

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, JUNE 17, 2010 – 10:00 A.M.

Committee Members Present

Peter Partington, Chair
Julie Leonard, Utilities
Anthony Fajardo, Planning & Zoning
Carol Ingold, Supervisor, Parks & Recreation
Tony Irvine, City Surveyor
John Grossman, Code Enforcement
Robert Dunckel, City Attorney's Office
Tom Terrell, Public Works

Staff

Dennis Girisgen, Public Works
Carrie Sarver, Assistant City Attorney
Frank C. Snedaker, Jr., Chief Architect
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Call to Order

Chair Partington called the meeting to order at 10:02 a.m., and stated this was a meeting of the City's Property and Right-of-Way Committee, a City Staff committee with the responsibility of advising the City Commission on matters affecting the dispensation of City property.

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

ITEM ONE: APPROVAL OF MAY 20, 2010 MINUTES

Motion made by Mr. Irvine, seconded by Mr. Terrell, to approve the minutes of the May 20, 2010 meeting. In a voice vote, the **motion** passed unanimously.

ITEM TWO: VACATION OF EASEMENT

ADDRESS: 625 Andrews Avenue

Nectaria Chakas, representing the Applicant, explained that the property is west of Andrews Avenue and north of SW 6th Street. The Applicant is seeking to vacate an 18 ft. wide easement that was granted to the City in 1981. The utility easement was granted when Andrews Avenue was planned at 108 ft. wide. This width has since been amended, and the right-of-way granted at that time is not needed. She advised that the Applicant's actions are consistent with those of other developments on Andrews Avenue. Once the easement is vacated, 9 ft. must be dedicated back to Broward County in order to comply with the current width of Andrews Avenue.

She explained that there is a 76-unit affordable housing project that has been proposed for the site, and must begin construction by a specified time period.

Mr. Irvine asked if the rededication to Broward County would come under the Committee's jurisdiction. Ms. Chakas clarified that the Applicant had met with a County representative who had confirmed the 9 ft. may be rededicated to the County.

Chair Partington asked what the next step would be for the Applicant. Ms. Chakas advised because it is an easement rather than a right-of-way, it would go directly to the City Commission.

Motion made by Mr. Terrell, seconded by Mr. Irvine, to approve the Item as presented.

Mr. Girisgen asked if any utilities are located in the area. Ms. Chakas confirmed that there are none, and the overhead power lines are located in the existing right-of-way rather than on the Applicant's property.

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

Walk On for Property and Right of Way Meeting

No representatives of Teco Gas were in attendance at the meeting. Attorney Dunckel asked Mr. Girisgen if he was aware of the timeline of the issue. Mr. Girisgen responded that Teco had recently learned an easement would be necessary.

Attorney Dunckel observed that if no action is taken today, the issue will not be addressed "until the latter part of August." Mr. Girisgen noted that a special meeting could be held if necessary. He also advised that the Committee should "rule it out" if the address is not on City property.

Mr. Terrell stated that during construction, Fire Station 29 had allegedly undermined some adjacent property. He added that Attorney Sarver and Mr. Snedaker both have additional information on the issue.

Chair Partington noted that the discussion would be treated as a walk-on Item.

Attorney Sarver recalled that there had been issues over the past year regarding the Fire Station under construction and an adjacent property whose owner alleges that the structural integrity of his property has been compromised by work from the City's contractor, Mastriana. In an effort to address the situation, Staff had requested that Attorney Sarver review a letter that would allow the contractor to come upon City property to perform remedial work "under certain conditions." The conditions would include the following:

- Returning the site in the same condition;
- Having insurance indemnification;
- Sign a general release prior to work due to any potential claims that could arise from the situation.

Attorney Dunckel asked if the contractor has agreed to the covenant. Attorney Sarver stated they have not yet done so.

Attorney Dunckel asked if the contractor has "a revocable license with some additional provisions." Attorney Sarver replied she was not certain. Attorney Dunckel noted that a revocable license normally carries indemnification and insurance provisions, and could be revoked "for some superior municipal purpose." He asked if there is a timing issue involved.

Mr. Snedaker explained that the issue has been going on for roughly one year, and monies have been received from the general contractor's insurance company, which paid in order to avoid litigation. The contractor feels that pressure grout with urethane would correct the situation; however, they would be required to come onto City property "and inject from our property" to make the necessary corrections. He concluded that there has been no damage in a year, but it could occur in the future.

Attorney Dunckel asked if there is any harm in the Item not going before the City Commission until August. Mr. Snedaker stated in his opinion no harm would be done, although there may be differing opinions.

Attorney Sarver asked if the conditions could be attached to the license. Attorney Dunckel advised the issue is not one of agreement between two parties, but requires City Commission approval as well.

Attorney Sarver said the separate agreement is the general release and covenant not to sue, which essentially means the contractor is allowed to come

onto the City's property in order to fix his own property. This must be entered into by both parties and must go before the City Commission.

Mr. Irvine observed that there is a concern regarding the 3 ft. difference in grade due to hurricane season: if a good deal of water is in the soil, it could create damage. He felt the Item should be moved ahead as soon as possible.

Mr. Terrell stated he did not feel the Item could be added to a City Commission Agenda before August 17. He asked if it is possible for the Committee to approve the proposed revocable license on the basis of their current knowledge.

Attorney Dunckel agreed the Committee could do this; the question is whether the revocable license must go before the City Commission, or if there is another process that does not require Commission approval.

Mr. Irvine asked if the contractor would set up on City property and pump grout into the foundation. Mr. Snedaker clarified that the grout would go beneath the foundation. Mr. Irvine asked if the contractor would leave anything on City property. Mr. Snedaker replied they would "clean up and leave the site in the same condition it was when they arrived," with the exception of plant material, which the City will replace.

Chair Partington stated no recommendation from the Committee is needed. Attorney Dunckel noted that the issue "may very well be going to the Commission," and felt a condition should be added specifying that any equipment or materials may only be placed in seven parking spaces to prevent interference with ingress/egress. Mr. Snedaker advised ingress/egress will be maintained at all hours.

Attorney Dunckel asked what the expected construction period would be. Mr. Snedaker estimated it would be three to four days.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to approve granting a license or some other such instrument, as to be determined by the City Attorney's Office, which would give Mastriana the right to come upon City property for the purpose of performing the grouting that is necessary to mitigate the damages, with the form of the instrument and the covenant not to sue subject to the discretion of the City Attorney's Office.

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

Attorney Dunckel reported that Fire Station 35 had put out a contract to acquire an ingress/egress pathway through a 10 ft. planting strip on the south side of NE 51st Street. The attorney on the other side of the negotiations had some objections, one of which was that the City only had 30 days to examine title and

“whatever defects there may have been.” At that point the City had the option to proceed with the transaction while accepting the title defects, or cancel the transaction. Another issue was that the contractor would not absorb any of the expense of perfecting the title.

He explained that the 10 ft. strip is part of the common elements of the condominium on the north side of 51st Street. Common elements travel with each of the 48 dwelling units in the condominium. The Declaration of Condominium states that common elements cannot be conveyed “separate and apart from” any of the dwelling units; an amendment of the Declaration would be necessary in order to convey proper title, which could not be done within the 30-day window. After further discussion, it was determined that the City would proceed with an eminent domain action, as there are provisions within the Declaration of Condominium that govern condemnation of common elements and distribution of proceeds.

He concluded that once the City places a good faith deposit in the court, they will have the title. Litigation is then continued as to how much more money might be owed. Some of the contract negotiations had obliged the City to make improvements to the right-of-way, such as landscaping and lighting; they may not be subject to these specifications after all.

Mr. Snedaker observed that this is “the cleanest way” to proceed, noting that the issue could come before the Planning and Zoning Board and a “disgruntled owner” would be present. Attorney Dunckel said the Office would inform Planning and Zoning that the issue is now in the hands of the Circuit Court.

There being no further business to come before the Committee at this time, the meeting was adjourned at 10:27 a.m.

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