

September 12, 2006

Ms. Patrice Boyes, Esq.
408 West University Avenue, Suite PH
Gainesville, Florida 32601

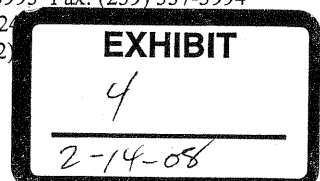
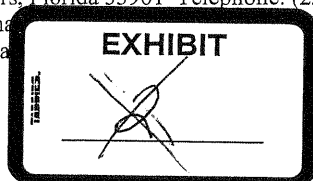
Subject: Economic Impacts, Blues Creek Subdivision, Unit 5

Dear Ms. Boyes:

Based upon more recent figures, this letter is intended to update the numbers found in my August 29, 2006 letter. As you know, current design plans for the Subject Property show 45 lots to be developed as Unit 5, Phases 2 and 3, of the Blues Creek. According to the Engineer, Ralph Eng, the design involves +/- 3,800 linear feet of roadway and +/- 700 linear feet of sewer lines. Sewer is being extended from one of the earlier Units to the south, across the drainage easement adjacent to the subject property. Additionally, the roadway is being extended from the earlier Unit 5, Phase 1, of the Blues Creek Subdivision. The development is consistent with the adopted master plan for the Planned Unit Development as approved in 1968 and reaffirmed in Ordinance 0-05-05.

It is estimated that \$1.35 million in infrastructure costs will be incurred for the proposed development. Additionally, mitigation costs are estimated at \$75,300. This amounts to a total cost associated with construction and mitigation of \$1.42 million or +/- \$32,000 per lot for the 45 proposed lots. The City Staff has indicated that there is disagreement over whether the development may proceed as proposed, and has suggested that the project stop at the terminus of Unit 5, Phase 2.

Implementation of the development plan as articulated by the City Staff results in the loss of not less than 11 lots. This will result in a reduction in roadway construction of +/- 1,800 linear feet, and no reduction in sewer lines. Additionally, the income from the sale of the 11 lost lots, estimated at a net figure of not less than \$650,000 to the owner, increases the total costs to be apportioned to the remaining lots to \$1.73 million. This would result in costs to be absorbed by the remaining 34 lots of an estimated \$52,000 per lot. This will have the effect of putting the lot costs above the

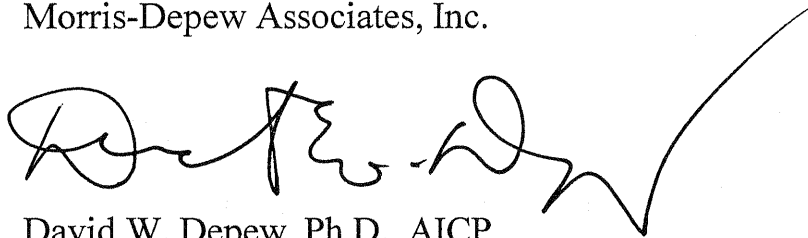


market average, destroying the ability of the owner to market the final phase of the development.

Overall, the City's proposed reduction will create a hardship for the owner that will result in the loss of financial feasibility associated with the proposed development. Obviously, no developer would undertake expenditures for the prospect of being able to sell lots at a loss. Yet, it is clear that the proposed reduction in lots that would result from the City's suggestion would create exactly that situation. Thus, the City's proposal is one that clearly removes the economic utility from the subject property.

If there are additional questions regarding this matter, please do not hesitate to contact me.

Regards,
Morris-Depew Associates, Inc.

A handwritten signature in black ink, appearing to read 'David W. Depew', with a long, sweeping flourish extending to the right.

David W. Depew, Ph.D., AICP
President

cc: Ralph Eng, PE

Affidavit

BEFORE THE CITY COUNCIL OF THE
CITY OF GAINESVILLE, FLORIDA

IN RE: Application of Larry Ross Builders, Inc., Proposed Unit 5
Plat, Blues Creek Residential Planned Development.

AFFIDAVIT OF DAVID W. DEPEW

STATE OF FLORIDA)

COUNTY OF ALACHUA)

BEFORE ME, the undersigned authority, personally appeared David W. Depew, who, after being first duly cautioned and sworn, deposes and says:

1. Affiant's name is David W. Depew. Affiant is President of Morris-Depew Associates, Inc. which is a planning, civil engineering, and surveying firm located at 2216 Altamont Avenue, Fort Myers, Florida. Affiant has been a planner in Florida for approximately the last 24 years. Affiant graduated from the University of Florida in 1972 with a Bachelors Degree in Political Science. Affiant received a Master's Degree from McMaster University in Hamilton, Ontario, in 1973 in Political Science, specializing in Comparative Political Development. From 1972 through 1976, Affiant engaged in doctoral work, completing all course work and comprehensive examinations for a doctoral degree at John's Hopkins University in Baltimore Maryland. Additionally, Affiant served as a fellow at the Center for Metropolitan Planning and Research while attending Johns Hopkins University. Affiant received a Doctor of Philosophy degree from Kennedy Western University December 23, 2004, specializing in public administration. From 1978 until 1980 Affiant was employed by the Mayor's Office of the City of Baltimore, eventually serving as the

Assistant Manager in the Technical Planning Unit. In 1980, Affiant returned to Florida as a Senior Planner for Lee County. By 1982, Affiant was appointed as Director of Community Development for Lee County, and responsible for all planning and zoning administration throughout unincorporated Lee County. Since 1984 Affiant has worked in the private sector as a land planner, and has had various planning assignments throughout the State since that time, operating from offices in Fort Myers, Tallahassee, and Gainesville. Affiant has been qualified as an expert in land use planning, zoning, and related areas in a number of local jurisdictions throughout the State of Florida. Affiant's work involves review of comprehensive plans and land development regulations along with site design and permitting throughout the State of Florida. Affiant is certified by the American Institute of Certified Planners (since 1983), and is an associate member of the Urban Land Institute.

2. Affiant has undertaken a thorough examination of the City of Gainesville's Comprehensive Plan, paying special attention to the Future Land Use Element, and the City of Gainesville's Land Development Code, paying special attention to those sections applicable to definitions, general lot and building requirements, design standards, platting, wetlands, mitigation, and the zoning. Affiant has also examined the Alachua County Land Development Regulations in order to determine the regulations under which the parcel in question was originally permitted when it was still a part of unincorporated Alachua County.
3. Affiant has reviewed the aerial photographs, Future Land Use Map, and the Zoning Map of the City of Gainesville, paying special attention to the property owned by Larry Ross Builders, Inc. located north of Devil's Millhopper State Geological Site, east of the University of Florida Agricultural Experimental Station, and west of the existing Blues Creek Unit 4.
4. The Affiant has reviewed application materials and historical data related to prior approvals associated with the subject property, more commonly described as Blues Creek Residential Planned Development, Unit 5, Phases 2 and 3, including the

original approving resolution (Alachua County Zoning Resolution Z-81-68), application materials submitted on behalf of the original rezoning request, Suwannee River Water Management District environmental resource permit applications and approvals, a drainage easement dated August 7, 1981 and recorded in the Official Records of Alachua County in Book 1371, Page 160 through Page 162, application materials for the current requested approval, a document titled "Wetland Mitigation Plan for Blues Creek Unit 5" prepared by Creative Environmental Solutions, Inc., a Staff Report from the city of Gainesville Department of Community Development, Current Planning Division for Petition No. 110PDC-04PB with a Meeting Date of September 28, 2004, and various pieces of correspondence between Attorney Patrice Boyes and various City Staff.

5. The Affiant possesses a general knowledge of planning and growth management principals generally accepted as part of the professional expertise associated with the discipline of land planning. Affiant is also familiar with the procedures and requirements for voluntary annexations in the State of Florida.
6. Based upon review of above referenced data, Affiant concludes that the original approval of the development plan for the subject property required that development occur in accordance with the previously approved master drainage plan, prepared by S. M. Hasan, on or around August, 1980 (Hasan Plan). Subsequent to preparation of the Hasan Plan (1988) a storm water management permit was issued by the Suwannee River Water Management District for the development as a whole based upon the Hasan Plan and the development parameters contained within the 1981 PUD approval granted by Alachua County.
7. Affiant concludes that the Hasan Plan includes that portion of the Blues Creek development referred to as "Future Unit No. 5" as depicted upon Blues Creek Revised Master Plan dated November 1999, prepared by Dunn Engineering (Dunn Plan), and which is the subject property involved in the current dispute between the City of Gainesville and the property owner.

8. Affiant has reviewed the Easement, dated August 7, 1981 between Devil's Creek, Ltd. and San Felasco Villas Venture and Millhopper Development Corporation (the Easement), and concludes that the easement property described is substantially that which is depicted upon the Dunn Plan as a "Drainage Easement, Developed Recreation & Conservation Area."
9. Affiant has reviewed versions of the Concept Design Plat prepared by Eng, Denman, And Associates, Inc. (Eng Plan), the most recent dated September 5, 2006, and has concluded that the area referred to as "Unit 5—Phases 2 and 3" depicts property that was depicted in the Hasan Plan, the Dunn Plan, and described in the Easement, all of which are referenced above.
10. Affiant has reviewed the Easement document and noted that the grant of easement specifically notes that the easement granted is for purpose of constructing, repairing, and maintaining a drainage system across, upon, and beneath the surface of the land specified in the easement description.
11. Affiant has reviewed zoning resolution Z-81-68, and has noted that there is no mention of the drainage area described in the Easement as a conservation or preservation area. Likewise, a review of the application material accompanying the rezoning request which provided the genesis for Z-81-68 reveals no mention of the Easement as a conservation or preservation area. There is no record of the Easement area, in its entirety, being used, reserved, or encumbered as a conservation, mitigation, or preservation area.
12. Affiant has reviewed the Site Plan Evaluation Sheet with a review date of September 23, 2004 by Project Planner Bedez E. Massey regarding the Blues Creek residential PD. This document refers to a Conservation Area, concluding that the applicant is attempting to mitigate wetland impacts in an area that was provided to mitigate wetlands encroachments elsewhere in the development. Insofar as the 'Conservation Area' refers to the area described in the Easement, Planner

Massey is incorrect in her analysis. The area in question was not, and is not encumbered by any form of conservation easement, nor do the documents support any other conclusion than that the area is encumbered by a drainage easement, as noted above. Further, the Dunn Plan clearly notes that the area in question is intended for more than simply conservation uses.

13. Documents associated with the ongoing permitting efforts indicate that certain areas within the Easement evidence negative impacts from past activities in and around Blues Creek. While the area in question certainly serves as a drainage feature for the Blues Creek Residential Planned Development, studies such as "Wetland Mitigation Plan for Blues Creek Unit 5" suggest that the invasion of exotic vegetation will continue to occur if left unchecked. Affiant concludes that efforts to enhance the natural functions of the drainage area, including removal of exotic vegetation, re-establishment of a more natural surface water regime, exclusion of all but passive human activities, and ongoing maintenance of the area, are critical for the continuing health of the native flora and fauna located within the Easement.

14. Affiant has reviewed the material associated with the annexation of the Blues Creek Planned Unit Development and the subsequent rezoning of the Blues Creek Planned Unit Development to the Blues Creek Residential Planned Development. While the larger portion of the Blues Creek development was annexed into the City of Gainesville in 2001 and 2002, the subject property was annexed in to the City of Gainesville, effective March 1, 2005. As part of the redesignation process undertaken by the City to establish the property under its land development regulations, the City adopted PDD (planned development district) zoning for the subject property, the Staff Report for 49ZON-05PB stating, "To avoid creating incompatibilities, nonconformities and confusion, the proposed PD zoning will be implemented by the PUD ordinance approved by Alachua County when this property was initially proposed for development. Therefore, should this petition be approved, the development regulations approved by the County within their PUD ordinance for this

property would be adopted and remain in place by the City so that future improvements or re-development of the property would be consistent and compatible with existing development in the vicinity.”

15. Additionally, Ordinance 0-05-05 which changed the zoning of the subject property to PDD included as exhibits Alachua County Zoning Resolution Z-81-68 and the November 1999 Dunn Plan.
16. Affiant has reviewed a portion of the permitting documents associated with the Blues Creek Planned Development project. Stretching back to the middle of the 1980's, this project's documentation indicates that it has been actively pursuing development approvals, undertaking phased construction of various portions of the project, and marketing completed product to the public since that time. During that time, and up to the present day, the project has actively and diligently been developed in accord with the adopted planned development Master Plan, originally approved by Alachua County. Affiant notes that there have been numerous permits issued, both by Alachua County and the City of Gainesville for the Blues Creek development since its initial approval, all of which were based upon the development plan first approved in 1981 as part of Alachua County Resolution Z-81-68, later revised and depicted as part of the Dunn Plan.
17. Through a review of the permitting history, Affiant has concluded that the subject property, Blues Creek Residential Planned Development Unit 5, Phases 2 and 3, is part of a larger development that has been continuously involved in the development permitting and construction process since the time it was rezoned by Alachua County resolution Z-81-68.
18. A review of the physical parameters of the subject property, coupled with the prior development that has occurred on the larger Blues Creek Residential Planned Development leads inescapably to the conclusion that development has proceeded in reliance on prior permits issued not only by Alachua County,

but also by the Suwannee River Water Management District and other State and Federal agencies.

19. Even if, for the sake of argument, it is accepted that the City's regulations would apply, a review of the City's vested rights provisions (Article III, Division 1), yields the conclusion that the Blues Creek Residential Planned Development has substantially relied upon and made significant commitments based upon the City's positive acts in regard to permitting. Section 30-29(1) states, in part, "A right to continue the development of the property notwithstanding the 1991-2001 Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith upon some act or omission by the city, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property." Section 30-29(2)c. goes further, stating, "The right to develop or **continue the development of a planned development** [emphasis added] shall be found to exist if a planned development was subject to a valid and unexpired final development order issued prior to the effective date. However, **planned developments approved prior to May 23, 1991**, [emphasis added] must have commenced substantial development on the planned development consistent with the planned development layout plan as approved and continued development in good faith as of the effective date in order to qualify for vested rights under this subsection c."
20. The record reflects that the Blues Creek Residential Planned District was approved prior to May 23, 1991, and that substantial development was commenced and continued in reliance upon the approved plans. Further, the City itself reaffirmed that the project had been approved prior to May 23, 1991 in its adoption of Ordinance 0-05-05.
21. Affiant has reviewed a letter dated August 24, 2004 from Thomas Saunders, the City's Community Development Director, to Patrice Boyes, Esq. This letter notes, "The

County's Master Plan for this development includes exculpatory language, where the note on the plan reads, 'please be advised that lots indicated on this master plan that have not been platted are conceptual only, and are subject to revision in both number and shape.' Therefore, the master plan does not appear to vest the developer, and the plat will be subject to our current ordinances." Director Saunders appears to assume that the Master Plan for the development is comprised only of a single document, the graphic representation of the development shown by the Dunn Plan. However, Affiant notes that the actual Alachua County Planned Unit Development approval to which Zoning Resolution Z-81-68 refers includes property development regulations for the R-1a and R-3 districts as well as the applicant's narrative dated June 24, 1981. The "exculpatory" language noted on the Master Plan must be considered in conjunction with the other documents attendant to the approval, and when that consideration is undertaken, it is clear that the language from the Master Plan was intended to provide for field adjustments based upon the application of the property development regulations to actual conditions found on-site. Thus, minor adjustments to lot layout were anticipated from the outset, and such language preserving some degree of flexibility is a rational and reasonable response to the development of large planned projects over longer time horizons. Further, the ability to preserve some level of flexibility for large planned developments with extended build-outs is a normally accepted practice in the field of planning, design, and permitting.

22. Current design plans for the Subject Property show 45 lots to be developed as Unit 5 of the Blues Creek. The design involves +/- 3,800 linear feet of roadway and +/- 700 linear feet of water and sewer lines. It is estimated that \$1.35 million in infrastructure costs will be incurred for the proposed development. Additionally, mitigation costs are estimated at \$75,300. This amounts to a total cost associated with construction and mitigation of \$1.42 million or +/- \$32,000 per lot. Implementation of the development plan as articulated by the City Staff results in the loss of not less than 11 lots, a reduction in roadway construction of +/- 1,800 linear feet, and

no reduction in water and sewer lines. Additionally, the income from the sale of the 11 lost lots, estimated at a net figure of \$650,000, increases the total costs to be apportioned to the remaining lots to \$1.73 million. This would result in costs to be absorbed by the remaining 34 lots of an estimated \$52,000 per lot. This will have the effect of putting the lot costs above the market average, destroying the ability of the owner to market the final phase of the development.

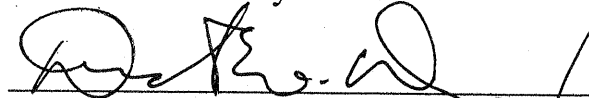
23. Affiant has reviewed Section 30-302.1 of the City of Gainesville's Land Development Regulations and Chapter 373.414, F. S. relating to activities in surface waters and wetlands and the means to determine whether such activities are in the public interest.
24. Affiant notes that the State criteria as noted in Chapter 373.414(1)(a)1 through 373.414(1)(a)4 and 373.414(1)(a)6 are concerned with adverse impacts. The City's criteria, however, are concerned with all areas of impact through language in Section 30-302.1(e)7a through 30-302.1(e)7e that describes a concern with "the effect of the development activity". This is a different standard than that contained within the Statute, and one that poses the potential for conflict between State and local regulatory agencies.
25. The State's concept of "adverse" is one that is well known and regularly used in permitting and regulatory frameworks. However, the City's term "effect of development activity" is, from a planning standpoint, indefinably vague, without the ability to be objectified, and, lacking such measurable standards, could place the State and the City in contradictory positions related to permit issuance through the use of different criteria to determine whether a particular development is in the 'public interest'.
26. It is also noted that the City's test (30-302.1(e)7) is whether development of a property containing wetlands "is clearly in the public interest", whereas the State's criterion is whether such activity, "is not contrary to the public interest or is clearly in the public interest". The difference between the Statute and the

City's Land Development Code is significant in that the City's standard requires a finding that a development has a clear positive effect upon the public interest.

27. Additionally, Affiant notes that 30-302.1(e) has the effect of subjecting the entirety of all property within the City containing wetlands to the provisions of 30-302.1, regardless of whether those wetlands are impacted by a given development plan. According to 373.414(1), F. S., the State's regulations are applicable when an activity will be in, on, or over surface waters or wetlands as delineated in Chapter 373.421(1), F. S. Again, this distinction has the potential for creating conflicts between the State agencies and the City where one agency has determined that no permits, mitigation, or design restrictions are required and another has determined that they are mandated.
28. The City's provisions found within the introductory paragraph to Section 30-302.1 note, "Wetlands damaged or degraded shall either be restored to their function and condition prior to such damage, or mitigated pursuant to the mitigation requirements in the Comprehensive Plan, this Code, and **in accordance with the appropriate water management district standards** [emphasis added]." There is no record that the "Wetland Mitigation Plan for Blues Creek Unit 5" does not implement this portion of the ordinance, nor is there any record that suggests the proposed mitigation does not offset the unavoidable impacts to the wetland areas shown on the subject property's proposed development plan. In fact, the Water Management District has issued the Environmental Resource Permit for the subject property, yet the City is demanding additional mitigation and analysis in what appears to be actions inconsistent with its own Code.
29. In conclusion, it is the professional opinion of the Affiant that the proposed Unit 5, Phase II of the Blues Creek Residential Planned Development meets the criteria for an ongoing, vested development under the City of Gainesville's Land Development Regulations. Further, a review of the record does not suggest that the Easement area is in fact solely a conservation or preservation area as those terms are defined, but rather that it

was always intended to be used as part of the overall storm water management system of the larger Blues Creek Residential Planned Development. Finally, portions of the City's Land Development Regulations applicable to the avoidance of loss or degradation of wetlands are potentially in conflict with the State's criteria for activities in surface waters and wetlands. In any case, the proposed mitigation effort is consistent with what measurable criteria exist in the City's Land Development Regulations as applicable to the current permitting effort.

Further Affiant sayest not.


David W. Depew, Ph.D., AICP

Sworn to and subscribed before me this 14th day of September, 2006.

Seal:



Patrice Boyes
My Commission DD251784
Expires December 30, 2007

Notary Public

Name: Patrice Boyes

Signature: Patrice Boyes

Personally known ___ or Produced Identification Type of Identification: _____.