

BEFORE THE CITY COMMISSION
CITY OF GAINESVILLE, FLORIDA

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**IN THE MATTER OF JEROME KELLY,
AGENT FOR George E. Fletcher, and Gloria
W. Fletcher, PETITIONERS¹
PETITION 142SUB-00PB, PHASE I (Legistar No. 001117);**

ORDER

The City Commission of the City of Gainesville held a formal quasi-judicial hearing on July 23, August 7, August 28-29, October 14, 2002, and May 1, 2003 on Petition 142SUB-00PB, Phase I (Legistar No. 001117), filed by Jerome Kelly, agent for George E. Fletcher and Gloria W. Fletcher (Petitioners)². The petition was for final plat approval for Phase I, Walnut Creek, a Planned Development, located in the vicinity of the 2600 Block of Northwest 39th Avenue.

The Petitioners were represented by Ronald Carpenter, Attorney (hereinafter referred to as Petitioner). At the hearing on May 1, 2003, the City of Gainesville staff was represented by Dana Crosby, Attorney (hereinafter referred to as Staff).

The City Commission determined that the following persons or entities were affected parties: Sharon S. Dame, Jeff and Gayle Malpass, Myrtle L. Deaver, Amy Sue Beckner, Glen Springs Preservation Association, Bonnie O'Brien, Elizabeth Furlow, Ramesh and Sneha Shah, and Brian and Tammy Trahan. The following parties were represented by Samuel Mutch, Attorney: Sharon S. Dame, Glen Springs Preservation Association, Bonnie O'Brien and Elizabeth Furlow. Ramesh and Sneha Shah were represented by Deborah Andrews, Attorney. (These persons and entity are hereinafter collectively referred to as Affected Parties).

¹ Luther E. Blake, Jr. and Irene Blake Caudle were the original Petitioners in this matter. A Notice of Substitution of Agency Relationship dated April 16, 2003, was filed with the City.

² The Hearing on Petition 142SUB-00PB, Phase I (Legistar No. 001117), was initially consolidated with Phase II (Legistar No. 020125). A Notice of Withdrawal of Walnut Creek Phase II dated April 11, 2003 was filed by the Petitioners with the City. The City Commission on May 1, 2003 struck Walnut Creek, Phase II (Legistar No. 020125) from the agenda.

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STATEMENT OF THE PETITION

The Petitioner filed revised plans and a revised subdivision plat with the City for Walnut Creek, Phase I. The Petition requested final plat approval for Phase I of the Walnut Creek subdivision as revised. The subdivision is zoned Planned Development. This subdivision is subject to the requirements of City of Gainesville Ordinance No. 991267, the planned development ordinance, as amended. Walnut Creek, Phase I is a 73-lot single-family residential subdivision.

PRELIMINARY STATEMENT

After hearing formal presentations, receiving evidence and testimony from Staff, the Petitioner, Affected Parties, expert and lay witnesses, all of whom were duly sworn, argument of counsel, and receiving comments from the general public, the City Commission voted to approve Petition 142SUB-00PB Phase I of the Walnut Creek subdivision (Legistar No. 001117), as specifically set forth below.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the formal quasi-judicial hearing and the entire record of this proceeding, the following findings of fact are made:

- 1) Walnut Creek is zoned Planned Development. City of Gainesville Ordinance No. 991267 allows 138 single-family detached dwelling units and requires that the development obtain final plat approval. The proposed street layout, lot size, and common area are consistent with the Planned Development Layout Plan and Planned Development Report, which was adopted on October 9, 2000 by City of Gainesville Ordinance No. 991267.

1 The revised plans and revised subdivision plat for Walnut Creek Phase I are consistent
2 with the Planned Development Layout Plan, the Planned Development Ordinance, and the
3 Gainesville Code of Ordinances.

4 2) Petitioner presented testimony and evidence that, based on their studies and review, the
5 proposed stormwater management plan on the revised plans and revised subdivision plat met the
6 criteria required by the Gainesville Code of Ordinances.

7 3) Affected Parties presented testimony and evidence that, based on their studies and
8 review, the proposed stormwater management plan on the revised plans and revised subdivision
9 plat met the criteria required by the Gainesville Code of Ordinances.

10 4) Staff presented testimony and evidence that, based on their review, the proposed
11 stormwater management plan on the revised plans and revised subdivision plat met the criteria
12 required by the Gainesville Code of Ordinances. An outside consultant, retained by staff,
13 presented testimony and evidence that the proposed stormwater management plan on the revised
14 plans and revised subdivision plat met the criteria required by the Gainesville Code of
15 Ordinances.

16 5) The City Commission finds that after reviewing the exhibits in evidence and hearing the
17 testimony of the witnesses, there is competent substantial evidence that the proposed stormwater
18 management plan on the revised plans and revised subdivision plat meet the criteria of the City
19 of Gainesville Code of Ordinances.

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CONCLUSIONS OF LAW

22 Based on the findings of fact set forth above, Petition 142SUB-00PB, Phase I, Walnut
23 Creek Subdivision (Legistar No. 001117), is consistent with the Planned Development Layout
24 Plan, the Planned Development Ordinance, and the City of Gainesville Code of Ordinances.

1 In view of the foregoing, Petition 142SUB-00PB, Phase I Walnut Creek Subdivision
2 (Legistar No. 001117) is APPROVED.

3 Entered this _____ day of May 2003.

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Thomas D. Bussing, Mayor

7 Attest:

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10 Kurt M. Lannon, Clerk of the Commission

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12 Copies furnished to:

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14 Ronald Carpenter, Esq.

15 Samuel Mutch, Esq.

16 Walter Mathews, Esq.

17 Jeff and Gayle Malpass

18 Myrtle L. Deaver

19 Amy Sue Beckner

20 Brian and Tammy Trahan

21 Wayne Bowers, City Manager

22 Marion J. Radson, City Attorney

23

RESOLUTION NO. _____

PASSED _____

A Resolution approving the final plat of "Walnut Creek, A Planned Development, Phase I", located in the vicinity of the south side of N.W. 39th Avenue between N.W. 25th Court and N.W. 27th Court; authorizing the Mayor and Clerk of the Commission to execute a Tri-Party Agreement for the construction of improvements; and providing an immediate effective date.

WHEREAS, the Development Review Board approved the design plat of "Walnut Creek, A Planned Development, Phase I" on February 8, 2001; and

WHEREAS, the owner of the plat has submitted a final plat which substantially conforms to the design plat as approved by the City Commission on March 26, 2001 and which incorporates all modifications and revisions specified in such approval; and

WHEREAS, the owner of the proposed subdivision has requested the City Commission to accept and approve the final plat as provided in Chapter 177 of the Florida Statutes and Chapter 30 of the Code of Ordinances of the City of Gainesville, Florida; and

WHEREAS, the City Commission finds that the final plat described herein is consistent with the City of Gainesville 2000-2010 Comprehensive Plan, and applicable ordinances and regulations of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA;

Section 1. The final plat of "Walnut Creek, A Planned Development, Phase I" is accepted and approved by the City Commission on the following described property lying in the City of Gainesville, Alachua County, Florida:

(See Exhibit "A" attached hereto and made a part hereof as if set forth in full)

Section 2. The Mayor and Clerk of the Commission are authorized to execute a Tri-Party Agreement with a lending institution and the subdivider that secures the construction and completion of the improvements required under the ordinances of the City of City of Gainesville, a copy of which agreement is attached hereto as Exhibit "B".

Section 3. The Clerk of the Commission is authorized and directed to affix his signature to the record plat on behalf of the City Commission and accept the dedication of public rights-of-way, easements, and other dedicated portions as shown on the plat.

Section 4. This resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2003.

Thomas D. Bussing, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

Kurt Lannon,
Clerk of the Commission

Marion J. Radson, City Attorney

LEGAL DESCRIPTION:

A TRACT OF LAND SITUATED IN SECTION 25, TOWNSHIP 9 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE AFOREMENTIONED SECTION 25, TOWNSHIP 9 SOUTH, RANGE 19 EAST FOR THE POINT OF REFERENCE AND RUN S.00° 57'04"E., ALONG THE WEST LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 50.15 FEET TO THE SOUTH RIGHT OF WAY LINE OF N.W. 39th AVENUE (100 FOOT RIGHT OF WAY); THENCE RUN N.89°34'14"E., ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 440.13 FEET TO A CONCRETE MONUMENT (STAMPED PRM LS #3784) AND THE TRUE POINT OF BEGINNING; THENCE CONTINUE N.89°34'14"E., ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 880.35 FEET TO A CONCRETE MONUMENT (STAMPED: PRM L.S. #3784) AT THE NORTHWEST CORNER OF PALM GROVE SUBDIVISION AS PER PLAT RECORDED IN PLAT BOOK "T", PAGE 52 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE RUN S.00°56'22"E., ALONG THE WEST LINE OF SAID PALM GROVE SUBDIVISION, A DISTANCE OF 672.97 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784); THENCE RUN S.89°03'38"W., PERPENDICULAR TO SAID WEST LINE, A DISTANCE OF 20.00 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784) WHICH MARKS THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, SAID CURVE HAVING A RADIUS OF 20.00 FEET; THENCE RUN NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°29'24", AN ARC DISTANCE OF 31.24 FEET (CHORD BEARING AND DISTANCE BEING N.45°41'04"W., 28.16 FEET RESPECTIVELY) TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784) WHICH MARKS THE END OF SAID CURVE; THENCE RUN S.89°34'14"W., A DISTANCE OF 95.19 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784); THENCE RUN S.00°56'22"W., A DISTANCE OF 14.97 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784); THENCE RUN S.89°34'14"E., A DISTANCE OF 262.54 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784) WHICH MARKS THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, SAID CURVE HAVING A RADIUS OF 100.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°57'54", AN ARC DISTANCE OF 57.53 FEET (CHORD BEARING AND DISTANCE BEING N.73°56'49"W., 56.74 FEET RESPECTIVELY) TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784); THENCE RUN S.00°29'21"E., A DISTANCE OF 88.39 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784) WHICH IS LOCATED ON THE NORTH LINE OF HIDDEN PINES SUBDIVISION AS PER PLAT RECORDED IN PLAT BOOK "H", PAGE 63 OF SAID PUBLIC RECORDS; THENCE RUN S.89° 30'39"W., ALONG THE NORTH LINE OF SAID HIDDEN PINES SUBDIVISION, A DISTANCE OF 435.02 FEET TO A CONCRETE MONUMENT (STAMPED: PRM LS #3784) AT THE NORTHEAST CORNER OF LOT 1 OF SAID HIDDEN PINES SUBDIVISION; THENCE RUN N.00°22'59"W., A DISTANCE OF 741.01 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 14.238 ACRES, MORE OR LESS.

EXHIBIT "A"

AGREEMENT
(Walnut Creek - Phase I)

Florida Bank, N.A., hereinafter called the Lender, has made a loan to George E. Fletcher & Gloria W. Fletcher, hereinafter called the Developer, which includes funds for the construction of subdivision improvements in a subdivision to be known as Walnut Creek, Phase I, in Gainesville, Florida.

W.G. Johnson & Son, Inc., hereinafter called the Contractor, has contracted for a total contract price of \$600,000.00 to install the streets, necessary drainage and other improvements required under applicable law. These funds are included in the loan by the Lender to the Developer.

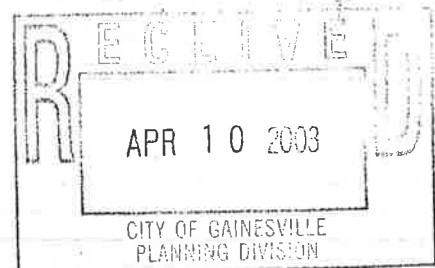
The applicable ordinances of the City of Gainesville require that assurances be given before a subdivision is platted that the proposed improvements will be completed within a reasonable time to the standards required by the City engineer for acceptance and maintenance by the City after completion, and as a condition of the acceptance of the plat of this proposed subdivision for recording.

As a condition of the acceptance of the plat of this proposed subdivision for recording, the City has reviewed the Contract and the Contract price relating to these improvements to establish that such sum is sufficient for normally anticipated costs.

A fund of \$756,000.00 (120% of the Director of Public Works approved estimate of the cost of the improvement) is irrevocably set aside for construction of required subdivision improvements and may not be used for any other purpose until such improvements are in place and accepted by the City. Disbursement of the fund during the course of construction will be made on certification by a private engineer acting for the account of the Developer as to the value of the work then completed, and then, acceptance by the City Director of Public Works of such certification, or, a separate certification by the City Director of Public Works. The Lender shall then advance to the Developer for payment to the Contractor the sum as agreed by the private engineer and the City Director of Public Works, each progress payment to be charged to 10% retainage to be paid with the final payment on completion and acceptance by the City of the improvements.

Should the Contractor default in performance under this Contract, the Developer agrees to engage another Contractor within 30 days to complete these improvements. The selection of the other Contractor will be subject to approval by the Lender and by the City. Should the Developer not proceed to relet the Contract within such time period of a default by the present Contractor, the Lender, and/or the City shall be entitled to complete the improvements so that the City will accept permanent maintenance, and use for the purpose of paying for such completion, the balance remaining of the loan funds attributable to this Contract and if such amounts are not sufficient, the Lender shall advance additional monies up to 120% of the original contract if so required, and shall have the option to advance any additional monies that may be required, all of which advances will be secured by the lien of the mortgage by the Developer to the Lender.

This completion may be by the Lender and another Contractor, or by the City directly, whichever shall be determined by the Lender and the City to be most appropriate for an early completion of the improvements and final acceptance by the City.



schedule, he may so advise the Developer who shall then be bound to take corrective measure. The Lender shall likewise be advised and may thereupon withhold further disbursements of progress payment until a resolution of the problem acceptable to the City Director of Public Works may be obtained.

Should the City have to take over and complete or have completed the subdivision improvements required by City ordinances, then the obligation of the Lender to pay a sum equal to the cost of such improvements to the City or make such sum available shall exist independent of and regardless of whether or not the Developer may be in default on its agreement or mortgage.

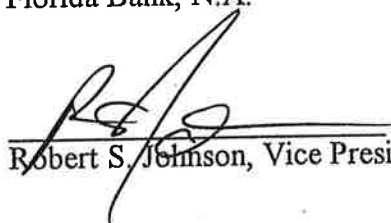
This Agreement executed at Gainesville, Florida this 10 day of April, 2002.

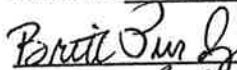
Witness:

Florida Bank, N.A.

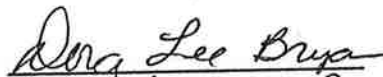

Printed Name: Janet Nester

By:

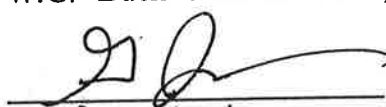

Robert S. Johnson, Vice President

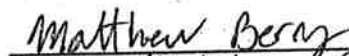

Printed Name: Britt Purdy

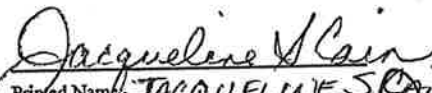
W.G. "Buck" Johnson & Son, Inc.



Printed Name: Dora Lee Bryan

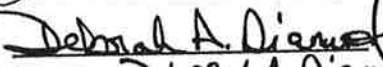
By:


Its: President

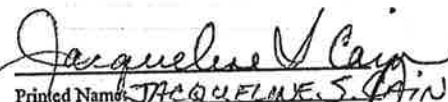
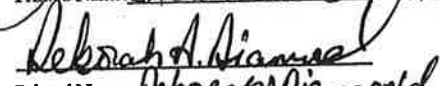

Printed Name: Matthew Berry


Printed Name: JACQUELINE S. CAIN


George E. Fletcher


Printed Name: Deborah A. Diamond


Gloria W. Fletcher


Printed Name: JACQUELINE S. CAIN

Printed Name: Deborah A. Diamond

City of Gainesville

Printed Name: _____

By:

Its: _____

Printed Name: _____

