

**LEGISLATIVE #**

**130108**



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*VIA ELECTRONIC MAIL ONLY*

June 4, 2013

Nicolle Shalley, Esq.  
City Attorney  
City of Gainesville  
200 E University Ave; Rm. 425  
Gainesville, Florida 32602-0490

**Re: Mogas Investments, Inc., et. al v. City of Gainesville  
One-Stop Homeless Center**

Dear Nicolle:

Thank you for taking time out last week to speak with me regarding the status of our clients' respective obligations under the First Amendment to Continuance and Settlement Agreement (the "Settlement Agreement"), which our clients executed on December 20, 2012. As we discussed, one of the promises made by the City in the Settlement Agreement was that it would "not file a petition to seek a land use or zoning change *in furtherance of, or connection with*, development of a homeless center on *any* property within a one (1) mile radius of the Nalbandian Properties....so long as Nalbandian owns the Nalbandian properties in fee simple." Just a few weeks later, however, we discovered that the City broke that promise.

On or about January 17, 2013, the City Commission voted to approve a proposed amendment to the City's Future Land Use Element that would, in fact, allow for the development of a homeless center on property within a one-mile radius of the Nalbandian Properties. Specifically, Petition PB-12-134 CPA (the "Petition") proposes to amend the Industrial Land Use Category to allow *any* type of use in the Industrial Land Use Category, so long as the proposed development is approved as a Planned Development ("PD").

My client has previously notified the City that approving such an amendment would violate the dictates of Section 163.3177, Florida Statutes, which requires a local government's comprehensive plan to "establish meaningful and predictable standards for

the use and development of land, and provide meaningful guidelines for the content of more detailed land development and use regulations.” In other words, there is nothing meaningful nor predictable about a comprehensive plan that allows for *any* type of development in a given land use category (so long as the government deems the proposed use “acceptable” and approves it as a PD rezoning). The City, however, ignored our notice (a copy of which is attached as Exhibit “A”) and subsequently voted to transmit the proposed amendment to the State as part of the City’s EAR package.

Even more troubling, however, is that the City’s decision to approve the Petition unmistakably runs afoul of the City’s promise that it would not file any land use petition “in furtherance of, or connection with” development of a homeless center within a one-mile radius of the Nalbandian Properties. The Petition that the City approved is not limited to any particular parcel of property; indeed, it would allow for the potential development of a homeless center on *any and all* Industrial parcels within the City of Gainesville, including parcels “within a one (1) mile radius of the Nalbandian Properties.”

The City’s actions in this regard are a direct breach of the Settlement Agreement. The City’s breach renders the Settlement Agreement null and void and of no further force or effect, and it puts the parties back in the same position as they were prior to executing the Settlement Agreement. Accordingly, Nalbandian’s “Gain Property Donation Offer” under the Settlement Agreement is no longer available to the City.

We understand that these events will result in the parties having to notify the Court that the settlement efforts are off and that the trial of this matter will need to be put back on the Court’s calendar. Although we are prepared to move in that direction, we are equally aware of the needless costs that would be incurred in prosecuting that lawsuit (in light of the City’s apparent decision to develop a homeless center on the former State correctional facility). Accordingly, we would propose that the parties enter into a new settlement agreement that would include substantially all of the same terms as the former Settlement Agreement, except that the Gain Property Donation Offer would be removed and our client would instead offer to pay the City \$25,000, which is the amount that City Staff originally budgeted for “consultant costs” associated with the initial stages of the project on the ADC site. A copy of Staff’s original estimates of the proposed costs of developing the homeless center is attached as Exhibit “B.”

Please understand that, at this point and as a result of the City’s breach of the Settlement Agreement, we do not believe our clients have any further obligation under the Settlement Agreement. This proposal is made simply as a good-faith effort to avoid any further litigation between the parties in regard to the City’s proposed development of the proposed homeless center across the street from my client’s industrial and business parks.

June 4, 2013

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Please give me a call at your earliest convenience to discuss our next steps, including the most efficient means of conveying this offer to the City Commission. I look forward to speaking with you again soon.

Best regards,

A handwritten signature in blue ink, appearing to read 'Karl J. Sanders', with a stylized flourish at the end.

Karl J. Sanders



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*VIA ELECTRONIC MAIL ONLY*

January 3, 2013

Kurt Lannon  
City Clerk, Gainesville City Commission  
200 E University Ave  
Gainesville, Florida 32601

**Re: Gainesville City Commission Agenda Item 120638 (01-03-13)  
Petition PB-12-134 CPA (Amend the Permitted Uses in the Industrial and Public  
Facilities Future Land Use Categories)**

Dear Mr. Lannon:

On behalf of my clients, Nalbandian Properties, LLC, Mogas Investments, Inc., and Ropen Nalbandian, please be advised that we object to the above-referenced legislation, which seeks to amend the City of Gainesville's Future Land Use Element ("FLUE"). In particular, my clients object to the proposed revisions to the description of the Industrial land use category in the FLUE. The proposed revisions would allow *any* type of use – without limitation – on lands identified as Industrial on the City's Future Land Use Map. As such, the proposed amendment is not "in compliance" with State law, as required by Section 163.3184, Florida Statutes.

Should you have any questions or require additional information, please do not hesitate to contact me. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karl Sanders".

Karl J. Sanders

cc: Nicolle Shalley  
Marion Radson  
Liz Waratuke

**Exhibit A**  
**Alternative One-Stop Homeless Assistance Center Sites**  
**Estimated Development Costs/Other Costs**

Location		800 Block NW 53rd Ave	5901 NE Waldo Road
Parcel Number	07877-001-004	07872-003-001	
Acres	12.7 acres	40 acres	
Owner	ADC Development/Investment Group, LLC	Gaines	
<b>PHASE I</b>			
Purchase Price	\$633,500		\$650,000
<b>PHASE II</b>			
<b>Other Costs/Development Costs:</b>			
Consultant	\$25,000		\$25,000
Land Clearing	Included in price		\$125,000
Site Preparation	\$100,000		\$30,000
Water/Sewer Extension	\$423,500		\$42,000
Driveway	* \$438,250		** \$220,000
Sidewalks	\$52,500		\$20,000
Pole Lighting	\$197,400		\$50,000
Access to Public/Private Road Entry Way.	Yes		No
Construction (New Building: 5,000 sq. ft)	\$610,000		\$610,000
Total Development Costs	\$2,480,150		\$1,772,000
RTS Transportation Costs	Near Route 8; however, will require additional bus and route @ \$182,682/yr (12 hrs of service on weekdays). Site not currently accessible by transit - no turn around.	Near Route 8; however, will require additional bus and route @ \$182,682/yr (12 hrs of service on weekdays). Site not currently accessible by transit - no turn around.	
<b>PHASE III</b>			
Shelter Services Component (Building Services)			
<b>Phase IV</b>			
Master Plan (Shelter Services, including Dormitories)			

\* 300 feet (quoted by the seller)

\*\* Price may increase by \$100,000 to procure access across CSX property.

**Bajalia Law Office, P.A.**  
**Attorneys at Law**

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July 3, 2013

**VIA E-MAIL ONLY (waratukeea@cityofgainesville.org)**

Elizabeth A. Waratuke, Esq.  
City of Gainesville  
Office of the City Attorney  
P.O. Box 490, Sta 46  
Gainesville, FL 32627

**Re: *Mogas Investments, Inc. et. al v. City of Gainesville***

Dear Ms. Waratuke:

I am writing in follow-up to our telephone call on June 24, 2013. I have been asked to re-involve myself in this matter, as it appears that our respective clients are headed back to court. As I explained during our telephone conversation, our clients believe that the City of Gainesville breached the First Amendment to Continuance and Settlement Agreement (the "Settlement Agreement"), thereby rendering the Settlement Agreement void prior to the City's attempted acceptance of the "Gain Property Donation Offer" on June 6, 2013. Additionally, since the time of our telephone call, we have learned that some of the City Commissioners discussed the Settlement Agreement amongst themselves - outside of a duly noticed public hearing. Of course, Florida's Sunshine Law expressly forbids such discussions - even if unintentional - and the Courts have consistently held that the proper remedy for a Sunshine violation is to void the ultimate vote on the issues discussed outside of the public eye.

**I      The City's Breach of the Settlement Agreement**

The City breached the Settlement Agreement in two ways. First, as was explained in the June 4, 2013 correspondence from Karl Sanders to Nicolle Shalley (a copy of which is attached), the City breached a material term of the Agreement when it filed "a petition to seek a land use . . . change *in furtherance of* . . . development of a homeless center on *any* property within a one (1) mile radius of the Nalbandian Properties . . ." As the City is certainly aware, at issue in the pending lawsuits between the parties is whether a homeless center can legally be developed on land that has been designated "Industrial" on the City's Future Land Use Map. Nevertheless, a mere twenty-eight days after signing the Settlement Agreement, the City approved Petition PB-12-134 CPA (the "Petition"), which attempts to amend the description of the City's Industrial land use category to allow *any* type of use to be developed on lands designated "Industrial," so long as the development is approved as a Planned Development ("PD") (like the PD that is the subject of our pending lawsuits.).

Second, pursuant to the Settlement Agreement, the parties agreed to a "Continuance Period" (i.e., a "cooling-off" period) and expressly agreed to take no further action in regard to the "global litigation" during that time. Indeed, the Settlement Agreement expressly states that the *only* action that the City could take that might impact upon the litigation was pursuing a wetland permit for the Homeless Center Parcel. The City was well aware that a key issue in the global litigation was our position that specific language contained within the Future Land Use Element prohibited the development of a homeless center on an industrial parcel. Despite this fact, and despite the clear language and intent of the Settlement Agreement, the City somehow decided it was appropriate to rewrite the very language that was at issue in the litigation. At best, that was an attempt to moot the critical issue of the pending lawsuits; at worst, it was a blatant attempt to circumvent the very purpose of the Settlement Agreement – honoring the "cooling-off" period.

## **II. The City's Violation of the Sunshine Law**

In addition to above-referenced breaches of the Settlement Agreement, we have recently learned of private discussions amongst certain Commission members regarding the Settlement Agreement, the Gain Property Donation Offer and the Commission's decision about whether to accept the Gain Property Donation Offer. *These discussions occurred prior to the June 6 public meeting to consider these issues, outside of the public eye.* Florida's Sunshine Law is clear that "no resolution, rule, regulation or formal action shall be considered binding" when the government-in-the-sunshine law has been violated. *Florida Statutes*, §286.011(1). It cannot be reasonably questioned that these private communications (just days prior to the June 6 public hearing) are in regard to a matter on which foreseeable action was going to be taken. As such, these private discussions were a clear violation of the Sunshine Law.

As the City is aware, Florida law is clear that even a "mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *ab initio*." *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974). In fact, "even 'an unintended violation of the government in the sunshine law will negate' action taken by a city commission." *Grapski v. City of Alachua*, 31 So.3d 193, 200 (Fla. 1<sup>st</sup> DCA 2010). In light of these private communications amongst Commission members that occurred prior to the June 6 public hearing, the Commission's June 6 vote to "accept" the Gain Property Donation Offer is void *ab initio*. Thus, even ignoring the City's two prior breaches of the Settlement Agreement and assuming the Settlement Agreement was still in force, the City has not legally accepted the Gain Property Donation Offer and obviously cannot do so prior to the July 1, 2013 deadline under the Settlement Agreement.

As I expressed to you during our conversation, I sincerely find it unfortunate that our clients face these ongoing issues that are clearly going to result in yet more litigation between them. I strongly believe that, given the issues we currently face (i.e., whether the

Settlement Agreement is still enforceable, whether the City's breaches rendered the Settlement Agreement void and the impact of the Sunshine Law violations), our clients are both likely to spend in excess of an additional \$150,000 in litigation costs. Further, the City will be compelled to reimburse my clients' attorneys' fees for the litigation involving the City's violation of the Sunshine Law.

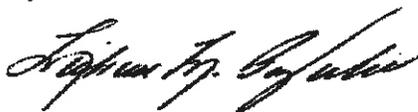
In an effort to resolve all of these impending issues and bring final resolution to this matter without either of our clients having to expend any more resources, I have been authorized to make the following proposal:

1. My client will make a \$75,000 charitable contribution to the City of Gainesville for use toward the City's efforts to develop a homeless center;
2. My client will agree to retain the Gain Property, pending the City's continued efforts to finalize its efforts to secure the Department of Corrections ("DOC") site for the homeless center;
3. In the event the City is successful in its efforts to acquire the DOC site, my client is then free to do with the Gain Property as he wishes;
4. In the event the City is not successful in acquiring the DOC site, my client will then transfer the Gain Property to the City and the City will return the \$75,000 charitable contribution to my client; and
5. The parties will exchange mutual full and complete releases.

I trust that the Commission will give sincere consideration to this proposal. If so, I must believe that they will determine this to be a more than fair proposal to all parties, given the current circumstances.

I look forward to hearing from you.

Bajalia Law Office, P.A.



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Michael M. Bajalia  
For the Firm

c: Mr. Ropen Nalbandian  
Karl J. Sanders, Esq.