

MEMORANDUM
Office of the City Attorney

Registrar No. 070210

Box 46

Phone: 334-5011/Fax 334-2229

TO: Mayor and City Commission

DATE: October 16, 2008

FROM: City Attorney

ADOPTION READING

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 adopt the ordinance, as amended by City staff.

PLANNING & DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

On June 16, 2008, the City Commission approved this ordinance 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 (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."

Planning staff has reviewed this issue with legal staff and has revised Policy 4.3.5.d. to bring the ordinance into compliance with applicable state statutory and administrative code requirements consistent with the DCA's recommendation. The City staff response to the ORC Report is attached as **Exhibit "B"**.

On September 26, 2008, City staff received a letter dated September 24, 2008 from the applicant's legal counsel (attached as **Exhibit "C"**) requesting various revisions to the ordinance to be made at the adoption hearing. With respect to the DCA's objection, the applicant is recommending that the City adopt a map that 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). The applicant is also requesting that 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 response to the requested revisions is attached as **Exhibit "D"**.

On October 6, 2008, City staff received a letter dated October 6, 2008 from the applicant's attorney, attached as **Exhibit "E"**, requesting *"a deferral of the adoption hearing on the Ordinance until the issue of the map is resolved. Further I ask that you agenda the Fowler White issues and the consideration of the 2007 Map adoption as part of the Hatchet Creek PUD Ordinance. Consideration of the 2007 Map adoption would hopefully include some advisement by the Airport Authority of the status of the over one-year Part 150 mapping process, which it authorized in July 2007."* The City Attorney's response to this letter is attached as **Exhibit "F"**.

In addition, Planning staff notes that this comprehensive plan amendment does not entail an overall increase in residential density when compared to the currently adopted future land use categories. Therefore, the statutory prohibition on adopting comprehensive plan amendments that increase residential density prior to adoption of a Public School Facilities Element and Interlocal Agreement does not apply to this ordinance.

BACKGROUND

By way of background, this was a request to change the land use 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 that is not compatible with the Gainesville Regional Airport's official 14CFR Part 150 Study (1986).

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

CITY ATTORNEY MEMORANDUM

On June 16, 2008, the City Commission approved the ordinance, with revisions, on first reading. On June 23, 2008, at the request of Commissioner Hawkins, the City Commission directed this office provide a legal opinion, at the time this ordinance returns for the adoption hearing, as to whether the City Commission may remove the age restriction for the development. The memorandum prepared by this Office is attached as **Exhibit "G"**.

In response to the applicant's request for continuance of the adoption hearing, the City Attorney's Office spoke with DCA Planning and Legal staff to obtain guidance on the issue of continuance. DCA staff stated that the DCA "highly disfavors" extended continuances and recommends that if the local government finds a continuance is necessary and justified that it impose a reasonable and time certain limitation on same. DCA staff cited its concerns that extended delays can result in data and analysis becoming outdated, the plan amendment can become inconsistent with plan amendments adopted in the interim, and that it becomes hard for the public to follow and be involved in the process. By way of example, given the DCA objections to the LandMar Comprehensive Plan amendment (contained in the same DCA transmittal cycle No. 08-01 as Hatchet Creek), including most notably the statutory mandate that the City adopt a Public School Facilities Element before adopting any plan amendments that increase residential density, City staff and the LandMar applicant proposed that the adoption hearing be continued and heard with the adoption of the DCA No. 08-02 amendments (likely January or February 2009). DCA staff indicated this limited and time certain continuance would likely be acceptable and would likely not result in a finding of "not in compliance."

In an effort to be responsive to the applicant's request for continuance and in accord with DCA's guidance, City staff offered to recommend the same time certain continuance of this ordinance as recommended for the LandMar Comprehensive Plan amendment (i.e., continue the adoption hearing until such time as the City holds the adoption hearing for the DCA No. 08-2 comprehensive plan amendments). The City Attorney and Planning and Development Services Director discussed this potential recommendation with Attorney Carpenter on October 7, 2008, and he indicated, on behalf of the applicant, that this would not ensure that the map issue is

resolved as requested by the applicant. The applicant's most recent request appears to be that the City either adopt a new map (different from that in the current Airport Hazard Zoning Regulations) as Exhibit B to this PUD ordinance or adopt a new map as an amendment to the Airport Hazard Zoning Regulations. As such, Attorney Carpenter indicated that the applicant would prefer to present its requests and recommendation(s) to the City Commission on October 16.

Florida Statutes set forth the procedure for adoption of an amendment to the Comprehensive Plan. The first hearing is held at the transmittal stage and must be 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.

If adopted on first reading, the proposed amendment to the Comprehensive Plan will be transmitted to the State Department of Community Affairs (DCA) for written comment. Any comments, recommendations or objections of the DCA will be considered by the Commission at the second public hearing.

Following second reading, 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, Assistant City Attorney II

Approved and
submitted by:



Marion J. Radson, City Attorney

MJR/NS/sw



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:

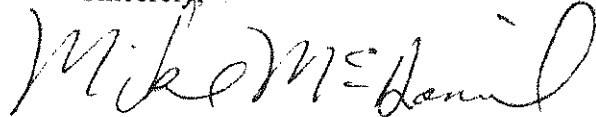
The Department has completed its review of the proposed Comprehensive Plan Amendment for the City of Gainesville (DCA 08-1), which was received on June 27, 2008. Based on Chapter 163, Florida Statutes, we have prepared the attached report, which outlines our findings concerning the amendment. It is particularly 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.

The Honorable Pegeen Hanrahan
August 26, 2008
Page 2

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@dea.state.fl.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.

October 1, 2008

City Staff Responses to:

OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT (issued 8/26/08)

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.

City Response: *Agreed. Please note that we are moving the Landmar comprehensive plan amendment (Ordinance 070447), which proposes an increase in residential density, from the DCA 08-1 group of amendments to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop responses to each of the Objections regarding Landmar and include them in the DCA 08-2 adoption packet.*

2. Objection: As proposed, the majority of the site, approximately 1,000 acres, would be devoted to low density single family housing, creating a pattern 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.

City Response: *As explained in our Response to Objection no. 1, we are moving the Landmar plan amendment (Ordinance 070447) to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop responses to each Objection regarding Landmar and include them in the DCA 08-2 adoption packet.*

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.

City Response: *As explained in our Responses above, we are moving the Landmar plan amendment (Ordinance 070447) to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop our responses to each Objection pertaining to Landmar and include them in the DCA 08-2 adoption packet.*

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.

City Response: *As explained in our Responses above, we are moving the Landmar plan amendment (Ordinance 070447) to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop our responses to each Objection pertaining to Landmar and include them in the DCA 08-2 adoption packet.*

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.

City Response: *We have addressed this Objection regarding intensity standards by establishing a maximum floor area ratio of 4.0 (added text is double-underlined) in the proposed Business Industrial land use category, as follows:*

- **Business Industrial.** This land use category is primarily intended to identify those areas near the Gainesville Regional Airport appropriate for office, business, commercial and industrial uses. This district is distinguished from other industrial and commercial districts in that it is designed specifically to allow only uses that are compatible with the airport. Intensity will be controlled by adopting land development regulations that establish height limits consistent with the Airport Hazard Zoning Regulations. When not located within an airport zone of influence, this category may be used to designate areas for office, business, commercial and industrial uses, with a maximum height of 5 stories, and a maximum floor area ratio of 4.0. Land development regulation(s) shall specify the type and distribution of uses, design criteria, landscaping, pedestrian and vehicular access.

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 Airport Noise Zone map. 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 in the PD zoning ordinance. For purposes of this PUD, the Airport Noise Zone is the area depicted on Attachment 3 to the Appendix F – Airport Hazard Zoning Regulations, Chapter 30, Gainesville Code of Ordinances adopted on May

10, 1999 as Ordinance 981149, a copy of Attachment 3 is attached hereto as Exhibit "B:" which consists of the map entitled "Airport Noise Zone - Gainesville Regional Airport", dated March 1999 and prepared by the City of Gainesville's Department of Community Development. The source of the map is CH2M Hill, Drawing 4, Gainesville Regional Airport Master Plan, Prepared under the Airport and Airway Improvement Act of 1982, 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

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.

City Response: *The referenced sub-sections of F.S. 187.201 (25) Plan Implementation are:*

(a) Goal. Systematic planning capabilities shall be integrated into all levels of government in Florida with particular emphasis on improving intergovernmental coordination and maximizing citizen involvement.

(b) Policies.

7. Insure the development of strategic regional policy plans and local plans that implement and accurately reflect state goals and policies and that address problems, issues, and conditions that are of particular concern in a region.

*As explained in our Response to Objection 1 under I. **CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. - A. Future Land Use Map**, we are moving the Landmar comprehensive plan amendment (Ordinance 070447), which proposes an increase in residential density, from the DCA 08-1 group of amendments to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop responses to each of the Objections regarding Landmar and include them in the DCA 08-2 adoption packet.*

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.

City Response: *The referenced sub-sections of F.S. 187.201, in addition to the above-referenced sub-sections on Plan Implementation, are:*

15) Land Use.

(a) Goal. In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner.

(b) Policies.

2. Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.

As explained in our Response to Objection 2 under I. CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. - A. Future Land Use Map, we are moving the Landmar comprehensive plan amendment (Ordinance 070447) from the DCA 08-1 group of amendments to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational Facilities Element. We will develop responses to each of the Objections regarding Landmar and include them in the DCA 08-2 adoption packet.

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.

City Response: *The referenced sub-sections of F.S. 187.201 are shown in the two preceding Responses. As explained in our Response to Objection 3 under I. CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. - A. Future Land Use Map, we are moving the Landmar comprehensive plan amendment (Ordinance 070447) from the DCA 08-1 group of amendments to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public*

Educational Facilities Element. We will develop responses to each of the Objections regarding Landmar and include them in the DCA 08-2 adoption packet.

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

City Response: *The referenced sub-sections of F.S. 187.201, in addition to the previously shown sub-sections on Land Use and Plan Implementation, include:*

17) Public Facilities.

(a) Goal.--Florida shall protect the substantial investments in public facilities that already exist and shall plan for and finance new facilities to serve residents in a timely, orderly, and efficient manner.

(b) Policies.--

1. Provide incentives for developing land in a way that maximizes the uses of existing public facilities.

7. Encourage the development, use, and coordination of capital improvement plans by all levels of government.

19) Transportation.

(a) Goal.--Florida shall direct future transportation improvements to aid in the management of growth and shall have a state transportation system that integrates highway, air, mass transit, and other transportation modes.

(b) Policies.--

3. Promote a comprehensive transportation planning process which coordinates state, regional, and local transportation plans.

7. Develop a revenue base for transportation which is consistent with the goals and policies of this plan.

9. Ensure that the transportation system provides Florida's citizens and visitors with timely and efficient access to services, jobs, markets, and attractions.

12. Avoid transportation improvements which encourage or subsidize increased development in coastal high-hazard areas or in identified environmentally sensitive areas such as wetlands, floodways, or productive marine areas.

13. Coordinate transportation improvements with state, local, and regional plans.

*As explained in our Response to Objection 4 under I. **CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. - A. Future Land Use Map**, we are moving the Landmar comprehensive plan amendment (Ordinance 070447) from the DCA 08-1 group of amendments to the DCA 08-2 group that is to be adopted subsequent to adoption of the Public Educational*

Facilities Element. We will develop responses to each of the Objections regarding Landmar and include them in the DCA 08-2 adoption packet.

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.

City Response: *The referenced sub-sections of F.S. 187.201 are shown in the Response to Objection 1 regarding the Future Land Use Map. As explained in our Response to Objection 1 under I. **CONSISTENCY WITH CHAPTER 163, F.S. and RULE 9J-5, F.A.C. -B. Future Land Use Element, City Response,** we have addressed this Objection regarding intensity standards by establishing a maximum floor area ratio of 4.0 (added text is double-underlined) in the proposed Business Industrial land use category, as follows:*

- **Business Industrial.** This land use category is primarily intended to identify those areas near the Gainesville Regional Airport appropriate for office, business, commercial and industrial uses. This district is distinguished from other industrial and commercial districts in that it is designed specifically to allow only uses that are compatible with the airport. Intensity will be controlled by adopting land development regulations that establish height limits consistent with the Airport Hazard Zoning Regulations. When not located within an airport zone of influence, this category may be used to designate areas for office, business, commercial and industrial uses, with a maximum height of 5 stories, and a maximum floor area ratio of 4.0. Land development regulation(s) shall specify the type and distribution of uses, design criteria, landscaping, pedestrian and vehicular access.

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: *The referenced sub-sections of F.S. 187.201 are shown in previous Responses. 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 Airport Noise Zone map. Proposed, revised Policy 4.3.5 d. follows, with additions double-underlined and deletions stricken.

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 in the PD zoning ordinance. For purposes of this PUD, the Airport Noise Zone is the area depicted on Attachment 3 to the Appendix F – Airport Hazard Zoning Regulations, Chapter 30, Gainesville Code of Ordinances adopted on May 10, 1999 as Ordinance 981149, a copy of Attachment 3 is attached hereto as Exhibit "B," which consists of the map entitled "Airport Noise Zone – Gainesville Regional Airport", dated March 1999 and prepared by the City of Gainesville's Department of Community Development. The source of the map is CH2M Hill, Drawing 4, Gainesville Regional Airport Master Plan, Prepared under the Airport and Airway Improvement Act of 1982, 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.



FOWLER WHITE
BOGGS BANKER

ATTORNEYS AT LAW

ESTABLISHED 1943

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

September 24, 2008

Erik Bredfeldt
City of Gainesville
Post Office Box 490
Gainesville, Florida 32602-0490

Re: Hatchet Creek Plan Amendment

Dear Erik:

On behalf of East Gainesville Development Partners LLC, we are requesting consideration of amendments to the draft comprehensive plan amendment for the Hatchet Creek PUD District that was transmitted to the Florida Department of Community Affairs ("DCA") in June of this year.

The first of the amendments we propose would resolve the only objection to the Hatchet Creek comprehensive plan amendment in the Objections, Recommendations and Comment (ORC) Report dated August 26, 2008 from DCA. DCA's objection was that, as proposed, Policy 4.3.5.d is "self amending". The concern is that the fundamental land use decision, *i.e.*, what types of uses would be located where on the property, should not be changed through amendment of a document extraneous to the comprehensive plan.

To remedy that concern, DCA recommends that the City adopt and incorporate into the comprehensive plan a map depicting the location of the allowed land uses on the property. The DCA recommendation was to adopt the Airport Noise Zone map referenced in Policy 4.3.5 as part of the plan. We believe that it would be a cynical, futile act to adopt the outdated 1999 map that is currently referenced in Appendix F, as it is acknowledged by everyone that it is extremely inaccurate and the sole purpose of adopting such a map would be to render the Hatchet Creek site impossible to develop residential and ALF.

A more reasonable approach would be to use the most recent map the Airport has

FOWLER WHITE BOGGS BANKER P.A.

TAMPA • ST. PETERSBURG • FORT MYERS • TALLAHASSEE • ORLANDO • JACKSONVILLE • FORT LAUDERDALE
101 N. MONROE STREET, SUITE 1090 • TALLAHASSEE, FL 32301 • P.O. BOX 11240 • TALLAHASSEE, FL 32302
TELEPHONE (850) 681-0411 • FAX (850) 681-6036 • www.fowlerwhite.com

produced, the 2007 Noise Exposure Map ("NEM"), and identify the 65 dB DNL and 60 dB DNL noise contour lines on the map amendment. We believe all parties agree that this 2007 NEM is the most accurate expression of where the actual 65 dB DNL line is on the Hatchet Creek site. It is the best, most recent available data and analysis to support the City's decision on the plan amendment. It is much more realistic, not to mention more equitable and reasonable, to adopt the noise contour lines depicted on this 2007 NEM. It is our understanding that the data for this map, and possibly the map itself, has already been reviewed and approved by the FAA. Also, members of the Airport's Technical Advisory Committee ("TAC") were provided a copy of the draft NEM study on July 8, 2008 and have provided their respective comments to the Airport related to this study on or before August 1, 2008. The changes to the language of the draft Ordinance would read as follows:

Policy 4.3.5

- d. The allowable uses within the PUD shall be as ~~restricted~~ as described below and as more specifically described in the PD zoning ordinance. ~~For purposes of this PUD, the Airport Noise Zone is the area depicted on Attachment 3 to the Appendix F Airport Hazard Zoning Regulations, Chapter 30, Gainesville Code of Ordinances adopted on May 10, 1999 as Ordinance 981149, a copy of Attachment 3 is attached hereto as Exhibit "B."~~ 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 within limitations, flight operations, and (2) that the site for which the units are proposed is suitable for residential development.
 1. Within the 65 dB DNL noise zone identified on the map labeled Hatchet Creek PUD Area in the Future Land Use Map Series A: Airport Noise Zone, subject to the Airport Hazard Zoning Regulations:
 - a. No residential development, or including ALF beds, are is allowed.
 - 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 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.~~

An alternative to this approach of identifying the 65 dB DNL on the PUD Map to be adopted as part of Map Series A would be to adopt the 2007 NEM map as an additional map in the future land use map series in the comprehensive plan. It could then be read in concert with the Hatchet Creek PUD Area map. The language for this approach would read as follows:

(Replace first sentence in Subparagraph d.1, above, with:)

1. Within the 65 dB DNL noise zone depicted on the map labeled Hatchet Creek PUD Area Noise Zones in the Future Land Use Map Series

A:

You will note that in Subparagraph 1.b., above, we have also indicated a deletion of the limitation of the non-residential uses within the 65 dB DNL noise zone to those within the Limited Industrial zoning district. Although this change is not related to the DCA ORC Objection, it is important to the Applicant's efforts to transform this property into a unified, quality adult-oriented retirement community. Not only is there is no reason to restrict the uses to those of an industrial nature, but it actually runs counter to the purposes of the new land use designation and the goals of maximizing the non-residential uses within the 65 dB DNL.

There are a limited number of additional changes to the transmitted language that are not related to the ORC objection but that we believe should be adopted by the City Commission. They are described below in the order that they appear in the draft Ordinance:

The first change relates to what we believe is a drafting error to Policy 4.3.5.b, where we are requesting that it be clarified that accessory uses do not count towards the 200,000 ft² of non-residential uses. The notion of having separate accessory uses for residents and their guests is what has always been discussed with Staff for over two years and the traffic analysis is based on this assumption as well. This requires clarifying the first sentence of this policy to read as follows:

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 not including accessory uses customarily and clearly incidental to an active adult community (to include a maximum of 100,000 square feet of retail space, and a maximum of 100,000 square feet of office space ~~and accessory uses customarily and clearly incidental to an active adult 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 an active adult community or parks, open space, conservation, open space buffers and mitigation areas.

The second change relates to what we believe is a drafting error to Policy 4.3.5.e, where we are requesting that it be clarified that every internal roadway/connection system does not

have to support pedestrians and bicycles and golf carts. The intent of this language requested by Staff, offered originally by the Applicant and discussed numerous times with Staff, was to have some sort of connection, but not every modality for each connection. The revised language would read as follows:

- e. All non-residential areas in the PUD shall be connected to the residential areas in the PUD by an interior roadway system ~~and/or~~ or a pedestrian/ or bicycle/ or golf cart system. All pedestrian sidewalk systems in the PUD shall comply with the Florida Accessibility Code for Building Construction requirements.

Thirdly, we request the deletion of the last sentence in Policy 4.3.5.t which was added after the last Commission meeting in June. This sentence caps the transportation impacts based upon a study that was submitted by the Applicant on April 3, 2008. This artificial cap is inappropriate and unnecessary. While it is likely that there will be no transportation impacts in excess of those predicted by the referenced study, the assumptions used in the study in no way maximized the current transportation capacity available for development of this site. The idea behind the cap confuses the valid comprehensive planning concept of analyzing the anticipated impacts of the maximum development capacity of a project with transportation concurrency analyses which are done at a later stage in the review process and which are quite detailed and specific to a proposed development plan. Why require a new traffic study and methodology letter in Policy 4.3.5.y if Policy 4.3.5.t is restricting development based on trip generation of a more generic study? At the very least, the City should allow the Applicant to provide an updated transportation study and should revise the language to the later date of the revised study submittal. Again, our suggested amendment is to delete the last sentence of Policy 4.3.5.t:

- t. 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 the 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.) is not exceeded for the PUD.~~

Fourth, we request that the requirement added to Policy 4.3.5.v, that all access points on NE 53rd Avenue be interconnected with the internal public or private road system in the Hatchet Creek development, not be absolute in nature. It is too early in the planning process to establish this policy in a land use amendment. The real world effect of this term will be to prevent commercial development along NE 53rd Avenue, which would be an unfortunate and unnecessary consequence for people who live in the area. The Hatchet Creek site has well over one mile of frontage on NE 53rd Avenue. The revised language would read as follows:

v. A maximum of two 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, and the locations shall be included in the PD zoning application. All access points are subject to Alachua County and City of Gainesville approval at the planned development zoning stage and shall be specified in the PD zoning ordinance. To minimize traffic impacts from the Hatchet Creek PUD on NE 53rd Avenue, to the extent reasonably possible, the access points on NE 53rd Avenue shall be interconnected with the internal public or private road system in the Hatchet Creek development. The private road system interconnections shall be interpreted to include internal driveway systems.

Lastly, similar to the policy for which DCA raised an ORC Objection, Policy 4.3.5.dd may also be considered self-amending as it relies on standards adopted in an ordinance which can be amended without an amendment to the comprehensive plan. Further, the Applicant has offered to far exceed those standards by constructing all buildings on the site to a 25 dB noise level reduction ("NLR") standard and residential and ALF development in areas with a DNL of 60 dB or greater to a 30 dB NRL building standard. None of these building standards are required in Appendix F. We request that the language be amended, as follows:

dd. All residential and non-residential development shall be constructed to achieve an outdoor-to-indoor noise level reduction ("NLR") of 25 dB. Additionally, in areas of a DNL noise zone greater than 60 dB, all residential and ALF development shall be constructed to achieve an NLR of 30 dB, as said DNL is depicted on the map labeled Hatchet Creek PUD Area in the Future Land Use Map Series A, as specified in Appendix F—Airport Hazard Zoning Regulations, Chapter 30 of the Gainesville Code of Ordinances in effect at the time of application for a building permit.

Again, an alternative approach to this language would be to adopt the 2007 NEM map with the noise contour lines contained on it in the future land use map series in the comprehensive plan and reference that map instead of placing the contour lines on the main PUD map.

Erik Bredfeldt
September 24, 2008
Page 6

We look forward to working with you as this plan amendment moves forward to adoption by the City Commission. Please feel free to contact me to discuss these issues at your convenience, as we believe it will be more productive to try to resolve these issues prior to a City Commission meeting.

Sincerely,

FOWLER WHITE BOGGS BANKER P.A.



Linda Loomis Shelley

LLS/tre

cc: Russ Blackburn
Ralph Hilliard
Dean Mimms
Marion Radson, Esq.
Nicole Shalley, Esq.
Ron Carpenter, Esq.
Rob Simensky

FOWLER WHITE BOGGS BANKER P.A.

TAMPA • ST. PETERSBURG • FORT MYERS • TALLAHASSEE • ORLANDO • NAPLES • JACKSONVILLE • FORT LAUDERDALE



Planning & Development Services

PO Box 490
Gainesville, FL 32602-0490
352-334-5022
352-334-2648 (fax)
www.cityofgainesville.org

October 6, 2008

Linda Loomis Shelley, Esquire
Fowler White Boggs Banker, P.A.
Attorneys at Law
101 N. Monroe Street, Suite 1090
Box 11240
Tallahassee, FL 32301

Re: Hatchet Creek PUD Comprehensive Plan Amendment

Dear Ms. Shelley

I have reviewed your letter of September 24, 2008 in which you proposed various revisions to the plan amendment that was transmitted to the Florida Department of Community Affairs (DCA) in June of this year on behalf of your client (East Gainesville Development Partners LLC).

As you know, DCA issued its Objections, Recommendations and Comments (ORC) Report on August 26, 2008. With respect to the proposed Hatchet Creek PUD (Planned Use District), DCA objected to proposed Policy 4.3.5 d. DCA stated that the proposed policy is self-amending, and that it would allow a different version of the Airport Noise Zone Map at the PD zoning stage than the map to be adopted into the City's comprehensive plan through Policy 4.3.5. DCA further stated that allowing the PD to control land use and allowing a different version of the Airport Noise Zone map at the PD zoning stage from that included with the Comprehensive Plan is self-amending and creates potential inconsistency between the PD zoning and the Comprehensive Plan. Staff concurs with DCA's assessment, and has made appropriate revisions to Policy 4.3.5 d. to overcome the Objection.

Staff cannot support your proposal on pages 1 and 2 of your September 24th letter to replace the adopted Airport Noise Zone Map with the draft 2007 Noise Exposure Zone (NEM) map. You are recommending that the City adopt into the Comprehensive Plan a map that has not been officially reviewed or otherwise adopted by the City, and that has not been officially reviewed or adopted by either the Gainesville Alachua County Regional Airport Authority (GACRAA) or the Federal Aviation Administration (FAA).

You are also recommending revisions on pages 2 and 3 that would have the comprehensive plan establish the 65 dB DNL noise zone (identified on the referenced, draft 2007 Noise Exposure Zone (NEM) map. Similarly, on page 5, you are proposing noise level reduction standards (not

in response to the Objection) that are most appropriately placed in the Airport Hazard Zone Regulations of Chapter 30. Comprehensive plan amendments are not where Airport Hazard Zone Regulations can be revised and adopted.

In addition to the proposed changes regarding the 2007 NEM map, you have also requested that the City make changes to other policies that were neither objected to nor commented upon by DCA in the ORC Report. As you know, these PUD conditions that comprise the subject comprehensive plan amendment were established over the course of numerous public hearings and therefore staff is reluctant to make substantive changes at this juncture.

A listing of your additional proposed revisions (not in relation to the DCA Objection) and our responses to them are as follows.

- On page 3 you are proposing deletion of the limitation of the non-residential uses in part of the property (within your proposed 65dB DNL noise zone) to those within the Limited Industrial (I-1) zoning district. Your proposed deletion is shown on page 2 in ~~strike-throughs~~: “Policy 4.3.5 d. 1. 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 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.~~” (Note - On page 3, you are also proposing adding a map to the Future Land Use Map Series of the Comprehensive Plan that would have your proposed 65dB LDN noise zone overlain on the Hatchet Creek PUD area.)
- *Response –As you may recall, when the City Commission approved the petition on October 29, 2007, the City Commission denied the PUD for the area (approximately 199 acres) of the property that is in the Industrial future land use category. On April 16, 2008 when the City Commission held a special hearing to re-consider the approved petition, the Commission again approved the petition, and applied the PUD to the entire subject property, including the area with the underlying Industrial land use. As part of that approval, the City Commission restricted the non-residential uses in the area with underlying Industrial land use to retail and office uses that are allowed in the (Limited Industrial (I-1) zoning district. This permits a wide range of uses in this area, and staff sees no reason to re-visit this decision of the City Commission. Furthermore, this request is within your proposed 65 dB Noise Zone area that is based on a draft map that is not part of the adopted Airport Hazard Zoning Regulations, which, as previously explained in this letter, staff cannot support.*

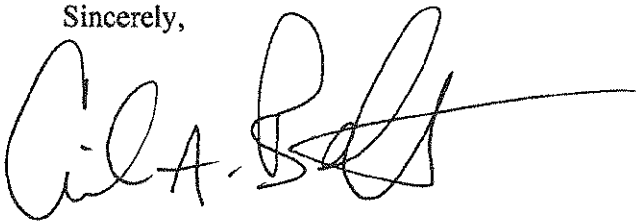
- On page 3, as an alternative (to your proposed “Hatchet Creek PUD Area” map with the 65 dB DNL noise zone depicted on it) you are proposing the adoption of the 2007 NEM map as a separate, additional map in the Future Land Use Map series in the Comprehensive Plan.
- *Response –Such a map would be based on a draft map that is not part of the adopted Airport Hazard Zoning Regulations, which, as previously explained in this letter, staff cannot support.*
- On page 3, you stated that you believe there is a drafting error in Policy 4.3.5 b, and that you are “requesting that it be clarified that accessory uses do not count towards the 200,000 ft² of non-residential uses.” You further stated that “having separate accessory uses for residents and their guests is what always has been discussed with Staff for over two years and the traffic analysis is based on this assumption as well.” You then recommended revision [deletions as ~~strike-throughs~~, additions underlined]of Policy 4.3.5 b as follows: “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 not including accessory uses customarily and clearly incidental to an active adult community (to include a maximum of 100,000 square feet of retail space, and a maximum of 100,000 square feet of office space ~~and accessory uses customarily and clearly incidental to an active adult 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 an active adult community or parks, open space, conservation, open space buffers and mitigation areas.”
- *Response – Staff agrees that revisions are needed to make it clear that accessory uses for residents and their guests, and that are customarily and clearly incidental to an active adult community, are to be excluded from the 100,000 square feet limitations pertaining respectively to retail and office uses. However, the type and scale of accessory development needs to be clarified. With our additional revisions shown as double-underlined or ~~double-stricken~~, we support revised Policy 4.3.5, which follows: “The non-residential and non-ALF intensity and allowable non-residential and non-ALF uses within the PUD ~~is~~ are a maximum of 200,000 square feet of non-residential uses (to include a maximum of 100,000 square feet of retail space, and a maximum of 100,000 square feet of office space ~~and accessory uses customarily and clearly incidental to an active adult community~~) not including accessory uses customarily and clearly incidental to an active adult community. Any such accessory uses shall be for the exclusive use of the residents of the PUD and their guests, and the type and scale of such accessory uses shall be specified in the Planned Development (“PD”) zoning ordinance. In addition, the PUD may include active and passive recreational facilities (such as parks, open space, conservation, open space buffers and mitigation areas) 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~~.”*

- On page 4, to address what you believe is another drafting error, you proposed revisions to Policy 4.3.5 e. as follows: “All non-residential areas in the PUD shall be connected to the residential areas in the PUD by an interior roadway system ~~and/or~~ or a pedestrian/ or bicycle/ or golf cart system. All pedestrian sidewalk systems in the PUD shall comply with the Florida Accessibility Code for Building Construction requirements.”
- *Response – The approved policy reflects its clear intent to provide true connectivity between all non-residential and residential areas in the PUD. The policy approved by the City Commission is sufficiently flexible as written. Where no interior roadway is to be provided, a combined pedestrian/bicycle/golf cart pathway will provide substantial, multimodal connectivity and transportation choice. The proposed revisions are substantive changes that would weaken this policy, and staff cannot support them.*
- On page 4, you are requesting revision of Policy 4.3.5 t. by deleting an essential component of this policy regarding the allowable number of drive-throughs.
- *Response – Staff cannot support your request to delete the requirement that 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.) is not exceeded for the PUD. This is the sole quantitative basis for limiting the number of drive-throughs along NE 39th Avenue and NE 53rd Avenue; deleting it would remove a substantive control over a use with substantial transportation system impacts.*
- On page 5, you are requesting Policy 4.3.5 v. be revised as follows: “...To minimize traffic impacts from the Hatchet Creek PUD on NE 53rd Avenue, to the extent reasonably possible, the access points on NE 53rd Avenue shall be interconnected with the internal public or private road system in the Hatchet Creek development. The private road system interconnections shall be interpreted to include internal driveway systems.”
- *Response – Addition of the provision that private road system interconnections are interpreted to include internal driveway systems added considerable flexibility to this policy when it was approved at the June 2008 transmittal hearing. The proposed additional text would substantially weaken this important policy, and it cannot be supported by staff.*
- On page 5, you stated that Policy 4.3.5.dd may also be considered self-amending since it relies on standards adopted in an ordinance [Chapter 30, Appendix F] which can be amended without amending the comprehensive plan. Also, you have requested amendment of this policy by requiring achievement of specific noise level reductions for future.

- *Response –The Airport Hazard Zoning Regulations are properly adopted in the Codes of Ordinances. Self-amendment of this policy is not at issue. Your proposed noise level reductions are not necessary because noise level reduction is regulated by provisions of the Airport Hazard Zoning Regulations. Furthermore, your proposed revisions rely on an unadopted NEM map, as previously discussed in this letter.*

As you know, this matter is scheduled to be heard by the City Commission on October 16th. In the interim, please do not hesitate to contact me if you have any questions regarding staff's responses to your recent letter regarding the Hatchet Creek comprehensive plan amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Bredfeldt", with a long horizontal line extending to the right.

Erik Bredfeldt, AICP
Director

cc: Russ Blackburn, City Manager
Marion Radson, City Attorney
Ralph Hilliard, Planning Manager
Teresa Scott, Public Works Director

CARPENTER & ROSCOW, P.A.

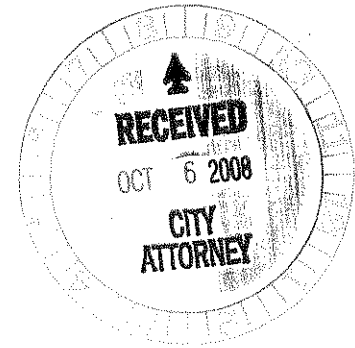
5608 NW 43rd STREET
GAINESVILLE, FLORIDA 32653-8334

TELEPHONE
(352) 373-7788
FACSIMILE
(352) 373-1114

RONALD A. CARPENTER
rcarpenter@raclaw.net

JOHN F. ROSCOW, IV
roscow@raclaw.net

October 6, 2008



Mayor Pegeen Hanrahan
City of Gainesville, Florida
VIA HAND DELIVERY

Dear Mayor Hanrahan:

As I am sure you are aware, on August 26th, the Department of Community Affairs ("DCA") submitted its ORC Report to the City on the proposed Hatchet Creek Amendment. The comments from DCA were minimal compared with other Comprehensive Plan Amendments. Both comments which were to be addressed by the City dealt with the adoption of a map depicting allowable land uses on the property, so as to have this issue addressed in this PUD ordinance itself and not cross-referenced to the City's Appendix F.

On September 24th the Applicant was advised that the City Planning Staff intended to respond to DCA's comments by attaching the 1999 Noise Zone Map ("1999 Map") to the Hatchet Creek Comprehensive Plan Amendment. As you will recall, it is this map which all parties acknowledged was inaccurate and misrepresentative as to the status of noise conditions on the subject property and indeed had never ever been submitted to or approved by the FAA. Furthermore, this 1999 Map was not part of a Part 150 Study.

Also on September 24th, Linda Shelley of Fowler White corresponded by mail to Mr. Bredfeldt relative to compliance with the ORC report and other proposed changes to the Comprehensive Plan Amendment (copy attached). On September 26th, after a September 25th telephone conversation, I e-mailed to Staff the Shelley letter and recommended that we attempt to meet to resolve the issue inasmuch as the adoption of the 1999 Map would make development of the project impossible (copy attached).

On October 1st I received a telephone call from Mr. Bredfeldt, the end result of which was that: (a) there would be no meeting with Staff; and, (b) the 1999 Map was to be submitted as part of the Hatchet Creek PUD Ordinance to the City Commission for review and adoption at the October 16th City Commission Meeting.

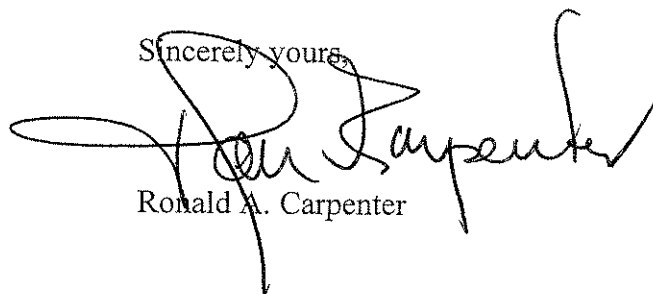
Mayor Pegeen Hanrahan
October 6, 2008

In October of 2007, the Airport Authority represented to the City Commission that a new Part 150 Study noise exposure map ("NEM") would be completed and available by January and approved by the FAA by February. In March the Airport Authority told the City Commission that the new NEM would be approved by the FAA by April. On numerous occasions, the Airport Authority suggested that the current 65 dB DNL noise contour would be smaller and that if the Applicant would wait for the new NEM to be completed, it would benefit the proposed project. Here it is October and still no map.

The Technical Advisory Committee ("TAC") for the Part 150 Study was provided a draft copy of the NEM on July 8th and was advised to have all comments to the Airport's consultant within two weeks, which was later extended at the City's request to August 1st. Mr. Simensky submitted an extensive inquiry as to the basis for various assumptions and analyses employed, which appeared unreasonable and had the effect of overstating the noise contour on the Applicant's property. Additionally, the City, through its noise consultant, submitted questions. To my knowledge, no answers have been provided to Mr. Simensky or the City despite the passage of more than two months since all comments were received by the Airport Authority and its consultant. The Airport has a 2007 NEM which was prepared in accordance with the methodology and data approved by the FAA. Mr. Simensky has transmitted a letter to the Airport Authority and its consultant withdrawing his request to receive a response to his comments (copy attached).

As agent for the applicant, I respectfully request a deferral of the adoption hearing on the Ordinance until the issue of the map is resolved. Further, I ask that you agenda the Fowler White issues and the consideration of the 2007 Map adoption as part of the Hatchet Creek PUD Ordinance. Consideration of the 2007 Map adoption would hopefully include some advisement by the Airport Authority of the status of the over one-year Part 150 mapping process, which it authorized in July 2007.

Sincerely yours,



Ronald A. Carpenter

RAC/bw

Enclosures

cc: Commissioner Thomas Hawkins
Commissioner Jeanna Mastrodicasa
Commissioner Scherwin Henry

Commissioner Lauren Poe
Commissioner Jack Donovan
Commissioner Craig Lowe
Russ Blackburn
Erik Bredfeldt (via e-mail)
Marion Radson, Esq.
✓Nicolle Shalley, Esq.



FOWLER WHITE BOGGS BANKER

ATTORNEYS AT LAW

ESTABLISHED 1943

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

September 24, 2008

Erik Bredfeldt
City of Gainesville
Post Office Box 490
Gainesville, Florida 32602-0490

Re: Hatchet Creek Plan Amendment

Dear Erik:

On behalf of East Gainesville Development Partners LLC, we are requesting consideration of amendments to the draft comprehensive plan amendment for the Hatchet Creek PUD District that was transmitted to the Florida Department of Community Affairs ("DCA") in June of this year.

The first of the amendments we propose would resolve the only objection to the Hatchet Creek comprehensive plan amendment in the Objections, Recommendations and Comment (ORC) Report dated August 26, 2008 from DCA. DCA's objection was that, as proposed, Policy 4.3.5.d is "self amending". The concern is that the fundamental land use decision, i.e., what types of uses would be located where on the property, should not be changed through amendment of a document extraneous to the comprehensive plan.

To remedy that concern, DCA recommends that the City adopt and incorporate into the comprehensive plan a map depicting the location of the allowed land uses on the property. The DCA recommendation was to adopt the Airport Noise Zone map referenced in Policy 4.3.5 as part of the plan. We believe that it would be a cynical, futile act to adopt the outdated 1999 map that is currently referenced in Appendix F, as it is acknowledged by everyone that it is extremely inaccurate and the sole purpose of adopting such a map would be to render the Hatchet Creek site impossible to develop residential and ALF.

A more reasonable approach would be to use the most recent map the Airport has

FOWLER WHITE BOGGS BANKER P.A.

TAMPA • ST. PETERSBURG • FORT MYERS • TALLAHASSEE • ORLANDO • JACKSONVILLE • FORT LAUDERDALE

101 N. MONROE STREET, SUITE 1090 • TALLAHASSEE, FL 32301 • P.O. BOX 11240 • TALLAHASSEE, FL 32302
TELEPHONE (850) 681-0411 • FAX (850) 681-6036 • www.fowlerwhite.com

produced, the 2007 Noise Exposure Map ("NEM"), and identify the 65 dB DNL and 60 dB DNL noise contour lines on the map amendment. We believe all parties agree that this 2007 NEM is the most accurate expression of where the actual 65 dB DNL line is on the Hatchet Creek site. It is the best, most recent available data and analysis to support the City's decision on the plan amendment. It is much more realistic, not to mention more equitable and reasonable, to adopt the noise contour lines depicted on this 2007 NEM. It is our understanding that the data for this map, and possibly the map itself, has already been reviewed and approved by the FAA. Also, members of the Airport's Technical Advisory Committee ("TAC") were provided a copy of the draft NEM study on July 8, 2008 and have provided their respective comments to the Airport related to this study on or before August 1, 2008. The changes to the language of the draft Ordinance would read as follows:

Policy 4.3.5

- d. The allowable uses within the PUD shall be as restricted as described below and as more specifically described in the PD zoning ordinance. ~~For purposes of this PUD, the Airport Noise Zone is the area depicted on Attachment 3 to the Appendix F Airport Hazard Zoning Regulations, Chapter 30, Gainesville Code of Ordinances adopted on May 10, 1999 as Ordinance 981149, a copy of Attachment 3 is attached hereto as Exhibit "B."~~ 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 within limitations, flight operations, and (2) that the site for which the units are proposed is suitable for residential development.
 1. Within the 65 dB DNL noise zone identified on the map labeled Hatchet Creek PUD Area in the Future Land Use Map Series A: Airport Noise Zone, subject to the Airport Hazard Zoning Regulations:
 - a. No residential development, ~~or including~~ ALF beds, are is allowed.
 - 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 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.~~

An alternative to this approach of identifying the 65 dB DNL on the PUD Map to be adopted as part of Map Series A would be to adopt the 2007 NEM map as an additional map in the future land use map series in the comprehensive plan. It could then be read in concert with the Hatchet Creek PUD Area map. The language for this approach would read as follows:

(Replace first sentence in Subparagraph d.1, above, with:)

1. Within the 65 dB DNL noise zone depicted on the map labeled Hatchet Creek PUD Area Noise Zones in the Future Land Use Map Series A:

You will note that in Subparagraph 1.b., above, we have also indicated a deletion of the limitation of the non-residential uses within the 65 dB DNL noise zone to those within the Limited Industrial zoning district. Although this change is not related to the DCA ORC Objection, it is important to the Applicant's efforts to transform this property into a unified, quality adult-oriented retirement community. Not only is there is no reason to restrict the uses to those of an industrial nature, but it actually runs counter to the purposes of the new land use designation and the goals of maximizing the non-residential uses within the 65 dB DNL.

There are a limited number of additional changes to the transmitted language that are not related to the ORC objection but that we believe should be adopted by the City Commission. They are described below in the order that they appear in the draft Ordinance:

The first change relates to what we believe is a drafting error to Policy 4.3.5.b, where we are requesting that it be clarified that accessory uses do not count towards the 200,000 ft² of non-residential uses. The notion of having separate accessory uses for residents and their guests is what has always been discussed with Staff for over two years and the traffic analysis is based on this assumption as well. This requires clarifying the first sentence of this policy to read as follows:

- 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 not including accessory uses customarily and clearly incidental to an active adult community (to include a maximum of 100,000 square feet of retail space; and a maximum of 100,000 square feet of office space ~~and accessory uses customarily and clearly incidental to an active adult 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 an active adult community or parks, open space, conservation, open space buffers and mitigation areas.

The second change relates to what we believe is a drafting error to Policy 4.3.5.e, where we are requesting that it be clarified that every internal roadway/connection system does not

have to support pedestrians and bicycles and golf carts. The intent of this language requested by Staff, offered originally by the Applicant and discussed numerous times with Staff, was to have some sort of connection, but not every modality for each connection. The revised language would read as follows:

- e. All non-residential areas in the PUD shall be connected to the residential areas in the PUD by an interior roadway system ~~and/or~~ or a pedestrian/ or bicycle/ or golf cart system. All pedestrian sidewalk systems in the PUD shall comply with the Florida Accessibility Code for Building Construction requirements.

Thirdly, we request the deletion of the last sentence in Policy 4.3.5.t which was added after the last Commission meeting in June. This sentence caps the transportation impacts based upon a study that was submitted by the Applicant on April 3, 2008. This artificial cap is inappropriate and unnecessary. While it is likely that there will be no transportation impacts in excess of those predicted by the referenced study, the assumptions used in the study in no way maximized the current transportation capacity available for development of this site. The idea behind the cap confuses the valid comprehensive planning concept of analyzing the anticipated impacts of the maximum development capacity of a project with transportation concurrency analyses which are done at a later stage in the review process and which are quite detailed and specific to a proposed development plan. Why require a new traffic study and methodology letter in Policy 4.3.5.y if Policy 4.3.5.t is restricting development based on trip generation of a more generic study? At the very least, the City should allow the Applicant to provide an updated transportation study and should revise the language to the later date of the revised study submittal. Again, our suggested amendment is to delete the last sentence of Policy 4.3.5.t:

- t. 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 the 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.) is not exceeded for the PUD.~~

Fourth, we request that the requirement added to Policy 4.3.5.v, that all access points on NE 53rd Avenue be interconnected with the internal public or private road system in the Hatchet Creek development, not be absolute in nature. It is too early in the planning process to establish this policy in a land use amendment. The real world effect of this term will be to prevent commercial development along NE 53rd Avenue, which would be an unfortunate and unnecessary consequence for people who live in the area. The Hatchet Creek site has well over one mile of frontage on NE 53rd Avenue. The revised language would read as follows:

v. A maximum of two 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, and the locations shall be included in the PD zoning application. All access points are subject to Alachua County and City of Gainesville approval at the planned development zoning stage and shall be specified in the PD zoning ordinance. To minimize traffic impacts from the Hatchet Creek PUD on NE 53rd Avenue, to the extent reasonably possible, the access points on NE 53rd Avenue shall be interconnected with the internal public or private road system in the Hatchet Creek development. The private road system interconnections shall be interpreted to include internal driveway systems.

Lastly, similar to the policy for which DCA raised an ORC Objection, Policy 4.3.5.dd may also be considered self-amending as it relies on standards adopted in an ordinance which can be amended without an amendment to the comprehensive plan. Further, the Applicant has offered to far exceed those standards by constructing all buildings on the site to a 25 dB noise level reduction ("NLR") standard and residential and ALF development in areas with a DNL of 60 dB or greater to a 30 dB NRL building standard. None of these building standards are required in Appendix F. We request that the language be amended, as follows:

dd. All residential and non-residential development shall be constructed to achieve an outdoor-to-indoor noise level reduction ("NLR") of 25 dB. Additionally, in areas of a DNL noise zone greater than 60 dB, all residential and ALF development shall be constructed to achieve an NLR of 30 dB, as said DNL is depicted on the map labeled Hatchet Creek PUD Area in the Future Land Use Map Series A, as specified in Appendix F ~~Airport Hazard Zoning Regulations, Chapter 30 of the Gainesville Code of Ordinances in effect at the time of application for a building permit.~~


Again, an alternative approach to this language would be to adopt the 2007 NEM map with the noise contour lines contained on it in the future land use map series in the comprehensive plan and reference that map instead of placing the contour lines on the main PUD map.

Erik Bredfeldt
September 24, 2008
Page 6

We look forward to working with you as this plan amendment moves forward to adoption by the City Commission. Please feel free to contact me to discuss these issues at your convenience, as we believe it will be more productive to try to resolve these issues prior to a City Commission meeting.

Sincerely,

FOWLER WHITE BOGGS BANKER P.A.



Linda Loomis Shelley

LLS/tre

cc: Russ Blackburn
Ralph Hilliard
Dean Mimms
Marion Radson, Esq.
Nicole Shalley, Esq.
Ron Carpenter, Esq.
Rob Simensky

FOWLER WHITE BOGGS BANKER P.A.

TAMPA • ST. PETERSBURG • FORT MYERS • TALLAHASSEE • ORLANDO • NAPLES • JACKSONVILLE • FORT LAUDERDALE

Ron Carpenter

From: "Ron Carpenter" <rcarpenter@raclaw.net>
To: "Dean Mimms" <mimmsdl@cityofgainesville.org>
Cc: "Russ Blackburn" <citymgr@cityofgainesville.org>; "Ralph Hilliard" <hilliardrw@cityofgainesville.org>; "Marion Radson" <radsonmj@cityofgainesville.org>; "Nicole Shalley" <shalleynm@cityofgainesville.org>; "Rob Simensky" <Rasimensky@aol.com>; "Linda Shelley" <lshelley@fowlerwhite.com>
Sent: Friday, September 26, 2008 9:11 AM
Attach: im55200809251947.PDF
Subject: Hatchet Creek

Dean,

Pursuant to our telephone conversation of Thursday, September 25th, please find attached a letter from Linda Shelley to Erik Bredfeldt relative to Hatchet Creek. The letter was mailed on September 24th and was not received prior to the dissemination of Planning's proposed response to the ORC. The use of the 1999 Map is not an impediment but an absolute obstacle. No one, through the entire process, has suggested that the 20 year old Map is either accurate, fair or an FAA approved Map.

Mr. Simensky is in Gainesville on Thursday, October 2nd and is anxious to have a meeting to discuss Ms. Shelley's letter.

I have copied everyone on the Linda Shelley cc list.

Thank you,
Ron



Before printing this e-mail - think if it is necessary. Think Green

CARPENTER & ROSCOW, P.A.
 5608 NW 43rd Street
 Gainesville, Florida 32653
 (352) 373-7788
 (352) 373-1114

This e-mail may contain privileged and confidential information intended only for the individual named above. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination or copying of this communication is prohibited. If this communication was received in error, please inform the sender by "replying" to this e-mail, and immediately and fully delete this message and its attachments without copying or disclosing its contents. Thank you.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

LAW OFFICE

CARPENTER & ROSCOW, P.A.

5608 NW 43rd STREET
GAINESVILLE, FLORIDA 32653-8334

TELEPHONE
(352) 373-7788
FACSIMILE
(352) 373-1114

RONALD A. CARPENTER
rcarpenter@raclaw.net

JOHN F. ROSCOW, IV
roscow@raclaw.net

October 2, 2008

Allan Penksa, GACRAA CEO
Peter Johnson, GACRAA Chairman
Jeff Breeden, RS&H consultant to GACRAA

Gentlemen:

On or about July 18, 2008 and August 1, 2008, Mr. Simensky, a member of the Technical Advisory Committee, submitted letters containing questions, comments, concerns, and requests for information and/or clarification of the materials in the draft copy of the noise exposure maps study dated June 2008.

Due to the passage of over two months without any response from GACRAA or its consultant, please be advised that my client, Mr. Simensky, withdraws his request for any response to the letters he submitted referenced above.

Sincerely yours,



Ronald A. Carpenter

RAC/bw



MEMORANDUM

Office of the City Attorney

TO: Mayor and City Commissioners **DATE:** October 8, 2008

FROM: City Attorney

SUBJECT: Response to Letter dated October 6, 2008 from Attorney Ron Carpenter re: continuance of adoption hearing for Hatchet Creek Comprehensive Plan Amendment (Ordinance No. 0-07-97; Petition 23LUC-07PB)

On October 6, 2008, Attorney Ron Carpenter, as agent for the applicant, wrote a letter to Mayor Hanrahan (a copy of which is attached as **Exhibit "A"**) requesting "*a deferral of the adoption hearing on the Ordinance until the issue of the map is resolved. Further, I ask that you agenda the Fowler White issues and the consideration of the 2007 Map adoption as part of the Hatchet Creek PUD Ordinance. Consideration of the 2007 Map adoption would hopefully include some advisement by the Airport Authority of the status of the over one-year Part 150 mapping process, which it authorized in July 2007.*" This memo is intended to provide guidance to the Mayor and City Commission in considering the applicant's requests as set forth in the letter from Attorney Carpenter. The issues are addressed in the order they appear in the letter and are identified by paragraph.

Paragraph 1: For ease of reference, the DCA's objection and recommendation with respect to the Hatchet Creek PUD Comprehensive Plan amendment, as contained in the ORC Report dated August 26, 2008, is as follows:

"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."

"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.”

Attorney Carpenter states that DCA’s objection and recommendation is directed to having the map issue addressed in the PUD ordinance and not cross-referenced to the City’s Appendix F (the “Airport Hazard Zoning Regulations”). This interpretation is in direct conflict with the DCA’s recommendation that the City either adopt the Airport Noise Zone Map into the plan or the City may adopt the map by cross reference to Appendix F; however, the reference must clearly state the date, author and source of the map.

City staff reads DCA’s objection as directed to the self-amending component of the proposed policy. DCA recommends that the City remove the self-amending language and clarify which map it is appending to the PUD ordinance and that the map be consistent with the land development regulations. DCA further suggests that in the event a new Airport Noise Zone map is adopted, it may then be incorporated into the plan through an amendment to this PUD ordinance. City staff, in its response to DCA, proposes amending the ordinance by deleting the self-amending component of the policy, appending the Airport Noise Zone map that is consistent with the current land development regulations and including the date, author and source of that map, in the reference to same.

Paragraph 2: Attorney Carpenter states that all parties have acknowledged that the 1999 Noise Zone Map (Attachment 3 to the City’s Airport Hazard Zoning Regulations) is inaccurate and misrepresentative as to the status of noise conditions on the subject property. To the best of our information, at no time has the City represented that the 1999 Noise Zone Map is inaccurate or misrepresentative, either in general or as applied to this property. Rather, at the many public hearings on this petition and ordinance, testimony has been given that due to changes in airport operations and airplane technology that occur over time, both the 1986 Part 150 Study and the 1999 Noise Zone Map are in need of updating. Consistent with such testimony, the Gainesville-Alachua County Regional Airport Authority (“GACRAA”) initiated a new Part 150 study and has been moving forward with that process to date. City staff has been participating in the Part 150 study process and has sought guidance on the map issue from both the City’s airport noise consultant and the Federal Aviation Administration (“FAA”).

As this Office stated in a Memo dated September 19, 2007, to the City Commission (and copied to the Petitioner and its attorneys):

“In light of the more recent maps, as described above, City Staff has sought guidance from its airport noise consultant and from the FAA on which maps should be adopted to update Appendix F. This in no way suggests or implies that the processing of the Petition must be tied to, conditioned or contingent upon the adoption of updated maps. It is the opinion of this Office that Appendix F requires the City to adopt the appropriate updated maps (and City Planning and Development staff is pursuing that issue); however, until that is done, any development should be reviewed in accordance with the current operative map adopted by the City for that purpose, which is the map attached as Exhibit 12.” The Memo further states “In view of conflicting information provided to the City from the Airport and the Petitioner concerning FAA grant funding, as well as uncertainty

over which updated noise contour maps should be adopted, and to obtain familiarity with the FAA's general interpretation of uses compatible within airport noise zones, City staff, on the recommendation of its airport noise consultant, in early August arranged a conference call with the FAA. On September 4, City Staff held a phone conference with Lindy McDowell, FAA Environmental Specialist and Rebecca Henry, FAA Program Manager for Planning and Compliance." "During the phone conference, FAA staff advised the City that in updating the noise contour maps in its local code, the City should adopt NEM's that have been reviewed for compliance by the FAA, as these are the only officially recognized maps for noise contour regulation purposes. City staff concurs with this position."

It is important to note that the Noise Exposure Map ("NEM") only establishes the current or projected physical location of the airport noise contour lines (e.g, the 55 Ldn, 60 Ldn, 65 Ldn, 70 Ldn and 75Ldn contours). The map does not establish the land use regulations within those contours. This Office stated in the Memo dated September 19, 2007:

"Nothing in this opinion suggests or implies that the FAA has the authority to dictate land use, zoning or development decisions in and around the Airport. The City has the authority to make such local land use, zoning and development decisions as the City determines are in the best interest of the community. The FAA may determine, however, that those local decisions reduce compatibility with the Airport and render the Airport ineligible for FAA grant funding. The ultimate decision as to local land use, zoning and development lies with the City."

Paragraphs 3 and 4: Despite Attorney Carpenter's assertions to the contrary, the City Commission, City Plan Board and City staff have spent hundreds of hours on this petition and ordinance. City staff remains responsive to the applicant, evidenced most recently by the following: On September 3, 2008, City Planning staff met with the applicant and its various agents to discuss the status of the Hatchet Creek PUD amendment in the context of the ORC report received from DCA on August 26, 2008. During that meeting, the group discussed how matters would likely proceed over the course of the next several months and some of the applicant's concerns with the ordinance as adopted on first reading, including the status of an updated map. During the meeting, Attorney Shelley indicated that resolution of the map issue would be paramount in determining whether the project moved forward or not. With respect to that concern, staff indicated to Attorney Carpenter that it was not clear how a map that had not been adopted by the FAA, GACRAA or the City Commission at the current juncture could be utilized within the context of this land use decision. The meeting ended with Attorney Shelley stating that she would forward a letter with the applicant's concerns (inclusive of the map and changes to other proposed conditions) and that City staff should check with Airport on the status of the Part 150 study.

On September 16, 2008, the City Attorney's Office spoke to Attorney Shelley regarding the applicant's proposal to recommend the City Commission adopt an airport noise zone map (for purposes of the PUD Ordinance) that has not been adopted by the FAA, GACRAA or the City Commission and is inconsistent with the Airport Noise Zone map that is currently adopted in the City's Land Development Code.

On September 29, 2008, City staff received Attorney Shelley's letter regarding the applicant's concerns. On October 1, as a courtesy, Planning staff spoke with Attorney Carpenter to inform him of how staff intended to proceed given the statutory adoption deadline and the City's agenda deadlines. City staff stated to Attorney Carpenter that staff would provide a response to Attorney Shelley's letter in the City Commission back-up for the October 16, 2008 agenda item and would provide a copy to the Petitioner as soon as the back-up was finalized. City staff also stated to Attorney Carpenter that, based upon verbal conversation with GACRAA staff, the 2007 NEM map had not been approved by FAA at this juncture but was proceeding forward. City staff advised that further discussions with staff would not be productive, at this point, for the following reasons: 1) staff's written response to the ORC report and Ms. Shelley's letter were in progress and would at best be completed in time for inclusion in the back-up for discussion by the City Commission; 2) City staff's continued concern that adoption of a map that was not part of the current adopted land development code was problematic and potentially not lawful; and, 3) that the status of the Part 150 study and map approval by the FAA was outside of the control of City Staff and rested with GACRAA.

Paragraphs 5 and 6: As to the status of and the Part 150 study and map review by the FAA, it should be understood that, pursuant to federal regulations, the decision to pursue the study, to develop NEM's, to seek review by the FAA and ultimately, to adopt NEM's and/or the Study lies with GACRAA. GACRAA is an independent special district created by Special Act of the Florida Legislature for the purpose of operating the Gainesville Regional Airport. As such, it is a legal entity separate and distinct from the City of Gainesville and Alachua County. The Part 150 Study process does include opportunity for input from area citizens and local regulatory jurisdictions (including the City and the County) and City staff has been engaged in the process and has provided written comments regarding the draft Phase I report. To date, GACRAA has not provided a written response to the City's comments; however, GACRAA staff continues to provide status updates and study information, as it becomes available, to City Staff. GACRAA has indicated that when it has developed, and the FAA has reviewed, an updated noise exposure map, GACRAA will present that map, along with its suggested noise compatibility measures, to the City Commission for discussion and consideration for adoption into the City's Airport Hazard Zoning Regulations.


Paragraph 7: In accordance with Section 163.3184(7)(a), Florida Statutes, upon receipt of written comments from the Department of Community Affairs, the City has 60 calendar days "to adopt the amendment, adopt the amendment with changes or determine that it will not adopt the amendment." In this case, the City received the ORC Report from the DCA on August 26, 2008; so the City must take one of the specified actions by October 24, 2008. City staff has recommended an amendment to the Ordinance that is responsive to the DCA's objections and recommendation on this plan amendment.


The City Attorney's Office spoke with DCA Planning staff and Legal staff on September 26, 2008 and October 6, 2008 to obtain guidance on the issue of continuance of adoption hearings. DCA staff stated that the DCA "highly disfavors" extended continuances and recommends that if the local government feels a continuance is necessary and justified that it impose a reasonable time certain limitation on same. DCA staff cited its concerns that extended delays can result in data and analysis becoming outdated, the plan amendment can become inconsistent with plan amendments adopted in the interim, and that it becomes hard for the public to follow and be involved in the process. By way of example, given the DCA objections to the LandMar Comprehensive Plan

amendment (contained in the same DCA transmittal cycle No. 08-01 as Hatchet Creek), including most notably the statutory mandate that the City adopt a Public School Facilities Element before adopting any plan amendments that increase residential density, City staff and the LandMar applicant proposed that the adoption hearing be continued and heard with the Cycle No. 08-02 amendments (likely January or February 2009). DCA staff indicated this limited and time certain continuance would likely be acceptable and would likely not result in a finding of "not in compliance."

In an effort to be responsive to the Hatchet Creek applicant's request for continuance and in accord with DCA's guidance, City staff offered to the applicant to recommend the same time certain continuance of this ordinance as it recommended for the LandMar Comprehensive Plan amendment (i.e., continue the adoption hearing until such time as the City holds the adoption hearing for the DCA No. 08-2 comprehensive plan amendments). The City Attorney and Planning and Development Services Director discussed this potential recommendation with Attorney Carpenter on October 7, 2008, and he indicated, on behalf of the applicant, that this would not ensure that the map issue is resolved as requested by the applicant. The applicant's most recent request appears to be that the City either adopt a new map (different from that in the current Airport Hazard Zoning Regulations) as Exhibit B to this PUD ordinance or adopt a new map as an amendment to the Airport Hazard Zoning Regulations. As such, Attorney Carpenter indicated that the applicant would prefer to present its requests and recommendation(s) to the City Commission on October 16.

With respect to the applicant's requests, City staff has included its response to Attorney Shelley's letter of September 24, 2008, in the City Commission backup. As indicated therein, City staff does not support either (1) adoption of a map into the PUD ordinance that is inconsistent with the City's Land Development Regulations, or (2) consideration of the 2007 Map adoption as part of the Hatchet Creek PUD Ordinance. City staff has consistently advised the City Commission and the Petitioner, that the two issues (the Hatchet Creek PUD land use change and the adoption of an updated map in the Airport Hazard Zoning Regulations) are separate and distinct legislative matters with different legal processes, legal standards and policy considerations. Again, as stated by this Office in the Memo dated September 19, 2007, *"It is the opinion of this Office that Appendix F requires the City to adopt the appropriate updated maps . . . ; however, until that is done, any development should be reviewed in accordance with the current operative map adopted by the City for that purpose."*


Nicolle M. Shalley
Assistant City Attorney II


Marion J. Radson
City Attorney

cc: Russ Blackburn, City Manager
Erik Bredfeldt, Planning and Development Services Director
Ralph Hilliard, Planning Manager
Robert Simensky, Petitioner (via email)
Ron Carpenter, Attorney for the Petitioner (via email)
Linda Shelley, Attorney for the Petitioner (via email)



MEMORANDUM

Office of the City Attorney

TO: Mayor and City Commissioners **DATE:** October 8, 2008

FROM: City Attorney

SUBJECT: Age Restriction in Hatchet Creek Comprehensive Plan Amendment Ordinance No. 0-07-97

INTRODUCTION

At the request of Commissioner Hawkins, the City Commission at its meeting of June 23, 2008, requested this Office provide a legal opinion, at the time the above referenced ordinance returns for an adoption hearing, on the following question: Can the City Commission remove the age restriction from the ordinance at the adoption hearing?

SHORT ANSWER

If the City Commission removed the age restriction from the ordinance at the adoption hearing, it would very likely result in the Department of Community Affairs finding this Comprehensive Plan amendment "not in compliance." Such a finding would then subject the City to an administrative hearing to defend its action and, perhaps, state imposed remedial actions or sanctions to bring the plan amendment "in compliance."

ANALYSIS

Florida Statutes and Administrative Regulations set forth substantive requirements and procedure for transmittal and adoption of an amendment to the Comprehensive Plan. The law requires that such amendments be supported by data and analysis and requires, in particular, that each comprehensive plan amendment package contain a description of the availability of and the demand (that the amendment will create) on sanitary sewer, solid waste, drainage, potable water, traffic circulation, schools and recreation. Generally speaking, given the number of persons per household and demographic of the persons residing therein, age-restricted communities have a lower impact on traffic circulation and schools than non-age restricted communities. As such, the manuals and industry standard assumptions used to generate public facility impact calculations differentiate between age-restricted and non-age restricted communities.

On March 12, 2007, the City received an application for a large-scale comprehensive plan amendment from East Gainesville Development Partners, LLC (the "Petitioner"). On August 21, 2007, the application was updated and resubmitted to the City, with a revised PUD Report and revised traffic impact analysis. Although the cover letter from the Petitioner's legal counsel states "[t]he update reflects 1,500 age-restricted residential units"; the revised PUD report states the Developer's request that "at least one-third of all residential units shall be housing designated for units with at least one resident at least 55 years old." The letter further acknowledges that "in the

event more than 20% of the residential development is designated for residents with no member of a residential unit at least 55 years old [i.e., less than 80% is age restricted], then the applicant must provide a new traffic study.” Table 5 in the revised traffic impact analysis reflects residential trip generation calculated at 100% senior adult housing and assisted living. In addition, the public facilities impact analysis within the updated PUD Report, provided no analysis for public schools and stated that “[n]o impact on public schools is anticipated based on the age-restricted nature of the development.”

City Planning staff issued a staff report to the City Plan Board dated September 20, 2007, regarding the Petition, as revised. The staff report states “in the revised PUD Report, the applicant is now proposing that rather than all residential development be age-restricted, only one-third of the residential units would be subject to that requirement. However, the revised fiscal impact, market, and traffic impact analyses submitted with the revised PUD Report are for 100 per cent age-restricted residential units.” Consistent with the data and analysis submitted by the Petitioner at that point, the Petition approved by the City Commission on October 29, 2007, contained condition Z-5, which read, in pertinent part, “all residential development shall be housing designated for persons who are 55 years or older.”

On March 7, 2008, the Petitioner requested condition Z-5 be revised to read, in pertinent part, “at least 80% of the residential development shall be housing designated for persons where at least one member of the household is 55 years or older.” The staff analysis of the requested revision, issued in a memo dated April 16, 2008 to the City Commission, stated “[h]aving a mix of age groups in the development is desirable; however, staff does not support the petitioner’s modifications without reviewing an updated traffic analysis to determine how the revised residential distribution will impact traffic. Additionally, an analysis of the proposed modifications on public school capacity needs to be provided for staff review.”

At the public hearing on April 16, 2008, the City Commission, by a vote of 4-3, approved the Petition, with the revision to Condition Z-5 language as proposed by the Petitioner (at least 80% age-restricted community). According to Planning Staff, the Petitioner did submit revised data and analysis to support an 80% age-restricted community.

On June 16, 2008, the City Commission approved the ordinance on first reading with condition gg. stating, in pertinent part, “at least 80% of the residential development shall be housing designated for persons where at least one member of the household is 55 years or older.” In accordance with Florida law, the approved ordinance along with the Petitioner’s data and analysis was transmitted to the Florida Department of Community Affairs (“DCA”) in June to review for consistency and compliance with the law.

The DCA review can result in the issuance of an “objections, recommendations and comments” report (an “ORC Report”) to the City. In this instance, on August 26, 2008, the DCA issued its Objections, Recommendations and Comments Report to the City. The DCA did not comment on condition gg. presumably finding the data and analysis supplied supported the condition as written. Upon receipt of the “ORC Report,” the City has 60 calendar days to adopt, adopt with changes or not adopt the proposed plan amendments.

After the City’s adoption hearing, the adopted Plan amendment is sent to DCA for its final finding with respect to whether the adopted amendment is in compliance with the law. If the amendment,

as adopted on second reading by the City, is consistent with the DCA's recommendation in the ORC Report, DCA will likely find the amendment "in compliance" with the law.

If the amendment is adopted on second reading by the City without addressing the DCA's objections (as set forth in the ORC report) or the City makes substantive changes to the ordinance at the adoption hearing that were not reviewed by the DCA in the transmittal hearing or are not supported by the 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."


This finding of "not in compliance" is sent to the State Division of Administrative Hearings for administrative hearing. The parties to the hearing are the DCA, the City and any affected parties that intervene. Prior to the hearing, the DCA and the City may agree to mediate or arbitrate the matter, may enter into a compliance agreement, or may proceed directly to the administrative hearing. In the proceedings, the City's decision is presumed correct and will be sustained unless the DCA or an affected party can show, by a preponderance of the evidence, that the amendment is "not in compliance." Although this is a favorable standard for the City, the City would need to submit evidence to support its decision. In this case, the current data and analysis would not support the adopted amendment (i.e., data and analysis based on an 80% age-restricted community without corresponding language in the amendment to ensure that the development is restricted as such.)

After the hearing, the hearing officer issues a recommended order to the Administration Commission (comprised of the Governor and Cabinet). The plan amendment does not become effective until the Administration Commission issues a final order determining the adopted amendment to be "in compliance." The Administration Commission, in its final order, may specify remedial actions to bring the plan amendment into compliance and may specify sanctions to which the City will be subject if it elects to make the amendment effective notwithstanding the determination of "not in compliance." These sanctions may include ineligibility for certain Community Development Block Grants, Florida Recreation Development Assistance Program Grants and state revenue sharing and the withholding of state funds for City road, bridge, water and sewer projects.

Prepared By:


Nicolle M. Shalley
Assistant City Attorney II

Reviewed and Submitted By:


Marion J. Radson
City Attorney

cc: Russ Blackburn, City Manager
Erik Bredfeldt, Planning and Development Services Director
Ralph Hilliard, Planning Manager
Robert Simensky, Petitioner (via email)
Ron Carpenter, Attorney for the Petitioner (via email)
Linda Shelley, Attorney for the Petitioner (via email)

D R A F T

10-1-08

ORDINANCE NO. _____
0-07-97

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

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.

19
20
21
22

WHEREAS, publication of notice of a public hearing that the Future Land Use Map be amended by overlaying the land use category of "Planned Use District" over certain property with the underlying land use categories of "Single-Family (up to 8 units per acre)," "Industrial," and "Recreation"; and

23
24
25

WHEREAS, notice was given and publication made as required by law and public hearings were held by the City Plan Board on September 20, 2007, September 27, 2007 and October 4, 2007; and

26
27
28

WHEREAS, notice was given and publication made as required by law and public hearings on the Petition were held by the City Commission on October 22, 2007, October 23, 2007, October 29, 2007, and April 16, 2008; and

29
30

WHEREAS, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of this proposed ordinance

1 and of the Public Hearing to be held in the City Commission Meeting Room, First Floor, City Hall, in
2 the City of Gainesville at least seven (7) days after the day the first advertisement was published; and

3 WHEREAS, pursuant to law, after the public hearing at the transmittal stage, the City of
4 Gainesville transmitted copies of this proposed change to the State Land Planning Agency; and

5 WHEREAS, a second advertisement no less than two columns wide by 10 inches long was
6 placed in the aforesaid newspaper notifying the public of the second Public Hearing to be held at the
7 adoption stage at least five (5) days after the day the second advertisement was published; and

8 WHEREAS, public hearings were held pursuant to the published and mailed notices described
9 above at which hearings the parties in interest and all others had an opportunity to be and were, in fact,
10 heard.

11 WHEREAS, prior to adoption of this ordinance the City Commission has considered the
12 comments, recommendations and objections, if any, of the State Land Planning Agency.

13 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE
14 CITY OF GAINESVILLE, FLORIDA:

15 Section 1. The Future Land Use Map of the City of Gainesville 2000-2010 Comprehensive
16 Plan is amended by overlaying the "Planned Use District" future land use category on the following
17 described property with the underlying land use categories of "Single-Family (up to 8 units per acre),"
18 "Industrial," and "Recreation," all as more specifically described and shown as follows:

19 See map, labeled as "Hatchet Creek Planned Use District" dated May
20 29, 2008, attached hereto as Exhibit "A", and made a part hereof as if
21 set forth in full.

22
23 The map attached as Exhibit "A" is adopted and added to the Future Land Use Map

1 Series A of the City of Gainesville Comprehensive Plan.

2 Section 2. Goal 4, Objective 4.3 of the Future Land Use Element of the City of Gainesville
3 2000-2010 Comprehensive Plan is amended by creating and adding Policy 4.3.5, which shall govern
4 and control the use and development of the property described in Exhibit "A." Except as amended
5 herein, Goal 4, its Objectives and its Policies, all remain in full force and effect:

6 Goal 4

7 The land use element shall foster the unique character of the City by directing growth and
8 redevelopment in a manner that uses neighborhood centers to provide goods and services to city
9 residents; protects neighborhoods; distributes growth and economic activity throughout the city in
10 keeping with the direction of this element; preserves quality open space and preserves the tree canopy
11 of the city, the land use element shall promote statewide goals for compact development and efficient
12 use of infrastructure.

13
14 Objective 4.3

15 The City shall establish protection and enhancement policies, as needed, for selected neighborhood
16 (activity) and regional centers.

17
18 Policy 4.3.5 Due to the unique infrastructure and environmental constraints of the Hatchet Creek
19 Planned Use District (the "PUD"), as depicted on the map labeled Hatchet Creek PUD
20 Area in the Future Land Use Map Series A, the PUD shall be governed by the
21 following conditions:

22
23 a. The residential density and allowable residential uses within the Planned
24 Use District is a maximum of 1,500 residential units and 300 Assisted
25 Living Facility (ALF) beds. The maximum number of residential units in
26 the Planned Development ("PD") zoning ordinance shall be 1,199
27 residential units and 300 ALF beds; provided however, if the State
28 Development of Regional Impact residential threshold is increased to 1,500
29 residential units or above, the owner may request that the PD zoning
30 ordinance, or an amendment thereto, allow up to 301 additional residential
31 units based upon a demonstration by the owner/developer that adequate
32 public or private facilities are available to serve the additional units and that
33 the site for which the units are proposed is suitable for residential
34 development.

35

D R A F T

10-1-08

- 1 b. The non-residential and non-ALF intensity and allowable non-residential
2 and non-ALF uses within the PUD is a maximum of 200,000 square feet of
3 non-residential uses (to include a maximum of 100,000 square feet of retail
4 space, a maximum of 100,000 square feet of office space and accessory
5 uses customarily and clearly incidental to an active adult community). Any
6 such accessory uses shall be for the exclusive use of the residents of the
7 PUD and their guests and shall be specified in the Planned Development
8 ("PD") zoning ordinance. In addition, the PUD may include recreational
9 facilities as accessory uses that are customarily and clearly incidental to
10 an active adult community or parks, open space, conservation, open space
11 buffers and mitigation areas.
- 12
- 13 c. The actual amount of residential units, ALF beds, and non-residential
14 development area will be specified in the PD zoning ordinance as limited by
15 the city, county and state development restrictions and constraints,
16 including but not limited to, wetlands and surface water regulations,
17 wellfield protection, floodplain requirements, concurrency and airport
18 hazard zoning regulations.
- 19
- 20 d. The allowable uses within the PUD shall be as restricted as described
21 below and as more specifically described in the PD zoning ordinance. For
22 purposes of this PUD, the Airport Noise Zone is the area depicted on
23 Attachment 3 to the Appendix F – Airport Hazard Zoning Regulations,
24 Chapter 30, Gainesville Code of Ordinances adopted on May 10, 1999 as
25 Ordinance 981149, a copy of Attachment 3 is attached hereto as Exhibit
26 "B," which consists of the map entitled "Airport Noise Zone – Gainesville
27 Regional Airport," dated March 1999, and prepared by the City of
28 Gainesville's Department of Community Development. The source of the
29 map is CH2M Hill, Drawing 4, Gainesville Regional Airport Master Plan,
30 prepared under the Airport and Airway Improvement Act of 1982, as
31 stated on the map. ~~If the City amends the Airport Noise Zone after the~~
32 ~~effective date of this PUD and such amendment results in areas of land that~~
33 ~~were in the Airport Noise Zone, but no longer are within the newly~~
34 ~~adopted airport noise zone, the City Commission, at the PD zoning stage,~~
35 ~~may allow residential development in that area upon a City Commission~~
36 ~~finding that (1) residential development in that area is compatible with the~~
37 ~~Airport operations, including without limitation, flight operations, and (2)~~
38 ~~that the site for which the units are proposed is suitable for residential~~
39 ~~development.~~
- 40
- 41 1. Within the Airport Noise Zone, subject to the Airport Hazard

Zoning Regulations:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

(a) No residential development, including ALF beds, is allowed.

(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 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.

2. Outside of the Airport Noise Zone, subject to the Airport Hazard Zoning Regulations, to the extent same are applicable:

(a) Residential development, including ALF beds, is allowed.

(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.

e. All non-residential areas in the PUD shall be connected to the residential areas in the PUD by an interior roadway system and/or a pedestrian/bicycle/golf cart system. All pedestrian sidewalk systems in the PUD shall comply with the Florida Accessibility Code for Building Construction requirements.

f. A PD (planned development) zoning ordinance consistent with the PUD must be adopted by the City Commission within 18 months of the effective date of the land use change. The obligation to apply for and obtain PD zoning shall be on the owner/developer. If the aforesaid zoning ordinance is not adopted within the 18-month period, then the overlay PUD shall automatically be null and void and of no further force and effect and the overlay land use category shall ministerially be removed from the Future Land Use Map, leaving the original and underlying land use categories in

D R A F T

10-1-08

1 place. The timely filing of an extension application by the owner/developer
2 to extend the aforesaid 18-month period shall toll the expiration date until
3 final City Commission action on the extension application.

4
5 g. A current and complete wetlands survey for the entire property shall be
6 submitted to the City of Gainesville and to the St. Johns River Water
7 Management District at the time of application for PD zoning. Formal
8 approval of wetland delineations for the entire property by the water
9 management district is required prior to the public hearing on the PD
10 zoning petition by the City Plan Board.

11
12 h. All direct impacts to jurisdictional wetlands, wetland buffers, and regulated
13 creeks shall be avoided to the extent practicable. All unavoidable, direct
14 wetland and creek impacts shall be mitigated in accord with applicable City
15 of Gainesville and water management district requirements. Any required
16 on-site mitigation will be part of and will not supersede other wetland
17 mitigation requirements of the comprehensive plan, land development code,
18 and the water management district. There shall be no net loss of wetland
19 acreage and function within the PUD. In addition, if wetland impacts are
20 proposed at the time of application for PD zoning or a subsequent
21 application for development approval, the owner/developer shall submit a
22 plan for improvement of surface water and wetland function within the
23 Planned Use District and, subject to City review and approval, the plan of
24 improvement shall be incorporated into the PD zoning ordinance or
25 subsequent development approval.

26
27 i. All pedestrian and/or bicycle pathways, trails, and sidewalks shall be
28 located outside of wetland buffer areas and outside of creek buffer areas,
29 except as may be established and shown for good cause by the
30 owner/developer and then provided for in the PD zoning ordinance.

31
32 j. Protection of the State-listed animal species Gopher tortoise (*Gopherus*
33 polyphemus) listed as a Species of Special Concern in Rule 68A-27.005,
34 Florida Administrative Code, located in the remnant sandhills east of the
35 Ironwood Golf Course, and documented in the applicant's Hatchet Creek
36 Planned Use District Report dated March 2007, is required and shall be
37 established in the PD zoning ordinance. Protection of the documented
38 population may be accomplished by establishing a designated protection
39 area in the planned development zoning ordinance that meets all applicable
40 requirements of the City's significant ecological communities district (Sec.
41 30-309, Land Development Code) and all applicable requirements of the

Florida Administrative Code.

- 1
2
3 k. The owner/developer shall submit an environmental features report (in
4 accordance with the requirements of the Significant Ecological
5 Communities zoning district Section 30-309, Gainesville Code of
6 Ordinances) with the application for planned development zoning. As part
7 of this report, the highest-quality uplands shall be delineated and
8 development within these high-quality areas shall be restricted.
9
- 10 l. The application for planned development district zoning shall include
11 requirements for the use of native vegetation landscaping and for the
12 removal of invasive trees and shrubs.
13
- 14 m. A master stormwater management plan for the entire PUD shall be
15 prepared by the owner/developer. The plan shall include provisions for
16 protecting the water quality of Little Hatchet Creek, particularly with
17 respect to stormwater runoff from any future development within the
18 planned use district. A conceptual master stormwater management plan
19 application shall be submitted at the time of application for PD zoning.
20 The subsequent master stormwater management plan must be approved by
21 the City Manager or designee prior to final development plan approval.
22 The master stormwater management plan for the project shall be modified
23 for undeveloped phases in order to comply with the statewide water quality
24 rule once it is adopted. The water quality leaving the site shall be
25 addressed in the PD zoning ordinance.
26
- 27 n. Buffer and setback requirements for the wetlands and creeks in the PUD
28 shall be specified in the PD zoning ordinance and shall be in accordance
29 with the land development code, including the significant ecological
30 overlay district requirements based upon review of the required
31 environmental features report that shall be submitted with the application
32 for PD zoning.
33
- 34 o. Buffer requirements pertaining to adjacent uses (including the municipal
35 golf course) will be provided by the owner/developer in the application for
36 PD zoning and, subject to City review and approval, shall be included in
37 the PD zoning ordinance. These buffers shall be designed to minimize the
38 impact on and adequately buffer the adjacent uses.
39
- 40 p. The PUD shall not vest the development for concurrency. The
41 owner/developer is required to apply for and meet concurrency

D R A F T

10-1-08

1 management certification requirements, including all relevant policies in the
2 Concurrency Management Element, at the time of application for PD
3 zoning. Transportation modifications which are required due to traffic
4 safety and/or operating conditions, and which are unrelated to
5 transportation concurrency shall be provided by the owner/developer.

6
7 q. Internal roadways shall be designed to provide for bicycle and pedestrian
8 access and connectivity, and shall include traffic calming (low design
9 speed) methods (e.g., speed tables, speed humps, "neck-downs",
10 roundabouts) acceptable to the City of Gainesville in accordance with the
11 traffic calming practices outlined by the Institute of Transportation
12 Engineers.

13
14 r. Sidewalks shall be provided on all internal streets. Sidewalk connections
15 shall be made from the internal sidewalk system to the existing and planned
16 public sidewalks along the development frontage. All sidewalks and
17 sidewalk connections shall be a minimum of 5-feet in width, except as may
18 be established and shown for good cause by the owner/developer and then
19 provided for in the PD zoning ordinance.

20
21 s. The PUD shall provide for transit access (either on site or on abutting
22 roadways) and shall include construction of an appropriate number of
23 transit shelters, as determined at the PD zoning stage and specified in the
24 PD zoning ordinance.

25
26 t. A limited number of drive-through facilities shall be allowed on the street
27 frontages of NE 53rd Avenue and NE 39th Avenue as determined at the PD
28 zoning stage and specified in the PD zoning ordinance. No direct access
29 from NE 39th Avenue or NE 53rd Avenue shall be allowed for these drive-
30 through facilities. All access to the drive-through facilities shall be from
31 the internal roadway system (the internal roadway system shall include
32 public and private roads and internal driveway systems) in the PUD.
33 Additional drive-through facilities that are entirely internal to the PUD shall
34 be determined in the PD zoning ordinance. The PD zoning ordinance shall
35 specify the design criteria for all drive-through facilities and shall include a
36 phasing schedule to ensure a mix of drive-through facilities, residential
37 uses, and other commercial/office uses in the planned use district. The trip
38 generation associated with drive-through facilities shall limit the total
39 number of drive-through facilities such that the total maximum trip
40 generation shown for the 100,000 square feet of shopping center use as
41 calculated by the traffic study dated 4/3/08 (prepared by GMB Engineers &

Planners, Inc.) is not exceeded for the PUD.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

- u. A maximum of two access points, unless additional access points are approved by the FDOT and the City of Gainesville, shall be allowed along NE 39th Avenue, subject to the final approval of FDOT. Any proposed reconfiguration of the existing road connection to the Ironwood Golf Course is subject to FDOT and City approval at the PD zoning stage. Boulevard-type driveways with the ingress/egress split by a landscaped median and other entry-type features shall count as a single access point. These access points shall be specified in the PD zoning ordinance.
- v. A maximum of two 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, and the locations shall be included in the PD zoning application. All access points are subject to Alachua County and City of Gainesville approval at the planned development zoning stage and shall be specified in the PD zoning ordinance. To minimize traffic impacts from the Hatchet Creek PUD on NE 53rd Avenue, the access points on NE 53rd Avenue shall be interconnected with the internal public or private road system in the Hatchet Creek development. The private road system interconnections shall be interpreted to include internal driveway systems.
- w. A maximum of one access point shall be allowed along NE 15th Street. Any proposed access point along NE 15th Street shall be included in the planned development district zoning application. Any proposed access point is subject to City of Gainesville approval at the planned development zoning stage, and shall be specified in the PD zoning ordinance.
- x. Additional, limited emergency access will be allowed if the need for such is identified and the access is approved by local government agencies that provide the emergency service(s), and shall be specified in the PD zoning ordinance.
- y. Prior to the application for PD zoning related to the planned use district, a major traffic study shall be submitted that meets the specifications provided by FDOT, Alachua County, and the City of Gainesville, and the traffic methodology used in the study shall be agreed to in a letter between the City, and the owner/developer. Any traffic studies undertaken by the owner/developer prior to the signed methodology letter with the City of

DRAFT

10-1-08

1 Gainesville may be unilaterally rejected by the City.

2
3 z. Prior to the second reading of the PUD land use amendment ordinance, the
4 owner/developer shall sign a binding agreement for proportionate fair-share
5 mitigation of the transportation concurrency impacts associated with the
6 maximum amount of development identified in the future land use map
7 amendment. The exact payment will be redefined by the PD development
8 program during the PD zoning approval process, and the appropriate
9 amendments to the binding agreement will be incorporated. The City shall
10 amend the 5-Year Schedule of Capital Improvements to show the required
11 transportation modifications and funding provided by the owner/developer.
12 If sufficient funds are not available for the required transportation
13 modifications, the owner/developer shall be required to limit the
14 development program associated with the PUD to that which would not
15 degrade the transportation level of service (LOS) below the adopted LOS
16 for impacted roads.

17
18 aa. Prior to the application for PD zoning related to the Hatchet Creek planned
19 use district, a signal warrant analysis for the intersection of NE 53rd
20 Avenue/NE 15th Street and for the project driveway at NE 39th Avenue
21 shall be submitted as part of the major traffic study requirements. The
22 specifications for the signal warrant analyses shall be part of the traffic
23 methodology letter that will be signed with the City of Gainesville. The
24 owner/developer shall be responsible for the costs of any new traffic signals
25 that are warranted as a result of the development's site related impacts, and
26 the costs shall not be counted toward any required proportionate fair-share
27 contribution for transportation concurrency.

28
29 bb. The owner/developer shall be responsible for the costs associated with
30 tying a new traffic signal at the proposed entrance to the community on NE
31 39th Avenue into the Traffic Management System to ensure that the new
32 signal communicates with the system, if and when such new traffic signal is
33 installed.

34
35 cc. The following shall be executed and delivered to the City prior to approval
36 of a development plan, prior to recording of a final plat, or prior to
37 issuance of a building permit, whichever first occurs: (1) Avigation and
38 clearance easements granting the owner/operator of the Gainesville-
39 Alachua County Regional Airport Authority, its successors and assigns, the
40 right to continue to operate the airport in a manner similar to current
41 operations despite potential nuisance effects upon residential and any other

D R A F T

10-1-08

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

uses that are established by this PUD and/or by the required PD zoning ordinance; (2) Notice to Prospective Purchasers and Lessees of potential aircraft overflights and noise impacts; and (3) Declaration of Restrictive Covenants to address the property's proximity to the Airport and the imposition of local, state and federal regulations. The easements, notice and declaration shall be in a form acceptable to the city attorney and airport authority and shall be executed in a recordable form by the property owner. In addition, a copy of the Notice shall be given to prospective purchasers or lessees at the time of contract or lease negotiations.

dd. All residential and non-residential development shall be constructed to achieve an outdoor to indoor noise level reduction (NLR) as specified in Appendix F - Airport Hazard Zoning Regulations, Chapter 30 of the Gainesville Code of Ordinances in effect at the time of application for a building permit.

ee. The owner/developer shall fund any potable water and/or wastewater capacity improvements that are based on the PUD demands so that the adopted levels of service in the Potable Water/Wastewater Element of the City's Comprehensive Plan are maintained. The owner/developer shall sign a binding letter of agreement with the City to ensure that the funding will be available to make the required improvements.

ff. At the time of application for PD zoning, the owner/developer shall provide design standards 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.

gg. At least 80% of the residential development shall be housing designated for persons where at least one member of the household is 55 years or older in accordance with the Federal Fair Housing Act (Title 42, Chapter 45, Subchapter 1, 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.

hh. This PUD does not permit or allow any development that would constitute a development of regional impact or any development that would require a development of regional impact review. Any PD zoning application or any

1 application for proposed development that exceeds the development of
2 regional impact thresholds shall be required to follow the procedures as
3 defined in Chapter 380, F.S. and applicable regulations of the Florida
4 Administrative Code.

5
6 ii. The PUD shall not be a gated community. Security features, if any, shall
7 be addressed in the PD zoning application and specified in the PD zoning
8 ordinance.
9

10 **Section 3.** The underlying land use categories of “Single-Family (up to 8 units per acre),”
11 “Industrial,” and “Recreation” on the property described in Section 1 of this ordinance are neither
12 abandoned nor repealed; such categories are inapplicable as long as the property is rezoned to Planned
13 Development “PD,” as provided in section 2 above. In the event, however, the property described in
14 Section 1 of this Ordinance is not rezoned by ordinance to Planned Development “PD,” as provided in
15 Section 2 of this Ordinance, then the overlay Planned Use District Category imposed by this Ordinance
16 shall automatically be null and void and of no further force and effect and the overlay land use category
17 shall be ministerially be removed from the Future Land Use Map, leaving the original and underlying
18 land use categories in place. The timely filing of an extension application by the owner/developer to
19 extend the aforesaid 18-month period shall toll the expiration date until final City Commission action
20 on the extension application.

21 **Section 4.** The City Manager is authorized and directed to make the necessary changes in
22 maps and other data in the City of Gainesville 2000-2010 Comprehensive Plan, or element, or portion
23 thereof in order to comply with this ordinance.

24 **Section 5.** If any word, phrase, clause, paragraph, section or provision of this ordinance or
25 the application hereof to any person or circumstance is held invalid or unconstitutional, such

D R A F T

10-1-08

1 finding shall not affect the other provisions or applications of the ordinance which can be given
2 effect without the invalid or unconstitutional provisions or application, and to this end the
3 provisions of this ordinance are declared severable.

4 Section 6. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such
5 conflict hereby repealed.

6 Section 7. This ordinance shall become effective immediately upon passage on second reading;
7 however, the effective date of this plan amendment shall be the date a final order is issued by the
8 Department of Community Affairs finding the amendment to be in compliance in accordance with
9 Chapter 163.3184, F.S.; or the date a final order is issued by the Administration Commission
10 finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S.

11 PASSED AND ADOPTED this _____ day of _____, 2008.

12
13
14
15
16
17

Pegeen Hanrahan,
Mayor

18 ATTEST:

APPROVED AS TO FORM AND LEGALITY:

19
20
21
22
23
24
25

Kurt Lannon,
Clerk of the Commission

Marion J. Radson, City Attorney

26 This ordinance passed on first reading this 16th day of June, 2008.













27
28 This ordinance passed on second reading this _____ day of _____, 2008.

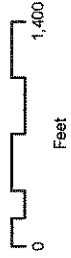
29
30

Exhibit "A"

City of Gainesville

Hatchet Creek Planned Use District
(Petition 23LUC-07PB)

-  Hatchet Creek PUD
-  Single Family
-  Residential Low Density
-  Residential Medium Density
-  Mixed Use Low
-  Commercial
-  Industrial
-  Education
-  Recreation
-  Public Facilities
-  Conservation
-  City Limits



Prepared by the Dept. of Planning
and Development Services
GIS Section May 29, 2008
File: 23LUC-07PB_Law_Dept_052908

This map is for informational purposes only. Do not rely on this map for accuracy of dimensions, size or location. The City of Gainesville does not assume responsibility to update this information or for any error or omission on this map. For specific information you are directed to contact the City of Gainesville, Florida.

