

MEMORANDUM

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Office of the City Attorney

TO: Mayor and City Commissioners

DATE: June 14, 2004

FROM: City Attorney

CITY ATTORNEY

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 receive an update on the status of the litigation and discuss a procedure for hearing an application for a special use permit for an asphalt plant, and possibly either a wellfield protection permit or wellfield special use permit, as applicable, on the property.

In February 2001, several citizens appeared at a City Commission meeting and expressed concerns about the proposed location of an asphalt and concrete batch plant on property on 441 north of the Florida Highway Patrol Station. At that meeting, after hearing the comments of the citizens, the City Commission authorized the City Attorney to draft an ordinance imposing a moratorium on certain uses in its industrial land use areas. Three days later, Watson Construction Company, the owner of the proposed asphalt and concrete batch plant, filed a plan for preliminary site plan approval for the asphalt and concrete batch plant. Watson planned to put the plant on the 441 property owned by Conrad and Gary Yelvington. The Yelvingtons operated a rock aggregate facility on the property.

Watson filed suit, requesting the Court enjoin the City from enacting the moratorium ordinance, or in the alternative, to declare that Watson was not subject to the ordinance. The court refused to do so.

At the same time that the City Commission authorized the City Attorney to draft the moratorium ordinance, the Commission also referred to the Community Development Committee the task of recommending the uses in the I-1 and I-2 to be studied in the moratorium. The subcommittee, and later the full commission, heard testimony, took evidence and considered what uses should be studied in the moratorium. After several public hearings, with input from an environmental consultant hired by City staff, Dr. Zegel, and with input from an environmental consultant hired by Watson, Mr. Cullen, the City Commission imposed a six-month moratorium on 48 uses to be studied during the moratorium. Asphalt plants were included in these uses, but not concrete plants.


The ordinance was adopted on May 14, 2001 providing an effective date of February 12, 2001 for the moratorium. The purpose of the Moratorium Ordinance was to enable the City sufficient time to review, study and hold public hearings on the uses within the Industrial 1 and 2 zoning district that may cause harm to the environment and be incompatible with surrounding land uses. In May of 2001, Watson filed for a temporary injunction, requesting the court enjoin the City from enforcing the moratorium against Watson's proposed construction of an asphalt/concrete batch plant. The Yelvingtons also filed for temporary injunction arguing that the moratorium constituted a temporary taking because an asphalt plant could not be located on the property during the course of the moratorium.

The hearing was held on July 11, 2001 and the Court issued its orders on July 24, 2001. The court denied the request for temporary injunction as to Yelvington, but granted it as to Watson. The Court found that Watson was likely to sustain irreparable harm because Watson's contract to purchase part of the Yelvington property expired during the term of the moratorium. The Court also estopped the City from applying the moratorium ordinance to Watson because of substantial expenses occurred by Watson and because Watson faced a substantial likelihood of success on the merits.

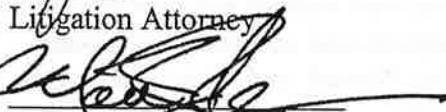
The City appealed the Court's decision granting the temporary injunction. The First District Court of Appeal upheld the granting of the temporary injunction but found the injunction to be invalid because of the Courts failure to require Watson to post a bond for the granting of the temporary injunction. The First District remanded the case back to the trial court for the posting of a bond and further proceedings. No further activity has occurred in the lawsuit.

The next step would be a final hearing before the trial court on the merits of the complaint.

Prepared by:


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Submitted by:


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