

**APPROVED**  
**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING**  
**CITY HALL 8<sup>TH</sup> FLOOR**  
**COMMISSION CONFERENCE ROOM**  
**THURSDAY, SEPTEMBER 16, 2010 – 10:00 A.M.**

**Committee Members Present**

Mehrdad Fayyaz, Acting Chair  
Carol Ingold, Supervisor, Parks and Recreation  
John Gossman, Code Enforcement  
Antoinette Butler, Parking and Fleet Services  
Tom Terrell, Public Works  
Tony Irvine, Public Works  
Julie Leonard, Utilities  
Anthony Fajardo, Planning and Zoning  
Robert Dunckel, Assistant City Attorney

**Staff**

Gene Schlanger, Economic Development Manager, Real Estate Division  
Carrie Sarver, Assistant City Attorney  
Dennis Girisgen, Public Works  
Barbara Hartmann, Recording Secretary, Prototype, Inc.

**Communications to City Commission**

None.

**Call to Order**

Acting Chair Fayyaz called the meeting to order at 10:06 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 AUGUST 19, 2010 MINUTES**

**Motion** made by Mr. Irvine, seconded by Mr. Tyrell, to approve the minutes of the August 19, 2010 meeting. In a voice vote, the **motion** passed unanimously.

**ITEM TWO**

**AGREEMENT TO TEMPORARILY CLOSE ALLEY &  
ALLOW THE CONSTRUCTION OF 3 MONITORING  
WELLS IN CITY RIGHT OF WAY**

Address: 2601 E. Commercial Boulevard

Mr. Schlanger explained that Exxon Mobil is seeking to install three drill-monitoring wells. This would require the closure of part of the alley for more than three days.

Saeed Savul of Groundwater & Environmental Services (GES) Inc., representing the Applicant, stated his firm is performing an assessment at the property. A Mobil gas station has experienced a leak, and the team is trying to assess how far it has gone on the property. Contamination in the soil and groundwater has been found close to the property's edge. GES must go off the property to determine the extent of the contamination, which would require the monitoring wells in the alleyway. They are aware that utilities exist in the area and will use vacuum clearing technology to extend down to 8 ft.

Attorney Dunckel advised he was not familiar with this technology, and asked to know the diameter. Mr. Savul said it would be 12 inches, and the technology would work "like a... vacuum pump."

Attorney Dunckel noted that when the monitoring wells are installed, the result would be an at-grade operation; however, when the company "plugs in" to the wells, operations will be above grade. Mr. Savul replied the wells would be capped with concrete covered with approved manhole covers and would be monitored every three months. The installation time is estimated to be one to three days.

Attorney Dunckel stated he saw a need for a revocable license due to the above-grade maintenance of traffic. Chair Fayyaz agreed with this assessment. He asked what would occur if contamination is found at the monitoring well, such as going to another location to find the limit of the contamination. Mr. Savul confirmed this is what is normally done and is "not determined yet," but would be determined once the wells are in place.

Mr. Tyrell asked what would occur when the wells are no longer needed and are "left behind." Mr. Savul said once the site is clean, they will fill the wells to the top with concrete and remove the manhole covers.

Mr. Irvine emphasized that this must be part of the license agreement. Attorney Dunckel stated that at this point, the revocable license will be for monitoring only rather than for remediation, which would require a different revocable license due to greater encroachment into the alley.

Chair Fayyaz commented that it may be possible additional wells will be needed in the future. Mr. Irvine asked if the company has drilled for samples north of the

alley to determine if there is a clean area. Mr. Savul replied they have not. Mr. Irvine said it seemed “common sense” to find a clean spot before placing three wells in the alley, as it may be necessary to take more samples somewhere else to determine the limit of the contamination. He did not feel the Applicant had proven there is no further contamination outside the alley.

Mr. Savul said the Applicant did not wish to go “too far” and attempt to clean too large an area. Mr. Irvine asked if they are confident the contamination “ends somewhere in the alley.” Mr. Savul replied at this time they are confident.

Attorney Dunckel said the site map shows “no tie as to the location of the three monitoring wells” to the property line. He pointed out that the distance from the property line is necessary for the revocable license. Chair Fayyaz noted that this is also necessary for the required engineering permit.

Mr. Savul explained that sometimes utilities are found at a location and the digging must be moved. Attorney Dunckel reiterated that “at some point you’re going to know that precisely,” and this information must be included in the revocable license.

Attorney Dunckel continued that the Applicant’s materials also grant Power of Attorney to “several different layers of officers within Exxon Mobil” without identifying these individuals by name. He asserted that the Application will need to be “signed by a human being,” and added that the secretary of the corporation must provide a Certificate of Incumbency, providing the names of individuals in specific positions. This is also necessary for the revocable license.

Ms. Leonard asked if the water main is near the location of the proposed wells. Mr. Savul replied at this point he was not aware of the placement of all utilities, but “both public and private” utilities will be located before drilling begins.

Mr. Irvine added that Public Works will want a survey document showing where utilities are located in the alley and their distance from the property line, as well as a legal description of the required license by the surveyor.

**Motion** made by Mr. Irvine, seconded by Attorney Dunckel, that this Committee recommend the granting of the revocable license necessary for the closure and the installation of the three monitoring wells in the approximate locations presented to us here, subject of course to adjustments, and allowing with all indemnifications and the forms that Dunckel mentioned as far as incumbency, that we also include in that license the method of abandonment of these wells and agreement to perform that abandonment when the wells are no longer needed, subject to an engineering permit. In a voice vote, the **motion** passed unanimously.

**ITEM THREE**

**VACATION OF EASEMENT**

Address: 1004 W. Broward Boulevard

Mr. Schlanger explained this Application is for the vacation of an easement at the Dr. Kennedy Homes. The vacation would facilitate new construction on the project.

Nectaria Chakas, representing the Applicant, stated the Dr. Kennedy Homes project was approved by the City Commission and consists of the redevelopment of the existing site. The easement in question, which is for a lift station and a force main, does not service any properties other than the Dr. Kennedy Homes.

Attorney Dunckel pointed out that there is ongoing litigation challenging the project, and he felt it would be prudent for the Committee's recommendation to state that this would occur after the final disposition of all litigation. Ms. Chakas noted that the Applicant is seeking to have building permits issued by a specific date in order to obtain financing; she did not feel this condition "will necessarily work."

Chris Shear, representing the Carlyle Group, added that most residents have been relocated from the site, and nothing will be built pending the recorded release of the easement. This would prevent the Applicant from fully vacating the easement and beginning construction and/or demolition prior to the resolution of litigation.

Attorney Dunckel said he was not convinced to change his recommendation, which was that the vacation not take effect until the final disposition of all appellate challenges. He stated this should not preclude building permits. Ms. Chakas requested the addition, in the record, that precluding these permits was not the Committee's intent.

Mr. Girisgen asked if Ms. Chakas had included a copy of a letter from Mark Darmanin, representing Utilities, in the materials. Ms. Chakas said she had not, but noted the letter states that the structure is located within the identified easement, and the vacation will not be effective until the engineer's certificate is recorded in the public record. The certificate would require that the relocation of any City infrastructure in the easement be inspected and accepted by the Utilities Bureau.

Attorney Dunckel requested that the conditions cited in the letter be part of any motion from the Committee, in addition to the condition he had already stated regarding disposition of appellate challenges.

**Motion** by Attorney Dunckel, seconded by Mr. Irvine, to recommend approval of the vacation, subject to the conditions outlined in Mark's correspondence and subject to the condition that the vacation not take effect until final disposition of the appellate challenges.

Mr. Irvine requested that Mr. Darmanin's entire letter be read into the body of the motion so it is part of the Resolution, so when the City Commission sees the minutes the terms are clearly laid out for them. The letter is attached hereto as Attachment 1.

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

**ITEM FOUR**

**VACATION OF RIGHT OF WAY**

Address: 501 Solar Isle Drive

Mr. Schlanger explained the Application is to vacate a portion of Solar Plaza Drive and Rio Coral Waterway, and Solar 501 LLC would like to remove any cloud on their title by vacating, as the City had entered into an Encroachment Agreement with a prior owner in 1987.

Kristy Armada, representing the Applicant, explained the residential property is on a canal on Solar Isle. A survey of the property shows it is adjacent to the seawall and dock, and therefore subject to the Encroachment Agreement. The Applicant is requesting that the property be vacated and deeded to the owner.

Attorney Dunckel noted that "all of those things that caused that Encroachment Agreement" are no longer on the property, and felt the Agreement should be modified to eliminate them. He pointed out that he was "not ready to vote on the second part of it," as the owners of the lots may have title to submerged lands on these lots. He felt they should know more of the history to learn "how we got to where we are today."

He continued that the canals are not dedicated to the public, although there are other areas of Las Olas Isles where they are dedicated. He recommended a motion to defer the Item until the next Agenda so more information can be provided about the history of the Encroachment Agreement.

Attorney Dunckel advised that the Committee may first wish to authorize a modification of the existing Encroachment Agreement to "take the Solar Drive part out of it." This would require a survey. They would then "figure out what we're going to do with the canal."

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**Motion** made by Attorney Dunckel, seconded by Mr. Irvine, to defer this Item until the next Agenda so that the attorneys can conduct further due diligence. In a voice vote, the **motion** passed unanimously.

Ms. Ingold recommended that the members save their information packets on this Item.

There being no further business to come before the Committee, the meeting was adjourned at 10:36 a.m.

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