

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, MAY 19, 2011 – 10:00 A.M.

Committee Members Present

Tony Irvine, Engineering
Leona Lettsome, Parks and Recreation
Tom Terrell, Public Works
Mark Darmanin, Utilities
Anthony Fajardo, Planning and Zoning
Robert Dunckel, Assistant City Attorney

Staff

Victor Volpi, Liaison, Senior Real Estate Officer
Terry Burgess, Zoning Administrator
Frank Snedaker, Chief City Architect
Dennis Girisgen, Public Works
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to the City Commission

None.

Call to Order

It was determined that Mr. Irvine would chair today's meeting.

Mr. Irvine 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.

ITEM ONE

APPROVAL OF APRIL 17, 2011 MINUTES

Motion made by Mr. Darmanin, seconded by Mr. Terrell, to approve the minutes of the April 17, 2011 meeting as presented. In a voice vote, the **motion** passed unanimously.

ITEM TWO

**LICENSE AGREEMENT TO ENCROACH INTO
EASEMENT**

Address: 3300 Commercial Boulevard

Mr. Irvine noted that this Item was deferred from the April 17, 2011 meeting so the Applicant could gather additional information.

Damon Ricks of Flynn Engineering, representing the Applicant, stated that an easement bisects the site on which new owners wish to remodel a patio. They would like to remove some of the encroachments onto the easement, including the building's trash enclosures. They are seeking a revocable license in order to make these renovations.

Mr. Volpi arrived at 10:07 a.m.

Since the previous meeting, Mr. Ricks said the Applicant has had several conversations with the Public Works, Real Estate, and Economic Development Departments. Public Works has determined the Applicant may get rid of the existing drainage outfall and move it to a new easement on the south end. This would relocate the City utilities. The Applicant has also spoken via email with Paul Bohlander, Assistant Utilities Director, regarding a water main that may potentially be located within the easement.

Mr. Darmanin explained that according to Mr. Bohlander's email, the Applicant is willing to add a catch basin at the southern end of the property, run new pipe from the existing catch basin to the new one, and provide a new outfall at the southern end of the property, therefore eliminating the problem within the current easement. They are not asking to vacate the current easement, as they understand there is an alignment issue with the construction of the possible new water main. The current easement would be left for possible future use by the City, with the understanding that it would have to go slightly deeper in order to go beneath the Intracoastal Waterway. He concluded that this satisfies the concerns raised by Utilities at the previous meeting.

Chair Irvine asked if any open cutting would be required for the proposed water main, and where the receiving pit would be located. Mr. Darmanin said in order to reach the necessary depth to cross the Intracoastal Waterway at this location, the entry and exit pits would likely be "almost a full block away in either direction."

Chair Irvine asked if the developer is aware of the potential water main, or if they would be building with the expectation of a permanent occupation on the easement. He pointed out that the existing plan for greater depth would still be subject to revision in the future. Mr. Darmanin pointed out that the request does not propose any permanent construction, and the Applicant is applying for a revocable license with the understanding that anything placed in the existing easement could be removed.

Attorney Dunckel said he would like to see the record reflect exactly what improvements would be permitted in the area so he could include this information

in the revocable license. This would ensure if the Applicant decided to include other improvements in the area in the future, they would be required to come back before the Committee.

Mr. Ricks advised Mr. Dunckel that the specific improvements that will encroach on the existing easement would include a new dining patio with fencing and a canopy. There will also be removable furniture and landscaping. He offered to provide a plot plan for the site.

Chair Irvine emphasized that while concerns regarding water lines have been addressed, he wanted to ensure the Applicant is aware any public utility can seek to use the easement. He explained that a telephone or fiber optic company may need this easement in the future and may make an open cut.

Motion made by Attorney Dunckel to recommend approval for a revocable license, subject to removal [of] the drainage line that runs through the utility easement now, relocate it to the south side, construct a new catch basin, connect the two, and authorize [the Applicant] to place improvements within the license area, consisting of dining patio, fencing, canopy, tables and chairs, conditioned upon the granting of the utility easement for the relocation.

Attorney Dunckel **amended** his **motion** to reflect the following: the word "removal" would be replaced by "abandon in place." He also noted that granting the revocable license would be subject to engineering permits.

Mr. Darmanin **seconded** the **motion**. In a voice vote, the **motion** passed unanimously.

ITEM THREE

LICENSE AGREEMENT TO ALLOW FENCE TO REMAIN

Address: 1536 SW 19 Avenue

Emerson Allsworth, representing the Applicant, stated that the Applicant's family purchased the property in 1961, at which time the yard was already fenced. The deed shows the property as being "free and clear of encumbrances" in 1961. Subsequent changes in title and title searches have also shown no encumbrances. Mr. Allsworth provided the Committee members with a copy of the original deed and photographs of the property and neighboring properties. The Applicant is before the Committee because when he added a room onto his house, the fence encroachment was noticed during the construction phase.

Mr. Allsworth advised that the Applicant needs the fence to remain on his property for the safety of his pets and his patrol car, which is parked inside the fence. He noted there has never been a complaint about the fence. The best

potential remedy discussed for the issue has been a revocable license. Records do not show whether or not the previous property owner had a permit for the fence.

Mr. Burgess said if the Committee approves the Application and a permit is found for the fence, the Applicant would not have to appear before the Board of Adjustment for a variance; if no permit is found, the Applicant will have to request a variance for the required 3 ft. setback on the property.

Chair Irvine asked why a permit would obviate the need for the Board of Adjustment, pointing out that a fence outside the property line would not have been built in accordance with a permit. Mr. Burgess said if the permit shows the fence was built to the property line, this would be according to Code prior to 1997.

Chair Irvine asked the Applicant what hardship would be caused by moving the fence back to the property line. Barry Radanof, Applicant, explained that he parks inside the fence and keeps two dogs in the fenced yard during the day. He added that he would "lose half that yard" by relocating. He concluded that he may seek to be a K9 Felony Officer, and this position requires a fenced-in yard in which to keep the dog.

Chair Irvine said he did not agree that these constituted a hardship, as the fenced enclosure would still exist but would be smaller. Attorney Dunckel noted there are 25 ft. from the property line to the house, which would leave room to park cars closer to the house. Mr. Radanof said if the only car in question were his personal vehicle, it would be a different issue; however, he also keeps his patrol car at his home, which includes equipment such as a computer and shotgun.

Chair Irvine explained he did not have an issue with the fence, but wanted to be convinced that there was an advantage to locating it on public property. Mr. Allsworth said the hardship would be the loss of "a substantial portion of [the Applicant's] yard." Chair Irvine said this would be more accurately stated as losing a portion of the City's right-of-way. Mr. Allsworth reiterated that the existing fenced area is used by both Mr. Radanof's dogs and his service vehicle.

Attorney Dunckel explained that the Committee members must act as trustees to the dedication of public rights-of-way, and the deed does not give the authority to appropriate any of the right-of-way for personal benefit. He noted that the title insurance, similarly, does not apply to zoning regulations.

He noted that if the fence is moved back to the property line, ample room remains for the dogs; with respect to the service vehicle, he noted that a covered carport may be able to accommodate the vehicle. He concluded that the issue

would be different if it resulted from a permitting or surveying error, and added that other residents may see the existing fence and believe they are able to build a fence out to the right-of-way as well. Attorney Dunckel concluded that he was not comfortable with these conclusions, but felt moving the fence back to the property line and allowing some encroachment into the right-of-way in the driveway area could be a possible solution.

Mr. Allsworth said landscaping could be added to the fence if that was the Committee's wish. He noted again that other residents in the area have landscaping all the way to the pavement. He added that it is not yet known whether or not a permit was ever issued for the fence.

Mr. Darmanin asked if the Applicant would like more time to research the possibility of a permit. Mr. Allsworth said this has already been done. Mr. Darmanin said the Application could be tabled if the Applicant wished to have more time to try to find the appropriate permitting information.

Mr. Terrell asked if there were no permitting records from the time in which the fence was constructed, or if records exist and a permit cannot be located. Mr. Burgess clarified that there are records related to the house, but no permit was found for the fence. Mr. Terrell said this suggested that the permit had not been pulled at the time.

Attorney Dunckel asked if the carport could be legally converted to a garage. Mr. Burgess said it would need to meet the front and side yard setbacks. Attorney Dunckel advised this would give the Applicant nearly 45 ft. to the property line.

Chair Irvine suggested that due to the sentiment expressed by the Committee members thus far, the Applicant may want to table the Item. He asked if the Applicant is required to come before the Committee prior to the Board of Adjustment. Attorney Dunckel characterized this as the "more orderly" procession of events. Chair Irvine said while he was sympathetic to the Applicant's dilemma, he must also act as the guardian of a public interest, and did not see a compelling reason to reduce a right-of-way.

Mr. Allsworth asked if the Item could be tabled while the Applicant goes to the Board of Adjustment to request a variance, although he noted that this would not be the usual order. Chair Irvine said this was what he had intended, as he would be more comfortable with the Item if the Board of Adjustment had approved it; he was not certain, however, that the Application could proceed in this manner. Mr. Burgess said the Board of Adjustment was likely to want the Committee to act on the Application first.

Mr. Allsworth asked if the Committee could make a recommendation for the fence to be relocated to the property line. Attorney Dunckel explained that he is

the attorney for the Board of Adjustment and could not make this recommendation, as he did not want to attempt to substitute his individual judgment for the collective judgment of the Board.

Mr. Radanof asked if the fence must be brought back 3 ft. to the property line on all four sides of the house. Attorney Dunckel advised that this requirement would only apply to the front portion, which faces the street.

Mr. Volpi suggested that the Committee could vote against allowing the fence in a right-of-way, but the Board of Adjustment could still vote in favor of moving the fence back to the property line. Chair Irvine said he did not feel the Committee had the authority to decide zoning issues.

Mr. Allsworth said it could be best to table the Item and make a decision on whether or not to take the Application to the Board of Adjustment; if there is no relief from the Board, there would be no reason to come back to the Committee. Chair Irvine said he was not certain the Committee would give the Application a positive recommendation, and for this reason, he would encourage the Applicant to table the Item.

Motion made by Mr. Darmanin, seconded by Attorney Dunckel, to table to allow the Applicant to evaluate his opportunities. In a voice vote, the **motion** passed unanimously.

Attorney Dunckel clarified that the Committee has taken no action on the Application, which would be better than a negative recommendation if the Applicant decides to proceed to the Board of Adjustment. He noted that if the Applicant requests a 3 ft. setback from the Board and it is granted, the Application would not have to come back before the Committee; it would only have to do so if the Applicant wished to encroach into the right-of-way.

Mr. Radanof said one issue was the final on the addition to his house, which cannot be given at this point due to the encroachment issue. Mr. Burgess said he felt this issue could be settled.

ITEM FOUR

UTILITY EASEMENT VACATION

Address: 2800 SW 5 Street

It was noted there was no one present on behalf of the Application.

Motion made by Attorney Dunckel, seconded by Mr. Terrell, to table. In a voice vote, the **motion** passed unanimously.

ITEM FIVE

ACCESS AGREEMENT TO INSTALL & SAMPLE

**GROUNDWATER MONITORING WELLS IN RIGHT
OF WAY**

Address: 3000 S Andrews Avenue

Rohit Raj Goswami, representing the Applicant, said the monitoring wells would show the extent and the source of contamination at this site. It is possible that wells may need to be installed even further into the right-of-way and other City property at a later time to determine the extent of contamination. The Application is for three wells.

Chair Irvine asked how the Applicant would handle any utility conflicts with the wells. Mr. Goswami said the wells could be slightly relocated “a few feet here or there” if necessary. He added if there is drilling in the vicinity of fiber optics, a representative of the appropriate utility would be asked to observe the process.

Attorney Dunckel noted it did not seem as if the precise location of the wells was known at this time; he advised that ultimately the location would have to be clearly shown, and asked if the Application would be sent back to Utilities at that time to have them double-check its accuracy. Chair Irvine said an engineering permit would be applied for at that stage.

Mr. Girisgen recalled that the last time a similar Application came before the Committee, it was a request for a revocable license. Attorney Dunckel reiterated that he would need specific identification of the location of the wells.

Mr. Goswami said he could provide GPS coordinates for the wells. Chair Irvine explained that these would be difficult to use when locating within a right-of-way, and suggested tying the location of the wells to the points of the right-of-way. Attorney Dunckel said he could make the drawings subject to the approval of Engineering and Utilities.

Mr. Girisgen asked if the wells would be permanent or temporary. Mr. Goswami said this would depend upon the requirements of the Department of Environmental Protection (DEP); the Applicant would have to have more information before they could answer this, although he noted that the DEP would not generally permit the wells to be abandoned once they are open. Mr. Girisgen suggested that for long-term wells, a revocable license would be necessary. Attorney Dunckel advised that monitoring wells often remain in place from two quarters to a number of years.

Motion made by Mr. Terrell, seconded by Attorney Dunckel, to approve the request as presented, subject to the stipulation that drawings be submitted with specific location information on the proposed well sites for review by the City Surveyor’s Office and the Land Development Section of Engineering.

Mr. Snedaker said when the alley was vacated, it was maintained as a utility easement, and contains sewer access and may accommodate proposed underground lines for Comcast and FPL.

Attorney Dunckel asked if there are strings attached to any grant monies used in the development of the park. He explained that grants often look for certification of title, which would not have shown the proposed easements. Mr. Snedaker said he could provide copies of "one or two grants" received from Broward County toward the park's development. Attorney Dunckel advised that Broward County sometimes has "very onerous" strings attached to its grants, and suggested that the Committee review these and consider working with the County if there is any difficulty reconciling the easements.

Mr. Snedaker said the land was purchased through the Broward County Open Space Trust and Parks Bond Initiative. They also provided funds through additional grants.

Mr. Darmanin said when any original motions were made regarding this Item, it was agreed they would include a caveat requiring the CRA to pay for all utility relocations if necessary. Mr. Snedaker said relocations are taking place as part of the CRA project, although he was not aware of how they were being funded. He advised that some of the utilities to be relocated are not related to the CRA project: FPL had wanted to "hold off and do all the work at once" due to engineering requirements. The City accepted some CRA money to install the undergrounding conduit, but he was not aware of whether or not the CRA was paying for the entire relocation.

Mr. Darmanin suggested that the Committee may not need to identify the source of funding, but can state that the developer is responsible for relocation costs. Chair Irvine said if the Committee recommended granting the easement, it did not compel the relocation of utilities; the relocation was separate from the Committee's responsibility.

Chair Irvine noted that one easement is an access easement to the public rather than a utility easement. Mr. Snedaker recalled that the original request was for a cul-de-sac on the site, but the Committee had instead recommended the access easement. Chair Irvine advised this may mean they should have separate motions on this Item for the FPL, general, and access easements.

Mr. Darmanin recommended reaffirmation of the motion made in 2008 when the Item was discussed by the Committee. Mr. Terrell pointed out that because of the motion made at that time, all the Committee needed to address at present would be "what was not included in that motion." Attorney Dunckel said while approval of two easements had been recommended in 2008, the Committee would still need to act on the remaining easement.

Mr. Darmanin said if the original motion was reaffirmed, the Committee could then add a second motion to address the final easement. Mr. Terrell advised it would also have to apply to any required relocations, which would be the responsibility of the developer. Mr. Snedaker clarified that the developer in this case is the CRA.

The Committee discussed which portions of the site and proposed easements were addressed in 2008. Chair Irvine cautioned that there are areas owned by the CRA in which the Committee has no authority.

Motion made by Mr. Darmanin, seconded by Mr. Terrell, to recommend approval for the three identified easements east of the vacated alley, south of NE 6 Street, with the caveat that any utility relocations will be done by the CRA.

Mr. Snedaker asked that the **motion** be **amended** to exclude the CRA from one part of the site with which they are not affiliated. Mr. Darmanin and Mr. Terrell agreed to replace the word "CRA" with the word "developer" in the **amended motion**.

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 11:35 a.m.

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