

ADDRESS OR GENERAL LOCATION: 2909 S. Andrews Avenue

Mr. Volpi explained that Keen-Dollar Enterprise would like the Committee's positive recommendation to vacate SW 29th Street from South Andrews Avenue west approximately 28 feet to a dead end at private property. He introduced Mr. Jerry McLaughlin, President of McLaughlin Engineering Company.

Mr. McLaughlin stated the property is currently used as private property, although it is City property. If it is fenced off he wants to go ahead and vacate and FEC [Florida's East Coast Railway] would get half and [his client] would get the other half. Mr. Volpi had a conversation with Mr. McLaughlin's brother regarding access to the alley. Mr. Dollar knows he would have to give access to that alley or vacate the alley. Mr. McLaughlin approached the FEC again regarding vacating the alley and the [FEC] legal department is "looking into it." There is one other private owner where the property is vacant and they are "having a hard time contacting." Mr. McLaughlin expressed "that would be our best scenario to vacate the alley also."

Mr. Dunckel inquired if FEC owns all of block 13. Mr. McLaughlin responded that a portion of lots 1, 2 and 3 is owned by a separate corporation. He repeated that the building is currently vacant and they are "having a hard time contacting them."

Mr. Irvine stated his concerns:

1. He wanted to know FEC's position on the vacation and inquired if Mr. McLaughlin had a written statement. Mr. McLaughlin stated they had a verbal agreement, but "obviously" it would be contingent on FEC having "something in writing agreeing to it."
2. Mr. Irvine stated "those alleys serve to re-circulate truck traffic at the back of those parcels" and he "does not know if the alley is not needed."

Chair Partington inquired if the purpose of the proposed vacation was to add to the land. Mr. McLaughlin responded affirmatively stating, "They are using it as private property now and it is City property." He added that there are fences that encroach and asphalt in the alley, which [his client] uses to park trailers.

Mr. Irvine stated he "sees all of that" but could not predict accurately what will happen 5-10 years from now with the railway system. He did not want to foreclose public access to the railway system on land the FEC owns. He added that he had seen nothing that demonstrated "this really meets criteria for vacation of right-of-way."

Chair Partington inquired about utilities. Mr. McLaughlin stated they would retain [the easement] as a utilities easement. Mr. Irvine pointed out that utility easements are “hard to get to at convenient hours.” He stated the utilities were not substantial and could be relocated at cost.

Mr. Fajardo stated there had been “discussion of the FEC as a greenway.” Vacating the right-of-ways might “lose some opportunities in the future.”

Chair Partington inquired who owns blocks 9, 10, 11 and 12, to which Mr. Irvine responded FEC. Mr. Volpi stated it was being used to park trucks and for storage.

Mr. McLaughlin stated FEC is not his client, but FEC knows [FEC] would receive half of the property by resolution if [the easement] were vacated.

Chair Partington inquired if the different lots fronting Andrews had different land uses or “just one main one.” Mr. McLaughlin responded it was all “basically used as a storage yard except the most orderly three lots of that block where there is a CVS building that is not occupied.” Chair Partington inquired if anyone uses the north-south alley.

Mr. Irvine responded that the alley is designed for truck traffic and is still open for travel. He added that it is not a smooth tarmac going up the alley. Currently he does not know if it is used; however, taking away the alley “certainly changes the potential for all of the lots that front Andrews Avenue.”

Chair Partington stated if they supported the roadway right-of-way vacation, then “we would dead end that alley.” He added it would make sense to vacate the alley as well, however they would not want to dead end the alley. Mr. Irvine responded “certainly not.”

Mr. McLaughlin stated Mr. Volpi had informed him that [his client] needed to give access to the alley or vacate the alley also. Mr. Volpi added the applicant was “willing to give a strip out to Andrews.” Chair Partington inquired how much and Mr. McLaughlin responded, “Whatever is required by code.”

Mr. Irvine stated he could not support “vacating anything that lies east of the southwest corner of the alley.”

Chair Partington responded that Mr. Irvine’s comments “make sense” and it would add half the right-of-way width to Mr. McLaughlin’s client’s property. Lot 8

is also FEC [land]. He added that Mr. Irvine's suggestion was supportable if it was just west of the alley.

Mr. Irvine stated he wanted to see a letter in support from the FEC before he would "foreclose options on that right-of-way."

Mr. McLaughlin stated they would not have gotten that far without the FEC's support. Mr. Irvine reiterated that he wanted to see "something in writing." Mr. McLaughlin stated he wanted to defer because he could not answer for his client regarding whether they were "willing to proceed with half of the alley instead of the whole alley."

Chair Partington stated if they were going to "pursue everything" they wanted to see the alley included. He added that anyone other than the FEC who potentially has access to the alley [would need to be] "okay with it." If everybody who fronts Andrews is "okay with losing the alley, then it might be viable."

Mr. Irvine responded from a development point-of-view:

- "If you take away the alley, you are seriously changing the available options on those lots that front Andrews."
- It is not a typical town lot; there is a wide avenue with a lot of truck traffic and industrial activity.
- To operate a business on Andrews you need rear access and parking.
- "It has come up before south of there, with rear access of buildings."

Chair Partington stated [regarding a prior application] the Committee "was going to go with it," but one or more of the property owners had objected. If all of the property owners "sign-off on it, then maybe."

Motion made by Mr. Dunckel, seconded by Mr. Irvine, to defer until such time as Jerry McLaughlin brought back. In a voice vote, the **motion** passed unanimously.

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

ADDRESS OR GENERAL LOCATION: Unit 128 City Park Mall – 120 SE 1st Street

Mr. Volpi explained that this item had come before the Property and Right of Way Committee in November, at which time the Committee deferred recommendation until the applicant was available for questions and comment. Mr. Ostrovsky

would like to construct a Kosher deli in Shop 128. He intends to spend \$80,000 for improvements as shown in the backup. He is requesting a five-year lease with five subsequent five-year options (a total of 25 years), a base rent of \$8 per square foot with a 10 percent rate increase every five years. He also requests four months of free rent from the time of his Certificate of Occupancy. He stated the Real Estate Office has difficulty renting this space as it is on the end and only has one access door. Mr. Volpi added that Mr. Ostrovsky intends to add another access door, which would make the space more viable. Mr. Volpi's office recommended:

1. Five-year lease with 4 five-year options for a 25-year total lease
2. \$10 per square foot base rent
3. 1.5 percent increase in rent per year
4. 4 months free rent from CO [Certificate of Occupancy]

Mr. Volpi explained that it has been "a difficult time" and one tenant is one year past due. The Real Estate Office believes having a tenant in the space is better than a vacant piece of property. He also recommends there be no assignment for five years. He believes the deli would be an asset to City Park Mall. He then introduced Mr. Ostrovsky.

Mr. Ostrovsky introduced his partner, Mr. Jerry Windle. Mr. Ostrovsky stated they were going to invest a lot of money. They would like to increase the rent at one percent per year. He stated he had spoken to Mr. Volpi about five years but after discussion with his partner, they are concerned that if something happened to either one of them they "would be stuck."

Chair Partington inquired what would happen if "things do not go well after a year or two." Mr. Ostrovsky responded that the five-year assignment "causes him a problem" in the case that he would need to sell, although he is not planning to sell.

Mr. Volpi stated that assignments are at the discretion of the City. He added [the City] has the right to refuse, "but not unreasonable." The applicant wants to have the right to sell.

Mr. Irvine inquired if an assignment clause was not included, whether they could write in an emergency exception.

Mr. Dunckel pointed out that the applicant is 60 years of age and that what has been presented to the Committee "is equivalent to a 30-year lease." He stated,

“Assuming the lease is drafted to prohibit assignment or sublease for the first five year period, it can be modified.”

Mr. Irvine stated he would rather the applicant come back for a modification of the lease than have an automatic assignment.

Mr. Terrell stated that in the past the Committee did not have a “right to wave anything” and did not “have as much say.” Mr. Dunckel agreed stating, “Usually the assignment implies that you take it with the same terms and conditions.”

Mr. Irvine added he did not want to keep their options “as limited as they already are.”

Mr. Volpi stated that if Mr. Ostrovsky decided to sell, the buyer would have to come back to the Committee with Mr. Ostrovsky and ask the Committee to amend the lease or “get a new lease.”

Mr. Dunckel added that another option was to renegotiate the terms so they could operate with a reasonable rate of return.

Chair Partington stated one tenant is already behind. Mr. Volpi added that two tenants are behind in their rents. Chair Partington inquired how they could “guard against that.”

Mr. Volpi stated the other tenants are at \$12 per square foot and Mr. Ostrovsky would be \$10 per square foot.

Mr. Ostrovsky stated the following:

- He knows what he is doing.
- He wants to be in one place.
- He adopted a special needs boy.
- He would run the business in the morning; his partner would run the business in the evening, as they are both single fathers.
- His Rabbi “is pushing for it.”
- The community needs it.
- They will do parties for the community.

Chair Partington responded he would like to see the space used but wants the Committee to guard against the same scenario regarding the rent not being paid. Mr. Volpi stated that was the “reason the deal was constructed this way” with Mr.

Ostrovsky spending his money up-front and the City would “abate the rent for awhile so he hits the ground running.”

Mr. Irvine inquired regarding Mr. Volpi’s recommended increase, what the rent would be at the end of 25 years. He expressed concern that it would not be realistic for downtown Fort Lauderdale and questioned if it would be the best use of the space.

Mr. Ostrovsky pointed out:

- He would be adding equipment, drainage and electric.
- It would be the only place on the east side of Fort Lauderdale that is Kosher
- The Synagogue is a big community and “they are waiting for it.”
- He believes the deli will help bring people to the area.

Ms. Alarcon stated that the area is currently locked at 7:00 p.m. and Mr. Volpi stated the applicant would like a special dispensation to keep the gates open until 10:00 p.m. Ms. Alarcon expressed concern that if the area was left open in the evening, there could be a problem with individuals loitering in the area. She stated the City “caters to a lot of people in that garage with year-long leases.”

Mr. Windle stated they have the same concern and therefore want to “put a door on street side.” Mr. Ostrovsky added they would have to keep the other door “open for the handicapped.”

Ms. Alarcon emphasized that if there is a problem, she has to shut the gate at a “certain time.” She suggested Mr. Ostrovsky approach the ADA [American Disabilities Association] for the other door. Mr. Ostrovsky responded he would do that if it were available; however, “the point is it is too narrow and the elevation is too high.” He added that regarding loitering, the homeless there are “not aggressive.”

Mr. Dunckel inquired how long it would take for the improvements to be completed to which Mr. Ostrovsky replied three to four months. Mr. Dunckel felt the rent obligation should begin when the CO is issued. Mr. Irvine suggested “free rent until the CO with a maximum time of four months.”

Mr. Terrell stated he had three contracts pulled because he had four one-year renewals; and the City Commission “may not like to see that many auto renewals without re-bidding.” Mr. Dunckel suggested “after the first five years, then CPI [Consumer Price Index].”

Ms. Alarcon stated she wanted a provision “to be able to shut down if it becomes a cost burden.” She added that she has no additional resources. She also wanted a provision to be able to “go back to tenants to collect maintenance funds regarding the contract for maintenance of the common area.”

Mr. Windle expressed there would be no “revenue flow” during the time they are “putting money” into the space. He stated that it is not a “Trump type location” but a difficult location. He added that the success of the deli is based on relations with the Jewish community. If they close at 7:00 p.m., they would have to depend on lunch sales to cover the rent. With unknown maintenance fees, the overhead position does not make it viable and it should be office space rather than food service.

Chair Partington expressed his desire to “see something happen” with the space.

Motion made by Chair Partington, seconded by Mr. Irvine, to recommend approval, subject to the annual rate of increase being 1.5 percent for the first five years; no rent is due until two months after CO; the agreement with Mr. Ostrovsky and Mr. Windle rather than a shell corporation; and that at the end of the five years it be written at the subsequent five years being with a CPI increase without a cap and a starting rent of \$10 [per square foot].

Mr. Ostrovsky had reservations regarding the motion. He stated that the area is “almost deserted and forced to close at 3:00.” He added that he is “ready to put money, but he needs the Committee’s help, not obstacles.”

Ms. Alarcon reiterated her concerns about having the option to close the gate early. Mr. Dunckel stated the Committee “would be remiss to not include a clause and for public safety reasons.”

Ms. Alarcon added that she would like a charge for maintenance to be built in when the leases renew. Mr. Volpi stated that if the increase to the CAM [Common Area Maintenance] occurred in five years, it would apply to everyone at the same time.

Amendment to motion made by Chair Partington to recommend with the shell corporation being allowed; no assignment during the first five years; \$10 per square foot; 1.5 percent increase for the first five years; CPI thereafter and a clause about the CAM coming in at the point at which all leases are renewed and valid, a CAM will be imposed, added to the lease; five years with two five-year

renewals at CPI, 15 years; ability for the City to control closing hours but not before 7:00 pm; no assignment during the first five years.

Mr. Ostrovsky stated, "I will not be able to do it." He added, "They finish prayer around 7:00-7:30, they come, I need to prepare the food. I think it will be around 10:00." He added that he would also do special parties. He stated he would work with Ms. Alarcon and be responsible to close the gate. Ms. Alarcon responded her concern was with property damage and loitering.

Mr. Dunckel suggested keeping the point vague in the motion. Chair Partington stated they are trying to build a "24/7 City" with activity downtown and it is "like an admission of failure to close at 7:00 p.m." Mr. Terrell added that "at the end of the day it is the City's property and we are responsible for that area."

Mr. Volpi added that being open later would draw a better element to the area. Chair Partington stated if there is a problem, the police would respond.

Mr. Terrell stated either the tenant or the City would have the right to secure the property.

Chair Partington repeated his amended motion:

Motion amended by Chair Partington, seconded by Mr. Irvine, for five years non-assignable, \$10 per square foot, 1.5 percent annual increase; two five-year extensions, after that at CPI; CAM at the point that all the property leases are renewed.

Mr. Dunckel stated that Ms. Alarcon's "public safety factor" should be taken into consideration, since there was not a "track record" of the area being open later.

Motion amended by Chair Partington, seconded by Mr. Irvine, that in addition the lease shall contain language referencing the City's ability to control the hours of operation of the area adjoining the leased property to be negotiated between the tenant and the City Attorney's Office for public safety purposes. In a voice vote, the **motion** passed 6-1 as follows: Chair Partington, yes; Mr. Dunckel, no; Mr. Terrell, yes; Ms. Ingold, yes; Mr. Fajardo, yes; Mr. Irvine, yes; Mr. Maloney, no.

Chair Partington explained that this is a recommendation, not a decision.

ITEM (WALK-ON):

FP&L EASEMENT

Address or General Location: SW 28th Street and SW 4th Avenue

Mr. Volpi explained that the City's Public Works Department would like the Committee's positive recommendation to approve two easements to FP&L to energize the new Fire Stations No. 3 and No. 49. These easement documents would be prepared by FP&L and the sketches in the backup would be refined, reviewed and submitted with a CAR for approval. He introduced Mark Friedman from Public Works.

Mr. Friedman stated the easements were needed for an underground FP&L line.

Chair Partington stated that FP&L wants to enter into an agreement with the City "that basically says if they put it in the right-of-way, if the City wants to change it around in the future, it would be at the City's expense."

Mr. Dunckel explained, "With the easement, they have a property right; if we want it moved, it would be at our nickel."

Mr. Terrell stated this is a transformer that services "this building only and into the electric room in the building." He added that FP&L needs the right to access for maintenance.

Mr. Dunckel stated that he has "been told" that there are tariffs that cover the right to go from the right-of-way to the meter, yet "they have not been able to produce that tariff yet" and whether that tariff applies to residential customers as opposed to commercial or industrial, he does not know.

Motion made by Mr. Irvine, seconded by Mr. Terrell, to recommend approval of both easements as requested, pursuant to the correct documents being prepared and filed. In a voice vote, the **motion** passed unanimously.

There being no further business to come before the Committee, the meeting adjourned at 11:49 a.m.