

# MEMORANDUM

Office of the City Attorney

Legistar No. 031014

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

**TO:** Mayor and City Commission

**DATE:** August 22, 2005  
FIRST READING

**FROM:** City Attorney

**SUBJECT:** Ordinance No. 0-04-44; Petition 56TCH-04 PB  
An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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Recommendation: The City Commission (1) approve Petition 56TCH-04 PB, and (2) adopt the proposed ordinance.

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

On October 20, 2003, the City Commission heard a presentation from GRU Senior Environmental Engineer, Brett Goodman, and several other members of the community who are concerned about the impact that contamination may have on the community's water supply. During this meeting, the City Commission directed the City Manager to report on options with respect to the development review process on site and near the site and potential land use changes. On December 12, 2003, City Planning Staff presented to the City Commission the option that the City could establish an overlay district for the area and amend the Land Development Code to codify existing policy for development in the area.

The purpose of this petition is to establish an overlay district over a superfund area, in order to ensure that certain procedures are followed during the development review process. This code amendment will establish the process for development approval and identify the area of environmental concern.

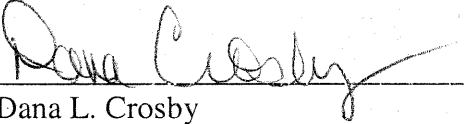
The Plan Board heard the petition and recommended that it be approved.

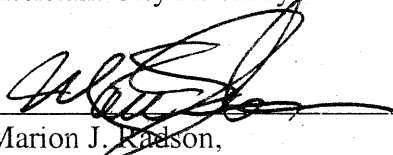
Public notice was published in the Gainesville Sun on March 3, 2004. The Plan Board held a public hearing March 25, 2004. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 56TCH-04 PB. Plan Board vote 6-0.

Fiscal Note. None

CITY ATTORNEY MEMORANDUM

Petition 56TCH-04 PB, as heard by the Plan Board, contained the regulation/requirements for this overlay district, as well as the property to be included in the special area plan. This ordinance, if adopted, states the regulation for the area. A separate ordinance (ordinance 0-05-70) will impose the zoning on the properties to be included in the special area plan. Both ordinances require two public hearings. Should the Commission adopt the ordinance on first reading, the second and final reading will be held on Monday, September 12, 2005.

Prepared by:   
Dana L. Crosby  
Assistant City Attorney

Approved and  
Submitted by:   
Marion J. Radson,  
City Attorney

MJR:DLC:sw

ORDINANCE NO. 0-04-44

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on March 25, 2004; and

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a public hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

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

Section 1. Section 30-207, City of Gainesville Land Development Code, is created and added to read as follows:

Sec. 30-207. Special Environmental Concern Area.

1 (a) Purpose. This overlay is established for the purpose of protecting the immediate  
2 and long-term potable water supply by creating a procedure for projects going  
3 through development review in any area designated by the U.S. Environmental  
4 Protection Agency as a superfund area, and that certain area adjacent to the  
5 superfund area, hereinafter referred to as a Special Environmental Concern Area  
6 (Area). Additionally, this overlay is established for the purpose of providing  
7 special review and care for any development in the Area.

8  
9 (b) New construction. In the Area, all new construction projects (except for the  
10 construction of a single-family home on a lot of record) are required to follow the  
11 process as stated below:

12  
13 1. The applicant/owners of all development projects in the Area shall  
14 schedule and attend a pre-application conference. This pre-application  
15 conference is mandatory.

16  
17 2. The applicant shall schedule and hold a neighborhood workshop in  
18 accordance with the neighborhood workshop guidelines.

19  
20 3. Following the neighborhood workshop, and as a condition precedent to  
21 proceeding with a development project in the Area, the applicant shall file  
22 an application for development review and a wellfield special use permit  
23 pursuant to sections 30-203 and 30-204 of this Code.

24  
25 4. A completed copy of the above-referenced application shall be submitted  
26 by the applicant to the following agencies for review and comment:

- 27  
28 a. United States Environmental Protection Agency  
29 b. Florida Department of Environmental Protection  
30 c. Gainesville Regional Utilities  
31 d. Responsible Party for Remedial Action  
32 e. Occupational Health and Safety Agency (OSHA)  
33 f. Alachua County Department of Environmental Protection

34  
35 5. Following the period allowed for receipt of comment from the agencies  
36 listed above and from the City Manager or designee, the applicant may  
37 proceed through the development review and wellfield special use permit  
38 process as described in the Code. The applicant shall respond to all  
39 comments and concerns of the reviewing agencies throughout the  
40 development review process and prior to receiving final approval.

41  
42 6. Hold harmless and indemnification agreement. By filing an application  
43 for development in the Special Environmental Concern Area, the owner(s)  
44 shall be required to sign a Hold Harmless and Indemnification Agreement  
45 with the City, releasing the City from any liability associated with the  
46 development of the site.

(c) Reuse of existing buildings and interior remodeling. All reuse projects that do not involve the excavation of soil or the drilling of wells are exempt from the requirements of subsection (b) above, but shall otherwise comply with the development review and wellfield protection processes stated in the Code.

(d) Conflict with Other Laws. In the event of a conflict between the provisions of this ordinance and any state or federal law, rule or regulation, the more stringent requirement will apply.

**Section 2.** It is the intention of the City Commission that the provisions of Section 1 of this ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or relettered in order to accomplish such intentions.

**Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

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

**Section 5.** This ordinance shall become effective immediately upon final adoption.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
PEGEEN HANRAHAN, MAYOR

ATTEST:

Approved as to form and legality

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
MARION J. RADSON  
CITY ATTORNEY

This Ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

*City of*  
*Gainesville*

Inter-Office Communication

Planning Division  
X5022, FAX x2282, Station 11

Item No. 16

**TO:** City Plan Board **DATE:** March 18, 2004  
**FROM:** Planning Division Staff  
**SUBJECT:** Petition 56TCH-04 PB, City of Gainesville. Amend the Land Development Code to establish a Special Environmental Concern overlay district for the Cabot Carbon/Koppers area.

Recommendation

**Planning staff recommends approval of Petition 56TCH-04 PB.**

Explanation

On October 20, 2003, the City Commission heard a presentation from GRU Senior Environmental Engineer, Brett Goodman, and several other members of the community concerned about the impact that contamination may have on the community's water supply. During this meeting, the City Commission directed the City Manager to report on options with respect to the development review process on site and near the site and potential land use changes. On December 12, 2003, City Planning Staff presented to the City Commission the option that the City could establish an overlay district for the area and amend the Land Development Code to codify existing policy for developing in the area.

The purpose of this petition is to establish an overlay district over a superfund area, in order to ensure that certain procedures are followed during the development review process. This code amendment will establish the process for development approval and identify the area of environmental concern.

Regulatory Background

The lead environmental regulatory agency for the Gainesville Superfund area is the United States Environmental Protection Agency (EPA). Based on previous development projects in the area, EPA has exercised jurisdiction over the contaminated property. The EPA typically requires the proposed developer to provide assurance that the development activities will not exacerbate existing contamination on site and that such activities will not result in an increased risk to human health or the environment either during construction or upon completion of the proposed development. These requirements are typically imposed by the lead environmental regulatory agency in return for providing certain assurances to a prospective purchaser/developer that the

implementation and completion of the development will not result in the imposition of liability on the part of the prospective purchaser/developer for pre-existing contamination. Local governments usually require a party seeking a development permit for property known to be contaminated to provide evidence that the lead environmental regulatory agency exercising jurisdiction over the site has approved the proposed development project.<sup>1</sup>

### **City Review Process**

The City's land development regulations require all proposed development to comply with all applicable regulations including State and Federal laws. In addition to the City regular review process, the developer is required to sign a Hold Harmless and Indemnification Agreement with the City, and development in the Superfund Area are required to get review and approval from the EPA, FDEP, OSHA and the party responsible for the remedial action (Cabot/Koppers). The additional review is required to ensure that the proposed development of any property in the area will not interfere with any remediation activity at the site.

### **Proposed Code Amendment**

#### **Sec. 30-207. Special Environmental Concern Area**

(a) *Purpose.* This overlay is established for the purpose of protecting the immediate and long-term potable water supply by creating a procedure for projects going through development review in a superfund area (Special Environmental Concern Area). This overlay will also alert the applicant that special care must be taken when developing in the area.

(b) *New Construction.* All new construction projects (except single family houses on lots of record) must follow the process outlined below.

- a. The applicant/ owners of all development projects must schedule and attend a pre-application conference in the "First Step Center". The first step meeting cannot be waived.
- b. The applicant must schedule a neighborhood workshop in-accordance with the neighborhood workshop guidelines.
- c. After the neighborhood workshop, and in order to proceed with a development project in the area the applicant must file an application for development review and a wellfield special use permit (Sec. 30-203 (b) and 30-204).
- d. The applicant must submit a completed application to the following reviewing agencies for review and comment.
  - i. United States Environmental Protection Agency
  - ii. Florida Department of Environmental Protection
  - iii. Gainesville Regional Utilities
  - iv. Responsible Party for Remedial Action (Cabot Carbon/Beazer East)
  - v. Occupational Health and Safety Agency (OSHA)
  - vi. Alachua County Environmental Protection

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<sup>1</sup> William L. Pence, letter dated October 22, 2003

- e. Review and comment. After review and comment from the agencies listed above and city staff, the applicant would then proceed through the development review and wellfield special use permit process. Applicant must address all comments and concerns to the satisfaction of the reviewing agencies.
- f. Code conflicts. When there are conflicts between city codes and those of EPA and FDEP, the requirements of EPA and FDEP shall apply unless the City Commission determines that complying with those requirements will be detrimental to the public, health, safety and welfare of the community.
- g. Hold Harmless and Indemnification Agreement. By filing an application for development in the Special Environmental Concern Area the applicant acknowledges that the owner(s) will be required to sign a Hold Harmless and Indemnification Agreement with the City, releasing the City from any liability associated with the development of the site.

(c) *Reuse of existing buildings and interior remodeling.* All reuse projects that do not involve the excavation of soil or the drilling of wells are exempt from the provisions of this section, and shall follow the regular development review and wellfield protection process.

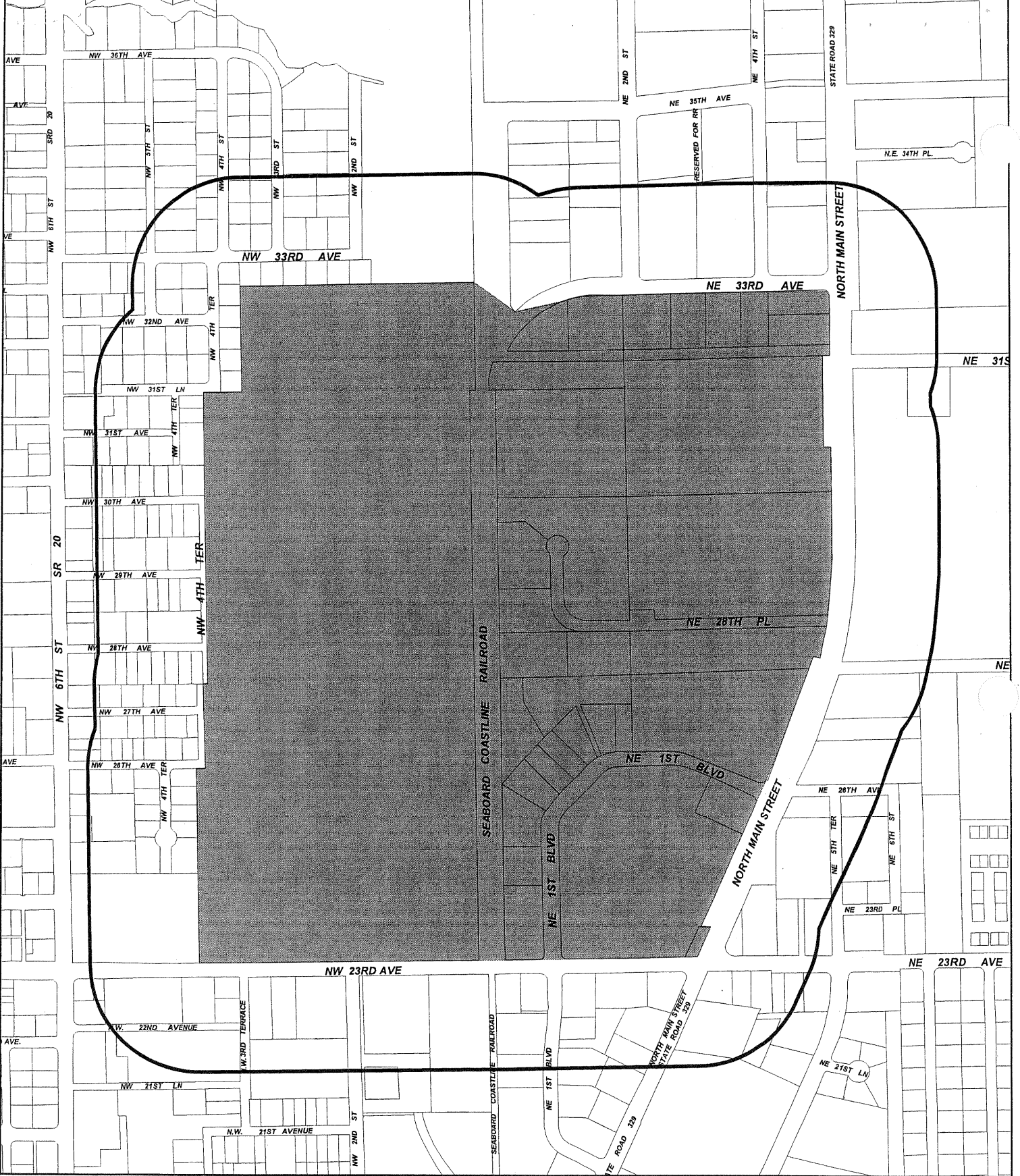
(d) *Regulated Area.* See Special Environmental Concern Area Map (see attached). If any part of a parcel is within the boundary of the mapped area, this Section regulates that entire parcel.

Respectfully submitted,



Ralph Hilliard  
Planning Manager



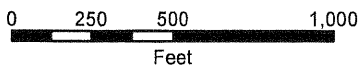


**SPECIAL ENVIRONMENTAL CONCERN AREA**  
**GAINESVILLE, FLORIDA**

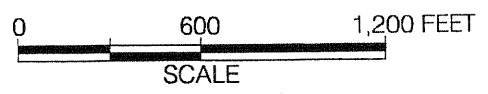
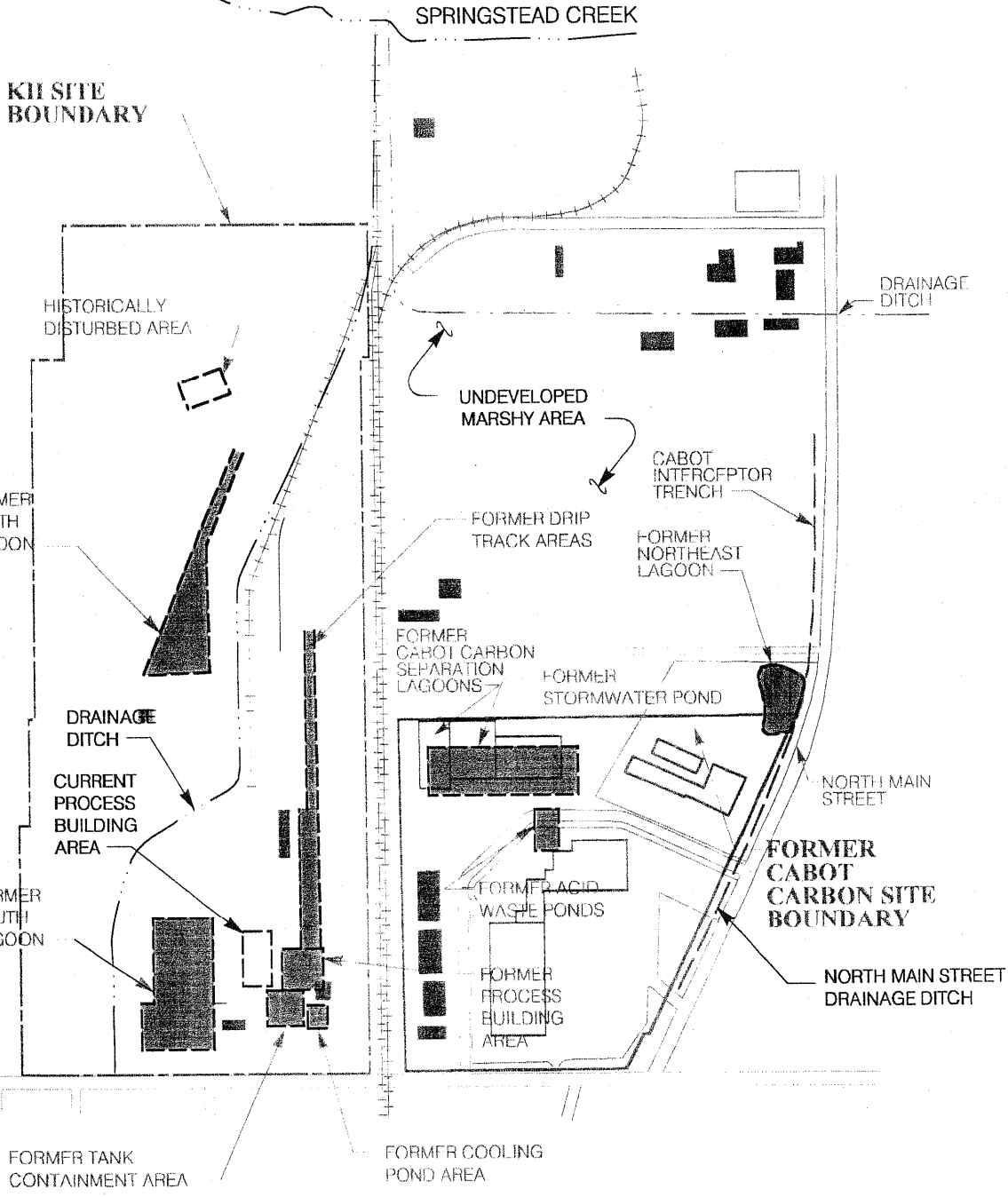


Cabot Carbon/Koppers Site

— 500 foot Buffer



City of Gainesville  
 Gainesville, Florida  
 Dept. of Community Development  
 November 2003



**LEGEND**

 IDENTIFIED COC SOURCE AREAS

**SITE PLAN**

CABOT CARBON/KOPPERS SUPERFUND SITE  
GAINESVILLE, FLORIDA



**FIGURE 1.2**

11. **Petition 56TCH-04 PB** City of Gainesville. Amend the Land Development Code to establish a Special Environmental Concern overlay district for the Cabot Carbon/Koppers area.

Mr. Ralph Hilliard was recognized. Mr. Hilliard stated that the petition involved a referral from the City Commission, based upon citizen concerns that there be an established process for development within the super fund area. He explained that an area of special environmental concern was to be established, and a 500-foot buffer around the area. He indicated that any development within the area would have to follow special regulations. Mr. Hilliard explained that staff had placed in the Code the process that had always been followed in the area. He discussed the requirements for applications and the reviewing agencies. He offered to answer any questions from the board.

Mr. Polshek asked if the current owner of the Cabot Carbon/Koppers area consulted on the petition.

Mr. Hilliard indicated they were not consulted, but changes were not a new process.

There was no public comment on the petition.

<u>Motion By:</u> Mr. Gold	<u>Seconded By:</u> Mr. Polshek
<u>Moved to:</u> Approve Petition 56TCH-04 PB.	<u>Upon Vote:</u> Motion Carried 6 – 0 Ayes: Andrews, Cole, Pearce, Polshek, Gold, Reiskind

**ADVERTISEMENT  
NOTICE OF PROPOSED  
ENACTMENT OF  
ORDINANCE  
BY CITY COMMISSION  
GAINESVILLE, FLORIDA**

Notice is hereby given that the proposed ordinances, whose titles appear below will be considered for First Reading on the 22nd day of August, 2005, at the City Commission meeting and if then adopted on First Reading will be considered for Second and Final Reading and adoption on the 12th day of September, 2005, at the City Commission meeting. The meetings begin at 8:00p.m. and the ordinances will be read as soon thereafter as may be heard. The meetings are held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida, and at the Public Library, Main Branch, located at 401 East University Avenue. On the dates mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinances. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or call the TDD phone line at least 2 business days in advance.

**ORDINANCE TITLE  
ORDINANCE NO. 031014**

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**ORDINANCE NO. 050076**

An Ordinance of the City of Gainesville, Florida, amending subsection (a) of section 30-311 of the Land Development Code, relating to violations, enforcement and penalties pertaining to stormwater management regulations; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**Note:** " All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

August 12, 2005  
Publish Date

Kurt M. Lannon  
Clerk of the Commission

28861, 8/12/05  
#A000046685