



MEMORANDUM
Office of the City Attorney

LEGISLATIVE ITEM NO. 001066

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

TO: Mayor and City Commission

DATE: May 14, 2001
~~April 23, 2001~~
FIRST READING
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-01-25
An ordinance of the City of Gainesville, Florida, imposing a temporary moratorium on building permits, zoning permits, site plan approval and any other official action of the City of Gainesville permitting or having the effect of permitting certain industrial development or use on all real property located in whole or in part within the "I-1: Limited industrial district" and the "I-2: General industrial district" of the City of Gainesville, as more specifically set forth in this ordinance; providing a procedure for extraordinary hardship; providing severability clause; and providing an immediate effective date.


Recommendation: The City Commission adopt the proposed ordinance.

The City Commission received testimony and evidence, and discussed and authorized the City Attorney at the meetings of February 12, March 12, and March 29, 2001, to prepare an ordinance imposing a moratorium on certain development and uses in the Industrial zoning districts. The list of uses included in the moratorium are attached to the proposed ordinance as Exhibit "A".

The purpose of the Moratorium Ordinance is 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. The moratorium also allows the City to prepare and adopt an amendment or amendments to the City of Gainesville Code of Ordinances, including the Land Development Code. During this time period, the city will not issue any development order or permit 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 Ordinance fulfills the City's constitutional charge and statutory obligations to protect and preserve the environment and the public health, welfare and safety of the citizens of the City of Gainesville.

Prepared and
submitted by:


Marion J. Radson
City Attorney

Passed on first reading by a vote of 5-0.




MEMORANDUM

Office of the City Attorney

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

FOR INFORMATIONAL PURPOSES ONLY

TO: Mayor and Members of the City Commission
Wayne Bowers, City Manager

FROM: Marion J. Radson, City Attorney 

DATE: April 23, 2001

SUBJECT: Moratorium Ordinance

As you are aware, Watson Construction Company, Inc. has filed a lawsuit and Motion for Temporary Injunction asking the court to enjoin the City from passing the moratorium ordinance, or in the alternative, to declare that Watson is not subject to the ordinance. Watson also asks the court to declare that the property is not subject to the City's Wellfield Protection Ordinance and should not be required to obtain a Special Use Permit.

Attached is a chronology of events that may be pertinent to issues that Watson may raise at the readings of the moratorium ordinance.

Attachment

DATE	ACTIVITY
6/28/99	Subject property rezoned from AGR to I-2 with Eastern 400' remaining in Agriculture.
Summer 2000	City staff meets with Eng (Engineer for Watson), and Watson to discuss an asphalt/concrete plant proposed to be constructed by Watson on a portion of the property. City staff says City is concerned about asphalt plant and may result in moratorium. Staff consults and tells Eng that City staff would not propose moratorium; but this will not prevent neighbors from protesting. Ralph Eng says Watson will go to optional Concept Review.
10/24/00	County adopts expanded Wellfield lines by ordinance. Amendment extends tertiary zone into eastern 1/3 (approx.) of subject property. Subject property is now subject to City's Wellfield Protection Ordinance.
11/30/00	Concept Review application filed by Watson for asphalt/concrete plant.
1/18/01	Concept Review before City Planning Board; residents express concern about noise, odor and increased traffic.
2/12/01	Regular City Commission meeting; under citizen comment, citizens raise concerns about certain uses in Industrial Zones. Commission, by motion, sends the matter to Community Development Committee and authorizes City Attorney to draft an ordinance for a moratorium based on the recommendation of the committee; Ms. Boyes, attorney for Watson, (in the audience on another matter), opposes a moratorium ordinance during public comment.
2/15/01	Application for preliminary site plan review filed by Watson for asphalt/concrete plant on portion of subject property (NOTE: Western portion of property in final stages for development approval of a rock aggregate plant by Yelvington).
2/28/01	Ms. Boyes, attorney for Watson, files application for Wellfield Special Use permit under protest.
3/5/01	Community Development Committee meeting; Dr. Zegel, City Consultant, provides a report on uses in the industrial zone that commissioners may want to consider for moratorium. Ms. Boyes objects to Dr. Zegel's report as not being specific enough and has her own consultant (Cullen) testify as to uses. The committee decides to send the matter to the full commission for meeting on 3/12/01, recommending that commission further discuss and consider imposing a moratorium on certain industrial uses.
3/8/01	Letter received from Watson's Engineers requesting exemption from Wellfield Special Use permit.
3/12/01	Regular Commission meeting; Dr. Zegel submits "Additional Detail Report". Commission continues discussion to next regular meeting of March 29.
3/13/01	Letter to City from Alachua County DEP concludes that proposed asphalt plant on subject property is located in tertiary zone and subject to Wellfield Protection Ordinance and required to obtain special use permit. Additionally, asphalt plants are "classD" facilities subject to Alachua County's Hazardous Materials Management Code. (NOTE: In an earlier letter dated December 18, 2000, Alachua County DEP concluded that proposed site is located within the tertiary zone, and that concrete batch plants are Class "B" facilities and asphalt plants are Class "D" facilities.)

3/27/01	Technical Review Committee (City Staff) informally discusses proposed asphalt/concrete plant with Watson's representatives who hear comments from staff on the application for preliminary site plan review.
3/29/01	Special commission meeting; Commission hears more testimony from Dr. Zegel, citizens and Watson's representatives. Commission votes to impose moratorium on particular uses in industrial zones.
4/3/01	Watson files Corrected Plans for Preliminary Site Plan review for asphalt/concrete plant based on staff comments from Technical Review Committee.
4/19/01	City Plan Board Meeting – Agenda includes application for Wellfield Special Use Permit and development plan review by Watson. (As of date of preparation of this chart, meeting has not yet occurred).

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04/16/01

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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04/16/01

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:

D R A F T

04/16/01

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

D R A F T

04/16/01

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

D R A F T

04/16/01

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:

APPROVED 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

EXHIBIT "A"

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

NOTE: IN. and MG refer to the Standard Industrial Classification Manual (1987 Edition), as provided in Sec. 30-22 of the Land Development Code.

(Exhibit "A" page 2 of 2)

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)

NOTE: IN. and MG refer to the Standard Industrial Classification Manual (1987 Edition), as provided in Sec. 30-22 of the Land Development Code.