

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, NOVEMBER 18, 2010 – 10:00 A.M.

Committee Members Present

Mehrdad Fayyaz, Acting Chair
Carol Ingold, Parks and Recreation
John Gossman, Code Enforcement
Tony Irvine, Public Works
Keith Hutchinson, 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
Leona Lettsome, Parks and Recreation
Barbara Hartman, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Call to Order

Acting Chair Fayyaz called the meeting to order at 10:04 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 OCTOBER 21, 2010 MINUTES

Motion made by Mr. Irvine, seconded by Mr. Fajardo, to approve the minutes of the October 21, 2010 meeting. In a voice vote, the **motion** passed unanimously.

ITEM TWO

ENCROACHMENT AGREEMENT SOLAR PLAZA DRIVE

Address: 501 Solar Isle Drive

Mr. Volpi recalled that this Item came before the Committee in September and October, and has now been brought back with additional information. He introduced Kristy Armada, attorney for the property owner.

Attorney Dunckel advised that both he and Ms. Armada had conducted further due diligence into the issue. They had previously agreed to vacate the north part of the encroachment agreement with respect to those encroachments that are no longer present on Solar Isle Drive. There is additional work that will need to be coordinated with a surveyor with regard to an outfall. He asked Mr. Irvine to work directly with the surveyor on this issue.

They have attempted to find the Army Corps of Engineers permit for the fill, but have not yet been successful. Attorney Dunckel said he is also researching submerged lands, and has come up with ideas relative to the Item. At this time, however, he said he would like the Board to approve proceeding with the modification of the encroachment agreement to eliminate the encroachment on the north side, subject to a coordination of the description relative to the outfall. The balance of the encroachment agreement would be left in its current condition with respect to this part of the filled lands that encroach into the canal.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, that the Board recommend approval of modifying the encroachment agreement to eliminate the encroachments as to the north side of the property, as those encroachments no longer exist in Solar [Isle] Drive, and as part of that, to locate with surveyor specificity exactly where the outfall line is, and to leave the balance of the encroachment agreement relative to the filled lands and the canal in its current condition.

Mr. Hutchinson said the basin is shown on the City's survey, but the outfall is not; if the outfall is found to be located within the area to be returned to the owner, the City would ask that it be relocated at the owner's expense. Attorney Dunckel agreed if the outfall is located within the extension of the right-of-way into the water, there would be no need for any further action; however, if the outfall is located on private property, relocation would be necessary. He said either the City would need to get a utility easement for the location of the outfall on the owner's property, or the owner would need to relocate at their expense.

Mr. Irvine said the encroachment agreement could be modified to exclude the outfall. He offered to make a call and determine if this would be necessary. Ms. Armada noted that there are still issues with the western side of the property, and proposed that the Item be deferred for one more month in order to come to a definitive agreement regarding what would happen with the property.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to table the Item. He noted that this motion to table takes precedence over the earlier **motion**.

Mr. Irvine requested that Ms. Armada have the surveyor show how to locate the outfall with respect to the north and west property lines of the parcel. Ms. Armada agreed to be in contact with the City once the survey was complete.

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

ITEM THREE

VACATION OF EASEMENTS

Address: 201 SE 6 Street

Mr. Volpi said the Applicant would like a recommendation to vacate portions of a recorded City easement in preparation for the proposed new courthouse. He introduced Catherine Donn, who would represent the Applicant.

Ms. Dunn showed an exhibit based on the current survey of the proposed courthouse property. An existing parking garage would be demolished and replaced with a new courthouse building. Two City easements would require relocation due to demolition and the proposal for the new facilities. The first easement is for the construction replacement, repair, and maintenance of storm sewers, sanitary sewers, and water mains. The area for vacation conflicts with building footers and the edge of the construction site. The second easement is a right-of-way that was vacated for the old SW 1 Avenue; it was retained as a City utility easement.

Mr. Hutchinson said the City would vacate the property, but needs the Applicant to verify that a 16 in. water main in the area is abandoned. In addition, if the water main is located within the easement, the owner must relocate it at his expense. Ms. Donn agreed to this.

Chad Edwards, engineer for the Applicant, said the 16 in. water main is shown as being "plugged" at one end. Mr. Hutchinson explained that the Applicant would need to verify this. Mr. Edwards agreed to verify that the main is closed.

Mr. Hutchinson said there is another water main that will be relocated through Courthouse Drive, so it will be within the remaining portion of the easement.

Mr. Girisgen asked if the water main on Courthouse Drive serves any other locations besides the courthouse. Mr. Edwards said there are master meters on the main which connect "both onto 3rd and 1st." Mr. Girisgen explained if the main serves only the courthouse, perhaps it should be privately maintained. Mr. Edwards said the main is already privately maintained, with a master meter on both sides.

Mr. Hutchinson said although there are two master meters, the main is not private. Mr. Irvine said these meters “sit on the service lines.” Mr. Edwards said the atlas shows the main is private.

Ms. Ingold said the project is currently in DRC, and noted that the project’s cost is “substantial.” She asked if the easement would still proceed if the project is not funded to its completion. Attorney Dunckel said Planning and Zoning would place appropriate conditions on the easement.

Attorney Dunckel noted that three easements were referenced in the Application’s title materials, but were not part of the backup information. He asked Ms. Donn to address this. Ms. Donn said one of the easements is before the Committee; there are other easements mentioned, but they are outside the area in question.

Motion made by Mr. Irvine, seconded by Attorney Dunckel, that this Committee recommend approval of the vacations as presented, with the conditions being inserted in the vacation resolution that requires their engineer to certify the relocation of all utilities and all conditions being met preceding the vacation.

Mr. Girisgen commented that there seems to be a question regarding the configuration of the water mains. He suggested that the engineering permits be reviewed to determine if it makes sense to privatize the main, depending on the overall configuration of other water mains in the area. He noted that although the atlas shows the main is private, “sometimes [the] atlases aren’t perfect.”

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

ITEM FOUR

ENCROACHMENT AGREEMENT

Address: 501 NE 12 Avenue

Mr. Volpi said this Item would allow a chain link fence to remain in the right-of-way of NE 5 Street. The homeowners had purchased the house several years ago and improved their back yard, including installation of a fence. All proper permits were obtained. Since that time, significant landscaping has grown over the fence. The owners have requested that the fence remain to their liability: if they removed the fence, they would lose their deck and create a safety hazard related to their pool. He introduced owner Donna Korbel.

Attorney Dunckel asked if the fence was present when the owners purchased the property. Ms. Korbel said they installed it following a survey which showed the fence was on the property.

Mr. Irvine asked how the survey could have shown the property line in a different location. Ms. Korbel said the house was purchased in 1984 and was surveyed before the fence was erected.

Attorney Dunckel said he was surprised to learn that the fence was in the right-of-way, as a photograph showed "more than an adequate recovery zone." He did not feel the fence represented a hazard to vehicular traffic. He said he was in favor of granting a revocable license to the Applicants, and noted that before this could be done, Mr. Irvine would need to work with the Applicants' surveyor to provide an adequate description of the location of the fence with regard to the property line and the right-of-way.

He added that the owners have been before the Board of Adjustment and were recommended by that Board to come before the Committee.

Mr. Irvine said this seemed "the exact kind of case" that would call for issuance of a revocable license. He said he would also support the Application, and advised the property owners to speak to their surveyors, as they may have recourse regarding the survey error.

Mr. Gossman noted that the fence will need to be maintained.

Motion made by Attorney Dunckel, seconded by Mr. Hutchinson, to recommend approval of a revocable license permitting this encroachment into the right-of-way, one of the conditions being that the vines be maintained and that the property owner be responsible for maintenance of the fence naturally. In a voice vote, the **motion** passed unanimously.

ITEM FIVE

ENCROACHMENT IN RIGHT-OF-WAY

Address: 2401 NE 27 Avenue

Mr. Volpi said the Applicant would like a concrete block wall to remain in the right-of-way of NE 24 Street. The Applicant is unsure when the wall was built and does not have a history of the permits. Should the City require him to remove the wall to Code, it would create a safety hazard, as it would be impossible to exit a pool on that side without the wall. He introduced Jamie French, agent for the Applicant.

Mr. French said the plans in the information packet show a drawing dating to the 1970s which shows the wall. Little other information from this era is available.

Attorney Dunckel said he had checked with Building and Zoning to determine why the concrete wall was not set back three feet from the property line. He was

informed the permit for the wall was issued in 1972, which was before a wall was required to be set back three feet.

Mr. French produced a drawing of the property with the wall, as well as a photo that was not included in the packet. He said there are 10 ft. from the outside of the wall to the road "all the way down." The property was foreclosed upon over a year ago.

Mr. Irvine said he was concerned, as this issue involved a concrete block wall that would be difficult to relocate or break down. Mr. Girisgen said the Committee should also consider sight triangles, as the wall is "in a classic definition of a sight triangle per Code."

Mr. Irvine continued that he was concerned about the substantive nature of the improvements, as the wall represented "a fixed monument in the right-of-way." Attorney Dunckel added that while the permit does not show what has actually been constructed, he assumed that the permit would show the wall is built on the property line.

Mr. Irvine said the permit shows the pool is 8 ft. from the property line, although it appears to be "almost touching the property line." He said he would not support approval of the Application.

Attorney Dunckel said one possibility would be to grant a revocable license on the condition that the concrete wall is changed to a chain link fence. He said the problem would be that the Applicant would also need to come before the Board of Adjustment, as a permit would be required for the new wall or fence, and it must be set back 3 ft. from the property line.

Mr. Volpi asked if the fence would be considered a safety hazard "right there at the pool." Mr. Gossman said he did not know how far the fence is required to be from a pool, as this would be the purview of a building inspector rather than Code Enforcement. He felt it could "reasonably" be considered a safety issue.

Mr. Irvine suggested that the Item be tabled until the Building Department can comment on whether or not the statement regarding safety is true. He said the pool could be left in place if the deck was removed.

Mr. French asked if the fact that the wall has been in place for 38 years and is 10 ft. from the road can be taken into account. He noted there are poles on the property that are closer to the road. Attorney Dunckel stated that the fact that the wall is concrete makes it a very different case from another kind of structure, and he did not feel the length of time it has been in place mitigates the problems the Committee has noted.

Mr. French asked if the owner could sign a “hold harmless” agreement. Attorney Dunckel said when a revocable license is issued, “it runs with the land and the property owner indemnifies the City.” He reiterated that the Committee remains concerned with the safety aspects of the wall.

Mr. Irvine said he would like facts from the Building Department regarding what can and cannot remain in place on the property. He said whether or not the pool can remain would affect his opinion on the Item.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to continue the case so that it can be brought back to us after Building has done the due diligence on the aspects that Tony just mentioned. In a voice vote, the **motion** passed unanimously.

Attorney Dunckel and Mr. Irvine agreed that a member of the Building Department should attend the next meeting to address the Application.

Mr. French asked if the main concern was whether or not it constitutes a safety issue to have a fence so close to the pool. Attorney Dunckel agreed this was the issue.

ITEM SIX

REVOCABLE LICENSE

Address: 1401 E. Broward Boulevard, Suite 200

Mr. Volpi said the Housing Authority of Fort Lauderdale is seeking to retain the fencing enclosing the entirety of a site during the construction of the development on the property. He introduced Nectaria Chakas, representing the Applicant, and noted that others were present to speak as well.

Ms. Chakas explained that the Applicant would like to close one and a half streets in connection with the development of the Northwest Gardens affordable housing project. She provided visuals of the five separate site plans, which stretch over five blocks. All site plans will be developed at the same time. In deciding how to develop the parcels, the Housing Authority determined that NW 14 Terrace and NW 14 Avenue should be closed off. This is because the Housing Authority owns both of the blocks, and both sides of the development will be under “intense construction” for roughly 12 months. Safety is also a factor, as the Applicant did not want cars or pedestrians moving through the area while it is under construction.

She noted the site’s proximity to Sunland Elementary School, and pointed out that the easiest way to divert children from the construction activity would be to close the streets in question and divert pedestrians to streets where not all lots are part of the project.

She showed a visual of the sites, noting that the gates would allow for emergency access and access to City inspectors, utility services, and other considerations.

Ms. Chakas said no staging would be done within the right-of-way, as the Applicant has access to ample staging on-site. Once the construction is complete, the Applicant would clean the streets, repair any damage, and return them to satisfactory condition. Construction is intended to begin in mid-December 2010 or mid-January 2011, and the construction period is estimated to be 12-14 months.

Chair Fayyaz asked if the Applicant has considered how garbage trucks and other vehicles will turn around in the area when roads are closed. Ms. Chakas said they should be able to make a three-point turn "in the street." Chair Fayyaz suggested including a turning area other than the street. It was noted that a turnaround would not be meant to serve non-City vehicles.

Attorney Dunckel stated a T-turnaround is required on any street closures. He asked if there are any limitations with regard to heavy equipment, which could affect infrastructure below the street. Mr. Girisgen said this could be worked into the conditions of the revocable license.

Mr. Irvine asked if the Applicant had spoken to the CRA regarding the street closures. Ms. Chakas said they had spoken to the CRA, but not with respect to the closures, and said the work being done is "a couple of blocks to the south" of the CRA. Mr. Irvine requested that the Applicant coordinate with the CRA.

He continued that he would prefer to see the area re-paved "from end to end" instead of "restoring and patching" the pavement. Ms. Chakas said the Applicant could agree to this if the revocable license is approved.

Attorney Dunckel requested further clarification of how the heavy equipment in the right-of-way could affect infrastructure. It was clarified that any repairs would be made after the fact. Mr. Girisgen added that he would like to see large cranes restricted from the right-of-way. Scott Strawbridge of the Housing Authority explained that the construction in this area would involve single-family two-storey attached town homes, and no large cranes were expected in the right-of-way.

Mr. Hutchinson said he would like to see a proposed infrastructure plan, which would address water and other utilities in the area. He stated that storm drains must be covered and protected; manholes cannot be used for discharge without written permission; and meters must be used for all water consumption. Ms. Chakas said these conditions would be acceptable to the Applicant.

Mr. Girisgen asked if bus routes had been taken into consideration. Mr. Strawbridge said there are no bus routes in the area other than those under Housing Authority control, and there are no residents in the area to be served. Ms. Chakas said they had also met with the principal of Sunland Elementary to advise which streets would be closed.

Mr. Strawbridge explained that the intent was to have one north-south thoroughfare dedicated to truck traffic for the site, and another thoroughfare that can be "locked down and dedicated to pedestrian traffic," particularly after-school traffic. He said the gates connecting parcels D and F of the site will be locked down and cannot be opened without a flagman for the students' safety. Mr. Girisgen requested a copy of this plan as part of the Application.

Attorney Dunckel asked if an MOT would be required for the project. Mr. Girisgen said it would.

Chair Fayyaz asked how the City would gain access to the site after hours in the event that utilities must be accessed. Mr. Strawbridge said the water system for the entire site is on a single meter; the three surrounding parcels also connected to this system are being reworked with new meters. The entire site will be "independent of anybody else's feeds" and no surrounding utilities will be affected during the construction period.

Mr. Girisgen asked if parking for construction personnel had been considered. Ms. Chakas said parking areas were included on each parcel of the site. Mr. Girisgen said a dust and sediment control plan should also be submitted. It was noted that this plan would be part of DRC review.

Ms. Ingold pointed out that the noise Ordinance states noise cannot begin before 8:00 a.m. She asked if this could be extended to 8:15 a.m. to avoid potential conflict with "students arriving and trucks." Mr. Strawbridge said while concern for students is paramount, stopping construction for an additional 15 minutes per day would lead to "an astronomical expense."

Attorney Dunckel said while the revocable license is being prepared, it is possible that Engineering may have additional requirements for the Application.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, that the Committee recommend approval for a revocable license, with conditions that include the following:

- TV the lines before and after construction;
- No cranes allowed in the right-of-way;
- Streets must be repaved when construction is complete;
- A proposed infrastructure plan must be submitted;
- Storm drains must be covered and protected;

- Sanitary sewer cannot be used for drainage without written permission;
- Meters must be used for all water consumption;
- City personnel, including Police, Firefighters, and utility workers, must have 24-hour access through the street closures;
- T-turnaround(s) must be included;
- Contracted meter readers must have access to meters;
- Engineering may impose additional conditions as warranted.

Mr. Irvine added if the road bed itself is damaged, repair and repaving of the streets will be necessary. Attorney Dunckel said the revocable license will include clauses that impose the obligation of repairs on the licensee.

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

New Business

Motion made by Mr. Irvine, seconded by Chair Fayyaz, that this Committee express its best wishes to Mark Darmanin, wishing him a speedy recovery. In a voice vote, the **motion** passed unanimously.

Mr. Girisgen said the Downtown Development Authority (DDA) is planning a project to install awnings along the Las Olas Boulevard corridor of the Downtown area. He noted that requiring individual owners to obtain revocable licenses could be “very cumbersome.” While the DDA had considered going through the City Commission to “direct Staff to get this done,” he had requested a chance to bring the issue before the Committee and discuss possible ways to streamline the process.

Chair Fayyaz said he felt the installation of awnings was “a good thing for the City,” and suggested if certain policies were put in place, there could be a standard application for a revocable license.

Mr. Irvine asked if an agreement could be made with the DDA regarding the style and format of awnings, and the DDA could then be given an easement or license for installation. Mr. Girisgen noted that indemnification clauses and insurance requirements are part of each revocable license, and he was not certain that the DDA would be willing or able to assume these responsibilities on behalf of individual owners. He said there was consideration of a standard template agreement.

Attorney Dunckel said an engineering permit for work in the right-of-way could be coupled with an addendum of conditions that would ordinarily be included in a revocable license. If the City Commission approves this format, each license would not have to go before the Commission for approval.

He asked if any County right-of-way jurisdictions came into play. Mr. Girisgen said they would apply to installations on 3 and 7 Streets and Andrews Avenue.

Chair Fayyaz said the Committee would need the City Commission's authorization to put this approval system in place and implement it. Attorney Dunckel said this would be his recommendation.

Mr. Fajardo noted that awnings are also included in the proposed South Andrews Avenue Master Plan.

Mr. Irvine suggested asking the City Commission to modify the engineering permit process for specific areas. Attorney Dunckel observed that Florida Building Code permits would also be required. Mr. Irvine said this permit would be included in the plan as well.

Attorney Dunckel asked who would define the specifications for awnings. Mr. Girisgen said the architects hired to design awnings could propose "certain schemes," to be reviewed by Planning and Engineering. Attorney Dunckel concluded that this would mean the City Commission would approve this vehicle in lieu of a revocable license, provided that it is done within the parameters of a specific area.

Chair Fayyaz asked if the Master Plans establish parameters for awnings. Mr. Fajardo said the parameters mentioned are "very general," such as maximum height.

Mr. Girisgen said it would make sense for Planning to review a set of proposals from the DDA on a per-block basis, after which a template would be brought to the Committee for review and approval. He noted that if authority is given to Engineering to approve the applications, this would streamline the process further.

Mr. Irvine observed that while Andrews Avenue would be subject to County approval, he would still "like to have some say" with regard to its standards. Attorney Dunckel said the City would be unable to have input. Chair Fayyaz said once the City review is complete, approval would then go to the County. Attorney Dunckel explained that while the Committee would have jurisdiction regarding private property, encroachment into a County right-of-way would give jurisdiction to the County.

Mr. Volpi asked if properties with existing awnings would be asked to replace them. Mr. Girisgen said he did not know, and added that the Committee might ask the DDA to provide a list of those property owners who will be participating in the project.

Mr. Fajardo said an application is going through the County process for “contact-sensitive corridors,” in which street cross-sections from the Downtown Master Plan are shown to the County as examples of what the City wants to see on its rights-of-way. He said this meant awnings could be considered as part of the application.

Mr. Volpi asked who would be liable if an awning fell and injured someone. Attorney Dunckel said there would be conditions attached to the permit that make the property owners liable.

Attorney Dunckel pointed out that revocable licenses are recorded and run with the property, while engineering permits are not recorded and their conditions do not run with the property. Chair Fayyaz said perhaps recording could be part of the new process, and the process could be a combination of a revocable license and engineering permit process “streamlined in one.” It would go to the Engineering Department for approval if parameters have been previously approved by the City Commission. Mr. Girisgen said the result would ultimately be more than “conditions attached to a permit,” and would actually be an agreement that must be signed by the property owner. Attorney Dunckel said this would mean the City Commission would need to authorize counter-execution by the Director of Public Works, for example.

There being no further business to come before the Committee at this time, the meeting was adjourned at 11:30 a.m.

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