

**LEGISLATIVE #**

**110667A**

1 **BEFORE THE CITY COMMISSION**  
2 **CITY OF GAINESVILLE, FLORIDA**  
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5 **IN THE MATTER OF DESIGN PLAT FILED BY**  
6 **Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development**  
7 **and Investment Group, LLC, regarding a three-lot subdivision of property located at 820**  
8 **NW 53<sup>rd</sup> Avenue, Gainesville, Florida.**  
9 **PETITION No. DB-11-145 SUB. (Legistar No. 110667)**  
10

11 **ORDER**  
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14 The City Commission of the City of Gainesville held a formal quasi-judicial hearing on  
15 February 16, 2012 on Petition DB-11-145 SUB (Legistar No. 110667), filed by Causseaux  
16 Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development and Investment  
17 Group, LLC (“Petitioner”). The petition is for design plat approval for a 67.34 acre parcel  
18 proposed to be subdivided into three lots, located in the vicinity of the 800 Block of NW 53<sup>rd</sup>  
19 Avenue, north side, on certain real property as more specifically described in the applications  
20 and as shown on the design plat. Nalbandian Properties, LLC, Mogas Investments, Inc., and  
21 Ropen Nalbandian (“Affected Parties”) were affected parties entitled to actual written notice of  
22 this Petition as provided by the City’s Land Development Code. The Affected Parties, by and  
23 through their attorney and counsel of record, Karl J. Sanders, timely filed a request for formal  
24 quasi-judicial hearing as provided in the Rules of the City Commission.

25 **STATEMENT OF THE PETITION**

26 Petition No. DB-11-145 SUB is a petition for design plat approval to subdivide a 67.34  
27 acre parcel into three lots, on certain real property, as more specifically shown on the design plat  
28 in the record.

29 **PRELIMINARY STATEMENT**

30 After hearing formal presentations and receiving evidence and testimony from the  
31 Petitioner and City Staff, whose witnesses were duly sworn, receiving documentary evidence and

1 hearing argument of counsel for Affected Parties, the City Commission, by a vote of 7-0,  
2 approved Petition DB-11-145 SUB with staff conditions.

3 **FINDINGS OF FACT**

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

6 1) Petitioner presented testimony and evidence that the design plat complies with the City's  
7 Land Development Code, including public right-of-way access to the proposed lots and  
8 the availability for the provision of necessary utilities through an existing public utility  
9 easement.

10 2) City Staff presented testimony and evidence that, based on their review, the design plat  
11 conforms and is consistent with the City's Comprehensive Plan, Land Development  
12 Code, and the Official Roadway Map. Specifically, City staff presented testimony that  
13 the design plat is compatible with surrounding land uses and complies with the minimum  
14 lot size requirements. The design plat, according to City staff, provides for adequate  
15 right-of-way for each lot within the design plat, including access to a public road, N.W.  
16 53<sup>rd</sup> Avenue. City Staff testified that the design plat is consistent with the City's  
17 Comprehensive Plan provisions regarding impacts to wetlands, which require the  
18 avoidance or minimization of the loss of function or degradation of wetland habitat  
19 and/or wetland hydrology. In addition, City staff testified in rebuttal that the Eighth  
20 Judicial Circuit Court of Florida in the case styled *Nalbandian Properties, LLC, Ropen*  
21 *Nalbandian v. City of Gainesville* (Case No.: 01-2010-CA-6288) recently ruled:

22 a) On the 9.784 acre parcel with a zoning designation of Planned Development, uses  
23 such as retail, office, service, and residential (uses which comprise the Homeless

1 Center Planned Development) are specifically allowed in and consistent with the  
2 Industrial Land Use category as described in the City's Comprehensive Plan.

3 b) The City of Gainesville Staff interpretation of the Industrial Land Use category  
4 provision in the City's Comprehensive Plan that allows for 25% of industrial area to  
5 contain non-industrial uses (uses such as retail, office, service, and residential that  
6 comprise the Homeless Center Planned Development) is reasonable and in accord  
7 with the essential requirements of law.

8 3) The Affected Parties through Mr. Karl Sanders, attorney, questioned staff, submitted  
9 documentary evidence into the record, and made oral argument. Mr. Sanders argued that  
10 the design plat is not consistent with the City's Comprehensive Plan because subdividing  
11 the parcel that has a Planned Development zoning designation is inconsistent with the  
12 parcel's Industrial Land Use Category. Specifically, Mr. Sanders argued that subdividing  
13 the parcel with the Planned Development zoning designation will create a parcel where  
14 the permissible uses may be entirely non-industrial and therefore inconsistent with the  
15 Industrial Land Use Category Comprehensive Plan provision that limits non-industrial  
16 uses to no more than 25 percent of the industrial area. Mr. Sanders therefore argued that  
17 the petition for design plat should be denied.

18 4) The City Commission finds that after reviewing the entire record, including the exhibits  
19 in evidence, the testimony of the witnesses, and hearing argument of counsel for the  
20 Affected Parties, there is competent substantial evidence that:

- 21 a) Adequate right-of-way is shown on the design plat to provide access to each lot and  
22 to public right-of-way;
- 23 b) The provision for necessary utilities to the property as shown on the design plat has  
24 been demonstrated through adjacent properties.

1 **CONCLUSIONS OF LAW**

2 Based on the findings of fact set forth above, the oral and documentary evidence  
3 presented at the hearing, and the entire record of this proceeding, the City Commission concludes  
4 that the design plat is consistent with and complies with all applicable factors and criteria as  
5 prescribed by the City's Comprehensive Plan and Land Development Code. In particular, the  
6 design plat is consistent with the Industrial Land Use Category of the City's Comprehensive Plan  
7 that allows for 25 percent of industrial area to contain non-industrial uses (uses such as retail,  
8 office, service, and residential that comprise the Homeless Center Planned Development).

9 **ORDER**

10 Petition DB-11-145 SUB (Legistar No. 110667) is APPROVED with Staff Conditions.

11 Entered this 1st day of March, 2012.

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14 Craig Lowe, Mayor

15 Attest:

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18 Kurt M. Lannon, Clerk of the Commission

19 Copies furnished to:

- 20 Robert Walpole, Causseaux Hewett and Walpole, Inc.,  
21 Erik Bredfeldt, Director, Planning and Development Services  
22 Karl Sanders, Attorney for Nalbandian Properties, LLC.  
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