



MEMORANDUM
Office of the City Attorney

Registrar No. 070210

Box 46

Phone: 334-5011/Fax 334-2229

TO: Mayor and City Commission

DATE: December 17, 2009

SECOND AND
ADOPTION READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-07-97, Petition 23LUC-07PB

An Ordinance amending the City of Gainesville 2000-2010 Comprehensive Plan Future Land Use Element and Future Land Use Map; by overlaying the "Planned Use District" category over certain property with the underlying land use categories of "Single-Family (up to 8 units per acre)," "Industrial," and "Recreation," as more specifically described in this ordinance, consisting of approximately 498 acres, generally located in the vicinity of Waldo Road on the East, NE 39th Avenue on the South, NE 15th Street on the West, and NE 53rd Avenue on the North; by creating and adopting Policy 4.3.5 in the Future Land Use Element of the Comprehensive Plan; providing time limitations; providing directions to the City Manager; providing a severability clause; providing a repealing clause; and providing an effective date.

Recommendation: The City Commission (1) receive the Objections, Recommendations and Comments Report from the State Department of Community Affairs; (2) review the amendments as proposed by City staff and the applicant; (3) amend the ordinance, as appropriate; and (4) adopt the ordinance, as amended.

PLANNING & DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

On June 16, 2008, the City Commission approved this ordinance, by a vote of 6-0, for transmittal to the Florida Department of Community Affairs (DCA) for review in accordance with state law. On August 26, 2008, DCA issued its Objections, Recommendations and Comments (ORC) Report to the City (attached as **Exhibit "A"**). In the ORC Report, DCA objected that the comprehensive plan amendment was not in compliance with Sections 163.3177(1), and (6)(a), Florida Statutes, and with Rule 9J-5.005(2)(g), Florida Administrative Code. The ORC Report states that "*The City has proposed policy 4.3.5 to guide development on the Hatchet Creek amendment site (Ordinance 070210). As proposed, Policy 4.3.5.d is self amending. The proposed policy would allow a different version of the Airport Noise Zone Map at the PD zoning stage from that adopted into the Comprehensive Plan through proposed Policy 4.3.5. Land development regulations and development orders are to be consistent with the adopted comprehensive plan. Allowing the PD to control land use and allowing a different version of the Airport Noise Zone map at the PD zoning ordinance stage from that included with the Comprehensive Plan is self-amending and creates potential inconsistency between the PD zoning and the Comprehensive Plan.*" The DCA's recommendation states: "*The City should revise the policy to delete the reference to allowing the PD to control land use and allowing a different map*

at the PD zoning stage. The Airport Noise Zone map referenced in the Policy needs to be adopted into the plan. Alternatively the City may adopt it by reference however, the City must include the date, author and source of the map should it be adopted by reference. Any updated Airport Noise Zone map should be incorporated into the plan through the plan amendment process.”

Planning staff reviewed the DCA’s recommendation with legal staff and has revised Policy 4.3.5.d. in the ordinance as recommended by the DCA. The City staff response to the ORC report is attached as **Exhibit “B”**. In light of the City Commission adopting an ordinance revising the Airport Hazard Zoning Regulations on December 3, 2009, the substance of the revised regulations, including a new map, has been incorporated into this Ordinance. In addition, since the transmittal hearing on June 16, 2008, the Property has been added to the City’s Transportation Concurrency Exception Area and is no longer governed by the Proportionate Fair Share Program. Therefore, the transportation concurrency conditions have been revised accordingly. The applicant concurs with these revisions.

Pursuant to Section 163.3184(7)(a), Florida Statutes, the City has 60 days from receipt of the ORC report (in this case August 26, 2008) to “adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment.”

On October 16, 2008, the City Commission held a public hearing at the adoption stage on the Ordinance and, by a vote of 5-2, approved 1) continuing the Ordinance until the adoption hearing for the DCA No. 08-02 cycle pursuant to the applicants request for continuance; 2) directing staff to interact with the developer and provide an analysis on the impact of removing the age restriction – paragraph gg of the Ordinance; and 3) requesting that staff draft policies for inclusion in the Ordinance that reflect how the proposed development will meet subparagraphs 30-211 (b)(1) and (b)(7) of the City Land Development Code.

With respect to removing the age restriction, City Planning staff contacted the applicant’s legal counsel to discuss the matter and received a written response dated January 12, 2009, as follows:

“The applicant is still proposing an age-restricted community and agrees that Policy (gg) should stand as written in the ordinance. The Department of Community Affairs (DCA) requires that local governments include such restrictions in the comprehensive plan itself (not just in subsequent zoning ordinances) if the restriction forms the basis for the evaluation of maximum impacts of the development.”

As set forth in a memorandum from the City Attorney’s Office dated October 8, 2008, if the City makes substantive changes to the ordinance at the adoption hearing that were not reviewed by the DCA in the transmittal hearing (such as removing the age restriction), and the change is not supported by the applicant’s existing data and analysis or by updated and reanalyzed data and analysis, the DCA could issue a notice of intent to find the plan amendment “not in compliance” and may subject the City to state imposed remedial action or sanctions, including loss of certain state funding.

With respect to including policies in the Ordinance that reflect how the proposed development will meet the purpose and intent of the planned development district, subparagraphs 30-211 (b)(1) and (b)(7) of the City Land Development Code read as follows:

“(b) *Objectives.* The PD provisions are intended to promote flexibility of design and integration of uses and structures, while at the same time retaining in the city commission the absolute authority to establish limitations and regulations thereon for the benefit of the public health, welfare and safety. By encouraging flexibility in the proposals which may be considered, while at the same time retaining control in the city commission over the approval or disapproval of such proposals, the PD provisions are designed to:

(1) Permit outstanding and innovative residential and nonresidential developments with a building orientation generally toward streets and sidewalks; provide for an integration of housing types and accommodation of changing lifestyles within neighborhoods; and provide for design which encourages internal and external convenient and comfortable travel by foot, bicycle, and transit through such strategies as narrow streets, modest setbacks, front porches, connected streets, multiple connections to nearby land uses, and mixed uses.”

“(7) Promote the use of traditional, quality-of-life design features, such as pedestrian scale, parking located to the side or rear of buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks.”

City Planning staff contacted the applicant’s legal counsel to discuss following revisions (shown in double underline) to Policy 4.3.5 ff. in response to the City Commission’s direction:

ff. At the time of application for PD zoning, the owner/developer shall provide design standards generally consistent with traditional neighborhood design concepts (such as pedestrian scale, parking located to the side or rear of buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks for all residential and non-residential uses in the PUD and, subject to City review and approval, those standards shall be specified in the PD zoning ordinance.

City Planning staff received a written response dated January 12, 2009 from the applicant’s legal counsel, as follows:

“We do not believe that the new language suggested by staff should be included in the plan amendment. Despite numerous community meetings and hearings on the project, no members of the community have suggested that these are the design standards that should be applicable to the project. As originally recommended by staff, we believe that design standards are an appropriate subject of site plan approvals and that these should not be prejudged in the comprehensive plan.”

On January 26, 2009, the City Commission again held the adoption hearings for the DCA No. 08-02 cycle ordinances and the agenda included the Hatchet Creek PUD Ordinance, as per the Commission action on October 16, 2008.

At the January 26, 2009 hearing, after much discussion of the status of updating the Airport Hazard Zoning Regulations including a new airport noise zone map and other matters, the Commission, by a vote of 4-3, approved 1) continuing the ordinance to the second DCA cycle of 2009, 2) requesting the petitioner submit a letter stating the path they will take upon the ordinance being continued, and 3) directed staff to work on unresolved issues.

On January 27, 2009, the applicant's legal counsel submitted a letter (attached as **Exhibit "C"**) stating that they will work with the City toward adoption of reasonable amendments to the Airport Hazard Zoning Regulations and will update the data and analysis as necessary, before the ordinance is back before the Commission for adoption. In addition, the applicant confirmed that if DCA issues a notice of intent to find the plan amendment not in compliance, the applicant will withdraw this amendment.

On October 29, 2009, the City received the ORC report from DCA for the Cycle 09-02 land use change ordinance and, in accordance with the 60 day statutory requirement, scheduled these ordinances for adoption hearing on December 17, 2009. In accordance with the City Commission approval on January 26, 2009, this Ordinance was likewise scheduled for December 17, 2009.

On October 29, 2009, applicant's legal counsel communicated to City staff (attached as **Exhibit "D"**) that the applicant concurs with the application of the new Airport Hazard Zoning Regulations to the property, requests that the age restricted community requirement be removed, requests that the "office and retail" limitation be lifted to allow for a broader range of Industrial uses, and again restates its understanding that the burden for updated data and analysis due to revisions is on the applicant. City staff has created a matrix (attached as **Exhibit "E"**) that sets forth the revisions requested by the applicant and those requested by City staff for inclusion in the ordinance at this adoption reading and the staff analysis and recommendation concerning each requested revision.

In addition, a more complete chronological background on this Petition and Ordinance, prepared by City staff, is attached as **Exhibit "F."**

CITY ATTORNEY MEMORANDUM

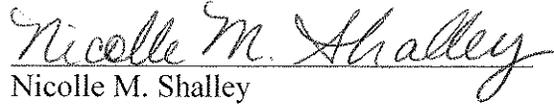
Florida Statutes set forth the procedure for adoption of an amendment to the Comprehensive Plan. The first hearing was held at the transmittal stage and was advertised seven days prior to the first public hearing. The second hearing will be held at the adoption stage of the ordinance and must be advertised five days before the adoption hearing.

The proposed amendment to the Comprehensive Plan was transmitted to the State Department of Community Affairs (DCA) for written comment after the first hearing. The comments, recommendations or objections of the DCA must be considered by the Commission at the adoption hearing. At the adoption hearing, the City Commission may adopt the ordinance, adopt the ordinance as amended, or not adopt the ordinance.

Following second reading, if the ordinance adopted or adopted with amendments, the Plan amendment will not become effective until the DCA issues a final order determining the adopted amendment to be in compliance in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, or until the Administration Commission

(Governor and Cabinet) issues a final order determining the adopted amendment to be in compliance.

Prepared by:



Nicolle M. Shalley
Senior Assistant City Attorney

Approved and
submitted by:


Marion J. Radson
City Attorney

Passed on first reading by a vote of 6-0.

MJR/NS/sw/rls



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

August 26, 2008

The Honorable Pegeen Hanrahan
Mayor, City of Gainesville
P.O. Box 490, Station 19
Gainesville, FL 32601-0490

RE: City of Gainesville Proposed Comprehensive Plan Amendment 08-1

Dear Mayor Hanrahan:

The Department has completed its review of the proposed Comprehensive Plan Amendment for the City of Gainesville (DCA 08-1), which was received on June 27, 2008. Based on Chapter 163, Florida Statutes, we have prepared the attached report, which outlines our findings concerning the amendment. It is particularly important that the City address the 'objections' set forth in our review report so that these issues can be successfully resolved prior to adoption. We have also included a copy of local, regional and state agency comments for your consideration. Within the next 60 days, the City should act by choosing to adopt, adopt with changes or not adopt the proposed amendment. For your assistance, our report outlines procedures for final adoption and transmittal.

The amendment package consists of two Future Land Use Map amendments each with specific policies guiding the development of the amendment site and amendments to Future Land Use Element Policy 4.1.1 adding a new Business Industrial future land use category and deleting the current allowance for an additional 2 stories of building height by Special Use Permit to the Urban Mixed-Use-1 future land use category. The Department commends the City on its commitment to the protection of natural resources as evidenced in the proposed policies guiding development of the Hatchet Creek and LandMar amendment sites. However, at the same time the Department has concerns that the policy related to the LandMar amendment needs additional guidelines to ensure the compatibility with adjacent uses and to address urban sprawl and long term transportation impacts. The Department has also identified issues with the proposed Hatchet Creek amendment based on a self amending proposed policy. With regards to the proposed Business Industrial future land use category the Department has identified the need for the City to include a measurable intensity standard for the category.

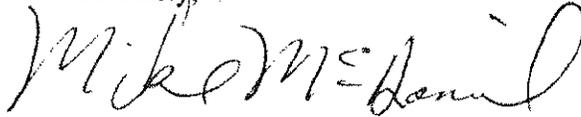
2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-2100
850-488-8466 (p) • 850-921-0781 (f) • Website www.dca.state.fl.us

• COMMUNITY PLANNING 850-488-2396 (p) 850-488-3309 (f) •
• HOUSING AND COMMUNITY DEVELOPMENT 850-488-7959 (p) 850-922-5623 (f) •

The Honorable Pegeen Hanrahan
August 26, 2008
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I believe the concerns outlined in our report can be resolved with additional attention to the amendment. If you, or your staff, have any questions or if we may be of further assistance as you formulate your response to this Report, please contact Ana Richmond, Principal Planner, via email at anastasia.richmond@dc.state.il.us or by phone at (850) 922-1794.

Sincerely,



Mike McDaniel
Chief, Office of Comprehensive Planning

MM/ar

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Mr. Scott Koons, AICP, Executive Director, North Central Florida RPC
Mr. Dean Mimms, AICP, Chief of Comprehensive Planning City of Gainesville
Mr. Allan Penska, Gainesville Regional Airport
Ms. Linda Shelly, Esq., Flower, White, Banker and Boggs

TRANSMITTAL PROCEDURES

The process for adoption of local comprehensive plan amendments is outlined in s. 163.3184, Florida Statutes, and Rule 9J-11.011, Florida Administrative Code.

Within ten working days of the date of adoption, the City must submit the following to the Department:

- Three copies of the adopted comprehensive plan amendment;
- A copy of the adoption ordinance;
- A listing of additional changes not previously reviewed;
- A listing of findings by the local governing body, if any, which were not included in the ordinance; and
- A statement indicating the relationship of the additional changes to the Department's Objections, Recommendations and Comments Report.

The above amendment and documentation are required for the Department to conduct a compliance review, make a compliance determination and issue the appropriate notice of intent.

In order to expedite the regional planning council's review of the amendment, and pursuant to Rule 9J-11.011(5), F.A.C., please provide a copy of the adopted amendment directly to Mr. Scott Koons, AICP, Executive Director of the North Central Florida Regional Planning Council.

Please be advised that the Florida legislature amended Section 163.3184(8)(b), F.S., requiring the Department to provide a courtesy information statement regarding the Department's Notice of Intent to citizens who furnish their names and addresses at the local government's plan amendment transmittal (proposed) or adoption hearings. In order to provide this courtesy information statement, local governments are required by the law to furnish to the Department the names and addresses of the citizens requesting this information. This list is to be submitted at the time of transmittal of the adopted plan amendment.

**DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR THE CITY OF GAINSEVILLE
COMPREHENSIVE PLAN AMENDMENT 08-1**

August 26, 2008
Division of Community Planning
Office of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of the City of Gainesville's proposed amendment to their comprehensive plan (DCA number 08-1) pursuant to Chapter 163.3184, Florida Statutes (F.S.).

The objections relate to specific requirements of relevant portions of Rule 9J-5, Florida Administrative Code (F.A.C.), and Chapter 163, Part II, F.S. Each objection includes a recommendation of one approach that might be taken to address the cited objection. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the other external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

Each of these objections must be addressed by the local government and corrected when the amendment is resubmitted for our compliance review. Objections, which are not addressed, may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis items, which the local government considers not applicable to its amendment. If that is the case, a statement justifying its non-applicability pursuant to Rule 9J-5.002(2), F.A.C., must be submitted. The Department will make a determination on the non-applicability of the requirement, and if the justification is sufficient, the objection will be considered addressed.

The comments, which follow the objections and recommendations section, are advisory in nature. Comments will not form bases of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form bases of Departmental objections unless they appear under the "Objections" heading in this report.

OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT

FOR THE CITY OF GAINESVILLE

PROPOSED COMPREHENSIVE PLAN AMENDMENT 08-1

I. CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C.

A. Future Land Use Map

The City has proposed Ordinance 070447 (LandMar) proposing to convert 1,754 acres from Alachua County Rural/Agriculture and City Agriculture to Single Family, Planned Use District and Conservation.

1. Objection: The City has not adopted its Public School Facilities Element and Interlocal Agreement by the scheduled date of July 1, 2008 as required by Section 163.3177(12)(i), F.S. Therefore, pursuant to Section 163.3177(12) (j),F.S., the City is prohibited from adopting amendments to the comprehensive plan which increase residential density. Therefore, the City cannot adopt proposed LandMar FLUM amendment, which has the potential to increase residential density, until the City adopts and transmits its Public School Facilities Element along with associated comprehensive plan amendments implementing school concurrency along with an executed Public School Interlocal Agreement.

[Section 163.3177(12)(j), F. S.]

Recommendation: The City must first adopt and transmit the Public Educational Facilities Element and executed Interlocal Agreement to the Department. Then based on the level of service standards and concurrency service areas the City should provide adequate data and analysis supporting the LandMar amendment. Should the capacity not be available to serve the amendment site the City should either revise the amendment to reduce school impacts or include mitigation through the appropriate district facilities work plan for the amendment consistent with the mitigation options included in the Public Educational Facilities Element.

2. Objection: As proposed, the majority of the site, approximately 1,000 acres, would be devoted to low density single family housing, creating a pattered that is inefficient, promotes dependence on the automobile, and discourages a diversity of housing types.. The amendment therefore exhibits the following indicators of urban sprawl:

- Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development.
- Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.
- As a result of premature or poorly planned conversion of rural land to other uses, fails adequately to protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, and other significant natural systems.
- Fails to maximize use of existing public facilities and services.

- Fails to maximize use of future public facilities and services.
- Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.
- Fails to provide a clear separation between rural and urban uses.
- Fails to encourage an attractive and functional mix of uses.
- Results in poor accessibility among linked or related land uses.
- Results in the loss of significant amounts of functional open space

Authority: Sections 163.3177(2), (5), (6)(a), and (8), F.S., and Rules 9J-5.005(2), (5), 9J-5.006(1)(g), (2)(c), (3)(b)1. & 8., (3)(c)3., and (5), 9J-5.011(2)(b)3., F.A.C.

Recommendation: The Department recommends the City reduce the amendment size and revise the single family density to ensure the amendment will promote a sustainable development pattern that creates a choice in housing opportunities. The amendment should be sized so that housing, jobs, daily needs and other activities are at a scale that will promote interconnectivity and are within easy walking distance of each other. Revise the amendments to include provisions that further address urban form and housing and include an analysis that demonstrates the amendments discourage the proliferation of urban sprawl consistent with the requirements of Rule 9J-5, F.A.C.

3. Objection: Rule 9J-5.006(3)(c)2., F.A.C., requires provisions for compatibility of adjacent land uses. The proposed Single Family land use is incompatible with the Industrial land use located at the southwest corner of the LandMar amendment site, and the amendment lacks provisions which will ensure the uses will be compatible.

[Sections 163.3177(6)(a) and (8), F.S.; and Rules 9J-5.005(2), 9J-5.006(3)(c)2., F.A.C.]

Recommendation: The City should revise Policy 4.3.4.D to include a substantial buffer from the adjacent Industrial land use on the southwest boundary of the site. The Department recommends a minimum of 300 feet. The buffer should ensure the proposed residential development will not impact the operations or expansion of the existing industrial uses adjacent to the site.

4. Objection: The LandMar amendment represents a significant increase in development potential and impacts to SR 121. Although, the amendment proposes to limit development within the first five years to a level that will not degrade the level of service on SR 121 the City has not identified potential improvements to maintain the level of service on SR 121 within the planning horizon or build out of the amendment site.

[Sections 163.3177(2), (3)(a), (6)(a)&(j), (8), F.S. and Rules 9J-5.005(2); 9J-5.006(3)(b)1, and (3)(c)3.; 9J-5.016(1)(a), (2)(b and c), (3)(b)1, 3, & 5, and (4)(a)1 & 2; 9J-5.019(3)(f, g and h), (4)(b)2 & 3, (5), F.A.C.]

Recommendation: The Department recommends the City include amendments to Capital Improvements Element and Traffic Circulation Map to address long range planning efforts to maintain the level of service standard for SR 121.

B. Future Land Use Element

1. Objection: The City has proposed to amend Policy 4.1.1 to create a new Business Industrial future land use category. The City has not included an intensity standard for the proposed future land use category.

[Sections 163.3177(6)(a), F.S. and Rules 9J-5.005(6), 9J-5.006(3)(c)7., F.A.C.]

Recommendation: The City should revise the policy to establish a standard for intensity of land use for the proposed Business Industrial future land use category. Possible standards for non-residential standards include the use of floor area ratios (FARs) or impervious surface ratios (ISRs), based on square feet per acre, in combination with building height limitations and types of uses allowed.

2. Objection: The City has proposed policy 4.3.5 to guide development on the Hatchet Creek amendment site (Ordinance 070210). As proposed, Policy 4.3.5.d is self amending. The proposed policy would allow a different version of the Airport Noise Zone Map at the PD zoning stage from that adopted into the Comprehensive Plan through proposed Policy 4.3.5. Land development regulations and development orders are to be consistent with the adopted comprehensive plan. Allowing the PD to control land use and allowing a different version of the Airport Noise Zone map at the PD zoning ordinance stage from that included with the Comprehensive Plan is self-amending and creates potential inconsistency between the PD zoning and the Comprehensive Plan.

[Sections 163.3177(1), (6)(a), F.S. and Rule 9J-5.005(2)(g), F.A.C.]

Recommendation: The City should revise the policy to delete the reference to allowing the PD to control land use and allowing a different map at the PD zoning stage. The Airport Noise Zone map referenced in the Policy needs to be adopted into the plan. Alternatively the City may adopt it by reference however, the City must include the date, author and source of the map should it be adopted by reference. Any updated Airport Noise Zone map should be incorporated into the plan through the plan amendment process.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Future Land Use Map

1. Objection related to the need to adopt school concurrency provisions prior to the adoption of the LandMar amendment: The proposed plan amendments are not consistent with and do not further the following goal and policy of the State Comprehensive Plan [Section 187.201, F.S.]:

(25) Plan Implementation, Goal (a) and Policy (b)7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goals and policies of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report.

2. Objection related to the proposed LandMar amendment related to the proliferation of urban sprawl: The proposed plan amendment is not consistent with and does not further the following goals and policies of the State Comprehensive Plan [Section 187.201, F.S.]:

- (15) Land use, Goal (a) and Policies (b)2; and
- (25) Plan Implementation, Goal (a) and Policy (b) 7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goal and policy of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report

3. Objection related to the proposed LandMar amendment related to compatibility: The proposed plan amendment is not consistent with and does not further the following goals and policies of the State Comprehensive Plan [Section 187.201, F.S.]:

- (15) Land use, Goal (a) and Policies (b)2; and
- (25) Plan Implementation, Goal (a) and Policy (b) 7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goal and policy of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report

4. Objection related to the proposed LandMar amendment related to long range transportation impacts: The proposed plan amendment is not consistent with and does not further the following goals and policies of the State Comprehensive Plan [Section 187.201, F.S.]:

- (15) Land use, Goal (a) and Policies (b)1;
- (17) Public Facilities, Goal (a) and Policies (b)1 and 7;
- (19) Transportation, Goal (a) and Policies (b)3, 7, 9, 12, and 13; and
- (25) Plan Implementation, Goal (a) and Policy (b) 7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goal and policy of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report

B. Future Land Use Element

1. Objection related to the proposed Business Institutional future land use category (Ordinance 071154): The proposed plan amendment is not consistent with and does not further the following goal and policy of the State Comprehensive Plan [Section 187.201, F.S.]:

- (25) Plan Implementation, Goal (a) and Policy (b)7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goals and policies of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report

2. Objection related to proposed Hatchet Creek Policy 4.3.5.d: The proposed plan amendment is not consistent with and does not further the following goals and policies of the State Comprehensive Plan [Section 187.201, F.S.]:

- (15) Land use, Goal (a) and Policies (b)2; and
- (25) Plan Implementation, Goal (a) and Policy (b) 7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goal and policy of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report.

**Exhibit "B" to Cover Memo
(Legistar No. 070210)**

December 17, 2009

**City Staff Responses (pertaining to Proposed Hatchet Creek (23LUC-07 PB)
amendment (Ordinance 070210)) to:**

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT (issued 8/26/08 for
Comprehensive Plan Amendment 08-1)**

FOR THE CITY OF GAINESVILLE

TO BE ADOPTED WITH PROPOSED COMPREHENSIVE PLAN AMENDMENT 09-2

I. CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C.

B. Future Land Use Element

2. Objection: The City has proposed policy 4.3.5 to guide development on the Hatchet Creek amendment site (Ordinance 070210). As proposed, Policy 4.3.5.d is self amending. The proposed policy would allow a different version of the Airport Noise Zone Map at the PD zoning stage from that adopted into the Comprehensive Plan through proposed Policy 4.3.5. Land development regulations and development orders are to be consistent with the adopted comprehensive plan. Allowing the PD to control land use and allowing a different version of the Airport Noise Zone map at the PD zoning ordinance stage from that included with the Comprehensive Plan is self-amending and creates potential inconsistency between the PD zoning and the Comprehensive Plan.

[Sections 163.3177(1), (6)(a), F.S. and Rule 9J-5.005(2)(g), F.A.C.]

Recommendation: The City should revise the policy to delete the reference to allowing the PD to control land use and allowing a different map at the PD zoning stage. The Airport Noise Zone map referenced in the Policy needs to be adopted into the plan. Alternatively the City may adopt it by reference however, the City must include the date, author and source of the map should it be adopted by reference. Any updated Airport Noise Zone map should be incorporated into the plan through the plan amendment process.

City Response: *We have addressed this Objection by deleting the sentence regarding future amendment of the Airport Noise Zone, and by including the date, author and source of the new Airport Noise Zone map. On December 3, 2009, the City Commission adopted on second reading an ordinance that revised and updated the Airport Hazard Zoning Regulations, including a new Airport Noise Zone Map. This new ordinance repealed and replaced the prior regulations as of the date of adoption.*

Proposed, revised Policy 4.3.5 d., with additions double-underlined and deletions stricken, follows.

Policy 4.3.5 Due to the unique infrastructure and environmental constraints of the Hatchet Creek Planned Use District (the "PUD"), as depicted on the map labeled Hatchet Creek PUD Area in the Future Land Use Map Series A, the PUD shall be governed by the following conditions:

d. The allowable uses within the PUD shall be ~~as~~-restricted as described below and as more specifically ~~described~~ provided in the PD zoning ordinance. For purposes of this PUD, the ~~Airport Noise Zone~~ 60-75 DNL ~~Noise Contour~~ is the area depicted as the 60 DNL Noise Contour, the 65 DNL Noise Contour, the 70 DNL Noise Contour and the 75 DNL Noise Contour on Attachment 3 to the Appendix F – Airport Hazard Zoning Regulations, Chapter 30, Gainesville Code of Ordinances adopted on December 3, 2009~~May 10, 1999~~ as by Ordinance 090384 ~~981149~~. A copy of Attachment 3 is attached hereto as Exhibit "B," which consists of the map entitled "Airport Noise Zone Map – City of Gainesville" prepared by the City of Gainesville Planning Department GIS Section 08/09. The source of the map is the Pt. 150 Study 2012 Noise Exposure Map, as stated on the map. ~~If the City amends the Airport Noise Zone after the effective date of this PUD and such amendment results in areas of land that were in the Airport Noise Zone, but no longer are within the newly adopted airport noise zone, the City Commission, at the PD zoning stage, may allow residential development in that area upon a City Commission finding that (1) residential development in that area is compatible with the Airport operations, including without limitation, flight operations, and (2) that the site for which the units are proposed is suitable for residential development.~~

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

B. Future Land Use Element

2. **Objection related to proposed Hatchet Creek Policy 4.3.5.d:** The proposed plan amendment is not consistent with and does not further the following goals and policies of the State Comprehensive Plan [Section 187.201, F.S.]:

- (15) Land use, Goal (a) and Policies (b)2; and
- (25) Plan Implementation, Goal (a) and Policy (b) 7.

Recommendation: Revise the amendments, as necessary, to be consistent with the above referenced goal and policy of the State Comprehensive Plan. Specific recommendations can be found following the objection cited previously in this report.

City Response: *Please City Response to Objection 2 (under I. CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. - B. Future Land Use Element).*



EXHIBIT "C" TO COVER MEMO
(Legistar No. 070210)

Linda Loomis Shelley
Direct Dial: 850-681-4260
Direct Fax: 850-681-3381
lshelley@fowlerwhite.com

January 27, 2009

Mayor Pegeen Hanrahan and
Members of the City Commission
City of Gainesville
200 East University Avenue
Gainesville, Florida 32601

Re: Hatchet Creek PUD Comprehensive Plan Amendment – Petition #23LUC-07PB

Dear Mayor and Members of the Commission:

On behalf of East Gainesville Development Partners, LLC (EGDP), we would like to thank you for continuing the application for a plan amendment until adoption of the amendments in the second cycle 2009. During the interim, EGDP will work with the City towards adoption of a current noise contour map that can be applied to the Hatchet Creek PUD as well as reasonable amendments to the Airport Noise Zone ordinance. Also, EGDP will work with the City on issues raised by the Commission during its deliberations on the proposed Hatchet Creek PUD amendment.

This letter also confirms that EGDP accepts the risk that this action might cause the Department of Community Affairs (DCA) to reject the amendment or find it not in compliance. To lessen that concern, EGDP agrees to update the data and analysis applicable to the amendment, as necessary, and further agrees that it will withdraw the proposed amendment if it is found not in compliance by DCA.

FOWLER WHITE BOGGS P.A.

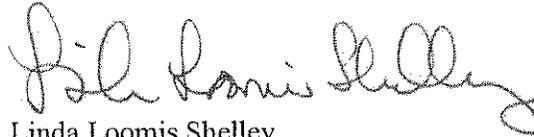
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TELEPHONE (850) 681-0411 • FAX (850) 681-6036 • www.fowlerwhite.com

Mayor Hanrahan
Members of City Commission
January 27, 2009
Page 2

Thank you again for continuing this matter to the City's second cycle 2009 for large-scale land use amendments.

Sincerely,
Fowler White Boggs P.A.

A handwritten signature in cursive script, appearing to read "Linda Loomis Shelley".

Linda Loomis Shelley

LLS/tre

cc: Russ Blackburn
Marion Radson
Erik Bredfeldt
Nicolle Shalley
Dean Mimms
Robert Simensky
Ron Carpenter, Esquire

FOWLER WHITE BOGGS P.A.

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EXHIBIT "D" TO COVER MEMO
(Legistar No. 070210)

Shalley, Nicolle M.

From: Shelley, Linda [lshelley@fowlerwhite.com]
Sent: Thursday, October 29, 2009 4:53 PM
To: Bredfeldt, Erik A.; Shalley, Nicolle M.
Subject: Hatchet Creek PUD Comp Plan Amendment

Erik and Nicole –

This will confirm our conversations of this afternoon in which I advised you that East Gainesville Development Partners requests that the Hatchet Creek PUD to be included as part of the 09-2 cycle of comprehensive plan amendments using the anticipated update to Appendix F as the new map attachment demonstrating the areas where residential (and other) uses are allowed (or prohibited). Because this change causes a significant reconfiguration of the project, the applicant believes that building an age-restricted community is no longer workable, and asks that this restriction be removed from the PUD conditions (Condition gg). Also, in Condition d.1.(b), there is an additional reference to "active adult community" which would need to be removed and we would request that the "retail and office" limitation in the last phrase of that section be removed to ensure that outdoor storage, an indoor farmers' market and other permitted uses listed in I-1 would be allowed. There may be similar references in other portions of the conditions that we or the City may identify as outdated or unnecessary given the above changes, and we look forward to your advice in that regard.

We understand that updated analyses are the applicant's burden and await further advice from the City as to the scope and content of same. We look forward to working through all of these issues with the City in a timely and cooperative fashion. Toward that end, please contact me at your earliest convenience (I understand that it will be next week) in order to get the necessary documents to the City so that it will have ample time for review.

Best regards, Linda



Linda Loomis Shelley
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 Assistant Beth Roberson: 850 681 4218

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11/13/2009

Exhibit "E" to Cover Memo for HATCHET CREEK PUD (Legistar No. 070210)

REVISION REQUESTED & RESPONSES

PROPOSED SUBSTITUTE CONDITION

<p>(1) City Staff Request: Reduce the maximum residential density to 1,200 units and specify the types in the PD zoning ordinance. It is the opinion of City staff that this density for the PUD is consistent with the information obtained about the site and the development constraints on the property during this land use amendment process and during the Hatchet Creek Design Plat process.</p> <p>Applicant Response: The proposed substitute condition is acceptable to the applicant.</p>	<p>a. The residential density and allowable residential uses within the Planned Use District is a maximum of 1,500 1,200 residential units and 300 Assisted Living Facility (ALF) beds. The maximum number of residential units in the Planned Development ("PD") zoning ordinance shall be 1,100 residential units and 300 ALF beds, provided however, if the State Development of Regional Impact residential threshold is increased to 1,500 residential units or above, the owner may request that the PD zoning ordinance or an amendment thereto allow up to 301 additional residential units based upon a demonstration by the owner/developer that adequate public or private facilities are available to serve the additional units and that the site for which the units are proposed is suitable for residential development</p> <p>c. The actual amount and types of residential units, ALF beds, and non-residential development area will be specified in the PD zoning ordinance as limited by the city, county and state development restrictions and constraints, including but not limited to, wetlands and surface water regulations, wellfield protection, floodplain requirements, concurrency and airport hazard zoning regulations.</p>
<p>(2) Applicant Request: Remove the "retail and office" limitation in the last phrase of d.1. (b) to provide for a broader range of Industrial type uses in this area where residential use is prohibited.</p> <p>City Staff Response: City staff has no objection to the request provided the uses are limited to certain Business Industrial uses that will be specified in the PD zoning ordinance, are limited by the overall 200,000 square foot non-residential maximum and are located only on land within the 60-75 DNL Noise Contour with underlying Industrial land use designation. In addition, City staff recommends clarifying the existing language concerning accessory uses.</p> <p>Applicant Response: The proposed substitute condition is acceptable to the applicant.</p>	<p>b. The non-residential and non-ALF intensity and allowable non-residential and non-ALF uses within the PUD is a maximum of 200,000 square feet of non-residential uses. This 200,000 square feet may be used for any combination of the following: up to 100,000 square feet of retail space, up to 100,000 square feet of office space and any remaining square footage for the Business Industrial Uses that are specified in the Planned Development ("PD") zoning ordinance. to include a maximum of 100,000 square feet of retail space, a maximum of 100,000 square feet of office space and in addition, the PUD may include accessory uses customarily and clearly incidental to an active adult community, including recreational facilities, and may include parks, open space, conservation, open space buffers and mitigation areas. Any such accessory uses shall be for the exclusive use of the residents of the PUD and their guests and shall be specified in the Planned Development ("PD") zoning ordinance. In addition, the PUD may include recreational facilities as accessory uses that are customarily and clearly incidental to an active adult community or parks open space, conservation, open space buffers and mitigation areas.</p> <p>d.1. Within the 60-75 DNL Noise Contour Airport Noise Zone, subject to the Airport Hazard Zoning Regulations:</p> <p>(a) No residential development, including ALF beds, is allowed.</p> <p>(b) Non-residential (retail, office and accessory uses to residential) development is allowed, as well as recreational facilities as accessory uses that are customarily and clearly incidental to an active adult community or parks, open space, conservation, open space buffers and mitigation areas; except that on lands with</p>

Exhibit "E" to Cover Memo for HATCHET CREEK PUD (Legistar No. 070210)

REVISION REQUESTED & RESPONSES	PROPOSED SUBSTITUTE CONDITION
<p>(3) City Commission Request from October 16, 2008 and Applicant Request from October 29, 2009: Remove the age restricted community (over 55) limitation; and submit new data and analysis concerning traffic impacts of deleting age restriction</p> <p>City Staff Response: City Staff concurs with removing the age restriction, based on the updated data and analysis submitted by the applicant and the receipt of an updated school capacity review letter from the Alachua County School Board. The development will still be required to meet transportation and school concurrency requirements set forth in the City Land Development Code and Comprehensive Plan.</p> <p>Staff received and has reviewed the updated traffic study dated November 19, 2009 prepared by the applicant's consultant, MPH Transportation Planning, Inc. The study was updated to account for removing the age restriction for all residential units. The revised traffic study indicates a 26.7% increase in average daily trips and a 48.4% increase in p.m. peak hour trips due to removal of the age-restricted community (as such residents tend to not be on the roads in the p.m. peak hour). This will result in a p.m. peak hour trip impact totaling 1,714 trips (the previous, age-restricted total was 1,155 such trips). Pursuant to Senate Bill 360 (now Chapter Law No. 2009-96), since the property is now located within a TCEA, this land use amendment is deemed to meet the level-of-service standards for transportation. As stated in other conditions of this PUD, the development will still have to satisfy the City's concurrency requirements and provide transportation modifications which are required due to</p>	<p>the underlying land use designation of Industrial, the non-residential development shall be limited to permitted retail and office uses identified in the limited Industrial (I-1) zoning district; certain Business Industrial (BI) zoning uses that are specified in the PD zoning ordinance.</p> <p>At least 80% of the residential development shall be housing designated for persons where at least one member of the household is 55 years of older in accordance with the Federal Fair Housing Act (Title 42, Chapter 15, Subchapter I, U.S.C.), the Florida Fair Housing Act (Chapter 760, Part II, F.S.) and all related federal and state regulations. This restriction shall be included on any plat or subdivision of land and in the restrictive covenants. The covenants shall be made expressly enforceable by the City of Gainesville and shall not be amended without City approval as to this restriction.</p> <p>b. The non-residential and non-ALF intensity and allowable non-residential and non-ALF uses within the PUD is a maximum of 200,000 square feet of non-residential uses (to include a maximum of 100,000 square feet of retail space, a maximum of 100,000 square feet of office space) and accessory uses customarily and clearly incidental to a residential community an active adult community community. Any such accessory uses shall be for the exclusive use of the residents of the PUD and their guests and shall be specified in the Planned Development ("PD") zoning ordinance. In addition, the PUD may include recreational facilities as accessory uses that are customarily and clearly incidental to a residential community an active adult community or parks, open space, conservation, open space buffers and mitigation areas.</p> <p>d. 1. Within the 60-75 DNL Noise Contour Airport Noise Zone, subject to the Airport Hazard Zoning Regulations:</p> <p>(a) No residential development, including ALF beds, is allowed.</p> <p>(b) Non-residential (retail, office and accessory uses to residential) development is allowed, as well as recreational facilities as accessory uses that are customarily and clearly incidental to a residential community an active adult community or parks, open space, conservation, open space buffers and mitigation areas; except that on lands with the underlying land use designation of Industrial, the non-residential development shall be limited to permitted retail and office uses identified in the Limited Industrial (I-1) zoning district.</p> <p>d. 2. Outside of the 60-75 DNL Noise Contour Airport Noise Zone, subject to the Airport Hazard Zoning Regulations, to the extent same are applicable:</p>

Exhibit "E" to Cover Memo for HATCHET CREEK PUD (Legistar No. 070210)

REVISION REQUESTED & RESPONSES

PROPOSED SUBSTITUTE CONDITION

<p>traffic safety and/or operating conditions.</p> <p>The school capacity review letter to Linda Shelley, Esq., dated November 25, 2009 from Alachua County Public Schools' Director of Community Planning, Terry L. Tougaw, showed that the total impact of a 1,500 unit non-age restricted residential component would be 390 students. This is an increase of 281 students compared to the 109 students (per an April 14, 2008 letter from Mr. Tougaw to the Ron Carpenter, Esq.) that would have resulted from the 1,500-unit age-restricted residential proposal. Although this is a 358 percent increase, the conclusion of the November 19, 2009 letter from Mr. Tougaw states that: "Students generated by the Hatcher Creek project at the elementary, middle and high school levels can be reasonably accommodated for the five, ten and twenty year planning periods and is consistent with the Public School Facilities Element. From a school capacity perspective, residential development within the City of Gainesville is generally desirable because of its potential to utilize existing capacity."</p> <p>Applicant Response: The proposed substitute condition is acceptable to the applicant.</p> <p>(4) City Commission Request from October 16, 2008: Include policies in the Ordinance that reflect how the proposed development will meet subparagraphs 30-211 (b)(1) and (b)(7) of the Land Development Code.</p> <p>Response: City planning staff proposes revisions to condition ff. as shown in response to the City Commission's direction.</p> <p>Applicant Response: The proposed substitute condition is acceptable to the applicant.</p> <p>(5) City Staff Request: Eliminate the specific references to the significant ecological communities</p>	<p>(a) Residential development, including ALF beds, is allowed.</p> <p>(b) Non-residential (retail, office and accessory uses to residential) development is allowed, as well as recreational facilities as accessory uses that are customarily and clearly incidental to a residential community an active adult community or parks, open space, conservation, open space buffers and mitigation areas.</p> <p>l. A limited number of drive-through facilities shall be allowed on the street frontages of NE 53rd Avenue and NE 39th Avenue as determined at the PD zoning stage and specified in the PD zoning ordinance. No direct access from NE 39th Avenue or NE 53rd Avenue shall be allowed for these drive-through facilities. All access to the drive-through facilities shall be from the internal roadway system (the internal roadway system shall include public and private roads and internal driveway systems) in the PUD. Additional drive-through facilities that are entirely internal to the PUD shall be determined in the PD zoning ordinance. The PD zoning ordinance shall specify the design criteria for all drive-through facilities and shall include a phasing schedule to ensure a mix of drive-through facilities, residential uses, and other commercial/office uses in the planned use district. The trip generation associated with drive-through facilities shall limit the total number of drive-through facilities such that the total maximum trip generation shown for the 100,000 square feet of shopping center use as calculated by the traffic study dated 4/3/08 (prepared by GMB Engineers & Planners, Inc.) as updated 11/19/09 by MPH Transportation Planning, Inc. is not exceeded for the PUD.</p> <p>ee ff. At the time of application for PD zoning, the owner/developer shall provide design standards generally consistent with traditional design concepts (such as pedestrian scale, parking located to the side or rear of buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks) for all residential and non-residential uses in the PUD and subject to City review and approval, those standards shall be specified in the PD zoning ordinance.</p> <p>i. Protection of the State-listed animal species Gopher tortoise (<i>Gopherus polyphemus</i>) listed as a Species of Special Concern in Rule 68A-27.005, Florida Administrative Code, located in the</p>
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Exhibit "E" to Cover Memo for HATCHET CREEK PUD (Legistar No. 070210)

REVISION REQUESTED & RESPONSES

PROPOSED SUBSTITUTE CONDITION

<p>district and environmental features report and replace with more general references to the land development code. These revisions are intended to acknowledge that the code is revised from time to time and to make clear that the development must comply with the code requirements that are in effect at the time of compliance with the condition.</p> <p>Applicant Response: The proposed substitute condition is acceptable to the applicant.</p>	<p>remnant sandhills east of the Ironwood Golf Course, and documented in the applicant's Hatchet Creek Planned Use District Report dated March 2007, is required and shall be established by establishing a zoning ordinance. Protection of the documented population may be accomplished by establishing a designated protection area in the planned development PD zoning ordinance that meets all applicable requirements of the City's significant ecological communities district (See 30-309 land development code) and all applicable requirements of the Florida Administrative Code.</p> <p>k. The owner/developer shall submit an environmental features a report (in accordance with the requirements of the environmental regulations in the City's land development code Significant Ecological Communities zoning district Section 30-309, Gainesville Code of Ordinances) with the application for planned development PD zoning. As part of this report, the highest-quality uplands shall be delineated and development within these high-quality areas shall be restricted.</p> <p>i. Buffer and setback requirements for the wetlands and creeks in the PUD shall be specified in the PD zoning ordinance and shall be in accordance with the environmental regulations in the City's land development code including the significant ecological overlay district requirements based upon review of the required environmental features report that shall be submitted with the application for PD zoning.</p>
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**Exhibit “F” to Cover Memo
(Legistar No. 070210)**

BACKGROUND ON HATCHET CREEK PUD

An application was submitted to the City of Gainesville on March 12, 2007 and revised on August 21, 2007, for a large scale land use change on approximately 498 acres in order to allow up to 1,499 residential dwelling units (80% or more age restricted), a maximum of 500 Assisted Living Facility (ALF) beds and up to 200,000 square feet of non-residential uses, including commercial and retail. The subject property surrounds the City of Gainesville’s Ironwood Golf Course and is undeveloped. It is traversed by Little Hatchet Creek and its associated floodplains and contains forested wetlands and uplands. Surrounding uses include developed and undeveloped single-family residential land, GRU’s Murphree water treatment plant and wellfield, undeveloped rural/agricultural land, a mobile home park and Gainesville Regional Airport across Waldo Road to the east. The amount of development on the subject property is limited due to development restrictions and constraints that include but are not limited to Airport Hazard Zoning Regulations, wetlands and surface water regulations, wellfield protection, floodplain, and concurrency requirements. Of particular impact on potential residential development is the Airport Noise Zone (applies to approximately 359 acres of the subject property), which prohibits residential development unless it complies with certain criteria in the Airport Hazard Zoning Regulations and is compatible with the Gainesville Regional Airport’s official 14CFR Part 150 Study.

On September 20, 2007, September 27, 2007 and October 4, 2007, the Plan Board heard presentations by staff and by the applicant, heard public comments, discussed the petition and the various proposed conditions of approval, and after approximately 13 hours of public hearing, made its recommendation on the proposed PUD. The main issues of concern to the Plan Board were land use compatibility with the surrounding uses particularly with respect to Gainesville Regional Airport, environmental compatibility particularly with respect to wetlands and surface waters, residential use incompatibility with the Airport Noise Zone, and determination of the appropriate level of specificity for conditions in the PUD ordinance. At the end of the third public hearing, the Plan Board voted to approve the staff recommendation to deny the proposed PUD for the portion of the property with Industrial land use and to approve the PUD for areas with Single Family, Residential and Recreational land use provided that no residential uses be allowed in the Airport Noise Zone. The Plan Board approved 200,000 square feet of non-residential uses, 500 ALF units and 1,199 residential units, made several revisions to the staff-recommended conditions, and added a condition pertaining to the prohibition of gated communities.

On October 22, 2007, October 23, 2007, and October 29, 2007, the City Commission heard presentations by staff and by the applicant, heard public comments, discussed the Petition and the Plan Board’s recommendation and at the end of the third public hearing, by a vote of 4-3, the City Commission approved the Petition with conditions as

recommended by the Plan Board and revised by the City Attorney, with the following further revisions:

- Amend Condition S by adding the underlined language "a maximum of 2 access points shall be allowed along NE 53rd Avenue unless additional access points are approved by Alachua County and the City of Gainesville, in accordance with the Alachua County Access Management Regulations";
- Amend Condition X by adding the underlined language "The developer shall be responsible for the costs of any new traffic signals that are warranted as a result of the development's site related impacts and the costs shall not be counted toward any required proportionate fair share contribution for transportation concurrency";
- Allow Assisted Living Facility but leave the number of beds to be determined upon further analysis (certificate of need process);
- Allow customary accessory uses exclusively for residents and their guests for an active adult community; and
- Amend Condition N by adding the underlined language: "acceptable to the City of Gainesville in accordance with the traffic calming practices outlined by the Institute of Transportation Engineers."

On March 24, 2008, at the request of the Petitioner, the City Commission scheduled a special meeting for April 16, 2008, to again review the approved Petition. At the public hearing on April 16, 2008, the City Commission, by a vote of 4-3, again approved the Petition, further amended as follows:

- The PUD would include the entire 500 acres;
- Approve 1,199 residential units and the 300 ALF beds, reserving the right for the petitioner to come back before the Commission to request an additional 300 residential units;
- No residential development or ALF beds allowed in the Airport Noise Zone;
- No Residential development in the eastern portion of the PUD currently with the land use category of "Industrial" (approximately 199 acres), but directed the Airport Authority, the petitioner and City staff, including the City Attorney, to attempt to identify properties within the Industrial area that could have residential use and not adversely impact airport operations;
- For any non-residential development within the portion of the land currently with the land use category of "Industrial", the only allowable uses shall be those permitted uses identified in the Industrial Zoning Ordinance or zoning category, as well as recreational facilities or lands, parks, open space, conservation, open space buffers, and mitigation areas, except as otherwise prohibited by the Airport Runway Clear Zone, Airport Height Notification Zone, or the Airport Noise Zone;
- Approve Condition E, but ensure that the impacts to the wetlands that take place by the petitioner results in improvement to that area, and that would include the entire 500 acres;

- For Conditions Q and S, that the Commission receive and review staff's standards as they bring those back, but also, that the petitioner work with staff to bring back the trip generation information that was requested by staff; and
- In Condition Z-5 that the language would be as recommended by staff concerning the age makeup of the population (80% age 55 and older and 20% younger families); and

On June 16, 2008, the City Commission approved this Ordinance, with further revisions, for transmittal to the Florida Department of Community Affairs (DCA) for review in accordance with state law. On August 26, 2008, DCA issued its Objections, Recommendation and Comments (ORC) Report to the City.

City staff received a letter dated September 24, 2008 from the applicant's legal counsel, was copied on a letter dated December 5, 2008 from the applicant and received a letter dated January 12, 2009 from the applicant's legal counsel. These letters requested various revisions to the ordinance to be made at the adoption hearing. The applicant is recommending that the City adopt a draft map that is different that the map contained in the existing Airport Hazard Zoning Regulations and which map has not been officially approved or adopted by the City, the Gainesville Alachua County Regional Airport Authority (GACRAA), or by the Federal Aviation Administration (FAA). City staff does not recommend adopting a draft map into the Comprehensive Plan, as the regulations may change during the review and adoption process.

The applicant's letters also request the City make changes to the ordinance that were neither objected to nor commented upon by DCA in the ORC Report. The requested revisions would make substantive changes to the ordinance without benefit of DCA review and comment. The City Planning staff did not recommend such revisions.

Pursuant to Section 163.3184(7)(a), Florida Statutes, the City has 60 days from receipt of the ORC report (in this case August 26, 2008) to "adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment." The adoption hearing was scheduled by the City for October 16, 2008. On October 6, 2008, the City received a letter from the applicant's attorney requesting a continuation of the adoption hearing

The City Commission held a public hearing on the Ordinance on October 16, 2008, and, by a vote of 5-2, approved 1) continuing the Ordinance until the adoption hearing for the DCA No. 08-02 cycle pursuant to the applicant's request; 2) direct staff to interact with the developer and provide an analysis on the impact of removing the age restriction – paragraph gg of the Ordinance; and 3) request that staff draft policies for inclusion in the Ordinance that reflect how the proposed development will meet subparagraphs 30-211 (b)(1) and (b)(7) of the City Land Development Code.

With respect to removing the age restriction, City Planning staff contacted the applicant's legal counsel to discuss the matter and received a written response dated January 12, 2009, as follows:

“The applicant is still proposing an age-restricted community and agrees that Policy (gg) should stand as written in the ordinance. The Department of Community Affairs (DCA) requires that local governments include such restrictions in the comprehensive plan itself (not just in subsequent zoning ordinances if the restriction forms the basis for the evaluation of maximum impacts of the development.”

As set forth in a memorandum from the City Attorney’s Office dated October 8, 2008, if the City makes substantive changes to the ordinance at the adoption hearing that were not reviewed by the DCA in the transmittal hearing (such as removing the age restriction), and the change is not supported by the applicant’s existing data and analysis or by updated and reanalyzed data and analysis, it is likely the DCA would issue a notice of intent to find the plan amendment “not in compliance” and may subject the City to state imposed remedial action or sanctions, including loss of certain state funding.

With respect to including policies in the Ordinance that reflect how the proposed development will meet the purpose and intent of the planned development district, subparagraphs 30-211 (b)(1) and (b)(7) of the City Land Development Code read as follows:

“(b) *Objectives.* The PD provisions are intended to promote flexibility of design and integration of uses and structures, while at the same time retaining in the city commission the absolute authority to establish limitations and regulations thereon for the benefit of the public health, welfare and safety. By encouraging flexibility in the proposals which may be considered, while at the same time retaining control in the city commission over the approval or disapproval of such proposals, the PD provisions are designed to:

(1) Permit outstanding and innovative residential and nonresidential developments with a building orientation generally toward streets and sidewalks; provide for an integration of housing types and accommodation of changing lifestyles within neighborhoods; and provide for design which encourages internal and external convenient and comfortable travel by foot, bicycle, and transit through such strategies as narrow streets, modest setbacks, front porches, connected streets, multiple connections to nearby land uses, and mixed uses.”

“(7) Promote the use of traditional, quality-of-life design features, such as pedestrian scale, parking located to the side or rear of buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks.”

City Planning staff contacted the applicant's legal counsel to discuss following revisions (shown in double underline) to Policy 4.3.5 ff. in response to the City Commission's direction:

ff. At the time of application for PD zoning, the owner/developer shall provide design standards generally consistent with traditional neighborhood design concepts (such as pedestrian scale, parking located to the side or rear of buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks for all residential and non-residential uses in the PUD and, subject to City review and approval, those standards shall be specified in the PD zoning ordinance.

City Planning staff received a written response dated January 12, 2009 from the applicant's legal counsel, as follows:

“We do not believe that the new language suggested by staff should be included in the plan amendment. Despite numerous community meetings and hearings on the project, no members of the community have suggested that these are the design standards that should be applicable to the project. As originally recommended by staff, we believe that design standards are an appropriate subject of site plan approvals and that these should not be prejudged in the comprehensive plan.”

On January 26, 2009, the City Commission held the adoption hearings for the DCA No. 08-02 cycle ordinances and the agenda included the Hatchet Creek PUD Ordinance, as per the Commission action on October 16, 2008.

At the January 26, 2009 hearing, after much discussion of the status of updating the Airport Hazard Zoning Regulations including a new airport noise zone map and other matters, the Commission, by a vote of 4-3, approved 1) continuing the ordinance to the second DCA cycle of 2009, 2) requesting the petitioner submit a letter stating the path they will take upon the ordinance being continued, and 3) directed staff to work on unresolved issues.

On January 27, 2009, the applicant's legal counsel submitted a letter to the City Commission stating that they will work with the City toward adoption of reasonable amendments to the Airport Hazard Zoning Regulations and will update the data and analysis as necessary, before the ordinance is back before the Commission for adoption. In addition, the applicant confirmed that if DCA issues a notice of intent to find the plan amendment not in compliance, the applicant will withdraw this amendment.

On October 29, 2009, the City received the ORC report from DCA for the Cycle 09-02 land use change ordinance and, in accordance with the 60 day statutory requirement, scheduled these ordinances for adoption hearing on December 17, 2009. In accordance with the City Commission approval on January 26, 2009, the Hatchet Creek ordinance was likewise scheduled for December 17, 2009.

On October 29, 2009, applicant's legal counsel communicated to City staff that the applicant concurs with the application of the new Airport Hazard Zoning Regulations to the property, requests that the age restricted community requirement be removed, requests that the "office and retail" limitation be lifted to allow for a broader range of Industrial uses, and again restates its understanding that the burden for updated data and analysis due to revisions is on the applicant.