


**MEMORANDUM****Office of the City Attorney****TO:** Mayor and City Commissioners**DATE:** April 23, 2001**FROM:** City Attorney**CONSENT****SUBJECT:** Watson Construction Co., Inc. v. City of Gainesville


Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Watson Construction Co., Inc. v. City of Gainesville.

On April 12, 2001, the City Attorney's Office received a Complaint for Declaratory Judgment/Injunctive Relief and a Motion for Temporary Injunctions from Patrice Boyes, Esquire, on behalf of Watson Construction Company, Inc. The complaint requests the court enjoin the City from adopting a moratorium on development in the I-2 zone, or in the alternative, to declare that the City is estopped from applying the moratorium to Watson's proposed development. The complaint also asks the court to declare that the City's wellfield protection ordinance and need for a special use permit does not apply to Watson's proposed development. The Motion for Temporary Injunction requests injunctive relief from the moratorium.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

**IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

Watson Construction Company, Inc.,

Plaintiff,

Case No.:

Division:

v.

City of Gainesville,

Defendant

---

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND FOR INJUNCTIVE RELIEF**

Plaintiff, WATSON CONSTRUCTION COMPANY, INC., [“Watson”] by and through undersigned counsel, brings this action for declaratory judgment and for injunctive relief against Defendant, CITY OF GAINESVILLE, [“City”] and alleges:

1. This is an action to enjoin the City of Gainesville, acting through the Gainesville City Commission, from adopting a proposed moratorium on industrial development approval.
2. Alternatively, this is an action for a declaratory judgment that the City is equitably estopped from applying any such moratorium to Watson’s hot mix asphalt batch plant and concrete batch plant currently awaiting site plan approval, and to enjoin the City from applying any such moratorium.
3. This is an action for a declaratory judgment of the rights and duties of the parties to this action under Section 30-200 et al of the City of Gainesville Land Development Code, as amended by Ordinance No. 990193 (the “wellfield protection ordinance”), and to enjoin the City of Gainesville from requiring Watson to procure a Special Use Permit for the hot mix asphalt batch plant and concrete batch plant pursuant to the City’s wellfield protection ordinance.

## FACTS COMMON TO ALL COUNTS

4. Plaintiff, Watson, is a construction and paving contractor situated in Gainesville, Florida. Watson is the equitable owner of a parcel currently zoned for Industrial (I-2 district) uses in the City; co-owners of the legal title are the Conrad Yelvington Revocable Trust of 1997 and the Gary Yelvington Revocable Trust of 1997 [collectively referred to as "Yelvington"].

5. The Defendant, City of Gainesville, is a municipal corporation, which acts through the elected City Commission and Mayor [hereinafter collectively referred to as the "City"].

6. In December 1998, the City Plan Board approved a land use amendment and rezoning of the subject parcel from Agricultural to Industrial. The rezoning permitted the siting of an aggregate distribution facility by Yelvington, which in turn could supply raw materials used in the mixing of asphalt and other products. The City Commission approved the Yelvington land use petition in February, 1999, and transmitted the petition for review to the Florida Department of Community Affairs pursuant to Chapter 163, Florida Stats.

7. The final adoption of the land use and final rezoning were approved on or about June 28, 1999, with City staff, the Plan Board, the Department of Community Affairs and the City Commission all finding that an Industrial land use designation and I-2 zoning for the subject parcel were consistent with surrounding uses.

8. In November 1999, the City's Development Review Board ["DRB"] conducted a conceptual review hearing of an aggregate distribution center with rail service sited for the subject parcel.

9. In April 2000, the DRB granted preliminary approval of the aggregate distribution center to be operated by Yelvington.

10. In October 2000, Watson met with City staff in a First Step Meeting to discuss the hot mix asphalt batch plant and concrete batch plant, a use by right under I-2 zoning, to be co-located with the aggregate distribution facility on the subject parcel.

11. At that October 2000, meeting, Watson representatives questioned whether the City would enact a moratorium, in light of a moratorium which nearly passed in 1997, the last time an asphalt batch plant was approved for location in an I-2 zoning district.

12. In response, city officials stated that no moratorium was planned or pending.

13. In reliance on the City's existing zoning code and Future Land Use Map, and the City's verbal representations, Watson undertook to design and submit an amendment to the Yelvington site plan for co-located asphalt and concrete batch plants, to purchase an existing asphalt batch plant, and to enter into a purchase and sale agreement with Yelvington for the parcel that is the subject of this dispute.

15. Under the Land Development Code of the City, the proposed asphalt and concrete batch plants are permitted uses within the I-2 zoning district. As such, they are uses by right; no approval from the City Commission is necessary. Where proper zoning and land use designation exists for a parcel, an applicant usually need only obtain site plan approval from the DRB.

16. The DRB has final authority to approve or deny site plans for industrial development.

17. On December 22, 2000, Watson participated in a Development Plan Review with City staff regarding the amended site plan.

18. On January 18, 2001, a Conceptual Site Plan Review was heard by the Gainesville City Plan Board at a duly advertised public hearing, which was televised via the local cable-TV access channel.

19. Watson representatives presented a detailed discussion of the proposed site layout, including a voluntary proposal to augment and enhance 24 acres of offsite wetlands to mitigate for the disruption of less than 2 acres of wetlands on site.

20. The site as shown is nearly 2,000 feet from the nearest Residential zoning use, and is further buffered by an Agricultural zoned parcel to ensure no truck traffic reaches the adjacent County road.

21. Few if any persons commented or objected to the Watson proposal as presented to the Plan Board at the January 18, 2001, hearing.

22. The chair of the Plan Board, Brad Guy, stated at the January 18, 2001, hearing that the proposed asphalt plant is a "use by right," and that the community needs a mix of industrial uses. Additionally, Mr. Guy voiced support for the co-location of the batch plant and the aggregate distribution facility alongside the rail line.

23. On or about February 3, 2001, without Watson's knowledge, a group of opponents of the asphalt plant met at the Unitarian Church in Gainesville to listen to presentations by Tom Bussing, then a candidate for Mayor of Gainesville, plus Mark Goldstein and Dwight Adams, longtime anti-development activists in the community, regarding how to stop the asphalt plant by requesting a temporary moratorium on all industrial development in the City. [T. Exhibit 6].

24. On February 12, 2001, based on citizen request, the City Commission, with little discussion and no competent, substantial evidence, voted 3-0 to refer potential consideration of a moratorium to a subcommittee of the Commission for further deliberation. Neither the citizens requesting the moratorium, nor the City, identified any specific or immediate danger to public health and safety, nor did they indicate that a flood of applications for industrial uses was expected.

25. On February 16, 2001, Watson submitted its preliminary/final site plan application for the asphalt and concrete batch plant accompanied by the requisite filing fee.

26. On or about March 5, 2001, the subcommittee to which consideration of a moratorium was referred, consisting of Commissioners Warren Nielsen and John Barrow, recommended to the City that it consider imposing a moratorium for certain industrial uses in certain areas and identify those uses and areas.

27. The City Commission on March 12, 2001, and continued on March 29, 2001, took public comment on the moratorium issue. The transcripts for March 12, 2001 (V.1) and March 29, 2001 (V.2) have been filed concurrently with this Complaint and are, thus, incorporated as a part of the Complaint.

28. The City Commission specified that the moratorium should last for a period not to exceed six months. (See Transcript V.2, 66-7, 86-7, 90-1).

29. The City never identified any imminent threat to public health and safety. (See Transcript V.2, 130-31).

30. The City Commission voted 5-0 to authorize the City Attorney to draft a temporary moratorium ordinance on a list of industrial uses in the I-2 zoning district for first reading. (See Transcript V.2, 254).

31. The City Commission declined specific, repeated requests to provide the cut-off date after which new applications would not be accepted, but pending applications "in the pipeline" would proceed through development approval uninterrupted by the moratorium. See Transcript, V.2, 37, 74, 128, 218 -226, 230-31, 235-38, 241-45, 250).

32. Although the City has not yet scheduled the first reading of the temporary moratorium, undersigned counsel is of information and belief, based on representations by the

City Attorney, that the hearing will not occur until late April, 2001.

## **COUNT I – INJUNCTIVE RELIEF**

### **(Enacting the Moratorium)**

33. Plaintiff, Watson, realleges paragraphs 4 through 32 of this Complaint as a part of this Count I.

34. A moratorium on development cannot be targeted at a particular project.

35. As demonstrated by paragraphs 23 and 24, above, the moratorium which is the subject of this action, is targeted specifically at the Watson hot mix asphalt batch plant and concrete batch plant.

36. Watson's equitable rights to purchase the subject property will expire April 15, 2001, absent a contract addendum extending that deadline; therefore, enacting the proposed temporary moratorium would delay Watson's project until such time as the contract deadline had expired.

37. Reform of the City's industrial zoning code may be accomplished without a moratorium, thus there is no harm to the city in granting Plaintiff relief from the moratorium.

38. Watson participated in all hearings before the City Commission, and stated its objection repeatedly to the temporary moratorium.

39. Watson has standing to maintain this action in that its substantial interests will be irreparably harmed if the City adopts the proposed moratorium ordinance it authorized on March 29, 2001 at a special meeting.

40. Watson has no adequate remedy at law.

41. Watson has exhausted its administrative remedies.

WHEREFORE, Plaintiff, Watson Construction Company, Inc., respectfully requests that

this Court enter its order permanently enjoining Defendant, City of Gainesville, from adopting a temporary moratorium on industrial development in I-2 zoning districts which by its terms or operation, stops development of Watson's proposed asphalt and concrete batch plants.

## **COUNT II – DECLARATORY & INJUNCTIVE RELIEF**

### **(Application of Moratorium to Watson)**

42. Plaintiff, Watson, realleges paragraphs 4 through 32 of this Complaint as a part of this Count II.

43. Watson's project and plans were in the pipeline before the City began to consider a moratorium on industrial development.

44. Watson's project and plans were in the pipeline before the City directed the City Attorney to begin drafting a moratorium ordinance for consideration.

45. Watson's project and plans were in the pipeline before the City made any decision to enact a temporary moratorium on industrial development.

42. Watson is the equitable owner of the subject property.

43. Watson has relied in good faith to its detriment on the City's existing zoning code and Future Land Use Map, and on the City's verbal representations regarding the subject project.

44. Watson's equitable rights to purchase the subject property will expire April 15, 2001, absent a contract addendum extending that deadline; therefore, applying the moratorium to Watson would delay Watson's project until such time as the contract deadlines had expired.

45. Watson has expended in excess of \$277,000 in reliance on existing zoning and land use for the project site and on the City's verbal representations regarding the project and now is in doubt as to its rights to proceed with development of the proposed project.

46. Applying the temporary moratorium on industrial development to Watson's



project would be highly inequitable and unjust.

47. Watson participated in all hearings before the City Commission, and stated its objection to the temporary moratorium.

48. Watson has standing to maintain this action in that its substantial interests will be irreparably harmed if the City adopts the proposed moratorium ordinance it authorized on March 29, 2001 at a special meeting.

49. Watson has no adequate remedy at law.

50. Watson has exhausted its administrative remedies.

WHEREFORE, Plaintiff, Watson Construction Company, Inc., respectfully requests that this Court enter its order:

1) declaring that the City of Gainesville is equitably estopped from applying any temporary moratorium on industrial development to Watson's hot mix asphalt batch plant and concrete batch plant; and

2) permanently enjoining Defendant, City of Gainesville, from applying any such moratorium on industrial development in I-2 zoning districts to Watson's hot mix asphalt batch plant and concrete batch plant

### **COUNT III-DECLARATORY & INJUNCTIVE RELIEF**

#### **(Wellfield Protection Ordinance)**

51. Plaintiff, Watson, realleges paragraphs 4 through 32 of this Complaint as a part of this Count III.

52. On November 2, 2000, the City informed Watson by memorandum that the tertiary zone boundary of the Murphree wellfield protection zone was being extended to cover a portion of the Yelvington/Watson tract and that a new provision requires a wellfield special use permit for development.

53. The City regulates development within its wellfield protection zone through requirement of a Special Use Permit for uses proposed for location within the boundary of its wellfield protection zone.

53. Watson expended significant funds to re-engineer and re-design the site layout to remove the asphalt and concrete batch plants from the tertiary zone of the wellfield protection area, leaving only a stormwater treatment pond within the tertiary zone.

54. City staff asserted that the presence of the stormwater facility within the tertiary zone triggered review of the entire project under a Special Use Permit before the City Commission.

55. Again, Watson expended significant funds to re-engineer and re-design the site layout to remove the stormwater facility from within the tertiary zone.

56. Notwithstanding the absence of any improvements or development activity within the tertiary zone, City staff continues to assert that Watson must apply for a Special Use Permit and undergo extensive review and approval by City Commission of the entire project.

57. The regulatory scheme for the wellfield protection ordinance is codified in Section 30-200 et al. of the Land Development Code, as amended on November 8, 1999 by Ordinance No. 990193; a copy of which is attached as Exhibit A.

58. Section 30-200 of the Land Development Code provides in relevant part:

(a) Purpose. This division is established for the purpose of protecting the immediate and long-term supply of potable water in the community by creating a permit procedure for uses and developments within the Murphree Wellfield Protection Zones . . . .

(b) It is further intended that Wellfield Protection Special Use Permits be required for developments which require special care in the control of their location, design and methods of operation in order to ensure conformance with the City's

comprehensive plan and Alachua County Murphree Wellfield Management Code . . . .

59. Section 30-201 of the Land Development Code provides in relevant part:

Within the Primary, Secondary and Tertiary Wellfield Protection (Management) Zones of Alachua County, all new development . . . shall be required to obtain a Wellfield Protection Special Use Permit from the city commission. In addition, all existing development which requires any level of development plan review for expansion or changes at a site shall be required to obtain a Wellfield Protection Special Use Permit . . . .

60. Watson's amended site plan demonstrates that no development for the proposed project will be located within the primary, secondary or tertiary wellfield protection zones.

61. As such, Watson's project will have no effect on the immediate and long-term supply of potable water in the community as contemplated by Section 30-200.

62. The City's application of the ordinance to land lying outside the wellfield protection zone is without authority in law or ordinance, and constitutes an extension of the wellfield protection boundary without authority of the City Commission. The plain language of the ordinance contemplates that projects proposed inside the wellfield protection zone must obtain a wellfield Special Use Permit unless they qualify for an exemption. Nowhere does the ordinance state that an entire project must be reviewed if the wellfield protection zone touches only a corner of the property.

63. The City's application of this ordinance to Watson's site plan amendment is arbitrary and capricious, and without foundation in the governing ordinance.

64. From the discussions both in front of the City Commission and in review meetings with City staff, the Plaintiff and Defendant are at odds over the proper application of this ordinance to the facts and circumstances at hand.

65. Plaintiff is uncertain of its rights and duties under Section 30-200 et al.

66. The intervention of the Court is necessary to resolve a present controversy and to ensure proper application of the law to the facts of Watson's project.

67. The court has jurisdiction pursuant to Chapter 86, Florida Statutes, to interpret documents and laws and render declaratory relief to the parties.

WHEREFORE, Plaintiff Watson Construction Company, Inc., respectfully requests that the Court enter its Order declaring the rights and duties of the parties under Section 30-200 et al. of the City of Gainesville Land Development Code, as amended, and to decree:

- 1) The City may not require Watson to obtain a Wellfield Special Use Permit for the site layout that places no development or facilities within the wellfield protection (tertiary) zone; and
- 2) The City may require Watson to obtain a Wellfield Special Use Permit for only those uses physically lying inside the wellfield protection (tertiary) zone; and
- 3) The City is enjoined from applying its wellfield protection ordinance to uses lying outside the wellfield protection zone boundary, regardless of parcel or subdivision lines.

Respectfully submitted,

**BOYES & ASSOCIATES, P.A.**



Patrice Boyes, Esq.  
Florida Bar Number 892520  
P.O. Box 1424  
Gainesville, Florida 32602-1424  
(352) 372-2684

**IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

Watson Construction Company, Inc.,

Plaintiff,

Case No.:

Division:

v.

City of Gainesville,

Defendant

---

**MOTION FOR TEMPORARY INJUNCTIONS  
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, WATSON CONSTRUCTION COMPANY, INC., ["Watson"] by and through undersigned counsel, files this Motion for Temporary Injunctions against Defendant, The City of Gainesville and alleges the following in support:

1. Plaintiff, Watson, is a construction and paving contractor situated in Gainesville, Florida. Watson is the equitable owner of a parcel currently zoned for Industrial (I-2 district) uses in the City.
2. Watson proposes an industrial development which is a use by right in the I-2 zoning district of the City.
3. In reliance on the City's existing zoning code and Future Land Use Map, and the City's verbal representations that no moratorium on industrial development was planned or pending, Watson undertook to design and submit an application for site plan approval, and also purchases an existing asphalt batch plant, and entered into a purchase and sale agreement for the subject parcel.
4. Watson participated in a Development Plan Review meeting with staff on

December 22, 2000 and a Conceptual Site Plan Review with the City Plan Board on January 18, 2001.

5. On or about February 3, 2001, without Watson's knowledge, a group of opponents of the asphalt plant met to discuss how to stop the asphalt plant by requesting a temporary moratorium on industrial development in the City of Gainesville.

6. Per the above citizens' request, on February 12, 2001, with little discussion and no competent, substantial evidence, the City Commission voted to refer potential consideration of a moratorium on industrial development to a subcommittee of the Commission.

7. Watson's preliminary final site plan application for the subject project was submitted on February 16, 2001.

8. On March 29, 2001, the City Commission voted 5-0 to authorize the City Attorney to draft a temporary moratorium ordinance on a list of industrial uses in the I-2 zoning district for first reading.

9. Although the City has not yet scheduled the first reading of the temporary moratorium, undersigned counsel is of information and belief, based on representations by the City Attorney, that the hearing will not occur until late April, 2001.

10. Watson's project and preliminary plans were in the pipeline before the City began to consider a moratorium on industrial development, before the City directed the City Attorney to begin drafting a moratorium ordinance for consideration, and before the City made any decision to enact a temporary moratorium on industrial development.

11. A temporary injunction is the appropriate remedy where plaintiff has a likelihood of irreparable harm, the unavailability of an adequate remedy at law, a substantial likelihood of success on the merits, and consideration of the public interest. See City of Oviedo v. Alafaya

Utilities, Inc., 704 So. 2d 206, 207 (Fla. 5<sup>th</sup> DCA 1998); Hall v. City of Orlando, 555 So. 2d 963 (Fla. 5<sup>th</sup> DCA 1990). The facts contained in the Affidavit of Larry Watson, President of Watson Construction Company, Inc., support a finding that the company faces irreparable harm and otherwise meets the test set forth in the above-cited authority for a temporary injunction pending the outcome of the proceedings at bar. The Affidavit of Larry Watson has been concurrently with this Motion and is, thus, incorporated as a part of the Motion.

**Temporary Injunction Against Adopting a Moratorium  
on Industrial Development**

12. Relying in good faith on the existing zoning code and Future Land Use Map, and on the City's verbal representations regarding the subject project, Watson has expended in excess of \$277,000 on the subject project, a use by right in the zoning district governing the property.

13. Watson's equitable rights to purchase the subject property will expire April 15, 2001, absent a contract addendum extending that deadline; therefore enacting the proposed moratorium would delay Watson's project until such time as the contract deadlines had expired, causing irreparable harm to Watson.

14. Watson has no adequate remedy at law to protect its interests.

15. A moratorium on development cannot be targeted at a particular project.

16. In light of evidence that the purpose of the moratorium is to defeat the proposed asphalt plant, Watson is likely to prevail at trial on this issue and, therefore, has a clear legal right to an injunction against the City.

17. Reform of the City's industrial zoning code may be accomplished without a moratorium so this injunction would not impact the public interest in this case.

18. As granting this temporary injunction will not result in monetary damages for the City of Gainesville, bond is inappropriate in this instance.

**Temporary Injunction Against Applying a Moratorium  
on Industrial Development to Watson's Asphalt plant**

19. Relying in good faith on the existing zoning code and Future Land Use Map, and on the City's verbal representations regarding the subject project, Watson has expended in excess of \$277,000 on the subject project.

20. Watson's equitable rights to purchase the subject property will expire April 15, 2001, absent a contract addendum extending that deadline; therefore enacting the proposed moratorium would delay Watson's project until such time as the contract deadlines had expired, causing irreparable harm to Watson.

21. Watson has no adequate remedy at law to protect its interests.

22. In light of evidence that Watson's project and preliminary plans were already in the pipeline before the City began to consider a moratorium on industrial development, before the City directed the City Attorney to begin drafting a moratorium ordinance for consideration, and before the City made any decision to enact a temporary moratorium on industrial development, the City is equitable estopped from applying the proposed moratorium to Watson. Therefore, Watson is likely to prevail at trial on this issue and has a clear legal right to an injunction against the City.

23. As granting this temporary injunction will not result in monetary damages for the City of Gainesville, bond is inappropriate in this instance.

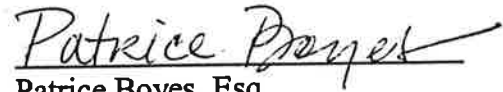
WHEREFORE, Plaintiff, Watson, respectfully requests this Court grant its Motion for



Temporary Injunction and enjoin Defendant, the City of Gainesville, from enacting a moratorium on industrial development or, alternatively, enjoin Defendant, the City of Gainesville, from applying any such moratorium to the Watson development.

Respectfully submitted,

**BOYES & ASSOCIATES, P.A.**



Patrice Boyes, Esq.

Florida Bar Number 892520

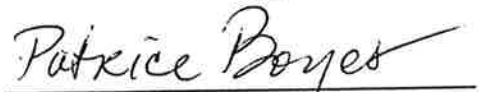
P.O. Box 1424

Gainesville, Florida 32602-1424

(352) 372-2684

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing motion for temporary injunction was furnished by U.S. Mail this 11<sup>th</sup> day of April, 2001, to MARION RADSON, Esq., Gainesville City Attorney, City Hall, Gainesville, Florida, 32601.



Patrice Boyes, Attorney

IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

Watson Construction Company, Inc.,

Plaintiff,

Case No.:

Division:

v.

City of Gainesville,

Defendant.

**NOTICE OF FILING AFFIDAVIT**  
**OF LARRY WATSON, PRESIDENT OF WATSON CONSTRUCTION, INC.**

PLEASE TAKE NOTICE that on the 11<sup>th</sup> day of April, 2001, Plaintiff filed with this Court the Affidavit of Larry Watson, President of Watson Construction Company, Inc.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Marion J. Radson, Esquire, the Gainesville City Attorney, P.O. Box 1110, Gainesville, Florida, 32602 on this 11<sup>th</sup> day of April, 2001.

Respectfully submitted,

**BOYES & ASSOCIATES, P.A.**

Patrice Boyes

Patrice Boyes, Esq.

Florida Bar Number 892520

P.O. Box 1424

Gainesville, Florida 32602-1424

(352) 372-2684

**IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

Watson Construction Company, Inc.,

Plaintiff,

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Defendant

---

**AFFIDAVIT**

**COUNTY OF ALACHUA  
STATE OF FLORIDA**

I, Larry Watson, do hereby attest that:

1. I am the President of Watson Construction Company, Inc., a construction and paving contractor located in Gainesville, Florida.
2. Watson Construction Company, Inc., is the equitable owner of a parcel in Gainesville, Florida, which is currently zoned for Industrial uses (I-2) and has been zoned I-2 at all times relevant to this action.
3. The City of Gainesville's Development Review Board granted preliminary approval for an aggregate distribution center with rail service to be sited on the property in April, 2000.
4. Watson Construction Company, Inc., first met with City staff in October 2000 to discuss siting a hot mix asphalt plant and a concrete batch plant to be co-located with the aggregate distribution facility on the property.

5. Both the hot mix asphalt plant and concrete batch plant are uses by right under I-2 zoning.

6. At the October 2000 meeting with City staff, consultants for the company questioned whether the City would enact a moratorium on industrial development, in light of a moratorium which nearly passed in 1997, the last time an asphalt batch plant was proposed for location in an I-2 district.

7. In response, city officials stated that no moratorium was planned or pending.

8. Watson Construction relied on the existing I-2 zoning and on the City's verbal representations, and expended significant funds to design, engineer and submit plans for a hot mix asphalt plant and a concrete batch plant. The plan was to co-locate these improvements near the aggregate distribution facility to reduce truck trips and various other impacts.

9. Watson Construction relied on the existing I-2 zoning and on the City's verbal representations and purchased an existing asphalt batch plant.

10. Watson Construction relied on the I-2 zoning and on the City's verbal representations and entered into a purchase and sale agreement for the subject site.

11. On December 22, 2000, Watson Construction participated in a Development Plan Review with City staff regarding the amended site plan.

12. On January 18, 2001, Watson Construction participated in a conceptual site plan review before the Gainesville City Plan Board.

13. At the January 18, 2001, hearing, the chair of the Plan Board, Brad Guy, stated that the proposed asphalt plant is a "use by right," and that the community needs a mix of industrial uses. Mr. Guy verbally supported the co-location of the batch plant and the aggregate distribution facility alongside the rail line.

14. I am of information and belief that the citizen request for a moratorium on industrial development, before the commission for the first time on February 12, 2001, was generated at a February 3, 2001, meeting of opponents of the asphalt plant and is targeted specifically at stopping the asphalt plant.

15. Watson submitted its preliminary/final site plan application for the asphalt and concrete batch plant, accompanied by the requisite filing fee, on or about February 14, 2001.

16. The City Commission on March 12, 2001, and continued on March 29, 2001, took public comment on the moratorium issue and voted to authorize the City Attorney to draft a temporary moratorium on industrial development.

17. The City Commission did not provide a cut-off date after which new applications would not be accepted, but pending applications "in the pipeline" would proceed through development approval uninterrupted by the moratorium.

18. The City has not yet scheduled the first reading of the temporary moratorium, but I am of information and belief that the hearing will not occur until late April, 2001.

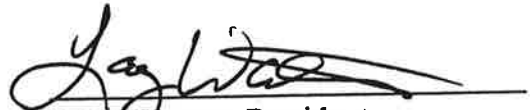
19. Watson Construction Company, Inc.'s equitable right to purchase the subject property expires on April 15, 2001, prior to the purported April 23, 2001, date for the first reading of the moratorium ordinance.

20. Wherefore, Watson Construction Company, Inc., may be forced to expend more funds on a project which will not be allowed to proceed by the City Commission and will not be recoverable as Watson is, as of March 29, on notice that a moratorium may be enacted.

21. Alternatively, Watson Construction Company, Inc., may allow its option to purchase the property to expire, thereby losing in excess of \$277, 000 already expended on this project.

22. Enacting this moratorium and applying it to Watson Construction Company, Inc.'s project will, therefore, cause irreparable harm to the company and to the asphalt plant project.


I HEREBY CERTIFY that the foregoing facts are true and accurate to the best of my belief and knowledge, this 11<sup>th</sup> day of April, 2001.

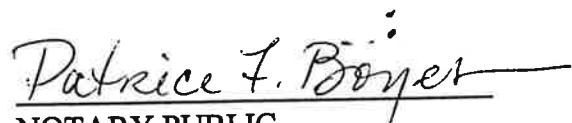
  
Larry Watson, President  
Watson Construction Company, Inc.

**COUNTY OF ALACHUA  
STATE OF FLORIDA**

Today appeared before me Larry Watson, who is personally known to me and who, thus, is known to me to be the person who executed the foregoing Affidavit, and who acknowledged before me that he executed the Affidavit.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County above, this 11<sup>th</sup> day of April, 2001.

 Patrice F Boyes  
My Commission CC879439  
Expires December 30, 2003

  
NOTARY PUBLIC,  
State of Florida at large

My commission expires: 12/30/03