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October 19, 2008

Via Email

City of Edgewater, Florida
Mayor Mike Thomas
Council Member Debra Rogers
Council Member Gigi Bennington
Council Member Ted Cooper
Council Member Harriet Rhodes

Re: Application for Restoration/Hammock Creek Green in Edgewater

Dear Mayor Thomas & Council Members:

I write on behalf of Edgewater Citizens Alliance for Responsible Development ("ECARD"). Several startling revelations have recently come to ECARD's attention which directly impinge upon the Restoration/Hammock Creek Green application and require investigation and redress by the appropriate authorities before the application process should be allowed to continue.

I. The comprehensive plan amendment application for Restoration/Hammock Creek Green is attached as Exhibit 1. It lists the owner as Mr. Mears and Hammock Creek Green, LLC and the Applicant/Agent as Donald Mears, GS Florida, LLP. Over the past few years Mr. Mears has become familiar at Edgewater Council meetings as he seeks to obtain development approvals for the Restoration/Hammock Creek property. I bring to your attention the declaration Mr. Mears submitted in a recent federal litigation, *Destinations Realty and Relocation Services, Inc. v. Hammock Creek Green LLC. and GS Florida* (Case No. 07-80810 S.D. Fla.). (Exhibit 2) Mr. Mears submitted this declaration in support of

defendants' motion for summary judgment. In the declaration, Mr. Mears states:

4. I have never been employed by Defendant, Hammock Creek Green, LLC ("Hammock Creek"), nor have I ever been authorized to act as Hammock Creek's agent or legal representative or to sign for or contractually bind Hammock Creek.

And yet that is exactly what Mr. Mears has been purporting to do with respect to the Hammock Creek application. I note for your review that Mr. Mears signed his statement March 3, 2008 and stated "I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct." Mr. Mears signed this federal court statement in accordance with 28 U.S.C. § 1746.

The court file also includes the March 3, 2008 declaration of Michael Bradley. (Exhibit 3) Mr. Bradley states that he is a senior vice-president for Greenfield Florida Land LLC and "the managing member of the parent company that wholly owns the company that wholly owns Defendant Hammock Creek Green LLC." (¶ 1) Mr. Bradley states at ¶ 5 that "GS Florida has never had the authority to contractually bind Hammock Creek. Donald Mears, Jr. has never been employed by Hammock Creek and has never been authorized to act as Hammock Creek's agent or legal representative."

And yet, that is exactly what Mr. Mears/GS Florida has been doing. Mr. Mears/GS Florida is the record "Applicant/Agent" in the application process. Like Mr. Mears, Mr. Bradley signed his statement "under penalty of perjury" in accordance with 28 U.S.C. § 1746.

Given that these statements are presumed true "under penalty of perjury," ECARD questions the legal standing of Mr. Mears/GS Florida to act as applicant/agent for the Restoration/Hammock Creek application. ECARD requests that the City of Edgewater immediately suspend the processing of this "development approval" pending a thorough investigation.

II. In *Edgewater Citizens' Alliance for Responsible Development, Inc. v. City of Edgewater*, Case No. 2007-20547 CINS (Seventh Judicial Circuit), Mr. Mears submitted a sworn affidavit on behalf of Restoration/Hammock

Creek Green. (See Exhibit 4 attached.) In that affidavit, dated October 9, 2007, Mr. Mears states that Hammock Creek has paid for the services of PEC Engineers, Inc. (“PEC”) as a floodplain basin consultant for work on Restoration/Hammock Creek. (¶¶ 9, 11) PEC employs Kenneth Hooper as its President, and Mr. Hooper was simultaneously Edgewater’s City Manager for about six years until late April 2006. Edgewater contracted with PEC for Mr. Hooper’s part time service as city manager. Newspaper articles reported at the time of his resignation that Mr. Hooper was questioned about conflicts of interest with developers. (Exhibit 5)

In his federal declaration, Mr. Mears stated that during the seven months following June 30, 2004, GS Florida “conducted due diligence on the Edgewater property.” (Exhibit 2, ¶¶ 9-10) Mr. Mears states that GS Florida entered negotiations for the Edgewater property between late April and June 2005. (Exhibit 2, ¶¶ 32) On June 6, 2005, GS Florida “went under contract” for the property. (Exhibit 2, ¶ 33) Mr. Mears further states that “[f]rom June of 2005 through January 2006, GS Florida was engaged in preparations for closing on the Edgewater Property, including land planning and work on regulatory and environmental issues.” (Exhibit 2, ¶ 34) Throughout this period Mr. Hooper/PEC served as the Edgewater City Manager. **ECARD seeks an investigation into whether any improper conflicts of interest/undue influence or quid pro quo resulted from the relationship between Restoration/Hammock Creek and Mr. Hooper/PEC.**

III. I also bring to your attention a letter dated January 14, 2005 to Mr. Hooper as City Manager from Mr. Gifford Anglim of the “daly design group, Inc.” regarding Mr. Anglim’s direction to Mr. Hooper: “You will meet with Cindy Coto next week to avert a Volusia legal challenge to the annexation.” (Exhibit 6) Mr. Dan Robison is copied on the letter. Ordinance 2004-O-31, which annexed the subject property, lists Dan Robinson as “the applicant/agent for Vincent and Pamela Snowden who are the owners...” (Exhibit 7) As of January 14, 2005, the annexation of the Restoration/Hammock Creek property had not been submitted to a second reading and adoption by the City Council. The annexation was finalized by the City of Edgewater on June 20, 2005. **ECARD requests a full investigation to determine if there was any quid pro quo or conflict of interest between any person or entity associated with the property that was then the subject of annexation and Mr. Hooper/PEC.**

IV. The annexation of the Restoration/Hammock Creek property into Edgewater was adopted by Ordinance 2004-O-31 on June 20, 2005. As previously noted, the applicant/agent of record is listed as Dan Robison, Highway 442 Partners, LLC and the owners as Vincent and Pamela Snowden. However, in his federal sworn statement, Mr. Mears states that “[o]n June 6, 2005, GS Florida went under contract with Edgewater 5, LLC (Edgewater 5”) and Edgewater 55, LLC (“Edgewater 55”) to purchase the Edgewater property. (Exhibit 2, ¶ 33.) Then, “on or around January 20, 2006, Hammock Creek assumed the rights to purchase the Edgewater property from an entity which had assumed those rights from GS Florida.” (Exhibit 2, ¶ 36.) Florida law is explicit that **only the owners** of real property may petition for voluntary annexation into a municipality. Section 171.044, Fla. Stat. (2008). **ECARD questions whether Ordinance 2004-O-31 annexing the subject property complies with Florida law.**

V. In light of these foregoing revelations, ECARD questions the propriety of the very large “donation” by Mr. Mears and services by Canin and Associates, a partner in Restoration/Hammock Creek for the “visioning” process the City of Edgewater is now undergoing in order to remake the City’s comprehensive plan. Mr. Mears’ March 3, 2008 declaration states that “GS Florida was first introduced to the Edgewater Property in June of 2004 through Jason Canin (“Canin”), a real estate broker with Charles Wayne Properties, Inc.” (Exhibit 2, ¶ 7) **ECARD questions the propriety of this donation and asks that it be examined thoroughly for conflicts of interest.**

VI. Restoration/Hammock Creek is on record in opposition to both ECARD’s proposed density amendment and the height cap charter amendment that it sponsored. (Exhibit 8) Recently I inspected the Restoration/Hammock Creek file at the City of Edgewater. Apart from the complete dearth of any “analysis” of fiscal, demographic, ecological, transportation, economic, impacts of this mammoth proposal by the City, I was struck by several legal bills from City Attorney Ansay to the City that are in the file. These two bills are attached as Exhibit 9. A bill dated July 13, 2007 from Ms. Ansay to the City is for services rendered “regarding issues related to ballot initiative; examination of case law and legal authority regarding same” and was forwarded to Mr. Mears for payment. (Exhibit 9) Also, a bill from Ms. Ansay to the City dated June 5, 2008 under “Restoration Development Review” provides:

05/20/2008

CSA: Receipt and review correspondence from Ted Brown regarding restoration development; Review issues regarding land use and charter issues regarding same.

05/22/2008

CSA: Review issues regarding development plan issues, height issues and comprehensive plan issues in preparation for review of upcoming submittal.

05/23/08

CSA: Review issues regarding recent Charter Review Committee discussion regarding height limit and issues related to same as impacts upcoming development applications and timing related thereto.

(Exhibit 10)

Further, a bill from Ms. Ansay to the City dated September 5, 2008 entitled "Restoration Development Review," details Ms. Ansay's work related to the density petition on August 11 and 12. (Exhibit 11) This bill also details Ms. Ansay's daily contacts with Restoration/Hammock Creek attorney Ted Brown regarding the proposed Restoration/Hammock Creek comprehensive plan amendment. As you know, 2008-O-2 was approved at the first reading on August 18, 2008. ECARD finds it problematic that Ms. Ansay spent the week following the first reading coordinating a joint trip to the Department of Community Affairs ("DCA") in Tallahassee with "representatives of Hammock Creek Green, LLC regarding issues related to comprehensive plan amendment, Evaluation and Appraisal Report and development issues." (Exhibit 10, entry for August 29, 2008.) It is problematic enough that immediately after the first reading of the ordinance Ms. Ansay "prepared for and attended conference with staff and representatives of Hammock Creek Green regarding upcoming meeting in Tallahassee." (Exhibit 10, entries for August 20, 21, 22, 27, 28) In fact, Ms. Ansay's time records establish that she prepared for the meeting and attended the meeting with DCA staff and Hammock Creek representatives to discuss not only the proposed Restoration amendment, but also the status of the City's entire comprehensive plan. (Exhibit 11, entries for August 19, 26,

28, 29) Section 163.3191, Fla. Statutes provides that once every seven years local governments shall assess the “progress in implementing the local government’s comprehensive plan” (§ 163.3191(a), Fla. Stat. (2008)) through the preparation of an “evaluation and appraisal report.” It would appear from Ms. Ansay’s activities on “Restoration Development Review” (as the billing statement titles it) that the entire Edgewater comprehensive plan is likely subject to direct influence and input from Restoration/Hammock Creek. But of course, this dovetails with the “visioning” process currently being “donated” by Mr. Mears and Canin and Associates to the City.

Ms. Ansay’s billing statements lead ECARD to query if Ms. Ansay is coordinating her work on the ECARD charter amendments with Restoration/Hammock Creek. It is beyond dispute that Restoration/Hammock Creek opposes the height cap in the City Charter that was initiated by ECARD and seeks its repeal. Further, Restoration/Hammock Creek strongly opposes the proposed density charter amendment on the November 4th ballot. **Why is the City of Edgewater billing Ms. Ansay’s time spent opposing Edgewater voters’ charter amendments to Restoration/Hammock Creek? And too, please provide ECARD with the City Council’s authorization to Ms. Ansay to travel to Tallahassee and meet with the representatives of Restoration/Hammock Creek and DCA staff regarding the review of the proposed Restoration/Hammock Creek comprehensive plan amendment and also discussion of “the Evaluation and Appraisal Report and development issues[.]” ECARD requests a thorough and impartial investigation into this matter.**

VII. Finally, at a January 30, 2008 City Council Special Meeting, recorded minutes of the meeting provide that Mayor Thomas stated that Mr. Mears allows the Mayor to use the Restoration/Hammock Green property for the Miami Tract Hunt Club, which Mayor Thomas operates. The minutes of the meeting state that the Mayor consulted with an attorney at Foley & Lardner about whether or not this created a conflict of interest and he was told by the attorney that it did not. Please see Exhibit 12 annexed hereto. **ECARD requests that any written opinion on this matter be produced for public inspection and further, that the Mayor’s relationship with Mr. Mears/Restoration/Hammock Creek be investigated to determine if indeed there is a legitimate conflict of interest.**

City of Edgewater
October 19, 2008

ECARD has raised material questions with respect to the Restoration/Hammock Creek application and the apparent use of City resources to oppose legitimate ECARD efforts to amend the City Charter to protect it from incompatible over-development. Given the unprecedented scope of the Restoration/Hammock Creek proposal, which seeks to double the size of Edgewater's population and add commercial space more than double the size of the Volusia Mall; its repudiation of the Volusia County Comprehensive Plan and intention to inject very dense development into the "green heart" of Volusia County; the subjection of Edgewater and County taxpayers to millions of dollars to provide new infrastructure and municipal service to the project site; ECARD and the citizens of Edgewater and Volusia County deserve to have the questions posed in this letter answered. We ask for a prompt, impartial and complete investigation into these questions and look forward to such an investigation.

Sincerely yours,

Lesley Blackner

attachments

Carolyn Ansay, Esquire

ECARD members

Attachments herewith