

**APPROVED**  
**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING**  
**CITY HALL, 4<sup>TH</sup> FLOOR**  
**LARGE CONFERENCE ROOM**  
**THURSDAY, AUGUST 21, 2008 – 10:00 AM**

**BOARD MEMBERS PRESENT**

Peter Partington, City Engineer  
Tom Terrell, Public Works Facilities Manager  
Mark Darmanin, Utilities Distr. & Collections Manager  
Dennis Girisgen, Land Development Manager  
Anthony Fajardo, Planner III  
Carol Ingold, Parks & Recreation Supervisor  
Michael Maloney, Code Enforcement Manager  
Bob Dunckel, City Attorney

**STAFF**

Victor Volpi, Senior Real Estate Officer  
Hilda Testa, Recording Clerk, Prototype, Inc.

**CALL TO ORDER**

Mr. Partington called the meeting to order at 10:10 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 rights-of-way.

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

**ITEM ONE:                    APPROVAL OF JULY 17, 2008 MINUTES**

**Motion** made by Mr. Darmanin, seconded by Ms. Ingold, to approve the minutes of the July 17, 2008 meeting. In a voice vote, the motion passed unanimously.

**ITEM TWO:                    MAINTENANCE AGREEMENT AND PERMIT TO PAVE ALLEY**

ADDRESS OR GENERAL LOCATION: 1208 SW 4 Street

Mr. Volpi explained this item had previously been before the Committee on August 22, 2007 and April 19, 2007 (Exhibit A). A brief history and recommendation from the City Engineer has been included in your backup (see email).

This matter has been brought back to the Property and Right-of-Way Committee for further discussion and recommendation.

Mr. Partington read the last page of the noted email into the record:

“City allowed the installation of brick pavers in part of the alley by Mr. McShane. That created a situation which could have encouraged Mr. McShane to try to block the alley. Part of the City’s response at that time was that then Land Development Manager indicated that he would get the City to lime rock the remainder of the alley so that it appeared to be more of a through route. Mr. McShane was then given time to pull a permit to install pavers in the remainder of the alley in place of the lime rock, but to date he has not completed that permit or the pavers. Therefore the City Engineer is now being requested to move forward with the lime rocking in the remainder of the alley.”

Mr. Partington summarized by saying a motion was passed the last time the issue was discussed, but the permit had not been pulled to put pavers in the alley. Mr. Partington was now being requested to move forward with the lime rocking of the alley. Mr. Partington requested input from the Committee before proceeding.

Mr. Partington opened the issue for discussion by the Committee members.

Mr. Darmanin stated the issue was not caused by a utility, and should not be paid for by utilities, and felt there were other remedies available to resolve the issue. Mr. Darmanin stated if the permit was issued in error, the permit should be remedied, and Mr. McShane would possibly be reimbursed. In response to questions by Mr. Partington, Mr. Darmanin explained at the last meeting Mr. Partington had requested the utilities to pave the alley. Mr. Darmanin stated a discussion had been held regarding the installation and maintenance costs to the utilities. Mr. Darmanin emphasized this was not a utilities issue and would not be fair for rate payers of the utility to pay for a remedy not incurred by the utility. The maintenance costs would then be a recurring budget item to be incurred by the rate payers.

Mr. Terrell agreed with Mr. Darmanin, and explained this alley was not an alley that would normally be maintained by the City. Mr. Terrell stated it would be a bad practice to rock and maintain one alley in one neighborhood in one part of the City.

Mr. Girisgen stated an application to pave the alley had been received, followed by a technical discussion by the Committee. Mr. Girisgen thought there were some outstanding issues which had never been resolved.

Mr. Partington read from the previous minutes regarding the motion made on the issue:

“An engineering permit will need to be issued with the permit conditioned upon the grant of the revocable license by the City Commission, and that there be a time limit of four months for the project to be completed from the point the revocable license is executed.”

Mr. Partington did not believe any progress had been made on the revocable license. Mr. Partington explained the process saying an engineering license would be approved, the application would go to the City Attorney for approval, and the revocable license would go on the agenda for approval by the City Commission.

Mr. Dunckel asked about the engineering permit allowing the pavers to initially be placed. Mr. Volpi agreed to locate the permit.

Mr. Partington opened the issue to members of the public.

Mr. Stephen Mathews, a resident of the alley, stated the neighbors had been dealing with this issue for three plus years, including coming before the Committee on a variety of issues with Mr. McShane. Mr. Mathews expressed frustration with the continual "run around." Mr. Mathews stated Mr. McShane was using stall tactics, and had no intention of brick paving the entire alley. Mr. Mathews stated the alley is rut filled and not maintained.

Mr. Mathews posed the following questions to the Committee:

What is the City's responsibility for a public access alleyway?  
What other alternatives are available to the neighbors?  
How does the City distinguish a public alleyway?

Mr. Partington asked if he could drive through the alley, to which Mr. Mathews stated yes, provided no cars were parked in the alley. Mr. Partington stated typically the City would not maintain unimproved alleys, and the only reason the Committee would consider this issue was because of the extraordinary circumstances arguably created by the City's issuance of a permit to pave part of the alley.

Mr. Mathews questioned why the same alleyways on the other side of 4<sup>th</sup> was paved, and felt the paving was arbitrary. Mr. Partington stated there were any number of unpaved alleyways, with no overriding general obligation on the City to maintain unimproved alleys. Mr. Partington felt this was a special case due to the circumstances created by the pavers in part of the alley.

Mr. Mathews asked about the liability if someone were hurt in the rut-filled, unmaintained alleyway. Mr. Partington stated the City might be sued. Mr. Partington felt it was unlikely Mr. Mathews could be sued since the City had the "deeper pockets."

Ms. Diane Ratcliff, a resident of the alleyway, stated the neighborhood went from septic to sewer, and felt that would have been a prime time to take care of asphaltting the alleyway. Ms. Ratcliff stated the portion of the alleyway on the other sides of 4<sup>th</sup> were totally repaved with asphalt, and questioned why both sides of the block were being

maintained, but not this one. Mr. Partington asked if a new water or sewer had been placed in those alleyways. Mr. Mathews answered no, and added the alleyways were lime rock before, and now asphalt. Ms. Ratcliff stated the work had been performed within the last six months.

Mr. Girisgen stated he had received an email from Paul Bolander stating rocked alleys could not be improved. Mr. Partington noted, according to the neighbors, the improvements had been completed at the time of the water line installation.

Mr. Chris McShane, applicant, stated the adjoining alleyways being discussed were not repaved by the City. Mr. McShane stated the alleyway had been previously asphalted, and a townhouse developer at the end of the alleyway did the improvements at his own expense. Mr. McShane stated no improvements were made by the City, and noted numerous alleyways within the neighborhood in their original state with no improvements.

Mr. Mathews and Ms. Ratcliff stated it was absolutely not true that a developer had performed the improvements. Ms. Ratcliff emphasized the alleyways had been covered with asphalt at the time of the water line work, and noted she sent an email at the time to the City regarding improving this section of the alleyway at the same time. Ms. Ratcliff stated she received no answer to her email.

Mr. Mathews stated the development Mr. McShane referred to was completed two years ago, well before the alleyways were improved. Mr. Mathews stated this was typical of the "smoke and mirrors" the residents had been dealing with.

Mr. Partington felt the completed improvements had been performed with no knowledge of the current situation, but if the improvements were made by WaterWorks, it would arguably set a precedent. Ms. Ratcliff stated the residents had come before the Committee twice, been delayed waiting for Mr. McShane's permits for a year and a half, and requested a decision be made today.

Mr. Partington summarized the situation, stating there was a lack of structure and maintenance in the alleyway, with the residents requesting the City improve the alley and then provide maintenance. Mr. Partington requested clarification on the alleyway being blocked. Ms. Ratcliff stated the alleyway was not blocked, but there were times when Mr. McShane's cars have blocked the alleyway.

Mr. McShane expressed concern with the disingenuous nature of the objections, and noted the alleyway was not unfit, dangerous, or rut filled. Mr. McShane added he paid extra money to a lawn care service to maintain the alleyway. Mr. McShane invited the Committee members to see the condition of the alleyway.

Mr. McShane explained a permit application was submitted. In addition to the permit application, Mr. McShane posted a 100% cash bond deposited with the City. Mr. McShane stated a contractor had been hired, but there had been problems getting the contractor to begin the work. Mr. McShane stated some technical comments were made to the application, including a curb needed at both ends of the alleyway. Mr. McShane stated the architect was in discussions with the City on the curb issue, but plans had not yet been approved. According to Mr. McShane, the architect stated the plans were to code without the curbs, but the City rejected the plan.

Mr. Dunckel asked if the architect was referring to the Florida Building Code. Mr. McShane replied the plan met the City's Engineering Code. Mr. Girisgen explained the curbs were part of a special provision to protect the integrity of the asphalt were the pavers tie in to the asphalt.

Mr. Partington asked if Mr. McShane still intended to brick pave the entire alleyway, and if constant and considerable effort had been made to pull a permit. Mr. McShane stated it was still his intention, and reminded the Committee of the 100% cash bond posted. Mr. Girisgen was not aware of the cash bond. Mr. McShane offered to provide a receipt to prove the funds were currently being held by the City.

Mr. Partington asked Mr. McShane again if there were constant and considerable efforts made to pull the permit, with lack of approval by the City. Mr. McShane stated due to the contentious nature of the proceedings, he was requesting the permit to focus on the true scope of the work.

Mr. Partington felt Mr. McShane was expressing desire to brick pave the alleyway, but was not convinced the words were really backed up by action. Mr. McShane noted at the last meeting there was a traffic officer present who testified tickets could be issued for illegal parking in the alleyway. Mr. McShane stated he had received no parking citations for parking in the alleyway. Mr. McShane noted three no parking signs had been added to the alleyway, and questioned how the signs were added in a historic protected neighborhood without approval by the neighborhood. Mr. McShane added the signs did not run the length of the alleyway, but were only placed in front of the McShane residence.

Mr. Partington noted it was illegal to block a public right-of-way, and the parked vehicles had been a continued concern in the alleyway. Mr. Partington felt probably the traffic people in attendance in the previous meeting decided to reinforce the no parking law. Mr. McShane stated the decision at the last meeting was no additional action should be taken since the City could write tickets to cars parked in the alleyway and additional signage would not be in keeping with the nature and character of the neighborhood. Mr. Dunckel stated the argument did not "hold any water" as the Committee could not tell Parking what could or could not be done.

Mr. Partington summarized the issue stating Mr. McShane still had every intention to brick pave the alleyway, with the permit being held up by lack of agreement on the technical issues, and a bond was posted for the value of the work. Mr. Partington noted the time limit had been exceeded, and asked Mr. McShane if he felt he was still "actively" working on the issue. Mr. McShane stated Mr. Partington was correct, and asked what the Committee would recommend if the application were not approved.

Mr. Mathews asked for the amount of the cash bond. Mr. McShane stated he did not know the total amount, but the bond was for 100% of the cost of the improvements. Mr. Mathews asked for the cost of the improvements. Mr. McShane stated he did not know the total cost of the improvements. Mr. McShane stated Mr. Mathews could check the City records.

Mr. Mathews called Mr. McShane's explanations "laughable," and again expressed his frustration to the Committee. Mr. Partington stated the paving specifications had been changed by the City, and confirmed increased costs for improvements.

Ms. Ratcliff stated Mr. McShane was not accurately reflecting the facts, and recalled the traffic officer attending the previous meeting stating no tickets would be given in the alleyway due to the brick pavers making the alleyway look like a private residence. According to Ms. Ratcliff, Ms. Alarcon from Parking agreed to follow up on the parking situation in the alleyway. Ms. Ratcliff emphasized Mr. McShane continued to misquote the facts of the issues over the last year and a half.

Mr. Partington stated the City was being asked to improve the alleyway, and the residents were unsure Mr. McShane would carry through with brick paving the entire alleyway. Mr. Dunckel recalled the original request to the Committee was to grant permission to Mr. McShane to pave the alleyway, not for the City to provide the improvements. Mr. Dunckel stated the original application needed to be resolved before anything else was decided. Mr. Partington stated the residents are now asking the City to make the improvements as the residents do not believe Mr. McShane's application will come to fruition.

Mr. Terrell stated in the past the City maintained only the area where road rock meets the asphalt road, at the apron to the alley. Improvements to alleys were done by adjoining property owners, not by the City. Mr. Terrell did not feel the improvement question was a decision for the Committee. Mr. Partington reminded Mr. Terrell of the special circumstances in that a private party was allowed to improve a portion of the alley.

Mr. Darmanin stated the objectors originally asked for uniformity of the alley, and felt there was more than one way to make the alley uniform. Mr. Darmanin felt if the permit

was issued in error, and that error was on the part of the Committee, some restitution might need to be made and the alley returned to its original condition. This would solve drainage issues, uniformity issues, and make Mr. McShane whole for the error of the Committee. Mr. Darmanin reminded the Committee this was his opinion and should be evaluated by Legal.

Mr. McShane suggested the City install lime rock in the alley up to the pavers. Mr. Darmanin stated the City would have an objection to installing the rock. Mr. Dunckel asked Mr. McShane how much additional time would be needed to complete the work in the alley. Mr. McShane stated the contractor is waiting on a piece of equipment needed to complete the work. Mr. Dunckel asked if six months would be enough time, to which Mr. McShane agreed. Mr. Dunckel suggested Mr. McShane enter into a revocable license with the City to have the work completed in six months. At the end of that time Mr. McShane would be required to remove the pavers if the work was not completed. Mr. McShane stated he would need to see the specific language before he agreed. Mr. Dunckel explained Mr. McShane would be given six months, with typical extender clauses allowed at the discretion of the City Manager, but if the deadline was not met, the pavers would be removed. Mr. Dunckel asked which part of the agreement Mr. McShane felt needed to be looked at more carefully. Mr. McShane stated he would never agree to remove the pavers without a court order or an administrative hearing.

Mr. Terrell asked if the existing application was made in a timely manner, and if the responses to the application were timely. Mr. Girisgen stated he would need to look at the record to be sure. Mr. Partington stated the impression given by the emails was the original application and the responses were both timely. Mr. Partington asked Mr. McShane would also object to the City remove the pavers and provide compensation for the expenses incurred. Mr. McShane stated he would object to that solution. Mr. McShane felt lime rocking of the remainder of the alley would solve the problem.

Mr. Dunckel felt Mr. McShane was “bobbing and weaving” and the issue was not moving forward. Mr. Dunckel suggested the City remove the pavers and let Mr. McShane sue. Mr. Mathews stated the City lime rocking the rest of the alley would be fine with the adjoining residents, as would Mr. McShane’s completion of the brick pavers in the future. Mr. McShane agreed to maintain the lime rock at his own expense until the brick pavers were installed. Ms. Ratcliff stated the lime rock would be an improvement, but felt Mr. McShane should remove his brick pavers.

Mr. Partington summarized the possible courses of action for the Committee:

- The Committee do nothing and rest on the motion previously passed.
- The Committee call for the removal of the existing pavers.
- The Committee pass a further motion to allow more time. The motion would have “teeth” which Mr. McShane would fight legally.

- The Committee would lime rock the remainder of the alley.

Mr. Partington stated he was leaning in the direction of lime rocking the remainder of the alley, recognizing the solution was totally contrary to regular policies and procedures. Mr. Partington wondered if the City Engineer had the authority to make the decision, or even if the Committee had the authority to make the decision.

Mr. Darmanin did not feel a speedy conclusion to the issue was the right way to go, and suggested finding a remedy to the situation and uniformly finishing the alleyway, whether that meant Mr. McShane finished the entire alleyway, or the alleyway be brought back its original condition prior to the erroneous permit being issued. Mr. Darmanin suggested if Mr. McShane was not willing to work with the "teeth" suggested by Mr. Dunckel, the timeframe should be shortened.

Mr. Dunckel suggested the City Attorney's office draft a revocable license with teeth and give Mr. McShane the opportunity to look it over. Mr. Dunckel was not prepared to advise the Committee the appropriate course of action would be to remove the pavers. Mr. Dunckel stated some things needed to be examined in the original application, and possibly the City would tear the pavers out and let Mr. McShane sue in court.

Mr. Dunckel supported the City Engineers with regard to the need for the curbs called for in the application. Mr. Girisgen felt the issues from the original application could be resolved fairly quickly, assuming willingness on all the part of all the parties. Mr. Girisgen expressed concern with Mr. McShane's contractor continuing to cloud the schedule.

Mr. Partington stated the City Attorney could draft a revocable license, then presumably there would be "backwards and forwards" on the exact language, while the clock continues with no resolution to the problem. Every time Mr. McShane blocks the alley the City gets pulled in to solve the problem. Mr. Partington suggested the Committee moving forward to a resolution.

Mr. Mathews stated Mr. McShane would have to lime rock the alley in order to proceed with the brick paving permit. Regardless of who was at fault with the original application, the alley could be lime rocked, Mr. McShane could continue with the brick paving permit. If Mr. McShane does not meet the time frames set, the City could go ahead and lime rock the alley.

Ms. Ratcliff suggested money be pulled from the bond posted by Mr. McShane to put down the lime rock. Mr. Girisgen stated the bond could only be used in the event of default.

Mr. Girisgen stated typically when a permit was issued a temporary structure affidavit was required, signed by the property owner. Mr. Dunckel asked Mr. Girisgen to research whether or not the temporary structure affidavit was included. Mr. Volpi provided a copy of the application dated February 16, 2007, which showed the temporary structure affidavit. Mr. Partington requested Mr. Dunckel review the original application and other attachments.

Mr. McShane stated there was no objection to the appearance of the pavers, but only to the fact the pavers were not all the way through the alley. Mr. McShane stated he was still planning to complete the pavers. Mr. McShane stated he was agreeable to a new time limit, but was unable to agree to the "teeth" without seeing the language. Mr. Dunckel asked if Mr. McShane would agree in principal subject to the draftsmanship, to which Mr. McShane agreed.

Mr. Partington suggested the revocable license be drafted, to be approved by the City Commission, to set a time limit for the installation of the pavers. Mr. Dunckel stated there would be a clause stating the City has the authority to remove the pavers if the time frame was not met. Mr. Partington stated the revocable license would contain a time line with sanctions if the time line was not met.

Ms. Ingold asked if the City could rock the alley at Mr. McShane's expense if the deadlines were not met. Mr. Dunckel stated the license could be worded as such if the Committee agreed, although the wording could "put more poker chips on the table to argue over."

Mr. Partington expressed concern with the additional time stretching out, and felt the sanctions should be aggressive. Mr. Partington asked about the time line should there be discussions back and forth for months without resolution. Mr. Dunckel stated the revocable license to be worded to say the six months would be from the date of the motion instead of the date of the City Commission approval. The completion date would be February 15, 2009, regardless of when the City Commission approval is granted. The revocable license would also impose the obligation to maintain the alleyway, and waives his homestead for the purpose of a lien in the event the City has to step in and do the maintenance.

Mr. Partington asked what would happen if a revocable license was not approved by February 15, 2009. Mr. Dunckel stated if there were frustrations in getting agreement to the wording, the issue would come back to the Committee with a possible recommendation to consider taking out Mr. McShane's pavers. Mr. Partington expressed concern with the issue being dragged out any longer. Mr. Dunckel stated he was not in agreement with the City lime rocking the alley, as a precedent would be set.

Mr. Terrell suggested the permit was properly issued and properly installed, and the remainder of the issues was beginning to look like a dispute between neighbors which should not be resolved by the Committee. Mr. McShane stated his home was built in the nature and character of the historic district. The City actually made the initial request for Mr. McShane to install the pavers to prevent straight in parking off the street. Mr. McShane stated now he was being treated like a criminal, although he went through the permitting process, paid the fees, paid the contractors, got a CO, and now was being asked for additional money out of pocket over a neighborhood dispute.

Mr. Partington stated Mr. McShane blocked the alley with vehicles in the past, and was demonstrating a lack of willingness to bring the issue to conclusion, but otherwise Mr. Partington did not feel Mr. McShane had done wrong.

**Motion** made by Mr. Dunckel, seconded by Mr. Maloney, to recommend draftsmanship of a revocable license that imposes a deadline on the brick pavers for the alley of February 15, 2009. Failure to meet that date, the revocable license would provide for a license to have the pavers removed. The revocable license to also have clauses allowing the City Manager for good cause shown to extend for up to two 60 day periods beyond February 15, 2009. If the City Attorney's office has frustration in the negotiation of the draftsmanship of it, to come back to the Committee for further action.

Ms. Ingold suggested tabling the issue for one month to research the permit originally given for the pavers. Mr. Dunckel stated he would be looking at the application in the interim. Ms. Ingold stated the application should be discussed and some history provided to the Committee, and go forward with the motion from there. Mr. Dunckel stated that would cause time to be lost toward the February 15<sup>th</sup> deadline, and the application research would be pursued simultaneous with the draftsmanship of the revocable license. Mr. Partington felt the only loose end was if Mr. Dunckel needed to return due to the level of "frustration" with drafting the revocable license, he was unclear how strong the case would be for sanctions. Mr. Darmanin stated the motion could be reopened at any time if any issues were discovered in researching the original application.

Mr. Dunckel stated the primary motivation was to get the alley paved, and he did not want to resort to using the "teeth", but wanted to get the job done. Mr. Partington asked Mr. McShane to redouble efforts to get the permit approved, and suggested he meet with Mr. Girisgen as soon as possible.

In a show of hands vote, the motion passed unanimously.

(Mr. Terrell left the meeting at 11:25 a.m.)

**ITEM THREE:**                    **THE REAL ESTATE OFFICE REQUESTS THE BOARD'S  
APPROVAL FOR CORRECTIONS MADE TO MAY 15, 2008  
AND JUNE 16, 2008, PREVIOUSLY APPROVED PROPERTY  
AND RIGHT-OF-WAY MINUTES**

ADDRESS OR GENERAL LOCATION: NE 4 Street and 5 Street, and NE 3 Avenue  
and 4 Avenue

Mr. Volpi introduced this item the minutes for May 15, 2008 and June 16, 2008 were introduced as property located between NE 2 and 3 Avenues, when in fact the property was between 3 and 4 Avenues. Mr. Volpi explained the properties were discussed incorrectly, therefore getting into the minutes with the incorrect location.

**Motion** made by Mr. Darmanin, seconded by Ms. Ingold, to approve the amended minutes.

In a voice vote, the motion passed unanimously.

Mr. Volpi asked if Mr. McShane was under any obligation to pave the rest of the alleyway. Mr. Dunckel stated he was not. Mr. Dunckel explained Mr. McShane could ask for his bond money back at any time as a permit has not yet been issued. Mr. Darmanin suggested a point could be added to the revocable license that Mr. McShane voluntarily forfeit the bond, release the funds to Engineering, and let Engineering pave through the City contract. Mr. Dunckel again expressed concern with giving Mr. McShane more "poker chips to disagree with."

Mr. Darmanin asked if the bond were forfeited due to contractor issues, or due to some other scenario, who would assume the maintenance associated with the alley. Mr. Dunckel stated the possibility of the City paving the alley could be researched, but expressed concern regarding uniformity in maintenance standards.

Mr. Volpi asked if the issues would be different with asphalt. Mr. Girisgen stated the City would maintain asphalt.

Mr. Partington stated this issue was another example of people having their major vehicular access from an alley. Mr. Partington stated the City was encountering a number of similar issues, and wanted to point out for future developments there could be confusion by the homeowners as to the maintenance obligation for the alley. Mr. Partington suggested in planning considerations an obligation be applied to developers to bring the alleys up to spec.

Mr. Dunckel stated he was also running into the same issues with townhouse developments with the primary access through the alley. Mr. Dunckel expressed concern with primary access to an alleyway originally intended for use by utilities. Mr. Fajardo stated the town homes come in with six driveways along the front, disrupting the traffic flow. Mr. Fajardo stated the communities were really pushing for more access off the alleys.

Mr. Dunckel stated the alleys were inadequate to be used as primary access, and asked who would bear the expense. Mr. Fajardo stated the developers were to maintain the alleys. Mr. Dunckel stated the developers were not performing the maintenance. Mr. Fajardo stated there was only a request, but no requirement for the developer to have access off the alleys. Mr. Fajardo proposed if the City requests the developers to put access off the alley, one requirement of access would be to improve the alley. Mr. Partington noted the requirement to improve parts of the alley was fairly recent, and allowing primary access was adding to the length of public streets and increasing the City's maintenance obligation.

Mr. Girisgen asked if the alleys were on the resurfacing program, to which Mr. Partington answered they were not. Mr. Fajardo noted in older parts of the City, homes have traditionally had access off the alleys, so the assumption only utility vehicles would use the alleys was incorrect. Mr. Dunckel stated the alleys were a secondary access, not a primary access. Mr. Fajardo stated there were exceptions, as in the past there was no standard and people got to choose the location of their driveway. Mr. Partington stated allowing the primary access from the alleys had added approximately ten to twenty miles to the public streets over the last four or five years. Even if the alleys are improved, they will still require maintenance.

Mr. Dunckel stated twenty years ago the City was in the process of systematically vacating the alleys, excluding the alleys where there was no other access. The vacation of the alleyways had since been abandoned. Mr. Partington stated the City continued to pick up new obligations due to the alleys being used for primary access.

Ms. Ingold asked about Mr. McShane's initial request to pave the alley. Mr. Partington stated the initial application was for Mr. McShane to pave part of the alley for his driveway. Ms. Ingold asked if the application was originally done correctly and the City approved it, would Mr. McShane have the right to withdraw his original application, keep his pavers, and the rest of the alley remains as is. Mr. Dunckel stated the applicant always has the right to withdraw the application. Ms. Ingold stated the neighbors were happier because their original complaint was Mr. McShane blocking the alley with cars and trees. Mr. Dunckel stated the neighbors may be happier than when they first came, but they were not happy.

Mr. Partington stated Mr. McShane now had a property that would always tend to lead to a situation where the alley could be blocked because his driveway was part of the alley. When someone came to visit him who did not understand his driveway should not be blocked because it's a public right-of-way would just park in the driveway. Ms. Ingold suggested the issue would then become an enforcement issue. Mr. Partington stated there could not be someone waiting there for violations.

Ms. Ingold noted other people park in alleys and use the alleys for other purposes, such as boat storage. Mr. Partington stated there were precedents where people established over time misuse of the alleys, and felt the City had "given up" on the alley and tried to claim the alley. Mr. Dunckel stated a vacation or abandonment of the alley requires action on the part of the City Commission, and not simply by misuse of the alley.

Mr. Fajardo asked about an earlier case concerning property outside the municipal boundaries and applicant wanted to extend the sidewalk. In that case, Mr. Dunckel stated if the owner was allowed to extend the sidewalk the City would not be able to reclaim the land. Mr. Fajardo asked for clarification between the two scenarios. Mr. Dunckel explained in Mr. McShane's case the area was a publicly dedicated alleyway versus the sidewalk case, which was land owned by the City in fee simple.

Mr. Dunckel stated there were provisions in the zoning code and in the building code stating a permit issued in error would not result in property right gain. Mr. Dunckel described two court cases providing relief for the City when permits were issued in error. Mr. Darmanin felt Mr. McShane's driveway was built based on a building permit and not with an engineering permit. Mr. Darmanin suggested Mr. McShane's case was comparable to the case cited by Mr. Dunckel.

Mr. Dunckel stated the underlying assumption was that the permit was issued in error, and asked what if the permit was rightfully issued. Mr. Darmanin suggested the "error" could have been an oversight or a mistake. Mr. Dunckel stated the Committee would have to be able to point to some provision in the Code prohibiting that type of activity. Mr. Darmanin stated any other improvements in the right-of-way would have required a revocable license, which was never brought to the City Attorney. Mr. Partington pointed out people were allowed to put brick pavers into the right-of-way all the time through engineering permits, with a temporary structure affidavit.

There being no further business to come before the Committee the meeting adjourned at 11:38 a.m.