

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, DECEMBER 16, 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 (10:30)
Anthony Fajardo, Planning and Zoning
Robert Dunckel, Assistant City Attorney

Staff

Victor Volpi, Liaison, Senior Real Estate Officer
Dennis Girisgen, Public Works
Diana Alarcon, Director, Parking and Fleet Services
Barbara Hartman, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Call to Order

Acting Chair Fayyaz called the meeting to order at 10:08 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 NOVEMBER 18, 2010 MINUTES

Motion made by Mr. Terrell, seconded by Ms. Ingold, to accept the minutes of the November 18, 2010 meeting. In a voice vote, the **motion** passed unanimously.

ITEM TWO

TEMPORARY CONSTRUCTION STAGING PERMIT

Address: 1901 NW 6th Street

Mr. Volpi introduced Barbara Howell, representing the City and WaterWorks 2011.

Ms. Howell explained that the information packet included a traffic circulation plan. The contractor will be kept out of the newly improved sections of Sistrunk, including the roundabout and intersections. She also provided copies of an updated Lincoln Park site plan.

Chair Fayyaz asked if there was anything unusual about the location. Ms. Howell advised there is some soil contamination: as a result the contractor has been asked not to store materials on-site or to track soil from the site. She provided a letter from the contractor that showed his agreement to these limitations. The contractor's activities will be monitored by an inspector. She noted that there is existing fencing on the property except for the berm along the west side, where fencing will be added.

Chair Fayyaz pointed out that the berm was added at a later time, and suggested if the fencing is moved just inside the berm, the fenced area will not be contaminated. Ms. Howell said she could ask the contractor to do this.

Mr. Terrell noted that there are both abandoned and active mains on the site. Ms. Howell said the contractor will be asked to avoid these areas.

Ms. Ingold requested that the contractor be asked not to "temporarily stop adjacent to the park" when they are pulling up to enter the site. Chair Fayyaz agreed that the swale in front of the park should not be parked upon, even temporarily.

Chair Fayyaz asked Attorney Dunckel if the City should require documentation stating the contractor accepts liability for any cross-contamination from the site into the right-of-way. Ms. Howell said this requirement could be included as part of the revocable license agreement.

Mr. Terrell said Environmental Engineering & Geotechnics (EE&G) had been consulted regarding this Item, and had made recommendations on the property's staging area and other details.

Motion made by Mr. Terrell, seconded by Ms. Ingold, to accept the application as proposed. In a voice vote, the **motion** passed unanimously.

ITEM THREE

ENCROACHMENT AGREEMENT SOLAR PLAZA DRIVE

Address:

501 Solar Isle Drive

Mr. Volpi noted this Item had appeared before the Committee on September 16, October 21, and November 18, 2010. There is now additional information on the Item.

Kristy Armada, representing the owner, said a new survey of the property shows there do not seem to be any outfalls on the northern border of the property. She is still working with Attorney Dunckel on the western side of the property.

Attorney Dunckel said they would be modifying the existing encroachment agreement to eliminate the encroachment on Solar Plaza Drive, as there is no longer an encroachment. The outfall is within the extended boundaries of the right-of-way. They will leave intact the portion of the encroachment agreement that deals with "filled-in submerged lands" on the west. He concluded that they have "exhausted...the alternatives" for this Item, and the ideal solution would be to get a permit from the Army Corps of Engineers, although this permit has not yet been obtained.

Motion made by Attorney Dunckel, seconded by Mr. Terrell, to recommend modification of the encroachment agreement to eliminate that portion of the encroachment agreement referenced on the Solar Plaza Drive and to remain intact that portion of the encroachment agreement west of the property, which represents the filled-in submerged lands.

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

ITEM FOUR

ENCROACHMENT IN RIGHT-OF-WAY

Address: 2401 NE 27th Avenue

Mr. Volpi noted this Item was previously before the Committee on November 18, 2010. He said the property owner had asked that this Item be deferred until January 2011, as he could not be present at today's meeting. He noted, however, that there is now additional information available regarding the property, and asked that this information be heard. Attorney Dunckel advised the Committee could hear the information, but it would not be appropriate to take any action on the Item at this time. It was confirmed this Item would be before the Committee in January 2011.

Mr. Gossman explained that part of his responsibility to Code Enforcement was to supervise "all the building inspectors assigned to Code Enforcement" and who would prosecute cases of this nature. He would make determinations along with these inspectors regarding whether or not a case was viable to prosecute.

He said he had reviewed documents for this Item with two building inspectors, including the original building permit for the wall from 1973 and the plans for

building the wall. The inspectors concluded that the wall was properly permitted legally built at the time and its final inspection was completed.

He concluded that there was as much information “as any other wall would have had at that time,” and in the event of a complaint, Code Enforcement would not prosecute a case.

Mr. Girisgen asked if there is “some implication” that when an individual files for a permit to build a wall, it is understood that wall will be within their property. Mr. Gossman explained there have been situations in which a wall was placed across a property line; an inspector will determine where survey markers are located. He concluded that mistakes can be made in these cases, and it is likely the permit went through inspection and “someone didn’t catch it.”

Attorney Dunckel added that a provision adopted into the ULDR in 1997 states that submitted plans are obligated to meet the Code whether or not they are approved. He noted that another question is “what remedies you want to pursue.”

He said while the Item is before the Committee for an encroachment agreement, “vacation [of the right-of-way] is another option.” He suggested that vacation may be in the best interest of the property owner.

Mr. Volpi asked if 50 ft. rights-of-way are required by the City. Attorney Dunckel characterized this as “a nuance” and said it was subject to debate.

The Item was deferred until January 2011.

ITEM FIVE

REVOCABLE LICENSE

Address: 901 NE 2nd Street

Robert Lochrie, representing the Applicant, stated he was not being compensated by St. Anthony Catholic Church and was representing them as a parishioner only.

He stated that in May 2009 the church made a formal request to the Mayor and the City Commission to allow for traffic calming on 9th Avenue between 2nd and 3rd Streets. This would come in the form of landscaping and speed bumps. The request was approved by the Victoria Park DRC and the “general membership of Victoria Park.” The plan was approved by the City Commission in September 2010 and is being processed through the City’s Engineering Department. Mr. Lochrie noted there are “a few comments” that need to be addressed, one of which is that the plan be submitted to this Committee.

The plan calls for landscaping on either side of the proposed speed bumps and at the intersections at 2nd and 3rd Streets. The landscaping will be “low scale” and will not include trees.

He stated that there is “another form of agreement,” other than a revocable license, that would be acceptable for the request. This is a declaration of maintenance responsibility. He said the Applicant is willing to work with the City Attorneys on whatever method they prefer.

Mr. Terrell said utilities are located in the right-of-way, and Public Works asks that they be protected and that no plantings are placed within 10 ft. of these utilities. He added that there are also drainage concerns, and Public Works would like the Applicant to indemnify the City from the results of the project planning drainage issues in the area.

Chair Fayyaz noted that Engineering will review the drainage issues. He noted, however, that requiring landscaping to be 10 ft. from any utilities “makes it impossible.” Mr. Terrell said his personal preference was for no landscaping in rights-of-way.

Mr. Irvine said he had concerns regarding “some catch basins” at mid-block that are surrounded by speed bumps, which would affect drainage. He suggested that a “more comprehensive topographic survey” be provided to the Engineering Department, including elevations.

Mr. Lochrie said this specific issue had previously come up, and explained that the speed bump does not extend all the way to the curb in order to allow for drainage. Mr. Irvine said he would prefer that Engineering received the information to be able to make this determination. Mr. Girisgen said a field review may be sufficient to this purpose.

Motion made by Mr. Irvine, seconded by Mr. Terrell, that this Committee recommend that the Application proceed to the City Attorney’s Office; the City Attorney will then choose the appropriate vehicle, whether a declaration of maintenance or a revocable license, to allow this development, landscaping and speed humps, to continue, and that the Applicant agrees to supply Engineering permitting with sufficient information as to make determination as to drainage.

Chair Fayyaz noted that “smaller shrubbery” would be allowed as part of the landscaping, but trees would not. Mr. Lochrie advised this is part of the plan.

Mr. Terrell said he understood that 10 ft. from utilities might not be “reasonable,” but stated that utilities must be protected. Attorney Dunckel advised that the Application would be “subordinate to the utilities.”

Chair Fayyaz advised that the City is working toward a policy for locating landscaping within rights-of-way. He did not feel a distance of 10 ft. was a reasonable request.

Ms. Ingold asked that maintenance of the plant materials be the Applicant's responsibility. Chair Fayyaz said this was part of the agreement.

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

ITEM SIX

WALK ON

Address: SE 1st Street

Mr. Volpi said the Application is to "improve southeast 1st Street" by repairing existing lights and adding overhead lighting. While the Applicant would like to maintain both existing and new lighting, he said he has not been able to "find any agreements that [say] they can do so."

The location is "a piece of right-of-way" between the library and Stranahan Park. The Applicant would like to formalize the agreement "between the City and Broward County" to make and maintain these improvements.

Attorney Dunckel requested clarification that the County owns the library and the City owns the Park. Chair Fayyaz confirmed this, and added that the pavers around the library were "done by the County at the time they built the library."

Attorney Dunckel asked why the Committee is not being asked to vacate the property, which Chair Fayyaz characterized as "basically a parking lot for [the] Women's Club."

Mr. Volpi said if the area is vacated the City would be "accepting part of their improvements" and would have to maintain them, such as light poles. It was noted that the Women's Club leases the property on which it is located from the City.

Dale Wilson, representing the Applicant, said the County made improvements south of SE 1st Street when the library was built. City memorandum #195, from 1982, refers to these improvements; however, no other documentation regarding the improvements has been found "other than they were on the plan when the library was built."

Mr. Wilson continued that the City has been maintaining a portion of the area on the north side; the Women's Club has maintained the front of their building; and the County has maintained "everything else."

Chair Fayyaz recalled there had been “a low spot with water gathering there” in front of the Women’s Club parking lot. The City had repaired this. He agreed that both the County and the City’s Parks and Recreation Department have done work in the area. This cooperation has been done in the absence of “a real agreement.”

Attorney Dunckel said a revocable license will ultimately be drafted, and it will place “certain maintenance responsibilities” on the County; therefore he will need the County’s responsibilities to be specified for inclusion in the revocable license.

Mr. Wilson referred the Committee to a sketch that delineates the area where the County has cared for the landscape. He added that the library has requested additional lights in the area. It was noted that some of the area in question is outside the County’s property line, and they would like to apply for a permit to install the lights.

Ms. Ingold commented that there are historic plaques in the area, and asked for confirmation that these would not be compromised in any way. It was confirmed that the request only deals with the addition of lights.

Mr. Irvine said he would like to ensure there is responsibility for maintaining the pavers, and that the City is “indemnified against trip-and-falls in that area.” Attorney Dunckel said the County would not be likely to indemnify the City in this case.

Mr. Terrell said there is both drainage and a water main in this area. Chair Fayyaz advised Mr. Wilson that the Applicant would need to contact the City’s Utilities Department before making any installations.

Mr. Volpi asked if the improvements would “level out” or otherwise address the pavers. Mr. Wilson said no improvements are planned except lighting. Mr. Volpi said he would recommend a survey of the area is done, including elevations.

Chair Fayyaz said the City and County must determine the areas maintained by each “so there is no question.” The Application was only a request to replace and add lighting. Mr. Volpi asserted that a topographical survey would be needed to determine “the elevations of what is there.”

Chair Fayyaz agreed that “the entire area, including 1st Avenue and Andrews Avenue...needs to be done.” He reiterated that the City and County must discuss and arrive at an agreement to establish this responsibility.

Attorney Dunckel noted that the 1982 memo refers to improvements that were “never done in a public right-of-way,” and asked if the Application would be

“retroactively fixing that.” The revocable license would cover the area owned by the County that includes pavers and landscaping.

The Committee and Mr. Wilson discussed the location of the line dividing City and County property as shown on the Applicant’s map. Attorney Dunckel noted that surveyors should have sketches and descriptions available in January 2011.

Ms. Ingold noted that both Parks and Recreation and the Women’s Club hold special events in Stranahan Park, which at times encroach into the area. She proposed that dates for events and construction be coordinated to avoid difficulty. It was agreed that Mr. Wilson could inform Mr. Girisgen of the construction dates, and would work with Chair Fayyaz and Ms. Ingold.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to recommend a revocable license which would allow the County to install additional lighting, and that the revocable license also cover that portion of SE 1st Street which has historically, dating back to approximately 1982, been maintained and improvements placed in there, and the County would supply us with a sketch and legal description of the survey so that we can better define the area that they are going to maintain, and that the dates of construction be coordinated through Dennis Girisgen. 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 11:03 a.m.

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