

MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners

DATE: September 12, 2005

FROM: City Attorney

CONSENT

SUBJECT: City of Gainesville v. Ed Crapo as Property Appraiser for Alachua County, et al. Case Nos. 01-03-CA-4664 and 01-04-CA-4560


Recommendation: The City Commission authorize the City Attorney to proceed with the appeal in this lawsuit.

In the fall of 2003 and 2004, the City filed suits to challenge the Property Appraiser's assessment of ad valorem taxes against certain City assets, which consisted of the City's fiber optic and internet system, nine City communication towers, and property adjacent to the Deerhaven plant.


All parties filed for summary judgment, which hearing was held before the court in June 2005, with a final written order entered on August 22, 2005. The Court found the City's fiber optic and internet system exempt from ad valorem taxation. As to the nine communication towers owned by the City and used for public safety purposes, the Court found the entire value of the towers to be taxable because the City allows private providers to place antennas on space on the towers not currently used by the City. The Court also found the property adjacent to Deerhaven, which was purchased for purposes of providing a buffer and for future expansion, taxable because the City did not purchase existing timber on the property and also did not break a hunting lease on the property.

The Court's finding that the City's properties are taxable is contrary to well established law that incidental private use does not destroy the predominate municipal purpose exemption for taxation purposes. Further, the Court's ruling could have significant impact on other City property as well as other municipalities' properties. For that reason the City will ask other impacted municipalities and municipal organizations to participate as amicus.

Prepared by:


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