

W. JAMES GOODING III
ROBERT W. BATSEL, JR.
ROBERT W. BATSEL
JAMES T. HARTLEY
KENNETH H. MACKAY IV



ATTORNEYS AT LAW

1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352.579.1290
Direct: 352.579.6580
Fax: 352.579.1289
jgooding@lawyersocala.com

April 15, 2024

By Email Only

Peter A. Lee AICP, City Manager
City of Ocala
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471-2172

RE: Request for City Council Consent to Represent 17th Street Ocala, LLC and 1333 LLC in Connection With Rezoning of Property on SE 17th Street

Dear Mr. Lee:

I am writing pursuant to the *Guidelines For Former City Attorneys* approved by City Council at its April 4, 2023, meeting which, among other things, established guidelines for determining whether Rob Batssel and I “participated personally and substantially” in a matter so as to require City Council consent before we can represent a private client in such matter, and established a procedure for us to request consent from City Council in the event that it is determined that we did so participate.

Specifically, I am writing to request City Council to consent to my representation of 17th Street Ocala, LLC (the principal of which is Harvey Vandeven) and 1333 LLC (the principals of which are Lance and Pat Schenker) in connection with the possible of rezoning of property they each own on SE 17th Street between SE 14th Avenue and SE 12th Avenue.

Although I do not recall ever representing the City in connection with these parcels (or any other parcels in their immediate vicinity¹), Projects Director Tye Chighizola, has told me that he believes that I may have been involved in prior efforts to rezone this property in the late 1990s. Although I do not remember doing so, I want to avoid any doubt about our ability to represent these clients and thus, am requesting the City to consent to my representation of these clients.

Therefore, I am requesting, under Rule 4-1.11 of the Rules of Professional Conduct, that the City Council “gives its informed consent, confirmed in writing, to the representation.” (Of course, our representation would also be subject to the provisions of Rule 4-1.9(b) and (c), Rule 4-1.10, and Rule 4-1.11, including the prohibition of misusing information contained in Rule 4-1.9(b) and (c) none of that is involved here).

¹ I was extensively involved in the rezoning of the property located on the South side of SE 17th Street at its intersection with SE 18th Avenue (now the location of Deerwood Professional Center) and the property located at the Northwest corner of SE 17th Street and SE 22nd Avenue (owned by an entity controlled by John Rudnianyn). I may have been involved in the rezoning of the medical office on the Northwest corner of SE 17th Street and SE 16th Avenue; if I wasn't, Rob probably was; this property is about a quarter-mile away from my clients' property.

Rule 4-1.11 does not provide standards concerning how to obtain that “informed consent.” However, the Preamble to the Florida Rules of Professional Conduct include certain definitions including the following as to informed consent:

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

Pursuant to that language:

1. As set forth above, I do not recall ever representing the City in connection with these parcels and, although Tye indicates I might have, he does not recall the particulars of it. In any event, since it would have been more than 25 years ago, I do not believe that I have access to information that would put the City or members of the public at some sort of disadvantage. Thus, I do not believe there any “material risks” to the City in connection with my representation of these clients.
2. The final point is the “reasonably available alternatives” to my representation of these clients. The only real alternative is for my clients to seek representation from other counsel. Given my lack of memory about ever having done anything for the City on these parcels, and the lapse of time between when Tye thinks I may have been involved, I do not think that any prior involvement by me should interfere with my potential clients’ selection of counsel.

Thus, I request that City Council provide informed consent in writing to my representation of 17th Street Ocala, LLC and 1333 LLC. I have included a consent on the bottom of this letter so that you can sign it if City Council provides such writing.

You should consult with City Attorney Will Sexton concerning this matter.

I have copied Tye as well as City Growth Services staff (with whom I have already met concerning this project).

Please let me know if you have any questions. Obviously, I would appreciate your putting this on the City Council agenda as soon as possible and letting me know when that will be.

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban

cc: City Attorney William Sexton
Mr. Tye Chighizola
Mr. Jeff Shrum

Letter to Peter A. Lee AICP, City Manager

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Mr. Aubrey Hale

Mr. Harvey Vandeven

Mr. Lance Schenker

(All by email only)

CONSENT TO REPRESENTATION

On _____, 2024, the City Council approved your representation of 17th Street Ocala, LLC and 1333 LLC, in connection with the matters discussed on the first page of your letter.

The City Council indicated that its consent was conditioned upon the following:
_____ (none if blank).

Mr. Peter A. Lee, AICP

City Manager

Dated _____