

City of
Gainesville

Inter-Office Communication

Planning Division
x5023, FAX x3259, Station 12

Item No. 3

TO: City Plan Board
FROM: Planning Division Staff

DATE: November 19, 1998

SUBJECT: Petition 180SVA-98PB, Brown & Cullen, Inc., agent for L.W. Calton. Pursuant to Section 30-192(b), City of Gainesville Land Development Code, to vacate, abandon, and close that portion of Southeast 2nd Street lying south of Southeast 11th Avenue and north of the abandoned Atlantic Coastline Railroad right-of-way And that portion of Lot 29 of Veitch's Addition to South Gainesville, a subdivision as per a plat thereof recorded in Plat Book "A", Page 90 of the public records of Alachua County, Florida, being previously dedicated as additional right-of-way for Southeast 2nd Street.

Recommendation

Staff recommends denial of Petition 180SVA-98PB.

Explanation

The petitioner is requesting the City to vacate a portion of Southeast 2nd Street. The petitioner would like to combine all of their property plus the right-of-way to expand their existing business in such a way that could not be accomplished without the street vacation. The existing right-of-way is approximately 200 feet or less in length and terminates at the abandoned railroad right-of-way, which is planned for the "Rails To Trails" program. During the 1980's the adjacent property owners paid a special assessment to have the City construct the short dead-end street. In addition, a retention basin was designed and constructed at the southern terminus of the street, in a manner that precluded vehicular access further to the south. The basin, however, has not been maintained over the years and is no longer functioning as designed. Currently, the basin is completely silted-in and overgrown. This portion of Southeast 2nd Street does not connect to any other streets south of Southeast 11th Avenue. It does, however, provide the only known access to a landlocked parcel.

The City Plan Board and City Commission shall consider the following criteria in determining whether the public welfare 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.

It appears to be the only viable public access to Parcel (#16031) located south and west of the abandoned railroad tracks.

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

Staff finds that the proposed action would be inconsistent with the City's comprehensive plan because the City would not be providing access to all legal properties.

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

Staff finds that the proposed action might violate individual property rights by preventing public access to (tax parcel # 16031) located to the south and west of this street and south of the abandoned Seaboard Coast Line railroad tracks that is landlocked (does not abut public right-of-way or access easement). Access to the parcel in question has been accomplished by traversing Southeast 2nd Street and the retention basin and also over the abandoned railroad tracks.

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

The right-of-way in question appears to only serves as a private access drive to property owned by the petitioner. In truth, however, it also serves as the only known access to Parcel (#16013). If there were any perpetual access to the landlocked parcel, there would then be the potential to vacate the street in question.

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

The vacation of the street would negate the only known access to Parcel (#16013).

6. The effect of the proposed action on crime.

There should be no negative impact associated with this request.

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

The proposed action could have a positive effect upon the safety of pedestrians utilizing the future "Rails-to-Trails" network, preventing multiple vehicle crossings of the "Trail" system.

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 effect of the proposed action could adversely impact municipal services to Parcel (#16013).

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

The only utility involved is secondary electric facilities. If secondaries remain as is, (GRU) would require a public utility easement. If secondaries are removed, GRU would not need an easement.

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

The action will decrease the property value of Parcel (#16013). Approving the petition would most likely increase the value of the petitioner's property.

11. The effect of the proposed action on geographic areas which may be impacted.

The proposed action should have no effect on the geographic area in which it is located.

12. The effect of the proposed action on the design and character of the area.

The proposed action would effect the existing design and character of the area by allowing for expansion of the existing business. In addition, the Public Works Department would want the petitioner to re-construct the retention facility per original design. City staff believes that this would prevent the only known access to Parcel (#16013).

Respectfully submitted,



Ralph Hilliard
Planning Manager

RH:GGF

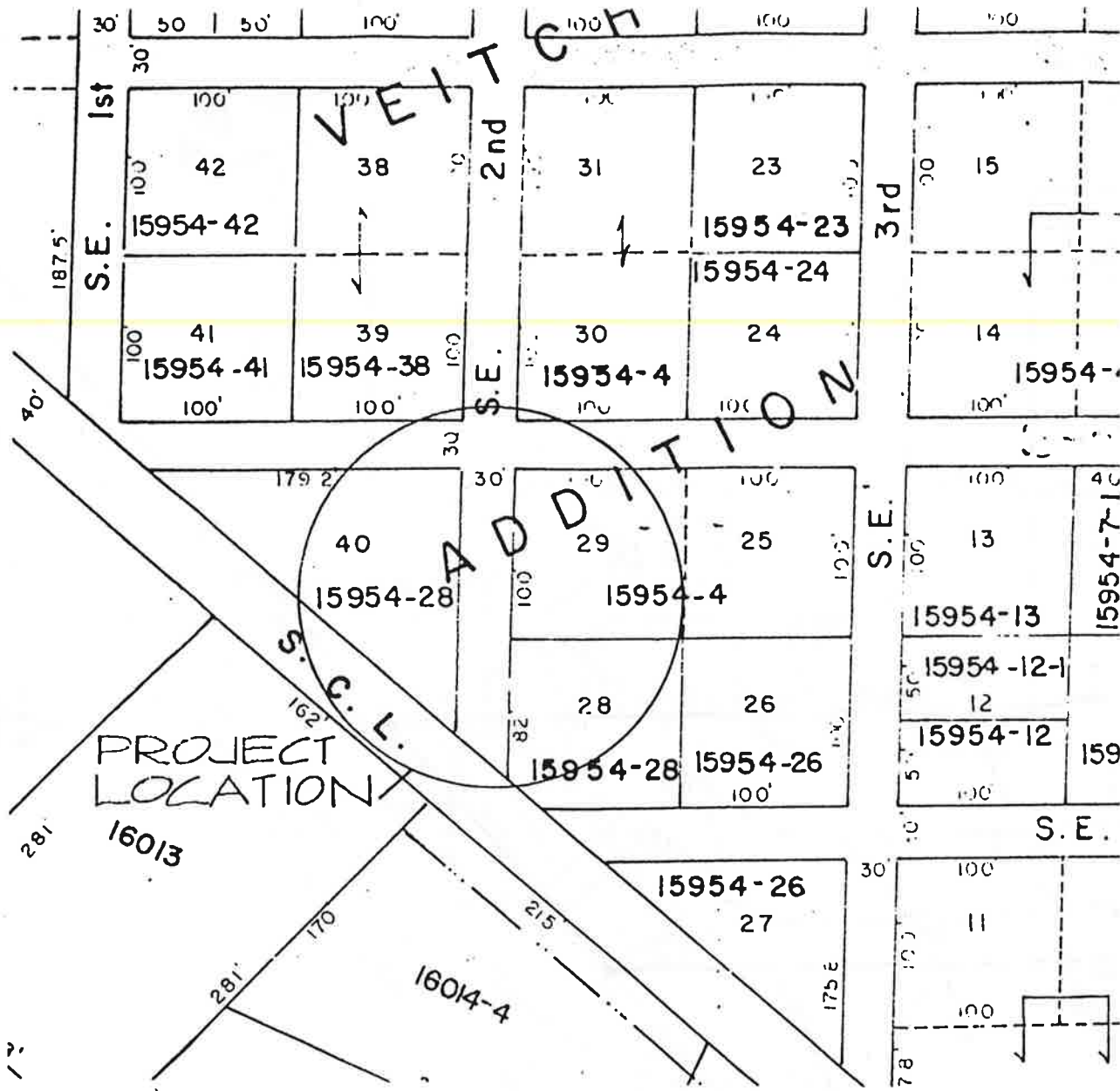
Street Closing



Area
under petition
consideration



Name	Petition Request	Map(s)	Petition Number
Brown and Cullen, Inc., agent for Larry W. Calton	Street Vacation	4152	180SVA-98PB



LOCATION MAP

SCALE: 1" = 100'



20'
2'

ES
27

E. DATA

Δ_2

CURVE DATA Δ_3

$\Delta = 70^\circ 59' 02''$

$R = 22.48$

$L = 27.85$

$T = 16.03$

PROJECT LIMITS

+50.80 P.O.C
CONS.

174.69

N $24^\circ 11' 00''$ W

R=12.48

R=32.48

5.01
N $81^\circ 45' 00''$ E

39.78

RAILROAD R/W

DETAIL "A"

SEE SHEET 2 OF 4

• DONOTES IRON PIPE



(28)

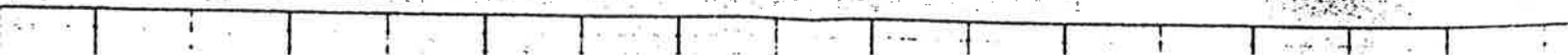
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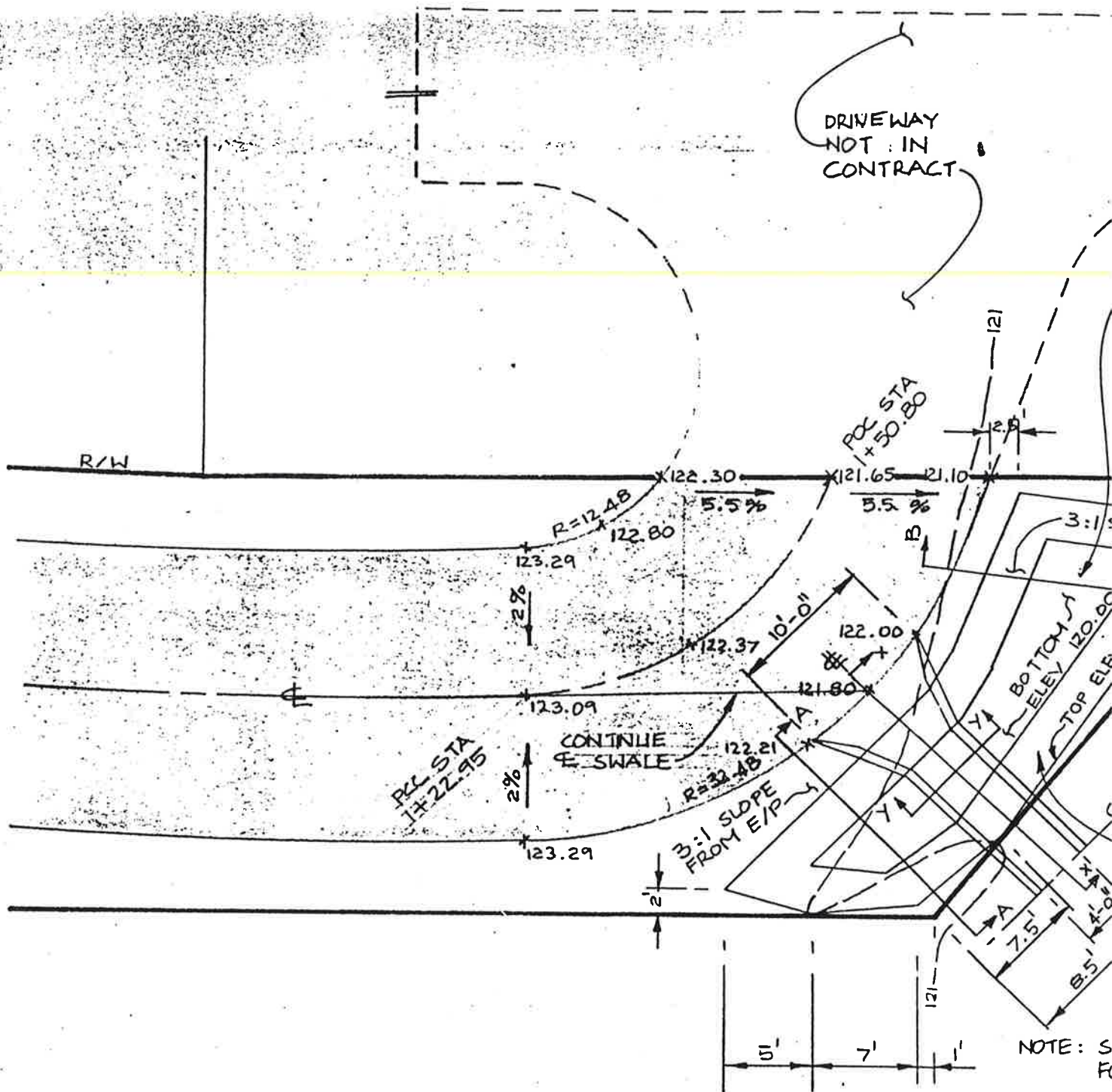
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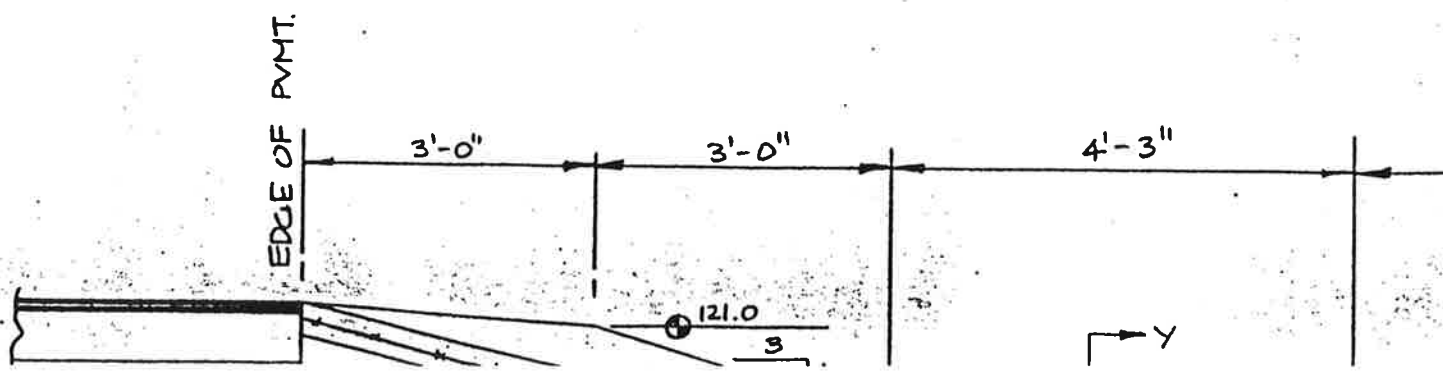
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DETAIL "A"

SCALE: 1" = 10'-0"



VI. NEW BUSINESS

3. Petition 180SVA-98 PB

Brown & Cullen, Inc., agent for L.W. Calton. Pursuant to Sec. 30-192(b) of the Gainesville Land Development Code, to vacate, abandon and close that portion of Southeast 2nd Street lying south of Southeast 11th Avenue and north of the abandoned Atlantic Coastline Railroad right-of-way, and that portion of Lot 29 of Veitch's Addition to South Gainesville, a subdivision as per a plat thereof recorded in Plat Book "A", page 90 of the public records of Alachua County, Florida, being previously dedicated as additional right-of-way for Southeast 2nd Street.

Mr. Gene Francis was recognized. Mr. Francis presented a map of the proposed street vacation site and the surrounding area. He pointed out the right-of-way of SE 2nd Street proposed for vacation, the surrounding lots and the railroad right-of-way. Mr. Francis stated that staff was recommending denial of the petition based upon the criteria of the Land Development Code, which prohibited the creation of a landlocked parcel. He pointed out the parcel of land to the south of the railroad right-of-way that would be landlocked by the proposed vacation. He explained that the petitioner wished to expand his business in a manner that would encroach into setbacks and the right-of-way. Mr. Francis reiterated that staff recommended denial of the petition since parcel 16031 would be landlocked since the only legal access was across the right-of-way of SE 2nd Street.

Ms. Dowling asked if the railroad track was no longer used.

Mr. Francis replied that it was not. He explained that there had been problems with a sewer line through the area and large trucks had used the SE 2nd Street right-of-way to implement repairs. He pointed out mechanisms for accessing the site. He noted that the railroad right-of-way belonged to the State and was, as yet, undeveloped as a rail trail. He presented photographs of the site. He reiterated that the site of the requested vacation was the only known way that staff was aware of to reach the landlocked parcel.

Mr. Polshek asked about the ownership history of the property and if the owner of the landlocked parcel had been consulted on the matter.

Mr. Francis indicated that the owner was present at the meeting.

Mr. Polshek noted that the property might still be landlocked by the rail trail right-of-way, even if the vacation were denied.

Mr. Francis reiterated that the only known legal access to the landlocked parcel was thought to be the SE 2nd Street right-of-way proposed for vacation.

Chair Barrow asked if the right-of-way could be considered a prescriptive easement.

Mr. Francis indicated that legal staff would make that determination. He stated that the City Attorney made the recommendation to the Public Works Department and Planning staff that the petition be denied.

There was discussion of the location of the lots and streets on the map. Mr. Francis pointed out that many of the streets near the railroad right-of-way had already been closed and vacated and, therefore, were not available for access to the landlocked parcel.

Chair Barrow asked the public benefit of the street closure.

Mr. Francis suggested that it would allow a business to expand which would increase the tax base.

Mr. Stuart Cullen, agent for the petitioner, was recognized. He gave a history of the area during the platting process of the 1900's and creation of the landlocked parcel in 1931. He presented a 1974 flood study map and pointed out how the landlocked parcel was accessed from south of the railroad right-of-way. He indicated that the access shown on the 1974 flood map was the historical access to the landlocked parcel. He reviewed construction of the streets retention basins in the area. Mr. Cullen indicated that it was understood by the City that there was no access to the landlocked parcel across the SE 2nd Street right-of-way. He described work done by GRU in maintenance of utilities and water retention and treatment in the area. Mr. Cullen noted that there were plans for the rail trail on the railroad right-of-way and it was not an accessible area. He pointed out that access to the landlocked site along the SE 2nd Street right-of-way across the railroad right-of-way would not allow the mandatory turning radius for fire trucks. He pointed out that the end of the SE 2nd Street right-of-way was just geographically the closest location to the landlocked parcel. He suggested that it was not the most viable or the historical access. Mr. Cullen indicated that the petitioner wished to expand his business and the only opportunity to do so was across the SE 2nd Street right-of-way.

Mr. Larry Calton, petitioner, was recognized. Mr. Calton described details of his business and plans for expansion. He requested that the board grant the petition.

Chair Barrow asked if there were any questions from the board.

Dr. Fried asked how Mr. Calton's business would be adversely affected if the board did not grant the petition. He noted that Mr. Calton's business was in operation at the present time.

Mr. Cullen explained that Mr. Calton's business was at capacity in the present buildings and there were no expansion possibilities. He suggested that the petitioner would either have to find another site or leave the City. He cited the advantages of an expanded tax base, safety and water quality.

Chair Barrow asked if the traditional road to the landlocked parcel south of the railroad right-of-way was still in existence.

Mr. Cullen indicated that some of the areas were still accessible but had not been used in some time.

There was discussion of the existing buildings and their relationship to the right-of-way.

Mr. Polshek suggested that an easement to the landlocked parcel might be provided across lot 40, which was owned by the petitioner, rather than the SE 2nd Street right-of-way.

Mr. Cullen explained that one of the petitioner's buildings took up most of lot 40, along with retention and setbacks. He noted that providing an easement across lot 40 would make it nonconforming. He pointed out that

an easement still would not allow access to the landlocked parcel because there was a piece of private property, the railroad right-of-way, in between.

Mr. Polshek stated that, if the railroad right-of-way were owned by the State of Florida, it was public property, not private property as stated by Mr. Cullen. He asked if Mr. Cullen had discussed the vacation with the owner of the landlocked property.

Mr. Cullen replied that he had not.

Chair Barrow opened the floor to public comment.

Mr. Ernie Ricard was recognized. Mr. Ricard stated that he was the owner of the landlocked parcel. He indicated that his family, at one time, owned much of the land in the area surrounding the site of Mr. Calton's business. He stated that, at the sale of the property, the SE 2nd Street right-of-way proposed for vacation had been maintained specifically to access the landlocked parcel. He agreed that, at one time, there was an access to the south of the railroad right-of-way. He explained that the right-of-way between Mr. Calton's properties was deeded to allow a legal access instead of one that crossed private property. Mr. Ricard indicated that he was in the process of trying to obtain access across the railroad right-of-way from the State of Florida. He discussed various work done by GRU, including the movement of a retention basin on the right-of-way, and other utility services. He stated that he had accessed his property across the SE 2nd Street right-of-way for a long time. He indicated that the old access road across private property had grown up and was unusable.

Mr. Polshek asked about the historical rights of use of the old access road with respect to its property owner. He wondered if there was a deed that allowed use of the adjacent property.

Mr. Ricard stated that there was none of which he was aware. He pointed out the City utilities in the area.

There was discussion of the railroad right-of-way.

Mr. Polshek asked what use Mr. Ricard planned for the landlocked parcel.

Mr. Ricard indicated that he was unsure at the present time. He suggested that it might be used for light manufacturing.

Mr. Polshek asked if Mr. Ricard thought use of the old access road was possible.

Mr. Ricard suggested that, if the City would pave the old access way so it would be as good or better access as the right-of-way proposed for vacation, it would be viable. He reiterated that he was in the process of obtaining access across the railroad right-of-way.

Chair Barrow asked if the board could grant a street vacation when it was the only access to a piece of property.

Mr. Ralph Hilliard was recognized. Mr. Hilliard indicated that the Code prohibited the creation of a landlocked parcel by vacating a public right-of-way.

Chair Barrow pointed out that the parcel was landlocked in any case by the railroad right-of-way.

Mr. Hilliard noted that, in a similar situation, there was access to Waldo Road by property owners east of the railroad right-of-way and rail trail.

Chair Barrow suggested that the bottom line was that there was currently legal access to the site and if the board approved the street vacation there would be none.

Mr. Hilliard agreed.

Mr. Ricard pointed out that, if he accessed his property through the old access road, it would require the adjacent property owner to give up a significant part of his land, whereas, the present access was via public right-of-way.

There was discussion of the status of streets on the map.

Mr. Francis pointed out that Mr. Calton did have the option of requesting a variance to setbacks up to the right-of-way in order to expand his buildings.

Ms. Dowling asked how the petitioner would suggest Mr. Ricard access his property if the right-of-way were closed.

Mr. Cullen indicated that the petitioner should use the historical roadway to the south of the railroad right-of-way. He agreed that the right-of-way proposed for vacation was geographically the best access to the landlocked property. He stated that the access to the landlocked property was created by the petitioner. He explained that the retention basin on the SE 2nd Street right-of-way "was not moved by GRU." He stated that "the retention basin was manipulated by GRU when they fixed the sewer line, but then they replaced it and they returned it back to its normal positioning. The petitioner came in himself on a bulldozer and moved the retention basin to the corner of his property. The basin should be there in the right-of-way where it is accessible and used by the road itself and it has been manipulated to appear that it's not there at all."

Ms. Dowling asked if there was a road along the historical access to the landlocked property.

Mr. Cullen replied that there was a pathway that had not been used recently. He pointed out that closing the SE 2nd Street right-of-way would not change the landlocked status of Mr. Ricard's property. He noted that the landlocked property was largely undevelopable and the public benefit with the expansion of an existing business was much greater. He stated that if the retention basin were restored to its original design, there would be no access to the landlocked parcel.

Mr. Hilliard stated that, according to City Code, if a property owner did not have public access or some type of perpetual access easement to his property, no development could occur on that property. He noted that the old prescriptive access to the landlocked parcel appeared to cross two or three different private properties. Mr. Hilliard pointed out that the City Attorney had recommended that the right-of-way not be closed. He suggested that the question was whether one business could have a negative impact on another.

Chair Barrow suggested that the City Attorney was considering issues of a "taking" of property.

Mr. Polshek asked if it were possible that there could be a compromise between the petitioner and Mr. Ricard that would allow access. He also asked if the proposed businesses' expansion would take up the entire vacated street.

Mr. Cullen indicated that the street proposed for vacation and existing structures did not allow access the landlocked parcel at the present time. He suggested that, if the street was not closed, Mr. Ricard would still not be able to access his property.

Chair Barrow noted that staff had reviewed the issue with the City Attorney and had received a recommendation of denial.

Mr. Hilliard agreed that the City Attorney's recommendation was not to close the only legal access to Mr. Ricard's property. He explained that it did not matter whether the access was physically present, only that it was a public legal access point. He noted that vacating the street would require the owner of the landlocked property to access his parcel through private property rather than available public right-of-way. He suggested that it might be considered a "taking."

Mr. Cullen suggested that it was a legal misunderstanding with City staff.

Mr. McGill pointed out that there was no direct path to the landlocked parcel. He agreed that the street proposed for vacation was the closest path, but was not a direct access.

Mr. Polshek indicated that the situation was the unfortunate consequence of the division of the property. He referred to the Land Development Code criteria and suggested that the board deny the petition.

Chair Barrow closed the floor to public comment.

Mr. Cullen pointed out a public utilities easement running along the railroad right-of-way that could possibly be used by Mr. Ricard to access his landlocked property. He suggested that it was a more viable way for access to the property than Southeast 2nd Street.

Ms. Dowling asked if the petitioner was willing to accept the financial responsibility to provide access to the public utilities easement.

Mr. Cullen indicated that he did not know. He pointed out that the utilities easement itself was in place.

Ms. Dowling noted that the access from SE 2nd Street was also available.

Mr. Cullen indicated that Mr. Ricard stated that he created the easement on SE 2nd Street and it was not present until that time.

<u>Motion By:</u> Mr. Polshek	<u>Seconded By:</u> Mr. Guy
<u>Moved to:</u> Deny Petition 189SVA-98 PB	<u>Upon Vote:</u> Motion Carried 5-1 Yeas: Guy, Barrow, Carter, Dowling, Polshek Nay: McGill

Quasi-Judicial Registration FormName:(please print) DONALD E. AND MARY JANE TSLHORNAddress: 4025 SW 100 St. (215 SE 10th AVENUE)Telephone Number: 332 4156Please indicate whether you are for or against this petition: FOR X or AGAINST (mark "X")Please indicate whether you are requesting a Formal Hearing: YES or NO X (mark "X")

Complete the following section of the form only if you are requesting a formal quasi-judicial hearing:

(Please refer to the enclosed Quasi-Judicial Hearing sheet contained in this mail-out for more information)

As an affected person receiving notice of the public hearing on Petition 180SVA-98 PB, I hereby request, that the City Commission conduct a formal quasi-judicial hearing as described above.

Signature: _____

This form and exhibits to be presented to the City Commission must be delivered to the Clerk of the Commission at least 7 days prior to the Second Public Hearing as stated in the notification letter sent to you. The Clerk of the Commission Office is located at City Hall, 1st floor, 200 East University Avenue, Gainesville, Florida. Mailed forms may be mailed to the following address: Clerk of the Commission, Quasi-Judicial Hearing, Petition 140SVA-98 PB, P.O. Box 490, Station 19, Gainesville, Florida, 32602.

Attorney Information (If applicable):

Name: (please print) _____

Address: _____

Signature: _____

Telephone Number: _____

CITY COMMISSION
GAINESVILLE, FLORIDA

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Quasi-Judicial Hearings

In 1993, the Florida Supreme Court, in the case of Board of County Commissioners of Brevard v. Snyder, held that an individual rezoning was a quasi-judicial act rather than a legislative act of a local governing body. As a result of this decision, the way that the City holds public hearings on individual land use actions such as rezonings, small scale land use changes, special use permits and site plans has changed dramatically. The City has established two types of quasi-judicial proceedings: informal and formal. The informal process, which is most widely used, includes a presentation by both City staff and the petitioner, followed by questions by the governing body, of staff and the petitioner. The next step in the process is public comment. During public comment, citizens may ask the governing body questions, and offer their testimony and opinions.

The formal quasi-judicial hearing is more like a trial court (an administrative hearing). All public testimony is taken under oath. Everyone testifying before the governing body is subject to cross-examination. All documents and exhibits that the governing body deems admissible is entered into evidence. The giving of opinion testimony is limited to expert witnesses, i.e., people whom the governing body finds have education or practical experience in an area to be able to render an informed opinion on the subject. Finally, the closing arguments to the governing body are limited to the evidence presented. After hearing closing arguments for and against the petition the governing body receives public comment (5 min. per person maximum) and makes its decision to approve or deny the petition.

Whether informal or formal, decision makers, City Commission, Plan Board, and the Development Review Board are not allowed to discuss quasi-judicial matters outside of the meeting room with anyone. All discussions about petitions must occur during the hearing. The reason for this restriction is that ex parte contacts with decision makers are presumed to be prejudicial to the side not represented.

What is the meaning of quasi-judicial? Quasi-judicial: means somewhat like a trial process. Rezoning, small scale land use changes (generally less than ten acres), special use permits and site plan approval applications, which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at the hearing, where the decision can be functionally viewed as policy application rather than policy setting, are considered quasi-judicial actions. (Source: Zoning Law and Practice After Brevard County v. Snyder, page 5.93)

Who determines if a quasi-judicial item will follow the formal or informal procedures? All quasi-judicial items are placed on the agenda as informal petitions, unless a formal hearing is requested by the petitioners or an affected party.

Who would be considered an affected party? All property owners who are entitled to actual written notice of the petition provided by the Community Development Department. A party who is not entitled to actual written notice, but who believes that he or she has a special interest or would suffer an injury distinct in kind and degree from that shared by the public at large, by the decision, may apply for affected party status by filling an application form with the Clerk of the Commission during regular business hours no less than 7 days prior to the meeting when the petition is scheduled to be heard. The request must be received by the clerk, during business hours. The decision making body will approve or deny the application prior to the start of the hearing.

How do you request a formal hearing? An affected party is automatically sent a registration form; others may request a form from the Department of Community Development. The form must be received by the Community Development Department no less than seven days prior to the public hearing for Special Use Permits and site plan approvals with all the evidence and documentation to support the affected party's or petitioner's position. For all zoning and small scale land use changes (less than 10 acres and less than 10 dwelling units per acre) the form must be received by the Clerk of the Commission no less than seven days prior to the City Commission public hearing on the petition.