

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL, 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, DECEMBER 18, 2008 – 10:00 AM

COMMITTEE MEMBERS PRESENT

Peter Partington, City Engineer
Tom Terrell, Public Works
Tony Irvine, Surveyor
Anthony Fajardo, Planner III
Carol Ingold, Parks & Recreation Supervisor
Bob Dunckel, Attorney
Mike Maloney, Planning & Zoning

STAFF

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

CALL TO ORDER

Mr. Partington called the meeting to order at 10:06 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 NOVEMBER 20, 2008 MINUTES**

Motion made by Mr. Irvine, seconded by Mr. Dunckel, to approve the November 20, 2008 minutes.

Mr. Partington noted a correction on Page 12, Item 7, the word "Master Arms" should read "Mast Arms".

In a voice vote, the motion passed unanimously.

ITEM TWO: **REVOCABLE LICENSE FOR CHAIN LINK FENCE IN R/W**
NORTH SIDE NW 59TH COURT

ADDRESS OR GENERAL LOCATION: North side NW 59th Court

Mr. Volpi explained Keith & Associates, agents for The South Florida Regional Transportation Authority would like a positive recommendation to install a chain link fence along the right-of-way line. A new fence was installed along the north right-of-way line to replace the existing within the roadway improvement area.

Traci Scheppske, representing Keith & Associates, explained the civil engineers for Northwest Mutual were constructing the roadway for the property. Prior to the road being dedicated for public right-of-way there was a fence separating the north and south properties. If approved, the fence would be replaced to provide privacy. Ms. Scheppske stated the placement of the fence would require a revocable license. Ms. Scheppske provided diagrams showing the property line and the placement of the fence.

Mr. Partington noted the fence was placed incorrectly and was encroaching slightly on the right-of-way. The revocable license was being requested to avoid future maintenance issues and questions as to responsibility.

Motion made by Mr. Irvine, seconded by Mr. Dunckel, to recommend approval of the requested revocable license to allow the fence to remain in its current location with caveats in regard to liability and maintenance.

Mr. Dunckel requested the motion be amended to include the termination of the revocable license in the event the fence was later moved.

Motion amended by Mr. Irvine, seconded by Mr. Dunckel, to recommend approval of the requested revocable license to allow the fence to remain in its current location with caveats in regard to liability and maintenance, as long as any portion of the current fence exists.

In a voice vote, the motion passed unanimously.

Mr. Dunckel requested a legal description of the current location of the fence with respect to the property line. Mr. Dunckel also expressed the expectation Northwest Mutual would maintain the area to the north of the fence.

ITEM THREE: **BROWARD COUNTY REVOCABLE LICENSE TO ALLOW A BOAT LIFT IN ROW**

ADDRESS OR GENERAL LOCATION: 1300 Brickell Drive

Mr. Volpi explained Architecture Planning Governmental Relations, agent for the owner, would like a positive recommendation to allow a boat lift in a portion of the right-of-way of Brickell Drive. The right-of-way is currently under an encroachment to allow a gate and fence, and the application was for the benefit of the one property owner.

Art Bengochea, with Architecture Planning Governmental Relations provided a past encroachment agreement executed between a past owner and the City of Fort Lauderdale in March of 1967. The agreement allowed the owner to build the existing

fence and gate. Applicant was requesting a boat lift be allowed at the end of the right-of-way. Mr. Bengochea explained the current dock was in the southwest corner, running east and then north along the perimeter of the property. Mr. Bengochea stated the river is very shallow and rocky in that location, making it impossible to place the boat lift in any other location on the property. Mr. Bengochea provided photographs showing the extensive landscaping and maintenance provided by the owners over the last forty years.

Mr. Irvine noted the three hundred feet of sea wall, and expressed concern with using the remaining fifty feet of public access for a boat lift. Mr. Irvine suggested BK Marine could dredge out the rocks, providing a site for the boat lift somewhere along the extensive run of sea wall. Mr. Bengochea explained the current was swift at tide change, and from a safety standpoint the proposed location would be the best choice. Mr. Irvine asked if the location was the only location and the best location for the public.

Mr. Bengochea noted the public currently has no access to the area. Mr. Dunckel stated the encroachment agreement allowed the construction of the walls, however the public still had the right to access the water. The property is still a public right-of-way, held in trust by the City of Fort Lauderdale, for all of the public, not just the current property owner. Mr. Partington noted in reality it would be highly unlikely the public was using the area.

Mr. Dunckel noted the owner had plenty of lineal water frontage to accomplish the construction of the boat lift. In talking with the contractor, Mr. Dunckel felt the location was chosen only due to the desire of the owner. Mr. Terrell stated the encroachment agreement, if brought to the Committee today, would most likely be denied.

Ms. Herd, the property owner, explained the water was turbulent at the end of the right-of-way, and the dock would actually be a safety feature due to the traffic pattern of the boats. Ms. Herd stated there was no other feasible location for the dock due to the boulders and the rocks. Ms. Herd noted other access for the public, and this particular dock was a safety issue.

Mr. Partington asked if the owners were made aware of the public right-of-way issue at the time the property was purchased. Ms. Herd stated they were made aware of the issue on the day of closing. Mr. Partington asked if there would be an additional dock. Ms. Herd explained there would be no additional dock, only a boat lift mounted on to the sea wall next to the dock.

Mr. Partington noted the Committee had a history of deciding against issues obstructing the public's rights of access to the waterfront. Mr. Irvine stated conditions five and six provided, "Owners agree to immediately remove said entrance gates and fence from City right-of-way at such time as the City requested removal." Mr. Irvine noted if further

improvements were allowed, the above noted item becomes harder and harder to enforce. Item Six stated "... The agreement is granted to the owners for the sole benefit of a special exception to the City's policy, and this agreement shall be construed most strictly against the owners and in favor of the City." Mr. Irvine felt further increase of the encroachment would undermine the conditions set forth in the original agreement.

Ms. Herd again expressed concern with the safety issues. Mr. Irvine stated the site was possibly not suited for a boat lift. Mr. Partington stated in all practicality the area would not affect, on a day-to-day basis, the public accessing the waterfront. However, Mr. Partington did note the application went against the principles adhered to by the Committee in restricting rights of access to the water front.

Mr. Dunckel stated he had been boating the waters of Fort Lauderdale since 1962 and was very familiar with the area being discussed. Mr. Dunckel felt the applicant's description of the safety concern was somewhat inflated. Mr. Dunckel conceded with the currents the area provided some difficulties, but did not feel the area was not nearly as dangerous, hazardous, or turbulent as the owner portrayed to the Committee. Mr. Dunckel explained the owner did not have a right to a boat lift, and suggested the engineers work out a different solution for a boat lift on private property rather than in the right-of-way.

Ms. Ingold asked about the size of the boat being discussed. Ms. Herd stated the boat was twenty-three feet. Ms. Ingold asked if the size of the dock could be reduced and the lift be located within the private property. Mr. Irvine stated the dock could also be relocated. Ms. Ingold noted there were other options for the lift, albeit pricey. Mr. Dunckel stated the responsibility of the Committee did not include designing the boat lift, and the paid professionals in that business should consider other alternatives. Mr. Dunckel also noted the cost of the project was not the concern of the Committee when placed against the principles of the public trust.

There followed a discussion with the owner regarding relocation options for the dock and lift. Mr. Partington asked if the application was denied what rights the property owners had moving forward. Mr. Dunckel stated the property owners had the right to explore other alternatives with the design professionals. Mr. Dunckel explained the City Manager controlled the agenda for the City Commission. Ms. Herd told the Committee the other side of Brickell Drive had a dock at the end of the street. Ms. Herd stated the lift could be removed at a later date, and noted the lift would not be the first lift built at the end of a street. Mr. Partington explained certain things were allowed thirty years ago that would not be allowed today.

Ms. Herd stated the public would not want to use the property to access the water. Mr. Irvine stated the gates to the waterfront were not private property, but a public right-of-way. Mr. Irvine expressed concern with public rights being privatized due to people

believing the property was private. Mr. Dunckel reiterated the encroachment agreement would not be allowed today, and the wall would not be there. Ms. Herd again expressed concern with the safety issues. Mr. Irvine noted if the site was so dangerous, perhaps the site did not lend itself to a dock.

Motion made by Mr. Irvine, seconded by Mr. Dunckel, to recommend approval of the agreement allowing the boat lift to be constructed in the right-of-way.

In a show of hand vote, the motion failed unanimously.

ITEM FOUR: **UTILITY EASEMENT VACATION**

ADDRESS OR GENERAL LOCATION: 1368/1372 NE 14th Street

Mr. Volpi explained McLaughlin Engineering would like 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). This easement was originally requested May 17, 2007 at the PROW meeting and the motion failed unanimously.

Mr. Volpi noted Mr. Lovesky, McLaughlin Engineering, had not shown up for several previous agenda items, and was not present today.

Mr. Dunckel noted no utilities existed in the five feet the applicant was seeking to vacate. When the land was platted in 2006 the Committee requested ten feet, with only five feet being utilized.

Ms. Ingold noted a pool encroaching to the east. Mr. Partington noted the issue was discussed previously, issues were raised, and the issues had never been resolved.

Motion made by Mr. Irvine, seconded by Mr. Dunckel, to table the issue.

In a voice vote, the motion passed unanimously.

ITEM FIVE: **LICENSE AGREEMENT/PIPER IN RIGHT OF WAY**

ADDRESS OR GENERAL LOCATION: 2401 Eisenhower Blvd.

Mr. Volpi explained Trans Montaigne Terminals LLC, would like a positive recommendation to place three twelve-foot carrier pipes in sixteen-foot casings in SE 10th Avenue from SE 24th Street to connect to their Port Everglades facilities. Mr. Volpi noted this item was deferred at the November 20, 2008 meeting to allow Trans Montaigne to perform ground penetrating radar investigation to determine the

placement and ownership of other lines in this right-of-way. Mr. Volpi noted the investigations were performed, and introduced Michael Gootman, with Prime Engineering to present a brief overview of the project.

Mr. Irvine noted portions of the requested area of Spangler Boulevard were located in Fort Lauderdale. Mr. Gootman referred to surveyor's legal description of the 10th Avenue right-of-way, and provided the Committee with the information needed to discuss the jurisdiction issues of the area.

Mr. Gootman noted the entire area fell within the Port Everglades development district, and in general pipelines have been allowed in the right-of-way to distribute fuels throughout the port. The request would allow the installation of the three pipelines in the right-of-way, totaling approximately three hundred feet in the City of Fort Lauderdale property.

Mr. Gootman noted the ground penetrating radar requested previously by the Committee was completed, and the location and depth of the Broward County force main and the jet fuel pipeline was determined.

Mr. Terrell noted Mr. Darmanin expressed no concerns with the pipelines. Mr. Dunckel explained the Committee could not grant an easement as the City was not the fee simple owner of the land. The land was under a previous dedication being held in trust for the public, and a revocable license would be necessary. The revocable license would contain a condition for relocation of the pipeline if required by the City.

Mr. Gootman explained the area was grass with no pavement, and would be drilled. Mr. Dunckel requested vertical parameters for the project. Mr. Irvine noted directional boring was not an exact science. Bryan Webb, Prime Engineering noted the original packet provided to the Committee contained the requested information, and a vertical number would also be provided.

Mr. Dunckel requested a legal description of the area as the City would have lien rights against the property to back up the indemnification. Mr. Irvine asked for information regarding old statutes granting jurisdiction to the Port over certain areas, and questioned whether the City actually had control of the right-of-way. Mr. Gootman explained the issue was resolved in similar cases by obtaining agreement by both the Port and the City. Following a discussion regarding jurisdiction, Mr. Irvine suggested the Committee proceed, however more research should be done to ascertain the jurisdiction. Mr. Dunckel agreed to make contact with someone in the City Attorney's office familiar with Port Everglade matters, and felt in the meantime the Committee should look at a revocable license.

Mr. Partington suggested construction specifications, in addition to the depths requested, be written into the revocable license. Mr. Gootman noted the pipeline would be carbon sealed and would fall within the DOT specifications. Mr. Webb noted the DOT design is ongoing. Whether or not the pipeline would be regulated by the DOT had not yet been established by the customer. The pipeline would meet Florida Administrative code requirements including double wall leak protection.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to recommend approval of a revocable license for the construction of the pipeline with horizontal and vertical data. The revocable license would be structured to travel with the engineering permit, meaning no revocable license would be issued without the engineering permit being granted. In the interim, investigation would go forward as to whether the City actually has jurisdiction.

By a voice vote, the motion passed unanimously.

There being no further business to come before the Committee the meeting adjourned at 10:57 a.m.

[Minutes prepared by K. Bierbaum, Prototype, Inc.]