

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL, 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, MARCH 19, 2009 – 9:00 AM

COMMITTEE MEMBERS PRESENT

Mike Fayyaz for Peter Partington, Assistant City Engineer
Tony Irvine, Engineering
Mark Darmanin, Public Works
Anthony Fajardo, Planner III
Carol Ingold, Parks & Recreation Supervisor
Deborah Hernandez for Mike Maloney, Code Enforcement
Bob Dunckel, Attorney

STAFF

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

CALL TO ORDER

Mr. Fayyaz called the meeting to order at 9:09 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 rights-of-way.

As of this date there were eight appointed members to the Committee, which means four would constitute a quorum. Following a roll call it was determined that a quorum was present.

ITEM ONE: **APPROVAL OF FEBRUARY 19, 2009 MINUTES**

Motion made by Mr. Darmanin, seconded by Ms. Ingold, to approve the February 19, 2009 minutes.

In a voice vote, the motion passed unanimously.

ITEM TWO: **ENCROACHMENT IN RIGHT OF WAY**

ADDRESS OR GENERAL LOCATION: 2025 S Miami Rd, Ft. Lauderdale, FL 33316

Mr. Volpi stated Mr. Gary Linnell of Linnell Holdings, LLC would like a positive recommendation to allow a wall and pavers to remain in the Right of Way of SE 21st. Street just west of South Miami Road. The wall and pavers encroach approximately two feet.

Mr. Volpi explained the pavers had always encroached into the right-of-way, and the company hired to repave pulled the permit and discovered the encroachment. Mr. Gary Linnell of Linnell

Holdings, LLC was unsure how long ago the encroachment occurred, as he had only been the owner for two to three months.

Referring to photographs, Mr. Fayyaz asked about an adjoining sidewalk. Mr. Linnell explained there was no sidewalk, but a small swale against the wall. Mr. Fayyaz stated there was a landscape buffer along the wall, which extended the encroachment into the right-of-way by more than two feet.

Mr. Irvine asked if the encroachment issue was brought up during the closing process while acquiring the property. Mr. Linnell stated the issue never came up. Mr. Irvine noted a survey was completed in 1996 and updated in December 2008, meaning the wall may have been there as early as 1996. Mr. Irvine was inclined to "go along with it" and noted this situation was different than someone wanting to build in the right-of-way, and was probably covered under an encroachment agreement.

Mr. Fayyaz asked about the width of the roadway in the area. Mr. Linnell stated there was a two lane road. Mr. Fayyaz noted the area still allowed for the fifty foot requirement should a sidewalk be needed in the future. Mr. Linnell noted a swimming pool on the property, with two to three feet between the wall and the swimming pool.

Motion made by Mr. Irvine, seconded by Mr. Darmanin, to recommend the City enter into an encroachment agreement to allow the wall and pavers to encroach in the right-of-way, providing that all necessary indemnification of the City be taken care of by the City Attorney's office.

In a voice vote, the amended motion passed unanimously.

Mr. Dunckel explained to Mr. Linnell the process for obtaining a revocable license from the City Attorney's office.

ITEM THREE: **UTILITY EASEMENT VACATION**

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

Mr. Volpi stated Paul Lovesky with 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 is easement was originally requested in May 17, 2007 at the PROW meeting and the motion failed unanimously.

Mr. Fayyaz asked what changes had occurred since the May 2007 meeting. Mr. Dick Coker, representing McLaughlin Engineering, explained there was confusion in the earlier meeting regarding the need for the vacation of the utility easement, and was present to try to clarify questions from the Committee.

Mr. Coker provided a brief history of the townhouse project, explaining the platting process moved forward with the normal ten foot periphery requirement, with no red flags being raised at the time. Mr. Coker explained there should have been an objection to the ten foot utility easement at the time as there was no purpose for the easement. All building plans were approved with the ten foot easement, with a "disconnect" between the two processes. Mr. Coker noted mistakes were made, and buildings were built encroaching into the ten foot easement, with a pool encroaching in the first five feet. Mr. Coker explained the developer was now asking for a vacation of five feet of the ten foot easement. Mr. Coker stated all utility companies signed off, and there were no public utilities in the five feet, and no plans for future utilities.

Mr. Coker noted a reference in the earlier minutes to future drainage lines needed in the area, but stated future drainage issues were not the purpose of platted utility easements. Mr. Coker pointed out there was no need for the ten foot easement, although there were private lines in the proposed five feet being left as easement. Mr. Coker stated the easement was for a public purpose, and in this case the public purpose does not exist, and a mistake was made originally in granting the easement.

Mr. Fayyaz asked about improvements on the requested footage. Mr. Coker described private improvements in the easement. Referring to the provided diagrams, Mr. Fayyaz asked about the dash lines on Parcel A. Mr. Irvine felt the line was the original southern boundary line, but was unsure if there was an easement along the boundary. Mr. Fayyaz opined the five feet would make a difference if there were a need for utilities. Mr. Darmanin concurred, stating insufficient space was the reason for maintaining the easement at the earlier meeting.

Mr. Irvine expressed concern with disregarding an easement approved by the County. Mr. Coker noted the statement regarding the original easement was a standard comment placed in every platting request, which should have been removed at the point of development, but was left in erroneously. Mr. Irvine noted the Committee was being asked to supplant Broward County's platting process and review in a matter of a few minutes. Mr. Coker disagreed, stating the request would go to Broward County after the Committee.

Mr. Irvine continued to express concern with the Committee "getting the ball rolling" in the process. Mr. Coker stated "just because the easement was granted doesn't mean it was right, or that it was needed". Mr. Irvine stated just because the franchisees felt the easement wasn't needed didn't mean the City utilities departments would agree. Mr. Coker stated there were no plans for the easement to be used. Mr. Darmanin explained, as mentioned in the earlier meeting, the Master Plan was not complete for the areas, so although there was no current plan, there may be a need in the future.

Dennis, City Staff representing Engineering, noted no public need for the present service for utilities or drainage. Referring to the provided drawings, Dennis noted there was no outfall to

the exfiltration system. Mr. Fayyaz would be willing to consider the application for five feet if there was an easement on the next lot, but did not feel there was enough information on future planning to agree with the vacation.

Mr. Dunckel noted the ULDR allowed for certain equipment to be placed in the setback area and asked about the limitations. Mr. Fajardo stated the limitation was no closer than five feet, eight feet in length, forty square feet, and could not go in the front, only the side area. Mr. Dunckel stated the pool pump could be moved to the rear areas of 1368 and 1372, as was done in 1366. Mr. Coker noted the people were already in the area, and moving existing equipment around would be difficult. Mr. Dunckel agreed somewhere along the line contractors, architects, and engineers bear some responsibility for the problem. Mr. Coker agreed, and stated no one was trying to absolve them, but there was an easement which the City never should have asked for. Mr. Dunckel stated, "The barn door is open and the horses are already gone."

Mr. Coker disagreed, and emphasized the easement doesn't serve a public purpose, and the duty of the Committee was to give back the easement. Mr. Coker noted any future drainage needs would not have anything to do with the developer's property, as the property has its own drainage. As the developer would not be causing the drainage issue, the Committee would not be entitled to ask for the easement for a future purpose unrelated to the property.

Mr. Coker admitted mistakes were made, but asked the Committee to look at the issue fairly, as if the easement was being requested at the present time, and whether five feet would be acceptable. Mr. Volpi asked if there were any other documents, other than a revocable license, that would allow the City to take an easement. Mr. Dunckel stated there was eminent domain. Mr. Volpi stated a future outfall would be a superior purpose under the revocable license. Mr. Dunckel explained from the developer's perspective a revocable license would cause wrinkles at the time of a sale.

Mr. Irvine remembered earlier discussion regarding SW 6th Avenue by SW 11^h Street when the Committee was told the easement was not needed, the right-of-way was vacated, and ten months later the City paid forty thousand dollars for the right to an easement to install sewer pipes, due to the vacation being granted prior to the completion of the master plan. Mr. Irvine stated he would be willing to approve the vacation if Mr. Darmanin was convinced Utilities would not need the easement, but felt that was not the case at the present time.

Mr. Dunckel explained the revocable license could be a temporary solution to the problem until Mr. Darmanin came back with a decision regarding future need for the easement. Mr. Darmanin stated the master plan would be a lengthy process and no answer would be available for quite some time.

Mr. Dunckel and Mr. Coker discussed the possibility of being granted a revocable license temporarily to cover the immediate issues with the owners. Mr. Dunckel suggested the pool heater and pump be allowed to remain in place pending completion of the Utility study. Mr. Darmanin interjected the Utility need would probably only be for one side. Mr. Dunckel suggested vacating five feet for Unit 1368 to allow for the swimming pool.

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to recommend vacation of the innermost five feet of the ten foot utility easement bordering Unit 1368, and a revocable license for the encroachments at Unit 1372.

In a voice vote, the amended motion passed unanimously.

ITEM FOUR: **VACATION OF RIGHT OF WAY**

ADDRESS OR GENERAL LOCATION: SE Corner of Federal Hwy & E. Sunrise Blvd.

Mr. Volpi stated this item was tabled on November 20, 2008 until further information could be gathered by the applicant regards to traffic turn around.

Ms. Stephanie Toothaker, representing Holman Automotive, provided a brief history of the project, and clarified some previous confusion regarding property owners being affected by the application. Ms. Toothaker explained three property owners would be affected by the vacation of NE 7th Avenue, including Holman Automotive, and 7th Avenue basically served as a private drive for the three property owners. Ms. Toothaker provided a copy of the non-exclusive cross-access easement signed by the three property owners. Ms. Toothaker also provided a letter from Hub Associates supporting and requesting the vacation.

Ms. Toothaker stated the applicant met with FDOT to discuss the main access from Federal Highway, and FDOT required the closure of NE 7th Avenue. Ms. Toothaker noted the justification statement provided all the reasons the application met the Committee requirements. Ms. Toothaker noted there was no sidewalk, no pedestrian access, served no public purpose, and was, in fact, not a safe area. Ms. Toothaker stated upon completion of the closure the applicant would provide security, lighting, and upgrades.

Regarding utilities, Ms. Toothaker stated the City would continue to maintain a utility easement in the area exactly where the existing utilities were, and all utility companies were contacted prior to the application.

Ms. Toothaker noted the final site plan was not yet completed, but provided drawings to show the applicant's plan. Mr. Fayyaz asked if there would be access from the back of the property into the property. Ms. Toothaker stated there would only be one access point, and none at the back of the property. Ms. Toothaker noted the emergency services had no objection to the

closing of 7th Avenue. Ms. Toothaker explained 9th would remain open for regular traffic, and the applicant would be providing landscaping and upgrades.

Mr. Irvine asked if it would be clear to the public the area was changed to a private drive. Ms. Toothaker confirmed the applicant would take care of signage, and the signage would be clearly marked on the final site plan. Mr. Dunckel requested further information regarding closing the area to the public. Ms. Toothaker stated the drive was currently not used by the public, only by employees of Hub, as the drive was currently a dead end. Mr. Jerald McLaughlin, President of McLaughlin Engineering, stated there would be a concave wall with signage clearly marking the area as private property. There followed a discussion regarding possibilities for signage to make the public aware of the private property and accommodating the need for drivers to turn around. Mr. Fayyaz suggested the addition of a cul-de-sac to provide for turn around traffic.

Mr. Fajardo explained the intersection at Federal Highway and Sunrise was part of the future master plan and asked about opportunities to enhance the pedestrian connections. Mr. Fayyaz stated the applicant's plan should consider the master plan requirements, and did not feel the vacation of 7th Avenue would affect the master plan. There followed a discussion regarding pedestrian access to the Parker Playhouse.

Mr. Darmanin asked about the utilities serving the current properties. Ms. Toothaker stated the utilities would be taken over but not relocated. Mr. Darmanin requested the meters be moved outside the decorative wall to separate private from public. There followed a discussion regarding placement of water meters.

Mr. Irvine noted to place a cul-de-sac property would have to be taken from Holiday Park. There followed a discussion regarding the public turnaround.

Motion made by Mr. Dunckel, seconded by Mr. Darmanin, to recommend vacation of 7th Avenue subject to Staff review of the geometrics for the possibility of creating either a T-turnaround or a cul-de-sac turnaround where 7th intersects with 9th Street, that there be executed cross-access agreements before submission to Property and Zoning, that there be some form of treatment on 7th to make an obvious transition from public to private, that the utilities be taken over by applicant with shared responsibility with the other two properties, or appropriately relocated.

Mr. Irvine requested the entire T-turnaround be treated, not just the private property.

In a voice vote, the motion passed, with Mr. Fajardo opposed.

Mr. Fayyaz publicly noted a quorum was present for the meeting.

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

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