LEGISLATIVE # 110667I

Exhibit E.

Documents submitted by Attorney Karl J. Sanders pertaining to overlaying certain properties with the Significant Ecological Communities District.

IN THE MATTER OF CITY OF GAINESVILLE, PETITIONER
PETITION 42ZON-06 PB

ORDER

The City Commission of the City of Gainesville held a formal quasi-judicial hearing beginning on June 25, 2007, and such hearing was continued and concluded on August 23, 2007, on Petition No. 42ZON-06 PB filed by the City of Gainesville (petitioner). The petition is to amend the City of Gainesville Land Development Code by overlaying the Significant Ecological Communities District on approximately 787 acres of property zoned AGR (Agriculture district), I-1 (Limited industrial district), I-2 (General industrial district), and RSF-1 (3.5 units/acre single-family residential district). The subject properties are generally located at 1300 and 920 Northwest 53rd Avenue, 4555 Northwest 6th Street, 5300 North Main Street, and 3464 Northwest 21st Place in Gainesville, Florida.

The Petitioner was represented by Ralph Hilliard, City of Gainesville Planning Manager. Upon filing of the appropriate forms with the Clerk of the Commission, the City Commission included the following persons as affected parties:

1. Carl Salafrio: who represented Osteen and Roberts (Parcel 07877-001-004)
2. Steve Cullen: who represented White and Wurn families (Parcels 07967-002-000 (Wurn), 7966-010-000 (White))
3. Patrice Boyes: attorney who represented White and Wurn families (Parcels 07967-002-000 (Wurn), 7966-010-000 (White))
4. Larry Wurn: who represented Wurn Family LLC (Parcel 07967-002-000)
5. Mohammed Majboor: owner of Parcel 06415-001-000

STATEMENT OF THE PETITION

The petition is to amend the City of Gainesville Land Development Code by overlaying the Significant Ecological Communities District on approximately 787 acres of property zoned AGR (Agriculture district), I-1 (Limited industrial district), I-2 (General industrial district), and RSF-1 (3.5 units/acre single-family residential district). The subject properties are generally located at 1300 and 920 Northwest 53rd Avenue, 4555 Northwest 6th Street, 5300 North Main Street, and 3464 Northwest 21st Place in Gainesville, Florida.

The issue in this proceeding is whether the inclusion of the subject properties in the Significant Ecological Communities District complies with the requirements of the Land Development Code of the City of Gainesville and other applicable law.

PRELIMINARY STATEMENT

After hearing formal presentations, receiving documentary evidence and testimony from City staff, the petitioner, expert witnesses, affected parties, all of whom were duly sworn, argument of counsel, and receiving comments from the general public, the City Commission deliberated and then voted to approve Petition No. 42ZON-06 PB, with exclusions of certain parcels as specifically set forth below.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the formal quasi-judicial hearing and the entire record of this proceeding, the following findings of fact are made:

1. On November 28, 2004, the City Commission adopted Ordinance Number 020967, which is codified in the City of Gainesville Land Development Code as Section 30-309, Significant Ecological Communities District, and Section 30-309.1, Rezoning To Significant Ecological Communities District.
2. In part, the purpose and intent of the Significant Ecological Communities District ordinance is "to codify standards to protect and restore significant ecological communities in the city while not eliminating all economically viable use of a parcel."
3. Pursuant to Section 30-309.1(a), the following criteria are used by the City to evaluate the appropriateness of overlaying the Significant Ecological Communities District on properties:
    a. Size of parcel;
    b. Number of viable FNAI natural communities found at parcel;
    c. FNAI natural communities state rank;
    d. Condition of ecological processes found at parcel;
    e. Typical species found at parcel (based on Guide to Natural Communities in FL);
    f. Invasive, non-native species found at parcel;
    g. Connectedness of parcel;
    h. Water quality protection provided by parcel;
    i. Listed species found at parcel;
    j. Potential listed species that could be found at parcel; and
    k. Management potential of parcel.
4. The petitioner employed the criteria in Section 30-309.1(a) to evaluate the appropriateness of overlaying the Significant Ecological Communities District on the following parcels of property: 07877-001-004; 07966-010-000; 07967-002-000; 07877-000-000; 07966-010-002; 08159-000-000; and 07965-002-000.
5. In particular, the petitioner presented score sheets that contained scores for each of the above-mentioned criteria for each parcel of property listed above. In addition, Lynn Mosura-Bliss, an ecologist with 25 years experience and expert in wetlands and animal and species determinations, testified as to the group of parcels that are the subject of this petition, the individual scores for each parcel that are the subject of this petition, and the scoring system employed by the petitioner generally. Geoffrey Parks, a habitat naturalist employed by the City with a bachelors degree in biology, masters degree in zoology, and certification in prescribed burning, also provided testimony about the scoring system and the characteristics of the subject parcels.
6. Parcels scoring greater than 80 are considered "outstanding quality" with respect to the significant ecological communities criteria; parcels scoring between 80 and 50 are considered "high quality" with respect to the significant ecological communities criteria; parcels scoring 50 and 20 are considered "moderate quality" with respect to the significant ecological communities criteria; and parcels scoring below 20 are considered "low quality" with respect to the significant ecological communities criteria.
7. The score sheets for the individual properties that are the subject of the petition contained the following scores for each of the subject properties:

Parcel Number	Score	Criteria evident
07877-001-004	28.66	Size of parcel (5); Number of viable FNAI natural communities found at parcel (1); FNAI natural communities state rank (3); Condition of ecological processes found at parcel (2); Typical species found at parcel (1); Invasive, non-native species found at parcel (4); Connectedness of parcel (1.66); Water quality protection provided by parcel (7); and Management potential of parcel (4)
07966-010-000	49.33	Size of parcel (5); Number of viable FNAI natural communities found at parcel (6); FNAI natural communities state rank (8); Condition of ecological processes found at parcel (4); Typical species found at parcel (5); Invasive, non-native species found at parcel (4); Connectedness of parcel (2.33); Water quality protection provided by parcel (9); Potential listed species that could be found at parcel (2); and Management potential of parcel (4)
07967-002-000	16.5	Size of parcel (1); Number of viable FNAI natural communities found at parcel (1); FNAI natural communities state rank (2); Condition of ecological processes found at parcel (2); Typical species found at parcel (5); Invasive, non-native species found at parcel (1); Connectedness of parcel (1); Water quality protection provided by parcel (2.5); and Management potential of parcel (1)
07877-000-000	22.16	Size of parcel (8); Typical species found at parcel (1); Invasive, non-native species found at parcel (4); Connectedness of parcel (1.66); Water quality protection provided by parcel (5.5); Potential listed species that could be found at parcel (1); and Management potential of parcel (1)
07966-010-002	24.5	Size of parcel (1); Number of viable FNAI natural communities found at parcel (1); FNAI natural communities state rank (2); Condition of ecological processes found at parcel (2); Typical species found at parcel (5); Invasive, non-native species found at parcel (4); Connectedness of parcel (2); Water quality protection provided by parcel (2.5); Potential listed species that could be found at parcel (1); and Management potential of parcel (4)
08159-000-000	50	There was no individual score available for this parcel, but Mosura-Bliss estimated the score to be about 50.
07965-002-000	49.33	Size of parcel (5); Number of viable FNAI natural communities found at parcel (3); FNAI natural

Parcel Number	Score	Criteria evident
		communities state rank (9); Condition of ecological processes found at parcel (4); Typical species found at parcel (5); Invasive, non-native species found at parcel (4); Connectedness of parcel (2.33); Water quality protection provided by parcel (9); Potential listed species that could be found at parcel (1); and Management potential of parcel (7)

8. Mosura-Bliss testified that if she were to score the subject parcels, instead of relying on the scores above that were arrived at by City staff after studying the subject properties in 2001, she would have scored the subject parcels higher or the same.
9. Mosura-Bliss testified that the subject parcels as a group scored 59, and that it was especially appropriate to include the subject properties in the Significant Ecological Communities District because of the ecological significance that existed due to the connectivity of the parcels. Parks also testified that it was important to consider the ecological value of the parcels by studying the parcels in the aggregate and in the context in which each parcel exists.
10. Pursuant to Section 30-309.1(b), should a property owner believe that the property should not be included in the significant ecological communities district overlay, the property owner has the burden of demonstrating to the City Commission that at least four of the following seven criteria do not exist on the parcel:
    a. Rarity or exemplary;
    b. Vulnerability;
    c. High water quality (either through recharge, surface waters or wetlands);
    d. Connectedness;
    e. Viability (with most ecological processes intact);
    f. Manageability; and
    g. Nature-oriented human use potential.
11. The petitioner conceded that Parcel 07967-002-000 should be excluded from Petition 42ZON-06 PB because four of the seven criteria above do not exist on this parcel. Therefore, based on the foregoing, the City Commission finds that Parcel 07967-002-000 does not contain the appropriate criteria to be included in the Significant Ecological Communities District.
12. The petitioner also recommended that Parcels 06415-001-000 and 07965-002-000 be removed from Petition 42ZON-06 PB because these parcels have been developed. Therefore, based on the foregoing, the City Commission finds that Parcels 06415-001-000 and 07965-002-000 should not be included in the Significant Ecological Communities District.
13. Parks testified as to the existence of 6 of the 7 criteria on Parcel 07966-010-000: vulnerability existed because ecological processes on the property were only moderately altered and were therefore vulnerable to further degradation; high water quality existed because the property fell in a moderate aquifer recharge area and contained wetlands of high quality, both of which contribute to aquifer recharge, flood control, and/or water filtration; connectedness existed because the property was within half a mile of the wellfield conservation easement with undeveloped land intervening, allowing for some

movement of wildlife; viability existed because continuation of natural processes and ecological values was possible; manageability existed because controlled burning was not required on the property which contains hammock; and nature-oriented human use potential existed despite the sandy or wet soils on the property because these types of soils are common in the City and many parks and recreational facilities have been developed on these types of soils.

14. Parks further testified as to the existence of 6 of the 7 criteria on Parcel 07877-001-004: rarity or exemplary existed because there was basin swamp on the property; vulnerability existed because there was basin swamp on the property; high water quality existed because the property fell in a high aquifer recharge area that contributes to aquifer recharge and the property contains wetlands of moderate quality that contribute to water filtration and flood control; connectivity existed due to the property's connectivity to wellfield conservation easement; viability existed; and manageability existed because prescribed fires could be conducted on the property and the recent thinning of pine plantation reduced the risk of fire.
15. Carl Salafrio, an environmental engineer, testified that the following criteria did not exist on Parcel 07877-001-004: the parcel was not exemplary because it contained only one viable on-site community listed as an S3 FNAI community, flora and fauna were not unusually indicative of high quality community, and listed flora and fauna were not observed on-site or documented; the parcel did not have high water quality due to trash dumping and vegetation removal on the site; the parcel was not viable because the parcel was bisected by a road with ditches and located near NW 53rd Avenue, impacted by trash dumping, noise existed on the property due to proximity of industrial area, and the property was adjacent to urban area; manageability did not exist on the parcel because controlled burning was not feasible and there was no access to the property by public roads; and nature-oriented human use potential did not exist on the parcel because of noise, adjacent lands were private, and there was no connection to the public roadway.
16. Steve Cullen, an engineer, testified that the White and Wurn parcels (Parcels 07967-002-000 (Wurn), 7966-010-000 (White)) should be excluded from the Significant Ecological Communities District. With respect to Parcel 7966-010-000 in particular, Cullen testified that 6 of the 7 criteria do not exist on the White parcel, including the following: exemplary, vulnerability, connectedness, viability, manageability, and nature-oriented human use potential.
17. Based on the foregoing, the City Commission finds that the petitioner presented substantial competent evidence that it is appropriate to overlay the Significant Ecological Communities District on the following parcels based on the criteria identified in Section 30-309.1(a) and that the property owners of the subject parcels have failed to demonstrate that four of the seven criteria identified in Section 30-309.1(b) do not exist on the subject parcels: 07877-001-004; 07966-010-000; 07877-000-000; 07966-010-002; 08159-000-000; and 07965-002-000.

CONCLUSIONS OF LAW

The rezoning petition is warranted with the exclusion of certain parcels as provided herein, on the following grounds:

1. The testimony and evidence presented shows that the rezoning of the following parcels is in conformance with Sections 30-309 and 30-309.1 of the Land Development Code:

07877-001-004; 07966-010-000; 07877-000-000; 07966-010-002; 08159-000-000; and 07965-002-000.

2. The testimony and evidence presented shows that the following parcels are appropriate for inclusion in the Significant Ecological Communities District based on the criteria set forth in Section 30-309.1(a): 07877-001-004; 07966-010-000; 07877-000-000; 07966-010-002; 08159-000-000; and 07965-002-000.
3. The testimony and evidence presented did not show that four of the seven criteria identified in Section 30-309.1(b) did not exist on the following parcels: 07877-001-004; 07966-010-000; 07877-000-000; 07966-010-002; 08159-000-000; and 07965-002-000.
4. The testimony and evidence presented shows that Parcel 07967-002-000 should not be included in the Significant Ecological Communities District because four of the seven criteria identified in Section 30-309.1(b) did not exist.
5. The testimony and evidence presented shows that Parcels 06415-001-000 and 07965-002-000 should be removed from Petition 42ZON-06 PB because these parcels have been developed.

CONCLUSION

Based upon the foregoing findings of fact and conclusions of law, the City Commission at its August 23, 2007 quasi-judicial hearing approved Petition 42ZON-06 PB as recommended by City Staff, with the exclusion of certain parcels, as specifically set forth as follows:

Exclusion 1: Parcel 07967-002-000 shall not be included in the Significant Ecological Communities District.

Exclusion 2: Parcel 06415-001-000 shall not be included in the Significant Ecological Communities District.

Exclusion 3: Parcel 07965-002-000 shall not be included in the Significant Ecological Communities District.

Entered this 13 day of September, 2007 nunc pro tunc August 23, 2007.

Peggy Hannahan
Mayor

Attest:

Clerk of the Commission

Copies furnished to:

City of Gainesville Planning Manager
Affected Parties
Owners of Parcels 07877-001-004; 07966-010-000; 07877-000-000; 07966-010-002; 08159-000-000; 07965-002-000; 07967-002-000; 06415-001-000; and 07965-002-000