**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA**

JUANITA M.WHITE, AS
TRUSTEE FOR THE
LUTHER M. WHITE REVOCABLE TRUST

Petitioner,

Case No.: 01 07 CA 3986
Division: W

vs.

CITY OF GAINESVILLE
a political subdivision,

Respondent.
_______________________________/

PETITION FOR WRIT OF CERTIORARI

COMES NOW, Petitioner, JUANITA M. WHITE, AS TRUSTEE FOR THE LUTHER M. WHITE REVOCABLE TRUST ("White"), by and through undersigned counsel, and pursuant to Rules 9.030(c) and 9.100(f), Fla. R. App. P., to file this Petition for Writ of Certiorari, to obtain review of a final order of the Gainesville City Commission on August 23, 2007 that granted the City of Gainesville's Petition 42ZON-06 PB to place on Petitioner's property (tax parcel 07966-010-000) a Significant Ecological Communities [SEC] District zoning overlay, and also denied Petition's application to be excluded from said overlay, and states the following in support:

JURISDICTION

This Court has jurisdiction to issue a writ of certiorari under Article 5, Section 5(b) of the Florida Constitution.

CITATIONS TO THE APPENDIX

Citations to the Appendix will appear throughout as (App. Document #; page number).

STANDARD OF REVIEW

The Florida Supreme Court has ruled that where a party is entitled to seek review of an administrative action, such as a quasi-judicial or zoning decision of the Gainesville City Commission ["City Commission" or "City"] in the instant case, the Circuit Court must make the following determinations: 1) whether procedural due process has been accorded; 2) whether the essential requirements of the law have been observed; and, 3) whether the administrative findings and judgment are supported by competent, substantial evidence. See Educ. Dev. Ctr., Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So. 2d 106, 108 (Fla. 1989); Brasota Mortgage Co., Inc. v. Town of Longboat Key, 865 So. 2d 638 (Fla. 2d DCA 2004); Cherokee Crushed Stone, Inc. v. City of Miramar, 421 So. 2d 684 (Fla. 4th DCA 1982).

The City Commission's decision is subject to strict scrutiny by the Court.

Zoning actions "that impact a limited number of persons, and in which the decision is contingent upon evidence presented at hearing, are quasi-judicial proceedings that may be reviewed by petition for writ of certiorari" and are subject to a strict scrutiny standard of review. Bd. of County Comm'rs of Clay County v. Qualls, 772 So. 2d 544, 545 (Fla. 1st DCA 2000). In the instant case, the City petitioned to overlay a Significant Ecological Communities district onto nine parcels, pursuant to Section 30-309.1, Code of Ordinances, City of Gainesville. Tax parcel 6415-001-000 (near 34th Street) was deleted from the petition after the April 20, 2007, City Plan Board meeting because it had been developed. (App. 6B; 1). Three of the affected landowners requested that their parcels also be excluded from the rezoning. After a quasi-judicial hearing before the City Commission, the City Commission voted on August 23, 2007, to exclude one parcel but to impose the SEC District overlay on seven parcels, including Petitioner's property. (App. 5; 147,161).

STATEMENT OF THE CASE AND FACTS

In March 2000, the City Commission directed staff to investigate changes to the City's environmental regulations, including the possibility of

an environmental overlay. (App. 1; 1). In January 2001, the City of Gainesville produced an Environmental Resources Report in which certain parcels, including the subject parcel owned by Petitioner, were evaluated to determine the ecological significance of those properties. (App. 5; 8). The staff report claimed each of the parcels was ranked "high" for ecological value. (App. 6B; 1, 3). The City Staff assigned points for factors listed in Section 30-309.1(a) such as the size of the parcel, the number of viable Florida Natural Areas Inventory [FNAI] natural communities found, the FNAI natural communities state rank, the condition of ecological processes found, the typical, listed or exotic species found on the parcel, water quality, connectivity, and management potential. The cumulative score of a parcel was used to designate the ecological value of the parcel. Parcels scoring less than 20 points were designated as being of low ecological value; 20-50 point parcels were of moderate value; 50-80 point parcels were termed high quality; parcels scoring more than 80 points were designated as outstanding. (App. 3; 26). Petitioner's property, tax parcel 07966-010-000, scored 49.33 points, and is, therefore, considered a property of only "moderate" ecological quality. (App. 3; 42); (App. 3). On November 8, 2004, the SEC District was incorporated into the Code of Ordinances for the City of Gainesville under its Land Development Regulations [LDR's].

In April 2006, the City of Gainesville initiated a rezoning petition, 42ZON-06-PB, before the City of Gainesville Plan Board to include nine properties into a SEC District, pursuant to Section 30-309.1. (App. 7; 1). Due to concerns expressed at its March 16, 2006 meeting about scoring and aggregation of low or medium quality parcels into a district intended for protection of property with high ecological value, the Plan Board recommended that a qualified environmental professional interpret the results. (App. 7; 1). On April 19, 2007, the Plan Board recommended approval of Petition 42 ZON-06PB.

The City hired Linn Mosura-Bliss, an ecologist with Water & Air Research. Ms. Mosura-Bliss testified that she has never been qualified as an expert in a court of law. (App. 3; 33). She holds herself out as an expert in wetlands, and exotic and endangered species determinations. Id. She does not hold herself out as an expert in hydrology or groundwater – two of the factors involved in scoring the subject parcels pursuant to the City ordinance. Id. She may or may not consider herself an expert in aerial photography interpretation but has had no course work. (App. 3; 37-38).

Since she did not possess the requisite qualifications in all factors necessary to inform her testimony in the hearing below, Ms. Mosura-Bliss was not, therefore, qualified to render an expert opinion on the validity of

the cumulative score for Petitioner's parcel or the group score of which Petitioner's parcel is a part. The City Commission was not entitled to rely on her testimony as competent, substantial evidence at the hearing below.

Moreover, Ms. Mosura-Bliss engaged in what she called "forensics ecology," since there were incomplete records about Petitioner's and the other properties subject to the proposed ecological overlay. (App. 3; 35). She did not personally visit Petitioner's property, but represented to the City Plan Board that she had personal knowledge of Petitioner's property. (App. 3; 36). She conducted a desktop study. (App. 3; 37).

According to the city ordinance at issue, parcels scoring 80 points or above were considered "outstanding", 50 or more "high" ecological value, below 50 to 20 "medium" ecological value, and below 20 "low" ecological value. (App. 2; 8 June 25). Somehow, according to the City's methodology (which is not expressed in the ordinance), parcels scoring in the medium category on an individual basis, when taken collectively as a group, scored in the high category and therefore were brought forward by staff to be considered as a significant ecological community. (App. 2; 8). In the case of "potential listed (protected) species," the scoring for parcels was based on a state publication from which Staff inferred the probability of their

occurrence on a parcel, knowing that only direct observation would confirm this scoring. (App. 2; 33).

In evaluating the individual properties for inclusion in the proposed overlay district, staff relied only on the written evaluations of former staff members from 2000 and 2001. (App. 5; 8); (App. 3; 34-35). Notably, Staff in some cases had specific information about specific parcels and in other cases did not. (App. 2; 33). Staff never visited the properties in preparation of the rezoning petition. (App. 3; 35). Staff told the commission that all eight properties subject to Petition 42ZON06-PB "rated as high quality." (App. 3; 3). However, the scores of the seven other properties evaluated with Petitioner's property ranged from 16.5 (low ecological value) to 50 (the lowest score in the high ecological value range). (App. 9); (App. 3; 16). Though, by the City's own standards, only one of the eight parcels scored high enough to be considered of high ecological value, all eight were included in the proposed overlay district. (App. 9); (App. 3; 100). The City's expert, hired after the April 19, 2007, Plan Board meeting, contended that no factors were weighted, yet admitted only one of the parcels alone reached the level to be considered "high" ecological value. (App. 6B; 1); (App. 3; 16, 19, 44). Only by aggregating the parcels could the City arrive at a score which was sufficiently high to include all of the properties into a

SEC District. (App. 5; 47); (App. 3; 15-16, 46-47); (App. 6A; 18-19). Simply adding the properties' individual scores together and averaging them would not bring the entire group above a score of 50 since none alone was ecological valuable enough. (App. 6A; 18-19). The City's ordinance does not authorize aggregation or weighting of factors. (App. 5; 68, 70-71). Of note, in the interim since the original evaluations were made, several parcels have been dropped out of consideration for the overlay district by the City, altering the validity of the evaluations of the remaining parcels, particularly with respect to connectivity. (App. 5; 94-97).

Numerous discrepancies exist in the data supporting Staff's nomination of Petitioner's property and the accompanying parcels for the ecological overlay, but they went unaltered. For example, Staff did not have available to it individual parcel scores for one scoring factor, so an available total for the group was used instead, meaning the individual scores were not reviewed for accuracy. (App. 3; 17). Another aberration was called "pretty serious" with the potential to affect the scoring of a 400-acre parcel in the group. (App. 3; 2). These discrepancies went unaltered, because the City instructed the Staff consultant not to change any of the scores. (App. 3; 17).

Staff stated that the ordinance allows greater flexibility, such as clustering, to nonresidential parcels at the time of development plan review.

However, clustering is a term that applies in the context of residential development to preserve unit density, and generally is inapplicable to development of the subject Industrial District properties, which typically feature larger but fewer buildings.

The City's consultant and original staff came up with different scores for the amount of aquifer recharge for the subject parcels, including Petitioner's. (App. 3; 39). Proximity to the City's wellfield was the apparent true motivation for the proposed ecological overlay. (App. 3; 39).

Petitioner's parcel, comprised of 70 acres, received an overall score of 49.33 points, meaning a moderate ecological value under the City ordinance. Staff can only assume what the basis was for the cutoff in the ranking system in the ordinance. (App. 3; 27-28). City staff determined that "moderate" value was good enough to be protected in the instance of Petitioner's parcel whereas the purpose of the ordinance was to protect significant or high ecological values. (App. 3; 20). The size of the property was rated at 5 out of 10 points on the basis of the number of acres. Petitioner's parcel received 6 out of 10 possible points for number of viable FNAI natural communities found on the property. The FNAI natural communities state rank was 8 out of 10 points. The condition of ecological processes found on the property received only 4 out of 10 points. The

typical species rating was 5. The exotic species rating was 4. The potential listed species (as listed species received no points) rating was 2. Water quality received 9 out of 10 points, the highest score for the property. Connectivity received only 2.33 points out of 10. Management potential received 4 out of 10 points. (App. 9).

The owners of three parcels subject to Petition 42ZON PB, including the Petitioner, requested exclusion from the proposed overlay district pursuant to Sec. 30-309.1(b) *Exclusion from rezoning criteria*, City of Gainesville Land Development Code. On June 25, 2007, continued to July 9, 2007 and again to August 23, 2007, the City Commission held a quasi-judicial hearing to consider those requests for exemption. (App. 2); (App. 3); (App. 4); (App. 5).

Pursuant to Section 30-309.1(b), to have property excluded from rezoning, a landowner must show that at least four of seven listed criteria do not exist on the property: rare or exemplary communities; vulnerability; high water quality (either through recharge, surface waters or wetlands); connectedness; viability (with most ecological processes intact); manageability; and nature-oriented human use potential. (App. 5; 9).

Petitioner's expert, engineer Steve Cullen, P.E., presented evidence that the City staff's own evaluation of the property recognized that the

Petitioner's parcel does not contain any rare or exemplary communities, but only those which are quite common, both in Gainesville and in the state of Florida. (App. 5; 104-106); (App. 10). Mr. Cullen also testified that the City's own consultant recognized that the White parcel exhibits only moderate recharge and moderate quality wetlands. High water quality does not exist on the property. (App. 5; 107).

On the issue of connectivity, defined by Section 30-309(c) as "the extent to which a parcel is adjacent to or near protected lands, and the degree to which intervening properties could hinder wildlife movement or other ecological processes . . .", the City scored the property as only 2.33 points out of 10 possible points, even before some of the adjoining parcels were removed from the district. (App. 9). The score would potentially be even lower now. The parcel is not adjacent to any protected lands. (App. 5; 107). The parcel is, admittedly, proximate to the Murphree Wellfield Conservation Easement, but intervening properties, including highly developed residential, commercial and industrial properties and a major thoroughfare, NW 53rd Avenue, create an environment in which wildlife and ecological processes are highly unlikely to migrate onto Petitioner's property. (App. 5; 107-08).

Viability is defined by Section 30-309(c) as "the extent to which ecological processes necessary to maintaining the natural values of the site

can persist over time." On the issue of viability, City staff's own notes acknowledge that the ecological processes on the parcel are already "heavily disturbed" and "not functioning, " scoring only 4 out of 10 possible points. (App. 5; 109); (App. 9). Due to the low management potential of the parcel, Mr. Cullen testified that neither viability nor manageability realistically exists on the parcel. (App. 5; 108-110).

The remaining factor, nature-oriented human use potential, is defined as "the extent to which amenities necessary for passive recreation (access, parking areas, trails, boardwalks) are present or can feasibly be developed on a site." Section 30-309(c), Code of Ordinances, City of Gainesville. None of the listed amenities are present on the parcel. (App. 5; 111). The soil on the property is unsuitable for future recreational development, per the Alachua County soil survey. (App. 5; 12, 111). In addition, recreational uses are unlikely on a property bordered by high-traffic roadways and industrial development. (App. 5; 111-12).

Several of the exemption factors, when used to score parcels for inclusion in the overlay, are defined in terms of predictive and subjective decisions by staff or other professionals. . . i.e. "to the extent that" or as to the "feasibility" of a certain course, in effect scoring the existence of a probability. Those same factors, when applied in the process of determining

exemption from the ordinance, become an irrebuttable presumption, requiring proof of the absence of a probability.

Nevertheless, the City required that Petitioner demonstrate the complete absence of – effectively a score of zero -- on four factors to qualify for exemption. (App. 5; 27). The black or white, yes-or-no, interpretation of the exemption factors, including the irrebuttable presumption of the absence of probability (i.e. listed species), is at odds with the definitions in Section 30-309(c).

On August 23, 2007, the City Commission voted to approve the re-zoning petition with one exception. On September 13, 2007, the City Commission rendered its order in writing. (App. 1).

ARGUMENT

I. City departed from the essential requirements of law by incorrectly applying Sections 30-309 and 30-309.1

A. The City incorrectly applied Sections 30-309 and 30-309.1 to allow aggregation of several parcels for scoring.

By the City's own admission, Petitioner's parcel is only of moderate ecological value based on the scores assigned to the parcel by the City. (App. 3; 26, 40-42). Petitioner's parcel does not possess sufficient ecological value to be included in a SEC District by virtue of the individual scores assigned to it by City staff in its evaluation. The only way in which

this parcel could conceivably be included in a SEC District is by aggregating its scores with those of one or more other parcels, and considering the "probability" of occurrences to be higher in the aggregate. Ms. Mosura-Bliss conceded at hearing that probability did increase when parcels were combined, and she thought that was how moderate parcels ended up in the overlay ordinance.

Sections 30-309 and 30-309.1, Code of Ordinances, City of Gainesville, relate only to the scoring of individual parcels and do not directly or indirectly allow aggregation of individual parcels for the purpose of artificially creating an ecologically significant parcel. Because zoning laws are acknowledged by Florida courts to be enacted "in derogation of private rights of ownership," these laws must, then, be strictly construed in favor of property owners. Stroemel v. Columbia County, 930 So. 2d 742, 745 (Fla. 1st DCA 2006); see also Mandelstam v. City Comm'n of City of S. Miami, 539 So. 2d 1139, 1140 (Fla. 3d DCA 1988)(holding that "zoning laws are in derogation of the common law and, as a general rule, are subject to strict construction in favor of the right of a property owner to the unrestricted use of his property").

The Commission had no legislative authority to evaluate the scores in the manner in which they were evaluated. The Commission is bound to the

provisions of its own ordinances as they are written. See Irvine v. Duval County Planning Comm'n, 504 So. 2d 1265 (Fla. 1st DCA 1986) (holding that in determining whether to grant an exception, planning commission was required to base its decision on specific standards and criteria set forth in zoning regulations, and it is reversible error to base decision on other grounds).

Aggregation of parcels is not permissible under Sections 30-309 or 30-309.1, as those sections are currently written. "It is a new argument," the City's planner, Ralph Hilliard told the City Commission at hearing below. (App. 3; 62). In its interpretation of those sections, this Court "may not insert words or phrases in municipal ordinances in order to express intentions which do not appear." Stroemel, 930 So. 2d at 745, *citing* Rinker Materials Corp., v. City of N. Miami, 286 So. 2d 552, 553-54 (Fla. 1973). Petitioner does not argue that the City could not have drafted the legislation so that aggregation would have been attempted, merely that the City did not draft the legislation to accomplish that purpose. The City cannot, therefore, utilize the current legislation to include or fail to exclude Petitioner's moderate quality parcel into a SEC District.

Aggregation also precludes Petitioner from effectively filing a meaningful exclusion application since the Petitioner cannot ascertain in

every case the source and basis for all pertinent scores, or which ecological factors from other parcels contributed to inclusion of Petitioner's property in the first place.

Wherefore, the Gainesville City Commission has departed from the essential requirements of law in its failure to exclude Petitioner's parcel from the Significant Ecological Communities Overlay District. Petitioner respectfully requests that this Court quash the decision of the Gainesville City Commission and remand with instructions consistent with the record below and Florida law.

B. The City incorrectly applied Section 30-309.1(b) by failing to apply the definitions in Section 30-309.

The Commission's decision to include Petitioner's parcel in the SEC District was based on an improper reading of Sections 30-309.1 and 30-309. When used to include parcels, the ordinance factors are read quite liberally and inclusively. When applied to a landowner's request to exclude a parcel from a proposed ecological overlay, as in the instant case, then the factors are read strictly, even absurdly.

The City's expert, Geoffrey Parks, presented the terms and provisions of Section 30-309.1(b) as it relates to exclusion of parcels to the City Commission as absolutes which left no room for interpretation. Pursuant to

Mr. Parks' testimony, the criteria for the SEC District either exist or do not exist on a parcel. Unfortunately for the City, this leads to an absurd, inequitable result. It is quite impossible to prove the absence of a probability (i.e. listed species) or a feasibility, or extent of existence of a factor (i.e. connectivity), but that is the standard the City imposed at hearing. Yet, when including Petitioner's parcel in the proposed ecological overlay, the City did not require of itself that a factor absolutely be present. For example, the City Staff relied on large-scale, regional aquifer recharge maps of the entire water management district, and did not engage a professional geologist or qualified engineer to evaluate Petitioner's property or the group's scorings with respect to the groundwater, geology and aquifer recharge factors encompassed by the City ordinance. (App. 3; 28-31) The City admitted at hearing that the soils and geology beneath Petitioner's property may be denser than the City suspects, meaning aquifer recharge would not be as high as the scoring indicates. (App.3; 30). Finally, Mr. Parks admitted that the properties are underlain by the "confined zone" of the Floridan aquifer, at least 10 feet of clays or clayey sands which form an aquiclude to the Floridan aquifer. (App 3; 30). That means recharge is not high. (App. 3; 32).

In the alternative, if Mr. Parks' interpretation is correct, then the City departed from the essential requirements of law by requiring Petitioner to

overcome an irrebuttable presumption in the ordinance. Once a parcel is nominated for the ecological overlay, the imprimatur of "probability", "extent of" or "feasibility of" certain ecological factors in the ordinance cannot be negated by any amount of empirical evidence at the proceedings below, as was the case with Petitioner's property in the proceedings below.

If, as here, a constitutionally protected property interest is implicated, a statutory presumption is invalid if: 1) it is not necessarily or universally true in fact; and 2) the government has a reasonable alternative means of making the crucial determination. See Bass v. Gen. Dev. Corp., 374 So. 2d 479, 484 (Fla. 1979) *citing* Vlandis v. Kline, 412 U.S. 441 (1973); Recchi America, Inc. v. Hall, 692 So. 2d 153 (Fla. 1997)(holding that statutory presumption created high potential for inaccuracy, and was excised to allow individuals to rebut with evidence; Florida still applies the irrebuttable presumption doctrine.) Petitioner has a constitutionally protected property interest, and thus the irrebutable presumption of the City's ordinance will be reviewed under the more stringent heightened scrutiny test, not the deferential rational basis test invoked by the U.S. Supreme Court in Weinberger v. Salfi when no constitutionally protected interests are at stake. 422 U.S. 749 (1975); see also Vlandis,412 U.S. 441; Pennsylvania v. Clayton, 684 A.2d 1060 (Pa. 1996) (explaining that the Salfi decision

applied to social welfare legislation which the courts were loathe to strike based on conclusive presumptions). The Pennsylvania Court ruled that the cases decided under Vlandis had not been overruled by the U.S. Supreme Court in Salfi. The City in the instant case could have retained proper experts to evaluate the parcels in contemporaneous time, and perform individual scorings where scores were missing, to name just a few reasonable alternative means the government could have used.

Mr. Parks' interpretation of 30-309.1(b) is disingenuous in light of the City's interpretation of 30-309.1(a). The City's work pursuant to Section 30-309.1(a) to evaluate parcels for inclusion in the SEC District was much more amorphous than Mr. Parks' reading of 30-309.1(b). Under the City's theory of aggregation scoring, the true presence or absence of a characteristic on a parcel is immaterial. Regardless of the established fact that certain ecological aspects of interest are absent from a target property, those ecological characteristics are still deemed to exist by virtue solely of that parcel's proximity to other parcels which do display evidence of those characteristics. Aggregation scoring – the only scoring which affords the City an argument to impose the ecological overlay on White's parcel under section Section 30-309.1(a) -- was not based on a dichotomous model. Lynn Mosura-Bliss, the City's witness, testified that "when you start combining

parcels you increase the probability for inclusion of significant resources." (App. 3; 44). She acknowleged, too, that this type of evaluation is not simple arithmetic, but a much more complex analysis (App. 3; 46).

Mr. Parks' interpretation is not consistent with the definitions of the various criteria as they are provided in 30-309(c). He states that 30-309.1(b) "requires that the landowner show . . . a score of zero" to demonstrate that the criteria do not exist on a parcel. (App. 5; 27). Vulnerability, connectivity, viability, nature-oriented human use potential and manageability, however, do not, per the definitions in 30-309(c), simply exist or not exist on a property. (App. 3; 102-112). Evaluation of these criteria takes place on a continuum. Each definition is couched in terms of "feasibility" or "the extent to which" a parcel shows certain characteristics. Where there are specific provisions included in the legislation, the Commission cannot simply ignore those provisions in favor of the more general language in another portion of the legislation. See Stroemel, 930 So. 2d at 746, *quoting* Parker v. Baker, 499 So. 2d 843, 845 (Fla. 2d DCA 1986)(holding that "[w]here there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control . . ."). The provisions of the SEC District legislation must be read in pari materia

and construed so that each of those provisions makes sense in light of the others. See Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993 (Fla. 2003) (holding that to ascertain legislative intent, related provisions must be construed in harmony with one another); Fla. Dept. of Educ. v. Cooper, 858 So. 2d 934 (Fla. 1st DCA 2003) (holding that statutes relating to the same subject must be read in pari materia and construed in such a manner as to give meaning and effect to each part).

Wherefore, the Gainesville City Commission has departed from the essential requirements of law in its failure to exclude Petitioner's parcel from the Significant Ecological Communities Overlay District. Petitioner respectfully requests that this Court quash the decision of the Gainesville City Commission and remand with instructions to issue a final order that comports with its ordinance and the evidence of record.

II. The City did not base its decision on competent, substantial evidence.

The City's decision to include Petitioner's property in the Significant Ecological Communities Overlay district was not supported by competent, substantial evidence, as required under Florida law. See Dep't of Highway. Safety & Motor Vehicles v. Trimble, 821 So.2d 1084 (Fla. 1st DCA 2002), *quoting* DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957) (holding that competent, substantial evidence is that which "will establish a substantial

basis of fact from which the fact at issue can reasonably be inferred . . . . such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial' we are aware of the familiar rule that in administrative proceedings the formalities … are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached…".) An order which bases an essential finding or conclusion solely on unreliable evidence should be held insufficient. See Fla. Conference v. Fla. R.R. and Pub. Util. Comm'n, 108 So.2d 601, 607 (Fla. 1959). The "substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent references . . . . " Id. This type of evidence "must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof or having fitness to induce conviction. Surmise, conjecture or speculation have been held not to be substantial evidence." Id.

Even the City's experts acknowledge that the evidence upon which they relied in making their recommendations was problematic. Mr. Parks admitted that the evaluation of Petitioner's parcel, performed six or more years previously, was probably outdated. (App. 5; 8). Ms. Mosura-Bliss

testified that she had found “discrepancies” and “anomalies” in the data upon which she relied, but was instructed by City staff to make no changes to the parcels’ scorings. (App. 3; 17, 23). Upon questioning by Commissioner Donovan, she admitted that this type of “aberration” was “pretty serious” and could “influence the score pretty dramatically.” (App. 3; 24).

The staff members, like Ms. Mosura-Bliss, charged with applying the data from the 2000/2001 studies had only previous staffers’ spreadsheets and/or field notes to evaluate some of the properties. (App. 3; 34). Ms. Mosura-Bliss acknowledged that current staffers did not necessarily always know what previous staffers’ reasoning had been with relation to all of the parcels. (App. 3; 34). She also stated that she had “no basis as to why any of these parcels were singled out.” (App. 3; 38). She referenced present-day staffers’ work on the subject SEC District as “forensics ecology,” explaining that they were “asked to try to provide an organized way to show the rankings and try to show how those rankings were derived by the city staff, not having the advantage of being able to talk to the city staff.” (App. 3; 34-35). She testified that she never made any on-site visits to the Petitioner’s parcel to ground-truth the rankings. (App. 3; 35, 36). In the Group Score Sheet for Group 5, in which Petitioner’s property is included for purposes of

the City's rezoning petition, for the exotic species factor, city staff wrote, "There was no documentation to support this score, although the presence of some exotic/invasive plants (Chinese tallow) or animals (wild pigs) is very likely based on personal knowledge of this region." (App. 6A; 18). City staff had assigned a score of 4 out of a possible 10 for this factor to the group. (App. 6A; 18). For the Water Quality Protection factor, Group 5 ranked a 7. The staff comment stated, "There were no data presented to support the overall score. For Part A the FNAI community types present on the site indicate that the score of 8 may be a little high." (App. 6A; 18). And, again, no data were presented to support the score of 6 given to Group 5 for allegedly possessing moderate quality of wetlands, although staff stated its personal knowledge, notes and aerial photography "would be consistent" with a score of 6." (App. 6A; 19).

As stated previously, the City was not entitled to rely on the expert opinion of Ms. Mosura-Bliss as competent, substantial evidence in any areas other than wetlands and exotic, endangered species.

The outdated information upon which the City relied is nowhere more apparent than in the ratings for connectivity of Petitioner's parcel. The connectivity was only rated 2.33 out of 10 possible points when the parcel was originally evaluated in 2000 or 2001. (App. 9). Since that evaluation,

the City has removed or "chipped away" at some of the parcels originally included in the evaluation. (App. 5; 95, 96, 103). The City's fallacious argument that connectivity exists on Petitioner's parcel is dependant upon a hypothesis contrary to fact. Perhaps if the property were connected to more ecologically significant parcels then it, too, would be more significant. The fact is, however, that the property is separated from the Murphree Wellfield Conservation Easement and, in fact, from any ecologically significant parcel. (App. 5; 107-08). A major thoroughfare, NW 53rd Avenue, divides Petitioner's parcel, separating at least the southern portion of the property from any ecologically significant lands. In addition, NW 53rd Avenue and the highly developed, commercial, residential and industrial uses which further intervene and separate Petitioner's parcel from any ecologically significant area would certainly "hinder wildlife movement and other ecological processes to a great degree." (App. 5; 108). The City staff's notes on the Individual Score Sheet for the White parcel reveals the speculative nature of the evidence on this score, and the lack of individual scores for the White property on this connectivity factor to permit proper evaluation per the ordinance. (App. 6A; 26-27). Staff also notes that there is "no data presented to support the overall score" of 9 given for the factor of Water Quality Protection as to the White parcel. (App. 6A; 26). Where no

score was provided in the 2000/2001 ranking, staff speculates based on aerial photography and alleged "personal site knowledge" what scores should be for the sub-factors of surface water and intervening matrix in the connectivity category. Although the 2000/2001 ranking listed a 2 for Potential Listed Species, city staff must have weighted that factor higher, based on the speculative comment, "Wetland communities would likely attract several species of listed wading birds." (App. 6A; 27).

The City cannot justify inclusion -- nor its denial of exclusion -- of Petitioner's property from the Significant Ecological Communities Overlay District at issue in these proceedings, based on the record below.

The City's decision was not based on competent, substantial evidence. Wherefore, based on the foregoing, Petitioner respectfully requests that this Court quash the decision of the Gainesville City Commission and remand with instructions to enter a final order consistent with its ordinance and the evidence of record.

ALTERNATIVE PRAYER FOR RELIEF

Petitioner believes that the action of the Gainesville City Commission was a quasi-judicial zoning decision. The City held formal quasi-judicial hearings in this matter on June 25, July 9 and August 23, 2007, and consistently referred to the matter as a zoning petition. In an abundance of

caution, however, Petitioner requests that, if this Court should determine that the zoning decision of the Commission was a legislative decision, this Petition should be deemed a de novo action. Petitioner believes that the Commission's departure from the essential requirements of law and failure to base its decision on competent, substantial evidence demonstrates the arbitrary and capricious nature of the Commission's decision. Under such a circumstance, Petitioner asks leave of this Court to amend this pleading to include the appropriate "fairly debatable" standard of review and appropriate prayer for relief, and to provide a legal basis for claims that the actions of the Commission were arbitrary and capricious.

Respectfully submitted,

PATRICE BOYES, P.A.

Patrice Boyes, Esq.
FBN: 892520
408 West University Avenue
Suite PH
Gainesville, Florida 32601
352-372-2684 (ph);
352-379-0385 (fax)
boyeslaw@bellsouth.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari, the accompanying Index to Appendix, and the Appendix have been furnished by U.S. Mail/hand-delivery to:

Marion Radson, Esq.
Office of the City Attorney
City of Gainesville (City Hall)
200 East University Avenue
Gainesville, Florida 32601

this 24th day of September, 2007.

Patrice Boyes, Esq.
Patrice Boyes, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the typeface contained in this Petition is Times New Roman, 14-point font, as required by Rule 9.100(l), Florida Rules of Civil Procedure.

Patrice Boyes, Esq.
Patrice Boyes, Esq.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

JUANITA M.WHITE, AS
TRUSTEE FOR THE
LUTHER M. WHITE REVOCABLE TRUST

Petitioner,

Case No.:
Division:

vs.

CITY OF GAINESVILLE
a political subdivision,

Respondent.
_______________________________/

NOTICE OF FILING APPENDIX
TO PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING INDEX TO APPENDIX

NOTICE IS HEREBY GIVEN of filing the original of the Appendix and accompanying Index to Appendix to the Plaintiff's Petition for Writ of Certiorari in the above-styled cause. A copy of this Notice and the Appendix and accompanying Index have been furnished by U.S. Mail/hand-delivery this 24th day of September, 2007 to Marion Radson, Esq., Office of the City Attorney, City of Gainesville, 200 East University Avenue, Gainesville Florida, 32601.

Respectfully submitted,

PATRICE BOYES, P.A.

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GAINESVILLE, FLORIDA 32601

PATRICE BOYES, Esq.
SHANNON L. BREWER, Esq.

TELEPHONE (352) 372-2684
TELEFAX (352) 379-0385

September 24, 2007

U.S. MAIL/HAND DELIVERY

J.K. "Buddy" Irby
Clerk of the Circuit Court
Alachua County Courthouse
201 E. University Avenue
P.O. Box 600
Gainesville, FL 32602-0600

Re: Juanita M. White, as Trustee for the Luther M. White Revocable Trust v. City of Gainesville

Dear Mr. Irby:

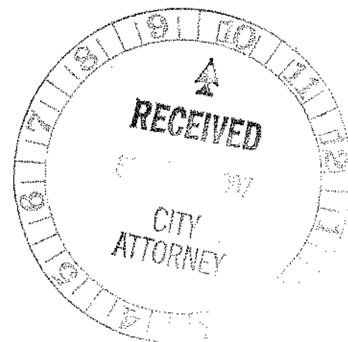
Enclosed please find the original copy of the Petitioner, Juanita M. White, as Trustee for the Luther M. White Revocable Trust, Petition for Writ of Certiorari and Appendix to Plaintiff's Writ of Certiorari. Please file the Petition at your earliest convenience.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me. Thank you for your cooperation and assistance.

Sincerely,

Patrice Boyes, Esq.

PB/as
Enclosure
cc: Nancy White Bennett.
Marion Radson, Esq.



CIVIL COVER SHEET

I. Case style

THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

Petitioner: JUANITA M.WHITE, AS TRUSTEE FOR THE LUTHER M. WHITE REVOCABLE TRUST

Case No.: 01 07 CA 3986
Judge: ____________

v.

Respondents: CITY OF GAINESVILLE, a political subdivision

II. TYPE OF CASE

Domestic Relations	Torts	Other Civil
____Simplified dissolution	____Professional malpractice	____Contract
____Dissolution	____Products liability	____Condominium
____Support IV-D	____Auto negligence	____Real property/mortgage Foreclosure
____Support non IV-D	____Other negligence	____Eminent domain
____URESA IV-D		_X_Other
____URESA non IV-D		
____Domestic violence		
____Other domestic relations		

III. Is Jury Trial Demanded in Complaint?

___Yes
_X_No

Date: September 24, 2007

SIGNATURE OF ATTORNEY FOR PARTY INITIATING ACTION

Patrice Boyes, Esq.

Patrice Boyes, Esq.