

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR WALTON COUNTY, FLORIDA  
CIVIL DIVISION**

EDGEWATER BEACH OWNERS  
ASSOCIATION, INC., a Florida corporation,

Plaintiff,

CASE NO. 08CA000006

v.

WALTON COUNTY, FLORIDA

Defendant

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**COMPLAINT**

Plaintiff, EDGEWATER BEACH OWNERS ASSOCIATION, INC. ("EBOA"), by and through its undersigned counsel, sues Defendant, WALTON COUNTY, FLORIDA ("Walton County") and alleges as follows:

1. This is an action for declaratory and injunctive relief.
2. EBOA is a Florida corporation with its principal place of business in Miramar Beach, Florida.
3. Walton County is a constitutionally created political subdivision of the State of Florida.
4. Venue is proper in Walton County because the Walton County Code citations were issued in Walton County, Florida, and the unenforceable ordinance, as alleged herein, was adopted in Walton County, Florida.
5. On April 8, 2003, Walton County codified Ordinance 2003-07. This ordinance is encompassed in sections 22-51 through 22-64 of the Walton County Code.

6. Subsection (g) of section 22-54 of the Walton County Code states as follows:

*Obstructions on the beach.* It shall be unlawful for beach chairs, umbrellas, tents, and other such personal articles to be on the beach in such a manner that they will interfere with beach maintenance, nesting turtles, or emergency vehicles.

7. There is no section in the ordinance defining the terms “interfere” or “beach maintenance” as they are used in subsection (g).

8. There is no instruction or guideline demonstrating how to determine what property constitutes a “personal article” subject to this provision.

9. There is no instruction or guideline demonstrating how to determine whether property is “interfering” with beach maintenance, nesting turtles, or emergency vehicles.

10. EBOA maintains a volleyball net on its private beach property consisting of two wood poles driven into the ground and connected by a net. EBOA has maintained the volleyball net in that location for nearly twenty years. A photograph of the volleyball net in its longstanding location is attached hereto as Exhibit “A.”

11. The volleyball net located on the private property of EBOA is itself personal, private property that was purchased and is maintained by EBOA for the benefit of its owners and guests.

12. On several occasions beginning in late July 2007, Walton County Code Enforcement officers issued “red tag” citations to EBOA, stating that the volleyball net’s location on the beach violated section 22-54 of the Walton County Code.

13. Upon inquiry, EBOA President Suzanne Harris (“Ms. Harris”) was informed that the volleyball net violated the Walton County Code because it interfered with nesting sea turtles.

14. Ms. Harris questioned Sharon Maxwell (“Ms. Maxwell”), a well-respected

local authority on sea turtles who was instrumental in the passage of the ordinance that is subject of this lawsuit, about the volleyball net's alleged interference with the nesting habits and/or safety of local sea turtles.

15. Ms. Maxwell confirmed with Ms. Harris that nesting sea turtles would not be affected by the volleyball net or its location.

16. When Ms. Harris relayed this information to code enforcement officer Kevin Hargrave, he represented to Ms. Harris that while the volleyball net did not interfere with nesting turtles, it violated the Walton County Code nonetheless because it presented a risk that a person may walk into the net after dark, causing serious injury, specifically decapitation.

17. Less than twenty feet from the volleyball net, EBOA maintains a sign advising that the nearby beach is private property and for EBOA owners and registered guests only (the "Private Property sign").

18. The Private Property sign consists of two wooden posts driven directly into the ground, supporting a wooden sign between the posts. This sign is a permanent fixture which is not taken down at night. A photograph of the sign is attached hereto as Exhibit "B."

19. The Private Property sign has not been cited by Walton County Sheriff's Department for violation of any provision of the Walton County Code.

20. Several similar private property signs are located along the beach in Walton County. They are as follows:

a. Private property sign located on the beach in front of the private property of Surfside Resort and Condominium. A photograph of said sign is attached hereto as Exhibit "C."

b. Private property sign located on the beach in front of the private property of Avalon Dunes. A photograph of said sign is attached hereto as Exhibit "D."

c. Private property sign located on the beach in front of the private property of the Beach House Condominium. A photograph of said sign is attached hereto as Exhibit "E."

d. Private property sign located on the beach in front of the private property of Four Mile Village. A photograph of said sign is attached hereto as Exhibit "F."

21. There are numerous structures along the beach in Walton County that are similar or nearly identical to EBOA's volleyball net in structure. They are as follows:

a. Volleyball net located on the beach adjacent to the Whale's Tail restaurant. This beach is a public beach maintained by Walton County. A photograph of said volleyball net is attached hereto as Exhibit "G."

b. Volleyball net located on the beach adjacent to Pompano Joe's restaurant. This beach is a public beach maintained by Walton County. A photograph of said volleyball net is attached hereto as Exhibit "H."

c. Volleyball net located on the gulf side of Scenic Highway 98, owned and maintained by Maravilla Owners Association. A photograph of said volleyball net is attached hereto as Exhibit "I."

d. Volleyball net located on the beach which is the private property of Surfside Resort and Condominium. A photograph of said volleyball net is attached hereto as Exhibit "J."

e. Volleyball net located on the beach which is adjacent to Costa del Sol Condominiums. A photograph of said volleyball net is attached hereto as Exhibit "K."

f. Wood picnic tables on the beach in front of Pompano Joe's restaurant. A photograph containing said picnic tables in the far right portion is attached hereto as Exhibit "L."

g. Trash receptacles located all along the beach in Walton County consisting of a similar wood beam that is driven in the sand in the same fashion as the volleyball net at EBOA. A photograph of said trash receptacles at the beach in front of Maravilla Condominium is attached hereto as Exhibit "M."

22. EBOA and its representatives consulted the responsible parties for the structures referenced in Paragraph 17. Upon information and belief, none of the above-identified private property signs or volleyball nets have been cited or "red tagged" for violation of section 22-54 of the Walton County Code, despite heavy patrolling of the areas in which they are located.

**Count One - Declaratory Relief**

23. EBOA realleges and incorporates paragraphs 1 through 22 as if set forth fully herein.

24. This is an action for declaratory relief over which this court has jurisdiction pursuant to section 86.011, Florida Statutes.

25. Upon information and belief, Walton County is selectively enforcing section 22-54 of the Walton County Code in an unjustifiable and arbitrary manner, and has unlawfully delegated legislative power to the sheriff's and code enforcement departments without providing any sufficient, objective, and ascertainable standards by which to enforce the ordinance.

26. Upon information and belief, Walton County Code Enforcement and the Walton County Sheriff's Office are left to their own devices to determine what types of "personal items" pose a threat to beach maintenance and nesting turtles.

27. Upon information and belief, Walton County is purposely not enforcing section 22-54 of the Walton County Code against the structures on the public beach it maintains.

28. It is EBOA's position that section 22-54 of the Walton County Code is unconstitutional because it has been selectively enforced against EBOA in an unjustifiable and arbitrary manner, essentially denying EBOA equal protection under the law, and constitutes an unlawful delegation of legislative authority.

29. It is Walton County's apparent position that the ordinance is constitutional and enforceable as written.

30. As such, there is a bona fide dispute between the parties and this matter is ripe for the Court's consideration.

WHEREFORE, Edgewater Beach Owners Association, Inc. prays:

A. that this Court enter a declaratory judgment finding that section 22-54 of the Walton County Code is unconstitutional on its face and invalid and unenforceable against EBOA;

B. that Walton County, and all persons acting in active concert or participation with it, including its agents, servants, directors, employees, successors and assigns, jointly and severally, be temporarily and permanently enjoined from enforcing or threatening to enforce section 22-54 of the Walton County Code, whether orally or in writing, against EBOA;

C. that Walton County, and all persons acting in active concert or participation with it, including its agents, servants, directors, employees, successors and assigns, jointly and severally, be temporarily and permanently enjoined from removing, damaging, altering or having any contact with EBOA's volleyball net, which is the personal, private property of EBOA located

on EBOA's private real property;

D. that EBOA be awarded costs of this action; and

E. that EBOA be awarded such other and further relief as this Court deems appropriate.

**Demand for Jury Trial**

Pursuant to section 86.071, Florida Statutes, Plaintiff demands trial by jury on all issues so triable.

**Count Two - Injunctive Relief**

31. EBOA realleges and incorporates paragraphs 1 through 22 above as if set forth fully herein.

32. This is an action for injunctive relief.

33. Walton County unlawfully delegated its legislative authority without providing sufficient objective guidelines for the proper enforcement of section 22-54 of the Walton County Code.

34. The ordinance does not sufficiently describe prohibited conduct such that a common person would understand what action is unlawful under the ordinance, nor does it provide a context in which a court can determine whether or not the regulation is reasonable.

35. Walton County has not enforced section 22-54 of the Walton County Code against similarly situated structures and/or signs that would pose the same purported risk as that asserted by Mr. Hargrave in red tagging EBOA's volleyball net.

36. Upon information and belief, Walton County was aware of similar alleged

violations, including violations on public property maintained by the county, but for no valid reason, chose not to issue citations for those violations.

37. Walton County's selective enforcement of section 22-54 of the Walton County Code was based on unjustifiable and arbitrary classifications and denies EBOA equal protection under the law.

38. Walton County's enforcement of section 22-54 of the Walton County Code is causing and, unless enjoined by this Court, will continue to cause EBOA irreparable harm in that it is impossible to determine the value of any loss of use of EBOA's private property and the volleyball net or the loss of overall value to the amenities provided by EBOA to its patrons and owners for their use and enjoyment. Accordingly, the injury EBOA will sustain as a result of Walton County's enforcement of section 22-54 of the Walton County Code is of a kind and degree that cannot be completely compensated by monetary damages, leaving EBOA with no adequate remedy at law.

WHEREFORE, Edgewater Beach Owners Association, Inc. prays:

A. that Walton County, and all persons acting in active concert or participation with it, including its agents, servants, directors, employees, successors and assigns, jointly and severally, be temporarily and permanently enjoined from enforcing or threatening to enforce section 22-54 of the Walton County Code, whether orally or in writing, against EBOA;

B. that Walton County, and all persons acting in active concert or participation with it, including its agents, servants, directors, employees, successors and assigns, jointly and severally, be temporarily and permanently enjoined from removing, damaging, altering or having any contact with EBOA's volleyball net, which is the personal, private property of EBOA located




on EBOA's private real property;

C. that EBOA be awarded costs and actions; and

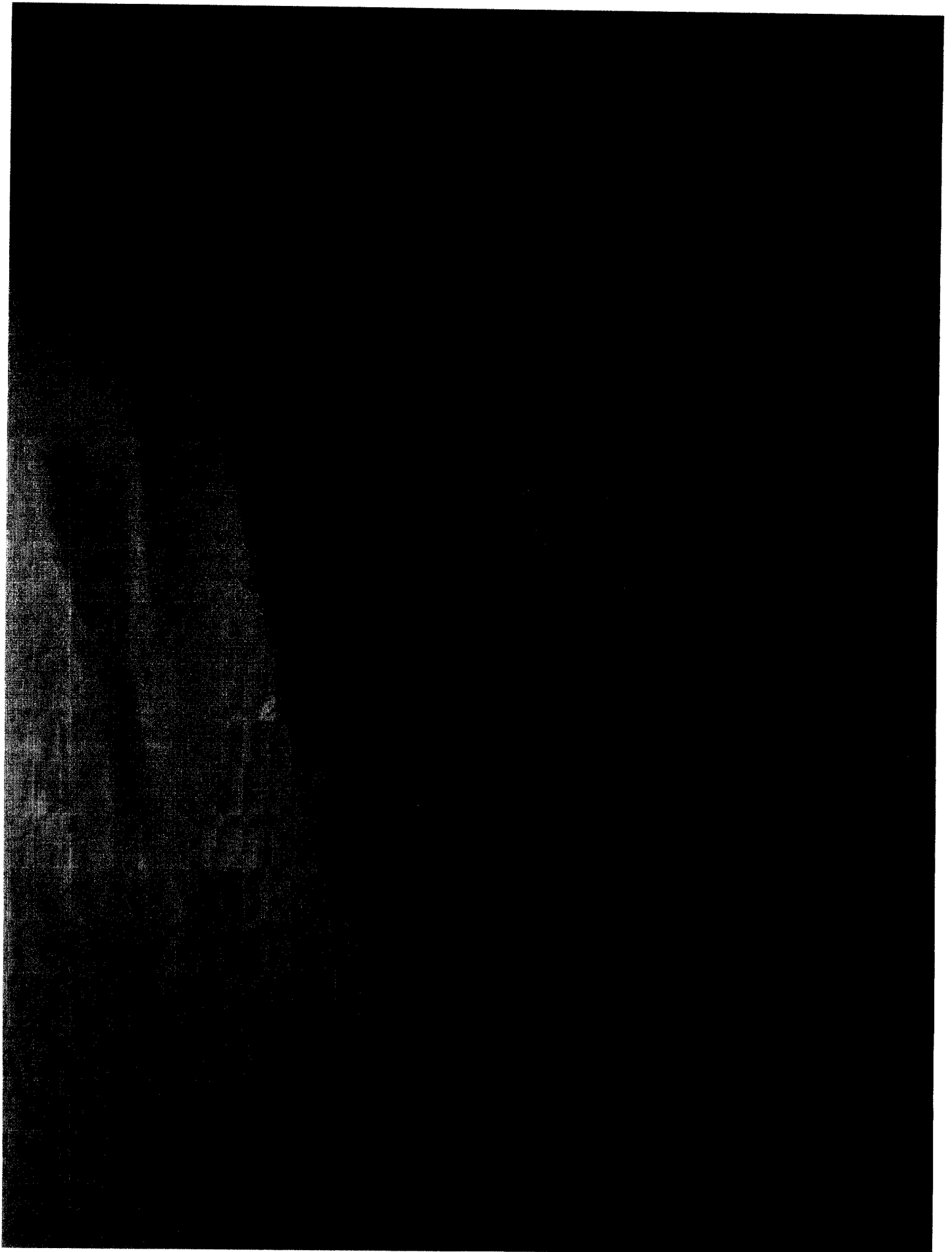
D. that EBOA be awarded such other and further relief as this Court deems

appropriate.

Dated this 3<sup>rd</sup> day of January, 2008



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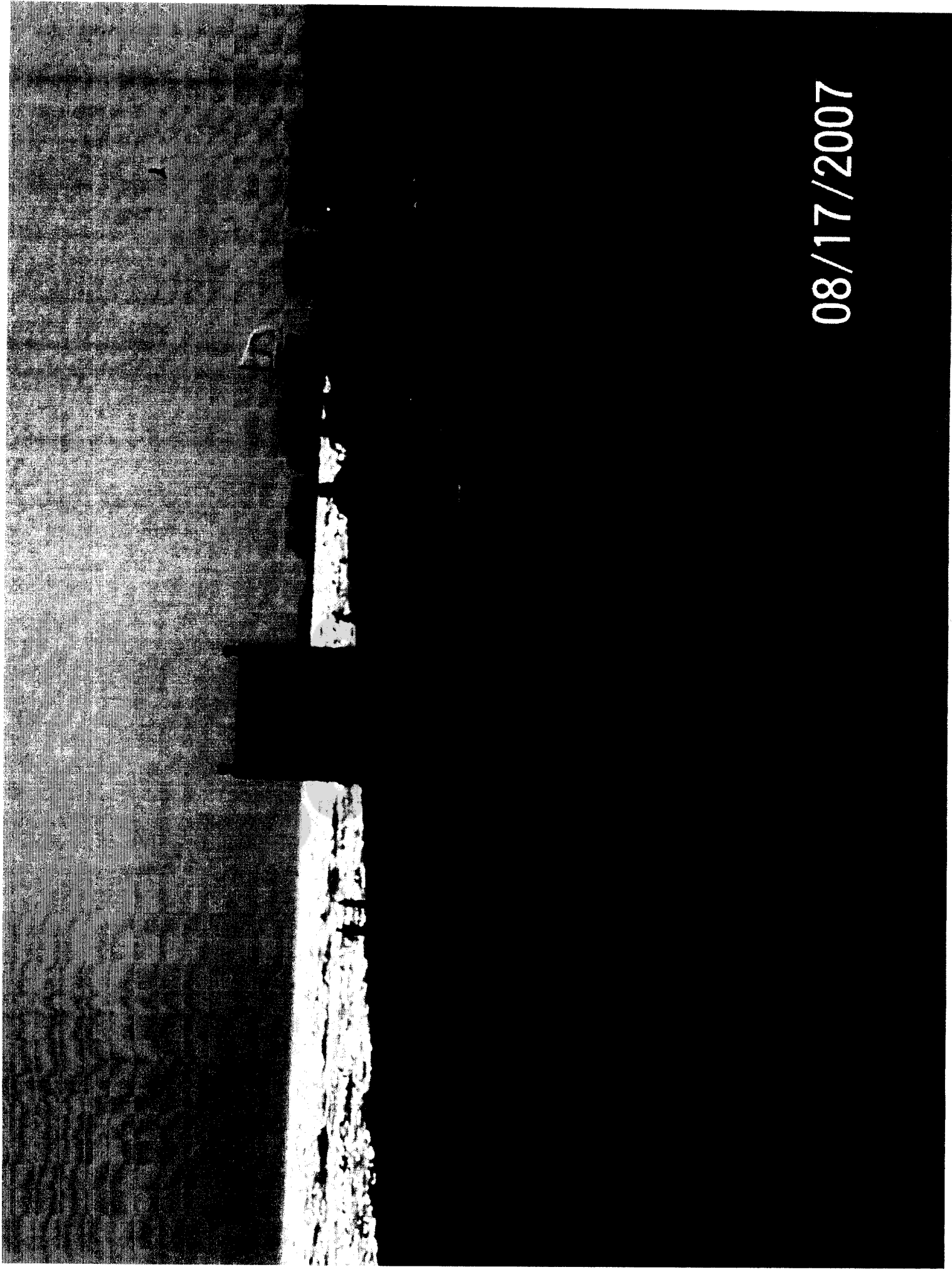


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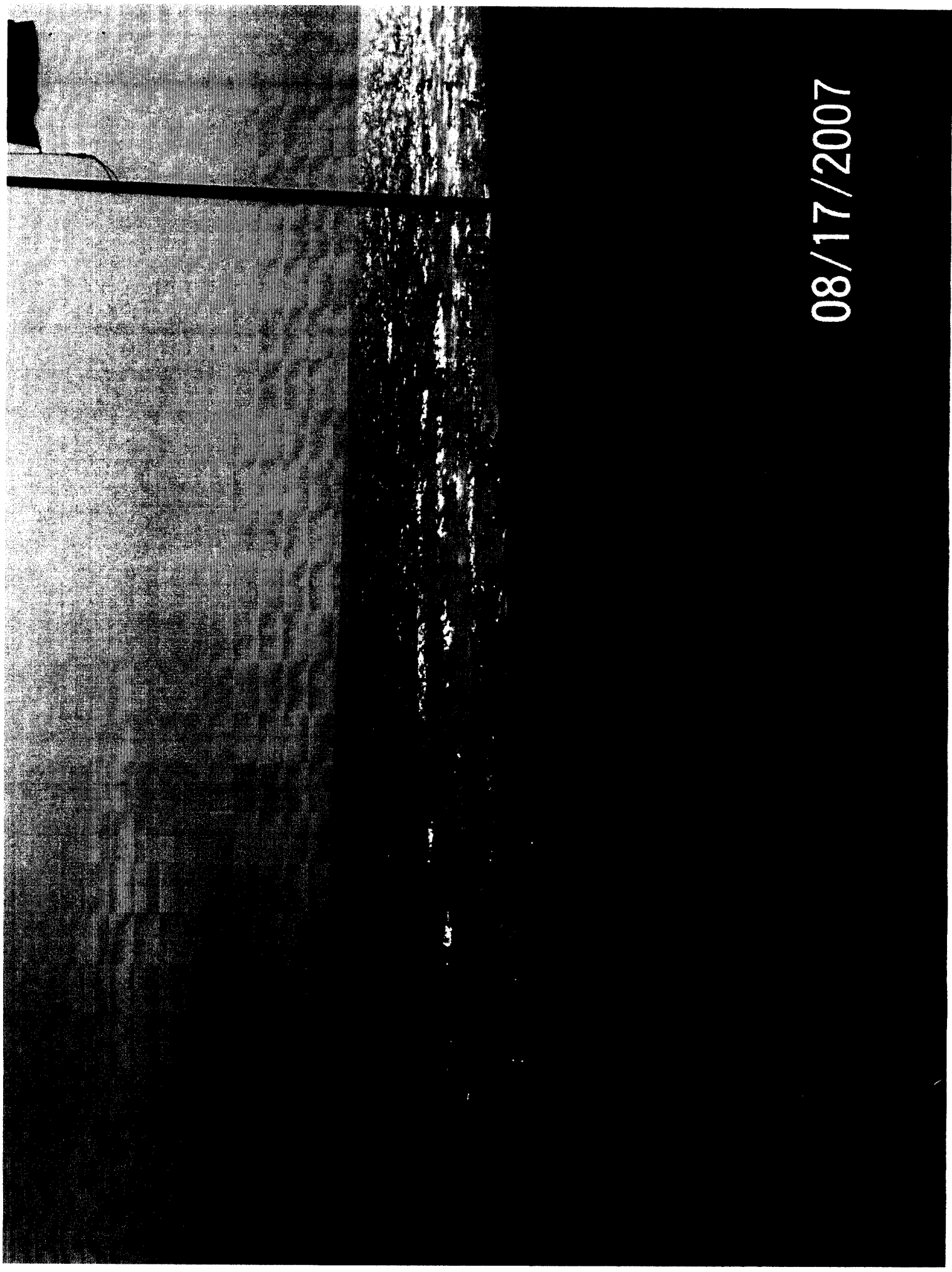
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EXHIBIT



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EXHIBIT B



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EXHIBIT W

