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February 5, 2021
(VIA electronic mail)

Honorable Lauren Poe
Mayor
City of Gainesville
P.O. Box 490
Station 19
Gainesville, FL 32627-0490

Dear Mayor Poe:

The City of Gainesville's Land Development Code authorizes City staff to sit as a technical review committee on proposed development ("TRC").¹ The City Commission has delegated to the TRC the extraordinary power to review and issue *final* development orders for extremely large developments. Moreover, while the code requires the TRC to "*meet at least monthly*" these meetings are not publicly noticed, nor is the public allowed to attend these meetings and be heard.

After the TRC issues a development order, no public notice is provided to the public that the development order has been issued. Under the Code, if someone finds out about the issuance of the development order, their only recourse to obtain a quasi-judicial hearing for subsequent judicial review is to engage in the expensive and time-consuming process to "*appeal*" the

¹ See Section 30-3.2, City of Gainesville Land Development Code.

TRC's decision to a special magistrate who has the power to issue a final decision to approve, deny, or modify the development order.²

As a land use lawyer practicing statewide for over forty (40) years, it is my opinion that the City of Gainesville's delegation of authority to issue final approvals of major development projects to the TRC is extremely unusual among Florida's local governments. More importantly perhaps this system of putting administrative staff in charge of making major development decisions without notice and public hearings is unconstitutional and is not consistent with well-established case law. Let me explain.

In most jurisdictions in Florida, development orders for large projects are subject to one (1) and often two (2) noticed public hearings. In many places the elected officials themselves issue the final development orders based on review by staff and often upon a recommendation of a board of appointed members. While some local governments allow staff to administratively approve some types of minor development, in virtually every jurisdiction I am familiar with, in these instances, the TRC notices its meetings and allows public input. Also, in most places proposed large development projects are publicly noticed, and a public hearing is held before an elected or appointed board where citizens and affected persons may appear and be heard on the proposed development.

² See Section 30-3.56 et al., City of Gainesville Land Development Code.

In *Evergreen the Tree Treasurers of Charlotte County v. Charlotte County Bd. of County Comm'rs*, 810 So. 2d 526 (Fla. 2nd DCA 2002), the court held that where a local development review committee composed of County staff had been delegated fact-finding and final decision-making authority over a land use matter, the Sunshine Law, Chapter 286, Florida Statutes, and concomitant public hearing requirements applied. Citing the Florida Supreme Court decision of *Bd. of County Comm'rs v. Snyder*, 627 So. 2d 469, (Fla. 1993), the court determined that the staff decision was a quasi-judicial matter because it involved making findings of fact and the application of general rules, and for this reason the public was entitled to attend the staff meeting and present written and oral comment.

As noted above, under Gainesville's rules, the only way a citizen or affected person may establish a record for judicial review is through the quasi-judicial process provided by the Code to "appeal" a TRC approved development. This empowers a non-elected administrative law judge to conduct the quasi-judicial hearing and make the final development decision. This process can easily cost the City, the developer, and the citizens hundreds of thousands of dollars and it can take months to resolve. Therefore, besides curing the due process concerns I have discussed, it would be more efficient and cost effective if the City conducted public hearings, at least on major development projects.

To conclude, I strongly urge the City to amend the Code to require that major development decisions not be approved by the TRC, but rather by the City Commission or the Development Review Board at which the public and affected persons may appear and be heard. I request that your office propose amendments to the City's Land Development Code to require that the TRC provide public notice and the opportunity for the public to be heard. I also propose that the City repeal the current appeal process and hold quasi-judicial hearings in a public meeting.

I appreciate your attention and remain available to assist you and City staff with this important matter.

Sincerely,



Terrell K. Arline

Cc: City Attorney, via electronic mail