



Attorneys at Law

Submitted
e meeting
from MJR
090906

4/1/2010

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April 1, 2010

Nicole Shalley, Esq.
City of Gainesville
200 E University Ave
Gainesville, Florida 32602

**Re: Request for Recusal of Commissioner Thomas Hawkins
Appeal of Development Review Board Decision (Legislative File# 090906)**

Dear Ms. Shalley:

As you are aware, this Firm represents Wal-Mart in connection with its efforts to locate a new Supercenter in Gainesville. On March 11, 2010, the City's Development Review Board approved Wal-Mart's application for a preliminary development order, thereby authorizing development of a new store at the 5800 block of NW 34th Street. That decision was subsequently appealed to the Gainesville City Commission by one of the opponents of our application, and a final hearing on the appeal is scheduled to commence this evening.

Recently, I learned that one of the sitting Commissioners, Mr. Thomas Hawkins, actually represented one of the opponents to our application in a prior proceeding before the Gainesville City Commission involving my client, Wal-Mart, and the proper application of the design standards set forth in the City's Central Corridor Overlay District (the "Central Corridor Design Standards"). Of course, the proceedings this evening also involve (a) my client; and (b) the proper application of the Central Corridor Design Standards.

Prior to the date on which he was elected to serve on the Gainesville City Commission, Mr. Hawkins opposed my client's application to redevelop one of its existing properties (Petition 004PDA-07B). As more fully set forth in the correspondence attached hereto as Exhibit "A," Mr. Hawkins represented Asset Management, Inc. in opposition to my client's application. The founder and president of Asset Management, Inc. is Ms. Betsy Whitaker. Ms. Whitaker has been a vocal opponent against my client's current application and, in fact, has requested to appear before the City Commission again this evening to restate her opposition. As more fully set forth in the correspondence attached hereto as Composite Exhibit "B," one of the principal objections of Mr. Hawkins' client to my client's prior application involved the City's interpretation and application of the Central Corridor Design Standards.

April 1, 2010

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We recognize that Commissioner Hawkins' representation of a client in a former quasi-judicial hearing opposing my client does not create a conflict, *per se*, under the State's ethics laws; nevertheless, we strongly believe that the circumstances recited herein raise serious due process issues concerning the instant appeal that is scheduled to be heard by Commissioner Hawkins' and his colleagues this evening. In short, these facts would cause a reasonably prudent person to have a well-founded fear of not receiving a fair and impartial hearing if Commissioner Hawkins does not recuse himself from these proceedings.

Given that the appeal is a quasi-judicial hearing, the City Commissioners are required to effectively perform the role of judges in considering the matter before them. Although they are not technically subject to the Florida Rules of Judicial Administration or Code of Judicial Conduct, we believe that those provisions are certainly instructive as to the minimum due process requirements for a quasi-judicial hearing. For example, in ruling on a Motion to Disqualify pursuant to Rule 2.330 of the Florida Rules of Judicial Administration, the moving party need only establish a reasonably well-grounded fear that he or she will not receive a fair hearing because of specifically described prejudice or bias of the judge. For purposes of ruling on the motion, the inquiry focuses solely on whether the moving party may reasonably question the judge's impartiality. Whether the judge perceives that he or she is actually able to act fairly and impartially is irrelevant. As aptly stated by the Fourth DCA:

It is not a question of what the *judge* feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling.

Corie v City of Riviera Beach, 954 So. 2d 68 (Fla. 4th DCA 2007)
(emphasis added).

Similarly, Canon 3E(1) of the Code of Judicial Conduct requires that "a judge disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Again, in light of the facts stated herein, our position is that there is a reasonable basis for my client to fear that Commissioner Hawkins is unable to impartially preside over the instant appeal; as such, we respectfully request that he recuse himself from either participating in tonight's debate or voting on the questions presented.

Thank you in advance for your prompt attention to this matter, and please do not hesitate to contact me with any questions you may have.


Very truly yours,



Karl J. Sanders

Cc: Marion Radson, City Attorney

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2007 AUG -6 PM 3: 17

August 6, 2007

Kurt Lannon, City Commission Clerk
City of Gainesville, Office of the City Commission
P.O. Box 490
Mail Station 19
Gainesville, FL 32602-0490

Re: Quasi-Judicial Registration Form for Petition 004PDA-07PB

Dear Mr. Lannon:

Enclosed, please find completed Quasi-Judicial Registration Forms for petition 004PDA-07PB submitted on behalf of Asset Management, Inc. and Amy Richard. I have also included other materials related to the petition so that you may provide them to the City Commission prior to the quasi-judicial hearing on petition 004PDA-07PB. Also, please consider this letter to be an application for affected party status by Asset Management, Inc.

As you know, the Commission Rules provide for an "application for affected party status" so that affected parties who are not entitled to written notice may request a determination of affected party status.¹ I have been unable to obtain an existing form for this application from the city and so have provided information about Asset Management, Inc. here. If this letter and its attachments fail to provide any information that the City Commission may need in order to determine whether Asset Management, Inc. is an affected party, please contact this office.

Asset Management, Inc. is a commercial properties management company providing services to Gainesville, Florida and the surrounding areas. Asset Management, Inc. manages and leases commercial properties in the NW 13th Street activity center. For example, Asset Management, Inc. is leasing agent for Verde Plaza on the southwest corner of NW 13th Street and NW 23rd Avenue. Also, Asset Management, Inc. manages the mixed-use City Center on the southeast corner of NW 13th Street and NW 23rd Avenue.

The NW 13th Street activity center is one of Gainesville's more vibrant retail areas and Gainesville's growth management laws specifically regulate development within the area

¹ Gainesville, Fla., Resolution No. 050508, 20-22 (Nov. 14, 2005).

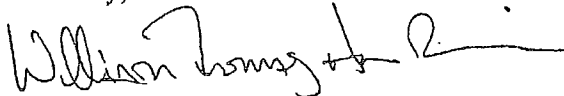
Kurt Lannon, City Commission Clerk
August 6, 2007
Page 2 of 2

in order to support business. For example, Appendix A, Section 5 of the Land Development Code provides development guidelines for property along NW 13th Street for the expressed purposes of "improv[ing] the environment for businesses" and "support[ing] a healthy economy."² Also, Objective 3.13 of the Urban Design Element of the Comprehensive Plan provides design guidelines for exclusive application to development within the NW 13th Street activity center.

When the City Commission considers this rezoning request, it will apply these growth management laws designed to improve the environment for business within the NW 13th Street activity center. Asset Management, Inc. has a special interest in the outcome of the quasi-judicial hearing because Asset Management, Inc. relies on the vitality of the NW 13th Street activity center for its own economic well-being. Asset Management, Inc. stands to suffer an injury distinct in kind and degree from that shared by the public at large because Asset Management, Inc. manages commercial property within the NW 13th Street activity center.

Thank you for providing this material to the City Commission. If you require any additional information, please do not hesitate to contact this office.

Sincerely,



W. Thomas Hawkins
Attorney at Law

Enc.: Quasi-Judicial Registration Form for Asset Management, Inc.
Quasi-Judicial Registration Form for Amy Richard
April 19, 2007 Affidavit Submitted by Amy Richard
February 6, 2007 Correspondence From Amy Richard to Shenley Neely
March 7, 2007 Memorandum From Dr. Earl Starnes to W. Thomas Hawkins
Dr. Earl Starnes' Curriculum Vitae

Cc: Asset Management, Inc.
Amy Richard

² Appendix A, Section 5, Exhibit B, Paragraph (a), Land Development Code.

Quasi-Judicial Registration Form

2007 AUG -6 PM 3:17

RE. Petition No. 004PDA-07PB Wal-Mart Stores, Inc., agent for Sam's Club. Planned development amendment with development plan review to expand the existing building by adding sales floor and liquor store areas and expand the fire service center. Zoned: PD (Planned Development.) Located at 2801 NW 13th Street. Legislative Matter No. _____

CC Mtg. Date: 8/13/2007

Name: (please print) Asset Management, Inc.

Address: 2624-B NW 13th Street, Gainesville, Florida 32609

Telephone Number: (352) 376-9474

Please indicate whether you are for or against this petition: FOR ___ or AGAINST X (mark "X")

Please indicate whether you are requesting a Formal Hearing: YES X or NO ___ (mark "X")

.....

Complete the following section of the form only if you are requesting a formal quasi-judicial hearing:

(Please refer to the enclosed Quasi-Judicial Hearing sheet contained in this mail-out for more information.)

As an affected person receiving notice of the public hearing on Petition No. 004PDA-07PB, I hereby request, that the City Commission conduct a formal quasi-judicial hearing as described above.

Signature: [Signature]
President, Asset Management, Inc.

This form and exhibits to be presented to the City Commission must be delivered to the Clerk of the Commission at least 7 days prior to the PUBLIC HEARING as stated in the notification letter sent to you. The Clerk of the Commission Office is located at City Hall, 1st floor, 200 East University Avenue, Gainesville, Florida. Forms may be mailed to the following address: Clerk of the Commission—Station 19, Quasi-Judicial Hearing, Petition No. 004PDA-07PB, P.O. Box 490, Gainesville, Florida, 32602.

Attorney Information (if applicable):

Name: (please print) W. Thomas Hawkins

Address: C. David Coffey, P.A., 5346 SW 91st Terrace, Gainesville, Florida, 32608

Signature: [Signature]

Telephone Number: (352) 335-8442

Quasi-Judicial Registration Form 2007 AUG -6 PM 3: 17

RE. Petition No. 004PDA-07PB Wal-Mart Stores, Inc., agent for Sam's Club. Planned development amendment with development plan review to expand the existing building by adding sales floor and liquor store areas and expand the tire service center. Zoned: PD (Planned Development.) Located at 2801 NW 13th Street. Legislative Matter No. _____
CC Mtg. Date: 8/13/2007

Name: (please print) Amy Richards

Address: 822 NW 25th Avenue

Telephone Number: 352.379.8646

Please indicate whether you are for or against this petition: FOR ___ or AGAINST X (mark "X")

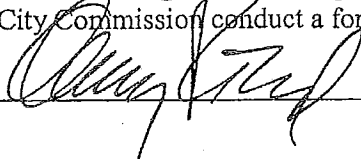
Please indicate whether you are requesting a Formal Hearing: YES X or NO ___ (mark "X")

.....

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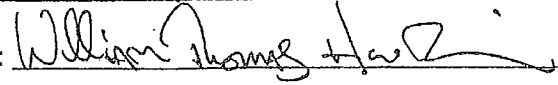
Signature: 

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Attorney Information (If applicable):

Name: (please print) W. Thomas Hawkins

Address: C. David Coffey, P.A., 5346 SW 91st Terrace, Gainesville, Florida, 32608

Signature: 

Telephone Number: (352) 335-8442

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To: City of Gainesville Plan Board
From: W. Thomas Hawkins, Esq.
Re: Recommended Conditions for Petition 004PDA-07PB
Date: April 19, 2007

In my presentation, I suggest several changes to staff's recommended conditions. If the Plan Board chooses to incorporate these suggestions into its recommendation to the City Commission, this specific language may help drafting a motion.

1. Strike staff's recommended Condition 3 and replace with the following.

This PD ordinance authorizes only those uses described in the adopted PD layout plan map and PD report. Modifications to this PD ordinance are allowed pursuant to Section 30-224, Amendments to Approved Planned Development, of the City of Gainesville Code of Ordinances.

2. Strike staff's recommended Condition 7 and replace with the following:

All activity on the property subject to this PD ordinance shall comply with the following performance standards for the production of sound. Unless otherwise stated, all terms and standards in this condition have the meanings given to them by Chapter 15, Noise, of the City of Gainesville Code of Ordinances ("Chapter 15"). Violations of this condition shall be enforced as violations of Chapter 15. All applicable provisions of Chapter 15 continue to apply to the extent they do not conflict with this PD ordinance.

- a. It is unlawful to make, cause or allow the making of any sound that creates a noise disturbance on any residential property on weekdays between the hours of 8:00 p.m. and 8:00 a.m. the following day.
- b. It is unlawful to make, cause or allow the making of any sound that creates a noise disturbance on any residential property on any day which is not a weekday.
- c. For the purposes of this condition, "plainly audible" means any sound or noise produced by any source, or reproduced by a radio, tape

player, television, CD player, electronic audio equipment, musical instrument, sound amplifier or other mechanical or electronic soundmaking device, or nonamplified human voice that can be clearly heard by a person using his/her normal hearing faculties, at the real property line of the source of the sound or noise.

3. Revise staff's recommended Condition 14 (with additions underlined) to the following:

All proposed new uses for the zoned Planned Development (PD) Planned Development amendment shall correspond to the Standard Industrial Code (SIC) classifications of those uses currently allowed under the MU-2 (Mixed use medium intensity district) zoning classification of the City of Gainesville Land Development Code. This condition shall replace the requirements of Section 2, Paragraph (e) of Ordinance No. 971051.

4. Strike staff's recommended Condition 17.
5. Add the following as a new recommended condition.

The property that is the subject of this PD ordinance is adjacent to a street shown on the map of the Central Corridors, Exhibit A to Ordinance No. 980015. Development within the Central Corridors Overlay District must meet the standards established by the Special Area Plan for Central Corridors, Ordinance No. 980015.

C. DAVID COFFEY
ATTORNEY AT LAW

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VIA FACSIMILE & U.S. MAIL

January 29, 2007

Lawrence Calderon
Chief of Current Planning
City of Gainesville
P.O. Box 490, Station 12
Gainesville, Florida 32602

Re: Wal-Mart Stores request for rezoning to PD; Petition # 004PDA-07PB

Dear Mr. Calderon:

On Wednesday, January 24th, 2007 I met with staff members of the Planning Division of the Department of Community Development. We discussed Petition number 004PDA-07PB which is a planned development ("PD") rezoning request that Wal-Mart Stores has submitted to the City of Gainesville. Wal-Mart Stores is requesting that the City adopt a PD ordinance to govern development of their Sam's Club property located on NW 13th Street. At the meeting, staff members and I discussed which parts of the Comprehensive Plan and Land Development Code ("LDC") will affect the Planning Division's review of the proposal. I have also reviewed the preliminary comments which the Planning Division and other departments prepared and discussed with the applicant at the Tuesday, January 23rd, 2007 Technical Review Committee Meeting.

Based on my meeting with staff and my review of preliminary comments, I am concerned that the Planning Division may not address all applicable requirements of the Comprehensive Plan and LDC in its review of this petition. As you know, the City Commission considers the Planning Division's recommendation when holding quasi-judicial hearings. If the Planning Division misstates or omits requirements of law, the City Commission's ability to find relevant facts and to reach informed conclusions of law is compromised. This risks approval of development that is inconsistent with the Comprehensive Plan and LDC.

Specifically, I am concerned that the Planning Division will fail to address three requirements of law in its review. First, I understand that the Planning Division will process the petition for a new PD ordinance without reviewing the proposal for compliance with PD'

eligibility requirements found in Section 30-216(1) of the LDC. Second, I understand that the Planning Division does not intend to review the proposed gasoline station for compliance with the requirements of the Special Area Plan for Central Corridors, an overlay district that limits gas stations to four fueling positions. Finally, I understand that the Planning Division does not intend to review the proposed gasoline station for compliance with the site design requirements of Policy 1.4.9 of the Concurrency Element of the Comprehensive Plan. This policy requires site design that promotes the City's multi-modal design goals and provides specific design guidelines to encourage pedestrian and bicycle use of the site. Although the three requirements of law I mention above are plainly stated in the Comprehensive Plan and LDC, I discuss each in greater detail below.

I. Requirements for PD Approval

Division 4, Article VII of the LDC controls planned developments in the City of Gainesville.¹ Within this division, Section 30-216, "Requirements and evaluation of PD," lists the criteria that the City Commission must use to evaluate all PD proposals.² The first criterion the City Commission must address deals with the PD's conformance with the PD objectives and the Comprehensive Plan.³ That criterion states:

No development plan may be approved unless it is consistent with the objectives set forth in Section 30-211(b), and the city's comprehensive plan, future land use map and concurrency management system.⁴

While this correspondence is too brief to fully discuss the requirements of the Comprehensive Plan, the PD objectives are easily reviewed. The objectives stated in Section 30-211(b) include:

Permit[ting] outstanding and innovative residential and nonresidential developments with a building orientation generally toward streets and sidewalks....⁵

...design which encourages internal and external convenient and comfortable travel by foot, bicycle, and transit through such strategies as narrow streets, modest setbacks, front porches, connected streets, multiple access to nearby land uses, and mixed uses;⁶

...eliminat[ing] the negative impacts of unplanned and piecemeal development;⁷

And,

¹ Sec. 30-211(a), Land Development Code of the City of Gainesville.

² Sec. 30-216, LDC.

³ Sec. 30-216(1), LDC.

⁴ *Id.*

⁵ Sec. 30-211(b)(1), LDC.

⁶ *Id.*

⁷ Sec. 30-211(b)(5), LDC.

Promot[ing] the use of traditional, quality-of-life design features, such as pedestrian scale, parking located to the side or rear of the buildings, narrow streets, connected streets, terminated vistas, front porches, recessed garages, alleys, aligned building facades that face the street, and formal landscaping along streets and sidewalks.⁸

These objectives do not describe the type of development characterized as "big-box" retail. Nonetheless, I understand that the Planning Division does not intend to review Wal-Mart Stores' proposal for compliance with the PD objectives. I understand that the Planning Division's practice is to not apply the requirements of Section 30-216(1) whenever an applicant requests a new PD ordinance for property that is the subject of an existing PD ordinance. In this case, the development of the Sam's Club property is currently governed by an existing PD ordinance, Ord. No. 971051. Therefore, I understand that the Planning Division plans to process this request as though the proposal is exempt from the requirements of Section 30-216(1). The LDC does not provide for this approach.

Section 30-224 of the LDC, entitled "Amendments to approved planned development," anticipates the amendment of existing PDs.⁹ Subsection 30-224(a) provides:

Except as noted in subsections (b) and (c) of this section, *an amendment to an approved PD (except for an extension of a time limit) must be accomplished only by a rezoning petition and ordinance accompanied by a new proposed PD.* All appropriate maps, plans and reports submitted with the approved PD layout plan may be resubmitted with the rezoning petition, along with sufficient new maps, plans and reports to clearly and thoroughly indicate the proposed changes, as the new proposed PD layout plan.¹⁰

The exceptions which the LDC outlines in Sections 30-224(b) and (c) do not include the changes proposed by Wal-Mart Stores. Therefore, the proposal is subject to the same requirements as all new proposed PDs, including compliance with each criterion of Section 30-216. While the Planning Division is following the process required by Section 30-224 (i.e., adoption of a new ordinance) the Planning Division is substantively reviewing the application as if it is not subject to the requirements of Section 30-216(1).

If the Planning Division does not address this proposal's conformance with the PD objectives, then the Planning Division will fail to address the threshold question of whether the proposal is eligible for adoption as a PD. Such an approach not only appears impermissible as a matter of law, it may obviate the PD provisions' intent of mixing "residential and nonresidential uses and/or unique design features which might otherwise not be allowed in the district."¹¹ This approach would leave Gainesville with division in the LDC intended to facilitate innovative design that is instead used to allow development proposals to avoid the limitations of a

⁸ Sec. 30-211(b)(7), LDC.

⁹ Sec. 30-224, LDC.

¹⁰ Sec. 30-224(a), LDC. (Emphasis added.)

¹¹ Sec. 30-211, LDC.

traditional zoning district. Instead of this approach, the Planning Division ought to review Wal-Mart Stores' proposal for compliance with Section 30-216(1) so that the City Commission can determine whether the project is eligible for PD rezoning.

II. Special Area Plan for Central Corridors

The Special Area Plan for Central Corridors ("central corridors overlay") is an overlay zoning district that operates in conjunction with a property's underlying zoning district.¹² The central corridors overlay has been "designed to make Gainesville a more vibrant, livable place, and increase citizen pride in its development."¹³ The LDC defines the boundaries of the central corridors overlay in two parts. First, the LDC includes a map that shows the streets which are central corridors.¹⁴ Second, a paragraph of the LDC, entitled "Delineation of Central Corridors Overlay District," states that "[t]he Central Corridors overlay district shall apply to all lands adjacent to the streets shown on the map of the Central Corridors."¹⁵ The parcel on which Sam's Club is situated has approximately eighty-five feet of frontage along NW 13th Street between NW 23rd Boulevard and NW 29th Road. The LDC defines this stretch of roadway as a central corridor.¹⁶ Therefore, the Sam's Club site is within the central corridors overlay.¹⁷

Generally, among the purposes of the central corridors standards are the goals to

...improve the sense of place and community; improve the environment for businesses, including smaller, locally-owned businesses; support a healthy economy by providing a vibrant mix of commercial, office, retail and residential uses in close proximity; reduce crime by encouraging a 24-hour mix of uses and a significant number of pedestrians; strike a balance between the needs of the car and pedestrian by creating a pleasant ambiance and interesting *people-scaled* features, and make the pedestrian feel safe and inconvenienced; increase transit viability; and improve independence of people without access to a car. ...¹⁸

Specifically, the central corridors overlay accomplishes its goals in part by limiting gas stations to four fueling positions.¹⁹ The purposes of the central corridors overlay and the limitation on gas station fueling positions appears to conflict with Wal-Mart Stores' proposal for a gas station with twelve fueling positions.

¹² Appendix A, Section 5, Exhibit B, Paragraph (b), LDC.

¹³ Appendix A, Section 5, Exhibit B, Paragraph (a), LDC.

¹⁴ Appendix A, Section 5, Exhibit A, LDC.

¹⁵ Appendix A, Section 5, Exhibit B, Paragraph (g), LDC.

¹⁶ Appendix A, Section 5, Exhibit A, LDC.

¹⁷ Enclosed are copies of correspondence between this office and Tom Saunders, the head of the Department of Community Development. The correspondence discusses whether the delineation of the central corridors overlay would include a property such as the Sam's Club site in its entirety. Based on that discussion, I understand that the Community Development Department concurs with the plain meaning of Appendix A, Section 5, Exhibit B, Paragraph (g), of the LDC and recognizes that the restrictions of Appendix A, Section 5, Exhibit B, Paragraph (q)(2) of the LDC apply to the entire Sam's Club parcel.

¹⁸ Appendix A, Section 5, Exhibit B, Paragraph (a), LDC. (Emphasis in original.)

¹⁹ Appendix A, Section 5, Exhibit B, Paragraph (q)(2), LDC.

Despite this apparent conflict, I understand that the Planning Division does not intend to review Wal-Mart Stores' proposal for compliance with the central corridors overlay. I understand that the Planning Division intends not to apply the central corridors overlay because the proposed gas station is not immediately on NW 13th Street.

The LDC does not permit this approach. The Planning Division does not have the discretion to redefine the boundaries of the central corridors overlay district. The Planning Division ought to review Wal-Mart Stores' proposal for compliance with the central corridors overlay so that the City Commission can determine whether the project meets the requirements of the LDC.

III. Policy 1.4.9 of the Concurrency Element of the Comprehensive Plan

Policy 1.4.9 of the Concurrency Element of the Comprehensive Plan ("Policy 1.4.9") regulates the number of fueling positions allowed at gas stations located in a Transportation Concurrency Exception Area ("TCEA").²⁰ In most zoning categories, including PD districts, the Comprehensive Plan limits gas stations to six fueling positions.²¹ This limitation does not overrule the limitation in the central corridors overlay but operates so that the more restrictive provision applies.²² The Comprehensive Plan's restriction on the number of fueling positions is different from the central corridors overlay in that the Comprehensive Plan provides specific design guidelines and provides for considerable flexibility.²³ An applicant who is able to increase the number of fueling positions at a proposed gas station while meeting the design guidelines may do so, up to a maximum of twelve fueling positions.²⁴ In order to incorporate these design criteria into the approval process, the Comprehensive Plan generally requires applicants for gas stations to seek a Special Use Permit ("SUP") and show, as part of the SUP approval process, that their proposal meets the specific design criteria.²⁵ Applicants for gas stations within the TCEA may also seek approval for their proposal through the PD rezoning process if the proposal is otherwise eligible.²⁶

The design criteria which applicants seeking gas stations in the TCEA that have more than six fueling positions must meet include the requirements that:

...Pedestrian/bicycle safety and comfort in the area are not compromised by the additional trips generated by the additional fueling positions;²⁷

...The architectural and site design are of such high quality that they enhance the site area and promote the City's multi-modal and design goals.²⁸

²⁰ Policy 1.4.9, Concurrency Element, City of Gainesville 2000-2010 Comprehensive Plan.

²¹ Policy 1.4.9.c.3., Concurrency Element, Comprehensive Plan.

²² Policy 1.4.9.c., Concurrency Element, Comprehensive Plan.

²³ Policy 1.4.9.c.3., Concurrency Element, Comprehensive Plan.

²⁴ *Id.*

²⁵ Policy 1.4.9, Concurrency Element, Comprehensive Plan.

²⁶ Policy 1.4.9.c.3., Concurrency Element, Comprehensive Plan.

²⁷ Policy 1.4.9.c.3.c., Concurrency Element, Comprehensive Plan.

And,

...Retail convenience goods sales or a restaurant are included in the development and designed such that pedestrian or bicycle use of the site is encouraged. The retail convenience goods sales or restaurant building and development shall meet all of the following requirements:

1. Building(s) shall be placed close to the public sidewalk for a substantial length of the site's linear frontage;
2. A minimum of 30 percent window area or glazing at pedestrian level (between 3 feet above grade and 8 feet above grade) on all first-floor building sides with street frontage. Windows or glazing shall be at least 80 percent transparent;
3. A pedestrian entry is provided from the public sidewalk on the property frontage; or, near a building corner when the building is on a corner lot;
4. Off-street parking shall be located to the side or rear of the building;
5. The building height and façade elevation are appropriate for the site and surrounding zoned properties.²⁹

Although the Sam's Club site is within the TCEA,³⁰ Wal-Mart Stores' proposal appears to be inconsistent with these design standards. Nonetheless, the Technical Review Committee's preliminary comments regarding concurrency review do not address Policy 1.4.9.³¹ Comment number six of the Planning Division's concurrency review does request that Wal-Mart Stores submit elevations of the gas station,³² as required by Policy 1.4.9.³³ However, those comments do not request that the applicant meet the design standards mandated by Policy 1.4.9.³⁴

I understand that the Planning Division does not intend to address the Policy 1.4.9 site design standards in the Planning Division review because Wal-Mart Stores has proposed to locate the gas station in the Sam's Club parking lot, away from the public right-of-way. The logic behind the Planning Division's approach is that Wal-Mart Stores' proposed site plan is so inaccessible to pedestrian, bicycle, and transit that any attempt to require compliance with Policy

²⁸ Policy 1.4.9.c.3.d., Concurrency Element, Comprehensive Plan.

²⁹ Policy 1.4.9.c.3.f., Concurrency Element, Comprehensive Plan.

³⁰ See, Map of Transportation Concurrency Exception Area, Concurrency Element, Comprehensive Plan.

³¹ See, Concurrency Review Recommendations/Requirements/Comments attached to the Technical Review Committee's memorandum noticing the Tuesday, January 23rd, 2007 Development Plan Review Appointment with Wal-Mart Stores.

³² *Id.*

³³ Policy 1.4.9.c.3.d., Concurrency Element, Comprehensive Plan.

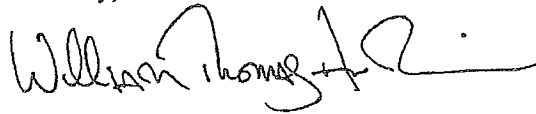
³⁴ Concurrency Review Recommendations/Requirements/Comments attached to the Technical Review Committee's memorandum noticing the Tuesday, January 23rd, 2007 Development Plan Review Appointment with Wal-Mart Stores.

Lawrence Calderon, Chief of Current Planning
January 29, 2007
Page 7 of 7

1.4.9 is ill-conceived.³⁵ However, the City of Gainesville does not have discretion to selectively apply the requirements of its Comprehensive Plan. The Planning Division ought to review the proposal in light of Policy 1.4.9 so that the City Commission can determine whether the proposal meets all of the requirements of the Comprehensive Plan.

Thank you for taking the time to review my comments. I am available, at your convenience, to discuss these concerns with you. If you, as the Chief Planner of the Planning Division, understand the requirements of the Comprehensive Plan and LDC to differ from the discussion herein, please provide a written explanation of your interpretation.

Sincerely,



W. Thomas Hawkins, Esq.
Attorney at Law

Enc.: Correspondence between this office and the Department of Community Development regarding delineation of the area subject to the Special Area Plan for the Central Corridors.

Cc: Tom Saunders, Department of Community Development
Marion Radson, City Attorney for the City of Gainesville

³⁵ I understand that the Planning Division's position is that Wal-Mart Stores' proposal fails so fundamentally to meet the intent of the Policy 1.4.9 design standards, that those design standards cannot conceivably apply to the site. This interpretation allows the extent of the site design's noncompliance to serve as a justification for the Planning Division's decision not to address the requirements of Policy 1.4.9. While the site may pose design challenges requiring creative solutions, the convenience of ignoring Policy 1.4.9 does not outweigh the reality that all development proposals must comply with the Comprehensive Plan.

C. DAVID COFFEY

ATTORNEY AT LAW

C. DAVID COFFEY, P.A.

Haile Village Center
5346 S.W. 91st Terrace
Gainesville, FL 32608-4399
Tel. (352) 335-8442
Fax (352) 376-0026
coffeypa@bellsouth.net

May 23, 2006

BY FACSIMILE & U.S. MAIL
(352) 334-2282

Thomas Saunders, Director of Community Development
City of Gainesville
222 E. University Avenue
Gainesville, FL 32602

Re: Central City Corridor Overlay

Dear Tom:

I am writing to request your interpretation of a provision in Gainesville's Land Development Code. This firm represents a client who is interested in the development of a parcel of property that may be within the Central Corridors overlay district. I would like your guidance to help understand the boundaries of that overlay district.

As you know, the Special Area Plan for the Central Corridors is codified in the Land Development Code as Appendix A, Section 5, Exhibit B. The boundaries of the overlay district are shown in two ways. First, Map A, Arterials and Collectors ("Map A") indicates the streets that make up the Central Corridors. Second, subsection (g), "Delineation of Central Corridors Overlay District," delineates the boundaries of the district. Subsection (g) reads:

The Central Corridors overlay district shall apply to all *lands adjacent to the streets* shown on the map of the Central Corridors. Distances from the Central Corridors overlay district to structures outside the Central Corridors overlay district shall be measured from the nearest curb or edge of pavement. (Emphasis added).

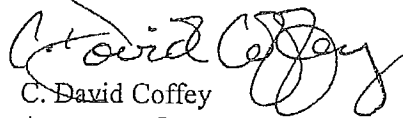
The parcel of property in which our client is interested has approximately eighty-five feet of frontage along a street that Map A designates as a Central Corridor. However, the property is deep and widens as it extends back from the central corridor. The size and shape of the property make it ideal for development in the rear with the frontage along the street used only as an access road.

Thomas Saunders, Director of Community Development
May 23, 2006
Page 2

Our question is whether the City interprets the term "lands adjacent to the streets" in subsection (g) to mean all of each parcel of property that fronts a Central Corridor, or all land within a certain distance from the Central Corridor. Should you interpret the law to exclude portions of parcels adjacent to the Central Corridors, it would be greatly appreciated if you would explain how the City makes this delineation.

I appreciate your attention in this matter. Please do not hesitate to call if you would like any information about my request.

Sincerely,

A handwritten signature in black ink, appearing to read "C. David Coffey". The signature is fluid and cursive, with the first name "C. David" and the last name "Coffey" clearly distinguishable.

C. David Coffey
Attorney at Law

C. DAVID COFFEY
ATTORNEY AT LAW

C. DAVID COFFEY, P.A.

Haile Village Center
5346 S.W. 91st Terrace
Gainesville, FL 32608-4399
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coffeypa@bellsouth.net

June 14, 2006

BY FACSIMILE & U.S. MAIL
(352) 334-2282

Thomas Saunders, Director of Community Development
City of Gainesville
222 E. University Avenue
Gainesville, FL 32602

Re: Central City Corridor Overlay

Dear Tom:

Thank you for taking the time out of your schedule to discuss the application of the Central Corridors overlay district requirements. I am writing to follow up our conversation with my understanding of what we discussed and where the requirements of that district apply.

As you will recall, my question was essentially whether all parcels of property adjacent to a designated Central Corridor were part of the overlay district in their entirety. In the alternative, I asked whether single parcels that were shaped so as to make development in the rear advantageous could be excluded from the requirements of the overlay district at a certain distance from the corridor.

You pointed out that there are at least two different types of standards for development in the Central Corridors overlay district. First, there are requirements such as build-to lines and requirements for sidewalks that only make sense next to the road. This characteristic is reflected in the code. For example, subsection (k) of the Central Corridors Special Area Plan requires that building facades are built to the street edge. However, when a building is built along a street more than 250 feet from the designated corridor, the build to requirements do not apply. As another example, subsection (m) requires sidewalks. However, these are only required along street frontage and to the extent that they connect principal buildings with the public right of way. The code does not require sidewalks along rear alleys or access roads.

Second, you pointed out that the overlay district contains use limitations, and that it is your understanding that these limitations apply across an entire parcel of property regardless of how far that single parcel reaches back from the designated corridor. For example, subsection (l) establishes that there is no minimum parking requirement in the Central

Thomas Saunders, Director of Community Development

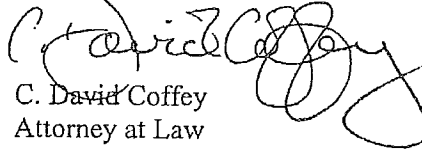
June 14, 2006

Page 2

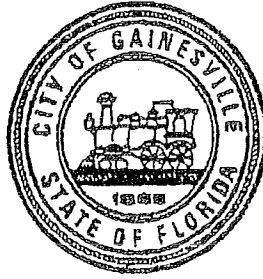
corridors overlay district regardless of a building's distance from the corridor. Further, subsection (p) requires that mechanical equipment be screened from public view without consideration for how far that mechanical equipment is from the road. Finally, subsection (q) limits gas stations to four fueling positions and automotive service businesses to three service bays no matter where on a parcel the automotive services are offered. It is my understanding, from our discussion, that the entire property within the overlay district (as defined by subsection (g)) is subject to these use limitations.

I have tried to reiterate the main points of our conversation to ensure that I understand how these requirements apply. Should this description show that I misunderstand the Central Corridors overlay district please let me know. Again, thank you for taking the time to discuss this matter with me.

Sincerely,



C. David Coffey
Attorney at Law



FAX COVER

*City of Gainesville
Community Development Department
P.O. Box 490, Station 11
Gainesville, FL 32601
Phone (352) 334-5022
Fax (352) 334-2282*

DATE: 6/26/06
TIME: 9:45
TO: DAVID COFFEY
PHONE NO. _____
FROM: JEFF
RE: _____
Number of pages including cover sheet: _____

Message:
TOM recommends that you like
discuss application of rules to
a specific site

C. DAVID COFFEY
ATTORNEY AT LAW

C. DAVID COFFEY, P.A.

Haile Village Center
5346 S.W. 91st Terrace
Gainesville, FL 32608-4399
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June 14, 2006

BY FACSIMILE & U.S. MAIL
(352) 334-2282

Thomas Saunders, Director of Community Development
City of Gainesville
222 E. University Avenue
Gainesville, FL 32602

Re: Central City Corridor Overlay

06-19-05A08:42 RCVD

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See § 376.25 - connections required from public sidewalk to principal building

They apply to front buildings, not those behind the first row.

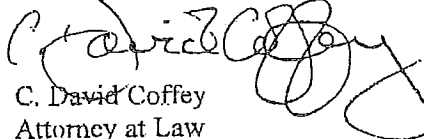
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Thomas Saunders, Director of Community Development
June 14, 2006
Page 2

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Sincerely,


C. David Coffey
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