



MEMORANDUM

Office of the City Attorney

Legistar No. 031014

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TO: Mayor and City Commission

DATE: Sept. 12, 2005
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-04-44; Petition 56TCH-04 PB
An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance, as amended.

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

On October 20, 2003, the City Commission heard a presentation from GRU Senior Environmental Engineer, Brett Goodman, and several other members of the community who are concerned about the impact that contamination may have on the community's water supply. During this meeting, the City Commission directed the City Manager to report on options with respect to the development review process on site and near the site and potential land use changes. On December 12, 2003, City Planning Staff presented to the City Commission the option that the City could establish an overlay district for the area and amend the Land Development Code to codify existing policy for development in the area.

The purpose of this petition is to establish an overlay district over a superfund area, in order to ensure that certain procedures are followed during the development review process. This code amendment will establish the process for development approval and identify the area of environmental concern.

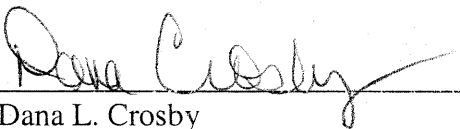
The Plan Board heard the petition and recommended that it be approved.

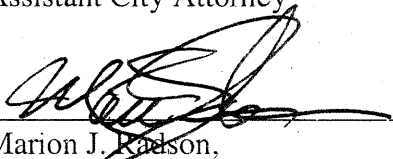
Public notice was published in the Gainesville Sun on March 3, 2004. The Plan Board held a public hearing March 25, 2004. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 56TCH-04 PB. Plan Board vote 6-0.

On August 22, 2005, the City Commission heard 56TCH-04 PB and adopted this ordinance on first reading. At that time, staff was asked to consult with the County on its consistency with other regulatory items. One suggestion staff has accepted is clarifying that the Occupational Safety and Health Administration (OSHA) will only review a health and safety plan associated with the area. That change has been incorporated in page 2, lines 30-31, of the ordinance.

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Petition 56TCH-04 PB, as heard by the Plan Board, contained the regulation/requirements for this overlay district, as well as the property to be included in the special area plan. This ordinance, if adopted, states the regulation for the area. A separate ordinance (ordinance 0-05-70) will impose the zoning on the properties to be included in the special area plan. Both ordinances require two public hearings. Should the Commission adopt the ordinance on first reading, the second and final reading will be held on Monday, September 12, 2005.

Prepared by: 
Dana L. Crosby
Assistant City Attorney

Approved and
Submitted by: 
Marion J. Radson,
City Attorney

MJR:DLC:sw

PASSED ON FIRST READING BY A VOTE OF 6-0.

ORDINANCE NO. 0-04-44

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on March 25, 2004; and

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a public hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Section 30-207, City of Gainesville Land Development Code, is created and added to read as follows:

Sec. 30-207. Special Environmental Concern Area.

(a) Purpose. This overlay is established for the purpose of protecting the immediate and long-term potable water supply by creating a procedure for projects going through

1 development review in any area designated by the U.S. Environmental Protection
2 Agency as a superfund area, and that certain area adjacent to the superfund area,
3 hereinafter referred to as a Special Environmental Concern Area (Area). Additionally,
4 this overlay is established for the purpose of providing special review and care for
5 any development in the Area.

6
7 (b) New construction. In the Area, all new construction projects (except for the
8 construction of a single-family home on a lot of record) are required to follow the
9 process as stated below:

10
11 1. The applicant/owners of all development projects in the Area shall schedule
12 and attend a pre-application conference. This pre-application conference is
13 mandatory.

14
15 2. The applicant shall schedule and hold a neighborhood workshop in
16 accordance with the neighborhood workshop guidelines.

17
18 3. Following the neighborhood workshop, and as a condition precedent to
19 proceeding with a development project in the Area, the applicant shall file an
20 application for development review and a wellfield special use permit
21 pursuant to sections 30-203 and 30-204 of this Code.

22
23 4. A completed copy of the above-referenced application shall be submitted by
24 the applicant to the following agencies for review and comment:

- 25
- 26 a. United States Environmental Protection Agency
- 27 b. Florida Department of Environmental Protection
- 28 c. Gainesville Regional Utilities
- 29 d. Responsible Party for Remedial Action
- 30 e. Occupational Health and Safety Administration (OSHA) (Health and
- 31 Safety Plan Review)
- 32 f. Alachua County Department of Environmental Protection

33
34 5. Following the period allowed for receipt of comment from the agencies listed
35 above and from the City Manager or designee, the applicant may proceed
36 through the development review and wellfield special use permit process as
37 described in the Code. The applicant shall respond to all comments and
38 concerns of the reviewing agencies throughout the development review
39 process and prior to receiving final approval.

40
41 6. Hold harmless and indemnification agreement. By filing an application for
42 development in the Special Environmental Concern Area, the owner(s) shall
43 be required to sign a Hold Harmless and Indemnification Agreement with the
44 City, releasing the City from any liability associated with the development of
45 the site.

(c) Reuse of existing buildings and interior remodeling. All reuse projects that do not involve the excavation of soil or the drilling of wells are exempt from the requirements of subsection (b) above, but shall otherwise comply with the development review and wellfield protection processes stated in the Code.

(d) Conflict with Other Laws. In the event of a conflict between the provisions of this ordinance and any state or federal law, rule or regulation, the more stringent requirement will apply.

Section 2. It is the intention of the City Commission that the provisions of Section 1 of this ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or relettered in order to accomplish such intentions.

Section 3. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 5. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this ____ day of _____, 2005.

PEGEEN HANRAHAN, MAYOR

ATTEST:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this ____ day of _____, 2005.

This Ordinance passed on second reading this ____ day of _____, 2005.