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City of Gainesville

Lauren Poe, Mayor



October 17, 2022

James D. Stansbury, Chief
Bureau of Community Planning and Growth
Florida Department of Economic Opportunity
Caldwell Building
107 E. Madison Street
Tallahassee, FL 32399

RE: City of Gainesville Comprehensive Plan Amendment No. 22-03ESR under Expedited State Review

Dear Mr. Stansbury:

The City of Gainesville ("City") has considered your letter on behalf of the Department of Economic Opportunity ("Department"), received on September 8, 2022, pursuant to the expedited state review process in Section 163.3184, Florida Statutes. The Department's letter provided a comment regarding the City's proposed Comprehensive Plan amendment (Amendment No. 22-03ESR)("Amendment"). Pursuant to Section 163.3184(3)(b)2., Florida Statutes, the Department's authority to provide comments is limited to "important state resources and facilities" that will be adversely impacted by the Amendment if adopted by the City. In addition, the Department shall state with specificity exactly how the Amendment will adversely impact an important state resource or facility. Unfortunately, the Florida Statutes fail to define "important state resources and facilities" under the Department's authority. However, Section 163.3184(5)(c)3., Florida Statutes, requires the Department to ultimately prove with clear and convincing evidence that a matter it has commented on is in fact an important state resource or facility, otherwise the Department has no authority to provide comments under the statutory expedited state review process.

In its letter dated September 8, 2022, the Department provided a comment based on its conclusion that "affordable housing is an important state resource." However, the Department failed to define or cite any definition of what "affordable housing" means or what specific "affordable housing" is an "important state resource or facility" under the Department's limited authority in the statutory expedited state review process, and furthermore the Department failed to identify any specific "affordable housing" project, resource, or facility that would be adversely impacted by the City's Amendment. The City recognizes the Department's role in promoting affordable housing in local governments throughout the state through such means as grants and tax programs and technical assistance with housing elements. In addition, the City agrees that affordable housing (however the Department may define) is certainly important and is certainly an issue that each local government in Florida must plan for and address under its home rule authority. However, the City disagrees that the Department may in a cursory and sweeping manner claim "affordable housing" is an "important state resource or facility" that gives the Department specific authority under the statutory expedited state review process to provide comment to the City's

DRAFT

Amendment. Because the Department failed to provide any evidence or state with specificity an important state resource or facility and because the Department failed to show how such resource or facility would be specifically and adversely impacted by the City's Amendment, the Department's comment is outside of its limited authority as provided in the statutory expedited state review process and is an infringement on the City's home rule authority as protected under Article VIII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes.

Assuming the Department has authority for its comment under the expedited state review process, which it does not, this letter serves as the City's response. The Department's comment contains three broad assertions: 1) the Amendment is internally inconsistent with the Housing Element; 2) the Amendment inadequately plans for the provision of public facilities and services; and 3) the Amendment does not address allowing Accessory Dwelling Units (ADUs).

Claim 1: The Amendment is internally inconsistent with the City's Housing Element.

The Department's first assertion demonstrates the Department's lack of understanding of the City's Comprehensive Plan. The Department asserts that the City's Amendment, which deletes one paragraph in the City's Comprehensive Plan Future Land Use Element pertaining to the single-family land use category, is internally inconsistent with Policy 1.1.5 and Policy 3.1.4 in the City's Housing Element. Policy 1.1.5 in the Housing Element is a single sentence that states in whole: "The University of Florida (UF) and the private sector shall be responsible for providing housing for college students." In support of the Department's claim, the Department cites City-provided data that the Department says indicates that student renters have been the primary beneficiaries of new rental housing built since 2000. Even if that was the case, the Department's citing of the fact that the *private sector* has provided housing for college students (which is exactly what Policy 1.1.5. requires) is not in any respect evidence that Policy 1.1.5 has either been violated or is in conflict with the City's Amendment. There is simply no logic or evidence undergirding the Department's claim that the City's Amendment (which fundamentally allows more housing types to be constructed by the *private sector* in the City) is in any way inconsistent with a housing policy that states that UF and the *private sector* shall provide housing for college students.

The Department also claims that the City's Amendment is internally inconsistent with the City's Housing Element Policy 3.1.4, which is a single sentence that states in whole: "The City shall help neighborhoods develop plans that address neighborhood character, stability, housing, safety, infrastructure, and historic resources." The Department provides no reasoning to support this claim other than stating that the City did not analyze whether the Amendment is consistent with this housing policy. The City in the adopting ordinance does in fact state that the Amendment is consistent with the City's Comprehensive Plan, which of course includes all policies and thereby Housing Element Policy 3.1.4. More to the point, the Amendment is consistent with Housing Element Policy 3.1.4. In fact, the City indeed has provisions to assist neighborhoods develop plans that will protect and regulate such neighborhoods through both historic preservation overlays or heritage overlays (see City Land Development Code Sections 30-4.27 and 30-4.28). As an overlay that protects the distinct identities and resources that are specific to a neighborhood, these neighborhood plans add more restrictive protections that take precedence over any underlying regulations. Accordingly, the City has complied with Policy 3.1.4 and this subject Amendment will in no way affect those neighborhood plans and protections, and therefore the Amendment is internally consistent with Policy 3.1.4.

DRAFT

Consequently, the City's Amendment is internally consistent with both Housing Element Policy 1.1.5 and Policy 3.1.4, and this determination by the City certainly meets the fairly debatable standard in Section 163.3184(5)(c)2.b.

It is worth noting that the Department made other sweeping claims in its comment letter that the Department failed to support with any evidence or citations whatsoever, and which directly contradict a growing and supported consensus in land use and housing policy. The Department claims – without one source of support or evidence – that the City's Amendment “may endanger the elimination of substandard housing conditions, the provision of adequate sites, and the distribution of housing for a range of income and types.” Directly to the contrary and as evidenced by the substantial data and analysis provided by the City, there is a growing consensus among land use and housing professionals that restrictive or exclusionary zoning, which includes most fundamentally restricting land to single-family housing where no more than one single housing unit is allowable per certain-sized residential lot: 1) makes housing less affordable; 2) exacerbates income and racial inequities; 3) imposes increased environmental harms; 4) makes the economy less productive; and 5) limits the types of housing available for different living arrangements including at different stages of life.¹

In the local context as it regards the City of Gainesville, the City's widespread historic practice of restricting land use to single-family housing has exacerbated the City's discrepancies in housing equity and affordability. Gainesville is a rapidly growing city with an inadequate supply of housing units, types, and geographic disbursement, and which is experiencing a corresponding and growing housing affordability problem disproportionately affecting Gainesville's Black population. Specifically, Gainesville had a 54% increase in population between 1990 and 2018, and almost 30,000 additional people will be living in Gainesville by 2050.² White and wealthier households are concentrated in west and northwest Gainesville (where the majority of single-family zoning is located), while Black and poorer households are

¹ *Ending Exclusionary Zoning in New York City's Suburbs*, NYU Furman Center, (November 2020), ([https://furmancenter.org/files/Ending Exclusionary Zoning in New York City's Suburbs.pdf](https://furmancenter.org/files/Ending%20Exclusionary%20Zoning%20in%20New%20York%20City's%20Suburbs.pdf)); *Multifamily Housing Impact Literature Review*, Delaware Valley Regional Planning Council, (October 2018), (<https://www.dvrpc.org/SmartGrowth/Multifamily/pdf/DVRPC-Multifamily-Housing-Impact-Literature-Review.pdf>); *Racial Diversity and Exclusionary Zoning: Evidence from the Great Migration*, Princeton University, Center for the Study of Democratic Politics, (January 2022), ([https://drive.google.com/file/d/10 -WcJe4v6GfxVDfj2h-R3pvjK4yjig0/view](https://drive.google.com/file/d/10-WcJe4v6GfxVDfj2h-R3pvjK4yjig0/view)), *How to Increase Housing Affordability? Understanding Local Deterrents to Building Multifamily Housing*, Kulka, Amrita and Sood, Aradhya and Chiumenti, Nicholas, (April 2022), (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4082457), *Exclusionary Zoning: A Legal Barrier to Affordable Housing*, Arizona State University Morrison Institute for Public Policy, (May 2022), ([https://morrisoninstitute.asu.edu/sites/default/files/exclusionary zoning legal barrier to affordable housing.pdf](https://morrisoninstitute.asu.edu/sites/default/files/exclusionary_zoning_legal_barrier_to_affordable_housing.pdf)), *Single-Family Zoning Analysis*, Cuyahoga County Planning Commission, (December 2021), ([https://s3.us-east-2.amazonaws.com/s3.countyplanning.us/wp-content/uploads/2022/02/SFZ Phase-1-Documents_12-14-21.pdf](https://s3.us-east-2.amazonaws.com/s3.countyplanning.us/wp-content/uploads/2022/02/SFZ_Phase-1-Documents_12-14-21.pdf)), *City NIMBYs*, Vicki Bean, 33 J. Land Use & Env. L. 217 (2018); *Regulation and Housing Supply*, Joseph Gyourko & Raven Molloy, 5 HANDBOOK REGIONAL & URB. ECON. 1289 (2015) (reviewing literature); *Why Have Housing Prices Gone Up?*, Edward L. Glaeser, et al., 95 AM. ECON. REV. 329, 329 (2005); *Racial Enclaves and Density Zoning: The Institutionalized Segregation of Racial Minorities in the United States*, Jonathan T. Rothwell, 13 AM. L. & ECON. REV. 290, 290 (2011); *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, Jonathan T. Rothwell & Douglas S. Massey, 44 URB. AFF. REV. 779 (2009); *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders*, Matthew Resseger, Harv. Univ. Working Paper (2013), (https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf); *Segregation by Design*, Jessica Trounstein, (2018); *Arbitrary Lines: How Zoning Broke the American City and How to Fix It*, M. Nolan Gray, Island Press (2022); *The Effect of Market-Rate Development on Neighborhood Rents*, Shane Phillips, Michael Manville, and Michael Lens, UCLA Lewis Center for Regional Policy Studies, (February 2021), (<https://escholarship.org/uc/item/5d00z61m?>); *Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities*, Christopher Jones, Stephen Wheeler, and Daniel Kammen, Urban Planning Journal, Vol. 3, No. 2, (2018)(<https://www.cogitatiopress.com/urbanplanning/article/view/1218>).

² *Blueprint for Affordable Housing: An Action Plan for the City of Gainesville*, The Florida Housing Coalition, (September 2020); *Bureau of Economic and Business Research Projections of Florida Population by County, 2025-2050, with Estimates for 2021*, Volume 55, Bulletin 192, (February 2022).

DRAFT

concentrated in east and southeast Gainesville.³ Over 63% of Gainesville’s total citywide residential land area is restricted to single-family housing, and over 65% of that total single-family zoning area is concentrated in (whiter and wealthier) northwest Gainesville.⁴ The Gainesville area has a current shortage of almost 1,800 units of housing for both renters and owners, and this doesn’t account for the projected population growth and demand in our area.⁵ Gainesville has a specific current shortage of over 1,300 rental units for households earning less than 60% of the Area Median Income (AMI).⁶ Because of the City’s vast land area that is restricted to single-family housing, over 80% of the housing units present in Gainesville are either single-family homes or larger apartment buildings (10+ units), with a corresponding deficiency in “missing middle” housing that includes townhomes, duplexes, triplexes, and quadplexes.⁷ Gainesville’s Black population disproportionately occupies “missing middle” housing because these units are generally much more affordable for low and middle-income residents compared to single-family homes or multi-family buildings, whereas White households are much more likely to live in single-family homes.⁸ Housing has become increasingly unaffordable for the Gainesville area since the early 2010s as supply has not kept up with demand, as home prices have increased at a much faster rate than income, and as rental vacancy rates have continued to decrease resulting in higher rents.⁹ Non-student renters earning less than 80% of the AMI are the largest group of cost-burdened households (greater than 30% of household income paid towards housing expenses) in Gainesville, and this group is disproportionately Black and minority renters living on Gainesville’s east side.¹⁰ In northeast Gainesville in particular, roughly 83% of renter households are cost-burdened and paying more than 30% of their income towards rent.¹¹

Given the established harms of restrictive or exclusionary zoning and its exacerbation of the problems identified above, the City has taken action (which includes the adoption of the Amendment) to loosen some of the City’s restrictions on single-family land use and zoning as one tool of many in a comprehensive housing action plan and as advised specifically by City staff and expert resources such as The Florida Housing Coalition and HR&A Advisors, among others.¹² The Amendment is not only internally consistent with Housing Element Policy 1.1.5 and Policy 3.1.4, but is in accordance with sound, equitable, and well-supported planning principles.

Claim 2: The Amendment inadequately plans for the provision of public facilities and services.

The Department claims that the Amendment inadequately plans for the provision of public facilities and services, and that the City’s Comprehensive Plan thereby does not provide meaningful and predictable

³ 2022 *Affordable Housing Framework*, City of Gainesville; *Exclusionary Zoning & Inclusionary Zoning Study*, HR&A Advisors, (December 2021).

⁴ See Exhibit A: City of Gainesville Map of Single-Family Zoning Districts; *Exclusionary Zoning & Inclusionary Zoning Study*, HR&A Advisors, (December 2021).

⁵ *Gainesville Comprehensive Housing Market Analysis*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, (2021), (<https://www.huduser.gov/portal/publications/pdf/GainesvilleFL-CHMA-21.pdf>).

⁶ *2019 Rental Market Study*, Shimberg Center for Housing Studies, (May 2019), ([2019-rental-market-study.pdf \(ufl.edu\)](https://www.shimbergcenter.org/wp-content/uploads/2019-rental-market-study.pdf)).

⁷ *Blueprint for Affordable Housing: An Action Plan for the City of Gainesville*, The Florida Housing Coalition, (September 2020).

⁸ *Exclusionary Zoning & Inclusionary Zoning Study*, HR&A Advisors, (December 2021).

⁹ *Gainesville Comprehensive Housing Market Analysis*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, (2021), (<https://www.huduser.gov/portal/publications/pdf/GainesvilleFL-CHMA-21.pdf>); *2022 Affordable Housing Framework*, City of Gainesville.

¹⁰ *2022 Affordable Housing Framework*, City of Gainesville; *2019 Rental Market Study*, Shimberg Center for Housing Studies, (May 2019), ([2019-rental-market-study.pdf \(ufl.edu\)](https://www.shimbergcenter.org/wp-content/uploads/2019-rental-market-study.pdf)).

¹¹ *Blueprint for Affordable Housing: An Action Plan for the City of Gainesville*, The Florida Housing Coalition, (September 2020).

¹² *Blueprint for Affordable Housing: An Action Plan for the City of Gainesville*, The Florida Housing Coalition, (September 2020); *Exclusionary Zoning & Inclusionary Zoning Study*, HR&A Advisors, (December 2021).

DRAFT

standards for the use and development of land in accordance with Section 163.3177(1), Florida Statutes. The Department's comment on the City's Amendment, which again simply deletes one paragraph in the City's Future Land Use Element pertaining to the single-family land use category, wholly ignores the entirety of the City's Comprehensive Plan which in fact provides meaningful and predictable standards for the use and development of land.

For example, Objective 3.4 in the City's Future Land Use Element ensures that the City will have services and facilities needed to meet and maintain Level of Service (LOS) standards relating to transportation, schools, potable water, wastewater, stormwater, and recreation. In addition, the City's Capital Improvements Element maintains a 5-Year Schedule of Capital Improvements that gets updated yearly to set funding levels for the provision, renewal, or replacement of all public facilities necessary to meet and maintain the adopted LOS standards for both existing and future populations. Effects to public facilities and services resulting from the City's Amendment are accounted for and will be adequately addressed by the established LOS standards as development occurs.

Concerning the impacts to and funding for public facilities and services, supportive infrastructure meeting levels of service (LOS) standards is a condition of all development in the City. Future developments are also subject to site specific improvements identified at the time of development review, including the development of any three or four-family developments. Furthermore, it is expected that all transportation impacts of the City's Amendment will be adequately addressed through the City's Transportation Mobility Program Area (TMPA) as outlined in the Transportation Element of the City's Comprehensive Plan. The program provides the means for mitigation of transportation impacts via construction of infrastructure improvements, contributions towards transit improvements, or contribution of funding in lieu of construction. In addition, as emphasized throughout the Transportation Element, the City encourages the provision of a balanced multimodal transportation system through strategic investments in transit, bicycle, and pedestrian facilities to reduce dependency on automobile travel. These strategies coupled with (1) the City's Vision Zero strategy that prioritizes people versus cars, and (2) land use policies that encourage provision of higher densities and mixed land uses will continue to encourage the use of alternative transportation modes maintaining the downward trends in traffic volumes experienced over the last several years.

It is also important to note that any additional vehicle trips will occur incrementally as either existing vacant residential properties are built on or currently developed properties are gradually redeveloped. Within the entire City of Gainesville, there are currently only 194 vacant properties in the former Single-Family Residential designation. The average size of these properties is approximately 1/4-acre. The Neighborhood Residential zoning district which will implement the Amendment is limited to 12 du/acre, which means that the maximum development potential for the majority of these properties will be limited to a 3-unit triplex. Currently within the City of Gainesville, all existing Single-Family designated properties are permitted to have one primary residence and two Accessory Dwelling Units (ADUs) without an owner residency requirement. As such, the City's Amendment is an incremental change from what is currently allowed and the City's Land Development Code includes both current and newly proposed regulations that will mitigate any potential impacts to surrounding areas. Finally, the Amendment is anticipated to lower Vehicle Miles Traveled (VMT) by encouraging greater density within the urbanized area of the City of Gainesville through directing new housing development near existing transit routes and job centers as opposed to outside the urban core.

Additionally, the City is in the process of updating the TMPA program to better align with future needs as land uses and associated transportation patterns continue to evolve, and funding has been allocated for

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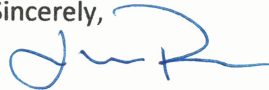
this effort which is expected to be completed within 18 to 24 months. Consistent with the efforts aforementioned, the City has implemented complementary transportation options over the past few years to further offset transportation needs and close the first mile/last mile transportation gaps throughout the city including micromobility and microtransit services. The transportation needs are also evaluated and mitigated through the Transit Development Plan which is updated every five to ten years; the next major update is expected in 2024.

Claim 3: The Amendment does not address allowing Accessory Dwelling Units (ADUs).

The Department claims that the City has not addressed allowing ADUs as a method of promoting affordable housing. This claim also demonstrates the Department's lack of understanding with the City's Comprehensive Plan and Land Development Code. To the contrary and as mentioned above, the City already allows ADUs citywide (see the City's Land Development Code Sections 30-4.12, 30-4.16, 30-4.19, and 30-4.23). In fact, and as maybe the best indicator of the rate of change that may be expected with the Amendment, the City has received only 37 total applications citywide to construct ADUs since September 2020 when the City first began allowing ADUs. Therefore, it is incorrect for the Department to claim that the City has not addressed the allowance of ADUs.

In sum, the Department's broad and undefined reference to "affordable housing" is an insufficient basis for the Department to assert authority to provide comments under the expedited state review process in Section 163.3184, Florida Statutes. Furthermore, the Department failed to identify with specificity or any support how the City's Amendment will adversely impact a specific state resource or facility. The Department, without any evidence, essentially provided sweeping and wholly unsupported claims outside of its authority, but which nevertheless were addressed above. Consequently, the City's Amendment is in compliance with Chapter 163, Florida Statutes, and the City's determination shall be presumed correct pursuant to Section 163.3184(5)(c)2.a. If you have any questions concerning this letter, please contact the City Clerk's Office by telephone at 352-334-5015 or by email at clerks@gainesvillefl.gov.

Sincerely,



Lauren Poe
Mayor
City of Gainesville

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