

# MEMORANDUM

Office of the City Attorney

LEGISLATIVE ITEM NO. 040655

Phone: 334-5011/Fax 334-2229  
Box 46

**TO:** Mayor and City Commission **DATE:** May 9, 2005

**FROM:** City Attorney **FIRST READING**

**SUBJECT: Ordinance No. 0-05-35, Petition 159-ASVA-04PB**  
**An ordinance of the City of Gainesville, Florida, to vacate, abandon and close that portion of Northwest 1st Avenue located between Northwest 13th Street (U.S. 441) and Northwest 14th Street; reserving a temporary utilities easement; providing a special condition; providing a severability clause; providing a repealing clause; and providing an effective date.**

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Recommendation: The City Commission adopt the proposed ordinance.

## STAFF REPORT

The petitioner is proposing the redevelopment of a three-block area in the southeast corner of the College Park Special Area District, located between University Avenue and Northwest 3<sup>rd</sup> Avenue and between Northwest 13<sup>th</sup> Street (US 441) and Northwest 14<sup>th</sup> Street. The three-block area has been assembled for purchase by the petitioner for the purpose of developing a mixed-use project, consisting of commercial, office, place of religious assembly and residential uses, to be known as "University Corners."

The petitioner is proposing to vacate, abandon, and close a portion of Northwest 1<sup>st</sup> Avenue located between Northwest 13<sup>th</sup> Street (US 441) and Northwest 14<sup>th</sup> Street. In addition, the request is to vacate, and abandon that portion of Northwest 2<sup>nd</sup> Avenue, located between Northwest 13<sup>th</sup> Street (US 441) and Northwest 14<sup>th</sup> Street. The proposal is not to physically "close" Northwest 2<sup>nd</sup> Avenue to through-traffic, however, it is to "one-way" the eastern portion of the street from Northwest 13<sup>th</sup> Street (US 441). Northwest 2<sup>nd</sup> Avenue will become a "private" street, open to the public ingress and egress.

The two streets for which a vacation is requested are minor local streets that are no more than two blocks in length. Northwest 1<sup>st</sup> Avenue is located very close to University Avenue and because of the amount of traffic generated in the area, this street has always been underutilized and has created dangerous circulation problems for both pedestrians and vehicles trying to enter, exit, or cross Northwest 1<sup>st</sup> Avenue at Northwest 13<sup>th</sup> Street (US 441).

The City shall retain temporary public and private utilities easements over, under, across, and through the vacated right-of-ways. The exact location of any new easements or a blanket easement for the entire 3-block site shall be determined at the time of site plan approval of the mixed-use development.


The Plan Board heard the petition and recommended that it be approved.

Public notice was published in the Gainesville Sun on November 2, 2004. Letters were mailed to surrounding property owners on November 3, 2004. The Plan Board held a public hearing November 18, 2004.

#### CITY ATTORNEY MEMORANDUM

The City Commission, at its meeting of December 13, 2004, approved the petition and authorized the City Attorney to draft the proposed ordinance for street vacation.

Prepared and  
submitted by:

  
Marion J. Radson, City Attorney

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ORDINANCE NO. \_\_\_\_\_  
0-05-35

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**An ordinance of the City of Gainesville, Florida, to vacate, abandon and close that portion of Northwest 1st Avenue located between Northwest 13th Street (U.S. 441) and Northwest 14th Street; reserving a temporary utilities easement; providing a special condition; providing a severability clause; providing a repealing clause; and providing an effective date.**

**WHEREAS**, pursuant to Section 30-192 of the Code of Ordinances of the City of Gainesville, an application was initiated to vacate, abandon and close that portion of Northwest 1st Avenue located between Northwest 13th Street (U.S. 441) and Northwest 14th Street, as more specifically described herein; and

**WHEREAS**, notice was given and publication made as required by law and a public hearing was held by the City Plan Board on November 18, 2004; and

**WHEREAS**, at least ten (10) days notice has been given of the public hearing once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of the public hearings in the City Commission meeting room, First Floor, City Hall, in the City of Gainesville; and

**WHEREAS**, notice has also been given by mail to all owners of property abutting the portion to be vacated prior to the adoption of this ordinance; and

**WHEREAS**, prior to the public hearings the application was presented to and approved by the appropriate Departments of the City; and

**WHEREAS**, the City Commission finds that it is in the public interest to vacate;

1 abandon and close the area for the purpose of accommodating a planned development, commonly  
2 known as University Corners, subject to a temporary utilities easement.

3 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
4 **CITY OF GAINESVILLE, FLORIDA:**

5 **Section 1.** Except as provided in Section 2 and 3 below, the following described right-of-  
6 way in the City of Gainesville no longer serves a public purpose and is hereby vacated,  
7 abandoned and closed for use by the public generally in order to make possible the planned  
8 development, commonly known as University Corners (Ordinance No. 040657):

9 See Legal Description attached hereto as Exhibit "A", and made a part  
10 hereof as if set forth in full.

11 **Section 2.** The City reserves unto itself, its successors and assigns a temporary public  
12 and private utilities easement over, under, across and through the right-of-way described in  
13 Exhibit "A", attached hereto and made a part hereof, for the purpose of operating, maintaining,  
14 removing and relocating the public and private utilities located therein. Said temporary easement  
15 will expire at such time as all private and public utilities located therein are relocated from the  
16 right-of-way described in Exhibit "A".

17 **Section 3.** In the event the planned development, commonly known as University  
18 Corners, is not adopted by Ordinance No. 040657, or the planned development is not constructed  
19 and completed as provided in said Ordinance, then this Ordinance may be repealed and the  
20 vacation, abandonment and closure of the right-of-way shall be of no further force and effect.

21 **Section 4.** The Clerk of the Commission or designee is authorized to record a true copy  
22 of this Ordinance in the Public Records of Alachua County, Florida.

23 **Section 5.** If any section, sentence, clause or phrase of this ordinance is held to be invalid

1 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way  
2 affect the validity of the remaining portions of this ordinance.

3 Section 6. All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
4 such conflict hereby repealed.

5 Section 7. This ordinance shall become effective immediately upon passage; however  
6 the vacation of the right-of-way shall not take effect until and unless the amendment to the City  
7 of Gainesville 2000-2010 Comprehensive Plan adopted by Ordinance No. 040656 becomes  
8 effective as provided in Section 9 of said Ordinance.

9 PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2005.

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Pegeen Hanrahan, Mayor

ATTEST:

Approved as to form and legality:

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KURT LANNON,  
CLERK OF THE COMMISSION

By: \_\_\_\_\_  
MARION J. RADSON, CITY ATTORNEY

This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

MJR/afm

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Exhibit "A"  
UNIVERSITY CORNERS  
NW 1<sup>st</sup> Avenue  
Street Vacation

LEGAL DESCRIPTION:

An area of land located in Section 6, Township 10 South, Range 20 East, and further described as:

Commence at a nail and disk, P.L.S. #4788 located at the intersection of the centerline of NW 1<sup>st</sup> Avenue and the eastern right of way line of NW 14<sup>th</sup> Street and the Point of Beginning, run North 00° 28' 45" West, along said eastern right of way line, a distance 20.01 feet to the northern right of way line of said NW 1<sup>st</sup> Avenue; thence run North 89° 35' 20" East, along said northern right of way line, a distance of 298.23 feet; thence continuing along said northern right of way line, run North 63° 45' 05" East, a distance of 22.90 feet to the western right of way line of NW 13<sup>th</sup> Street; thence run South 03° 06' 06" West, a distance of 60.00 feet, to the southern right of way line of NW 1<sup>st</sup> Avenue; thence run North 63° 11' 03" West, along said southern right of way line, a distance of 21.80 feet; thence continuing along said southern right of way line, run South 89° 34' 19" West, a distance of 295.73 feet to the eastern right of way line of NW 14<sup>th</sup> Street, thence run North 00° 28' 45" West, along said eastern right of way line, a distance of 20.01 feet to the Point of Beginning.

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**LEGAL NOTICES**

**ADVERTISEMENT  
NOTICE OF PROPOSED  
ENACTMENT OF ORDINANCE BY CITY COMMISSION, GAINESVILLE, FLORIDA**

Notice is hereby given that the proposed ordinance, whose title appears below will be considered for First Reading on the 9th day of May, 2005, at the City Commission meeting and if then adopted on First Reading will be considered for Second and Final Reading and adoption on the 23rd day of May, 2005, at the City Commission meeting. The meetings begin at 6:00 p.m. and the ordinances will be read as soon thereafter as may be heard. The meetings are held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida, and at the Public Library, Main Branch, located at 401 East University Avenue. On the dates mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or call the TDD phone line at least 2 business days in advance.

**ORDINANCE TITLE  
Ordinance 040655  
0-05-35**

**An ordinance of the City of Gainesville, Florida, to vacate, abandon and close that portion of Northwest 1st Avenue located between Northwest 13th Street (U.S. 441) and Northwest 14th Street; reserving a temporary utilities easement; providing a special condition; providing a severability clause; and providing an effective date.**

Note: "All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

April 29, 2005  
Publish Date

Clerk of the Commission  
27509, 4/29/05