

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, NOVEMBER 19, 2009 – 10:00 A.M.

COMMITTEE MEMBERS PRESENT

Peter Partington, Chair
Robert Dunckel, City Attorney's Office
Mark Darmanin, Public Works
Carol Ingold, Parks & Recreation Supervisor
Anthony Fajardo, Planning
Tony Irvine, Survey

STAFF

Victor Volpi, Senior Real Estate Officer
Deborah Hernandez (attending for Mike Maloney)
Diana Alarcon, Parking and Fleet Services
Jennifer Picinich, Recording Secretary, Prototype, Inc.

CALL TO ORDER

Chair Partington called the meeting to order at 10:05 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 OCTOBER 15, 2009 MINUTES**

Corrections:

Pg. 11: change Terrill to Terrell

Pg. 1: Change Mr. Girisgen's title from Land Development Engineer to Land Development Manager

Mr. Darmanin and Mr. Fajardo joined the meeting at 10:06 a.m.

Motion made by Mr. Irvine, seconded by Mr. Darmanin, to approve the minutes of the October 10, 2009 meeting with corrections. In a voice vote, the **motion** carried unanimously.

ITEM TWO: **RELOCATION OF EASEMENT & STORM LINE**

ADDRESS OR GENERAL LOCATION: 3410 SW 27th Street

Mr. Volpi explained that the Tedesco Family Partners, LP would like the Committee's positive recommendation to relocate a 12 ft. dedicated easement and storm line for the purpose of constructing a new home. There is a 12 in. outfall.

Walter Morgan, from Morgan, Olsen & Olsen, LLP was present. He explained that his client has three parcels of land that have been reconfigured into two parcels. The existing 12 ft. easement was between two of the former parcels. Since they have moved the property line, they need to vacate the current easement and relocate it to between the new property lines to separate the new parcels.

Mr. Irvine stated the property was originally part of Broward County's incorporation. He added that there is a 12 in. storm drain and a bleeder was installed there for the water line.

Mr. Morgan stated that the drain would stay "exactly where it is in the cul-de-sac," but would be rerouted.

Mr. Irvine questioned Mr. Morgan's statement and Mr. Irvine stated he spoke with the drainage engineers. The catch basin serves mainly asphalt and "all that goes in there is storm water runoff with no pre-treatment." The drainage engineers contacted Broward County Environmental who expressed "being amenable to granting a permit for a new outfall." However, City engineers have conditions they want observed, such as a manatee grate at the outfall, PRV [pressure reducing valve] in the structure and a control box with a red valve or backflow valve.

Regina Bobo-Jackson, of Gator Engineering Consultants, was present and is the civil engineer for the project. Regarding additional cost, she stated it would be significantly more, since what is already there "is just a pipe." She added that a control structure is required, which is typical "in this kind of condition." It was not built under current standards and needs to be brought up to standard. She added "this was anticipated."

Mr. Irvine expressed he does not want the City to have to do a retrofit in a few years.

Mr. Volpi inquired who would approve the permit. Chair Partington responded the Land Development Manager.

Mr. Darmanin prefers not to have a "pinch valve," i.e. a red valve, installed. Ms. Bobo-Jackson asked Mr. Irvine to provide the comments he mentioned to her.

Chair Partington stated he understands why Mr. Darmanin does not want the red valve installed, as they "are a pain to maintain and are arguably ineffectual." The request to relocate easement has to be proceeded by the relocation of the pipe. The first condition for relocating the easement is to relocate the pipe, which has sub-conditions such as being subject to pulling all applicable permits from the City and the County.

Mr. Irvine thought the Committee "could address the red valve here." He inquired if Chair Partington felt it should be "left for Permitting."

Chair Partington responded affirmatively and added that the only issue was the problem with non-return valves. [The City] has been experimenting with "a more expensive version of the red valve which is inland of the outfall."

Ms. Bobo-Jackson inquired if the City would be "willing to share some of that expense." Chair Partington responded it was doubtful. He felt the Committee had to leave it subject to all applicable permits from the City and the County, who may not be on the "same page with what we want."

Mr. Darmanin expressed that if the pipe is "out of water as it is" or if it is "above the mean high water," there is no reason for a pinch valve or an inline valve

Mr. Irvine stated the "mean high water" in that area is between 1-3 to 1-7. The "invert of that structure is about 4."

Chair Partington inquired if "anyone" was aware of any history of tidal flooding. Mr. Morgan replied "no." Mr. Darmanin thought a new pollution retardant basin [PRB] "put in the street would probably be sufficient, as opposed to placing one at the outfall area."

Chair Partington reiterated the suggested conditions of having the applicant pull all applicable permits from the City and the County and to include explicit consultation with Utilities. He added that what the Committee is asking for from the applicant could be at a significant cost.

Mr. Dunckel expressed the project needed to go to Property and Zoning and the City Commission, to vacate the easement that was dedicated on the face of the plat so that all of “these things end up becoming conditions of that vacation.”

Mr. Morgan stated there were three lots, one was vacant and they are going to “end up with two lots and two houses again.”

Motion made by Mr. Irvine, seconded by Mr. Darmanin, that the Committee recommend the vacation of the existing storm drain easement as requested with conditions that the vacation shall not be effective until such time as a new outfall line is created, is designed and installed, with all applicable permit requirements of the County and the City, and the State if necessary, and that the City permit be processed with explicit consultation with the Utilities Department for their feedback on the conditions of City Permitting and a new easement be dedicated 12 ft. wide to cover the newly installed fall line, and not vacate the old easement until conditions are met for the new easement.

Mr. Darmanin requested clarification that the new pipe be centered in the new 12 ft. easement.

Mr. Irvine **amended the motion**, seconded by Mr. Darmanin, to include that a new pipe be centered in the new 12 ft. easement.

In a voice vote, the **amended motion** carried unanimously.

ITEM FOUR: **VACATION OF RIGHT OF WAY**
[out of order]

ADDRESS OR GENERAL LOCATION: 2624 NE 23rd Street

Mr. Volpi explained that the applicant, Mr. Alex Gheorghiu has requested that his wall remain in the right-of-way at the corner of Bayview Drive and NE 23rd Street. This item was discussed at the last two Committee meetings. He is requesting a vacation of the needed amount “shown in the back-up.”

Mr. Dunckel wanted to “verify for the record, that when the wall was built, was there a permit application that showed the location of the wall as it exists today relative to the right-of-way.”

Mr. Volpi inquired if Mr. Gheorghiu had ever seen a permit for the wall. Mr. Gheorghiu responded he did not see a permit, but was told it was permitted.

Mr. Irvine stated that the permit does not show the wall encroaching on the property line. He added that he had commented before that the permit did not "grant any encroachment." Mr. Dunckel stated that even if it had under the ULDR, "you have to comply with the law."

Mr. Irvine stated he had spoken with Dennis Girisgen and Mr. Girisgen was "satisfied that the site triangle would not be affected by giving up that portion of right-of-way." Mr. Irvine took some photos of the site triangle which the Committee referred to. He stated that the field evidence agrees with Mr. Girisgen's conclusion. Mr. Irvine added that he had another issue regarding that they want the buffer around the wall in vacation which would make the rights-of-way of Bayview Drive and 23rd Street narrower than their platted width. He stated he would not support that. Mr. Irvine stated they would either get a variance from the Board of Adjustment for the entire wall or not. He added that additional restricting of the right-of-way would not help the situation.

Mr. Dunckel stated that "assuming a vacation were granted as to that part," then they would be back in front of the Board of Adjustment with respect to the site triangle of 25 ft. as well as the 3 ft. setback.

Chair Partington stated that if the Committee grants the request, it would still go before the Board of Adjustment for the 25 ft. site triangle and then the 3 ft. setback. The Committee would not agree to an "artificial reduction" in the width of the right-of-way in order to avoid the obligation to set the wall back 3 ft. from the right-of-way line.

Mr. Dunckel expressed he would not support the application.

Chair Partington stated there would be no monetary compensation, "no matter how they structure it."

Mr. Irvine stated there would be a \$3,000 fee for processing. Mr. Dunckel added that the fee was to cover the City's administration expenses.

Mr. Irvine stated that if the City "has no use for that portion of right-of-way, that is fine." Otherwise he did not want to accommodate a mistake.

Mr. Fajardo expressed that the applicant needed to be able to show hardship. Mr. Dunckel added that economic hardship does not count.

Mr. Gheorghiu inquired if there was a 3 ft. setback in 1977. Mr. Dunckel replied "probably not."

Mr. Irvine stated there are several issues, but “the big issue is increasing the height of the wall.”

Mr. Dunckel explained that the Committee is dealing with a non-conforming wall that had to be 3 ft. setback. It was legal when it was built. Because it is a non-conforming wall, “you cannot expand a non-conforming use.” By increasing the height by 16 in., “you have expanded a non-conforming use, which is an issue that the Board of Adjustment would have to take.”

Chair Partington stated that “arguably the issue would have to be sent back to deal with the current code.” He added that taking 3 ft. out of the “two pieces of right-of-way” was “precedent setting and undesirable” in his view.

Mr. Irvine explained that if the City determines they do not need the right-of-way and vacate it, the question becomes what type of wall can the applicant use once the encroachment of public right-of-way is addressed.

Ms. Hernandez stated that in the “worst case scenario,” if the Committee grants the vacation of the right-of-way, the applicant would have to put the wall back to the original non-conforming height.

Mr. Dunckel stated that “assuming there was a vacation of the colored area, that portion of the wall which encroaches in the colored area, is illegal and therefore does not get non-conforming structure status.”

Mr. Darmanin inquired if it would be “prudent to allow the applicant to go to the Board of Adjustment first.

Mr. Dunckel stated the only thing the applicant could go to the Board of Adjustment on is the 16 in. [addition to the wall].

Mr. Darmanin felt the applicant would be better served by knowing the issues.

Mr. Irvine stated that the only way he would support the application is if the right-of-way is not needed by the City. If is not needed by the City, it does not matter if there is a wall or not. He added that the charge of the Committee is the right-of-way.

Motion made by Mr. Irvine, seconded by Mr. Dunckel, that the Committee recommend approval of the vacation of the portion of the right-of-way shown on the drawings submitted by the applicant, with the exception that no portion of that right-of-way which lies outside of the tangents to the curb shall be vacated with the effect of keeping a constant width on NE 23rd Street and on Bayview Drive.

This vacation would be subject to the normal conditions of vacation submittal to DRC [Development Review Committee] and P&Z [Planning and Zoning].

Mr. Irvine wanted to point out that the applicant bought the house with the wall built in the current location and “inherited” the problem.

Ms. Ingold inquired that if area is not vacated and the owner takes down 16 in., is the wall “in effect on our property, so if someone ran off the road and into the wall the City is liable.”

Mr. Dunckel replied that it could be.

Mr. Irvine stated the City should either “get out of the right-of-way or get the wall out of the right-of-way.”

Mr. Volpi agreed that [the possible liability] was another reason for vacation.

Chair Partington expressed that if there was a crash at this intersection and an attorney found something non-conforming, the attorney might argue that the non-conformity contributed to the crash. The fact that the City did not deal with the non-conformity could increase the City’s liability, even though the site line is adequate with the wall where it is.

In a voice vote, the **motion** passed 4-2 as follows: Chair Partington, yes; Mr. Irvine, yes; Mr. Darmanin, yes; Ms. Ingold, yes; Mr. Dunckel, no; Mr. Fajardo, no.

ITEM THREE: **NEW TENANT CITY PARK MALL**

ADDRESS OR GENERAL LOCATION: Unit 128 City Park Mall

Mr. Volpi explained that Mr. Ostrovsky would like the Committee’s positive recommendation to enter into a lease with the City for Shop #128 of the City Park Mall. Mr. Ostrovsky intends to put \$60,000 of improvements into the space to create a full-scale Kosher Restaurant. Part of these improvements may include a new front door with steps at the front window. He is also requesting that the City purchase more tables similar to the ones that the City purchased before to increase seating directly outside Shop #127. Mr. Ostrovsky offers a five-year lease with five five-year options. The beginning of the rent would be \$10 per square ft. and a 10 percent increase every five years. Considering it will take some to complete construction and move in, Mr. Ostrovsky would like a four-month free rent from the Certificate of Occupancy. Mr. Volpi recommended approval and hoped the “upscale deli would bring in more business to the City Park Mall.”

Mr. Volpi added that \$10 per square foot is “less than what everybody else is paying.” However, the City has had trouble renting the space because it is on the corner, not visible, and patrons “cannot get to the door.” He expressed that it has been vacant for a long time and is a difficult space to rent.

Ms. Alarcon explained that the tables purchased by the City were purchased through a grant. There were never funds “put out.” Any additional tables in City Park Mall were purchased by restaurants currently at City Park Mall. She stated that Parking and Fleet Services has no intention of providing the tables.

Ms. Alarcon added that she has no issues with the lease, however she expects Parking and Fleet Services to be asked for the tables and they do not have the funding, nor the resources to “go after another grant.”

Chair Partington inquired why Parking would be expected to pay for the tables. Ms. Alarcon responded that City Park Mall is attached to City Park Garage. The leases that go through the City Park Mall go back into Real Estate through the general fund, not into Parking Services. She added that in the past, to try and make the area “more alive and to generate business, they went after a grant” and received a grant to put recycled tables there. She is concerned about the area becoming too crowded with tables.

Mr. Volpi said the fire department allows “x” amount of feet.

Mr. Irvine expressed concern about the request to allow four months from the CO [Certificate of Occupancy] and four months before the CO. He stated he is totally opposed to offering eight months of free lease time, as it works out to an effective rate of \$3.33 per square ft. for the first year.

Mr. Volpi stated that “it is making zero right now and he needs time to build.” If eight months is required to do that, Mr. Volpi agrees, adding that the applicant would not be making any money during that time.

Chair Partington commented that it is a “dead area” and the City is “always struggling to bring that area to life.”

Mr. Dunckel inquired about the patrons to the other restaurants and that if the applicant is subsidized to such an extent that he could “undercut the others.”

Mr. Volpi added that the market was different when the others “came in.” The other restaurants requested a rent reduction to \$12 per square ft., and the City “granted them everything they asked for.”

Mr. Dunckel did not agree to a five-year option. He recommended a CPI [Consumer Price Index] or two percent, whichever is greater, each year. He recommended only two five-year options. He wanted to know "what entity was going to be the tenant, have you looked at the financials, have you looked at his track record, and what experience does he have in running a Kosher restaurant." Mr. Volpi responded that Mr. Ostrovsky has owned three.

Chair Partington said there were many questions to be answered and the applicant was not present. Mr. Volpi stated the item should be deferred.

Motion made by Mr. Irvine, seconded by Mr. Darmanin, to defer the item and have Mr. Volpi provide more information and renegotiate to address Mr. Dunckel's comments about the CPI and the extensions.

Mr. Dunckel recommended the lease start with giving him four months and then start paying rent.

In a voice vote, the **motion** passed unanimously.

There being no further business to come before the Committee, the meeting adjourned at 10:58 a.m.