

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, OCTOBER 21, 2010 – 10:00 A.M.

Committee Members Present

Mehrdad Fayyaz, Acting Chair
Carol Ingold, Parks and Recreation
John Gossman, Code Enforcement
Tom Terrell, Public Works
Tony Irvine, Public Works
Mark Darmanin, Utilities
Anthony Fajardo, Planning and Zoning
Robert Dunckel, Assistant City Attorney

Staff

Victor Volpi, Liaison, Senior Real Estate Officer
Carrie Sarver, Assistant City Attorney
Dennis Girisgen, Public Works
Diana Alarcon, Director, Parking and Fleet Services (10:30 a.m.)
Antoinette Butler, Parking and Fleet Services
Keith Hutchinson, Operations
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Call to Order

Acting Chair Fayyaz called the meeting to order at 10:03 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 SEPTEMBER 16, 2010 MINUTES**

Attorney Dunckel said Item 4 of the September 16 minutes was deferred to today's meeting, and asked that this Item be added to today's Agenda for updated discussion.

Chair Fayyaz noted the following correction to the September 16 minutes: Attorney Dunckel should be listed as a voting member and Mr. Girisgen should be listed as a member of Staff. Mr. Terrell requested correction of the spelling of his name.

Motion made, and seconded by Ms. Ingold, to approve the September 16, 2010 minutes as corrected. In a voice vote, the **motion** passed unanimously.

ITEM TWO **SURPLUS PROPERTY**

Address: Various

Mr. Volpi said the Real Estate Office would like the Committee's positive recommendation to surplus a property located at 1239 NE 3 Avenue and put it out for bid, as an individual has expressed interest in purchasing it. The property is not needed for City services.

Mr. Darmanin noted that the property in question was included as Item 146 on the City's salable property list. He said as this parcel was not identified for removal from the list, "you have your authorization to be able to sell that piece of property." Chair Fayyaz clarified that this means the parcel can be brought before the City Commission to request a sale.

Attorney Dunckel said there is no further action needed on this Item, as it was previously authorized by the Board.

ITEM THREE **VACATION OF UTILITY EASEMENT**

Address: 801 East Sunrise Boulevard

Mr. Volpi read the requested action, which is to vacate a portion of a 7.5 ft. utility easement located at the east end of the property. This portion of the easement is not needed for public use, although FDOT requires it for right-of-way and will not accept it with an easement. This Item is related to the vacation of easement requested in Item 4.

Howard Jablon, representing A.J. Hydro Engineering, Inc., said he is the civil engineer representing the owner for a project called Pet Supermarket. The property has gone through site plan approval, and the project is currently under construction. As part of a requirement for the project, the developer dedicated 10 ft. of additional right-of-way on the south side of the project to accommodate the Broward County Trafficways Plan. There were existing utility easements located within the same 10 ft. to be dedicated, and FDOT will not accept the dedication without utility easements being vacated first.

He submitted letters from each utility company that can put in utility easements. There are no facilities within this easement at this time, and none are proposed. The Applicant is requesting vacation of the easement so the right-of-way may be dedicated to FDOT.

Mr. Jablon said the reason two easements are being dedicated is that there is an existing 10 ft. utility easement along the north side of the right-of-way line, which is being vacated in Item 4. On the east side of the property is an alley "that was vacated years ago," with an easement taking its place. The proposal for Item 4 is to vacate only the south 10 ft. of that utility easement, which also lies within the area to be dedicated to FDOT.

Mr. Darmanin said he did not believe there were any utilities in the area except possibly a meter or service line. He said if a utility is found at the site, it must be relocated at the developer's expense. Mr. Jablon agreed to this.

Motion made by Mr. Darmanin, seconded by Attorney Dunckel, to vacate the south 10 ft. of the existing 7.5 ft. utility easement proposed in Item 3, subject to relocation in the event any utilities are found in Item 3. In a voice vote, the **motion** passed unanimously.

ITEM FOUR **VACATION OF EASEMENT**

Address: 801 East Sunrise Boulevard

Motion made by Attorney Dunckel, seconded by Mr. Darmanin, to recommend vacation of Item 4 on the same terms and conditions as Item 3.

Mr. Irvine said he had concerns about the document that would create the second easement, and he wished to see a copy of it. He said he wanted to be sure there were no special conditions that would pose a problem. Mr. Volpi produced a copy of the document for Mr. Irvine's review.

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

ITEM FIVE **VACATION OF RIGHT OF WAY & EASEMENTS**

Address: 590 NW 7 Avenue

Mr. Volpi said the Applicant wishes to vacate a portion of the right-of-way dedicated for:

1. a right turn lane on NW 7 Avenue;
2. the right lane easement on NW 7 Avenue approaching the intersection of NW 6 Street;

3. the right lane easement on NW 6 Street at now vacated NW 6 Avenue;
and
4. the 6 ft. utility easement adjacent to the right turn lane easement along NW 6 Street as shown in parcel D of the plat.

Linda Strutt of Linda Strutt Consulting represented the Applicant.

Attorney Dunckel noted that the Applicant is not looking to vacate the non-vehicular access lines on NW 7 Avenue. Ms. Strutt said the Applicant has already amended these access lines, which was approved by the City Commission on September 21, 2010.

Ms. Strutt explained that the project was originally platted 10 years ago with the hopes of future development. The Applicant developed the site plan and worked with City and County Staff on access. Minor modifications have been made to the plat, shifting the main entrance off 7 Avenue to the south; this changed the turn lane associated with the opening. The site plan has gone through DRC and was revised per comments, and was unanimously approved by the Planning and Zoning Board, all subject to "cleaning up the conflicts of the plat." She concluded that the appearance before the Committee is "the first step."

Mr. Irvine asked if the Applicant has spoken with the CRA engineer in this area. Ms. Strutt said she had spoken with this individual "as recently as two days ago." Mr. Irvine asked if there was any documentation from the CRA supporting the changes. Sean Jones, agent for the Applicant, said one condition of site plan approval is compliance with the requirements of the CRA, which has had an opportunity to comment and give conditions.

Mr. Darmanin noted "the radius turning the corner of what would have been 6 Avenue," and said he would add the stipulation that if there is a utility found in any of the areas it would be relocated at the developer's expense. Attorney Dunckel said it would be possible, if they wished, for the Committee to recommend approval of all four areas with the same condition.

Motion made by Mr. Darmanin, seconded by Attorney Dunckel, that we vacate numbers 1, 2, 3, and 4 as presented, with the condition that if a utility is found in those areas, that it be relocated at the developer's expense. In a voice vote, the **motion** passed unanimously.

Chair Fayyaz noted there are two additional items to discuss, a "walk-on" and a deferred item.

The walk-on is 81 Ocean Harbor, for which the Applicant would like a positive recommendation to allow parking in any portion of the right-of-way on Harbor Drive. Building and Code Enforcement were processing permits to repave

parking in this area and discovered that parking spaces encroached 2-3 ft. into both sides of Harbor Drive and have done so since the building was constructed.

Mr. Volpi introduced Nirmla Motwani, manager of the motel, representing the Applicant. Mr. Motwani said this is a U-shaped street, and over the past 20 to 25 years the City had added landscaping that affected the encroachment. He said this was not the only property in the area affected in this way.

Attorney Dunckel said he would recommend that the Committee not entertain this Item at this time, as there are "a number of other issues" in the beach area that are similar. When a development is approved, no part of parking is authorized to be within a public right-of-way; however, he said several developments have used rights-of-way for parking "for a number of years." He felt the City should take a "larger systemic approach" than attempting to solve one issue at a time, and he felt establishing a solution for the single issue before the Committee today could be seen as precedent for other issues later on. He asked that the Committee defer the Item, and noted that "this is a difficult problem," as Code Enforcement has forced other businesses with similar issues to make modifications to their operations.

Mr. Gossman said the Code Enforcement Board had found that the issues involve paving done without permits at some locations. Mr. Motwani said the case for the Applicant is not the same case, and the Applicant should not be penalized for the actions of other properties.

Attorney Dunckel said there is no policy that allows private property owners to use public rights-of-way for parking. He asked if Code Enforcement was receptive to members of Staff explaining that "a larger situation" is going on and requires additional time, especially as it is only coming to the Committee's attention today. Mr. Gossman said if there is support from the City Attorney's Office in recommending an extension on a case, this would be the case. Attorney Dunckel explained that he did not want the Applicant to be penalized while a way to address the situation at hand is determined.

Mr. Terrell said he agreed with Attorney Dunckel and recommended deferral.

Chair Fayyaz explained the situation to Director Alarcon and asked if she would like to add anything. Director Alarcon said she agreed with Attorney Dunckel, and felt the situation should be discussed further between Parking and Fleet Services, Public Works, and the City Attorney's Office before proceeding further. She noted that the situation creates issues for the general public as well as the property owner(s).

It was clarified that Code Enforcement would take no further action on the specific case before the Committee until a solution has been reached.

Mr. Darmanin said the cases affect utilities as well, and said if parking is ultimately allowed in rights-of-way there would have to be “some sort of revocable license.” He said he would also like to see the original plans from the current Item if it returns to the Committee at a later date, as this would address allegations that there might have been landscaping additions.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to defer this Item to be brought back at a later date after Staff has had an opportunity to review the more universal problem and come up with some recommended solutions, and to incorporate storm water analysis and also a complete building permit history when this Item comes back before the panel.

An **amendment** was added to the **motion** to include a recommendation from the Committee to Code Compliance requesting that any action be abated until the matter is resolved. Attorney Dunckel and Mr. Irvine accepted the **amendment**.

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

The final Item had been deferred from the September 16 meeting, and is a request for vacation of right-of-way at 501 Solar Isle Drive.

Attorney Dunckel said he had met with Kristy Armada, presenter, and reviewed several issues. At the previous meeting, he recalled it had been the consensus that since there were no improvements encroaching into the Solar Plaza Drive right-of-way, to the north of the properties in question, there does not seem to be an issue with eliminating the encroachment agreement as to Solar Plaza Drive.

The more difficult issue, he continued, was that lands west of the platted lot lines had been filled in. He said the dedicatory language on the base of the plat does not speak in terms of dedicating the canals to the public, as do some other plats. However, law has often ascribed dedications that are within the basic purpose and intent of the plat. He said the canals in this case are intended to serve as a “wet right-of-way,” not only for the residents of the subdivision but for the general public.

Attorney Dunckel said the question is who would end up with ownership of the bottomlands, as the plat does not reserve ownership of these lands to the maker of the plat. His conclusion was that, just as a property owner abutting a public right-of-way owns the underlying fee simple to the center line, so the bottomlands would go to the abutting property owners.

He advised a distinction should be drawn between ownership of the bottomlands and a “navigational servitude in favor of the public” that would allow the public to navigate through the canal’s waters. Thus far no permit from the Army Corps of

Engineers, authorizing the fill of the additional land, has been discovered. Because of this, as well as because it encroaches into navigational servitude, Attorney Dunckel concluded he could not justify making a recommendation that the encroachment agreement be lifted as to the filled-in lands. He said he was open to revisiting the issue if a permit from the Army Corps of Engineers is found, as they have superior authority in these issues.

He recommended that the Committee recommend modifying the encroachment agreement to eliminate the encroachment that abuts Solar Plaza Drive, but retaining the encroachment agreement regarding the filled-in lands.

Ms. Armada requested clarification that eliminating the encroachment agreement on the north side also affects the right-of-way. Attorney Dunckel said it would not, and the property line remains "where the platted property line is." It was clarified that if a permit from the Army Corps of Engineers is found, the Item would have to come back to the Committee.

Mr. Darmanin noted that the neighborhood in question had had "a number of discussions about storm water issues." He noted that a good deal of storm water work is being done in the area and he did not know what access might be affected. He said there are proposals for the addition of tide valves, and he did not know where these structures might be added.

Attorney Dunckel and Mr. Irvine discussed whether or not a clause or condition of termination in an encroachment agreement would allow the City to proceed with a storm drainage line in the neighborhood, should one be needed. Attorney Dunckel and Chair Fayyaz felt an easement would provide "an out for the future."

Chair Fayyaz suggested the Committee move the Item to their next meeting and review the report "more carefully."

Motion made by Attorney Dunckel, seconded by Mr. Darmanin, to defer this Item until the next meeting. In a voice vote, the **motion** passed unanimously.

There being no further business to come before the Committee at this time, the meeting was adjourned at 11:09 a.m.