

ORDINANCE NO. 210837

An ordinance of the City of Gainesville, Florida, to vacate, abandon, and close a certain public right-of-way generally located in the 400 block of NW 12th Terrace, between NW 5th Avenue and NW 4th Place, as more specifically described in this ordinance, subject to terms and conditions; providing directions to the City Clerk; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, Stetz Properties, LLC, RJ Karow, and Frank J. Jr. and Cynthia Stetz, represented by CHW Professional Consultants, Inc., are the owners/developer ("Developer") of certain property proposed to be developed into a high-density multi-family development described in application Petition PB-21-0195 SUP; and

WHEREAS, pursuant to Section 30-3.41 of the City of Gainesville's Land Development Code (Chapter 30 of the City of Gainesville Code of Ordinances), application Petition PB-21-00194 SVA was initiated by the Developer and all owner(s) of land abutting the subject public right-of-way requesting the City to vacate, abandon, and close the right-of way; and

WHEREAS, the request to vacate the subject public right-of-way was presented to and approved by the appropriate departments of the City of Gainesville; and

WHEREAS, the City Plan Board, which acts pursuant to the authority granted in Section 4.02 of the Charter Laws of the City of Gainesville and which acts as the Local Planning Agency pursuant to Section 163.3174, Florida Statutes, held a public hearing on January 27, 2022, and voted to recommend that the City Commission approve this vacation of public right-of-way with conditions; and

WHEREAS, municipalities in Florida have the authority under Article VIII, Section 2(b) of the Florida Constitution and Section 166.021(4), Florida Statutes, to impose conditions on vacation of a public right-of-way. See *City of Temple Terrace v. Tozier*, 903 So. 2d 970 (Fla. 2nd DCA 2005); and

1 **WHEREAS**, at least 10 days' notice has been given once by publication in a newspaper of general
2 circulation notifying the public of this proposed ordinance and of public hearings to be held by
3 the City Commission of the City of Gainesville; and

4 **WHEREAS**, public hearings were held pursuant to the notice described above at which hearings
5 the parties in interest and all others had an opportunity to be and were, in fact, heard; and

6 **WHEREAS**, the City Commission finds that the vacation of the subject right-of-way meets the
7 required criteria in Policy 10.2.1 of the Transportation Element of the Comprehensive Plan and
8 Section 30-3.41 of the Land Development Code, subject to the terms and conditions set forth
9 herein.

10 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE,**
11 **FLORIDA:**

12 **SECTION 1.** Upon the Developer completing all of the terms and conditions specified in Section
13 2 of this ordinance and the City's recordation of this ordinance together with the executed
14 affidavit of completion (as described in Section 2 of this ordinance) in the Public Records of
15 Alachua County, Florida, the following described public right-of-way will be vacated, abandoned,
16 and closed for use by the public generally:

17 See legal description attached as **Exhibit A** and made a part hereof as if set forth
18 in full. The location of the property is shown on **Exhibit B** for visual reference. In
19 the event of conflict or inconsistency, **Exhibit A** shall prevail over **Exhibit B**.

20
21 **SECTION 2.** The public right-of-way described in Section 1 of this ordinance will not be vacated,
22 abandoned, or closed for use by the public unless and until the Developer has satisfied all of the
23 following terms and conditions at no cost or expense to the City. Notwithstanding the foregoing,
24 nothing in this section precludes the Developer from applying for a temporary right-of-way
25 obstruction permit under Chapter 23 of the Code of Ordinances or obtaining from the City any

1 necessary temporary construction easements. When the Developer has completed all of the
2 following terms and conditions and same have been approved and accepted by the City, the City
3 Manager shall evidence the completion and approval of the terms and conditions by executing
4 the affidavit of completion attached as **Exhibit C**, which must be recorded together with this
5 ordinance in the Public Records of Alachua County, Florida.

6 Condition 1. The Developer shall grant to the City the ownership and rights necessary for the
7 extension of NW 4th Place, as public right-of-way, westward to NW 12th Drive prior to the final
8 vacating of NW 12th Terrace.

9
10 Condition 2. The Developer, at Developer's sole cost and expense and with no cost borne by the
11 City, shall construct all necessary and required improvements to NW 4th Place, including the
12 extension of NW 4th Place as described in Condition 1, at the time of redevelopment of abutting
13 properties.

14
15 **SECTION 3.** Upon receipt from the City Manager of the executed affidavit of completion (as
16 described in Section 2 of this ordinance), the City Clerk or designee is authorized and directed to
17 record a true copy of this ordinance together with the affidavit of completion in the public
18 records of Alachua County, Florida.


19 **SECTION 4.** If any word, phrase, clause, paragraph, section, or provision of this ordinance or the
20 application hereof to any person or circumstance is held invalid or unconstitutional, such finding
21 will not affect the other provisions or applications of this ordinance that can be given effect
22 without the invalid or unconstitutional provision or application, and to this end the provisions of
23 this ordinance are declared severable.

24 **SECTION 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of such
25 conflict hereby repealed.

26 **SECTION 6.** This ordinance will become effective immediately upon adoption; however, the
27 vacation of the public right-of-way that is the subject of this ordinance will not become effective
28 until this ordinance together with the executed affidavit of completion (as described in Section 2


1 of this ordinance) has been recorded in the Public Records of Alachua County, Florida. If this
2 ordinance together with the executed affidavit of completion is not recorded in the Public
3 Records of Alachua County, Florida, within two years following the effective date of this
4 ordinance, this ordinance will be deemed null and void and of no further force and effect.

5 **PASSED AND ADOPTED** this 5th day of May, 2022.

6
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8 
9 LAUREN POE
10 MAYOR

11
12 Attest:

Approved as to form and legality:

13
14 
15 OMICHELE D. GAINNEY
16 CITY CLERK

17 
18 DANIEL M. NEE
19 INTERIM CITY ATTORNEY

20 This ordinance passed on first reading this 21st day of April, 2022.

21 This ordinance passed on second reading this 5th day of May, 2022.