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November 20, 1998

To: Gainesville City Commission

Copy: Mr. Marian Radson, Gainesville City Attorney

Following receipt of a copy of a letter from Mr. Mac McEachern on the subject of the proposed construction moratorium round the Gainesville airport, I asked Mr. Ralph DeMeo of Hopping, Green, Sams & Smith (our counsel) to review Mr. McEachern's comments and provide us his opinion of their significance relative to the ordinance issue. I asked that he do this in light of our attorney's earlier opinions also provided to you as well as the comments (attached) of Mr. Roberts of the Aviation Office of FDOT.

This is offered to you in hopes that it may help resolve the legal issues around this subject. PCR remains very concerned that the proposed moratorium as written will delay our efforts to get approval of construction permits necessary for us to respond to our business needs, especially, environmental, health, and safety matters.

Sincerely,

A handwritten signature in cursive script that reads "Keith B. Baucom".

Keith B. Baucom  
Vice President

Attachments: As stated



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MEMORANDUM

TO: Keith Baucom, PCR, Inc.

FROM: Ralph A. DeMeo

RE: City of Gainesville Proposed Moratorium on Construction Around the Gainesville Airport

DATE: November 20, 1998

You have asked me to prepare a supplemental memorandum to my prior memorandum dated November 13, 1998, pertaining to the City of Gainesville's proposed construction moratorium around the Gainesville Airport. It has been suggested that § 333.03(1)(c)5., Fla. Stat., the statutory procedure for granting variances under Florida's airport zoning laws, may authorize the City to enact a moratorium to prevent the construction of structures near the Gainesville airport using the City's power to grant or deny construction variances. However, reliance on § 333.03(1)(c)5., Fla. Stat., is inappropriate.

Section 333.03, Fla. Stat., authorizes political subdivisions of the state to establish regulations for the prevention of airport navigation hazards. Section 333.03(1)(c) requires the creation of variances to accommodate the erection, alteration or modification of structures which would exceed the relevant federal obstruction standards. However, Subpart 5 of § 333.03(1)(c) provides that no variance shall be approved solely on the basis that the proposed structure will not exceed federal obstruction standards as contained in the pertinent federal laws and aviation regulations. In Florida, a variance has been defined as a special exception to existing zoning laws to permit nonconforming uses. *Thomson v. Tequesta Bd. Of Adjustment*, 546 So.2d 457 (Fla. 4th DCA 1989). The valid establishment of a variance requires consideration of the relevant zoning regulations. A municipality which has the power to vary the application of zoning regulation or to authorize special exceptions to those zoning regulations is expressly limited to such variations or exceptions as are consistent with the spirit, intent, purpose or general plan of the regulations. *Troup v. Bird*, 53 So.2d 717 (Fla. 1951).

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Thus, § 333.031(c)(1)5. merely provides that a municipality must evaluate the entire scope of regulatory requirements prior to enacting a valid variance from airport zoning regulations.

Section 333.03(1)(c)5., Fla. Stat., is irrelevant to the establishment of a moratorium on the construction of structures around an airport. Consequently, reference to or reliance on this section is inappropriate in determining whether the City of Gainesville may enact a moratorium on the construction of structures which is more restrictive than the existing federal law. In conclusion, nothing in Chapter 333, Fla. Stat., including the variance provision, affects or modifies our original opinion that the proposed City moratorium, which is more restrictive than federal air navigation obstruction standards, is unconstitutional.