

LEGISLATIVE #

110076L



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June 30, 2011

VIA EMAIL and U.S. MAIL

Onelia Lazzari
City of Gainesville
P.O. Box 490, Station 12
Gainesville, Florida 32602-0490
lazzarior@cityofgainesville.org

Re: Natural and Archaeological Resources Protection Regulations

Dear Ms. Lazzari:

We appreciate the email recently received from the City providing an update on the status of the Natural and Archaeological Resources Protection Regulations ("Regulations") and thank you for continuing to advise East Gainesville Development Partners ("EGDP") on the status of the Regulations.

On behalf of EGDP, we have reviewed staff's current proposed revisions to the Regulations which will be the subject of a public hearing before the City Commission on July 7, 2011. Unfortunately, the current draft largely does not incorporate significant recommendations proposed by EGDP in its March 24, 2011, letter. A representative of EGDP will be present at the July 7th public hearing to review in more detail the context of the Regulations and appropriateness of placing such a burden on EGDP's property. Furthermore, through this letter we wish to reiterate in advance our recommended changes to the proposed Regulations and the legal basis upon which our recommendations are based. Additionally, a copy of our March 24, 2011, letter is attached hereto for your reference.

Our main objection to the proposed Regulations is that the Strategic Ecosystems map includes and therefore the ordinance regulates parcels such as those owned by EGDP that do not include environmentally significant lands or resources. The Strategic Ecosystems designations are based on an out of date study that was completed in 1996, approximately fifteen years ago, and which describes areas in very general terms. The Regulations should not encompass

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properties such as EGDP's for which there is conclusive, more recent site specific data which clearly indicates that the property does not contain environmentally significant upland resources. Importantly, the City Commission and Staff already have all of this information as it was supplied during EGDP's design plat process.

We respectfully request that the City review our extensive information on the Hatchet Creek site and apply the same findings it reached in 2009 to this site prior to including this site within the adopted map so that it can reach a reasonable decision about whether the property should be included on the Strategic Ecosystem map. Additionally, EGDP's property is less than 2.0% of the Buck Bay ecosystem the county identified in 1996, when the property was in the County. EGDP's property is not physically connected to the rest of the Buck Bay ecosystem and we now know from over 5,000 hours of ground-truthing at the site that there are no natural or archeological resources at the site that should be governed by these proposed Regulations. Since the proposed Regulations cannot be adopted for several months – until the City amends its Comprehensive Plan – there is ample time for Staff to confirm that the map for the proposed Regulations should not include EGDP's property.

In the event the City is unwilling to modify the 1996 map it is basing the proposed Regulations upon, we strongly urge the City to incorporate into the Regulations a mechanism at the time the proposed Regulations are adopted, as well as a pre-development mechanism, to allow the property owner to demonstrate the extent of non-qualifying lands on the property. Again, there is ample time to demonstrate this prior to adoption of the proposed Regulations, especially since Staff already has this information and has visited the site on numerous occasions between 2006 and 2009.

The City's existing Environmental Management Regulations provides property owners the opportunity to demonstrate the nonexistence of "significant ecological communities" and avoid inclusion on an environmental overlay. Section 30-309.1 provides a process that allows property owners to prove that their lands should not be rezoned to the Significant Ecological Communities overlay district. This option is available at the time the City notifies the property owner that it intends to rezone the property within the overlay district. The proposed Regulations should similarly provide property owners with the same right to demonstrate that their lands should not be placed within the Strategic Ecosystems overlay in the first instance. They also should recognize that if a property is partially located in the fringe of a large Strategic Ecosystem that is mainly within unincorporated Alachua County, the property owner need not ground-truth the entirety of the off-site resources within the Strategic Ecosystem.

Without a mechanism that allows a property owner to rebut the designation as a Strategic Ecosystem with a more detailed natural resource inventory, the Regulations are illegally broad in achieving their purpose. Such unfounded designations place a cloud on the property, which significantly hampers financing opportunities, discourages investment in development plans and creates an inordinate burden on private property.

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The Regulations also will needlessly increase the cost of development. As proposed, the Regulations do not allow site specific studies to be considered until a specific development plan is proposed. Applications for development approval are required to include the results of ground-truthing for any regulated strategic ecosystem resources in order to determine the location and extent of any significant natural communities or other natural resources. By not allowing a property owner to demonstrate a lack of those resources prior to submittal of a proposed development plan, the property owner lacks certainty in how to propose development of his site. The concurrent submittal of an applicant's ground-truthing and development plans is inefficient and unduly burdensome. After the City reviews the ground-truthing, a difference in opinion as to the presence, location and/or extent of any significant natural communities may result in expensive changes to the application. This is not cost effective or time efficient for the property owner or the City.

We appreciate the City's recognition that the Regulations, as drafted, are inconsistent with the City's Comprehensive Plan ("Plan") because they ignore the Plan's depiction and protection of "Environmentally Significant Land and Resources," and create a more expansive natural resource category, "Strategic Ecosystems." The Plan does not currently reference "Strategic Ecosystems" or refer to the use of the 1996 KBN/Golder study as supplanting the environmentally significant properties inventory/ranking report required by the Plan.

In fact, the Plan requires the identification of natural resources protected by land development regulations to mirror those mapped in the Plan as Environmentally Significant Land and Resources. Conservation Element Policy 2.4.1 requires the City to:

"maintain an updated inventory of identified environmentally significant resources identified in the Environmentally Significant Land and Resources map series **within the Future Land Use Map Series**. If additional resources are identified, these properties shall be subject to regulations keyed to the resource present at the site. The Future Land Use Map Series shall be amended to include these properties." (emphasis added)

It is clear that a 1996 Study and maps cannot serve as an "updated inventory" of resources to be protected. Although we look forward to reviewing the proposed amendments to the Plan, it will be unfortunate if the City chooses to abandon the current requirement that it maintain an updated inventory of identified environmentally significant resources and instead "update" its current plan with 1996 data and analysis – especially since EGDP has already supplied all necessary data, reports and findings regarding its property to the City during the design plat process covering its property. Furthermore, City Staff have visited the site to evaluate these environmental features during that process.

In addition, when undertaking the adoption of aggressive regulations such as the City is proposing in this instance, we respectfully suggest that the City should consider the impact of the

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regulation in the context of other existing regulations that limit a property owner's use of his property. The significant adverse effect of the Regulations on EGDP's property is magnified by the cumulative nature of the other various set asides, buffers and limitations that will be applied to the property. To manage the effect of this cumulative impact, we respectfully request again that the Regulations require that all government-mandated set asides, buffers and limitations, including airport noise zones not addressed in the Regulations, be coordinated and co-located to the maximum extent practicable to avoid an inordinate burden on a parcel based upon the totality of the applicable regulations.

We request that these comments, including the attached March 24, 2011, letter, be included in the agenda materials provided to the City Commissioners in advance of the July 7, 2011 meeting. If you or any of the City's planning or legal staff have any questions or wish to discuss any of the recommendations included in these materials, please do not hesitate to call me at (850) 681-4225 or Linda Shelley at (850) 681-4260.

Sincerely,

FOWLER WHITE BOGGS P.A.



Karen A. Brodeen

Encl.

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