



# MEMORANDUM

Office of the City Attorney

070927  
Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commissioners

DATE: February 25, 2008

FROM: City Attorney

CONSENT

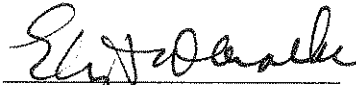
SUBJECT: Building 32606, Inc. a Florida Corporation vs. City of Gainesville, a Florida municipal corporation; Alachua County Circuit Court; Case No.: 01-08-CA-264.

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Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City in the case styled Building 32606, Inc. a Florida Corporation vs. City of Gainesville, a Florida municipal corporation; Alachua County Circuit Court; Case No.: 01-08-CA-264.

On January 29, 2008, the City of Gainesville was served with a summons and complaint. The Plaintiff alleges that the City refused to issue the Plaintiff a building permit to construct a masonry wall on property that it has sole and exclusive right to use and possess per a lease agreement. The Plaintiff is requesting that the Court declare the Plaintiff the "virtual owner" of the leased strip and order the City to issue a building permit.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

EAW/klm

IN THE CIRCUIT COURT IN THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA.

BUILDING 32606, INC., a Florida corporation, Plaintiff, vs. CITY OF GAINESVILLE, a Florida municipal corporation, Defendant.

CASE NO.: 01-2008-CA-264

DIVISION: 9

TRUE COPY SADIE DARNELL, SHERIFF ALACHUA COUNTY, FLORIDA served at 1:40 PM on the 23 Day of Jan 20 08 As Deputy Sheriff

S U M M O N S

THE STATE OF FLORIDA:

TO EACH SHERIFF OF THE STATE: You are hereby commanded to serve this Summons and a copy of the Complaint or Petition in this action on Defendant:

Please serve: CITY OF GAINESVILLE, a Florida municipal corporation Peegen Hanrahan, City Mayor 200 East University Avenue Gainesville, Florida

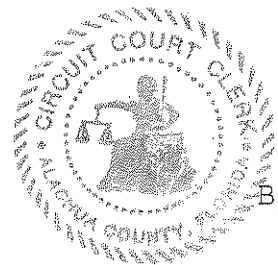
ADJUTANT DUE 2/18/08

Each Defendant is required to serve written defenses to the Complaint or Petition to A. BICE HOPE, ESQUIRE, Plaintiffs' attorney, whose address is P.O. Box 5217, Gainesville, Florida 32627, (352) 371-2066 within twenty (20) days after service of this Summons on the Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition.

WITNESS my hand the Seal of this Court this 22nd day of January, 2008.

J.K. "BUDDY" IRBY As Clerk of said Court

(SEAL)



By: Brenda Quinn As Deputy Clerk

COPY

"IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PERSONS WITH A DISABILITY WHO NEED ANY ACCOMMODATION IN ORDER TO PARTICIPATE SHOULD CALL JAN PHILLIPS, ADA COORDINATOR, ALACHUA COUNTY COURTHOUSE, 201 EAST UNIVERSITY AVENUE, GAINESVILLE, FL 32601 AT (352) 337-6237 WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE. IF YOU ARE HEARING IMPAIRED CALL (800) 955-8771; IF YOU ARE VOICE IMPAIRED CALL 800-955-8770."

IN THE CIRCUIT COURT OF THE  
EIGHTH JUDICIAL CIRCUIT, IN  
AND FOR ALACHUA COUNTY,  
FLORIDA.

BUILDING 32606, INC., )  
a Florida corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF GAINESVILLE, a Florida )  
municipal corporation, )  
 )  
Defendant. )

CASE NO.: 01-2008-CA-2164  
DIVISION: J

**COMPLAINT**

Plaintiff, **BUILDING 32606, INC.**, a Florida corporation sues  
Defendant, **CITY OF GAINESVILLE**, a Florida municipal corporation,  
and alleges:

1. This is an action for declaratory judgment under Chapter 86, Fla. Stats. (2007).
2. Plaintiff, Building 32606, Inc., is an active Florida corporation duly authorized and doing business in Alachua County, Florida, and whose last known post office address is 3434 S.W. 24<sup>th</sup> Avenue, Suite "A", Gainesville, Florida 32607.
3. Defendant, City of Gainesville, (hereinafter referred to as the "City") is a Florida municipal corporation located in Alachua County, Florida.
4. All of the conditions precedent to the filing of this action have occurred or accrued.

5. The City entered into a Lease Agreement dated December 26, 1985 with Star Garage Legal Center, a Florida general partnership. A copy of the Lease Agreement is attached hereto as Exhibit "A".
6. The Lease Agreement is effective through December 25, 2035, and all of the rent due through that date was paid in full at the commencement of the lease.
7. The premises covered by the Lease Agreement is an approximate 20' x 200' strip located between what is known as the Star Garage (to the east) and a city parking lot (to the west), said premises hereinafter referred to as the "Leased Strip".
8. Paragraph 4. of the Lease Agreement states as follows:

"BUILDING SERVED. It is contemplated and intended that the leased premises is for the use and benefit of the patrons, occupants and customers of the building located immediately to the east of the leased premises and commonly referred to as the Star Garage."
9. Paragraph 3. of the Lease Agreement states as follows:

"PURPOSES. Said leased premises shall be used for off-street parking of motor vehicles, landscaping, walkways and any other use not prohibited by law."

(emphasis supplied).

10. On or about November 22, 2004, Plaintiff's sister company, Star Garage Corporation, a Florida corporation, purchased the property commonly known as the Star Garage from Star Garage Legal Center. A copy of the Warranty Deed is attached hereto as Exhibit "B".
11. As part of the preparation for the purchase, the City executed a Consent to Assignment of Lease Agreement between the City of Gainesville and Star Garage Legal Center on November 15, 2004. A copy of the Consent to Assignment of Lease Agreement (hereinafter referred to as the "Consent") is attached hereto as Exhibit "C".
12. The Consent gave the City's approval to assignment of the December 26, 1985 Lease Agreement to Building 32606, Inc.
13. Also, as part of this sale transaction, Star Garage Legal Center and Plaintiff executed an Assignment of Lease assigning all of the lessee's rights under the December 26, 1985 Lease Agreement to Plaintiff. A copy of the Assignment of Lease dated November 22, 2004 is attached hereto as Exhibit "D".

14. On or about December 19, 2007, the City sold the parking lot to the west of the Leased Strip and the Leased Strip to First Street Lodging, LLC, a South Carolina limited liability company. A copy of the Special Warranty Deed evidencing that transaction is attached hereto as Exhibit "E".
15. As part of that transaction, the City assigned and the Grantee acknowledged and accepted the assignment of the Lease Agreement to/by the Grantee. A copy of the Assignment of Lease is attached hereto as Exhibit "F".
16. First Street Lodging, LLC's intention is to immediately build a 6 or 7 story Hampton Inn hotel on the parking lot property portion of the land conveyed to it by the City.
17. First Street Lodging, LLC's further intention as shown on its building plans is to store its trash immediately west of the Leased Strip's west line and to use the Leased Strip for ingress and egress to the hotel and to haul trash from the hotel to an off-site container.
18. First Street Lodging, LLC has no rights to the present use or possession of the Leased Strip.

19. Rather Plaintiff, Building 32606, Inc. has all rights to the present use and possession of the Leased Strip, which rights shall continue throughout the Lease term through December 25, 2035.
20. Notwithstanding the above, the City has granted First Street Lodging, LLC a building permit showing the ingress and egress and trash conditions as specified above.
21. At about the time of the City's conveyance (December 19, 2007), Building 32606, Inc. applied for a building permit from the City for the purpose of constructing a masonry wall on the Leased Strip's west line.
22. The purpose of the masonry wall would be to screen the Leased Strip from the 6 or 7 story hotel and to minimize impacts of the activities from the hotel on the Leased Strip and the Star Garage.
23. The City has refused to grant a building permit for the masonry wall on the Leased Strip. The only reason cited was that the City could not consider the application unless the Leased Strip's owner joined in or consented to the construction of the masonry wall.

A copy of the City's January 11, 2008 letter to the Plaintiff's architect is attached hereto as Exhibit "G".

24. Building 32606, Inc.'s attorneys requested the City to grant the building permit based on Building 32606, Inc.'s exclusive right to use and possess the Leased Strip. Copies of letters to Lawrence Calderon dated January 8, 2008, to Marion J. Radson, Esquire dated January 11, 2008 and to Nicholle M. Shalley, Esquire dated January 16, 2008 are attached hereto as Exhibits "H", "I", and "J" respectively.
25. To date, the City has refused to issue the building permit to Building 32606, Inc.
26. There is a bona fide, actual, present, practical need for a declaration of Building 32606, Inc.'s right to construct the masonry wall.
27. The above-stated facts are present, ascertained or ascertainable facts or present controversy as to a state of facts.



28. The right of Building 32606, Inc. to construct the masonry wall is dependant upon the above-stated facts or the law applicable to those facts.
29. The Plaintiff has an actual, present interest in whether or not it can construct the masonry wall.
30. The Plaintiff is interested in or may be in doubt as to its rights under the Lease Agreement and how those rights may be affected by the City's ordinances regarding accepting building permit applications.

**WHEREFORE**, Plaintiff, Building 32606, Inc., respectfully requests from the court:

- A. that it take jurisdiction of this cause under Chapter 86, Fla. Stats.;
- B. that it declare that Plaintiff, as the exclusive lessee of the Leased Strip, is the "virtual owner" of the Leased Strip for building permit purposes;
- C. that it declare that no consent or approval is required from the lessor/owner of the Leased Strip in order for the City to process Plaintiff's building permit application;

COMPLAINT  
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Case No.: 01-2008-CA-

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- D. that it declare that, should the City have no other objection (other than that as stated above), then the City issue Plaintiff the building permit for the masonry wall; and
- E. that it grant such other and further relief as it finds equitable and just.

**DATED** this 22<sup>nd</sup> day of January, 2008.



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A. BICE HOPE, ESQUIRE  
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Attorney for Plaintiff

SILBER/COMP