



# MEMORANDUM

Office of the City Attorney

031309e

Legistar No. 040037

Phone: 334-5011/Fax 334-2229  
Box 46

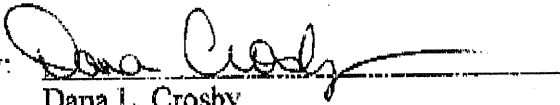
**TO:** Mayor and City Commission  
**DATE:** June 14, 2004  
**FROM:** City Attorney  
**SUBJECT:** Final Administrative Order in the Matter of Eng, Denman & Associates, Agent for Schackow Realty, Petitioner, Petition 139SUB-03DB  
**CONSENT**

Recommendation: The City Commission authorize the Mayor to execute, and Clerk of the Commission to attest, the Final Order.


On May 24, 2004, the City Commission, at its regular meeting, held a formal quasi-judicial hearing pursuant to section. 30-183(i)(2), Gainesville Code of Ordinances. The hearing was heard at the request of Affected Party, Ewen Thomson, for the purpose of considering a design plat approval of Forest Creek Cluster Subdivision, located in the vicinity of 3309 and 3425 NW 17<sup>th</sup> Street. At its May 24, 2004 meeting, the Commission considered the record, evidence, and testimony of staff, affected parties, and interested persons, and the Petitioner, and announced its oral order in the matter of Eng, Denman & Associates, Agent for Schackow Realty, Petitioner (Legislative Matter 031309).

At the conclusion of the May 24, 2004 hearing, the City Commission voted to approve Petition 139SUB-03DB, design plat for Forest Creek Cluster Subdivision, with certain conditions and as amended, to include a total of 11.26 acres, more or less.

Prepared by:

  
Dana L. Crosby  
Assistant City Attorney

Approved and  
Submitted by:

  
Marion J. Kadson,  
City Attorney

MJR:DLC:sw

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

**IN THE MATTER OF ENG, DENMAN & ASSOCIATES,  
AGENT FOR SCHACKOW REALTY, PETITIONER  
PETITION 139SUB-03DB (Legistar No. 031309)**

**ORDER**

The City Commission of the City of Gainesville held a formal quasi-judicial hearing on May 24, 2004 on Petition 139SUB-03DB (Legistar No. 031309), filed by Eng, Denman & Associates, agent for Schackow Realty, Petitioner.

Petition 139SUB-03DB is a design plat approval of Forest Creek Cluster Subdivision. The subject property is located in the vicinity of the 3309 and 3425 NW 17<sup>th</sup> Street. Jefferson Braswell, Attorney, represented the Petitioner.

Upon filing of the appropriate forms with the Clerk of the Commission, the City Commission included the following persons as affected parties: Ewen Thomson, Scot Davis, Mark Nelson, Nancy Lasseter, and Tim Strauser.

**STATEMENT OF THE PETITIONS**

Petition 139SUB-03DB is filed as a request for design plat approval of Forest Creek Cluster Subdivision (Forest Creek). Forest Creek is described in the application filed by Petitioner as 28 lots on 10.3 acres more or less, having a density of 2.7 dwelling units per acre; however, during the formal quasi-judicial hearing of May 24, 2004 Petitioner amended his request for design plat approval to add .98 acres of wetland owned by the Petitioner at this time, thus requesting approval of 28 lots on a total of 11.26 acres more or less.

**PRELIMINARY STATEMENT**

After hearing formal presentations, receiving evidence, and hearing sworn testimony from City and County staff, the Petitioner, affected parties, counsel, and after receiving

comments from the general public, the City Commission voted by a vote of 4 to 2 (Commissioner Domenech absent) to approve Petition 139SUB-03DB, design plat approval of Forest Creek Cluster Subdivision, with conditions and with the inclusion of the .98 parcel of wetland.

### **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. A cluster subdivision is established at section 30-190, Land Development Code of the City of Gainesville, to establish a process by which land may be developed for residential purposes without strict adherence to the dimensional requirements of the City's zoning code.
2. Modifications to the yard and lot requirements are permissible with cluster subdivisions.
3. Cluster subdivisions, which reduce lot sizes below the minimum area required in the zoning district, shall provide open space to be preserved and maintained for scenic value, recreational or conservation purposes, or for other related uses.
4. Cluster open space may be conveyed for public ownership or maintained under private ownership if protected in a way that is satisfactory to the City.
5. The Development Review Board (DRB) is authorized by section 30-352, Gainesville Code of Ordinances, to review and approve or deny development plans submitted for its review as provided for in chapter 30, Gainesville Code of Ordinances.
6. The DRB considered a request to approve a design plat for Forest Creek Cluster Subdivision for 28 lots on 10.3 acres more or less at a public hearing on March 11, 2004 and, by a vote of 4-2, approved Petition 139SUB-03DB with staff conditions and modifications.

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7. City and Alachua County Environmental Protection Department staff recommends approval of the Petition with conditions.

### **CONCLUSIONS OF LAW**

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

1. Cluster developments shall be approved in accordance with the procedures established for design plats and final plats under chapter 30, Land Development Code of the City of Gainesville.
2. The City Commission considered the matter on May 24, 2004 and reviewed the proposed design plat for consistency with the requirements of the Land Development Code of the City of Gainesville and found there is competent substantial evidence that the proposed design plat meets the standards and requirements as set forth in the Land Development Code of the City of Gainesville, if approved with conditions.

### **ORDER**

Based upon the foregoing findings of fact and conclusions of law, the City Commission at its May 24, 2004 quasi-judicial hearing APPROVED Petition 139SUB-03DB, design plat for Forest Creek Cluster Subdivision, as amended to include a total of 11.26 acres, more or less, with the following conditions:

- Title Opinions shall be submitted by the Developer to the City of Gainesville Current Planning Division Office, and will be reviewed and approved by the City Attorney before the final plat is placed on the City Commission agenda.
- The wetland buffer boundary shall be corrected on the design plat maps to exclude the 35-foot utility easement.

- Developer shall install a chain-link fence during all stages of construction; the project engineer shall inspect the installation and removal of the fence.
- The restrictive covenants associated with the Forest Creek Cluster Subdivision shall include prohibitions to protect the wetlands and other environmental features, as depicted on the Forest Creek Cluster Subdivision Design Plat, including the additional .98 acre parcel which shall become a part of the final design plat upon approval by the Commission, from dumping and other harmful acts.
- Prior to final plat approval, Developer must sign a TCEA Agreement for provision of the required standards and shall submit an application for Certificate of Final Concurrence at the time of application for final plat approval.
- Developer shall adhere to conditions submitted by City of Gainesville Public Works Division on March 8, 2004.
- Developer shall adhere to conditions submitted by the Alachua County Environmental Protection Department to the City's Current Planning Division on March 3, 2004.
- Developer shall adhere to conditions submitted by the City's Arborist to the City's Current Planning Division on March 8, 2004.
- Developer will grant a conservation easement to an appropriate legal entity over all wetlands and creeks as depicted on the Forest Creek Cluster Subdivision Design Plat, including the additional .98-acre parcel.
- Developer will perform invasive plant removal at the site as depicted on the Forest Creek Cluster Subdivision Design Plat, including invasive plant removal for the additional .98-acre parcel.

- Developer will investigate the implementation of green building programs and construction techniques on this development and will analyze other possibilities of this type and nature.

Entered this 17 day of June 2004.

Peggy Hanrahan  
 Peggy Hanrahan, Mayor

Attest:

[Signature]  
 Kurt Lannon, Clerk of the Commission

*Copies furnished to:*

- Jefferson Braswell, Esq., Attorney for Petitioner
- Wayne Bowers, City Manager
- Marion J. Radson, Esq., City Attorney

Affected Parties:

- Ewen Thomson
- Scot Davis
- Mark Nelson
- Nancy Lassiter
- Tim Strauser