



City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601

Text File

Introduced: 11/28/2005

File Number: 050485

Version: 0

Status: Public Hearing

..Title

Abandon and Close Public Right-of-Way (B)

Petition 45SVA-05 PB, Legislative Matter No. 050485. Brandon Reeb, agent for K.A. Miller, Trustee. Pursuant to Section 30-192(b) of the Gainesville Land Development Code, to vacate, abandon and close public right-of-way located at Southeast 3rd Terrace from Southeast 14th Lane to Williston Road (State Road 331)

..Explanation

The purpose of this request is to vacate a portion of right-of-way located southeast of the intersection of Southeast 14th Lane and Southeast 3rd Terrace. The right-of-way is an undeveloped portion of Southeast 3rd Terrace that runs northwest to southeast between Southeast 14th Lane and State Road 331, otherwise known as Williston Road. The 30-foot wide right-of-way to be vacated is a "paper street," that consists of grass, trees and vegetation. The right-of-way serves as a side yard for the adjacent property and has been maintained by the applicant for the past several years. Upon vacation of the right-of-way, a public utility easement would be retained over the site. The right-of-way provides no public access.

The Plan Board heard the petition and recommended that it be approved with the condition that a public access easement will be maintained coincidental and in perpetuity with the GRU utility easement.

Public notice was published in the Gainesville Sun on October 4, 2005 and October 11, 2005. Letters were mailed to surrounding property owners on October 5, 2005 and October 10, 2005. The Plan Board held a public hearing on October 20, 2005.

..Fiscal Note

None

..Recommendation

City Plan Board to City Commission - The City Commission approve Petition 45SVA-05 PB, with the condition that a public access easement be maintained coincidental and in perpetuity with the GRU utility easement. Plan Board vote 4-0

Alternate Recommendation A: The City Commission approve Petition 45SVA-05 PB, with the condition that a public utility easement be retained over the vacated area.

Alternate Recommendation B: The City Commission deny Petition 45SVA-05 PB.

Staff to Plan Board - Approve Petition 45SVA-05 PB with the condition that a public utility easement be retained over the vacated area.

CITY
-----OF----- INTER-OFFICE COMMUNICATION
GAINESVILLE

Item No. 1

TO: City Plan Board **DATE:** October 20, 2005

FROM: Planning Division Staff

SUBJECT: Petition 45SVA-05 PB, Brandon Reeb, agent for K.A. Miller, Trustee. Pursuant to Section 30-192(b) of the Gainesville Land Development Code, to vacate, abandon and close public right-of-way located at Southeast 3rd Terrace from Southeast 14th Lane to Williston Road (State Road 331).

Recommendation

Planning Division staff recommends approval of Petition 45SVA-05 PB with the condition that a public utility easement be retained over the vacated area. *(After the continuation of this item at the September 15th Plan Board meeting, staff was directed to participate in a meeting with the neighborhood residents and the petitioners. Planning staff met with the Sugarhill Neighborhood Association and the petitioners on October 6, 2005, and was informed that pedestrian connectivity between the neighborhood and the sidewalk on Williston Road has been an ongoing issue for years. The neighborhood residents desire a pedestrian connection to have access to the convenience store located across Williston Road. City staff is studying the area to determine where a pedestrian access is most feasible. At this point in time, staff does not object to a denial of this petition.)*

Explanation

The purpose of this request is to vacate a portion of right-of-way located southeast of the intersection of S.E. 14th Lane and S.E. 3rd Terrace. The right-of-way is an undeveloped portion of S.E. 3rd Terrace that runs northwest to southeast between S.E. 14th Lane and State Road 331, otherwise known as Williston Road. The 30-foot wide right-of-way to be vacated is a "paper street," that consists of grass, trees and vegetation. The right-of-way serves as a side yard for the adjacent property and has been maintained by the applicant for the past several years. Upon vacation of the right-of-way, a public utility easement would be retained over the site. The right-of-way provides no public access.

The City Plan Board shall consider the following criteria in determining whether the public interest would be best served by the proposed action:

- 1. Whether the public benefits from the use of the subject right-of-way as part of the City street system.**

The public gains minimal benefit from the subject right-of-way because it is a paper street.

2. Whether the proposed action is consistent with the City's comprehensive plan.

Staff recommends approval of this petition as long as an easement is retained over the vacated area. This proposal is consistent with the City's Concurrency Management Policy 1.2.1, concerning vacating streets only under certain conditions. The closure of the subject right-of-way will not foreclose reasonably foreseeable future bicycle/pedestrian use, will not foreclose non-motorized access to adjacent land uses or transit stops, and there is no reasonably foreseeable need for any type of transportation corridor for the area in the future.

3. Whether the proposed action would violate individual property rights.

Staff finds that the proposed action does not violate any individual property rights. As indicated on the enclosed map, tax parcel 15951-7 (1440 S.E. 3rd Terrace) appears to become landlocked with the vacation of the right-of-way. However, the properties on either side of it (tax parcels 15951-6 and 15951-1) are owned by the same property owner. A landlocked parcel can be created if the same property owner owns the abutting properties.

4. The availability of alternative action to alleviate the identified problems.

The subject right-of-way is not in use as a public thoroughfare. No alternative action is needed.

5. The effect of the proposed action on traffic circulation.

There will be no impact on traffic circulation since the subject right-of-way cannot be used as a public thoroughfare.

6. The effect of the proposed action on crime.

There should be no negative impact associated with this petition.

7. The effect of the proposed action upon the safety of pedestrians and vehicular traffic.

The safety of pedestrians and vehicular traffic will not be impacted by this proposal.

8. The effect of the proposed action on the provision of municipal services including, but not limited to emergency services and waste removal services.

The proposed action will not adversely impact municipal services in the area. Trip circulation in the area will not be altered since the proposed vacated right-of-way is not being used as a public thoroughfare.

9. The necessity to relocate utilities, both public and private.

GRU will be maintaining an easement over the vacated area. There should be no problem relocating any utilities, if needed.

10. The effect the proposed action will have on property values in the immediate and surrounding areas.

The proposed street vacation should not have any negative impact on the property values in the surrounding neighborhood.

11. The effect of the vacation on geographic areas that may be impacted.

The proposed street vacation should have little impact on the geographic area in which it is located.

12. The effect the vacation on the design and character of the neighborhood.

The proposed street vacation should not have any negative impact on the design and character of the neighborhood. The right-of-way is not being used as a public thoroughfare.

The recommended approval of Petition 45SVA-05PB, with conditions, is based on the recommendations/conditions from the following departments:

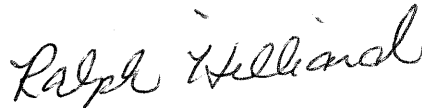
1. **BellSouth:** BellSouth has no objections to closing the street right-of-way.
2. **GRU:** If this portion of 3rd Terrace is closed, please provide a public utility easement over the area in case we need to extend water to serve 1440 SE 3rd Terrace or to extend sewer and electric to serve 1440 SE 3rd Terrace and 1444 SE 3rd Terrace. The easement must remain open and accessible for maintenance equipment and no trees or permanent structures within the easement.
3. **GRU Real Estate:** Need to retain an easement for existing electric line and future sewer service to tax parcels 15951-7 and 15951-6.
4. **Police:** Recommend for approval with consideration for comments. Will the closure prevent the property owners of parcel #15951-7 access to their property? The actions (erecting fences, etc) of surrounding neighbors might prevent vehicle access to this property.
5. **Public Works:** Approvable as submitted.
6. **Fire:** Approvable as submitted.

7. **Planning Division:** Street vacation is approvable as submitted as long as the same owner owns property abutting tax parcel 15971-7.
8. **Building:** The Building Department has no problem with the proposed street vacation. However, it does appear that Lot 7 is being landlocked.
9. **City Arborist:** Approved as submitted if there are no impacts on the existing regulated trees.

Condition:

Retain public utility easement for operation and maintenance of GRU utilities.

Respectfully submitted,

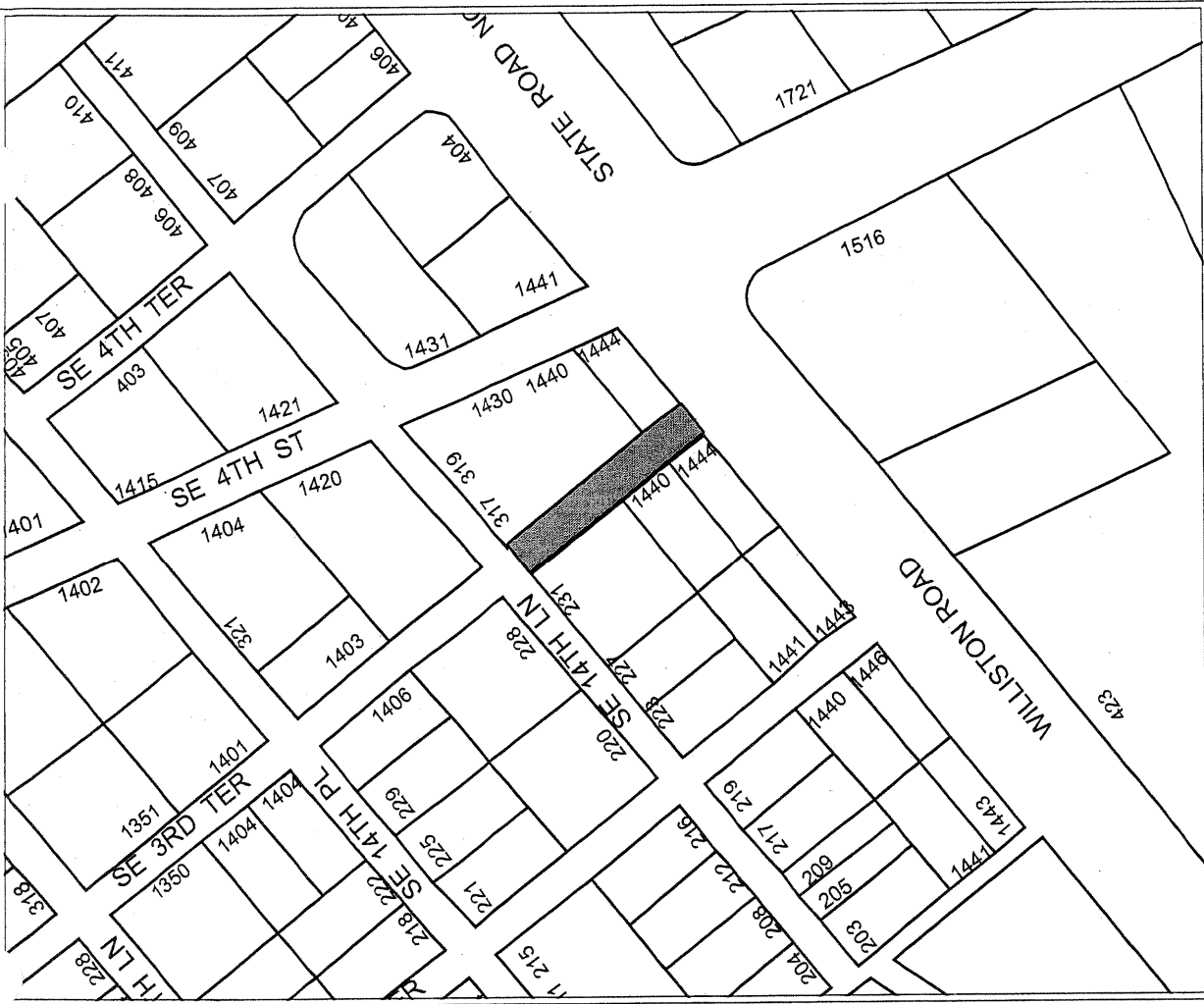
A handwritten signature in cursive script that reads "Ralph Hilliard".

Ralph Hilliard
Planning Manager

RH: JS

Street Closing

City Limits

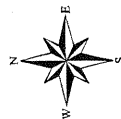


Area under petition consideration



STREET CLOSING

| Name | Petition Request | Map(s) | Petition Number |
|---------------------|------------------|--------|-----------------|
| K.A. Miller Trustee | Street Vacation | 4252 | 45SVA-05PB |



No Scale

Street Closing

City Limits



Area
under petition
consideration



STREET CLOSING

| Name | Petition Request | Map(s) | Petition Number |
|---------------------|------------------|--------|-----------------|
| K.A. Miller Trustee | Street Vacation | 4252 | 45SVA-05PB |



No Scale

Legislative Matter 050485

1. **Petition 45SVA-05 PB** Brandon Reeb, agent for K.A. Miller, Trustee. Pursuant to Sec. 30-192(b) of the Land Development Code, to vacate, abandon and close public right-of-way located at Southeast 3rd Terrace from Southeast 14th Lane to Williston Road (State Road 331).

Mr. Jason Simmons was recognized. Mr. Simmons stated that Petition 45SVA-05 PB was continued from the September Plan Board meeting to allow staff, the petitioner, and the neighbors to further discuss the street vacation and pedestrian access through the neighborhood. He indicated that, on October 6, 2005, a meeting was held and many neighbors attended to express their opposition to the proposal. He explained that, because of that meeting, staff had modified their recommendation. He presented a number of slides of the area and described them in detail. Mr. Simmons noted that staff discussed the matter with the City Traffic Engineer who went to the subject property and it was not clear exactly how much right-of-way there was on SE 4th Street to provide a sidewalk should the portion of SE 3rd Terrace be vacated. He noted that there was an existing sidewalk on the opposite side of SE 4th Street. He indicated that Public Works supported the street vacation. He pointed out that there was a large clump of trees in the right-of-way to be vacated, and to use it would require walking around those trees onto private property. Mr. Simmons indicated that, in previous years, the neighborhood residents had a path to Williston Road through nearby private property and that path was no longer available to them. He stated that staff still supported the street vacation, however, staff would not object should the board find that the proposal did not meet the criteria of the Code.

Mr. Kirk Reeb, agent for the petitioner, was recognized. Mr. Reeb indicated that his family owned the property on both sides of the right-of-way that was the subject of the request for vacation. He discussed the renovations made to the structures on the properties abutting the right-of-way and stated that it increased the value of all the neighborhood properties. He stated that he had closed and roped off the right-of-way because of problems with loitering. Mr. Reeb indicated that he would agree to provide property for a sidewalk on SE 4th Street should there not be sufficient right-of-way available.

Mr. Cohen noted that one of the photographs showed a rope across an area. He asked if that area was the right-of-way requested to be vacated.

Mr. Reeb indicated that it was. He pointed out a curb cut that he roped off to prevent entry into the right-of-way. He stated that it was the area where there were issues of people driving on the right-of-way and loitering.

Mr. Polshek noted that GRU had requested an easement across the right-of-way. He asked if the petitioner could build on that easement, or if it had to remain open.

Mr. Simmons stated that the easement was for GRU to provide service whatever might be built on the property.

Mr. Polshek noted that the report stated that, "the easement must remain open and accessible for maintenance equipment and no trees or permanent structures within the easement." He suggested that there could simply be a woodchip path on the GRU easement.

Mr. Reeb stated that there were no plans for future development on the right-of-way should it be vacated. He stated that it was a safety issue for the tenants on the abutting properties.

Mr. Polshek asked, if the petitioner was willing to provide additional right-of-way along SE 4th Street, would funds be available for sidewalks.

Mr. Simmons indicated that it was his understanding that there were funds within the Community Development Block Grant (CDBG) to provide sidewalk construction.

Mr. Reeb reiterated that he would be willing to provide additional right-of-way along NE 4th Street should the existing right-of-way not be sufficient for sidewalks.

Mr. Simmons noted that the board could make the sidewalk on NE 4th Street a condition of the vacation.

Chair Cole called for public comment on the petition.

Mr. Stanford Moore, resident of the neighborhood, was recognized. Mr. Moore noted that there had been a path across private property to the west of the right-of-way for years, however, new property owners closed off that access. He requested that, since the City already owned the right-of-way, a path be constructed through it to Williston Road. He noted that he was not requesting a paved sidewalk.

Chair Cole asked if the petitioner's proposal for a sidewalk along SE 4th Street was a compromise.

Mr. Moore stated that he did not believe there was enough space for a sidewalk on SE 4th Street. He noted that there was ditch and trees along the street. He suggested that it would be much less expensive to have a path down the existing public right-of-way for SE 3rd Terrace.

Mr. Jesse Moore, 229 SE 14th Place, was recognized. Mr. Moore cited a concern regarding statements that it was not safe for tenants in houses on the right-of-way should it remain open and accessible. He indicated that people had been crossing private property to the west of the right-of-way for many years and there were no safety problems. He pointed out that the City owned 30 feet of right-of-way, and there could be a 10-foot path and allow the petitioner to have 10 feet on either side. He explained that there were neighborhood meetings and there was no discussion of illegal activity on the right-of-way. He noted that the neighborhood would have addressed the matter if such activity had taken place.

Mr. Cohen noted that the neighbors had stated that there had been a path to Williston Road across private property and that path was no longer available. He pointed out that the right-of-way was public land, but had issues. He stated that he saw no reason to leave the street open, and suggested that the board close the right-of-way contingent upon some alternative such as a sidewalk or path along the length of the right-of-way to Williston Road.

Mr. Reiskind asked if it was true that there was a clump of trees in the middle of the right-of-way and persons had to go onto private property to go from SE 14th Lane to Williston Road.

Mr. Simmons indicated that, according to the Traffic Engineer, there was a clump of trees in the middle of the right-of-way, and walking around them required walking on private property. He pointed out the area of

the path the residents used to the west of the right-of-way proposed for vacation. He noted that that path was on private property, which was now closed.

Mr. Lawrence Calderon was recognized. Mr. Calderon presented a map and pointed out the paper street right-of-way proposed to be vacated, and the path across private property to the west used by the residents of the area for many years.

Mr. Moore explained that the previous owners of the property to the west had allowed residents to cross it to get to Williston Road. He agreed that there were trees on the right-of-way proposed for vacation, however it was not a 30-foot span of trees that would have to be walked around. He explained that the right-of-way could not be used at the present time because it had been blocked off by the petitioner. He stated that all the neighbors were requesting was a path through the right-of-way that the City already owned.

Mr. Polshak pointed out that, if GRU required an easement on the right-of-way, and there could be no structure or trees on that easement, the trees would eventually be removed by GRU. He noted that it had not been determined that a sidewalk could be provided on SE 4th Street, even if the applicant provided extra land. He suggested that a wood chip path along the right-of-way with a three-foot split rail fence from SE 14th Lane to Williston Road would maintain the easement for GRU and resolve the issue.

Mr. Calderon explained that when staff first examined that situation, it appeared that SE 3rd Terrace was a paper street, therefore, staff recommended that it be vacated. He noted that the object of having a right-of-way was to serve a public purpose and it appeared that there was a public purpose for the right-of-way, even if it was not developed with a path. He pointed out that the neighbors had used private property for access to Williston Road, and that private property was now closed, so they did not have a way to go from one point to the other. Mr. Calderon suggested that the board bear in mind that rights-of-way were for a public purpose and if there were significant objections and discussion about it, it should not be closed.

Chair Cole noted that the actual public right-of-way was not being used at the present time, therefore, did not serve a public purpose.

Mr. Calderon agreed, but pointed out that there appeared to be a need for access since the traditional site of that access had been closed to the neighborhood. He suggested that the best option was to create that path in the public right-of-way rather than closing it for public use.

Chair Cole asked if staff recommended that a sidewalk be provided on SE 4th Street if possible, but if not possible, the right-of-way remain open and a path created along its length.

Mr. Simmons indicated that staff recommended approval of the petition. He explained that the Traffic Engineer went to the site and was of the opinion that it would not be appropriate for a sidewalk to be placed through SE 3rd Terrace because of the trees. He agreed, however, that should new development be constructed on the vacated right-of-way, the trees might be cut anyway.

Mr. Reeb suggested that if the right-of-way were to have a path, it would open the neighborhood up to persons who did not live there.

Mr. Polshak asked if there was a sidewalk along SE 14th Lane.

Mr. Simmons indicated that there was not.

Mr. Polshek pointed out that, even if a sidewalk was placed on SE 4th Street, people would be forced walk in the street at SE 14th Lane.

Mr. Moore pointed out that, even if the petitioner donated property along SE 4th Street for a sidewalk, there was no telling how long before that sidewalk would be constructed, if ever. He noted that the City already had property in the form of the right-of-way on SE 3rd Terrace to provide access.

Mr. Cohen asked what the petitioner could do to eliminate the paper street and still satisfy the neighbors.

Mr. Reeb indicated that the sidewalk on SE 4th Street was possible, and a paper street to the south of the site, SE 2nd Terrace, was already cleared of trees.

Mr. Cohen asked if the petitioner would be satisfied if the board recommended that the right-of-way be vacated contingent upon another access point being provided.

Mr. Reeb indicated that he would agree to such a proposal and would allow a walkway through the right-of-way until another access was provided.

Mr. Calderon reminded Mr. Reeb that there would be a public liability issue allowing persons to use a vacated right-of-way. He explained that the board could recommend approval of the street vacation, and if the City Commission agreed the right-of-way would become private property owned by the petitioner. He noted that GRU would have an easement, however it was not a cross-access easement, but simply an easement should utility service need to be provided. He explained that the board could offer a public pedestrian access within the GRU easement. He noted that it was also possible that the City could provide a pedestrian path over the easement. Mr. Calderon explained that the petition would go to the City Commission to make a final decision.

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| <u>Motion By:</u> Mr. Polshek | <u>Seconded By:</u> Mr. Reiskind |
| <u>Moved to:</u> Approve Petition 45SVA-05 PB, with the condition that a public access easement be maintained coincidental and in perpetuity with the GRU utility easement. | <u>Upon Vote:</u> Motion Carried 4 – 0 Ayes: Cohen, Polshek, Reiskind, Cole |