

Legislative Item No. 070399

Legal Opinion from the City Attorney's Office

of Sections 29-52, 29-53 and 29-3(41) from the Zoning Ordinance as amended through 1972 are attached as **Exhibit B**. Consistent with the Zoning Ordinance, the Zoning District Map of 1968 and the Zoning Districts Map amended through 1978 both list the zoning of the Facility as "Public" (these maps are considered too fragile to copy; however, both are available for public viewing in the Community Development Department Map room). Apparently the term "Public" was shorthand for "Public Use" district because other similar public properties were also designated "Public" and the district key/legend did not contain the designation of "Public Use."

The Zoning Ordinance was repealed and replaced with the "Zoning Code of the City of Gainesville" adopted by Ordinance No. 2650, on October 26, 1981 (the "Zoning Code.") The Zoning Code created Section 29-171. "PS: public services and operations district." A copy of this Section is attached as **Exhibit C**. This Section states "*Uses permitted by right.* The specific use(s) permitted on the subject property shall be specified as a part of the ordinance which places this classification on a particular area of ground and may include:" (relevant portions listed below)

"(4) *Public Administration (Div.J)*"

"(16) *Any other use specified in the ordinance rezoning property to this classification. ...*"

"(16) *Any use customarily incidental to any permitted use*"

To implement the new Zoning Code, the City undertook a comprehensive City-wide rezoning which was adopted by Ordinance 0-82-76 (Petition No. 48-82 PB) on July 19, 1982 ("Rezoning Ordinance".) The minutes from the city-wide rezoning hearings do not reflect any discussion about the rezoning of the Facility, most of the discussion appeared to be generated by individual property owners who spoke for or against the rezoning of their parcels. As to the overall principles guiding the city-wide rezoning decisions, then City Planning Manager Samuel Mutch explained at the April 22, 1982 public hearing, that the city-wide rezoning sought "**to designate the least intensive zoning district that would allow existing uses to be conforming.**" A copy of the minutes from the April 22, 1982 Plan Board hearing and from the July 19, 1982 City Commission hearing are attached as **Exhibit D**.

The Rezoning Ordinance placed the "PS" zoning classification on the Facility, as evidenced by Exhibit A to the Rezoning Ordinance titled the "Address and Zoning Atlas" (the "Atlas.") Map 481 of the Atlas shows the "PS" zoning on the Facility and specifies the permitted use as "Municipal Service Center." A copy of the Rezoning Ordinance and Map 481 are attached as **Exhibit E**.

As argument against the expansion of the Facility, it is suggested that "Municipal Service Center" does not describe the use with enough specificity. It is further suggested that the ordinance that placed the "PS" zoning on the Facility should have stated "motor vehicle repair facility." However, the Atlas lists many other "PS" uses by general description, such as "storm water," "drainage" and "airport." In addition, a review of more recent ordinances rezoning land to the "PS" district indicate that the specific use permitted by right may be described generally, such as "recreation facility" (Ordinance No. 002027), "public park" (Ordinance No. 050914), "museum and cultural center" (Ordinance No. 060015) and "active recreation" (Ordinance No. 000159); or more specifically, such as "veterinary services for wildlife rehabilitation" (Ordinance No. 980436). Copies of the above listed ordinances are attached as **Exhibit F**.

Even the language of current Section 30-75.(c) "Public services and operations district (PS)" – "uses permitted by right" of the LDC (a copy of which is attached as **Exhibit G**), lists permissible uses by general description, such as "public administration," "commercial sports" and "cemeteries." It can be concluded that many properties zoned "PS" do not specify each and every use that may be conducted on the property.

Another argument is that the term "Municipal Service Center" is not expressly defined in the Zoning Code or in the "Land Development Code of the City of Gainesville" (the "LDC") which repealed and replaced the Zoning Code in 1992 and remains in effect as of the date of this memorandum. While the term "Municipal Service Center" is not defined, both Section 30-23(b) of the LDC and Section 29-23(b) of the former Zoning Code state that "any word or phrase used in this chapter [of which the zoning map is incorporated by reference] which is not defined in this chapter or by textual definition or examples in the SIC Manual shall have the common dictionary meaning most appropriate to the context in which such word or phrase is used." Copies of Section 29-23(b) from the Zoning Code and Section 30-23(b) from the LDC are attached as **Exhibit H**.

A "Google" search of the term "municipal service center" provides links to the web pages of "municipal service centers" across the country. A review of the web pages reflects that these centers serve as central physical facilities which house and support a wide variety of municipal services, including without limitation, fleet operations, street and road maintenance, public works, fueling stations, traffic control sections and solid waste divisions. Copies of a "Google" search and municipal service center web pages are attached as **Exhibit I**.

Pursuant to Section 2-213 of the Code of Ordinances, City of Gainesville, Florida, (a copy of which is attached as **Exhibit J**), the Department of Community Development is charged with performing the clerical, investigative and other administrative duties for the appointed boards that review planning and development matters. At the May 24, 2007 development review board hearing, City Planning Manager Ralph Hilliard, in answer to a board member question, stated that staff made the determination that the use of the Facility was permitted in the 1960's under the Public Use designation, was rezoned to "PS" in the city wide rezoning of 1982 and continues to be a permitted use.

In addition, the Community Development Department has been designated by the City Manager to review and issue zoning compliance permits under Section 30-357 of the LDC, a copy of which is attached as **Exhibit K**. On July 24, 2007, the Community Development Department approved a zoning compliance permit certifying that the Facility complies with the LDC. A copy of the permit is attached as **Exhibit L**.

Finally, it is undisputed that the City has continuously operated the Facility from the completion of construction sometime in 1966 through the present date for the provision of public works, fleet and other municipal services. No regulatory or legal authority has ever taken the position that the uses conducted at the Facility are unlawful or otherwise not permitted on the site.

CONCLUSION

The 1965 site plan for the Facility was approved as conforming to the City Zoning Ordinance. In the 1982 City-wide rezoning, the Facility was rezoned from "Public Use" to "PS" and in accordance with the Zoning Code, the rezoning ordinance specified the permitted use of the Facility as "Municipal Service Center." The common meaning of "Municipal Service Center" is a central facility for the provision of a variety of municipal services. The Department of Community Development has determined that the uses conducted at the Facility, and the expansion as proposed, are legal conforming uses permitted on the property under its "PS" zoning designation.

Based on the above recitation of facts, it is our opinion that the Facility is zoned "PS" and that the use of the property as a municipal service center is a permitted conforming use.

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Attachments