

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, OCTOBER 15, 2009 – 10:00 A.M.

COMMITTEE MEMBERS PRESENT

Mike Fayyaz, Acting Chair, Assistant City Engineer
Tom Terrell, Public Works
Carol Ingold, Parks & Recreation Supervisor
Anthony Fajardo, Planning
Tony Irvine, Survey

STAFF

Victor Volpi, Senior Real Estate Officer
Dennis Girisgen, Land Development Manager
Antoinette T. Butler, Project Engineer
Jennifer Picinich, Recording Secretary, Prototype, Inc.

CALL TO ORDER

Mr. Fayyaz called the meeting to order at 10:12 a.m., and stated this was a committee of City Staff serving as an advisory panel to the City Manager and the City Commission on matters related to City right-of-way on the City's properties.

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 SEPTEMBER 17, 2009 MINUTES**

Motion made by Ms. Ingold, seconded by Mr. Irvine, to approve the minutes of the September 17, 2009 meeting. In a voice vote, the **motion** passed unanimously.

ITEM TWO: **VACATION OF EASEMENT**

ADDRESS OR GENERAL LOCATION: 1730 N. Federal Highway

Mr. Volpi explained that McLaughlin Engineering was requesting a positive recommendation from the Committee for vacation of a 10 ft. platted easement on

the F.V.S. Plat, as it is not needed for public use. The applicant intends to expand the building.

Jerry McLaughlin of McLaughlin Engineering Company was present, and he explained the property was a combination of three plats and some unplatted property. An easement was required when the platting was done. There is a standard 10 ft. perimeter easement for the plat. They have combined the properties and the only utility in the easement is FPL, which Mr. McLaughlin is in the process of having vacated.

Mr. Terrell expressed that Mr. Darmanin had agreed to the approval.

Motion made by Mr. Irvine, seconded by Ms. Ingold, to recommend approval of the easement vacation as permitted. In a voice vote, the **motion** passed unanimously.

ITEM THREE: **ENCROACHMENT AGREEMENT**

ADDRESS OR GENERAL LOCATION: 1251 SE 2nd Court

Mr. Volpi stated that Linda Watson would like a positive recommendation to allow her fence to remain on a portion of the City alley. The alley has overhead electric and underground gas. To the best of her knowledge, and in the pictures shown, the City does not have any utilities in the easement.

The homeowner, Linda Watson was present, along with Jana Goodman. Ms. Watson explained that she bought the property approximately eight years ago and recently discovered that part of the fence had been removed. A neighbor had filed a complaint because he “did not like the bamboo tree” and was concerned about hurricanes. Ms. Watson had FPL trim the bamboo tree. Another neighbor received a citation from Code Enforcement and subsequently removed the section of the fence. She wanted to replace the 8 ft. section including the gate if necessary. She added that utility workers access the area.

Mr. Fayyaz asked the homeowners if they had considered vacating the alley. Ms. Goodman responded that the people who back-up to the area do not want to vacate, but want the area to be maintained by the City and be kept “status quo.”

Mr. Irvine stated that the only survey he observed was dated 1980, which did not show the fence. Ms. Watson stated she had not done a survey when she purchased the property.

Mr. Irvine was not in favor of allowing the fence because it is a public right-of-way, and the City could not keep and maintain the property due to the existing fence. Ms. Goodman expressed that having the fence was a security issue.

Mr. Terrell stated there are gas and electric utilities on the property, but no City utilities. Mr. Irvine said there is electric overhead, but was not sure if there is still gas underground. He suggested the security issue be resolved by putting a fence across the back of their yard. He did not believe it was a viable solution for the Committee to allow the homeowners to fence the area, increase their yard, landscape it, pay no taxes on it, and deny the public untrammelled use to the property.

Mr. Fayyaz explained that the Committee was in place to determine whether or not the request would meet the requirement that has been set for use of public right-of-way. He felt the homeowners should pursue having the alley vacated because it serves no use other than the utilities on the property.

Mr. Terrell expressed that the Committee could not support closing the area because it would be a violation of Code. He did believe the area should be vacated. If the residents abutting the property did not want to vacate, the Committee would still have to recommend vacation. Ms. Goodman inquired if the entire area needed to be vacated, or just a portion. Mr. Fayyaz responded the entire area because it is a dead-end alley with no function. He added that the Committee could not recommend approval for a project that would be against the Code.

Mr. Irvine suggested that the Board of Adjustment (BOA) might be able to "provide relief," which Mr. Fayyaz added would be the next course of action for the homeowners. Mr. Irvine stated he did not believe "hardship" rules applied in their case. He thought the homeowners would be "better off" talking to their District Commissioner and pursuing City Commission action to vacate the entire alley as it serves no public purpose. He would not recommend privatizing public use.

Mr. Fayyaz reiterated that the City could not issue a permit for something that would be against the Code. The only thing the Committee could recommend would be vacation of the entire alley.

Mr. Girisgen offered a different perspective with regards to Planning and Zoning rules. Depending on the zoning for the area, if it were multi-family, there would be potential for the properties to eventually be assembled and put into multiple units. Planning would prefer access to garages from the alley side and would require property owners on each side of an alley to dedicate more alleyway.

Mr. Fajardo stated that Planning could not support vacation of the alley unless there were “zoning circumstances.”

Mr. Fayyaz added that it is a dead-end alley, not a continuous alley. If development occurs, Planning would probably develop one “big, giant unit” that would cross the alley.

Mr. Irvine noticed a 5 ft. pedestrian easement that ran from 2nd Court into the alley, which meant there was potential for the alley to be “greenway.” With a pedestrian easement, the public would have a right, according to the survey, to walk through the property.

Ms. Goodman asked if a fence could be put on an easement. Mr. Fayyaz responded with a permit; however, the alley is not an easement, but a right-of-way. He advised that a more recent survey would be beneficial to the homeowners.

Mr. Terrell stated that the Committee could not technically approve the request before them.

Motion made by Mr. Terrell, seconded by Mr. Irvine, to accept the recommendation as presented.

Mr. Irvine stated he did not see any immediate solutions. He recommended deferring the item until the homeowners obtain a new survey and determine the “true status” of the easement, possibly requesting Parks and Recreation and Planning look at the situation in detail to try and determine a solution for the homeowners. He believed the motion would “weaken their standing.”

Mr. Terrell stated that if the motion passes, “they are done.” The Committee could defer until more information is available.

Mr. Volpi stated the Committee could also make a motion to recommend vacation. Mr. Irvine stated he could not support vacation without more information. He inquired if the homeowners were presently under penalty or jeopardy from Code. Ms. Watson responded no; however, she had told Code that she would keep them “up to date.”

Mr. Fayyaz stated the Committee’s challenge was to come up with solutions to issues within the Committee’s privy and in the law, and he concluded that the issue was outside the Committee’s jurisdiction.

Mr. Irvine recommended the homeowners call McLaughlin Engineering to obtain a more current survey if there is one.

Motion amended by Mr. Terrell, seconded by Mr. Irvine, to defer the issue to a future meeting. In a voice vote, the **motion** passed unanimously.

ITEM (WALK-ON): LIGHTING NE 33rd SHOPS

ADDRESS OR GENERAL LOCATION: NE 33rd Street

Mr. Volpi explained that Candace Proctor and the North Beach Restaurants and Shops Association would like the Committee's positive recommendation to have the City fund and construct "up and down" lighting along NE 33rd Street from A-1-A to NE 33rd Avenue. There has been a resurgence of activity in the area including outside entertainment events with vendors. At this time there is not enough power to run holiday and landscaping lights and the outlets for vendors. The Association intends to maintain the system and pay for the electricity after the City constructs it.

The following representatives attended the meeting: Cathy Vassallo, Fishtales on 33rd Bar and Grill; Lenny Cipolla, Southern Coast Electrical; Candace Proctor, 33rd Street Wine Bar; and Danielle Fulco, The Dive Bar and Blue Jean Blues.

Ms. Proctor explained they are in the fourteenth week of Sunday block parties. For successful events, there are eight trees "that need to be lit." In addition, there was signage damaged by the hurricane, which they plan to replace and which had already been zoned. Mr. Cipolla would coordinate how this would work from tree-to-tree. Ms. Proctor emphasized the Association has:

- talked to many electricians;
- been to City meetings;
- has an idea of what they want and what can be done; and
- they are concerned about the expense.

Mr. Cipolla explained there are existing poles with circuits that would not be able to maintain what they need on the island, which is approximately a "few" hundred feet from end-to-end. He could have an FPL engineer add a meter to the island and the Association would pay the electric bill. He needs the "okay" to move forward to engineer the problem. There needs to be power at each tree for a receptacle with lights for the tree and for the area. In order to run pipes, they would have to "rip up a little bit of pavement" which they would replace.

Ms. Proctor stated they came up with the plan after talking to several electricians. The requested approval would be less cost for everyone and less invasive to the street. There would be a six-inch section of asphalt to "tear up."

Mr. Terrell stated he had been to the area five or six times over the last seven or eight years and has had the same conversation with "the groups." The Committee could not make decisions about funding, but could decide to recommend construction in the right-of-way, and if needed, a revocable license to proceed. The Association did not obtain drawings due to the expense and without knowing if the City would approve the project. Mr. Terrell added that the City does not provide power for private events and would not pay for it if they did.

Mr. Terrell explained that in 2003 directions were put on the trees and powered from the City's two streetlight poles on either end of the island, which only had 15 amps. An agreement was made between the City and FPL to pay by wattage, not by metered service from the FPL holiday lighting plan, for the period from Thanksgiving to New Years. In turn, the City invoiced the shops, which he recounted had been \$250 for the electric service.

Mr. Fayyaz stated the Association's proposal made sense and provided a more permanent solution. Mr. Cipolla added that it would be better to have a panel at each end of the island so that if a breaker "trips" it can be turned back on. Mr. Terrell said there had been a lot of "nuisance trips" when the decorations were "over-amped." The project would require construction in the right-of-way and an Engineering Permit. Service would be needed from FPL; therefore, the project would need to be "built perfect." He added it would require two sets of permits.

Mr. Volpi inquired if the City pays for the holiday lights on Las Olas. Mr. Terrell responded that Las Olas lighting is paid for by the Las Olas Merchant Groups.

Mr. Fayyaz inquired if the Committee should support placing meter and utilities within the right-of-way that belongs to private entities. Mr. Irvine responded yes.

Mr. Terrell stated that 10 years ago he would have objected from a safety point of view; however with the building construction boom, it is not "unheard of" anymore. Regarding safety, when "something happens," Public Works, as a first responder, should have access and be able to turn the power off because it would be in the right-of-way.

Mr. Terrell agreed there should be a 200-amp service installed where the sign would be placed. Mr. Irvine was concerned about privatizing public rights; however, the project would be for commercial use between the City and the merchants.

Mr. Fayyaz stated the City had been working with the Association for 20 years.

Motion made by Mr. Irvine, seconded by Mr. Terrell, to recommend that the City, working through the City Attorney's Office and the City Manager's Office, enter into a license agreement with the proper indemnifications necessary to allow the project to go forward as submitted, knowing that there would be an Engineering Permit and Building Permit required. Currently there are no engineering plans, but all issues are currently being reviewed and addressed through that design process.

Mr. Terrell stated he would second the motion with the funding language removed. Mr. Irvine accepted the amendment.

Motion amended by Mr. Irvine, seconded by Mr. Terrell, to recommend that the City, working through the City Attorney's Office and the City Manager's Office, enter into a license agreement with the proper indemnifications necessary to allow the project to go forward as submitted, with the funding language removed, knowing that there will be an Engineering Permit and Building Permit required. Currently there are no engineering plans, but all issues are currently being reviewed and addressed through that design process.

Mr. Girisgen mentioned concern about a three-inch wide trench included in the project and that a motorcycle rider could "feel that rut." Mr. Cipolla responded that it would be "right up against the curb" and nobody would be driving over it. Mr. Fayyaz recommended the Association work with Hal Barnes to "make sure it goes in the right place" to minimize concerns about the trench and to coordinate the two projects.

Mr. Fajardo stated he believed the property owners in the area had been talking to the City about a master plan that had not been started yet. He encouraged the applicants to talk to Planning to get more information on the owners' existing master plan, coinciding with the Beach Master Plan of the City.

Mr. Irvine stated his understanding was that the applicants would not be putting anything permanent except for the feeds.

Mr. Terrell explained that the vote of the Committee was part of a process. The next step would be for the City Attorney to craft an agreement and a license or an indemnification with the appropriate people from the Association. The application would then go to the City Commission for approval. Mr. Fayyaz directed the applicants to work with Mr. Volpi to assure the process would go smoothly.

Mr. Volpi stated that the Attorney would want all of the engineering plans. He added he would contact Bob Dunkel and then would contact the owners. Mr. Fayyaz recommended Mr. Volpi request that Mr. Dunkel expedite the process for the applicants in order to be ready for the holidays.

In a voice vote, the **motion** made by Mr. Irvine, amended by Mr. Terrell, passed unanimously.

ITEM (WALK-ON): **WALL ENCROACHING IN RIGHT-OF-WAY**

ADDRESS OR GENERAL LOCATION: 2624 NE 23rd Street

This walk-on item was deferred from last month's meeting to allow the applicant to be present. Mr. Volpi invited the applicant, Alex Gheorghiu, to address the Committee.

Mr. Gheorghiu explained he installed a pool in his backyard at the corner of Bayview and 23rd. There was an existing 4 ft. high, CBS block wall, which he had added two courses of block to. He had not known he needed a permit to add the block to the existing wall. The inspector informed him that the existing fence encroached on City property. The fence was built in 1977 with a permit. Mr. Terrill inquired if it was a Right-of-Way Permit, to which Mr. Gheorghiu responded it was a Building Permit. He requested that he be able to add two courses of block to the existing wall due to a privacy issue.

Mr. Irvine observed from the Building Permit that the fence was built in the right-of-way, not outside the right-of-way as permitted.

Mr. Gheorghiu's [associate] stated that the site triangles were 30 by 40 ft. at the intersection and site triangles are usually 20 by 20 ft. Mr. Irvine stated it was 55 ft. on the permit because of the acute angle of the intersection to the streets. He added the tangent lengths would be longer as shown on the permit. He expressed his reluctance to allow the owners to preempt public right.

Mr. Fayyaz inquired if Mr. Gheorghiu had already added the blocks, to which the applicant responded affirmatively. Mr. Fayyaz suggested Mr. Gheorghiu could block the view other ways, such as with landscaping. Mr. Gheorghiu stated that since the fence was already there, he would rather receive a permit. Mr. Fayyaz pointed out there were many issues involved with the new Code and the requirements in 1977 may have been different.

Mr. Gheorghiu stated he had obtained engineering plans and had added the blocks "up to Code."

Mr. Terrell reviewed the motion from the prior meeting and stated the second condition of the motion had been for the homeowner to provide the neighboring property owners with a meeting notice. Mr. Gheorghiu stated there was an abandoned home on the property south of him. His neighbors to the west have two small children and have “no problem” with the fence.

Mr. Fajardo stated that the prior discussion regarding fences was on current Code requirements for fences along property lines. This fence was not on the property line but past it. Mr. Fayyaz observed it might be better for the homeowner to go through the process without the Committee reviewing the application. Mr. Gheorghiu’s associate stated they had applied for a permit, which resulted in them needing to apply for an encroachment. Mr. Gheorghiu stated that Zoning had looked at the fence and determined it encroached on City property and advised that the homeowner go before the Property and Right-of-Way Committee.

Mr. Irvine felt it was a Board of Adjustment (BOA) issue. Mr. Volpi inquired if the BOA could give a variance to leave the fence. Mr. Irvine responded yes and that it was a significant encroachment. Mr. Irvine added that he was against “incremental” encroachment sanctioned by the City and preempting public property.

Mr. Fajardo expressed the BOA may allow the fence to remain, but would not allow the owner to increase the nonconformity. He stated it goes back to hardship, which is not there.

Mr. Volpi inquired if they should go to the BOA first. Mr. Fayyaz questioned if the BOA allowed the encroachment, would the homeowner be able to go back to PROW to increase the height. Mr. Irvine stated that would be a zoning issue and was not the Committee’s directive.

Mr. Gheorghiu stated he had added 16 in. to the existing 4 ft. wall prior to obtaining an “after-the-fact” permit. Mr. Volpi stated the BOA would probably not give approval and that the homeowner’s only recourse would be if the Committee recommended an encroachment agreement, which would go through the City Attorney’s Office and then to the City Commission for approval.

Mr. Irvine stated the permit was insignificant due to the fact that the fence had not been built according to the permit.

Ms. Ingold inquired that if a permit was issued and construction took place, had the City sent an inspector. If an Inspector had given approval, would the fault go

to the City? Mr. Irvine responded no and Mr. Fayyaz added that any permit is revocable.

Mr. Terrell stated that the Committee had no authority to "offer release" to the homeowner and that the issue was "overly complicated."

Mr. Terrell restated the two questions being what to do with the existing permit application and whether or not to go to the BOA.

Mr. Irvine stated that if the Committee voted not to recommend relief, Code would cite the owner for "unpermitted" work on the structure. Mr. Gheorghiu responded that he had been in touch with his Inspector and was keeping him informed. Mr. Irvine explained that if the homeowner received a citation, the homeowner could take the citation to the BOA to get relief from the citation for the after-the-fact permit and the encroachment in the right-of-way. Mr. Volpi inquired again regarding the hardship. Mr. Irvine stated the Board does not recognize financial cost as a hardship. Mr. Volpi said the "worst that could happen" is the homeowner would have to take the wall down and reshape it. Mr. Gheorghiu stated there had been pavers put down as well.

Mr. Irvine offered an alternative; the homeowner could apply to the City Commission for a partial vacation of right-of-way. If the existing land outside of the wall could support the site triangle needs the City has for traffic, the homeowner could approach the Commission to request that a portion of the right-of-way be vacated. Mr. Fayyaz added that the site triangle has a height associated with it.

Following further discussion and with no request to vacate, Mr. Terrell recommended the following order of operation:

1. Request vacation.
2. Come back to the Committee to vacate the right-of-way where the wall sits.
3. Talk to the Inspector during this time so he does not site the homeowner for the two additional courses of block.
4. When the process had been completed, if the building permit were denied, the two courses of block would have to be taken down.

Mr. Irvine stated it should be done incrementally and that the Committee could recommend the applicant pursue the possibility of a partial vacation of right-of-way. The homeowner could "put any enforcement action at bay" by communicating the situation to his inspector and work toward a solution.

Motion made by Mr. Terrell, seconded by Mr. Irvine, to defer the request to allow the applicant to amend his request and look at possibilities including vacations. In a voice vote, the **motion** passed unanimously.

The Committee recommended the homeowner speak to Mr. Fajardo and Mr. Girisgen as soon as possible to “start the process.”

There being no further business to come before the Committee, the meeting was adjourned at 11:27 a.m.

[Minutes prepared by J. Picinich, Prototype, Inc.]