



MEMORANDUM

Office of the City Attorney

LEGISLATIVE ITEM NO. 050770

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

May 8, 2006

TO: Mayor and City Commission

DATE: ~~April 24, 2006~~

FROM: City Attorney

SECOND READING

~~FIRST READING~~

SUBJECT: Ordinance No. 0-06-47, Petition 176SVA-05PB
An ordinance of the City of Gainesville, Florida, to vacate, abandon and close a public right-of-way generally located at Northwest 7th Place, west of Northwest 5th Street and east of an abandoned railroad right-of-way, as more specifically described in this Ordinance; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

COMMUNITY DEVELOPMENT STAFF REPORT

The purpose of this request is to vacate a portion of right-of-way east of the Gainesville Police Department (GPD). The approximately .05-acre right-of-way to be vacated is an undeveloped portion of Northwest 7th Place, which lies between the westerly right-of-way line of Northwest 5th Street and the eastern right-of-way line of the abandoned CSX railroad. The property owner on the south side of the right-of-way at tax parcel 14414-010-001, also owns the property north of the subject right-of-way, at tax parcel 14409-000-000. Upon vacation of the right-of-way, the City would trade the vacated right-of-way to the property owner of the above-mentioned tax parcels for the north half of tax parcel 14409-000-000. The right-of-way is an unimproved "paper street." It provides no public access and would best be used for a land trade that would benefit the expansion activities of GPD. In recent months, the City has purchased land east of GPD headquarters for the use of some existing buildings and the construction of new facilities at some point in the future. The property that the City will receive in this land trade is the final piece in the acquisition activities.

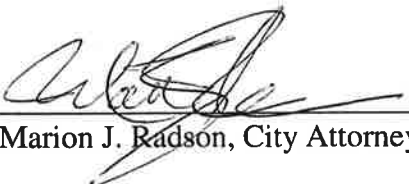
The Plan Board heard this petition and recommended that it be approved.

Public notice was published in the Gainesville Sun on January 31, 2006. Letters were mailed to surrounding property owners on February 1, 2006. The Plan Board held a public hearing February 16, 2006.

CITY ATTORNEY MEMORANDUM

The City Commission, at its meeting of March 27, 2006, authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance vacating the public right-of-way.

Prepared and
submitted by:



Marion J. Radson, City Attorney

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Passed on first reading by a vote of 6-0.

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4/4/06

ORDINANCE NO. _____
0-06-47

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4 **An ordinance of the City of Gainesville, Florida, to vacate, abandon**
5 **and close a public right-of-way generally located at Northwest 7th**
6 **Place, west of Northwest 5th Street and east of an abandoned railroad**
7 **right-of-way, as more specifically described in this Ordinance;**
8 **providing a severability clause; providing a repealing clause; and**
9 **providing an immediate effective date.**

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12 **WHEREAS**, pursuant to Section 30-192 of the Code of Ordinances of the City of
13 Gainesville, an application was initiated to vacate, abandon and close a public right-of-way
14 generally located at Northwest 7th Place, west of Northwest 5th Street and east of an abandoned
15 railroad right-of-way, as more specifically described herein; and

16 **WHEREAS**, notice was given and publication made as required by law and a public
17 hearing was held by the City Plan Board on February 16, 2006; and

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

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

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

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

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1 and close the right-of-way as set forth herein.

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

4 **Section 1.** The following described right-of-way in the City of Gainesville no longer
5 serves a public purpose and is hereby vacated, abandoned and closed for use by the public
6 generally:

7 See legal description attached hereto as Exhibit "A", and made a part hereof
8 as if set forth in full.

9 **Section 2.** The Clerk of the Commission or designee is authorized to record a true copy
10 of this Ordinance in the Public Records of Alachua County, Florida.

11 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
12 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way
13 affect the validity of the remaining portions of this ordinance.

14 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
15 such conflict hereby repealed.

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1 Section 6. This ordinance shall become effective immediately upon final adoption.

2 PASSED AND ADOPTED this _____ day of _____, 2006.

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Pegeen Hanrahan, Mayor

7 ATTEST:

Approved as to form and legality:

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11 _____ By: _____
12 KURT LANNON, MARION J. RADSON, CITY ATTORNEY
13 CLERK OF THE COMMISSION

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16 This ordinance passed on first reading this _____ day of _____, 2006.

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18 This ordinance passed on second reading this _____ day of _____, 2006.

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21 MJR/afm

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That portion of right of way known as Northwest 7th Place running West from the Westerly right of way line of Northwest 5th Street to the Easterly line of the abandoned CSX right of way line, according to Brush's Addition to Gainesville, Deed Book "O", page 218, Plat of Block 25 per Book "A", page 88, of the Public Records of Alachua County, Florida.

EXHIBIT "A"

2006 MAR 15 11:14 AM
050770
CITY OF GAINESVILLE
PLANNING DEPARTMENT

Quasi-Judicial Registration Form

Petition 176SVA-05 PB. Pursuant to Sec. 30-192(b) of the City of Gainesville Land Development Code, to vacate abandon and close public right-of-way located at Northwest 7th Place, west of Northwest 5th Street and east of the abandoned railroad right-of-way line.

CC Mtg. Date: 3/27/06

Name: (please print) John Dukes, Jr.

Address: 510 N. W. 6th Pl

Telephone Number: 372-0320

Please indicate whether you are for or against this petition: FOR or AGAINST (mark "X")

Please indicate whether you are requesting a Formal Hearing: YES or NO (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 176SVA-05 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 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. Forms may be mailed to the following address: Clerk of the Commission – Station 19, Quasi-Judicial Hearing, Petition 176SVA-05 PB, P.O. Box 490, Gainesville, Florida, 32602.

Attorney Information (If applicable):

Name: (please print) _____

Address: _____

Signature: _____

Telephone Number: _____

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 practiced 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 filing 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.