

LEGISLATIVE #

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**BEFORE THE CITY COMMISSION
CITY OF GAINESVILLE, FLORIDA**

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IN THE MATTER OF an application to rezone certain property from Alachua County Agriculture (A) to City of Gainesville Planned Development District (PD).

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PETITION NO. PB-17-65; LEGISTAR NO. 170427.

ORDER

Preliminary Statement

On December 5, 2019, the City Commission of the City of Gainesville held a quasi-judicial hearing on Petition PB-17-65, an application filed by eda engineers-surveyors-planners, Inc., as agent for Weyerhaeuser NR Company, that requested to rezone certain property from Alachua County Agriculture (A) to City of Gainesville Planned Development District (PD). The City Commission provided Weyerhaeuser with procedural due process by giving adequate notice of and conducting a hearing on its PD zoning application, at which hearing Weyerhaeuser had an opportunity to be heard before an impartial decision-maker and to present evidence and cross-examine any witnesses. The City Commission received at the hearing both written and oral competent substantial evidence, all of which is included within the record. In applying the competent substantial evidence received to the essential requirements of the correct law and decision criteria described herein, the City Commission voted 7-0 to deny Petition PB-17-65.

Decision Criteria

In accordance with Section 30-3.14 of the City of Gainesville Land Development Code, the City Commission shall evaluate the application to rezone the Subject Property to Planned Development District (PD) according to the following criteria:

- A. Compatibility of permitted uses and allowed intensity and density with surrounding existing development.
- B. The character of the district and its suitability for particular uses.
- C. The proposed zoning district of the property in relation to surrounding properties and other similar properties.
- D. Conservation of the value of buildings and encouraging the most appropriate use of land throughout the city.
- E. The applicable portions of any current city plans and programs such as land use, traffic ways, recreation, schools, neighborhoods, stormwater management and housing.
- F. The needs of the city for land areas for specific purposes to serve population and economic activities.
- G. Whether there have been substantial changes in the character or development of areas in or near an area under consideration for rezoning.
- H. The goals, objectives, and policies of the Comprehensive Plan.

1 I. The facts, testimony, and reports presented at public hearings.

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3 In accordance with Section 30-3.17 of the City of Gainesville Land Development Code, the City
4 Commission shall also evaluate the application to rezone the Subject Property to Planned
5 Development District (PD) according to the following additional criteria:

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7 A. *Consistent with Comprehensive Plan.* A PD application may only be approved if it is consistent
8 with the Comprehensive Plan.

9 B. *Conformance to PD purpose.* A PD application may only be approved if it is in conformance
10 with the purpose of PDs as articulated in Section 30-3.15.

11 C. *Internal compatibility.* All uses proposed within a PD shall be compatible with other proposed
12 uses; that is, no use may have any undue adverse impact on any neighboring use, based on
13 the streetscape, treatment of pedestrian ways and circulation, motor vehicle circulation, and
14 the separation and buffering of parking areas and sections of parking areas; the existence or
15 absence of, and the location of, focal points and vistas, open spaces, plazas, recreational areas
16 and common areas, and use of existing and proposed landscaping; use of the topography,
17 physical environment and other natural features; use and variety of building setback or build-
18 to lines, separations and buffering; use and variety of building groupings, building sizes,
19 architectural styles, and materials; variety and design of dwelling types; particular land uses
20 proposed, and conditions and limitations thereon; and any other factor deemed relevant to
21 the privacy, safety, preservation, protection or welfare of any proposed use within the PD.

22 D. *External compatibility.* All uses proposed within a PD shall be compatible with existing and
23 planned uses of properties surrounding the PD; that is, no internal use may have any
24 avoidable or undue adverse impact on any existing or planned surrounding use, nor shall any
25 internal use be subject to undue adverse impact from existing or planned surrounding uses.
26 An evaluation of the external compatibility of a PD should be based on the following factors:
27 adjacent existing and proposed uses, design of the development, traffic circulation, and
28 density and intensity.

29 E. *Intensity of development.* The residential density and intensity of use of a PD shall be
30 compatible with and shall have no undue adverse impact upon the physical and
31 environmental characteristics of the site and surrounding lands, and shall comply with the
32 policies and density limitations set forth in the Comprehensive Plan. Within the maximum
33 limitation of the Comprehensive Plan, the permitted residential density and intensity of use
34 in a PD may be adjusted upward or downward in consideration of the following factors: the
35 availability and location of public and utility services and facilities; the trip capture rate of
36 development; and the degree of internal and external connectedness of streets.

37 F. *Usable open spaces, plazas and recreation areas.* Usable open spaces, plazas and recreation
38 areas provided within a PD shall be evaluated based on conformance with the policies of the
39 Comprehensive Plan and the sufficiency of such areas to provide appropriate recreational
40 opportunities, protect sensitive environmental areas, conserve areas of unique beauty or
41 historical significance, enhance neighborhood design, and encourage compatible and
42 cooperative relationships between adjoining land uses.

43 G. *Environmental constraints.* The site of the PD shall be suitable for use in the manner proposed
44 without hazards to persons either on or offsite from the likelihood of increased flooding,
45 erosion or other dangers, annoyances or inconveniences. Condition of soil, groundwater level,

1 drainage and topography shall all be appropriate to the type, pattern and intensity of
2 development intended. The conditions and requirements of the protection of resources
3 article shall be met.

4 H. *External transportation access.* A PD shall be located on, and provide access to, a major street
5 (arterial or collector) unless, due to the size of the PD and the type of uses proposed, it will
6 not adversely affect the type or amount of traffic on adjoining local streets. Access shall meet
7 the standards set in Chapter 23 and Chapter 30, Article VI. Connection to existing or planned
8 adjacent streets is encouraged. The trip generation report shall be signed by a professional
9 engineer registered in the state when there is a difference between the traffic report provided
10 by the petitioner and the concurrency test.

11 I. *Internal transportation access.* Every dwelling unit or other use permitted in a PD shall have
12 access to a public street directly or by way of a private road, pedestrian way, court or other
13 area that is either dedicated to public use or is a common area guaranteeing access. Permitted
14 uses are not required to front on a dedicated public road. Private roads and other accessways
15 shall be required to be constructed so as to ensure that they are safe and maintainable.

16 J. *Provision for the range of transportation choices.* Sufficient off-street and on-street parking
17 for bicycles and other vehicles, as well as cars, shall be provided. Parking areas shall be
18 constructed in accordance with such standards as are approved by the city commission to
19 ensure that they are safe and maintainable and that they allow for sufficient privacy for
20 adjoining uses. When there is discretion as to the location of parking in the project, it is
21 strongly encouraged that all motor vehicle parking be located at the rear or interior side of
22 buildings, or both. The design of a PD should, whenever feasible, incorporate appropriate
23 pedestrian and bicycle accessways so as to provide for a variety of mobility opportunities.
24 Connection to all sidewalks, greenways, trails, bikeways, and transit stops along the perimeter
25 of the PD is required. Where existing perimeter sidewalks do not exist, sidewalks shall be
26 provided by the development.

27 28 **Facts and Evidence Presented**

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30 Based upon the competent substantial evidence received at the quasi-judicial hearing and
31 included within the record, the following findings of fact are made:

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- 33 1. Weyerhaeuser NR Company (“Applicant”) is the successor-in-interest by merger to
34 approximately 1,778 acres of land, previously owned by Plum Creek Land Company, generally
35 located north of U.S. 441 and Northwest 74th Place, east and west of SR 121 and CR 231, and
36 south of Northwest 121st Avenue (“Weyerhaeuser Property”).
 - 37 2. On April 24, 1992, the City adopted Ordinance No. 3768 and annexed into the City from
38 Alachua County approximately 460 acres of the southern portion of the Weyerhaeuser
39 Property. On February 12, 2007, the City adopted Ordinance No. 060731 and at the request
40 of the property owner voluntarily annexed into the City from Alachua County the remaining
41 approximately 1,318 acres of the northern portion of the Weyerhaeuser Property.
 - 42 3. At the time of both annexations, the Weyerhaeuser Property had an Alachua County land use
43 designation of Rural/Agricultural and an Alachua County zoning designation of Agriculture.
44 Both annexation ordinances stated that the Alachua County land use and zoning designations
45 remain in full force and effect, and are enforced by the City, until the City adopts revised land
46 use and zoning for the Weyerhaeuser Property.

- 1 4. On January 1, 2009, the City adopted Ordinance No. 070447 and assigned the following four
2 City land use designations to specified portions of the entirety of the Weyerhaeuser Property:
3 1) Conservation; 2) Single-Family; 3) Residential Low-Density; and 4) Planned Use District
4 (“PUD”) Overlay (with an underlying land use designation of City Agriculture). This 2009 City
5 ordinance provided certain conditions regarding the Weyerhaeuser Property, including a
6 requirement that the property owner (now and hereinafter Weyerhaeuser) timely apply for
7 and obtain City Planned Development (“PD”) zoning on the PUD portion of the Weyerhaeuser
8 Property within 18 months of the effective date of Ordinance No. 070447. If Weyerhaeuser
9 failed to meet that deadline, City Ordinance No. 070447 mandated that the PUD overlay
10 would automatically become null and void and that portion of the Weyerhaeuser Property
11 would retain solely the underlying land use designation of City Agriculture.
- 12 5. The land use designations and the associated regulations for the Weyerhaeuser Property
13 adopted by Ordinance No. 070447 are codified, as amended, in Policy 4.3.4 of the Future Land
14 Use Element of the City of Gainesville’s Comprehensive Plan.
- 15 6. On October 21, 2010, and at the request of Weyerhaeuser, the City adopted Ordinance No.
16 100189 and extended Weyerhaeuser’s 18-month PD zoning deadline to July 26, 2012.
- 17 7. On May 3, 2012, and again at the request of Weyerhaeuser, the City adopted Ordinance No.
18 110700 and again extended Weyerhaeuser’s PD zoning deadline to July 26, 2016.
- 19 8. On March 3, 2016, and upon Weyerhaeuser’s third request for a deadline extension, the City
20 adopted Ordinance No. 150540 and for a third time extended Weyerhaeuser’s PD zoning
21 deadline to July 26, 2018.
- 22 9. In June 2017, Weyerhaeuser submitted to the City the application that is the subject of this
23 order, which was an application to rezone portions of the Single-Family, Residential Low-
24 Density, and PUD-designated areas of the Weyerhaeuser Property consisting of
25 approximately 744 acres, as further described in the City staff report submitted as part of the
26 record (“Subject Property”), from Alachua County Agriculture (A) to City of Gainesville
27 Planned Development District (“PD”).
- 28 10. On October 26, 2017, the City Plan Board held a hearing on Weyerhaeuser’s PD zoning
29 application in order to make an advisory recommendation to the City Commission, which per
30 Section 30-3.12 of the City’s Land Development Code is the final decision-making authority
31 for the PD zoning application.
- 32 11. On June 7, 2018, and upon Weyerhaeuser’s fourth request for an extension, the City adopted
33 Ordinance No. 170996 and for the fourth time extended Weyerhaeuser’s PD zoning deadline
34 to July 26, 2019. Ordinance No. 170996 included a provision stating that any future extension
35 applications by Weyerhaeuser would toll the PD zoning deadline until final City Commission
36 action on the extension application. On June 4, 2019, Weyerhaeuser submitted a letter to the
37 City requesting another extension, and in a letter dated June 7, 2019, the City affirmed that
38 the PD zoning deadline is thereby tolled per Ordinance No. 170996 until the City Commission
39 acts on Weyerhaeuser’s extension request. As a result, Weyerhaeuser’s PD zoning application
40 that is the subject of this order was able to proceed to the City Commission for a quasi-judicial
41 hearing notwithstanding the PD zoning deadline specified in Ordinance No. 170996.
- 42 12. To date and since the Weyerhaeuser Property was annexed into the City in 1992 and 2007,
43 City zoning has never been assigned and therefore the Weyerhaeuser Property zoning
44 remains Alachua County Agriculture (enforced by the City).

- 1 13. The Weyerhaeuser Property, which includes the Subject Property that is the subject of this
2 order, has never been developed and has historically been used and is currently being used
3 by Weyerhaeuser for agriculture/silviculture.
- 4 14. Andrew Persons, AICP, Director of the Department of Doing; Brittany McMullen, AICP, Planner
5 III; and Lili Kolluri, Environmental Coordinator (collectively included within "City staff") are
6 professional City staff and provided expert written and oral testimony within the record and
7 during the PD zoning application's quasi-judicial hearing before the City Commission on
8 December 5, 2019.
- 9 15. The Weyerhaeuser Property lies completely within two Strategic Ecosystems, including Buck
10 Bay Flatwoods and Hague Flatwoods, which is a designation that recognizes a special need to
11 promote connectivity and minimize fragmentation of natural systems, and to protect
12 wetlands, floodplains, and associated uplands in a broad systems context.
- 13 16. The total acreage of jurisdictional wetlands and surface waters on the Weyerhaeuser Property
14 as delineated in 2016 is approximately 788 acres.
- 15 17. As part of its PD zoning application and as required by the City's Comprehensive Plan and Land
16 Development Code, Weyerhaeuser submitted a Conservation Management Plan (CMP) for 22
17 proposed Conservation Management Areas (CMAs) totaling 1,161 acres, including
18 approximately 388 acres of upland habitat and 773 acres of wetland habitat. Weyerhaeuser
19 proposes in its CMP to have 341 acres of both upland and wetland pine plantation areas
20 remain in perpetual silviculture, of which approximately 165 acres are in jurisdictional
21 wetland pine plantations and 70 acres are within required wetland buffers.
- 22 18. Throughout review of Weyerhaeuser's PD zoning application, Weyerhaeuser declined to
23 address guidance from City staff that perpetual silviculture should not be continued in any
24 wetlands or wetland buffers or areas with a Conservation land use designation. In June 2019,
25 City staff received a letter from Weyerhaeuser stating its intent to not undertake perpetual
26 silviculture in such areas; however, Weyerhaeuser has to date failed to amend its CMP and
27 application materials consistent with its expressed intent.
- 28 19. Weyerhaeuser's PD zoning application proposes to rezone the Subject Property from Alachua
29 County Agriculture (A) to City of Gainesville Planned Development District ("PD") with the
30 following associated development regulations, which provide for a less dense and intense
31 development pattern than allowed in Future Land Use Element Policy 4.3.4:
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Uses	Acres	Proposed PD Development	Allowable Development per Comp Plan (entire acreage of Weyerhaeuser Property)
Mixed-Use	121.8	MIN 668 units (5.48 u/ac) MAX 1,300 units (10.7 u/ac) (Achieved only if residential unit allowance is transferred from Residential and Single-Family Detached areas) MIN 10,000 sf non-residential (no timeline or trigger of when this would be done) MAX 30,000 sf non-residential	MIN 668 units (5.48 u/ac) MAX 100,000 sf non-residential
Residential	227.2	MAX 632 units (2.8 u/ac)	MAX 1,004 units (2.75 u/ac)
Single-Family Detached	45.5	MAX 84 units (1.8 u/ac)	MAX 218 units (0.4 u/ac)
Conservation Management	345.8		
Utility Easement	3.6		
Total PD	743.9		

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2 20. There are no existing public bus routes in the direct vicinity of the site, and the proposed
3 density and location of the development as proposed in the PD zoning application does not
4 support the provision of new public transportation services, such as a new bus route, to the
5 area. In addition, there are no sidewalks adjacent to or providing access to the Subject
6 Property. Therefore, access to the proposed PD would be auto-centric or available exclusively
7 by automobile with a lack of reasonable transportation choices.

8 21. Correlated with the lack of reasonable transportation choices, the PD zoning application fails
9 to address a lack of external connections in the vicinity to basic needs and services including
10 schools, shopping centers, or transit stops or stations.

11 22. City staff testified that Weyerhaeuser’s PD zoning application and its proposed CMP and
12 allowance of perpetual silviculture within portions of wetlands and wetland buffers and
13 conservation land use areas is inconsistent with and in conflict with the requirements of the
14 City’s rezoning criteria and its Comprehensive Plan, including: Future Land Use Element Policy
15 4.3.4.a.3, which prohibits impacts to wetlands other than to achieve interconnectivity
16 between upland properties; Policy 4.3.4.a.4, as perpetual silviculture in the subject areas
17 prevents re-establishment of undisturbed habitat buffers that protect adjacent wetlands;
18 Policy 4.3.4.a.9, which requires the maintenance and enhancement of plant and animal
19 species habitat and distribution; Policy 4.3.4.b, which prohibits development (defined in the
20 Land Development Code as not including silviculture) within any conservation land use areas
21 except certain minimal crossings and passive recreational uses; and Policy 4.3.4.c.3.a, which
22 requires preservation of the ecological integrity, maintenance of habitat connectivity,
23 minimization of natural area fragmentation, and protection of wetlands.

1 23. City staff testified that Weyerhaeuser’s PD zoning application and its lack of transportation
2 choice or provision is inconsistent with the requirements of the City’s rezoning criteria and its
3 Comprehensive Plan, including: Transportation Mobility Element Policy 2.1.12, which
4 encourages development that provides pedestrian/bicycle connections to nearby land uses
5 such as schools, parks, retail, office, and residential; Objective 2.2, which provides for land
6 use designations and implementation to achieve transit-supportive densities and
7 transportation choice; and Policy 2.2.1, which requires land use designations and
8 implementation to be consistent with transportation choices.

9 24. City staff testified that Weyerhaeuser’s PD zoning application is auto-centric and lacks
10 transportation choices, has a lack of external connections to basic needs and services, allows
11 for non-clustered and non-compact development with insufficient development density and
12 intensity (e.g., low-density with insufficient development mandates to achieve development
13 potential and Comprehensive Plan allowances), and consequently and given the Subject
14 Property’s environmentally sensitive resources and its location at the periphery of the City
15 and in relation to surrounding properties, is inconsistent with the requirements of the City’s
16 rezoning criteria and its Comprehensive Plan, including: Future Land Use Element Goals 1, 2,
17 and 3, Objective 1.2, Objective 1.5, and Objective 2.1, which discourage the proliferation of
18 urban sprawl, direct the achievement of sustainable development patterns, require the
19 protection and promotion of transportation choices, and encourage compact and dense
20 development patterns.

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22 **Discussion and Conclusions**
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24 The City Commission of the City of Gainesville provided Weyerhaeuser with procedural due
25 process by giving adequate notice of and conducting on December 5, 2019, a quasi-judicial
26 hearing on its PD zoning application, at which hearing Weyerhaeuser had an opportunity to be
27 heard before an impartial decision-maker and to present evidence and cross-examine any
28 witnesses.

29 The City Commission received at the hearing both written and oral competent substantial
30 evidence. Competent substantial evidence means such evidence that may establish a substantial
31 basis from which the fact at issue can be reasonably inferred, or material and relevant evidence
32 that a reasonable mind could accept as adequate to support a conclusion. The opinions and
33 recommendations of experts, including City staff, are deemed expert testimony and constitute
34 competent substantial evidence. Citizen testimony during any public comment portion of a
35 hearing may constitute competent substantial evidence if it is fact-based and not a mere
36 generalized statement of support or opposition. All the competent substantial evidence received
37 by the City Commission is included within the record, and certain portions of such facts and
38 evidence are detailed above in this order.

39 At the hearing and as detailed in this order, the City Commission has made its decision on
40 Weyerhaeuser’s PD zoning application by applying the competent substantial evidence received
41 to the essential requirements of the correct law and decision criteria described in this order.

42 Accordingly, the City Commission hereby finds that Weyerhaeuser’s PD zoning application and its
43 proposed CMP and allowance of perpetual silviculture within portions of wetlands and wetland
44 buffers and conservation land use areas is inconsistent with and in conflict with the requirements
45 of Land Development Code Section 30-3.14 B., C., H., and Section 30-3.17 A., D., F., and G.
46 Weyerhaeuser’s PD zoning application is inconsistent with the policies specified in the

1 Comprehensive Plan and would be incompatible with the character of the area and its suitability
2 for particular uses, specifically in relation to surrounding properties and the Subject Property's
3 environmentally sensitive status and constraints as detailed above.

4 Weyerhaeuser's PD zoning application is auto-centric and lacks transportation choices, has a lack
5 of external connections to basic needs and services, allows for non-clustered and non-compact
6 development with insufficient development density and intensity (e.g., low-density), there are no
7 existing public bus routes in the direct vicinity of the site and the proposed density and intensity
8 and location of the development does not support the provision of new public transportation
9 services such as a new bus route to the area, and the Subject Property is located at the periphery
10 of the City with environmentally sensitive resources. Therefore, the City Commission hereby finds
11 that Weyerhaeuser's PD zoning application and its lack of transportation choice or provision is
12 inconsistent with the policies specified in the Comprehensive Plan, has proposed uses and
13 intensity and density that is incompatible with surrounding existing development, is incompatible
14 with the character of the area and its suitability for particular uses, does not adequately address
15 external compatibility, and does not provide for a range of transportation choices and is therefore
16 inconsistent with the requirements of Land Development Code Section 30-3.14 A., B., H., and
17 Section 30-3.17 A., D., E., and J. In addition, the City Commission hereby finds that
18 Weyerhaeuser's PD zoning application is also inconsistent with the requirements of Land
19 Development Code Section 30-3.14 A., B., H., and Section 30-3.17 A., D., E. because
20 Weyerhaeuser's PD zoning application is inconsistent with the City's established policy goals of
21 prohibiting urban sprawl, directing the achievement of sustainable and compact and dense
22 development patterns, and requiring the protection and promotion of transportation choices.

23
24 **Order**
25

26 DENIED. The City Commission of the City of Gainesville provided Weyerhaeuser with procedural
27 due process by giving adequate notice of and conducting on December 5, 2019, a quasi-judicial
28 hearing on its PD zoning application, at which hearing Weyerhaeuser had an opportunity to be
29 heard before an impartial decision-maker and to present evidence and cross-examine any
30 witnesses. The City Commission received at the hearing both written and oral competent
31 substantial evidence, all of which is included within the record. In applying the competent
32 substantial evidence received to the essential requirements of the correct law and decision
33 criteria described herein, the City Commission hereby denies Petition PB-17-65.
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35 Entered this 16th of January, 2020.
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38 _____
39 LAUREN POE
40 MAYOR

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42 Attest:

Approved as to form and legality:

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45 _____
46 OMICHELE D. GAINNEY
47 CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY