

#150694

**Barry D. Goldman**

**7908 NW 56<sup>th</sup> Way**

**Gainesville, FL 32653**

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88 7 88 2 2 2 2 2

16 AUG 18 PM 2:07  
**(352) 559 - 0700**

August 19, 2016

Kurt Lannon, Clerk of the City Commission,  
P.O. Box 490, Station 19,  
Gainesville, FL, 32627-0490

Re: New Generation Home Builder, Inc.,  
(Blues Creek Planned Development)  
Petition PB-15-115 PDA

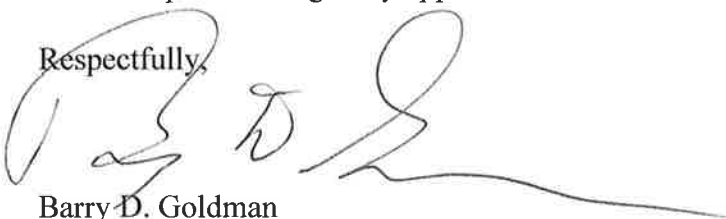
Dear Clerk;

Enclose please find interested party's Request to Participate in FORMAL Quasi Judicial Hearing. .

Please note that I do request a formal hearing in this matter.

Your cooperation is greatly appreciated.

Respectfully,



Barry D. Goldman

Enc.

**REQUEST TO PARTICIPATE IN FORMAL QUASI-JUDICIAL HEARING**

(Please refer to the "Quasi-Judicial Hearings" information provided on page 4.)

Quasi-judicial matter (e.g., petition/ordinance #, etc.): PB 15-115 PDA

Date of hearing: 9/1/2016

1. Please indicate your status as it relates to this matter:

: **APPLICANT** (i.e., the property owner or entity that has applied for a rezoning, Special Use Permit, development review, variance, etc.)

: **AFFECTED PARTY** (i.e., you either: **a**) have received or are entitled to receive mailed notice under Section 30-351 of the Land Development Code, **OR b**) believe you may, depending on the result of this quasi-judicial hearing, suffer an injury distinct in kind and degree from that shared by the general public.)

2. Are you for or against approval of this matter?

: **FOR**

: **AGAINST**

3. Name (please print): Barry D Goldman

Address: 7908 NW 56<sup>th</sup> Way

Phone number: 352 559 0700

Signature: [Signature] Date: 8/19/2016

**Attorney Information (if applicable):**

Name (please print): Pro Se (see above)

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Signature: \_\_\_\_\_

**This form together with any exhibits to be presented at the hearing shall be received by the City of Gainesville Clerk of the Commission (see contact info. above) no less than seven (7) calendar days prior to the date of the hearing as stated in the mailed notification letter.**

16 AUG 18 PM 2:07  
[Vertical stamp]

**Barry D. Goldman**

**7908 NW 56<sup>th</sup> Way**

**Gainesville, FL 32653**

**(352) 559 - 0700**

August 22, 2016

Kurt Lannon, Clerk of the City Commission,  
P.O. Box 490, Station 19,  
Gainesville, FL, 32627-0490

Re: New Generation Home Builder, Inc.,  
(Blues Creek Planned Development)  
Petition PB-15-115 PDA

Dear Clerk;

Enclose please find interested party's motion barring additional evidence or testimony and limiting the hearing of September 1, 2016, to errors in law or fact.

I have sent copies to Nicolle M. Shalley, Esq., City Attorney and EDA, as Agents for New Generation Home Builder. Please file the same and see that all interested parties who have filed an appearance receive copies of this motion.

Please put this motion on the agenda for the September 1, 2016 City Commission meeting.

Your cooperation is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "Barry D. Goldman", with a long horizontal flourish extending to the right.

Barry D. Goldman

Enc.

CC Nicolle M. Shalley, Esq.,  
EDA

**City Commission  
City of Gainesville, Florida**

**New Generation Home Builder, Inc.,**

**Quasi Judicial Proceeding  
Petition PB-15-115 PDA  
File 150694**

**(Blues Creek Planned Development)**

**Applicant**

\_\_\_\_\_ /

**NOTICE OF SCHEDULING HEARING**

To: Nicolle M. Shalley, Esq.  
City Attorney, Gainesville,  
200 E University Ave # 425,  
Gainesville, FL 32601

EDA, as Agents for  
New Generation Home Builder  
2404 NW 43rd St,  
Gainesville, FL 32606

All interested Parties

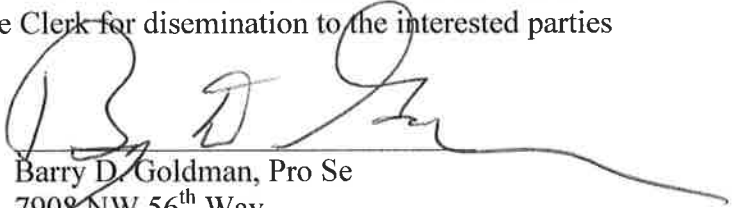
**YOU ARE HEREBY NOTIFIED THAT** the undersigned has scheduled hearing for the following:

DATE: September 1, 2016  
TIME: At the Commencement of Blues Creek Planned Development hearing  
TRIER OF FACT: City Commission  
PLACE: City Commission Chambers 200 E University Ave, Gainesville, FL 32601  
SPECIFIC MATTER TO BE HEARD: Interested Party's Motion Barring Additional Proposals, Evidence, Etc

**KINDLY GOVERN YOURSELVES ACCORDINGLY**

**CERTIFICATION**

I HEREBY CERTIFY that a copy of the within was mailed or hand delivered to the above individuals named above and submitted to the Clerk for dissemination to the interested parties <sup>22<sup>nd</sup> Wed</sup> day of August, 2016.

  
Barry D. Goldman, Pro Se  
7908 NW 56<sup>th</sup> Way  
Gainesville, Fl 32653  
(352) 559-0700

City Commission  
City of Gainesville, Florida

New Generation Home Builder, Inc.,

Quasi Judicial Proceeding  
Petition PB-15-115 PDA  
File 150694

(Blues Creek Planned Development)

Applicant

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**INTERESTED PARTY'S MOTION  
BARRING ADDITIONAL PROPOSALS, EVIDENCE OR TESTIMONY  
FROM APPLICANT BY EX-PARTE COMMUNICATION AND OTHER RELIEF.**

To: Nicolle M. Shalley, Esq.  
City Attorney, Gainesville, Florida  
200 E University Ave # 425,  
Gainesville, FL 32601

EDA, as Agents for  
New Generation Home Builder  
2404 NW 43rd St,  
Gainesville, FL 32606

All interested Parties

**COMES NOW, Barry D. Goldman**, pro se, an interested party, and files this, his motion, for an order barring additional evidence or testimony and such other relief as is deemed equitable and just. As grounds therefore, he states:

- 1) This Petition PB -15-115 PDA came before the City Commission as a result of hearing on January 28, 2016 by the City Planning Department on a recommendation for zoning change.
- 2) On May 19, 2016, The City Commission convened, swore witnesses, took testimony from the applicant, received exhibits, heard testimony of affected parties and received exhibits from all parties, and heard comments from the public. At that time discussions were had and a decision reached.
- 3) Thereafter, City Commission moved, seconded and voted upon a motion to deny the Petition. A Written Order denying Petition PB-15-115 PDA to amend the Blues Creek Planned Development zoning (B) passed. The petition was denied. A break then ensued and most of the audience left believing the matter concluded.
- 4) Before the meeting concluded they then heard from the Applicants agent when the following occurred:

“Minutes note:	Clay Sweger and Ralph Hilliard made presentations. Motion: Reopen the hearing for the deliberation and voting portion for a time certain of August 4, 2016. Donald Clark spoke to the matter.
Action:	Approved, as shown above
Action text:	A motion was made by Commissioner Budd, seconded by Commissioner Carter, that this Matter be Approved, as shown above. The motion carried by the following vote:” 7 – 0

5) On May 27, 2016, City counsel admonished the Commission to continue to refrain from communication with all parties because of potential additional evidence being received. Specifically, she wrote,

*“Because this quasi-judicial matter will not be finalized until you approve the final written order and there is the possibility that the Commission could re-open all or part of the hearing for further deliberation, I recommend that you not communicate with any affected party, the petitioner or citizen on this matter as those communications would be considered ex-parte communications under your Rules and Florida law. Depending on your action on June 2<sup>nd</sup>, I can provide further guidance on communications at that time.”*

6) On May 31, 2016 Clay Sweger of EDA on behalf of the applicant wrote directly to the Mayor, copy to the City Commissioners, City Attorney, et al. of his intention to modify and make changes to the basic plan. It is further understood that there was one or more e-mail communications between EDA and its agents to the Mayor and City Counsel (see paragraph 8 of this motion) At no time, was this party, notified of this letter request or e-mail(s) despite the fact that the undersigned had filed a notice of appearance and participated in the proceeding of May 19, 2016. Further, this ex-parte communication by EDA directed to the Mayor and Committee members is against the admonition of Counsel and is potentially disqualifying to all who read the communication(s).

7) On June 2, 2016, the City Commission held its regular meeting. A discussion of the Order, prepared by Counsel and the Motion was had. The Mayor, at the June 2, 2016 Commission meeting speaking to the City Attorney in the presence of all commission members states, (CC website 5:15:35 et seq and videotape at 1:30 et seq)

**So, we all received an ex-parte communication from the applicant in the form of an e-mail and a revised layout for the subdivision. If a majority of the commission is amiable to one of those two proposed new layouts, could we still follow the procedure that you just told us? (emphasis added)**

While the undersigned has a copy of the letter of EDA dated May 31, 2016, the content of this ex-parte e-mail with its two new proposals contained therein has never been revealed.

8) Notwithstanding the admission of receipt of the ex-parte communications, there has been no attempt to disregard the ex-parte information, nor any disclosure of the receipt of the information to interested parties. Instead of ignoring the attempted ex-parte communications, the Commissioners chose to read, rely upon and act on those ex-parte communications, implicitly, by scheduling an August 4<sup>th</sup>, 2016 hearing to hear the new proposals of the Applicant.

9) The agenda for the August 4<sup>th</sup> 2016 meeting reflects the following:

*On May 19, 2016, the City Commission held a complete formal quasi-judicial hearing on this Petition and orally issued an order denying this Petition by a vote of 4-3. In accordance with Rule 18.C. of the Rules of the City Commission, the City Attorney prepared and presented a written order of denial to the City Commission for its consideration at its next Regular Meeting on June 2, 2016. At the June 2nd meeting, the City Commission took no action on the written order of denial and instead, by a vote of 7-0, approved continuing the hearing to re-open the "Deliberation and vote of the Commission" portion of the formal quasi-judicial hearing on the date certain of August 4, 2016.*

The August 4, 2016 meeting was then adjourned because the Commission decided it wanted to hear the matter in its entirety, in one day, rather than to bifurcate the hearing to allow interested parties time to respond to evidence, it had yet to disclose.

10) After various delays, the matter is now scheduled before the City Commission, to act in a quasi judicial capacity on September 1, 2016.

11) Under the American Bar Association Rules:

***Rule 2.9: Ex Parte Communications***

***(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.....***

12) Under the Florida Judicial Benchguide Rules, the following article appears:

**1. What Are Ex Parte Communications and When and Why Are They Prohibited? Black's Law Dictionary defines "ex parte" as "[o]n or from one party only, usually without notice to or argument from the adverse party." Black's Law Dictionary 576 (8th ed. 2007). Canon 3B(7) provides as follows: A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:.....**

*Can Ex Parte Communication Be Remedied? According to ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS 5.22-5.23 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.), The 2007 Model Code of Judicial Conduct in Rule 2.9(A) instructs judges to "make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond." Courts have held that prompt disclosure of the ex parte communication to all affected parties may avoid the need for other corrective action. . . . Where irremediable prejudice has occurred, of course, disclosure will not be sufficient to avoid disqualification or reversal. In the Florida Judicial Ethics Benchguide, June, 2015*  
<http://www.flcourts.org/core/fileparse.php/304/urlt/JudicialEthicsBenchguide.pdf>

13) The Code of Federal Regulations provides:

CFR§ 76.15 *Ex parte communications.*

*(b) Sanctions. A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanctions. An attorney who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to sanctions, including, but not limited to, exclusion from the proceedings.*

14 ) Since the ex-parte communications commenced after the passage of the motion to deny Petition PB-15-115 PDA, it is beyond argument that the ex-parte communications were a direct attempt to re-open and affect the outcome of the application. It is also a fact that the ex-parte communications led to the current scheduled hearing and the consideration of two (now 3) totally new site plans. Further, since almost



3 months have elapsed since the receipt of the ex-parte communications, it cannot be said that the Commission has made prompt disclosure nor has it notified the parties of the substance of the communication. Indeed to this date the substance of the e-mails with its 2 new proposals has not been revealed. It is therefore beyond argument that the interested parties due process rights have been denied.

15) All parties were aware of the quasi judicial nature of the proceedings. The applicant should have presented their best plan to the trier of the fact and presented its most favorable evidence at the original hearing of May 19, 2016. Some, including the applicant, chose not to be represented by counsel, during this hearing. That is their prerogative. However it does not relieve any of them of their obligation to act properly or to have their agents act properly.

16) The bell has rung. It is not possible to unring it. Some of the mistakes were made by well intentioned persons, who are inexperienced with quasi-judicial matters. Nonetheless, they are mistakes and mistakes have consequences. The following is a partial list of the mistakes made:

A) The Applicant should not have made any contact ex-parte with the Commissioners, no less on multiple occasions together with 3 new plans. This is the biggest mistake(s).

B) Each of the individual Commissioners had an individual responsibility to reject and disregard the ex-parte communications.

C) A copy of each written ex-parte communication should have been sent to all affected parties

D) The Commissioners should not have discussed among themselves the substance of the ex-parte communication received from the applicant's agent.

E) The Mayors inquiry to City Attorney "***If a majority of the commission is amiable to one of those two proposed new layouts, could we still follow the procedure that you just told us?***" leads the undersigned to believe that the City Commission has prejudged the new proposals and decided upon a favorite new proposal.

17) The applicant's efforts to reopen the hearing to allow additional evidence should be denied for three separate reasons. They are:

A) The first reason is that, in a judicial proceeding or a quasi judicial proceeding, there are established rules. The way of going forward is the presentation of a Plaintiffs case, then the

Defendants case, a rebuttal is permitted by the Plaintiff (which is limited to new facts adduced by the Defendants case), and a sur-rebuttal. After the parties have concluded the matter is presented to the trier of the fact for decision. In only rare cases, for good cause shown, can a motion to reopen be granted. (Usually the same is limited to newly discovered evidence or other matters which could not have been presented.) Here, the Plaintiff chose his application. He chose his case and presented it. He now seeks to present three totally different plans after hearing the decision of a quasi judicial proceeding. There is no newly discovered evidence. There is no review of the newly submitted plans by the Planning Department or the employment of their expertise. There is plainly no basis to allow a totally new case to be presented at this late time. The correct procedure, at this time, is to remand the three applications to the Planning Department. At that time Applicant may then select from the three new plans a single plan. Or, of course, the Applicant may withdraw his application to amend and resubmit the same to the Planning Department.

B) The second reason for denial of an evidentiary proceeding is that an ex-parte communication(s) and enclosures are fruits of the poisonous tree. As pointed out previously the rule of law is that they should be excluded.

C) The third reason that is urged for denial of a new evidentiary proceeding is because during both meetings of May 19, 2016 and June 2, 2016, the motions that passed were to ..... ***continue the hearing to re open the "deliberation and vote of the commission" portion of the formal quasi judicial hearing on the date certain of August 4, 2016.*** No mention is made of any motion to allow a modification of any plan or the taking of any additional testimony or evidence. Certainly, no motion to do so was made nor passed. At least 90 days has passed following the hearing and the decision, and this tribunal lacks jurisdiction to reopen the hearings. Given the conduct of the Applicants ex-parte conduct, it is submitted that no evidence as contained in the letters, e-mail(s) and 2 or 3 new proposals should be allowed.

18) This motion is being made to preserve the record.

19) Additionally, There are two other items of unfinished business involving this Applicant, the City and the community:

A) This is an application to amend the Blues Creek Master plan. On the filed map in Plat Book 24 Page 73 for development of Unit 5 Phase 1 of Blues Creek, between lots 4 and 5 there appears a marking "common area for pool .... 6270 sq ft". Above the same

there appears a note "The Developer shall complete Pool Construction upon 2/3 of the lots in Unit 5 have received a certificate of occupancy." The Document was signed by the Developer and various officials of the City of Gainesville on various dates in early 2003. Thirteen years have now passed and still no pool. It is submitted that with the 10 homes already established in Unit 5 Phase 1, that when mathematically 2/3 of the homes have been completed in both phases of Unit 5, all Certificates of Occupancy should cease unless the pool has been constructed.

The problem is the property is now owned by Blues Creek Masters Owners Association, the HOA of the surrounding area and as I understand it, the new homeowners in section 2 will not be not eligible for membership, hence, would not be allowed to use the pool, if built on this site. The current community pool for the rest of Blues Creek is vastly overcrowded and has been for the past years. The situation begs for a solution and the good offices of the City are requested in aid of a solution. (See Exhibit "A")

B) There is a 90 acre parcel in the center of all Blues Creek maps which was used to attract and sell almost 500 homes in Blues Creek by the developer and his successors. That land was and is designated as "Drainage Easement, Developed Recreation and Conservation Area." Its use is limited to, and people were led to believe, that this area would be a:

***... conservation area ... nature trails, walkover structures and gazebos which retain the land predominantly in its natural, scenic and wooded condition;***

After 30 years, where the Developer and successors, have profited from the sale of almost 500 homes, that property should be finished and delivered as promised, with nature trails, walkover structures, gazebos on the 90 acre parcel and turned over to the appropriate Home Owners Association for the used and benefit of all of Blues Creek residents.

**Wherefore**, the interested party, Barry D. Goldman, pro se, respectfully moves this honorable tribunal to enter an order barring any additional proposals, evidence or testimony from any party or participant who has communicated with the Commission, or any member of the Commission, individually, in an ex-parte manner. Further,

- A. Conditionally approving the plan set forth in Petition PB -15-115 PDA providing that Applicant accept the following conditions
1. Deleting the southern 8 lots depicted on the map,
  2. providing for a GRU lift station (and prohibiting any jack and bore drilling in ecologically sensitive lands); or alternatively
- B. Remanding this petition to the Gainesville City Planning Department for further action and recommendations on Petition PB -15-115 PDA as might be amended by the applicant; or alternatively
- C. In addition to the forgoing, as a condition of any approval set forth above, Applicant shall set forth a proposal
- a. To construct a swimming pool as depicted on the site plan for Blues Creek design plan Unit 5 Section 1 as approved by this body in 2003; alternatively
  - b. To present a plan for a swimming pool and recreational facilities within Unit 5 Section 2 which will be open to and available to all unit owners of Unit 5 Section 1 and 2 together with the adjacent properties; alternatively
  - c. To present a settlement plan agreed upon with the Blues Creek Masters Home Owners Association to compensate for the overcrowding of the swimming pool area and the failure to build the swimming pool as depicted on the approved plan for Unit 5 section1
  - d. Additionally, to construct, and dedicate, nature trails, walkover structures and Gazebos on the 90 acre parcel entitled as "Drainage Easement, Developed Recreation and Conservation Area" as implicitly set forth and promised in the sale of approximately 500 residences.

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was hand delivered or mailed to Kurt Lannon, Clerk of the City Commission, P.O. Box 490, Station 19, Gainesville, FL, 32627-0490 of and the above named individuals this 22<sup>nd</sup> day of August, 2016.

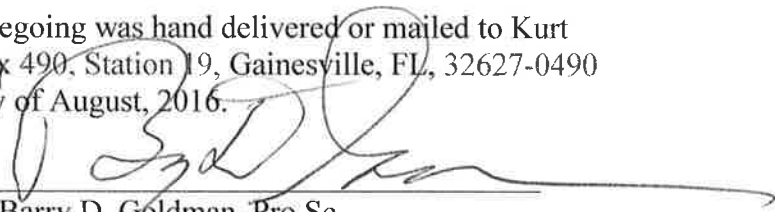
  
Barry D. Goldman, Pro Se  
7908 NW 56<sup>th</sup> Way  
Gainesville, Fl 32653  
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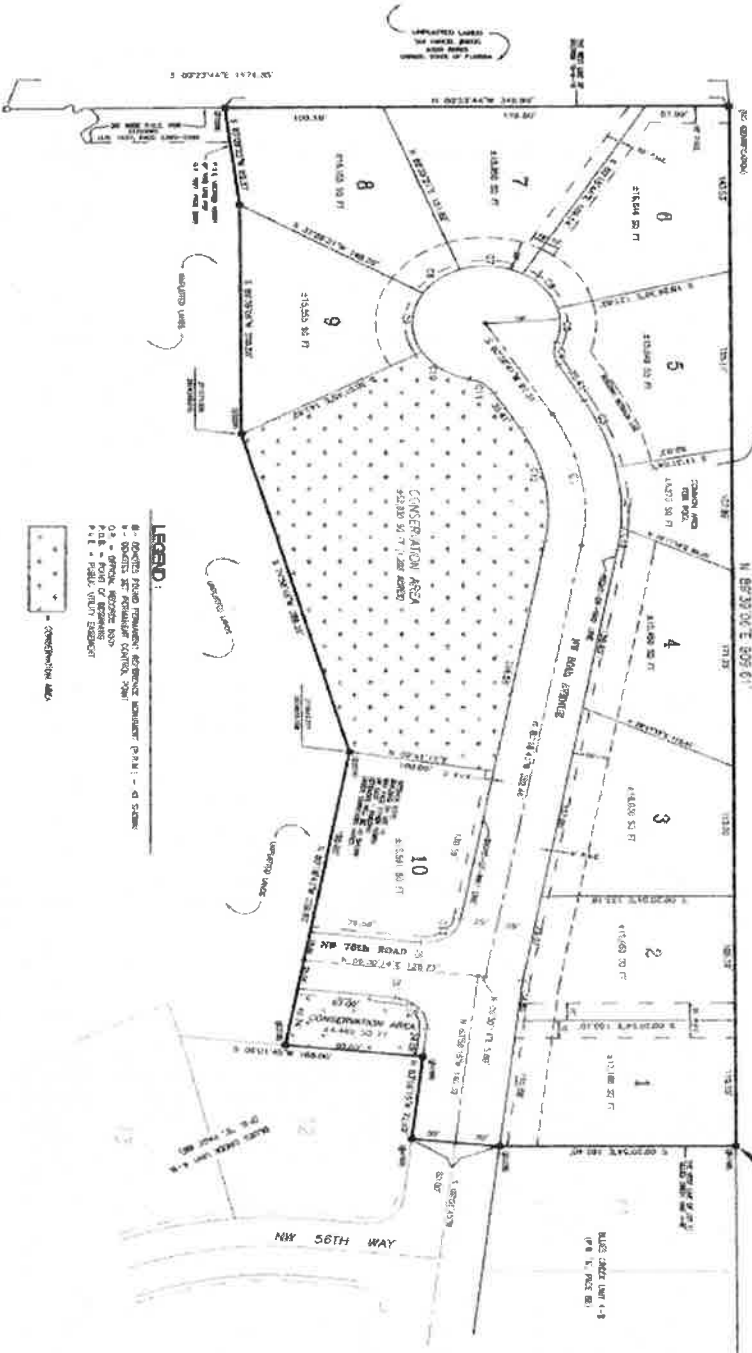
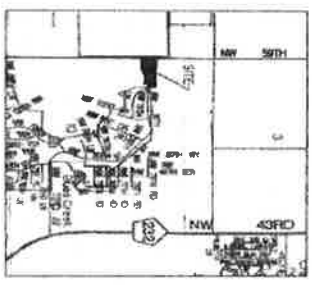
Exhibit A

# BLUES CREEK UNIT 5 PHASE 1

A PORTION OF A PLANNED UNIT DEVELOPMENT SITUATED IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA.



LEGAL DESCRIPTION: A PORTION OF A PLANNED UNIT DEVELOPMENT SITUATED IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA. THE PLANNED UNIT DEVELOPMENT CONSISTS OF 10 PHASES. THIS PHASE IS THE FIRST PHASE TO BE DEVELOPED. THE PLANNED UNIT DEVELOPMENT IS SITUATED IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA. THE PLANNED UNIT DEVELOPMENT IS SITUATED IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA. THE PLANNED UNIT DEVELOPMENT IS SITUATED IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA.



- LEGEND:**
- 1 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 2 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 3 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 4 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 5 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 6 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 7 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 8 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 9 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION
  - 10 - EXISTING ROAD FRONTAGE - EXISTENCE MONUMENT (P.O.B.) - O - DIMENSION

**SURVEYOR'S NOTES:**

- 1) ALL DIMENSIONS OF CURVES ARE IN FEET AND INCHES.
- 2) ALL DIMENSIONS OF CURVES ARE IN FEET AND INCHES.
- 3) ALL DIMENSIONS OF CURVES ARE IN FEET AND INCHES.
- 4) ALL DIMENSIONS OF CURVES ARE IN FEET AND INCHES.

**CONFORMANCE OF CONSERVATION AREA AND COMMON AREA:**

The Conservation Area and Common Area are in compliance with the requirements of the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services (FDACS).

LOCATION MAP (NO SCALE)

**APPROVAL OF THE CITY OF GAINESVILLE:**

APPROVED BY THE CITY OF GAINESVILLE  
CITY COMMISSIONER: [Signature] DATE: 10/23/2003  
CITY MANAGER: [Signature] DATE: 10/23/2003  
CITY ATTORNEY: [Signature] DATE: 10/23/2003  
CITY ENGINEER: [Signature] DATE: 10/23/2003  
CITY PLANNING: [Signature] DATE: 10/23/2003  
CITY PUBLIC WORKS: [Signature] DATE: 10/23/2003  
CITY UTILITIES: [Signature] DATE: 10/23/2003  
CITY ZONING: [Signature] DATE: 10/23/2003

**DESIGNATION:**

DESIGNATED BY: [Signature] DATE: 10/23/2003  
DESIGNATION: [Signature] DATE: 10/23/2003  
DESIGNATION: [Signature] DATE: 10/23/2003

**ACTION EMBLEMENT (STATE OF FLORIDA COUNTY OF ALACHUA):**

ACTION EMBLEMENT (STATE OF FLORIDA COUNTY OF ALACHUA): [Signature] DATE: 10/23/2003  
ACTION EMBLEMENT (STATE OF FLORIDA COUNTY OF ALACHUA): [Signature] DATE: 10/23/2003  
ACTION EMBLEMENT (STATE OF FLORIDA COUNTY OF ALACHUA): [Signature] DATE: 10/23/2003