

**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
THURSDAY, MAY 17, 2007
CITY HALL, 8TH FLOOR
COMMISSION CONFERENCE ROOM**

BOARD MEMBERS PRESENT

Mehrdad "Mike" Fayyaz, Assistant City Engineer, Acting Chairman
Mark Darmanin, Utilities Distribution, and Collections Manager
Bob Dunckel, Assistant City Attorney III
Tony Irvine, City Surveyor
Catherine McCaffrey, Community Inspections Manager
Tom Terell, Public Works Maintenance Manager
Carol Ingold Mordas, Parks Supervisor

STAFF PRESENT

Victor Volpi, Senior Real Estate Officer
Barbara Howell, WaterWorks 2011
Rene Cross, Planner II
Ellen Parker, Planner II

OTHERS PRESENT

Scott A. McLaughlin, McLaughlin Eng. Co.
Linda Strutt, AICP, Las Olas Co.
Jong Hyeon Park, Sushi Ko Express
Jeff Liss, Stiles Development, Las Olas Co.
John Milledge, Las Olas Co.
James McCulla, Harbor Shops LLC
Travis Woods, Prototype Inc.

CALL TO ORDER

Mr. Fayyaz called the meeting to order at 10:09 a.m. and stated this was a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public right-of-way.

Following the roll call, it was determined that a quorum was present.

ITEM ONE: APPROVAL OF APRIL 19, 2007 MINUTES

Motion made by Mr. Darmanin, seconded by Ms. McCaffrey, to accept the minutes of the April 19, 2007 meeting as presented. In a voice vote, the motion was unanimously approved.

ITEM TWO: **EASEMENT VACATION**

Address or General Location: 1368 and 1372 NE 14 Street

Mr. Volpi presented the request of McLaughlin Engineering for a positive recommendation to vacate the two inner most five feet of two ten foot platted easements along the west and east property lines of Parcel A of the Grandeur Plat (173-19, 20, & 21).

Mr. McLaughlin stated the ten foot easement platted was a requirement at that time. It turned out that the easement was never used and was reduced to five feet to maintain an easement around the property for possible future use. Mr. Dunckel asked when the plat had been completed and Mr. McLaughlin stated in 2006. Mr. Dunckel said it would then require the ten foot easement and it would be necessary to redo the site plan to preserve the easements dedicated a few years ago. Mr. Darmanin stated reducing the easement would not allow for construction. Mr. Terrell stated the easement could be used for storm water out flow from the lake. Mr. Fayyaz stated there were two easements and if storm water was installed it would only utilize one easement. Mr. Darmanin stated the master plan was not fully conceived at this point, as far as environmental concerns, and the access may be needed to test the water. Mr. Irvine stated problems had occurred on 14th Street with relocation recently and voiced his reluctance not wanting to cut off options at this point.

Mr. McLaughlin stated the buildings were already constructed. Mr. Volpi inquired if there was outfall and Mr. Darmanin stated no, there was no outfall. Mr. Dunckel asked why vacation was being requested if the buildings were already constructed and was advised that additional accessories had to fall within the easement. Mr. Fayyaz suggested a temporary easement that would allow usage but if the City found it needed to use the easement the accessories would have to be removed.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to approve the requested vacation.

Mr. Irvine stated the survey showed a catch basin in the easement and inquired regarding ownership of the catch basin. Mr. Dunckel stated there would be title issues but the matter should be resolved through a property attorney. Mr. Irvine questioned how the building department could get a CO when three items were clearly built on the easement. It is shown on the survey and there is a swimming pool. Mr. Dunckel stated the pool heater does not fall under a temporary category. Mr. Irvine asserted the pool went over into the easement.

In a voice vote, the motion failed unanimously.

Mr. Volpi stated that either Building and Zoning is accepting surveys without looking, or the developer is not submitting the surveys requested. Mr. Dunckel added these are utility easements and have been granted subsequent to platting and the survey often does not show all easements. Mr. Volpi stated surveyors would show platted easements. Mr. Irvine added any professional surveyor is required to show this information.

ITEM THREE: **VACATION OF A PORTION OF SAGAMORE ROAD
AND SE 4TH STREET**

Address or General Location: Sagamore Road and SE 4 Street, between Federal Highway and SE 8 Avenue, south of E Oakland Park

Mr. Volpi presented the request of Linda Strutt, AICP, representative for the Las Olas Company requesting a positive recommendation to vacate portions of SE 4th Street, in an effort to remedy encroachments. If recommended it would leave a substandard right-of-way. The plan is to construct two overpasses in the area. Previous overpasses were approved and constructed.

The Committee recommended that this item be tabled until further clarification of a verbatim transcript could be compared to the meeting minutes.

Revised minutes to be reviewed at the July 19, 2007 PROW meeting.

ITEM FOUR: **ASSIGNMENT OF LEASE**

Address or General Location: 136 SE 1 Street

Mr. Volpi introduced Jong Hyeon Park of Shushi Ko Express, who requested to assign his lease to Jae Kyung Kim, new owner of the restaurant. Mr. Dunckel asked if the first, last, and security deposits were verified and Mr. Volpi stated most likely. Mr. Irvine questioned any problems from the operation in that location and Mr. Volpi stated there was none. Mr. Volpi asked Mr. Park if the deposit and last month's rent was paid and Mr. Park said yes, and the security of \$1,500. Mr. Dunckel asked if there would be a greater risk with the new owner and stated if the risk were greater it would justify an increase in the rent. Mr. Dunckel stated he would ask similar questions on all future City Park leases. Mr. Volpi stated the market remained about the same. Mr. Dunckel suggested a

change in the wording of the lease by modifying the clause so the assignor retained residual liability until the end of the original lease.

Ms. McCaffrey asked what the length of the lease was and Mr. Volpi stated it expired in 2008. Mr. Dunckel asked about renewal options and suggested if the Committee agreed with the assignor amendment, exposure for the original term would be recommended. Approval would be contingent on amending the lease when the original lease expired. Mr. Volpi informed Mr. Park that under this proposal he would remain liable until the end of the lease, and asked if he understood. Mr. Park stated he had sold the business and it should not remain a liability. Mr. Dunckel stated the law in general states, if the lease was silent on a matter the assignor remains liable. Mr. Terrell agreed for future leases but felt the sale had been secured on existing contracts and felt the amendment would adversely affect the sale with only one year remaining in the lease. Mr. Dunckel asserted the residual liability exposure would be small and if it were the standard the tenant would be required to a greater degree of due diligence in scrutinizing a prospective assignee. Mr. Terrell stated, "If it was already there, I would agree." Mr. Dunckel suggested the amendment should be added so that everyone after this point would be careful about whom they assign to, since they would hold the remaining lease liability. Mr. Volpi added his agreement that the leases should be airtight but felt it should not apply to leases already signed. Ms. McCaffrey asked if the amendment could be made with consideration to how much time remained in the lease. Mr. Dunckel thought this was a good case since only one year remained on the lease, and then there would be no further liability on the assignor.

Mr. Irvine inquired how the lease addressed assignment and stated it was good to make people more diligent. Mr. Volpi stated the lease allowed assignment to anyone subject to approval by the City manager, and read the pertinent portion from the lease agreement.

Motion made by Mr. Dunckel, seconded by Mr. Irvine to approve assignee stepping into the shoes of assignor, provided the City Commission consents to the assignment with the same terms and conditions.

Mr. Volpi asked if the motion should be amended so this particular lease could not be assigned now. Mr. Dunckel asked what the Committee thought and suggested the balance of the existing term, and then it could be renewed - modify the lease so future assignment would be subject to residual liability. Mr. Fayyaz added it could be added into the renewal of the lease in 2008. The amendment should be added into future leases with all tenants. Mr. Dunckel amended the Motion to "Condition of approval would include modification of the

lease paragraph 17 would be modified to assignor is liable for the balance of existing term for which assignment is contemplated.” Mr. Volpi explained the conditions to Mr. Park and asked him to translate for Mr. Kim to assure his understanding of the condition. Mr. Kim stated that he understood the condition. Mr. Park stated, “It was not a normal lease contract. If someone sells a business and assigns the lease to someone else the liability should end. That is common sense. If the new tenant has a problem and old tenant has moved, it would be difficult to find them. It seems complicated and illogical.” Mr. Volpi advised Fort Lauderdale leased the Park Mall under market value, therefore if the City attorney recommended caveats creating a tighter lease it became a business decision and was not unreasonable in securing good tenants. Mr. Darmanin asked what would happen if the new tenant did not agree to the additional conditions. Mr. Fayyaz inquired about the length of time needed to rent the property and Mr. Volpi stated it would take six months to a year to get a new tenant. Mr. Dunckel stated unless the lease specifically states releasing the assignor, the assignor is not released. This lease specifies the assignor is released. It is a negotiating point, the property is leased below market, and it is appropriate to require this condition.

Mr. Irvine suggested removing the release clause from the lease agreement and allowing the law to follow the natural precedent. Mr. Dunckel affirmed the motion on the floor accomplished that and stated Mr. Kim had not exercised the option to renew. He was before the Committee for a recommendation for approval and the Committee was recommending that the lease be modified. Mr. Irvine stated the recommendation can be made and Mr. Park and Mr. Kim can decide what they want to do.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to recommend approval of assignment of lease subject to the condition that the lease is modified so that this assignee for any future assignments would remain residually liable for the balance of the existing term or renewal term in which the assignment takes place. In a voice vote, the motion was unanimously approved.

Mr. Dunckel suggested, having taken this action, other tenants should be apprised of the direction taken by the Committee. On future assignments, more information on the business background of assignees should be required so the Committee can be assured they have the acumen to step into the shoes of operation. When a different operation is being set up, there should be more due diligence. Mr. Volpi added it was the responsibility of the prospective tenants to provide due diligence.

ITEM FIVE: **STAGING AREA**

Address or General Location: 2900-2990 W Broward Boulevard

Mr. Volpi presented Ms. Howell's request for a positive recommendation to allow a staging area at 2900-2990 W. Broward Boulevard to facilitate a WaterWorks 2011 project.

Ms. Howell had contacted the contractor about the holes in the fence and was informed they were for wind flow. It was requested that the sides be cleared. "Materials not to exceed the height of the fence" was added to the site plan. The office trailer was the only item that would exceed the fence height. The letter from the property owner contained the language as stated in the ordinance. The property owner would be required to clean the site if the contractor failed to do so. Mr. Irvine questioned the traffic circulation plan stating South of the staging area was a residential area and increased truck traffic should be curtailed. Ms. Howell said it had been requested to keep out of the neighborhood as much as possible. Ms. Parker asked if the lot would contain storage containers and Ms. Howell stated yes the storage containers would hold tools.

Motion made by Mr. Darmanin, seconded by Ms. Mordas, to approve the request of Ms. Howell for the staging area. In a voice vote, the motion was unanimously approved.

ITEM SIX: **SIGN IN THE RIGHT OF WAY**

Address or General Location: Cordova Road, just south of 17 Street

Mr. Volpi presented the request of James McCulla, Harbor Shops LLC, to erect a sign in the right-of-way.

Mr. McCulla informed the Committee of a meeting with Ron Hicks and others to map out a course to get permission for the sign. Mr. Leferier suggested to begin with PROW to get started and Mr. McCulla hoped to leave with directions on how to move forward with the City's consent. The package presented included a description of materials and the construction method proposed for the sign. The sign would span the outer edges of the sidewalk. Mr. Fayyaz asked if the present columns were located at the back of the sidewalk and Mr. McCulla stated the sign is wider than the one superimposed on the picture. The new sign will span the outside edges of the sidewalk. The sidewalk is 54" wide, with a 6" curb,

and approximately one foot depth of pole should be sufficient for wheelchairs. Mr. Dunckel stated this item was not on the agenda as he would have searched for a law pertaining to off-premise advertising. Mr. Terrell stated that Mr. McCulla was looking for direction on how to proceed not necessarily for an approval from the Committee.

Mr. McCulla stated given the short time frame of notice he realized the presentation lacked all necessary information, and continued, "The law needs to be researched, possibly a survey done, there are standards that must be met, and what I need is guidelines, direction on where to go to meet the criteria." Mr. Terrell stated a substantial amount of engineering review would be needed, the poles would be going on private property, and wind loads would need to be reviewed. Mr. Fayyaz asked if the sign could be allowed in the right-of-way and stated once that was answered the next step would be engineering. Mr. Terrell added the distance from the intersection would require an FDOT opinion. Ms. Mordas questioned if consideration should be given to the sign being in front of the port since the port was a high security. Mr. Irvine suggested the Police Department should review the matter in case of a conflict with Homeland Security rules.

Mr. McCulla asked if someone was on staff to help pursue FDOT and ADA requirements and Mr. Volpi stated the applicant did their own homework. Mr. Darmanin added an engineering firm or a sign company would do that leg work. Mr. McCulla asked to be informed, as soon as possible if the matter was illegal after the law had been researched. Mr. Dunckel replied that he would get to it as soon as possible. Mr. Irvine suggested addressing the street renaming.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to change the name of the road to Cordova Road/Harbor Shops Drive south of 17th Street. In a voice vote, the motion was unanimously approved.

Motion made by Mr. Volpi, seconded by Mr. Darmanin, to defer the vote on the sign. In a voice vote, the motion was unanimously approved.

Mr. Fayyaz stated Dennis Girisgen was replacing Tim Welch and asked if he should be on the Committee. Mr. Volpi stated members were appointed by the City Manager. Mr. Irvine suggested requesting Mr. Girisgen be added as a staff support. Mr. Volpi stated he would research the matter and report back to the Committee.

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Motion made by Mr. Irvine, seconded by Ms. Parker that the Committee requested Dennis Girisgen attend the Committee meetings in an advisory capacity. In a voice vote, the motion was unanimously approved.

There being no further business to come before the Committee the meeting adjourned at 12:25 p.m.

MINUTES – ITEM THREE
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**ITEM THREE: VACATION OF A PORTION OF SAGAMORE ROAD
AND SE 4TH STREET**

Address or General Location: Sagamore Road and SE 4 Street, between Federal Highway and SE 8 Avenue and south of E Oakland Park

Mr. Volpi presented the request of Linda Strutt, AICP, representative for the Las Olas Company requesting a positive recommendation to vacate portions of SE 4th Street, in an effort to remedy encroachments. He noted that if the vacation request is recommended it would leave a substandard right-of-way. The applicant is also requesting air rights to construct two overpasses in the area. Previous overpasses were approved and constructed.

Mr. Lis, Stiles Development Company representing the Las Olas Company, stated submittal for DRC had been made to the City on May 11, 2007. Mr. Lis presented the background on the Las Olas Company and stated the company was committed to the hotel, having developed a plan to update the four acre campus making it a five star hotel. The main thrust was to keep the guest experience isolated from the back of the house desiring that guests move through air-conditioning throughout their travel into and within the hotel. The interior circulation issues had been addressed including the creation of a new retail wing and a new approach to the parking garage. Two pedestrian bridges have been proposed; one on the face of the existing garage would be ten feet wide and attached to the garage. The second bridge proposed would come across Sagamore at the 2nd level, with approximately a 20 foot clearance. This would connect to the main hotel campus on the north side of the road and handle the main movement of guests between the conference center and the proposed entrance off 8th Avenue.

The second request was for vacation and dedication of the right-of-way. Mr. Dunckel asked if Mr. Lis was proposing to dedicate the triangle and Mr. Milledge, Las Olas Company, stated the records showed the Company owns the triangle, and they will turn it over to the City. There were two plats which created the misalignment. Mr. Lis stated there was a previous realignment of Sagamore Road, but the realignment never went to the point where it hit the triangle. Originally, it was requested that the rights-of-way be vacated on both sides of the road but since the application was filed, it was decided that one right-of-way would remain as a sidewalk. Mr. Lis explained that the vacation request was being amended to include only the triangle on the south side of the road. Securing the triangle of land assures the correction of the odd configuration of the 50 foot right-of-way changing down to a 30 foot right-of-way. BellSouth has a fiber cabinet there and it has been agreed that if the triangle can be secured BellSouth would be given a utility easement and the City would receive a pedestrian easement.

Mr. Lis indicated the right-of-way would be approximately 25-35 feet. Mr. Volpi questioned if the building would fall within the right-of-way and Mr. Lis answered no, the building would be in the triangle. Mr. Volpi asked if the easement rights would be dedicated back, except for the building and Mr. Lis stated the building would not be in the right-of-way. Mr. Lis explained BellSouth would use the entire triangle because of the fiber cabinet. The overpass would be built around and over the cabinet and the triangle. Mr. Irvine questioned if the building would be in the triangle but not from the ground level and Mr. Lis replied yes. Mr. Irvine added this would address the substandard right-of-way with the additional pedestrian easement to soften the blow of a substandard right-of-way. Mr. Volpi asked if the foundation of the overpass was in the right-of-way and Mr. Lis stated no, the foundation would follow the property line with the beams going overhead.

Mr. Dunckel asked what the setback requirements were and Mr. Lis stated all setback requirements within the property lines were met. Mr. Dunckel asked what the setback requirements were within the triangle and stated discussions were ongoing with BellSouth in regard to cabinets because certain rights contained in the right-of-way easement could be different than a utility easement. If BellSouth utilized the triangle, the setback requirements would have to be followed. Mr. Lis stated it would not be a problem since the setback for the building corner would be met, the cabinet is in the corner, and the existing face of the building meets the setback requirements.

Motion made by Mr. Irvine, seconded by Mr. Darmanin, to recommend approval of the vacation of the triangle portion on the South side of Sagamore and the acceptance of the dedication of the right-of-way of the triangle portion on the north side of Sagamore or SE 4th Street. Mr. Dunckel amended the motion to include “with the retention of the pedestrian and utility easement for the South side of Sagamore.” In a voice vote, the motion was unanimously approved.

Mr. Irvine brought up the overheads and stated the elevation should be above NGVD. Mr. Lis presented the formal submittal plans to Mr. Irvine. Mr. Dunckel stated, if the motion included “Provided that the lowest horizontal member of the overpass is at least 20 feet above the grade of the ground” it would take care of that issue. He believed the current height might only be 17 feet. Mr. Lis suggested the need to be consistent with the clearance that currently existed.

Mr. Lis stated this overpass was not as large. There was an eight inch gravity sewer line and FPL duct bank in the road. The bridge is not as wide and there was height ability providing more flexibility than under the garage. Mr. Dunckel voiced a conflict with timing and felt the request should come back later after going through DRC and Planning/Zoning. Ms. Parker stated that right-of-way vacations and developments above rights-of-way are generally inconsistent with Downtown Master Plan principles, however there were mitigating factors in this case since the right-of-way is already constructed over to accommodate hotel patrons. The new proposal does not seem to affect views and is only for a pedestrian bridge, one of which is an addition to an existing building. The site plan will be reviewed at time of submittal to determine

appropriateness with an integrated design. Mr. Milledge stated the request to return to the Committee later would slow the progress of the project. There would be no objections to conditions being placed on the recommendation. Elected officials and neighbors had received the project favorably and it was requested to move forward subject to the planning review. Mr. Dunckel cautioned regarding a lack of familiarity with the project and suggested coming back to a special meeting after going through DRC. Mr. Darmanin suggested a conceptual approval based on technical criteria then a revisit for aesthetics would be possible.

Mr. Lis explained there were only two overpasses, not three; the one that existed would be expanded by ten feet by placing a liner on the garage. Without a call up the submittal to DRC and Planning/Zoning would stop here at Right-Of-Way - the next step is the City Council. The timeline here is longer and the approval must be first. The right-of-way issue must be dealt with and the project can not be built without the approval of the pedestrian bridge. Mr. Dunckel suggested sandwiching the PROW approval between the DRC and Planning/ Zoning approvals. Mr. Milledge answered he understood Mr. Dunckel's thinking but requested conditions be placed on the recommendation and if DRC had any major issues it would be brought back to the Committee. Mr. Irvine suggested making motions separately for each overpass requested. Mr. Darmanin suggested both overpasses should be included in the same motion including conditions for DRC review and a revisit if necessary. The technical side would be 20 feet or lowest minimum horizontal, covering both issues.

Motion made by Mr. Irvine, seconded by Mr. Dunckel, that the committee recommend positive approval of the pedestrian overpass, or liner, over the right-of-way at the easternmost end of existing parking building, Exhibit D. Conditions: lowest portion to be no lower than the lowest existing elevation of the parking building.

Mr. Irvine added the DRC could throw up a flag at this point. Mr. Dunckel requested the motion be amended to include "implementation subject to the details worked out by the City attorney." Mr. Irvine agreed to the amendment. In a voice vote, the motion was unanimously approved.

Moving to the next motion, Mr. Irvine stated the rendering for Exhibit C was not clear. Mr. Lis requested agreement to the same elevation as the previous motion and if changes occurred, a revisit would be necessary.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to recommend approval with regard to the clearance being the same as the one to the east, but for ultimate recommendation to be deferred until after visitation to DRC, the recommendation does not include location or dimension other than height.

Mr. Darmanin added the same clearance should be required, not just stating what spot and how wide, it would be a conceptual approval. Mr. Irvine stated the Committee was willing to hold a special meeting if necessary and added his approval of the concept

agreeing that downtown hotels needed to be attractive. Mr. Fayyaz asked if the City attorney needed to review the matter and Mr. Dunckel stated no, it was not necessary.

Mr. Dunckel amended the motion, seconded by Mr. Irvine to include, "This issue to be revisited by PROW at a special meeting after the DRC hearing." In a voice vote, the motion was unanimously approved.