

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL, 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, SEPTEMBER 17, 2009 – 10:00 AM

COMMITTEE MEMBERS PRESENT

Peter Partington, Chair
Bob Dunckel, City Attorney's Office
Tom Terrell, Public Works
Mark Darmanin, Public Works
Carol Ingold, Parks & Recreation Supervisor
Anthony Fajardo, Planning
Mike Maloney, Code Enforcement
Tony Irvine, Survey

STAFF

Victor Volpi, Senior Real Estate Officer
Julius Delisio, Liaison, Cemetery Administration
Antoinette T. Butler, Project Engineer
Fernando Blanco, Airport Engineer
Dennis Girisgen, Land Development Manager
Diana Alarcon, Parking Services
Jennifer Picinich, Recording Clerk, Prototype, Inc.

CALL TO ORDER

Mr. Partington called the meeting to order at 10:03 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.

COMMUNICATIONS TO CITY COMMISSION

None.

ITEM ONE: APPROVAL OF AUGUST 20, 2009 MINUTES

Motion made by Mr. Darmanin, seconded by Ms. Ingold, to approve the August 20, 2009 minutes.

In a voice vote, the motion passed unanimously.

ITEM TWO: **WALL ENCROACHING IN RIGHT-OF-WAY**

ADDRESS OR GENERAL LOCATION: 2624 NE 23rd Street

Mr. Volpi explained the applicant would like a positive recommendation to add two courses of block to a wall that extended into the City right-of-way at the corner of Bayview Drive and NE 23rd Street.

Mr. Volpi stated the applicant was not present for the meeting.

Motion made by Mr. Darmanin to defer the item to a later date.
Motion failed for lack of a second.

Mr. Irvine wished to deal with the item at the present meeting. Mr. Dunckel wanted more information regarding an encroachment agreement. Mr. Volpi was not aware of an agreement or building permit. Mr. Dunckel suggested independent verification of any site triangle issues rather than simply accepting the applicant's word. There followed a brief discussion of the size of the existing wall.

Mr. Irvine was hesitant to further sanction an existing encroachment. Mr. Partington reminded the Committee the encroachment was possibly legal, however there was not enough information available to make a determination. Ms. Ingold stated if additional privacy was the issue, privacy could be achieved with additional landscaping.

Mr. Darmanin requested letters from all utilities in the area to ensure there were no utility issues surrounding the wall. Ms. Ingold asked if letters should also be required from the neighbors verifying there were no objections. Mr. Partington stated applicant should provide the utilities information, site triangle information, and canvassing of neighbors. Mr. Terrell stated the portion not in the right-of-wall would require a building permit, and the permit should be included with the application.

Motion made by Mr. Dunckel, seconded by Mr. Darmanin, to defer the item to the October meeting, particularly invite the applicant to attend the meeting. In advance of the next meeting the applicant would research building permit history, verify a pre-existing revocable license or encroachment agreement, find out about utilities in the area, find out whether the proposed height would be permissible, and whether a building permit to raise the height was pending. The Committee also required a meeting notice go out to neighboring property owners.

Mr. Fajardo noted there may be a requirement for an opaque wall, which would include chain link fencing. Mr. Dunckel stated in the case of a requirement for the wall to be opaque, the wall would then be a nonconforming structure. Typically a nonconforming

structure could not be enlarged. Mr. Partington explained the application would probably consult a licensed engineer who would make sure the site drawing met the City ordinances and engineering standards.

In a voice vote, the motion passed unanimously.

ITEM THREE: VACATION OF RIGHT-OF-WAY, EVERGREEN CEMETERY

ADDRESS OR GENERAL LOCATION: 1200 NE 10th Avenue

Mr. Volpi explained the Cemetery division of the City would like a positive recommendation to vacate a portion of the rights-of-way inside Evergreen Cemetery to be able to sell more burial plots.

Mr. Volpi introduced Jane Storms of Pulice Land Surveyors and Julius Delisio, representing the cemetery. Mr. Delisio noted the restricted burial space, and the unpaved roads. Mr. Delisio also pointed out Evergreen was one of the few cemeteries in South Florida allowing upright monuments.

Mr. Partington asked about the preserving the access ways since no plan for a drive around the cemetery was submitted. Ms. Storms provided brief history of the cemetery, explaining the reason for the unusual plat map of the cemetery. Ms. Storms explained in the past a family actually purchased a lot and provided maintenance. Currently a family would have an interment right, but would not actually own the land.

Mr. Volpi asked what issues were involved if there were both warranty deeds and interment rights. Mr. Dunckel stated neither would affect the current application. Mr. Volpi asked if burials involved driving across private property. Mr. Delisio explained a State statute made all cemeteries public property, and all cemeteries were made perpetual to make sure maintenance was performed. Ms. Storms stated the City previously granted a five-foot concrete easement between plots to allow families to get to their plots without walking on the plots of others. Mr. Dunckel verified the easements were on the face of the plat in 1919 and were not later added.

Ms. Storms verified there would be no burials in the easements. By State statute every plot must be mapped, including the distance between monuments. Ms. Storms answered questions by the Committee using provided diagrams. Ms. Storms confirmed the new area would contain five-foot sidewalks. There followed a discussion regarding

custom and practice for rights-of-way in a cemetery and plot locations and sizes using the provided diagrams.

Mr. Dunckel asked if there was anything to differentiate the six-foot east-west walkway from plots. Mr. Delisio stated most plots were indicated with markers, and the public was typically very respectful of not walking across graves. Mr. Dunckel felt the Committee needed to be somewhat protective of the ease of access for visitors, however typically rights-of-way were not vacated to allow for a larger development footprint, including walkways.

Mr. Volpi asked about private cemeteries in Fort Lauderdale. Mr. Delisio stated there were no private cemeteries in the City. Ms. Ingold explained the applicant appeared in front of DRC, and one recommendation made by the Parks Department was to consult with urban forestry regarding the large tree roots being cut for burials.

Mr. Partington asked if there was any financial advantage from approving the applicant's request. Mr. Delisio stated if no additional burials were allowed there would be no income to provide maintenance. There followed a discussion regarding Planning issues around vacation of cemetery rights-of-way. Ms. Ingold asked if the plots near the walkways were priced differently than others. Mr. Delisio said they were not.

Motion made by Mr. Darmanin, seconded by Mr. Irvine, to approve the vacation as presented.

In a voice vote, the motion passed unanimously.

ITEM FOUR: **SPECTRUM BUS SHELTER**

ADDRESS OR GENERAL LOCATION:

Mr. Volpi explained the Spectrum Business Park Association would like a positive recommendation to place a bus shelter on City owned property located on Commercial Boulevard.

Mr. Volpi introduced Chantal Hogue, Keenan Development Group, and Fernando Blanco, Airport Engineer. Mr. Volpi noted the application was for a license agreement as opposed to an easement. A brief history of the project was provided, pointing out

the application was to clean up an old DRI condition, including putting in sidewalks, bicycle racks, and adding bus shelters to meet transportation requirements.

Mr. Blanco explained the airport had no objection to the placement of the bus shelter provided a license agreement was worked out between the City and Spectrum Business Group. Mr. Darmanin asked if the specific location was scouted for utilities. Ms. Hogue did not know if there were underground utilities, but noted project would involve enlarging an existing pad to allow for the bus shelter. Mr. Darmanin asked Mr. Girisgen provide utility information. Mr. Volpi noted the survey was not specific and applicant would provide a map addressing the utility issue.

Mr. Partington asked who would be responsible for maintaining the bus shelters. Ms. Hoague stated the City would maintain the shelters. Mr. Partington stated the City had an agreement with Gold Coast to maintain the seats, however the shelters would not be covered under the Gold Coast agreement. Ms. Hoague noted Gold Coast was also the contractor installing the bus shelters. Mr. Partington felt the maintenance issue was still a "loose end" that needed to be addressed. Mr. Dunckel asked who made the agreement for the City to maintain the shelters, and in what context. Ms. Hoague stated a meeting was held in February of 2009 where the commitment was made. Mr. Girisgen and Mr. Fajardo did not recall the commitment being made.

Mr. Partington stated the County had stimulus money from the current Administration, and proposed to install a large number of bus shelters around the city. Under the proposed program the City would be responsible for maintaining the shelters. Mr. Partington explained the project was just getting off the ground, and was headed up by Arethia Douglas with the County. Ms. Hoague described a conversation with Ms. Douglas, and confirmed approval was received from Ms. Douglas. Mr. Partington did not feel the maintenance issue was fully resolved. Mr. Dunckel explained the Committee was not opposed to bus shelters, however there was concern regarding the fiscal responsibility to the City. Mr. Dunckel suggested granting a revocable license requiring Gold Coast be responsible for maintenance.

In response to questions by Mr. Darmanin, Ms. Hoague stated the City of Fort Lauderdale was not allowed to advertise on any bus shelter. Mr. Partington stated since Gold Coast generates income from advertising on the seats, Gold Coast was willing to maintain a certain number of shelters, and may well be willing to maintain the shelter being discussed.

Mr. Fajardo noted the condition was written as part of a DRI. When the application was submitted, the conditions were found requiring upgrading before the project could move forward. Mr. Fajardo pointed out the condition did not state the shelter had to be installed by a certain date, only prior to CO for the Spectrum 4800 project. Mr. Fajardo emphasized City Staff was not pushing the shelter be completed right away.

Mr. Terrell felt the shelters looked similar to those removed from Las Olas. Ms. Hoague was not familiar with the Las Olas shelters. Mr. Partington stated the shelters were removed due to complaints of vagrants in the shelters.

Mr. Dunckel asked for clarification on advertising in the bus shelters. Ms. Hoague stated advertising was not allowed in this particular type of shelter, only on the benches. Mr. Partington explained there was an advertising ordinance prohibiting off premises advertising. Mr. Dunckel felt if the maintenance fell on the taxpayers, there should be a trade-off with advertising, within parameters, in exchange for the maintenance. Mr. Dunckel stated a revocable license could be written to include a consent from Gold Coast to provide perpetual maintenance, or maintenance for a period of time.

Mr. Irvine did not feel the vagrancy issue should be completely dismissed. Mr. Partington pointed out it was a DRI condition. Mr. Volpi stated the maintenance agreement with Gold Coast was recently revamped. Mr. Volpi felt there might be a bus shelter situation in the new maintenance program. Mr. Partington did not feel the bus shelters were covered formally under the agreement.

Mr. Partington felt comfortable with the easement, leaving only the question of maintenance. Mr. Partington felt a letter from Gold Coast agreeing to maintain the shelter would be acceptable. Mr. Partington was aware there were loose ends, however an agreement might be the only option.

Mr. Darmanin agreed with Mr. Dunckel's suggestion of using wording in a revocable license to issue an exemption to the advertising ordinance, if an exemption was needed, allowing Gold Coast to advertise on the one particular bench since there was a bench there with advertising prior. In return for the site-specific advertising allowance, Gold Coast would provide maintenance. Mr. Partington felt a site-specific allowance would "open a can of worms" regarding advertising on bus shelters.

Mr. Dunckel asked if the obligation under DRI was limited to construction. Ms. Hoague stated the obligation was to purchase and construct. Mr. Girisgen did not feel the bus shelters were a line item requirement, but a general obligation to make transit improvements. Following the DRI meetings were held and a conclusion reached stating the condition would be satisfied with the installation of bus shelters, sidewalks, and bicycle racks. Mr. Dunckel asked for Plan B if the installations were not practical. Mr. Girisgen stated the issue would need to be revisited.

Mr. Irvine asked if the responsibility fell to Spectrum to perform the improvements, and if so, the maintenance should be a cost of doing business and should not fall to the City. Ms. Hoague explained Spectrum's responsibility through the DRI was to install the two shelters, bike racks, and a sidewalk with a three hundred thousand dollar budget. Ms.

Hoague felt the project was already a big investment, and did not feel maintenance was fair to the business owners since the improvements would benefit everyone and was located on City property. Mr. Partington pointed out the shelters would be used by people at the business park and would be in Spectrum's best interest to have the shelters maintained. Ms. Hoague stated the conditions did not include the maintenance.

Mr. Irvine emphasized the maintenance was not a minor obligation and could not support putting the City at risk for a large annual obligation to help a developer meet DRI obligations. Mr. Girisgen explained the DRI was large, with a somewhat vague condition. Mr. Girisgen noted it was not uncommon for ongoing maintenance obligations to be covered under the DRI.

Mr. Partington recommended the application be approved subject to, among other possible conditions, Spectrum being responsible for the maintenance. If Spectrum did not want to provide the maintenance, then "let the chips fall where they may" in terms of compliance with the DRI. Mr. Terrell asked what would happen if the motion was denied. Mr. Girisgen said the situation would have to be revisited to try to resolve the condition. Mr. Irvine stated the development could be stalled or stopped completely. Mr. Girisgen asked if the Committee's decision to deny would be a recommendation or a final decision. Mr. Partington explained the application could go on to the City Commission with a negative recommendation from the Committee, and possibly the City Commission would see the matter differently than the Committee.

Motion made by Mr. Irvine, seconded by Mr. Terrell, to recommend granting of a revocable license agreement with Spectrum for the areas shown for the purpose of constructing a bus shelter with the following conditions:

- Indemnify the City
- Enter into a maintenance agreement whereby Spectrum agrees to maintain the bus shelter after construction at a reasonable standard of repair.

Mr. Girisgen requested clarification on the maintenance agreement regarding length of time. Mr. Dunckel stated the agreement would be for the life of the license. Ms. Hoague asked how many shelters would need to be maintained. Mr. Partington stated the maintenance agreement would only cover the shelter being granted the easement. Mr. Volpi noted there were two shelters required, with the second going on Wachovia property. Mr. Partington asked for the status of the second shelter. Mr. Girisgen felt there was rationale for Spectrum to maintain both. Mr. Girisgen felt the maintenance requirement could be crafted into the DRI condition. Mr. Partington stated the Committee could only discuss the shelter being constructed on City airport property.

Mr. Dunckel asked if the location was in a district allowing construction close to the property line under the ULDR. Mr. Fajardo stated the business district requirement was for a minimal setback. Mr. Dunckel stated a revocable license could be drafted, however if there is a ULDR violation the license could not go to the City Commission.

Mr. Terrell requested clarification on the maintenance of the second shelter. Mr. Partington felt the Committee was only discussing the one shelter attached to the easement, and the maintenance of the other would have to be dealt with through some other mechanism. There followed a discussion regarding who had the authority to require Spectrum to provide maintenance. Ms. Hoague pointed out Spectrum did not choose to build on City property, and questioned why Spectrum should maintain something they were forced to install. Mr. Partington understood Ms. Hoague's position, and suggested the argument be made in front of the City Commission.

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

There being no further business to come before the Committee the meeting adjourned at 11:22 a.m.

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