

ITEM TWO: **REVOCABLE LICENSE AGREEMENT**

Address: 441 NW 7 Avenue

Mr. Volpi explained the request is for an easement to cross an alleyway and accommodate a sewer connection between the House of God Church and NW 7 Terrace, which is a vacant lot adjoining the church property. The House of God Church was represented by Deacons Byron Morgan and Terry Foster, and Mike Cocking, contractor.

Mr. Cocking referred the Committee members to drawings of the project, stating that the church owns the adjoining vacant lot. The sewer connection would cross beneath an alleyway at a minimum depth of 2 ft. 6 in. to 3 ft.

Mr. Terrell observed that while the church currently owns both pieces of property, this might not always be the case. He asked if there is no sewer on 5 Street. Mr. Darmanin confirmed there is no sewer on 5 Street or 7 Avenue.

Mr. Darmanin said the proper way to address the issue would be through a sewer main extension from the alleyway intersecting 5 Street to the existing sewer manhole at 7 Avenue, and run a lateral from the manhole to the church lot. Rather than going beneath a fence on the church lot, the connection would go directly to the lateral. He noted that this would require an underground contractor and the addition of a manhole.

He explained that it is neither encouraged nor typically approved to run private utilities through an easement or right-of-way. This is because any construction in these areas would tear the connection apart, as the private owner would not respond to a locations request along with representatives of the utility companies. A private owner would not be notified that there would be work in the area and would not have the opportunity to mark their service line. In addition, when the private utility is damaged, the owner would also be responsible for his own repairs, as he would not be in compliance with the Florida Statute regarding the location of private utilities.

Chair Partington asked if the request was related to a new sewer. It was clarified that the project would allow the church to change from an existing septic system.

Mr. Cocking explained that the church is unable to get a permit for a drain field, and they are spending a great deal of money pumping out the existing septic tank. When the church contacted the City, the location requested was the most feasible spot available for the connection. He also pointed out that while access through a manhole was the right way to address the issue, and would cost

approximately \$4000-\$5000, this cost would escalate to \$20,000-\$30,000 if the contractor had to go into the street.

Mr. Darmanin agreed that this was the closest spot for the church because of the lack of sewer on 5 Street or 7 Avenue; however, he explained that this does not make it a feasible connection for the City, as it is not an appropriate location.

Mr. Darmanin said there are multiple alternatives, and noted that the suggestion of a sewer main from 7 Terrace down 5 Street was “a gravity-fed alternative” and the least maintenance-intensive proposal for the future. Another possibility would be a small grinder station and a private sewer agreement; this would, however, require a lot of money up front due to the cost of attorneys’ negotiations and the perpetual maintenance of the station.

Mr. Volpi asked if any utilities are located in the alley. Mr. Darmanin said there is only a private storm water drain at the south end of the alley. Mr. Volpi suggested an application to vacate the alleyway, which is not used by cars. He pointed out that this meant the church would “get both parcels back” at fee simple. Chair Partington explained that vacating the alley would mean the alley is divided between the two adjoining properties. The church would then own the entire alley.

Mr. Irvine said this process would take three to four months, while the church is presently facing an expense every week due to the septic tank. Mr. Cocking said within two to three weeks, he could pull the permit for the work.

Mr. Irvine asked if the church could add a sleeve or encase the line in concrete where it crossed the right-of-way. He recalled that this had been done with electrical lines in some areas. At the same time, the church could pursue vacation of the alley. Mr. Terrell said the only problem with this scenario is that the sewer line at 7 Terrace is meant to serve that property only. He asserted that creating a lateral to this property was not an appropriate solution.

Chair Partington noted that running a sewer line down 5 Street would be a main, and asked if the City has an obligation to provide mains to which properties can connect within a reasonable distance. He asserted that providing people with lines to which they can connect is the basis of the WaterWorks 2011 program.

Mr. Darmanin said every developer is required to construct his own access. If a developer enters into an area in which utilities are not currently supplied, he is required to supply the infrastructure necessary to receive utilities.

It was clarified that Assistant Utilities Director Paul Bohlander had advised the church of the existing connection on 7 Terrace. Mr. Cocking said all that would be required was to put in a “Y” and a cleanout for this property, and another line

could be used to “come down the alleyway and take care of the church.” This would mean 7 Terrace would have its own lateral connection point. Mr. Darmanin said there is currently a Y at this property, and Mr. Cocking’s suggestion would mean a second Y would come off the first.

Mr. Terrell stated that if the line is taken across the 7 Terrace property to a separate property, there would be no way to protect the lateral on the other piece of private property. It would mean another easement would be required to “[travel] with the property.”

Attorney Dunckel said his opinion was that the project could be done. He said it would be cumbersome for the church to grant itself an easement, but suggested there may be a way to make an irrevocable dedication, which cannot be appealed, revoked, or amended without the City’s permission. If 7 Terrace is ultimately sold separately from 7 Avenue, the easement would remain. While he had never drafted an agreement of this nature, he said it could potentially work.

Mr. Irvine said if an easement across the alley is recorded, anyone purchasing either parcel in the future would be aware of the easement. If the parcel is split, easement rights would have to be reserved. Attorney Dunckel said the simplest action would be for the church to reserve the easement when the property is split. He said there was a chance this could be forgotten in the future: if the 7 Terrace parcel is sold and the new owner decides to cap the connection, the 7 Avenue parcel would have no sewer access.

Chair Partington said if the church sold the property, they would have to inform the buyer that the connection must be preserved or relocated. Mr. Darmanin agreed with Attorney Dunckel that this could be several years in the future and could be forgotten.

Mr. Irvine said an easement agreement would be more costly for the church, and said this money would be better spent vacating the right-of-way. Attorney Dunckel said he was not against vacating the alley, but had intended to address Mr. Terrell’s concern by proposing a set of documents that would give “the greatest sense of protection” in the future.

Mr. Irvine said if Mr. Darmanin agreed it is feasible to encase the line in concrete, he would consider granting a temporary easement for one year, on the condition that the Applicant pursue vacation of the alley during that year to unify the property. Chair Partington noted that the vacation application costs \$3000, although he advised the Applicant that it would be to their advantage to vacate the alley and unify the property.

Mr. Terrell said there would be a one-month delay even if the church was granted an easement today, as further legal activities are required and the Application

must proceed to the City Commission. If the Applicant made a vacation request, it could be back on the Committee's agenda for the following month. He concluded that the only delay would be one month in any case.

Ms. Redding said the Application would also have to go through the Development Review Committee (DRC) and the planning process.

Mr. Darmanin said because there is no immediate access to the City's sewer system, a variance could be written to allow the Applicant to build a drain field. While this would be "a retrograde step," as the WaterWorks program is predicated on providing the sewer system to those who did not have it in specific areas, Mr. Darmanin pointed out that the program was not intended to have 100% participation, and exemptions have been made for certain properties for which the City could not provide access to the sewer system. If the church's property is considered to be such a property, a variance could be written and they could be allowed to build a drain field. This would eliminate the concerns regarding the easement, utilities crossing the alleyway, and potential future sale of one of the properties.

Mr. Foster said the issue was that the church is located in downtown Fort Lauderdale, and would not want to be left off the sewer system. He asserted that the City is supposed to provide mechanisms through which a property may connect to its sewer system.

Mr. Terrell said at the time the church building itself was built, "and even currently," it was not the City's responsibility to provide the infrastructure, but to provide the service. He said even at present, the developers of properties are required to bring the necessary infrastructure to the properties they build so the properties can be serviced. He explained he was trying to find a simple, cost-effective means by which to prevent the church from having to pump its septic tank on a daily basis; while it might seem that the simplest and least expensive solution would be to connect across the alleyway, he pointed out that this would cause the problems the Committee had discussed.

Mr. Foster said Mr. Bohlander had explained the issue to the church, and asked why he had not raised these issues at that time. Mr. Darmanin said he could not answer this, or why a manhole and 125 ft. of additional main had not been built for the church, as this would have addressed the problem. He stated this would have been the correct solution.

Chair Partington advised he would try to reach Mr. Bohlander by phone and ask him to come to the meeting. He asked Mr. Irvine to chair the meeting while he did this.

Mr. Terrell said the existing sewer system was built under assessment; had the property paid this assessment when it was built, they may have had access to service. If the property did not pay the assessment at the time, they were not entitled to sewers.

Mr. Darmanin asked if the church representatives had an objection to a cleaned-out septic tank and new drain field, which would provide them with roughly 15 years of service. Mr. Morgan said this would not be guaranteed for this length of time. He added that another issue is the consistency of the sand, which also made addressing the problem more difficult.

Mr. Cocking said another problem is when it rains on the property, the drain field already takes in a lot of water. He said no matter the size of the drain field, a large amount of water would already be settling on the lot. He said he would not guarantee a drain field of any size would work more than three to five years.

Mr. Darmanin asked if the elevation over the drain field could be changed in order to push the water away from it to a different portion of the lot. Mr. Cocking said it would be slightly helpful but would not solve the problem. Mr. Irvine added that in the Progresso neighborhood where the church is located, the water table becomes an issue during the rainy season.

Mr. Cocking said it seemed more feasible to vacate the alleyway. Mr. Darmanin asked if it might be an alternative to give the church three to ten years, through use of a variance, to give them sufficient time to ask for the vacation of the alleyway. Mr. Cocking said as a contractor he would give the church as much of an extension as he could. Mr. Darmanin explained he was trying to provide the church with options.

Chair Partington returned to the meeting and resumed the chair.

Mr. Morgan said the church has spent a great deal of money getting to this point; he felt it would be better to document the steps they take to address the problem and put in the sewer line, as the church is large and could not exist for another few years on a drain field.

Mr. Irvine asked if the Committee could recommend and approve the vacation at this time and save the Applicant the expense of appearing before the Committee again.

Chair Partington said he had received a text from Mr. Bohlander stating he could be at the meeting within 30 minutes. He asked the Committee and the Applicants if they would be interested in deferring the issue until Mr. Bohlander could join them. It was agreed the Item would be deferred for 30 minutes and the Committee would move on to the next Item during that time.

The Committee deferred Item Two at 10:35 a.m.

ITEM THREE

WALK-ON ITEM

Mr. Volpi said the State of Florida wished to use a portion of George English Park as a temporary easement in order to facilitate the construction of a bridge over the Middle River at Sunrise Boulevard. At the January 20, 2011 meeting, the Committee had agreed to defer this Item; it would be brought back to them at the discretion of the Chair. He provided the Committee members with documentation regarding this Item.

Chair Partington explained that a meeting of several interested parties and Departments, including the Florida Department of Transportation (FDOT), Parks and Recreation, Parking and Fleet Services, Marine Facilities, Business Enterprises, and Teco Gas, had been held to discuss this Item. He clarified that the only Item in front of the Committee at this time is the proposed easement for FDOT for their construction.

Mr. Terrell asked if FPL would be requesting a permanent or temporary easement. Chair Partington said they were requesting a permanent easement.

Mr. Irvine asked if representatives of the City's Utilities and Engineering Departments had attended the meeting. Mr. Darmanin said Keith Hutchinson of Utilities had attended. Mr. Irvine explained that he was aware of an issue regarding the 20 in. crossing on the bridge, and asked if this has been addressed with FDOT.

Mr. Darmanin said he had been advised that "Utilities and Engineering [were] handling it." Mr. Irvine said this was not the case. He expressed concern that there has not been an answer regarding the disposition of the water main, and asked why the City was accommodating other utilities without making appropriate accommodations for its own.

Claire Tronel, Right-of-Way Task Manager for FDOT, advised that the water main issue is being addressed, as a 26 in. main is being designed. She explained that additional land is for the water main, and she is helping to determine the best place for this touchdown to occur.

Mr. Darmanin asked if the new water main will be hung on the bridge. Ms. Tronel said it was her understanding that there would be no room for the main on this bridge; there have been discussions of placing it beneath the bridge or through the north or south seawalls. She added that when the water main comes out of the water, it is possible that it would land on private property, which is why options are still being considered.

Mr. Irvine stated he would like to have someone from Engineering discuss the water main further, as he is unwilling to proceed until Engineering and Utilities have achieved a level of comfort regarding its placement. He left the meeting briefly to place a call to a member of Engineering.

Chair Partington noted that the proposed easement does not include the likely easement where the water main would come up; this would be a separate easement altogether.

Mr. Terrell said it sounded as if someone has designed a water main for the City that will land on private property "on one side or the other," and asked why FDOT is not requesting this right of way on behalf of the City when the design phase is complete. Ms. Tronel said FDOT has to acquire the right-of-way for the construction of the bridge in order to certify the overall project. They are required to acquire all rights-of-way including the one for the City.

Chair Partington asked if this would mean acquiring easements on both sides of the bridge. Ms. Tronel said no easement seemed to be needed on the east side of the water; the easement is necessary for where the bridge touches down on the west side. This will mean going back under the bridge for a connection for the water main. Currently the project is in the modeling phase while the best possible approach is determined. She reiterated that it will be FDOT's responsibility to buy the rights-of-way for wherever the bridge touches down.

Mr. Darmanin asked how current water service would be maintained from the two water mains currently in place. Ms. Tronel said she had been advised there are "temporary solutions" while the new main is being constructed. Mr. Darmanin emphasized that these prospective solutions are important, as the temporary bridge will be built directly over the existing subaqueous crossing of the 20 in. water main, and the 12 in. main would need to be removed during bridge work. This would put one of the mains out of service and the other "in severe danger" during construction. He concluded that he had serious concerns about this issue.

Chair Partington pointed out that the project will not go out to bid for approximately 18 months, which would mean the process is not being rushed. Mr. Darmanin disagreed, as the issue has come before the Committee twice and a special meeting once.

Chair Partington agreed that the issue had been portrayed as an urgent one. Ms. Tronel said she did not see the issue as urgent, and said the pacing of the project would be dependent upon the water main easement and the water main design. The construction phase of the project cannot be finalized until the easement through the park is obtained.

Mr. Darmanin asserted that the construction easement cannot be a separate issue from the discussion of the water main, which would be directly affected by the construction.

Chair Partington suggested it might be possible to write a condition regarding the water main, or “trust FDOT because they’re well aware of” the water main issue. He noted, however, that the technical solution for the water main is not yet understood, and said he was not certain this affected the principle of giving FDOT the construction easement.

Mr. Darmanin reiterated his concern, explaining that during the construction phase, the 20 in. subaqueous water main could be struck or broken by accident, while the 12 in. main has been disconnected during the construction of the temporary bridge. He stated by granting the construction easement, they would be giving FDOT permission to proceed without seeing the necessary technical data.

Mr. Irvine rejoined the meeting. He advised that he had spoken to a colleague who said they were “making progress” on accommodating the water main. He also noted that it may be necessary for the City to acquire an easement on private property and therefore incur the cost, while they are unsure regarding FDOT’s position on compensating the City for the easement. Mr. Darmanin clarified that Ms. Tronel had said it was FDOT’s responsibility to acquire the prospective easement on private property. Mr. Irvine said this left him much more comfortable with this issue.

Mr. Volpi suggested that the Committee recommend that FDOT be approved for the easement after they have supplied the private property easement. This would mean the appropriate input from Engineering has been given on the private property easement.

Attorney Dunckel asked if this meant waiting until the Committee has sufficient information on both easements. Mr. Volpi said the easement before the Committee today would be made contingent upon the completion of the work and documentation of the private property easement.

Attorney Dunckel said he had issues with the verbiage of the proposed easement, pointing out that there had been discussions “about ‘no staging’” or storage of construction equipment, but this was mentioned in “the first line of the easement.” He said the language of the Application required some changes, but suggested that the Committee grant conceptual approval so FDOT knows the easement area has been approved.

Mr. Irvine asked Mr. Darmanin if he wanted the 26 in. replacement water main to be in place and operational before work proceeded on the project. Mr. Darmanin

said based on the discussions he has heard, the order of operations for the project would be disconnection of the 12 in. water main, leaving the 20 in. water main in place to supply water on both sides of the bridge, and then build a temporary bridge over the 20 in. water main. He explained that he was not comfortable with not knowing where the pilings would be placed, as they could damage the 20 in. main if they are too close to it.

Mr. Terrell agreed that the two mains are critical to the beach in particular. Mr. Irvine pointed out their necessity for fire protection as well. Mr. Darmanin added that even changing the order of operations, such as leaving both mains in place while the pilings are being driven, could make a difference. He also asked to know if the final outcome would be a subaqueous crossing for a new 26 in. main, or if it would be attached to the new bridge.

Mr. Irvine asked if the Application's language could also list the duration of the easement. Attorney Dunckel said he was still inclined to have FDOT "travel parallel paths" and make the two easements under discussion be co-concurrent.

He continued that the consensus seemed to be approval of the concept of the temporary easement; however, the text language required further work. This would allow Ms. Tronel to advise FDOT that the temporary easement would commence once the Utilities issues have been certified.

Ms. Tronel said her only concern was that she did not know when Utilities would be able to make this certification. She explained that she has to have all the rights necessary for the construction project at the time the project is certified; if the Utilities easement cannot be approved until a later date, she would not be able to get certification for FDOT. She agreed that it made "more than good sense" to wait until the design is in place and the easement has been identified, and suggested that FDOT could come back to the Committee once Utilities has expressed their confidence in the plans.

Mr. Irvine asked if the Application could be deferred until more of these details are known by Utilities and Engineering.

Chair Partington said the reason the easement was being requested was so FDOT could proceed with more detailed design. He asked if the Committee could indicate a likely recommendation of their approval, so they can proceed with work on the construction phasing.

Motion made by Attorney Dunckel that the Committee endorses the conceptual approval of the location and the concept of the temporary easement, but not a final recommendation to the City Commission until such time as both the utility easement and the verbiage of this easement can be worked out.

Mr. Darmanin asked if Attorney Dunckel would **amend** his **motion** “to include the utility locations.” Attorney Dunckel accepted the **amendment**.

Paul Bohlander, Assistant Utilities Director, joined the meeting at this time.

Attorney Dunckel clarified that one issue for which the verbiage of the proposed easement must be discussed further would be the staging and storage of construction equipment. He recalled that during the special meeting with FDOT, it was established that no staging or storage would be done within the park, although equipment would be operating in the area.

Mr. Irvine **seconded** the **motion**.

Mr. Bohlander said in his opinion, FDOT was working in good faith to provide the easement for the water main’s relocation. He did not feel the Application for the easement in the park should be delayed.

Ms. Tronel said the delay would not harm FDOT’s progress. She said she has already made offers on the other necessary easements to be negotiated, so the water main easement would be “the one...to watch” in order to maintain her schedule. She said this easement would be identified and an offer would be made to the property owner before the project is certified.

Mr. Terrell said he supports the **motion**; however, when the Application comes back to the Committee, he would like it to “travel together” with the water main easement. Chair Partington pointed out that the Committee may not need to approve the water main easement, as it may or may not be located on City property. Mr. Terrell said ultimately the only way he could support the **motion** was if the water main easement has been approved by the appropriate Department(s) when the Application comes back to the Committee.

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

The Committee resumed discussion of Item Two at this time (11:07 a.m.). They provided Mr. Bohlander with the documentation for the Application and apprised him of the options that had been discussed thus far.

Mr. Bohlander said the thought had been for the church to “cross the alley” to access the sewer system through the adjoining property; he noted that the proposed options have been a licensing agreement, an easement, and vacation of the alley. Once they reached the adjoining lot, an easement or another agreement would be necessary in order to connect with the main on 7 Terrace. He said the properties would need to be joined in order to ensure they would not be sold separately.

Mr. Irvine asked if the proposal to cross the alley was encouraged by the City. Mr. Bohlander said no main was provided on 7 Avenue, as it would have been very expensive and served a limited number of properties. A main could be brought down 5 Street, but he noted that this would be done at considerable cost.

Mr. Terrell asked if the existing gravity system was built by WaterWorks. Mr. Bohlander said it was an old system built under assessment. Mr. Terrell said one issue for him was if the property was not given sewer service, they had not paid the assessment; this would mean the City was under no obligation to bring sewer service to the property. Mr. Bohlander said while this may not be an obligation, the City would like to encourage everyone to connect to the sewer system.

Mr. Gossman said if the church had vacation and unity of title, they would have paid the assessment for the lot on 7 Terrace.

Mr. Terrell said if the alley, or a portion of the alley, is vacated, the lateral sewer connection would no longer require the approval of the Committee and would solely be a building permit issue.

Chair Partington clarified that the vacation process would cost the Applicant \$3000, but they would then own the alley as additional land.

Mr. Darmanin said the Applicant is currently undergoing severe financial strain by having to pump the septic tank on a daily basis. He noted that other options to address this included building a new piece of gravity main; installing a small grinder station on the private force main; and obtaining a variance that would allow them to rebuild their drain field. He noted that the Applicant had advised the drain field would be built over sugar sand and might lack the lasting effect it would have in other locations.

He concluded that while WaterWorks intended to provide service to as many residents as possible, but was never intended to provide 100% of residents with service. In addition, the City has made exemptions for other properties that had to retain their septic tanks.

Mr. Bohlander asked what the downside would be for connecting across the alley to the existing sewer. Chair Partington said the issue was the principle, as placing private utilities across an alley were not allowed.

Chair Partington said another suggestion was a temporary easement to allow the Applicant to encase the pipe in concrete beneath the alley while proceeding with the vacation of the alley. Attorney Dunckel said either an easement or a license would be appropriate.

Chair Partington asked Mr. Foster and Mr. Morgan for their view on returning to the Committee with a vacation application for the alley. He estimated it would take three to four months. Mr. Irvine added that a temporary easement could be provided for a year so the church could apply to vacate the alley.

Mr. Terrell asked how long the process for a temporary easement would take. It was clarified that this would be three to four months, or the same time period as a vacation application. Attorney Dunckel suggested that a revocable license with unity of title would be the quickest way to address the situation. The revocable license would be terminable or open to extension at the end of a one-year period. He explained that unity of title would allow the titles of the two properties to be combined solely for the purpose of the utility. This would also address the issue of selling one of the two lots, as the unity of title would show up when a title examination is done prior to a sale.

Mr. Darmanin asked for a brief explanation of the vacation process so the Applicant would know what should be done conceptually. Ms. Redding advised that a survey of the alley would be made and the application would go to the DRC. If the Committee votes at this time to recommend vacation, the application would not need to come before PROW again. The Planner assigned to the project would place the application on the next City Commission agenda, and signs would be posted on the property, so any individuals objecting to the vacation would have the opportunity to attend the meeting and speak on the issue. She added that the application fee is \$3000.

Mr. Irvine said a sketch and description of the site would be necessary, which was less expensive than a complete survey. Attorney Dunckel said this would be necessary "only for the area where they cross the alley." Mr. Irvine explained that as there were no clear drawings of the alley provided in today's Application, he would need to see exactly where the lateral would extend across the alley.

Mr. Darmanin asked if the entire alley would need to be vacated. Mr. Irvine said this would be the best solution, particularly as the alley is not being used. Ms. Redding confirmed that this would not alter the application process.

Mr. Cocking said the lateral would extend from the existing septic tank to the fence, which is roughly 7 ft.; the alleyway itself is roughly 4 ft. to 5 ft. physically. Mr. Darmanin said one question would be how many feet from the property line would be crossed to the alleyway. Mr. Cocking said from the parking lot to the alley is approximately 15 ft.

Chair Partington noted that engineering and building permits would be required for the work, and asked if the lateral would also need to be encased in concrete as it crosses the alley. Mr. Darmanin said this would be the Applicant's choice. Mr. Terrell noted that this could "cost thousands" in addition to the vacation.

Motion made by Attorney Dunckel, seconded by Ms. Redding, to recommend a temporary revocable license for a year, pending the processing of a vacation application for the entire length of the alley; the Property and Right-of-Way Committee approves the principle of vacation of the entire length of the alley. In a voice vote, the **motion** passed unanimously.

Chair Partington advised that the application for the revocable license must be approved before building and engineering permits could be issued.

He introduced Jay Sajadi, who works in the Land Development section of the Engineering Department.

There being no further business to come before the Committee at this time, the meeting was adjourned at 11:31 p.m.

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