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Certified Circuit Court & Appellate Mediator

April 1, 2020

Sean McDermott, Asst. City Attorney  
City of Gainesville  
200 E. University Ave. STE 425  
Gainesville, Florida 32601  
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Via Email Only

Re: Opinion of counsel: A certain parcel lying in Block 1,  
University Place (Plat Book A-77)

Dear Sean:

I have been asked to review relevant instruments of record and other materials to ascertain the apparent ownership of a strip-shaped parcel (the "Parcel") appearing on the Plat of University Place, which was recorded on December 10, 1909 at Plat Book A, Page 77, in the Public Records of Alachua County, Florida. The location of the Parcel is generally north of SW 1<sup>st</sup> Avenue and lying between SW 10<sup>th</sup> Avenue and SW 9<sup>th</sup> Terrace, where it terminates on the Plat.

By way of background, I am a licensed attorney in the State of Florida (#892520) and have practiced in the areas of real property, land use and environmental law since admission to the Florida Bar in 1991. Over the years, I have examined numerous titles for purposes of issuing title insurance as a Title Agent and also as a land use attorney.

In this instance, I reviewed the recorded plat of University Place, select warranty deeds for properties adjacent to the Parcel, City of Gainesville zoning and land use maps (via Alachua County Map Genius), Alachua County Property Appraiser records, excerpts of the City of Gainesville Land Development Code and Comprehensive Plan, notes of interviews with GRU staff, City of Gainesville Plan Board records, developer application materials, City staff reports, Florida case law, and the Affidavit of Stanley Forron.

Based on the foregoing materials, it is my opinion that apparent ownership of the Parcel lies in the owners of the immediately adjacent, privately-owned lots, each one owning to the centerline of the Parcel. The basis for my opinion is set forth in the balance of this letter.

### **Discussion**

The plat of University Place was recorded in the Public Records of Alachua County, Florida on December 10, 1909 at Plat Book A, Page 77. There is no dedication of streets to the City of Gainesville. Rather, the Plat legend contains the following express reservation in the developer of the fee beneath all streets:

The W.R. Thomas Real Estate Co. reserves until itself the fee in all the streets, as per this map and to use the same for Railroad, Gas, water and sewer pipes electric and light poles and wires and such other reasonable uses as the said company may see fit. Dated this 10<sup>th</sup> day of December A.D. 1909.

The undersigned has not performed a full title search. However, a sampling of the deeds adjacent to the Parcel does not reflect an easement or other conveyance in favor of the City as of the late 1970s. GRU staff has indicated verbally that the City does not possess an easement – blanket or otherwise – to permit installation of utilities underneath, through or over the Parcel. (Limited utilities are reportedly present in the Parcel.)

Testimony adduced at the February 27, 2020 City Plan Board hearing on application PB-19-183-SVA, a petition to vacate a purported public right of way (ROW) in Block 1 of University Place subdivision, demonstrated that the Parcel is not part of the City street network. (The Plan Board on February 27, 2020 also heard the related Petition, PB-19-182-SUP, and recommended approval contingent on the City Commission approving a ROW vacation of the purported ROW that comprises the Parcel; See counsel’s recommendation below.)

Examination of a sampling of recent deeds for the eastern parcels in Block 1 of the Plat supports a conclusion that the Parcel is privately owned. For example, TP 13201-000-000 (in The Innovation Square LLC chain of title) was conveyed “...including the area of the alley lying between said lots to the mid point (sic) of said alley...”. In contrast, parcels on the western side of Block 1, such as TP 13207-000-000 (Two Bald Fat Men Land Investments II, LLC) do not contain reference to the “alley” in the deeds. Yet, inexplicably, the City’s zoning map assigns a DT zoning category to the Parcel at this western location.

It is well settled under Florida law that when a public right of way is vacated, ownership to the centerline reverts and vests in the immediately adjacent properties. Where a roadway has not been dedicated to the City, as in this case, ownership is to the centerline of any platted streets or rights of way – a possible explanation for the conveyances discussed above.

The subject 15-ft-wide Parcel does not appear to have been designed as a public thoroughway east of SW 10<sup>th</sup> Terrace, according to the 1909 plat. Its narrow configuration relative to the nearby platted “South 7<sup>th</sup> Street” and “West Union Street” supports a conclusion that it was designed to service private property, not public users. This conclusion is further supported by the Affidavit of Stanley Forron, whose family has owned property adjacent to the Parcel since 1979, has always maintained the Parcel privately and understood the Parcel to service the adjacent parcels only. ¶¶ 5-9, Affidavit of Stanley Forron, March 31, 2020.

The subject Parcel still terminates at SW 9<sup>th</sup> Terrace, according to City Staff testimony at the Plan Board hearing. The 1909 Plat shows a strip aligned with the Parcel resuming on the eastern side of the center parcel, but current land records show the eastern strip being included and conveyed privately within Tax Parcels 13201-000-000, 13200-000 and 13209-000. A north-south street shown on the 1909 Plat immediately adjacent to the center parcel also has been subsumed by surrounding parcels, according to current land records.

### **Conclusion and Recommendation**

The presence of limited municipal utilities in the Parcel, a Parcel whose apparent ownership is private, should be resolved to avoid competing claims for prescriptive easement and condemnation, particularly since the pending development application for this section of Block 1 calls for relocation of the utilities to the perimeter of the proposed development.

To remove any cloud on title resulting from a potential claim of use for public utilities and ROW, it is recommended that the City of Gainesville execute, deliver and record a quit-claim and release of all interest in the Parcel, as the circumstances warrant.

Such a recording would serve as constructive notice to the public of the private ownership of the Parcel.

And, finally, it is recommended that upon approval and/or recording of the quit-claim and release, Petition PB-19-183-SVA be dispatched as moot, consistent with the appropriate City procedures. It follows that the related PB-19-182-SUP would be deemed fully approved and issued to the applicant.

I have enclosed with this letter the: (1) Affidavit of Stanley Forron; and (2) Plat of University Place [A-77].

Feel free to contact me should you have any questions. I look forward to your consideration.

Sincerely,

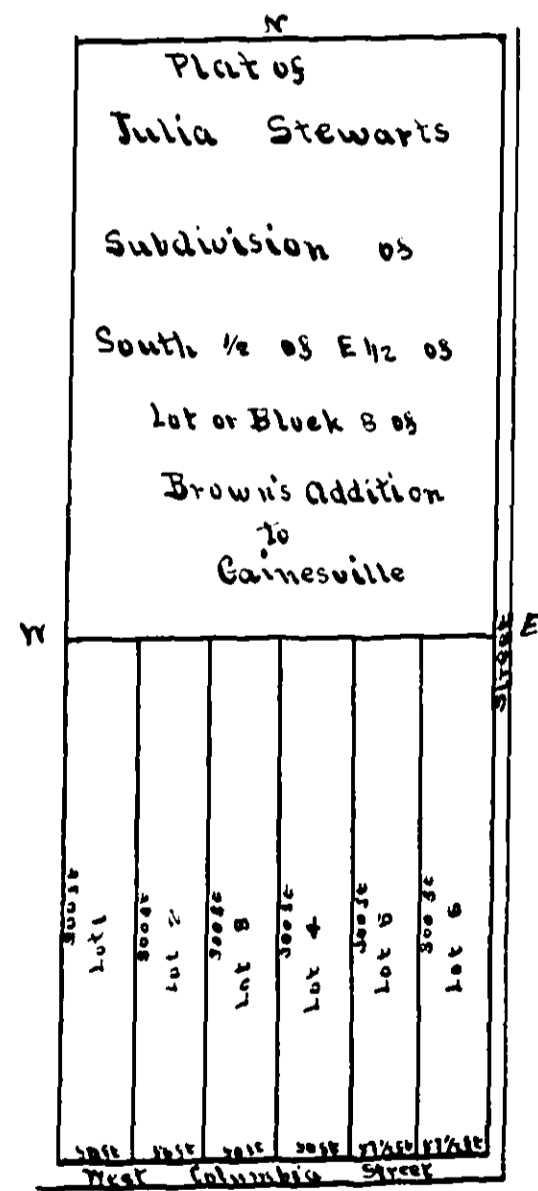
/s/ PATRICE BOYES, ESQ.

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Patrice Boyes, Esq.

ENCLOSURES (2)

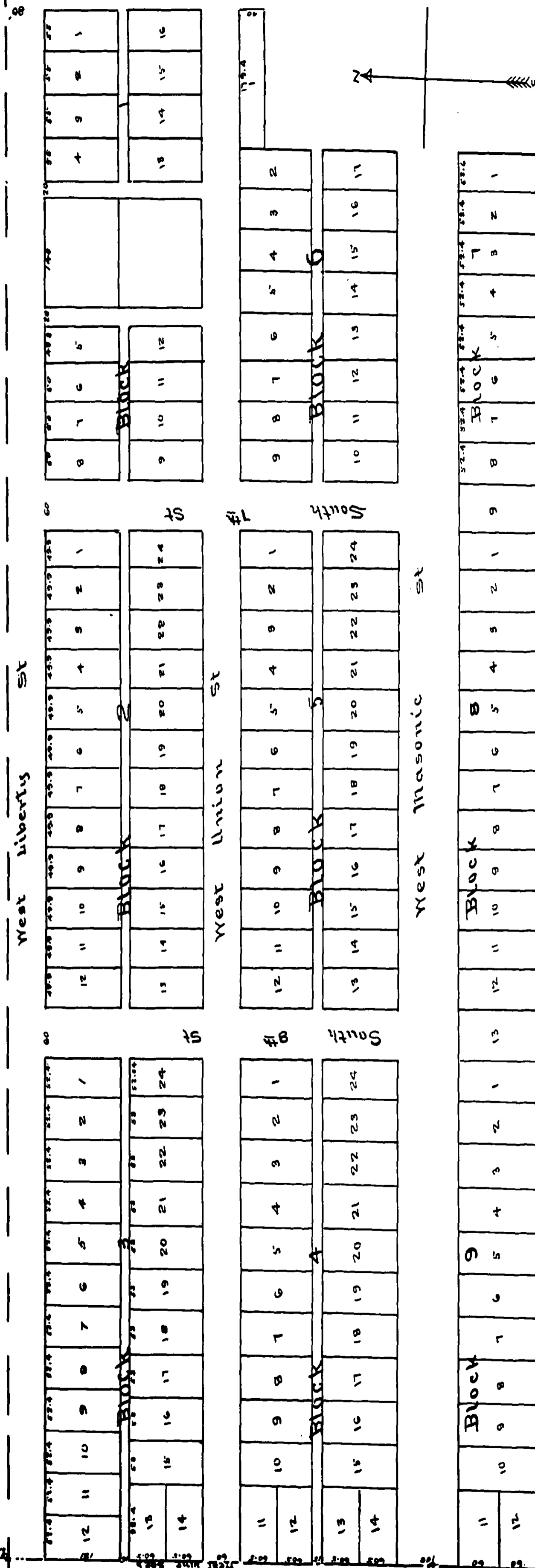
A-77.



Mrs Julia A Stewart  
 Mr Milton Stewart  
 Filed and Recorded  
 Dec 14<sup>th</sup> 1908  
 S.H. Wienges Clerk  
 by M.S. Cheves D.C.

University  
Hampton

Sole Selling Agents  
Gainesville Florida



The W. R. Thomas Real Estate Company's subdivision of a portion of the North 1/4 of SW 1/4 of Sec 21, T10S, R20E  
The W. R. Thomas Real Estate Co. reserves, as per this map, to use the some 50 feet of the  
water and sewer pipes electric light poles and wires and such other reasonable uses as the said company may see fit  
Filed for Record Dec 10, 1909  
Dec 10, 1909. S.W. Thomas Clerk

Scale 1 inch = 100 ft  
W. R. Thomas Del  
Nov 1909

## **AFFIDAVIT OF STANLEY FORRON**

BEFORE ME, the undersigned authority, personally and physically appeared **STANLEY FORRON**, who provided a valid Driver's License or other proper identification, and who was sworn under oath, and who, upon personal knowledge, said:

1. I, Stanley Forron, am over 18 years of age and a resident of Alachua County, Florida.
2. I have executed this affidavit based upon my personal knowledge of the facts stated herein.
3. I am the Manager of Two Bald Fat Men Land Investments II LLC, a Florida limited liability company (the "Company"), with a mailing address of P.O. Box 358113, Gainesville, Florida 32653-8113.
4. The Company owns Tax Parcels 13206-000-000 and 13207-000-000, with street addresses of 21 SW 10<sup>th</sup> Street and 928 SW 1<sup>st</sup> Avenue, Gainesville, Florida, respectively. These parcels are located on the southwestern corner of Block 1 of University Place, a plat recorded in Plat Book A Page 77, of the Public Records of Alachua County, Florida. Two houses occupy these parcels.
5. I am familiar with the history of land use on this block of downtown Gainesville because my family owned and operated the BP Gas Station (Tax Parcel 13205-000-000), which is situated on the northwest corner of Block 1 of University Place. My family has owned property on this block since 1979; a map showing the parcels is attached as **Exhibit A** and incorporated herein.
6. There is a 15-foot alley between the three residential properties (two of which the Company owns) on the southwest side of Block 1 and the commercial uses that occupy the parcels on the north side of this alley.

7. In my personal experience and that of my mother's, the City of Gainesville has never paved or maintained this alley, and at least for the past 40 years, our family was the only party to keep the pathway swept, patched, and clear of debris and vegetation.
8. Our family purchased property in 1979 with the understanding that this alley serviced the adjacent parcels only. Delivery trucks do not use this pathway because it is too narrow. Basically, the pathway allows residents to get to their back yards.
9. The alley is not used by the general public, but it is often trespassed by loiterers who purchase alcohol at the nearby convenience store and consume it in the alley. We have had to call law enforcement on more than one occasion to remove unconscious alcohol consumers from the alley.
10. I have prepared and signed this Affidavit to negate any claim to the alley that parties other than the adjacent property owners may make or may try to make by virtue of the presence of municipal utilities in the alley or the occasional trespass.

**Further Affiant sayeth naught.**

THIS SPACE LEFT BLANK INTENTIONALLY

  
\_\_\_\_\_  
STANLEY FORRON

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before on this 31 day of March 2020 by STANLEY FORRON, in his individual capacity and as Manager of Two Bald Fat Men Land Investments II LLC, a Florida limited liability company, who ( ) is personally known to or who (✓) did present a valid Florida Driver's License as identification and who took an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC-STATE OF FLORIDA  
MY COMMISSION EXPIRES: 3/21/23

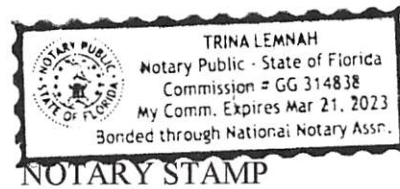




EXHIBIT A:  
AERIAL MAP

Exhibit A




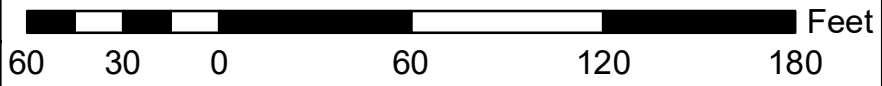
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Standard Parallel 1: 29.5833333333333333  
Standard Parallel 2: 30.8333333333333333  
False Easting: 500000.0000000000  
False Northing: 0.0000000000000000  
Units: Meter  
Datum: North\_American\_1983  
GCS: North\_American\_1983  
Prepared by: Employee ##  
Date: 3/31/2020



Document Path: N:\2019\19-0316\Planning\GIS\MXDs\ROW\1B.mxd

**Legend**

 Alachua County Tax Parcels



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNR/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community