

050295

CITY OF GAINESVILLE

Office of the City Attorney

Memorandum

Phone: 334-5011/Fax 334-2229

TO: Mayor and City Commission DATE: August 22, 2005

FROM: City Attorney

SUBJECT: Edwin Dix/Lincoln Pool Property

Chronology

The City acquired the property from the Alachua County School Board in August 1975, per deed recorded at Official Records Book 965, Page 158. In September 1997, the School Board expressed an interest in re-acquiring the property, according to an Interoffice Memo from Cliff Crawford, Recreation and Parks Director, to Kimberly Trombley, Assistant City Manager. In January 1999, a private party expressed interest in purchasing the property, according to an Interoffice Memo from Teresa Scott, Public Works Director, to Public Works Manager Emery Swearingen.

On May 10, 1999, the City Commission approved a request by Recreation and Parks to have the property declared surplus and disposed of by sealed bid. Staff was aware of two interested parties, Mr. Dix and the School Board. The School Board wanted to use the property for expanded office space. Mr. Dix wanted to build a day care facility.

The property was appraised at \$53,000. The Purchasing Department sent out bid proposal packages to four parties, listing \$53,000 as the minimum bid, and advertised the sale in the Gainesville Sun. The bid specifications provided that the deed conveying the property would contain a restrictive covenant and a reversion clause stating that the property would revert back to the City if the purpose stated for the property in the initial bid was not implemented within the time frame stipulated in the buyer's proposal. The bid specifications further provided that, if the property reverted back to the City, the buyer would be reimbursed for the purchase price only.

The reason for the reverter provision does not appear in any of the written materials concerning the sale provided to me by Purchasing, Recreation and Parks, the City Clerk and Public Works. Nor have I located anyone directly involved with the transaction who specifically recalls what that reason was. The provision is not standard in City purchase and sale agreements. Rather, it typically appears in those involving property that is being sold, pursuant to applicable laws and regulations, for a price below fair market value. The bid specifications did not address the issue other than to indicate that the property was zoned PS and that bids contingent upon rezoning would not be accepted.

A likely reason for the reverter clause is that the Recreation and Parks Department was interested in ensuring that the property's new use would be compatible with its previous recreational and educational function, and with the neighboring school. Steve Phillips, Interim Assistant Director for the Recreation and Parks Department, was not directly

involved with the project but recalls this being a concern for members of the neighborhood, who did not oppose construction of a daycare facility but would have opposed a development that they viewed as incompatible with the school area.

Mr. Dix and his partner Philip Leitner submitted the only responsive bid, which was dated February 25, 2000. They listed their bid amount as \$53,000, and their intended use of property as day care and after school care center. Their schedule for implementation of use was "on or before year 2002." On March 13, 2000, the City Commission approved the property sale pursuant to the bid. The purchase and sale agreement, containing the reverter provision, was executed on April 30, 2000.


On June 20, 2000, the City issued Mr. Dix a Special Warranty Deed conveying the property, which was recorded at OR Book 2297, Page 1612. A second Special Warranty Deed correcting an error in the legal description of the property was issued on August 7, 2000, and recorded at OR Book 2308, Page 1424. Both deeds contained the reverter clause.

On February 15, 2005, the City Planning Division received from Mr. Dix an application to rezone the property to RSF-2 and RSF-3. In a memo dated March 17, 2005, the Planning Division Staff recommended approval of Mr. Dix's petition. The memo indicated that Mr. Dix purchased the property from the School Board in 2001. It is not clear from the document where this incorrect information was obtained.

The Plan Board approved Mr. Dix's rezoning petition on March 17, 2005. The City Commission approved the rezoning ordinance on first reading June 13, 2005, and on second reading June 27, 2005. Supporting documents also identified the property as having been purchased by Mr. Dix from the School Board.

In late July, the rezoning came to the attention of Land Rights Coordinator Sam Bridges, who had prepared the corrective Special Warranty Deed with the reverter clause. This information was communicated to the Planning Division, the City Attorney's Office and Mr. Dix. Mr. Dix requested a Quit Claim deed releasing the reverter, and asked Mr. Bridges to place the item on the August 8, 2005, City Commission agenda. Mr. Bridges prepared a draft of the deed for review, but advised Mr. Dix that his department's deadline for submitting agenda items had already passed.

Mr. Dix then directed his request to the Commission, via letter dated August 1, 2005. After speaking with the City Attorney, Mr. Dix agreed to wait until the August 22, 2005, Commission meeting.

Prepared by: 
Marynelle Hardee
Assistant City Attorney I

Approved and
Submitted by: 
Marion J. Radson
City Attorney

DRAFT

This Instrument Prepared By:

Sam Bridges, Land Rights Coordinator
Public Works Division – MS#58
City of Gainesville
P.O. Box 490
Gainesville, FL 32602-0490

Tax Parcel No. 15800-000-000
Section 9, Township 10 South, Range 20 East

QUIT-CLAIM DEED RELEASING REVERTER

THIS QUIT-CLAIM DEED, executed this _____ day of _____, 2005, by the CITY OF GAINESVILLE, a municipal corporation of the State of Florida, Grantor, to EDWIN DIX, Grantee:

(Wherever used herein the terms "Grantor" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH, That the said Grantor, for and in consideration of the sum of one (\$1.00) dollar and other good and valuable consideration to it in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situated, lying and being in the County of Alachua, State of Florida, to wit:

Lands described in Alachua County Public Records Book 2308, page 1424 and further described as follows:

Lot 1 and 4, Block 1, Range 4 East of State Road 331 of Goss 1st Addition as per Plat Book A, Page 34 and Lot 1, Block 2, Range 4 East of State Road 331 and the west three quarters of Block 1 Range 5 and closed streets of Eastside City Pool as described in OR Book 965, Pages 156-158; containing 4.8 acres, more or less.

THIS QUIT-CLAIM DEED is executed for the purpose of releasing the requirement for reversion of the subject property to the City of Gainesville pursuant to the reverter clause in the Special Warranty Deed recorded at Book 2308, Page 1424, of the Official Records of Alachua County, Florida.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee forever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed in its name, affixed its seal the day and year first above written.

Signed, sealed & delivered
In the Presence of:

CITY OF GAINESVILLE, FLORIDA
A Florida Municipal Corporation

Print Name _____

Pegeen Hanrahan, City Mayor

Print Name _____

ATTEST:

Kurt M. Lannon, Clerk of the Commission

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Pegeen Hanrahan and Kurt M. Lannon, the City Mayor and Clerk of the Commission, respectively, of the City of Gainesville, Florida, a municipal corporation, who are personally known to me and duly sworn, and acknowledged that as such officers, and pursuant to authority from said corporation, as its act and deed, and for the uses and purposes set forth and contained in said instrument.

Print Name: _____
Notary Public, State of Florida
My Commission Expires:

Subject to City Commission and City Legal Approval