



MEMORANDUM

Office of the City Attorney

001479

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

TO: Mayor and City Commissioners

DATE: June 25, 2001

FROM: City Attorney

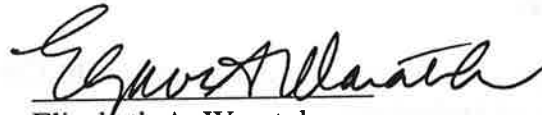
CONSENT

SUBJECT: Conrad Yelvington, as Trustee for the Conrad Yelvington Revocable Trust of 1997 and Gary Yelvington, as Trustee of the Gary Yelvington Revocable Trust of 1997 v. City of Gainesville
Alachua County Circuit Court; Case No.: 01-01-CA-2047


Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Conrad Yelvington; as Trustee for the Conrad Yelvington Revocable Trust of 1997 and Gary Yelvington, as Trustee of the Gary Yelvington Revocable Trust of 1997 v. City of Gainesville; Alachua County Circuit Court; Case No.: 01-01-CA-2047

On June 7, 2001, the City of Gainesville received a Summons and Complaint filed by Mr. Conrad Yelvington and Mr. Gary Yelvington. Plaintiffs are seeking an injunction to prevent the City of Gainesville from enforcing a moratorium on an industrial use of an asphalt plant on land owned by Plaintiffs.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

EAW/bdp

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

CONRAD YELVINGTON as Trustee
for the CONRAD YELVINGTON
REVOCABLE TRUST OF 1997 and
GARY YELVINGTON, as Trustee of the
GARY YELVINGTON REVOCABLE
TRUST OF 1997,

CASE NO. _____

Division " _____ "

Plaintiff,

A TRUE COPY
STEPHEN M. OELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 1010a, on the 7 day
of July, 20 07
By S. B. Bussing
As Deputy Sheriff

vs.

CITY OF GAINESVILLE,
Defendant.



SUMMONS

THE STATE OF FLORIDA:
TO EACH SHERIFF OF THE STATE:

You are hereby commanded to serve this Summons and a copy of the Complaint or
Petition in this lawsuit on the below-named Defendant:

CITY OF GAINESVILLE
c/o Tom Bussing
Mayor
200 E. University Avenue
Gainesville, Florida 32601

Each Defendant is required to serve written defenses to the Complaint on **Richard T. Jones, Esquire, Savage, Krim, Simons & Jones, LLC**, Plaintiff's attorney, whose address is 408 W. University Avenue, Suite 500, Gainesville, Florida 32601, within twenty (20) days after service of this Summons on that ~~Third Party~~ Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on the attorneys

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or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or petition.

WITNESS my hand and the seal of this Court this 1st day of June, 2001.

As Clerk of the Court

(SEAL)



By: Brenda Davis
As Deputy Clerk

Elizabeth F. Hodge

Richard T. Jones, Esquire
Florida Bar No. 040640
Elizabeth F. Hodge, Esquire
Florida Bar No. 0146994
408 W. University Avenue, Suite 500
Gainesville, Florida 32601
Telephone (352) 372-4263
Facsimile (352) 375-5365
Attorneys for Plaintiff

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

CONRAD YELVINGTON as Trustee
for the CONRAD YELVINGTON
REVOCABLE TRUST OF 1997 and
GARY YELVINGTON, as Trustee of the
GARY YELVINGTON REVOCABLE
TRUST OF 1997,

CASE NO. 0101CA2047

Division "K"

Plaintiff,

vs.

CITY OF GAINESVILLE,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs, CONRAD YELVINGTON, as Trustee of the CONRAD YELVINGTON
REVOCABLE TRUST OF 1997 and GARY YELVINGTON, as Trustee of the GARY
YELVINGTON REVOCABLE TRUST OF 1997, ("YELVINGTON") brings this action for
injunctive relief against the CITY OF GAINESVILLE ("CITY") and alleges:

1. This is an action to enjoin the CITY, acting through the Gainesville City
Commission ("City Commission"), from enforcing a moratorium on an industrial
use of an asphalt plant on approximately twenty (20) acres of a 49.62 acre parcel
currently zoned for Industrial (I-2) uses of which YELVINGTON is the legal
owner. The moratorium was adopted by the CITY on May 14, 2001 when it
approved Ordinance #0-01-25.
2. The CITY is a municipal corporation which acts through the elected City

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Commission and mayor.

3. In December 1998, the City Plan Board approved a land use amendment and rezoning of the subject parcel from Agricultural to Industrial. The rezoning permitted the siting of an aggregate distribution facility by YELVINGTON, which in turn could supply raw materials used in the mixing of asphalt and other products. The City Commission approved the YELVINGTON land use petition in February 1999 and transmitted the petition for review to the Florida Department of Community Affairs pursuant to Chapter 163, *Florida Statutes*.
4. The final adoption of the land use and final rezoning were approved on June 28, 1999 with CITY staff, the Plan Board, the Department of Community Affairs and the City Commission all finding that an Industrial land use designation and I-2 zoning for the subject parcel were consistent with surrounding uses. The final approval was with the specific knowledge that an asphalt plant was a permitted use.
5. In November 1999 the CITY Development Review Board conducted a conceptual review hearing of an aggregate distribution center with rail service for the subject parcel.
6. In April 2000, the Development Review Board granted preliminary approval of the aggregate distribution center to be operated by YELVINGTON.
7. Before the CITY approved the land use amendment and rezoned the subject parcel to I-2, YELVINGTON planned to co-locate with its aggregate distribution facility on the subject parcel a hot mix asphalt batch plant and a ready mix concrete plant. YELVINGTON had discussions with several prospective

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purchasers about co-locating a hot mix asphalt batch plant and a ready mix concrete plant on a portion of the subject property. On March 6, 2000 Watson Construction Company, Inc. contracted to purchase from YELVINGTON 22.37 acres of the 49.64 acres zoned I-2 for use as an asphalt plant.

8. Based on the contract with Watson and based on the conduct of the CITY as alleged in paragraphs three (3), four (4), five (5) and six (6), YELVINGTON closed on his purchase contract for the 49.64 acres in July 2000. At the time of his closing of the purchase and paying the full purchase price YELVINGTON did so with the express economic expectation that he could sell or lease portions of the 49.64 acres for a hot mix asphalt plant and for a ready mix concrete plant which would offset the cost of the land. YELVINGTON would not have purchased the entire 49.64 acres but for the expectation of reselling or leasing for the hot-mix asphalt plant and ready mix concrete plant uses allowed in I-2 zoning.
9. Before February 12, 2001 and up until May 14, 2001, a hot mix asphalt batch plant and a ready mix concrete plant were uses permitted by right under I-2 zoning.
10. On February 12, 2001 apparently based on citizen request, the City Commission, with little discussion and no competent substantial evidence, voted three to zero to refer potential consideration of a moratorium on all industrial development in the CITY to a subcommittee of the City Commission for further deliberation. Neither the citizens requesting the moratorium nor the CITY identified any specific or immediate danger to public health and safety, nor did they indicate that a flood of applications for industrial uses was expected.

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11. On March 5, 2001, the subcommittee to which consideration of a moratorium was referred, consisting of Commissioners Warren Nielsen and John Barrow, recommended to the CITY that it consider imposing a moratorium for certain industrial uses in certain areas and identify those uses and areas.
12. The City Commission on March 12, 2001 and continued on March 29, 2001, took public comment on the moratorium issue. The City Commission specified that the moratorium should last for a period not to exceed six (6) months. The CITY never identified any imminent threat to public health and safety. At the meetings of March 12th and March 29th the CITY had either a report from Water and Air Research or testimony from Bill Zagel of Water and Air Research on what were claimed to be those major groups of manufacturing uses that were said to have the largest impact on the community in terms of environmental pollution, odor and noise. Zagel and Water and Air Research attempted to rank major groups according to air pollution, ozone, toxics, noise and odor. The list of forty-eight (48) uses attached to the ordinance is the results of that attempt. No attempt at the time of the report from Water and Air Research or at the final adoption of the moratorium ordinance was made to indicate where and how those forty-eight (48) legal uses would be accommodated in the city of Gainesville.
13. The City Commission voted five to zero to authorize the City Attorney to draft a temporary moratorium ordinance on a list of industrial uses in the I-2 zoning district for first reading.
14. The City Commission declined specific, repeated requests to provide the cut-off date after which new applications would not be accepted but pending applications

“in the pipeline” would proceed through development approval uninterrupted by the moratorium. On April 23, 2001 the CITY held the first reading of the proposed moratorium ordinance.

15. On May 14, 2001 the CITY held the second reading of Ordinance #0-01-25. At that time the City Commission by a five to zero vote approved the ordinance.
16. The stated purpose of Ordinance #0-01-25 is to:

“enable the City of Gainesville sufficient time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the City of Gainesville Code of Ordinances, including the Land Development Code, relating to the allowance or development of certain manufacturing uses, as more specifically defined herein, within the ‘I-1: Limited Industrial District’ and the ‘I-2: General Industrial District’ in the City of Gainesville.”

The ordinance also states that during this time period the CITY will not take any action on any application for development permit or issue any development order which has the effect of allowing or permitting the development of those certain manufacturing uses in the I-1 and I-2 zoning districts within the CITY. The language of the ordinance is “no application for development permit may be filed, accepted, or processed” for any development of the forty-eight (48) uses described in Exhibit “A” to the moratorium. Before enactment of Ordinance #0-01-25, the forty-eight (48) uses listed in Exhibit “A” to the Ordinance were permitted by right in the I-2 zoning district.

17. By the terms of Ordinance #0-01-25, the moratorium is in effect until 11:59 p.m. on Monday, November 12, 2001. It is likely the moratorium will be extended beyond that time because the CITY will need approximately one hundred twenty

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(120) days to advertise, conduct public hearings and adopt the amendment to the Land Development Code, after it completes its review, scientific study, and draft an ordinance. The study, review and drafting cannot be done in sixty days.

18. By prohibiting development permits for legal uses permitted by right in the I-2 zoning district, the CITY has effected a taking of at least the 22.37 acres YELVINGTON contracted to sell to Watson Construction Company. Even if the CITY eventually lifts the moratorium, YELVINGTON has temporarily been deprived of substantially all economically beneficial or productive use of the subject property specifically contemplated by him as alleged in paragraph nine. Because the CITY will be unable to conclude its review, study, public hearings and preparation and adoption of amendments to the CITY Code of Ordinances in one hundred eighty (180) days, YELVINGTON will continue to be deprived of substantially all economically beneficial or productive use of the subject property beyond the November 12, 2001 date. This temporary deprivation constitutes a taking.
19. CITY Ordinance #0-01-25 interfered with YELVINGTON's reasonable, distinct, investment-backed expectations held at the time it contracted to purchase the property in 1998, rezoned the property in 1999, contracted to sell a portion of the property to Watson Construction Company in 2000 and close on the purchase in July 2000.
20. The CITY effected this taking without providing to YELVINGTON due process as required by the CITY Land Development Code. Section 30-351(c)(3) of the Land Development Code requires that when the CITY amends the list of

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permitted use categories allowed by a zoning use and the change involves less than five percent (5%) of total land area of the CITY, all owners of property whose land will be affected by the petition shall be given notice of the hearings by mail. This notice shall be mailed at least fifteen (15) days prior to the date of hearings. YELVINGTON is the record owner of land in the affected I-2 zoning category and it has never received written notice from the CITY concerning the proposed moratorium. YELVINGTON and all other owners of land zoned I-1 and I-2 were entitled to written notice because lands in those categories involve less than five percent (5%) of the total land area of the CITY.

21. An injunction is proper because Ordinance #0-01-25 is confiscatory and YELVINGTON's remedy is a judicial determination that the ordinance is unenforceable as applied to them.
22. By adopting Ordinance #0-01-25 the CITY effectively undid the land use amendment and zoning change it granted to YELVINGTON in 1999. The CITY cannot effect this rezoning absent a change in circumstances from those existing in 1999 and without granting due process to YELVINGTON to challenge the rezoning before it is completed. The CITY has not claimed that there has been a change in circumstances from February 1999 to February 2001 that would justify reversal of the land use amendment and zoning change granted in 1999. The CITY cannot arbitrarily change its mind after it has rezoned property.
23. Although the CITY has the power to determine where a legal use may be developed, the CITY cannot ban a legal use. All forty-eight (48) uses listed in the ordinance, including hot-mix asphalt plants, are legal uses. City Ordinance

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#0-01-25 bans the forty-eight (48) uses permitted by right in the I-2 zoning district without establishing a zoning district in which those uses may exist.

24. When the CITY crafts its amendment to the Land Development Code relating to permitted uses in I-1 and I-2, the CITY will either ban outright the forty-eight (48) uses or establish a new zoning designation for the forty-eight (48) uses currently banned by Ordinance #0-01-25. The effect of either of those amendments will be to make all then existing facilities engaged in the forty-eight (48) uses non-conforming. Once a property is designated as a non-conforming use the landowner is restricted in how the property may be used. Because the effect of any final amendment to the Land Development Code developed by the CITY will be to limit how landowners currently engaged in any of the forty-eight (48) legal uses may utilize their property, YELVINGTON and all landowners in I-1 and I-2 should have received written notice by mail of the proposed moratorium.
25. It is unclear from the language of City Ordinance #0-01-25 the intent of the CITY in adopting the moratorium. If the CITY intends to ban certain legal uses of property zoned I-1 and I-2, the CITY has effected a taking of the land owners' property rights.
26. If the intent of the CITY is to develop additional standards applicable to all industries to protect the health and safety of Gainesville citizens, the CITY can accomplish that by developing an overlay district to which those standards would apply. The CITY can develop an overlay district for industrial uses without imposing a moratorium on existing legal uses. Such an overlay district would

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allow the CITY to protect what it claims to be the health and safety of its citizens while also protecting the rights of YELVINGTON and other owners of I-1 and I-2 property to engage in legal uses of their property.

27. YELVINGTON's claim is ripe because on May 14, 2001 the CITY, through the City Commission, made a final decision to adopt City Ordinance #0-01-25 which burdens all property zoned I-1 and I-2, including that property owned by YELVINGTON. The adopted ordinance provides to the court a firm delineation of permitted uses in the I-1 and I-2 zoning districts so the court may assess the extend of the taking of YELVINGTON's property that has occurred.
28. YELVINGTON would not have purchased the entire 49.64 acres in July 2000 but for the Gainesville Land Development Code allowing the development of hot mix asphalt batch plants in I-2 zoning districts. YELVINGTON purchased the entire acreage with the intent of co-locating a hot mix asphalt batch plant with its aggregate storage facility. Although other uses of the property may be permitted under the I-2 zoning district, none require the acreage that a hot mix asphalt batch plant does. If YELVINGTON had known it would in 2001 be allowed to use the property for only certain limited uses, all of which require significantly less acreage than a hot mix asphalt batch plant, YELVINGTON would not have purchased as much land as it did in July 2000.
29. For every day the moratorium is in effect, YELVINGTON is deprived of the right to develop its property for a legal use permitted by right under the I-2 zoning district. This deprivation is an immediate and irreparable injury to YELVINGTON.

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WHEREFORE, CONRAD YELVINGTON, as Trustee of the CONRAD YELVINGTON REVOCABLE TRUST OF 1997 and GARY YELVINGTON, as the Trustee of the GARY YELVINGTON REVOCABLE TRUST OF 1997 request the court to enter an order permanently enjoining the CITY OF GAINESVILLE from enforcing City Ordinance #0-01-25 on the YELVINGTON property or enjoining the CITY OF GAINESVILLE from refusing to issue all necessary permits for an asphalt plant on the YELVINGTON property subject to such conditions as the court may find proper.

SAVAGE, KRIM, SIMONS & JONES, LLC


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Florida Bar No. 040640
Elizabeth F. Hodge, Esquire
Florida Bar No. 0146994
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Gainesville, Florida 32601-5289
Telephone (352) 372-4263
Facsimile (352) 375-5365
Attorneys for Plaintiff

c:/wp/yelvington/complaint for injunctive relief
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ORDINANCE NO. _____
0-01-25

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4 An ordinance of the City of Gainesville, Florida, imposing a
5 temporary moratorium on building permits, zoning permits, site plan
6 approval and any other official action of the City of Gainesville
7 permitting or having the effect of permitting certain industrial
8 development or use on all real property located in whole or in part
9 within the "I-1: Limited industrial district" and the "I-2: General
10 industrial district" of the City of Gainesville, as more specifically set
11 forth in this ordinance; providing a procedure for extraordinary
12 hardship; providing severability clause; and providing an immediate
13 effective date.

14
15 WHEREAS, the City of Gainesville on November 13, 1991 adopted the City of
16 Gainesville 1991-2001 Comprehensive Plan (hereinafter, the "Comprehensive Plan") which
17 contained among other matters goals, objectives and policies with respect to future land use in
18 accordance with the Local Government Comprehensive Planning and Land Development and
19 Regulation Act, Florida Statutes 163.3161 through 163.3215 ("the Act"); and

20 WHEREAS, pursuant to the Act, certain real property within the City of Gainesville is
21 designated for industrial use with the zoning categories of "I-1: Limited industrial district" and
22 the "I-2: General industrial district"; and

23 WHEREAS, it is the policy of the Comprehensive Plan that the City adopt regulations to
24 determine the appropriate scale of uses and consider the externalities of the uses in the industrial
25 land use and corresponding zoning district categories; and

26 WHEREAS, the City of Gainesville on June 10, 1992, adopted the City of Gainesville
27 Land Development Code (hereinafter, the "Code") which identifies and creates certain zoning
28 districts, namely the "I-1: Limited industrial district" and the "I-2: General industrial district",
29 and;



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1 WHEREAS, the "I-1: Limited industrial district" and the "I-2: General industrial
2 district" identify certain specific uses and categories of development and uses which could cause
3 harm to the public health, safety and welfare of the community, negatively impact adjoining uses
4 and development, and otherwise be detrimental to the environment; and

5 WHEREAS, the City Commission finds that it is essential to protect and preserve the
6 environment and the public health, welfare and safety of the City and its citizenry, that it is in the
7 City's best interest, and that it is consistent with the Comprehensive Plan for the City to study the
8 potential impact of certain uses and development within the I-1 and the I-2 districts on the
9 environment and surrounding land uses; and

10 WHEREAS, the City Commission has heard testimony and received evidence from its
11 professional planning staff and professional consultant that certain uses within the I-1 and I-2
12 Districts may cause harm to the environment through undesirable air, odor, toxins, and noise
13 emissions and otherwise be incompatible with surrounding land uses; and

14 WHEREAS, a legal advertisement was placed in a newspaper of general circulation
15 notifying the public of this proposed Ordinance and of the Public Hearing to be held in the City
16 Commission Auditorium, First Floor, City Hall, of the City of Gainesville approximately seven
17 days after the day the first legal advertisement was published; and

18 WHEREAS, a second legal advertisement was placed in the aforesaid newspaper
19 notifying the public of the second Public Hearing to be held approximately five days after the
20 day the second legal advertisement was published; and

21 WHEREAS, the two Public Hearings were held pursuant to the published notices
22 described above at which hearing the parties in interest and all others had an opportunity to be
23 and were, in fact, heard.

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1 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
2 **CITY OF GAINESVILLE, FLORIDA:**

3 **Section 1.** The City Commission adopts the foregoing findings.

4 **Section 2.** Purpose

5 (a) The purpose of this Ordinance is to enable the City of Gainesville sufficient time
6 to review, study, hold public hearings, and prepare and adopt an amendment or amendments to
7 the City of Gainesville Code of Ordinances, including the Land Development Code, relating to
8 the allowance or development of certain manufacturing uses, as more specifically defined herein,
9 within the "I-1: Limited industrial district" and the "I-2: General industrial district" in the City
10 of Gainesville. During this time period, the city will not take any action on any application for
11 development permit or issue any development order which has the effect of allowing or
12 permitting the development of those certain manufacturing uses in the aforesaid zoning districts
13 within the City. It is not the purpose of this Ordinance to deny development orders and permits
14 for other uses that are permitted by right or special use permit and that otherwise comply with all
15 applicable codes, ordinances, regulations, and policies of the City of Gainesville and other
16 regulatory agencies.

17 (b) It is further the purpose of this Ordinance to fulfill the City's constitutional charge
18 and statutory obligations to protect and preserve the environment and the public health, welfare
19 and safety of the citizens of the City of Gainesville, and in particular to protect the public health,
20 welfare and safety of the citizens and value, use and enjoyment of property in the City of
21 Gainesville during the interim period described in this Ordinance, and thus defer official
22 governmental action until the City of Gainesville has properly reviewed, studied, held public

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1 hearings and adopted amendments, if any, to the City of Gainesville Code of Ordinances, as
2 necessary.

3 Section 3. Definitions

4 (a) "Application for development permit" means any application for building permit,
5 zoning permit, preliminary or final development plan review, special use permit, variance, or any
6 other official action of the City of Gainesville having the effect of permitting the use or
7 development of land.

8 (b) "Development" has the meaning given it in Section 380.04, Florida Statutes
9 (2000).

10 (c) "Development Order" means any order granting, denying, or granting with
11 conditions an application for development permit.

12 (d) "Development permit" includes any building permit, zoning permit, development
13 plan approval, special use permit, variance, or any other official action of the City of Gainesville
14 having the effect of permitting the use or development of land, but does not include subdivisions
15 and Zoning Compliance forms issued under Chapter 30, and occupational licenses issued under
16 Chapter 25 of the Gainesville Code of Ordinances.

17 (e) "Moratorium area" means all that real property located in whole or in part within
18 the "I-1: Limited industrial district" and the "I-2: General industrial district" as identified on the
19 City of Gainesville Zoning Map Atlas on file in the office of the Clerk of the Commission.

20 Section 4. Imposition of Moratorium

21 (a) For a period of 182 days from and after the adoption date of this ordinance,
22 ending at 11:59 p.m. on Monday, November 12, 2001:

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1 (1) No application for development permit may be filed, accepted, or
2 processed for any development of those certain uses as specifically described in Exhibit "A",
3 attached hereto and made a part hereof as if set forth in full, located in the Moratorium area by
4 any Department, Board, Commission, or Agency of the City of Gainesville, except as provided
5 in Paragraph (b) below and Section 5 of this ordinance.

6 (2) No development order may be issued for any use or development of those
7 certain uses as specifically described in Exhibit "A", located in the Moratorium area unless an
8 application for development permit was properly filed with the City of Gainesville on or before
9 5:00 p.m. on Monday, February 12, 2001, except as provided in Paragraph (b) below and Section
10 5 of this ordinance.

11 (b) The imposition of the moratorium is not intended to affect either the processing of
12 any application for development permit or the issuance of development orders on any
13 development within the Moratorium area for which an application for development permit was
14 properly filed with the City of Gainesville on or before 5:00 p.m. on Monday, February 12, 2001.

15 Section 5. Alleviation of Hardship

16 (a) The City Commission of the City of Gainesville may authorize exceptions to the
17 moratorium imposed by this ordinance when it finds, based upon substantial competent evidence
18 presented to it, that deferral of action on an application for development permit and the deferral
19 of the issuance of a development order for the duration of the moratorium would impose an
20 extraordinary hardship on a landowner or developer.

21 (b) A request for an exception based upon extraordinary hardship shall be filed with
22 the City Manager or designee, including a fee of \$300.00 by the landowner, or the developer
23 with the consent of the landowner, to cover processing and advertising costs, and shall include a

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1 recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and
2 shall contain such other information as the City Manager shall prescribe as necessary for the City
3 Commission to be fully informed with respect to the application.

4 (c) A public hearing on any request for an exception for extraordinary hardship shall
5 be held by the City Commission at the first regular meeting of the City Commission that occurs
6 after the expiration of the period for publication of notice of the request for an exception.

7 (d) Notice of the filing of a request for an exception, and the date, time, and place of
8 the hearing thereon shall be published once at least 10 days prior to the hearing in a newspaper of
9 general circulation within the City limits of the City of Gainesville, Florida.

10 (e) In reviewing an application for an exception based upon a claim of extraordinary
11 hardship, the City Commission shall consider the following criteria:

12 (1) The extent to which the applicant has, prior to Monday, February 12,
13 2001, received City of Gainesville permits or approvals for the proposed development.

14 (2) The extent to which the applicant has, prior to Monday, February 12,
15 2001, made a substantial expenditure of money or resources in reliance upon permits or other
16 approvals of the City of Gainesville directly associated with physical improvements on the land,
17 such as grading, installation of utility infrastructure or any other public improvements.

18 (3) Whether the applicant, prior to Monday, February 12, 2001, has
19 contractual commitments in reliance upon permits or other approvals of the City of Gainesville
20 to complete a structure(s).

21 (4) Whether the applicant, prior to Monday, February 12, 2001, has in
22 reliance upon permits or other approvals of the City of Gainesville incurred financial obligations

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1 to a lending institution which, despite a thorough review of alternative solutions, the applicant
2 cannot meet unless development proceeds.

3 (5) Whether the moratorium will expose the applicant to substantial monetary
4 liability to third persons; or would leave the applicant completely unable, after a thorough review
5 of alternative solutions, to earn a reasonable investment backed expectation on the property.

6 (f) The City Commission shall consider the following non-exclusive factors under
7 the criteria set forth in subsection (e) above:

- 8 (1) The history of the property;
9 (2) The history of any development on the property;
10 (3) The history of the property's Future Land Use Map classification;
11 (4) The history of the property's zoning;
12 (5) Any change in development when property ownership changed; and
13 (6) The present nature, size and use of the property.

14 (g) At the conclusion of the Public Hearing and after reviewing the evidence and
15 testimony placed before it, the City Commission shall act upon the request either to approve,
16 deny, or approve in part and deny in part the request made by the applicant.

17 **Section 6.** If any word, phrase, clause, paragraph, section or provision of this
18 ordinance or the application hereof to any person or circumstance is held invalid or
19 unconstitutional, such finding shall not affect the other provisions or applications of the
20 ordinance which can be given effect without the valid or unconstitutional provisions or
21 application, and to this end the provisions of this ordinance are declared severable.

22 **Section 7.** This ordinance shall become effective immediately upon final adoption.

23 **PASSED AND ADOPTED** this ____ day of _____, 2001.

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Paula M. DeLaney, Mayor

ATTEST:

APPOVED AS TO FORM AND LEGALITY:

Kurt Lannon
Clerk of the Commission

Marion J. Radson, City Attorney

This ordinance passed on first reading this ____ day of _____, 2001

This ordinance passed on second reading this ____ day of _____, 2001

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EXHIBIT "A"

- 1
- 2
- 3
- 4 1. ✓ Primary production of aluminum (IN. 3334)
- 5 2. Primary smelting and refining of copper (IN. 3331)
- 6 3. Petroleum refining (IN. 2911)
- 7 4. Pulp mills (IN. 2611)
- 8 5. Steel works, blast furnaces, and rolling mills (IN. 3312)
- 9 6. Cellulosic manmade fibers (2823)
- 10 7. Phosphatic fertilizers (IN. 2874)
- 11 8. Paper mills (IN. 2621)
- 12 9. Alkalies and chlorine (IN. 2812)
- 13 10. Inorganic pigments (IN. 2816)
- 14 11. Paperboard mills (IN. 2631)
- 15 12. Plastic materials and synthetic resins, and nonvulcanizable elastomers (IN. 2821)
- 16 13. Nitrogenous fertilizers (IN. 2873)
- 17 14. Cement, hydraulic (IN. 3241)
- 18 15. Manmade organic fibers, except cellulosic (IN. 2824)
- 19 16. Electrometallurgical products, except steel (IN. 3313)
- 20 17. Products of petroleum and coal not elsewhere classified (IN. 2999)
- 21 18. Gum and wood chemicals (IN. 2861)
- 22 19. Lime (IN. 3274)
- 23 20. Industrial inorganic chemicals, not elsewhere classified (IN. 2819)
- 24 21. Aluminum sheet, plate and foil (IN. 3353)
- 25 22. Glass containers (IN. 3221)
- 26 23. Flat glass (IN. 3211)
- 27 24. Cyclic organic crudes and intermediates, and organic dyes and pigments (IN. 2865)
- 28 25. Primary smelting and refining of nonferrous metals, except copper and aluminum (IN.
29 3339)
- 30 26. Brick and structural clay tile (IN. 3251)
- 31 27. Medicinal chemicals and botanical products (IN. 2833)
- 32 28. Synthetic rubber (IN. 2822)
- 33 29. Secondary smelting and refining of nonferrous metals (IN. 3341)
- 34 30. Explosives (IN. 2892)
- 35 31. Aluminum rolling and drawing, not elsewhere classified (IN. 3355)
- 36 32. Carbon black (IN. 2895)
- 37 33. Asphalt paving mixtures and blocks (IN. 2951)
- 38 34. Industrial organic chemicals, not elsewhere classified (IN. 2869)
- 39 35. Gray and ductile iron foundries (IN. 3321)
- 40 36. Minerals and earths, ground or otherwise treated (IN. 3295)
- 41 37. Gypsum products (IN. 3275)
- 42 38. Pesticides and agricultural chemicals, not elsewhere classified (IN. 2879)
- 43 39. Rolling, drawing, and extruding of copper (IN. 3351)
- 44 40. Pharmaceutical preparations (IN. 2834)
- 45 41. Steel wire drawing and steel nails and spikes (IN. 3315)
- 46 42. Asphalt felts and coatings (IN. 2952)

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(Exhibit "A" page 2 of 2)

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- 43. Pressed and blown glass and glassware, not elsewhere classified (IN. 3229)
- 44. Cold-rolled steel sheet, strip, and bars (IN. 3316)
- 45. Chemicals and chemical preparations, not elsewhere classified (IN. 2899)
- 46. Mineral wool (IN. 3296)
- 47. Tires and inner tubes (IN. 3011)
- 48. Mining and quarrying of nonmetallic minerals except fuels (MG 14)

COPY

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

CONRAD YELVINGTON as Trustee
for the CONRAD YELVINGTON
REVOCABLE TRUST OF 1997 and
GARY YELVINGTON, as Trustee of the
GARY YELVINGTON REVOCABLE
TRUST OF 1997,

CASE NO. 010/CA2047

Division "K"

Plaintiff,

vs.

CITY OF GAINESVILLE,

Defendant.

MOTION TO CONSOLIDATE

CONRAD YELVINGTON as Trustee of the CONRAD YELVINGTON REVOCABLE TRUST OF 1997 and GARY YELVINGTON as Trustee of the GARY YELVINGTON REVOCABLE TRUST OF 1997 ("YELVINGTON"), pursuant to Rules 1.100(b) and 1.270(a), *Fla. R. Civ. P.* moves the court to consolidate this action with Case Number 01-0-CA-1356, *Watson Construction Company, Inc. v. City of Gainesville*, which is currently pending in Alachua County Circuit Court and says:

1. When actions involving a common question of law or fact are pending before the court, the court may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Rule 1.270(a), *Fla. R. Civ. P.*

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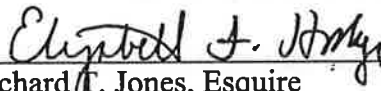
2. In its complaint filed simultaneously with this motion YELVINGTON seeks injunctive relief to stop enforcement of City of Gainesville Ordinance #0-01-25 as such ordinance relates to YELVINGTON's property.
3. Watson Construction, Inc. ("Watson") has filed a complaint for declaratory and injunctive relief for injuries it suffered arising out of the enactment of City of Gainesville Ordinance #0-01-25.
4. Both cases will be pending in Alachua County Circuit Court although at the time of filing this motion it is unknown to which division this case will be assigned.
5. Both cases arise out of City of Gainesville Ordinance #0-01-25 which, effective February 12, 2001, imposed a moratorium on 48 legal uses in the I-1 and I-2 zoning districts.
6. YELVINGTON owns 49.64 acres of land in the CITY OF GAINESVILLE zoned I-2. On March 6, 2000, Watson and YELVINGTON entered into an agreement in which YELVINGTON agreed to sell to Watson approximately 22 acres of the 49.64 acre parcel. At the time of the agreement both YELVINGTON and Watson contemplated that Watson would construct a hot mix asphalt plant on the 22 acre site to be co-located with the aggregate distribution facility YELVINGTON will operate on the remaining portion of the site.
7. The claims of YELVINGTON and Watson involve common questions of fact and law and consolidation will avoid the possibility of inconsistent results. *U-Haul Co. of Northern Florida, Inc. v. White*, 503 So. 2d 332 (Fla. 1st DCA 1986).
8. The interests of judicial economy are best served by consolidating the cases.

WHEREFORE YELVINGTON respectfully requests that the court consolidate this case

with Case Number 01-0-CA-1356, Watson Construction Company, Inc. v. City of Gainesville.

I HEREBY CERTIFY that a copy of the foregoing document has been furnished by U.S. Mail to Marion Radson, Esquire, City Attorney for the Defendant, City of Gainesville, P.O. Box 1110, Gainesville, Florida 32602 on this 1st day of ~~May~~^{June}, 2001.

SAVAGE, KRIM, SIMONS & JONES, LLC



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