



Alachua County, FL Special Meeting

Meeting Agenda - Final

Thursday, February 20, 2020

9:00 AM

RE: General Discussion

Approval of Agenda

Items for Discussion

1. [20-0178](#) Discussion on the Administrative Complaint Policy, Whistle-blower Ordinance and Recent Complaint

Fiscal Consideration: N/A

Recommended Action: Adopt Resolution 20-XX (Administrative Complaint Policy) and authorize advertisement of Whistle-blower Ordinance for consideration for adoption at a public hearing.

Discuss recent complaint.

[DRAFT Whistle-blower Ordinance ADA.pdf](#)

[Administrative Official Complaint Policy Resolution \(ADA\).pdf](#)

[DRAFT Administrative Official Complaint Policy \(ADA\) \(1\).pdf](#)

[Kabat Letter / Daniels Response Letter.pdf](#)

Closing Comments

Public Comment

Commission Comment

Adjourn



Agenda Item Summary

Agenda Date: 2/20/2020

Agenda Item No.: 1.

Agenda Item Name:

Discussion on the Administrative Complaint Policy, Whistle-blower Ordinance and Recent Complaint

Presenter:

Board of County Commissioners and County Attorney

Description:

N/A

Recommended Action:

Adopt Resolution 20-XX (Administrative Complaint Policy) and authorize advertisement of Whistle-blower Ordinance for consideration for adoption at a public hearing.

Discuss recent complaint.

Prior Board Motions:

N/A

Fiscal Consideration:

N/A

Background:

Currently, the County does not have a policy to handle complaints against the County Administrating Officials (County Manager and County Attorney), and their deputies and assistants. A policy would help to ensure that complaints from Board members and employees against an Administrating Official, or a deputy or assistant to an Administrating Official, are handled in a consistent manner and conducted in an impartial and unbiased way. The policy clarifies the roles and responsibilities of the Administrating Officials during such complaints. The policy assigns these roles and allows for a swifter response to complaints in accordance with the policy without the necessity for ad hoc procedures to be established.

In addition to considering an Administrating Official Complaint Policy, staff has prepared for consideration a Whistle-blower Ordinance.

Sections 112.3187-112.31895, Florida Statutes, entitled the "Whistle-blower's Act," (the "Act") provides for protections to persons who disclose information regarding illegal or malfeasant conduct on the part of government employees, agent or contractors. The Act provides for the establishment, by local ordinance, of an administrative procedure to permit disclosure of complaints and protect those persons making disclosure from retaliation. The Act also provides that when a local

2

government adopts a local ordinance establishing such administrative procedures, that the local government will have an opportunity to address complaints locally instead of proceeding directly to court.

It is in the County's best interest to have the first opportunity to review and address allegations of illegal or malfeasant conduct by its employees, agents and contractors prior to the delay and expense of court proceedings. The County wants to redress grievances and ensure that County operations are always conducted with integrity and responsive to the needs of the citizens of the County.

The adoption of this Ordinance is also in the best interest of County employees as it allows an avenue to have such concerns addressed without the expense and time of litigation falling to the employee. The Ordinance empowers employees to disclose information of unlawful activity or malfeasance to the appropriate County employees with assurances the employee will not be retaliated against, or provides recourse for any such retaliation. The adoption of this Ordinance does not preclude any employee from seeking judicial intervention if they are still aggrieved after the County has investigated.

The proposed ordinance would amend Chapter 23 of the Code of Ordinances to establish Article III creating a procedure to handle whistle-blower complaints and legal protections for the complainant.

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2020-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 23 OF THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED "PERSONNEL," TO INCLUDE ARTICLE III, ENTITLED "WHISTLE-BLOWER PROVISIONS," SECTIONS 23.30 THROUGH 23.34; ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR EMPLOYEES AND OTHER PERSONS TO REPORT INSTANCES OF ILLEGALITY, MISMANAGEMENT, MALFEASANCE, WASTE OR FRAUD ON THE PART OF COUNTY EMPLOYEES, AGENTS OR CONTRACTORS; PROVIDING A PROCEDURE FOR INVESTIGATING SUCH ALLEGATIONS; ACKNOWLEDGING INDEPENDENT AUTHORITY OF CLERK OF COURT TO DO SAME; PROVIDING FOR NON RETALIATION FOR PERSONS WHO REPORT SUCH INSTANCES; PROVIDING A MANNER FOR PERSONS ALLEGING RETALIATION TO SEEK REDRESS; ACKNOWLEDGING AUTHORITY OF CONSTITUTIONAL OFFICERS TO DO THE SAME; PROVIDING FOR REPEALING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 112.3187, Florida Statutes, entitled the "Whistle-blower's Act," provides for protections to persons who disclose information regarding illegal or malfeasant conduct on the part of government employees, agent or contractors; and

WHEREAS, the Whistle-blower Act (the "Act") provides for the establishment, by local ordinance, of an administrative procedure to permit disclosure of complaints and protect those persons making disclosure from retaliation; and,

WHEREAS, the Act provides that where a local government adopts a local ordinance establishing such administrative procedures, that the local government will have an opportunity to address complaints locally instead of proceeding directly to court; and

WHEREAS, the Board of County Commissioners of Alachua County (the, "Board") finds that it is in the County's best interest to have the first opportunity to review and address

1 allegations of illegal or malfeasant conduct by its employees, agents and contractors prior to the
2 delay and expense of court proceedings; and

3 **WHEREAS**, the County now desires to amend Chapter 23 of the Code of Ordinances to
4 establish Article III creating an administrative procedure to handle whistle-blower complaints.

5 **NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY**
6 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:**

7 SECTION 1. Chapter 23, entitled “Personnel”, Article III, entitled “Whistle-Blower
8 Provisions,” of the Code of Alachua County, Florida is hereby amended to include the following:

9 **Sec. 23.30. Procedure for disclosing certain information.**

10 (a) The Board adopts by reference as part of this chapter, Section 112.3187, Florida
11 Statutes, as amended from time to time, including any definitions except to the extent they conflict
12 herein.

13 (b) Employees or other persons who have information concerning the following
14 categories are required to disclose that information to either the County Manager or the County
15 Attorney:

16 (1) Any violation or suspected violation of any federal, state, or local law, rule
17 or regulation committed by an employee or agent of an agency or independent contractor which
18 creates and presents a substantial and specific danger to the public’s health, safety, or welfare; or

19 (2) Any act or suspected act of gross mismanagement, malfeasance,
20 misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross
21 neglect of duty committed by an employee or agent of an agency or independent contractor.

22 (c) The information must be disclosed on the employee’s or person’s own initiative, be
23 in writing, and be signed by the employee or person making the disclosure. Alternatively, the
24 information may be disclosed to the Equal Opportunity Office directly in person, or by any other
25 reporting mechanism established by the Equal Opportunity Manager.

26 **Sec. 23-31. Procedure for investigating disclosures.**

27 (a) Once a disclosure has been made, the County Manager and County Attorney shall
28 confer to determine whether any investigation is warranted and, if so, an appropriate course of
29 investigation of the disclosure, in light of the specifics of the disclosure, the laws and regulations
30 which may apply, the complexity or sophistication of the matters involved in the disclosure,
31 whether criminal violations may be present, and any other relevant factors. Should the County
32 Manager or County Attorney be the subject of a disclosure, then the remaining un-accused official
33 shall confer with the Chair of the Board on a proper course of action, including, if necessary, the
34 use of an outside organization to conduct the investigation.

1 (b) The level of formality and documentation of any investigation of disclosures made
2 may vary depending on the nature and severity of the disclosure. In any event, the Chair and
3 members of the Board should be kept updated as appropriate on the progress of any investigation.
4 Investigations shall be completed within 90 days of disclosure. If due to the nature of the
5 disclosure or other extenuating circumstances, additional time is necessary, the County Manager
6 or County Attorney shall seek approval from the Chair.

7 (c) Once a determination has been made with respect to how any investigation will
8 proceed, such investigation will be conducted in an expeditious manner. The County Manager or
9 County Attorney, as the case may be, shall make any criminal or regulatory referrals, recommend
10 modified policies to the Board, or take any other actions which are deemed necessary as a result
11 of the investigation.

12 (d) Nothing in this ordinance shall impact any independent authority vested in the
13 Clerk of Courts.

14 **Sec. 23-32. Retaliation prohibited.**

15 The County, including any official thereof, shall neither dismiss, discipline, or take any
16 other adverse employment action against any employee, nor take any adverse action that affects
17 the rights or interests of a person, who discloses, in good faith, the information categorized in
18 Section 23.30.

19 **Sec. 23-33. Persons protected.**

20 (a) Any employee or other person who discloses information on their own initiative
21 and in the manner prescribed in Section 23.30(b), is protected from retaliation based on such
22 disclosure. Any person requested to participate in any investigation or hearing concerning a
23 disclosure is protected from retaliation based on such participation. Any person who refuses to
24 participate in any prohibited retaliatory actions is protected from retaliation for such refusal.

25 (b) Employees or other persons are not afforded any protections as noted herein where
26 such employees or persons:

27 (1) Commit or intentionally participate in committing the violation or suspected
28 violation for which protection from retaliation is being sought;

29 (2) Violate any personnel rule or policy in connection with or related to the
30 subject of the disclosure; or

31 (3) Violate any contractual or regulatory provision applicable to County contracts
32 which are the subject of or related to the disclosure.

33 (c) The provisions of this Article shall not be applicable when an employee or person
34 discloses information known by the employee or person to be false.

35 (d) Nothing herein precludes the County from taking any personnel, contractual, or
36 other action against any employee or other person which is predicated upon grounds other than,
37 and would have been taken absent, the employee's or person's disclosure of information under
38 Section 23.30.

1 (e) The provisions of this section may not be used by a person while he or she is under
2 the care, custody, or control of the state correctional system or the County's Sheriff, or after release
3 therefrom, with respect to circumstances that occurred during any period of incarceration.

4 **Sec. 23-34. Procedure for reviewing complaint of retaliation.**

5 (a) Any complaint of retaliation prohibited under Section 23.33 must be filed with the
6 Human Resources Director within 60 days after the alleged retaliatory action. Such complaint
7 must be submitted in writing, setting forth the facts which constitute the alleged retaliation. Once
8 a retaliation complaint has been received, the Human Resources Director or designee shall
9 investigate the complaint and submit a report to the County Manager and County Attorney, if
10 applicable, making findings of fact and a conclusion as to whether retaliation has occurred. A
11 copy of the report shall be provided to the person making the complaint. Should the County
12 Manager or County Attorney be the subject of the complaint, then the remaining un-accused
13 official shall receive a copy of the report.

14 (b) Should the employee or person making the complaint of retaliation not agree with
15 the report's conclusions, then the matter shall be heard by a panel of persons consisting of the
16 County Manager, the Equal Opportunity Manager, and a third Department Director chosen by
17 those two. After hearing the matter, the panel shall deliberate and render a written decision making
18 findings of fact and a conclusion as to whether prohibited retaliation has occurred. The Office of
19 the County Attorney shall provide such legal advice and support to the panel as may be required.

20 (c) If it is determined that retaliation has occurred, the County Manager, or County
21 Attorney where appropriate, shall take such actions as would remedy the effects thereof, including
22 if necessary reinstatement and payment of lost wages or profits. The County Manager is authorized
23 to promulgate any procedures, not inconsistent with these provisions, to facilitate the complaint
24 review process.

25 (d) Notwithstanding any of the foregoing, the authority of any County Constitutional
26 Officer to adopt and administer policies and procedures concerning whistle-blower complaints
27 with respect to their employees shall not be diminished by this ordinance and such Officers may
28 adopt any such policies and procedures as may be deemed necessary and appropriate.

29 SECTION 2. Repealing Clause. All ordinances or portions thereof in conflict herewith are,
30 to the extent of such conflict, hereby repealed.

31 SECTION 3. Modification. It is the intent of the Board that the provisions of this
32 ordinance may be modified as a result of considerations that may arise during public hearings.
33 Such modifications shall be incorporated into the final version of the ordinance adopted by the
34 Board and filed by the Clerk to the Board.

1 SECTION 4. Severability. If any word, phrase, clause, paragraph, section or provision of
2 this ordinance or the application hereof to any person or circumstance is held invalid or
3 unconstitutional, such finding shall not affect the other provisions or applications of the ordinance
4 which can be given effect without the invalid or unconstitutional provisions or application, and to
5 this end the provisions of this ordinance are declared severable.

6 SECTION 5. Inclusion in the Code. It is the intent of the Board of County Commissioners
7 of Alachua County, Florida, and it is hereby provided that the provisions of this ordinance shall
8 become and be made a part of the Code of Ordinances of Alachua County, Florida; that the section
9 of this ordinance may be renumbered or re-lettered to accomplish such intent and that the word
10 “ordinance” may be changed to “section”, “article”, or other appropriate designation.

11 SECTION 6. Effective Date. A certified copy of this ordinance shall be filed with the
12 Department of State by the Clerk of the Board within ten (10) days after enactment by the Board
13 and shall take effect upon filing with the Department of State.

14 **DULY ADOPTED** in regular session, this ____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

ATTEST:

By: _____
Robert Hutchinson, Chair

Jessie K. Irby, II
Clerk of Court

APPROVED AS TO FORM

County Attorney

(SEAL)

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

RESOLUTION NO. 2020-__

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, ADOPTING AN ADMINISTRATING OFFICIAL COMPLAINT POLICY.

WHEREAS, the Alachua County Board of County Commissioners wishes to ensure that complaints against an Administrating Official, or a deputy or assistant to an Administrating Official, are handled in a consistent manner and conducted in an impartial and unbiased way.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

The Board of County Commissioners of Alachua County, Florida adopts the attached Administrating Official Complaint Policy.

DULY ADOPTED in regular session, this ____ day of February 2020.

**BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA**

ATTEST:

J.K. "Jess" Irby, Esq.
Clerk of Court

BY: _____
Robert Hutchinson, Chair
Board of County Commissioners

APPROVED AS TO FORM

County Attorney
(SEAL)



BOARD OF COUNTY COMMISSIONERS POLICY

Alachua County, Florida

Resolution Number:

Effective:

Review Date:

Last Revised Date:

This Board Policy supersedes and replaces any previous versions.

ADMINISTRATING OFFICIAL COMPLAINT POLICY

Purpose: To ensure that complaints from Board members and Board employees against an Administrating Official, or a deputy or assistant to an Administrating Official, are handled in a consistent manner and conducted in an impartial and unbiased way.

Policy: Complaints from Board members and Board employees, alleging misconduct by an Administrating Official, or a deputy or assistant to an Administrating Official, shall be handled in accordance with this Policy.

Procedure:

Complaints against County Manager, or Deputy or Assistant County Manager:

1. When a Board member or a Board employee alleges misconduct by the County Manager, the complaint shall be immediately directed to the County Attorney as an independent officer for preliminary review.
2. The County Attorney shall review the complaint and the County Attorney, or designee, shall conduct a preliminary investigation to determine if there is probable cause to warrant conducting a full administrative investigation.
3. If the County Attorney determines that there is no probable cause, the County Attorney shall present such determination to the Board members along with a copy of the complaint.
4. If the County Attorney determines that there is probable cause and the allegations also implicate the County Attorney or the County Attorney's Office, the County Attorney shall refer the complaint to an outside investigator who shall report directly to the Chair of the Board.
5. If the County Attorney determines that there is probable cause and the allegations do not implicate the County Attorney or the County Attorney's Office, the County Attorney shall proceed with one of the following options, at his or her election.
 - a. The County Attorney, or designee, may conduct an administrative investigation of the complaint; or
 - b. The County Attorney may refer the complaint to an outside investigator of the County Attorney's choice, reporting directly to the County Attorney, if the County Attorney finds one of the following.
 - i. The investigation of the complaint is outside of the knowledge or skills of the County Attorney's Office.

- ii. The investigation of the complaint creates either an actual or perceived conflict of interest with the County Attorney's Office.
 - iii. The County Attorney is unable to complete the investigation in a timely manner due to work load and staffing concerns.
- 6. All administrative investigations shall be concluded within a reasonable time based upon the extent and severity of the allegations, but when possible should be completed within 45 calendar days of the determination of probable cause.
- 7. Following the conclusion of an administrative investigation involving allegations against the County Manager, the County Attorney will distribute a report to the County Manager and the Board members with the findings and recommendations, including recommendations for amendments to Board policies, and all necessary documentation. The report shall not include recommendations on discipline. The Board retains the authority to make the final decisions on such recommendations.
- 8. If an administrative investigation incurs costs, those costs shall not exceed \$50,000 without prior approval of the Board and shall be paid from Special Expense or Reserves.
- 9. **Deputy County Managers or Assistant County Managers.** Complaints against the Deputy County Manager or an Assistant County Manager will be handled in the same way as complaints against the County Manager, outlined above, except that, instead of paragraph 7, the following applies.

Following the conclusion of an administrative investigation involving allegations against the Deputy County Manager or an Assistant County Manager, the County Attorney will distribute a report to the County Manager and the Board members with the findings and recommendations, including recommendations for amendments to Board policies or administrative procedures, and all necessary documentation. The report shall not include recommendations on discipline. The Board retains the authority to make the final decisions on recommendations regarding Board policies. In accordance with the County Charter, which assigns and vests all executive responsibilities and powers with the County Manager, the County Manager shall make decisions regarding recommendations on administrative procedures and all final decisions regarding personnel.

Complaints against County Attorney, or Deputy or Assistant County Attorney:

- 1. When a Board member or a Board employee alleges misconduct by the County Attorney, the complaint shall be immediately directed to the County Manager as an independent officer for a preliminary review.
- 2. The County Manager shall review the complaint and the County Manager, or designee, shall conduct a preliminary investigation to determine if there is probable cause to warrant conducting a full administrative investigation.
- 3. If the County Manager determines that there is no probable cause, the County Manager shall present such determination to the Board members along with a copy of the complaint.
- 4. If the County Manager determines that there is probable cause and the allegations also implicate the County Manager or any employee whom the County Manager directly

supervises, the County Manager shall refer the complaint to an outside investigator who shall report directly to the Chair of the Board.

5. If the County Manager determines that there is probable cause and the allegations do not implicate the County Manager or any employee whom the County Manager directly supervises, the County Manager shall proceed with one of the following, at his or her election.
 - a. The County Manager, or designee, may conduct an administrative investigation of the complaint, or
 - b. The County Manager may refer the complaint to an outside investigator of the County Manager's choice, reporting directly to the County Manager, if the County Manager finds one of the following:
 - i. The investigation of the complaint is outside of the knowledge or skills of the County Manager's personnel.
 - ii. The investigation of the complaint creates either an actual or perceived conflict of interest with the County Manager's Office.
 - iii. The County Manager is unable to complete the investigation in a timely manner due to work load and staffing concerns.
6. All administrative investigations shall be concluded within a reasonable time based upon the extent and severity of the allegations, but when possible should be completed within 45 calendar days of the determination of probable cause.
7. Following the conclusion of an administrative investigation involving allegations against the County Attorney, the County Manager will distribute a report to the County Attorney and the Board members with findings and recommendations, including recommendations for amendments to Board policies, and all necessary documentation. The report shall not include recommendations on discipline. The Board retains the authority to make the final decisions on such recommendations.
8. If an administrative investigation incurs costs, those costs shall not exceed \$50,000 without prior approval of the Board and shall be paid from Special Expense or Reserves.
9. **Deputy County Attorney or Assistant County Attorneys.** Complaints against the Deputy County Attorney or an Assistant County Attorney will be handled in the same way as complaints against the County Attorney, outlined above, except that, instead of paragraph 7, the following applies.

Following the conclusion of an administrative investigation involving allegations against the Deputy County Attorney or an Assistant County Attorney, the County Manager will distribute a report to the County Attorney and the Board members with findings and recommendations, including recommendations for amendments to Board policies, and all necessary documentation. The report shall not include recommendations on discipline. The Board shall make the final decisions on recommendations regarding Board policies. The County Attorney shall make all final decisions regarding personnel.

AS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS
RESOLUTION xx-xxx, DATED xx/xx/xxxx

I have found a new position working outside of this organization. The position of Forester/Landscaping inspector has become too politically charged. I have been unable to perform the straightforward job duties of my position because I have to run every situation up through management for approval before I am allowed to proceed, if allowed to proceed at all. The approval to pursue code enforcement is dependent on whom the violator is. This has resulted on me being on a personal improvement plan (PIP) with progressive disciplinary action since my previous supervisor retired and the department promoted my current supervisor from within the department. I do not believe that I had a below satisfactory evaluation prior to my change in supervision. I believe that these charges have been brought due to my persistence in pursuing code enforcement, regardless of the economic status or affiliation of the violator. I am required to ask my supervisor and/or director before pursuing code enforcement action against any business that may be connected to the County Manager or the Deputy County Manager. The Growth Management Department managers choose to implement the letter of the law on some applicants and they let others follow only a select set of rules. Just ask the Hare Krishnas at the Iskcon Temple hear Alachua. They seem to be a personal hobby for my supervisor. There is no problem pursuing code enforcement action against that organization. I guess they don't know the right people. I am not saying that the property is completely code compliant either.

There is always some discretion in allocating efficient use of limited staff time. As you will see below, it appears that the management of the Growth Management Department has a difficult time in determining where to invest it's time for the greatest good. The Department seems to be allocating it's time to those entities that do not know to whom to complain.

The hesitancy and randomness by which the County's Unified Land Development Code (ULDC) is enforced has changed over my 13+ years with the County. I came on board with the County when Randy Reid was the County Manager. My only direct interaction with him during his tenure was when I was called into a Commissioner's office with him, my Director at the time Steve Lachnicht and my coworker who was the 2nd Forester/ Landscaping Inspector at the time. During this meeting it was made clear that my coworker and I were to follow the letter of the ULDC with regard to canopy preservation. Prior to this meeting, my position and the related County codes that we implemented were considered the lowest priority within the development review personnel. After the meeting, my position and the ULDC sections that I implement were on equal footing with my other development review coworkers and made it easier for me to preserve trees on proposed development in the County. After Mr. Reid left the Manager position, there were a few temporary managers from within the organization and it seemed that the County was on a cruise control or status Quo trajectory. When Dr. Niblock was hired, it seemed that the County started to decline in morale and people in my department became fearful to implement the ULDC evenly across all applicants. We were specifically directed by Deputy County Manager Mr. Jim Harriott to "find a way to yes" with regard to new development proposals. This has been taken to heart by my department. My coworkers seem to bend (interpret) the code in whatever way necessary to keep projects moving toward approval, which makes it difficult to implement the code equally across applicants. In my opinion, the County does not need a building full of planners if the developers are allowed to do whatever they want. Our department seems to effectively be working for the developer by figuring out how to creatively interpret the ULDC to suit what the developer wants to propose.

The current County Manager, Ms. Michelle Leiberman, sent a chill down the spine of the entire Growth Management Department when she fired our department's Director Steve Lachnicht. This has created a

situation where people seem to be more afraid than ever to do their jobs for fear of following in Mr. Lachnicht's footsteps. Decisions seem to be made based on how they will be viewed by the County Manager as opposed to how they are written in the County Commission adopted ULDC. I guess that I am an idealist, as I dutifully enforce the ULDC as it is written. I believe that this is why I am following Mr. Lachnicht's footsteps in leaving County employment.

I do not believe that the citizens deserve an "arborist" that is a stuffed shirt position holder that is there to make the County look like it cares for its tree canopy while justifying to its citizenry how the standard looking Florida development next door needed to removed 95 percent of its trees because it is so innovative and progressive. The trees have been sacrificed in order to increase density. This has been continually bucked by the developers. The market apparently does not want density because the developers continually look for ways to develop in the old standard ways. When the "new" development products below were pitched by Growth Management staff there was a promise of vertical development with walkable, pedestrian friendly streets. What the County gets is standard development with a sidewalk off the "back" porch.

The Transit Oriented Development (TOD) standards are routinely circumvented by the developers. The County reduced its tree preservation requirements for TODs and Traditional Neighborhood Developments (TNDs) from 20% to just 5% in order to get higher density and urban design standards such as front facades and front doors facing the street instead of a parking lot and compact blocks with a gridded street network. Most of these code requirements do not get implemented as intended. What the County gets is traditional, standard, anywhere USA development with drastic reduction tree preservation. The good example of this is the Mayfair apartments at Park Lane. In this case the developer was required by code to face the front of the building toward the street to create a walkable city block. The developer did not want that. So during construction they neglected to build the sidewalks to the "front" doors of the buildings along Archer Road. That is because these are not the actual front doors to the units. The front doors are internally accessed in these apartments. The developer was eventually required to build the sidewalks to the "back" porches and they had to retrofit the railing to allow a gate for access. The other side of the block is "fronted" by the backs of rows of detached garages with no doors "fronting" the "street" which is indistinguishable from a parking lot drive isle to the untrained eye. This "innovative" design and the developer circumventing the ULDC is a theme in Alachua County as you will see below.

Many of the "streets" that the buildings on these "blocks" face have been allowed to have angled parking all down the "street". This results in a standard parking lot situation in most apartment complexes throughout the County. This was not the original intent of this section of code. The original intent was to have a more pedestrian friendly street with sidewalks and street trees with the building façade near the back of sidewalk. The parking lots were supposed to be internal to the block behind the buildings. This concept does not fit into the developers' standard template so the developers' agents have had to get creative and they have either convinced staff that streets lined on both sides by angled parking are still pedestrian friendly or the code is inadequate to force the issue. This can be seen in the most recent proposal by Park Lane. It is also found in Park Avenue apartments on the SE corner of NW 39th Ave. and 98th Street and Newberry Park at Newberry Rd. and SW 122nd Street.

Celebration Pointe has been able to erect a huge sign fronting I-75, and then change the County's Code to only apply to itself in order to keep that signage after the fact. Celebration Pointe has also been able to avoid the landscaping inspection of most of their stormwater management facilities (SMFs) for years. My supervisor (the Development Review Manager), has been repeatedly requesting a schedule for these inspections from Celebration Pointe's representatives and they ignore her. In my opinion, this is when code enforcement should be utilized. A Notice of Violation could be issued with a specified time to correct, further plan approvals could be held, Certificate of Occupancy could be held and referral to the Code Enforcement Board could be made for not following the approved plan. None of this has occurred. It is no wonder the developer does what they want and asks for permission after the fact, if they ask at all. Required design standards such as the front doors facing the street become fire department access doors or mechanical room doors while the actual front is facing the internal (back) parking lot. This can be seen on the eastern side of Celebration Pointe's main road SW 45th Street just south of Dave and Busters. In another example, the "block" that Bass Pro Shop is on, is supposed to be lined by buildings along SW 50th Terrace. Buildings were proposed on the plan, because it is required, but it is known by staff and the developer that there is no intention of building these structures and there is insufficient language in the ULDC to force the developer to build these structures. The structures look like single wide mobile homes lined up end to end on the approved plan. The landscaping did not even get installed according to the plan in this area because it would have looked odd when the buildings were not constructed. The trees were not required by code to be in those locations so the field changes to their locations did not make the trees out of compliance with the Unified Land Development Code (ULDC).

Another example of a development that circumvented the Code is the CVS on the corner of NW 43rd Street and NW 23rd Ave was required to have a door facing the street. Staff required the door to ultimately face the intersection of the roadways mentioned above on the SE corner of the building. Placement of the door away from the parking lot is not the standard template of this business so the CVS requested a 2nd door on the parking lot side of the building on the NE corner of the building. Staff agreed to this proposal. Today the "primary" door required by staff facing the intersection for pedestrian traffic is locked with a sign directing people to the door near the parking lot.

The public library on Tower Road had an expansion within the last few years. As part of this expansion, the library had to make drainage changes to their stormwater facility. The approved plan required the facility to be landscaped with the minimum standards for all new SMFs. Somehow the facility was given a Certificate of Completion of a Certificate of Occupancy without the standard landscaping inspection. When I discovered this, I brought it to my Supervisor and eventually to my Director prior to issuing a Notice of Violation, as the facility was out of Compliance with the approved development plan. I was not allowed to issue this Notice. It is my understanding that this action would have been looked upon unfavorably by upper County Management and it may bring heat down upon the Department.

The Parks Edge development, which you will probably be seeing the plat of soon, went through so many iterations of to shoehorn a 7 lot subdivision into an existing "subdivision", unfortunately for the existing neighbors, this subdivision occurred so long ago, these lots are considered parent tracts and able to be subdivided again. The existing deed restrictions prohibit lots less than one acre to be created but the County does not enforce existing deed restrictions. There are a minimum of 7 lots as required by the ULDC, presumably for increased density purposes. Five of the lots meet the deed restrictions and are an acre or more. These lots

are also the product that the developer perceives a market for and is looking to sell. Two of the lots in this subdivision look like they are created for 2 single wide mobile homes. They are there according to the ULDC but it doesn't take a brain surgeon to figure out that they will never be built upon. The developer gets their 5 lots and the County gets its 7 lots. Sounds like a win/win. This development also plowed new ground in tree preservation. This site is loaded with large live oaks scattered all over the site. The tree mitigation total estimate was cost prohibitive so the developer had to get creative. In order to "preserve" these trees, the lots and the open space had to be "massaged" into contorted shapes so the canopies could be outside of the building setbacks. Historically, in order for these trees to be considered saved, the trees and their driplines would have to be in open space or common area and off the lots. This makes it nearly impossible for the tree to be damaged during construction and almost guarantees survival. If the trees were on the lots, they would typically be mitigated as the County cannot guarantee their survival with impacts from the structures under their canopies. Since the County "found a way to yes" and approved this subdivision I suppose it will be up to the citizens of the neighborhood to sue to enforce their deed restrictions.

The School "I" at Oakmont development representative inquired with County staff, including myself, to see if this facility would be required to preserve trees according to the standards applied to traditional development within the County. My answer was yes, as public schools are not exempt from the requirements of the ULDC. The representative stated that it was the school's assertion that retaining any trees internal to the site would constitute a safety hazard to the students. Prior to submittal, all projects require a pre-design on-site meeting where an evaluation of the existing trees is performed so that the best trees can be selected for inclusion into the development plan. After the initial inquiry, and prior to submittal, the school system preemptively removed a cluster of live oaks, a persimmon from the center of the site and removed a couple of large sugar berries that leaned inward from the northern edge of the site. This was done without a tree removal permit or any County approvals. When I brought this to the attention of my supervisor and the director of the department, I was not allowed to issue a Notice of Violation and the mitigation was eventually handled through the development plan approval. This plan was initially given to another staff member to review, but they had a time conflict and it was given back to me to review. When I reviewed the plan, I made a comment to avoid the dripline impacts on the only trees that remained on site which was a line of fence line trees along the southern property line. No attempt was made by the applicant's agent for clarification prior to resubmittal of the plan. The comment was not addressed in the second submittal. I clarified the comment during my second review. This comment was omitted by planning staff and was not included in the insufficiency report. I was unaware of this omission so during the third review I discovered that the comment was not addressed again. I also noticed that the staff report did not reflect the totality of my comments. When I questioned my supervisor about the omission, she informed me that I missed my opportunity to be clear in the first round of comments and that it was too late to address. The entrance drive on the south side of the school is approximately half the distance away from the trunk, rather than outside of the drip line as required by the ULDC. It was also the contention of the school board representative that trees in the parking lot were a safety hazard. The development review manager agreed, so the parking lot does not have the standard ULDC required paved ground surface area tree canopy coverage.

The Oakmont site contractor created a large unpermitted haul route through the development plan approved open space preservation area. In the process, they hit about a dozen live oaks and damaged the root

system under the canopy of those trees and other nearby trees. Staff had multiple meetings to discuss the situation with the County Environmental Protection Departments (EPD). EPD took immediate decisive action to protect the sinkhole resource under their jurisdiction by requiring a chain link fence to be erected. My supervisor and director were afraid to pursue the tree related issues because of the potential political fallout. My director stated that she did not want to get "yelled at again by management." This case was brought to the Growth Management Department's attention in early August. A case was not allowed to be opened until months later when a neighbor complained that this same contractor was piling soil, storing materials, mixing cement and parking an employee's car within and just outside the dripline of a 100" live oak with no tree barricading erected on another part of the development. This tree and the area immediately surrounding it were supposed to have tree barricading erected and the area is also part of the approved open space for the subdivision.

The Hudson home located south of Haile Plantation on 91st Street preemptively cleared and the department took immediate action to remedy the trees removed without a permit. The GM Department, however, was hesitant to try to cite the contractor responsible for the work. This organization is great at making rules but afraid to implement them on anyone that appears to be able to contact the County Manager or Assistant Manager due to fear of its consequences. It is obvious to all internal viewers that the GM Director is fearful of the possibility of getting fired due to an incorrect calculation in her decisions to implement the County Code of Ordinances as written regardless of the entity it needs to be implemented upon. This is selective code enforcement. It also sends a clear signal to the large business interests in the area that the County is scared of them and can be intimidated into submission.

It is my opinion that I am being targeted for removal from my position of 13+ years by my department (Growth Management) because of the above situations. I cause political pressure on GM Department management (director and immediate supervisor) due to the ordinances that I enforce and who I have to enforce them upon. I have been under attack from my direct supervisor since she was promoted to her current position. At least one of the situations referenced in one of my PIPs occurred prior to her being appointed to the position. My position has lots of demands and it is difficult to keep up with the workload at times. This has created the opportunity for my direct supervisor to add new and more time consuming processes to my workload to precipitate and expedite my failure to adequately perform my required job duties. Her solution to help me get the tasks completed is to bury me in paperwork such as tracking all of time in my Outlook calendar. I also had to prepare standard operating procedures (SOPs), and compile lists of my open code cases, which are required to be continually updated. The code cases are searchable in the County's current system, but due to its antiquated and user unfriendly design, only a few staff members know how to work the program. Falling behind is especially acute if I take any time off from work. There is no one in the department that is capable of competently fulfilling the duties of my position in my absence. Staff is able to fulfill the paperwork side of the job but not the technical tree expertise.

For the past 13 years the GM Department has not prioritized updating its software program to a user friendly version (possibly due to cost and the required staff time to find or create such a product). This has unfortunately resulted in 13+ years of inefficient processes to develop. The Department is currently working with an outside vendor to create a program to streamline some of its processes. Tree removal permitting recently was added to this list due to my complaints of inefficiency during one of my personal improvement plan

meetings. This has put additional workload on me to work to create an efficient final product. During this same time, my direct supervisor thought it would be a good idea for me to create a standard operating procedure (SOP) for the old process that has been around since the tree removal permitting ordinance was adopted in the 80's. This SOP will likely be rendered effectively useless or require an almost complete rewrite in a few months when the new computer based system is implemented.

My direct supervisor also implemented a policy to require a notarized affidavit from all property owners for a tree removal permit after a public records request for a couple of trees permitted in Haile Plantation. The situation that sparked the increased bureaucracy was the permitting of the removal of a couple of groups of street trees that were interfering with a private residence and a business. These street trees were planted in an area between the street and sidewalk. This space was inadequate and unable to support the long-term growth of the live oaks without them causing damage to the nearby structures. This is why the trees were permitted for removal. These trees existed within Home Owners Association (HOA) property and the nearby neighbor was being negatively affected. The neighbor applied for the permit and I issued the permit contingent upon approval by the property owner (the HOA). The owner was also required to replant a smaller growing tree species. I believe that the requirement to pay \$90.00 and to have husbands and wives both get their signatures notarized puts an unnecessary burden on the citizens of Alachua County for what is typically a tree of compromised health close to their home. This has not been an issue in the past 13 years and for the many years prior to my employment. The other issue is that the information required for a tree removal permit is specifically spelled out in the ULDC. A notarized affidavit from all property owners is not mentioned.

I am not opposed to change. If the citizens of Alachua County and the Commission desire to eliminate all impediments to development by removing the tree protection standards within the land development code, so be it. If this is the desire, I would advise the organization to not rehire my vacated position. I however do not believe that this is the will of the people. I have spoken to numerous citizens on both sides of the issue over my tenure with the County and it seems like the majority like Alachua County's tree canopy. My hope for my replacement is that they will experience a more positive course correction for the County.

Responses to Letter from Steven Kabat

Paragraph 1. Steven's supervisor changed in 2018. The Growth Management director position changed that March. Steven was never required to get approval to pursue code enforcement. Much of what he states in the first paragraph were issues with Steven's own performance. As the Forester position is a split position between codes enforcement and plans review, in previous years Steven had been basically unsupervised on the Codes enforcement end. A new supervisor brought new expectations especially with communication, time management, and consistent code application, never with whether or not the Code should be enforced.

Paragraph 3. Cannot speak to the issues or direction with Randy Reid and Steve Lachnicht. When a deputy county manager was hired and placed over Growth Management, this was the first time someone other than the County Manager was over our department. The involvement in development issues was new as well as was the perspective in many cases. Every project requires give and take as each development site is different and has different issues. This does not mean that a development will not be required to meet the Code and Comprehensive Plan.

Paragraph 4. Obviously having a long-time staff member, who was at the time Director, leave the department abruptly was a major change for everyone. The circumstances surrounding this were discussed and worked through. There may be a few people that have not moved on but for the most part we see positive direction forward now. Steven was asked on multiple occasions to enforce the code consistently and questioned, to get an understanding, when he seemed to be enforcing the code differently depending on the person or project. This complaint by him throughout this letter was one of the issues the development review manager has been having with his performance.

Paragraphs 5-7 The next few paragraphs (5-7) deal with issues in the Code that have been acknowledged and discussed with the Board and will be addressed with the Code update. Mayfair in particular became a problem because of third party review of plans that did not ensure it was consistent with the development plan and building permits were issued. This process has been corrected for better coordination between plans review and development review staff.

The signage at Celebration Pointe was requested by Celebration Pointe and approved by the Board, and was not a recommendation or change proposed by staff.

Paragraph 8. There are issues at Celebration Pointe especially with landscaping compliance. Celebration Pointe was able to get comprehensive plan language specific to their development approved to allow alternative compliance to some of the regulations, one of which was the allowance for them to get approval to phase landscaping. This has not occurred yet. There have been several meetings to get things corrected. One of Celebration Pointe's employees has a prior relationship with the Deputy County Manager and as such Celebration Pointe is one of the developers that consistently goes to him first, sometimes because they think they might, or have received a no from staff. Them doing this does not

result in an automatic yes and the deputy manager seeks the facts when they do come to him but as this is one of the developers that has consistently involved him first or quickly that is probably the reason for the comments from Steven.

He also mentions issues with liner buildings at Celebration Pointe, again one of the TOD/TND codes issues to be addressed in the Code update.

Paragraph 9. The door on the street at CVS was being used as recently as a month ago. The code does not say they cannot also have a door in the parking lot and does not have teeth to require any business to unlock a door, if it is in fact locked.

Paragraph 10. The public library on Tower Road received a final CO without the landscaping release, either because it was a building addition, and not a new structure, so did not get caught in the building department or because we had not yet put the landscape release comments on the CO checklist. When Steve brought this to our attention he was never told he cannot issue violations, but an attempt was first made to address this through the site engineer since we issued the CO without the landscaping release. Honestly this may have gotten lost and not followed up on afterward.

Paragraph 11. Parks Edge subdivision is a lot in an old large lot unrecorded subdivision that by our Code can be subdivided and redeveloped. The existing deed restrictions require one acre lots but are defunct and not enforceable by the neighborhood and never enforceable by the County. The applicant still included one acre lots for all but two lots. This meets County Code. The tree preservation on this subdivision did not chart new ground, as trees have been preserved on lots in other developments though not very often. None of the required tree canopy in this development is either on lots or has a drip line on the lots. There are many other very nice trees, most in the open space areas, that warranted protection but they had a part of their drip lines over into lots lines. The code does not prohibit this and in an effort to save these trees, buildable area was required to be included on the plat that avoids any area near the tree or within the drip line. If these areas were not respected or if trees are removed, mitigation will be required. This is a code issue that needs to be addressed with the tree code update coming forth as a recommendation from EPAC and as part of the ULDC update. The common interpretation of drip line protection entirely off lots when there are other means of protection has an adverse effect of requiring mitigation so encouraging trees that could easily be saved to be removed for ease of development. This plat is on the Board's agenda for February and may have citizens present, not because of the trees but because of the subdivision of the lot and the greenway to the County park.

Paragraph 13. School I at Oakmont. Meetings were held with Jim, the developer CHW, and school board representatives regarding new state requirements for school safety, many of which involved trees near the school. At the pre-application meeting the developer said that the property owner had already cleared some hackberries and it was determined to handle the mitigation at development plan review as that would be the normal remedy with an NOV. As to the trees on the southern property line, when development review staff reviewed this more carefully, many of trees were not on the school site

property and therefore could not be counted as canopy or have requirements placed on them. The driveway in question was already on site as part of the initial improvements on Parker Road when the school site was donated by Oakmont.

Paragraph 14 and 15. The comments in this paragraph about potential political fallout and not wanting to get “yelled at by management” or simply untrue. Both Oakmont and Hudson were issued irreparable harm NOVs and will be going to Code Board on February 6th. This process took a while with Oakmont as EPD had been onsite and was working with the applicant on correcting several items, and progress was being made.

As for Hudson, Steve was not intending to cite them initially but the clearing was major. Apparently, and learned as part of this discussion, it is not uncommon for a homebuilder or property owner to clear trees in preparation for building and many times Steve finds out after the fact. In this case, however, they also filled in a large area of floodplain without any approvals. We did have discussions on this as to whom to cite with the County Attorney’s office because there are issues to be considered when you cite other than the property owner. The contractor and property owner were cited.

Paragraph 16 Steve had an issue with communication, time management and an unwillingness to follow his supervisor’s direction. HR has been consulted with and involved since the beginning and no steps have been taken without their guidance and review.

Paragraph 17. We are updating our software now, cannot really comment on the “past 13 years of not prioritizing this”. The requested Standard Operating Procedures and other information repeatedly requested from Steven was to get an understanding of what he was doing, how he was doing, and in many cases this was to see how we could shift some of the workload. GM created standard operating procedures about six years ago for most processes and tree permitting should have been done then. The new software system may make it easier but will not fundamentally change issuing permits.

Paragraph 18. The notarized affidavits for tree removal permits was a response to trees being removed in the common area at Haile Plantation by a property owner without the consent of the HOA. Staff was called by an attorney on the issue.

Paragraph 19. The County does enforce the tree protection and landscaping codes. I would agree with Steve that his position was overburdened, especially now with the current building boom. GM used to have two arborists but one was removed in budget cuts a number of years ago. Part of the request of Steve, from his supervisor and the director, was please document what you are doing so we can have backup to show we need another position. This proved impossible to ascertain.