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7 Items submitted
by Sam Mutch

CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION

10/14/02

IN RE: Petition 142 SUB-00 DB


OBJECTION TO CONSIDERATION OF PETITION

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and object to any consideration of Walnut Creek Subdivision, Phases I and II, at the October 14, 2002, meeting of the City Commission, and in support thereof state as follows:

1. The affected parties have had little time to review any type of submission made to the City of Gainesville by the Petitioner. The last submission received by the affected parties was on October 11, 2002, although the document was dated October 7, 2002. The affected parties understand that there was at least one additional submission made on October 14, 2002.
2. The submission of additional information has not met the time requirements as required by the Gainesville Code of Ordinances.

Respectfully submitted to the City Commission and submitted by hand to Ronald Carpenter and other interested parties this 14th day of October 2002.

MUTCH & BRIGHAM, P.A.


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Walnut Creek
Sam Mutch
Objections

**CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION**

IN RE: Petition 142 SUB-00 DB

MOTION TO STRIKE

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and move the City Commission to strike all of the public comment/testimony taken on September 23, 2002, and state in support that the affected parties were not on notice that either public comment or testimony would be taken at the time the City Commission was to take a ministerial act to execute a written development order concerning Petition 142 SUB-00 DB.

Respectfully submitted to the City Commission and submitted by hand to Ronald Carpenter and other interested parties this 14th day of October 2002.

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**CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION**

IN RE: Petition 142 SUB-00 DB

MOTION TO VOIR DIRE COMMISSIONER BRADY

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and request permission to *voir dire* Commissioner Edward Braddy on the ex parte communications received by him from the Petitioner during a quasi-judicial hearing on Petition 142 SUB-00 DB. *Voir dire* is needed in order for the City Commission to determine whether or not the challenge to Commissioner Braddy's impartiality should be sustained and he should be disqualified as a trier of fact in the quasi-judicial hearing of Petition 142 SUB-00 DB.

Respectfully submitted to the City Commission and submitted by hand to Ronald Carpenter and other interested parties this 14th day of October 2002.

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**CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION**

IN RE: Petition 142 SUB-00 DB

MOTION TO DISQUALIFY COMMISSIONER BRADY

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and object to the ex-parte communications sent by Everett Caudle to all of the City Commissioners. In particular, the affected parties demand the City Commission disqualify Commissioner Edward B. Braddy from any further consideration of Petition 142 SUB-00 DB, and state as follows:

Referring to the e-mail response from Commissioner Edward B. Braddy to Everett Caudle of Sunday, September 22, 2002, at 2:02 p.m., which is attached as Exhibit A. It is clear from that response that Commissioner Braddy read the correspondence from Mr. Caudle. It is also clear from the transcript of the hearing of September 23, 2002, that Commissioner Braddy took a position which clearly reflected Mr. Caudle's concerns.

The affected parties contend that Mr. Braddy actually deceived the Commission and the public when he said:

“Mr. Mayor, I had replied to an e-mail, and then after talking to the city attorney, I had been advised that --- not to exchange e-mails with --- this was a homeowner in the Glen Springs area. And I think we've all received a bunch of e-mails, and I've since replied to one thing, saying, “sorry, I can't communicate until this whole thing is settled.” So does that qualify?” (Page 59-60, Transcript of September 23, 2002, City Commission meeting)

The affected parties contend that Mr. Braddy was intentionally deceptive in his answer on the issue of the ex parte communications, when the ex parte communication came from the Petitioner, not from a Glen Springs neighbor. Mr. Caudle may live in the Glen Springs area, but Mr. Braddy knew well that Mr. Caudle was the applicant, and not a member of the “neighborhood” which is the main opposition to the project. The affected parties assume that when Mr. Braddy said that it was from a neighbor, he meant it was from someone opposed to the stormwater management design of the project and not from the applicant. Mr. Braddy cannot

feign innocence as immediately prior to asking for disclosure of ex parte communications Mr. Caudle had represented his family as the owner of the property.

Respectfully submitted to the City Commission and submitted by hand to Ronald Carpenter and other interested parties this 14th day of October 2002.

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**CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION**

IN RE: Petition 142 SUB-00 DB

OBJECTION TO ACTION WITHOUT DUE PROCESS

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and objection to any action without due process, and state in support:

1. The actions of the City Commission were not taken after 5:00 p.m. on the land use petition 142 SUB-00 DB, as required by Section 166.041(3)(c)2., *Florida Statutes*. In this case, an "ordinance" means "an official action of a governing body which action is a regulation of a general and permanent nature and enforceable as a local law." The subdivision plat is such an "ordinance." However, if the City Commission determines that the resolution adopting the plat is not an "ordinance" per Section 166.041(1)(a), *Florida Statutes*, then it can only be a "resolution" which means "an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision of a disposition of a particular item of the administrative business of the governing body." As such, a resolution of the nature of approving a subdivision plat is a ministerial duty of the City Commission, and the procedures for adoption of the resolution after 5:00 p.m. would not be applicable.
2. Section 166.041 (Procedures for Adoption of Ordinances and Resolutions), *Florida Statutes*, states in part, "the notice procedures required by this section are established as minimum notice procedures," and "a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law." None of the affected parties or the public were on notice by the City of Gainesville of any legislative or quasi-judicial action to be taken on September 23, 2002. In fact, the only action the affected parties and the public thought was under consideration was a purely ministerial action of the City Commission. Therefore, notice requirements found in Section 166.041, *Florida Statutes*, and Section 30-351, *Gainesville Code of*

Ordinances, have not been met by either the City or the Petitioner for Petition 142
SUB-00 DB.

Respectfully submitted to the City Commission and submitted by hand to Ronald
Carpenter and other interested parties this 14th day of October 2002.

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**CITY OF GAINESVILLE, FLORIDA
BEFORE THE CITY COMMISSION**

IN RE: Petition 142 SUB-00 DB

OBJECTION TO CONSIDERATION OF PETITION

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and object to any consideration of Phase I of the Walnut Creek Subdivision, at the October 14, 2002, meeting of the City Commission, without inclusion of Phase II of the Walnut Creek Subdivision, and in support thereof state as follows:

1. The gross area of Phase I of the Walnut Creek Subdivision is 14.32 acres. The total number of lots within Phase I is 73. The gross density (lots per gross acre) is equal to 5.1 dwelling units per acre. The maximum density permitted according to Ordinance 991267 is 4.6 dwelling units per acre. Wherefore, any consideration of Phase I, Walnut Creek Subdivision and any development order issued for Phase I without the inclusion of Phase II would violate Ordinance 991267.
2. Ordinance 991267 requires all lots adjacent to Hidden Pines Subdivision must be 60 feet in width. The affected parties contend Lots 129 through 137 are adjacent to Hidden Pines Subdivision, and are less than 50 feet in width. Therefore, Phase II is in violation of Ordinance 991267.
3. With the submissions given to the affected parties on Friday, October 11, 2002, it appears stormwater drainage facilities will be placed in what is considered an additional setback along an arterial road, NW 39th Avenue. The affected parties question how a stormwater management facility can be placed in such legally required additional setback from the right-of-way from NW 39th Avenue.
4. The modifications made in Phase I of Walnut Creek Subdivision cannot be made without review of the Development Review Board in accordance with Section 30-224 (Amendments to Approved Land Development), *Gainesville Code of Ordinances*. This section requires that any changes in the location and types of landscape materials must be reviewed by the Development Review Board.
5. The modifications made in Phase I of Walnut Creek Subdivision appear to violate Section 30-216 (Requirements and Evaluation PD), *Gainesville Code of*

Ordinances, in that the modifications to the stormwater management facilities may not be in conformance with the PD objectives found in Ordinance 991267; and the intrusion of the stormwater management facilities into the additional setback and buffer shown along the interface of Phase I, Walnut Creek Subdivision with NW 39th Avenue right-of-way.

6. The plan development as approved in Ordinance 991267 required Development Review Board approval for the subdivision. A change in the location of buffers, affecting any plan that was approved by the Development Review Board meets the criteria for “intermediate review” as specified in Section 30-159 (Criteria for Determining Level for Review), *Gainesville Code of Ordinances*.
7. An intermediate review must be noticed in accordance with Section 30-351, *Gainesville Code of Ordinances*, which requires formal notice including notices to affected parties, notice published in a newspaper of general circulation at least 15 days prior to the hearing which specifies the time, place, and a general description of the matter to be considered at the hearing. Neither on September 23, 2002, nor thereafter were notices given to affected parties of the type of action to be taken at the meeting of October 14, 2002. The quasi-judicial hearing under which the site plan was reviewed was closed on August 28, 2002. Although the quasi-judicial hearing which ended on August 28, 2002, was properly noticed, there was no indication that the consideration of the final written order of development that was to have been issued on September 23, 2002, would be reconsidered by the City Commissioners and the action of August 28, 2002, rescinded.
8. The actions taken on September 23, 2002, were in violation of the procedures for quasi-judicial hearings published by the City of Gainesville. The City Commission has required strict compliance by all parties in the application of the rules concerning quasi-judicial hearings before it. The City Commission took an *ultra vires* action when it opened the hearing for public comment and rescinded its actions of August 28, 2002, to take testimony from people who were never determined to be affected parties and who were not sworn. The action then to rescind the actions of August 28, 2002, were not based upon competent

substantial evidence or any of the other criteria required for an action of the City Commission in a quasi-judicial hearing as provided by Section 30-348, *Gainesville Code of Ordinances*, and the procedures of the City Commission for quasi-judicial hearings.

9. The agreement between the Applicant and the affected parties, Glen Springs Preservation Association, Inc., et al., prior to the beginning of the quasi-judicial hearing and adopted by the City Commission was that both Phases I and II of Walnut Creek Subdivision would be considered together at the quasi-judicial hearing. It was the understanding of the affected parties that this meant that plat approval for both Phase I and II would be adjudicated at the same time by the City Commission.

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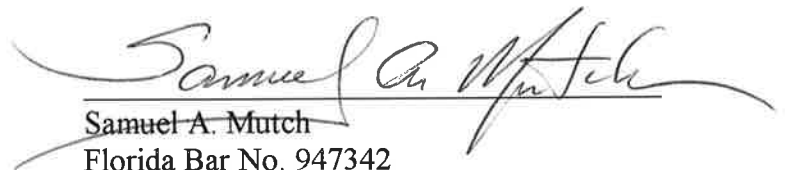
MOTION TO INSPECT

Comes now, Glen Springs Preservation Association, Inc., Bonnie O'Brien, Elizabeth Furlow, Leonard Furlow, and Sharon Dame, and demand this City Commission order Petitioner to permit the inspection of its property which is the subject of Petition 142 SUB-00 DB. Since January 2002, Glen Springs Preservation Association, Inc., et al., has made at least four (4) written requests to take soil samples and to conduct a double ring infiltrometer soil test on the subject property of Petition 142 SUB-00 DB. The Petitioner has either denied or completely ignored the requests of Glen Springs Preservation Association, Inc., et al.

It is imperative that the appropriate tests are conducted to determine the correct seasonal high water table and the conductivity of the soil. Without such independent testing, any approval of the project would be suspect.

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