

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, AUGUST 18, 2011 – 10:00 A.M.

Committee Members Present

Peter Partington, Chair
Tony Irvine, Engineering
Leona Lettsome, Parks and Recreation
Tom Terrell, Public Works
Julie Leonard, Utilities
John Gossman, Code Enforcement
Anthony Fajardo, Planning and Zoning
Carrie Sarver, Assistant City Attorney (dep. 10:10)

Staff

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

Communications to City Commission

None.

Call to Order

Chair Partington called the meeting to order at 10:05 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 JULY 21, 2011 MINUTES

Motion made by Mr. Terrell, seconded by Mr. Fajardo, to approve the minutes of the July 21, 2011 meeting. In a voice vote, the **motion** passed unanimously.

Attorney Sarver explained that she had to leave today's meeting early and wanted to make sure her comments on pending Items were on the record.

Regarding the access easement in Item 3, Attorney Sarver noted that the Applicant would need to get a surety bond to cover the costs of the monitoring wells. She continued that in Item 4, the Applicant would donate the paving, and through the engineering permit, special text would be included to specify that no

property rights are given. Mr. Girisgen confirmed that his Department is working on the language of this permit.

She advised that originally Item 5 had stated there was an existing lease agreement with the sidewalk closing; however, this agreement should correctly be part of Item 4. Attorney Sarver cautioned that should the Committee approve this Application, they should ensure that the City Attorney's Office may review the Item and make sure that modifications can be done with written consent. Chair Partington noted that the final sentence in Item 5 should be moved to Item 4.

Mr. Terrell returned to Item 3, noting that the surety bond should be required to remove or abandon the wells, which are two separate possibilities. Mr. Irvine explained that some wells are better abandoned than removed.

Chair Partington asked if there was any problem in the Committee proceeding without an attorney present. It was agreed that the Committee has done so in the past.

Attorney Sarver left the meeting at 10:10 a.m.

ITEM TWO

UTILITY EASEMENT VACATION

Address: 2800 SW 5 Street

Chair Partington asked why the easement vacation was being sought. It was explained that the existing house encroaches on the easement; the property has been sold, but the bank will not close on the property because a portion of the residence is located in the easement. The request is to vacate the north side of the easement, as utility poles are located on the south side of the property.

Mr. Irvine commented that vacating half the easement was useless, and expressed concern that the building seems to be within feet of the property line, which could also prevent the bank from closing on the property. Mr. Fajardo noted that this would depend upon when the building was constructed, and pointed out that the Applicant is not making any additions to the house. Mr. Irvine stated that there appeared to be an unpermitted extension onto the house that created the encroachment. He noted that the property is in what was formerly an unincorporated area, in which a good deal of work was done without a permit. He concluded that he would like to see more of the house's history.

Halina Sosnowka, realtor for the Applicant, stated that part of the building extends approximately one foot into the easement; nothing has been added onto the building over the years.

Mr. Irvine noted that the Applicant has acquired the eastern 5 ft. of the adjoining lot, which means the easement is entirely on their property. Chair Partington observed that there are no utilities on the easement and no apparent future need for it.

Motion made by Mr. Irvine, seconded by Mr. Terrell, that the Committee recommends the vacation of this easement as requested, with the typical and usual oversight and utility sign-offs from City utilities and franchise. In a voice vote, the **motion** passed unanimously.

ITEM THREE

ACCESS AGREEMENT

Address: 3000 S Andrews Avenue

Mr. Volpi explained that the Applicant wished to install groundwater monitoring wells in the City's right-of-way to determine the potential presence and concentration of contaminants and to address Department of Environmental Protection (DEP) requirements. These are in addition to the other wells recommended by the Committee on July 21, 2011.

Rohit Goswami, representing the Applicant, stated that the first three wells were requested to measure the metal concentration beside the property; the nine wells before the Committee today are offsite wells and located farther from the site in an attempt to capture the extent of the contamination. This is necessary in order for the Applicant to complete the site assessment and proceed with a remediation program.

Mr. Irvine noted that some of the sites are unpaved swale areas on the side of the road, and stated he would like to see the City indemnified against potential trips and falls. Mr. Girisgen assured the Committee that including this language was standard practice.

Ms. Leonard said she would like to ensure that the proposed wells are a minimum of 10 ft. from any existing utilities. Mr. Goswami agreed with this.

Mr. Fajardo pointed out that one photograph of a proposed well site appears to be over a sidewalk. Mr. Goswami said the intent is to access the subsurface area. Mr. Terrell said the well would be a 2 in. pipe with a filter.

Chair Partington asked how monitoring is done. Mr. Goswami said DEP's standard procedure is to put a tube inside the well, purge the well to get a minimum required amount of water from it, and take a sample. This is done until the concentration levels are reduced below the target levels. Once the concentration is below the target level, the Applicant can request closure on the

site and abandon the wells. Mr. Girisgen asked what the procedure is for abandoning a well. Mr. Goswami said abandoned wells are grouted.

Motion made by Mr. Terrell, seconded by Mr. Irvine, to approve as requested, including the requirement from the City Attorney's Office that there be a surety bond to ensure the abandonment of the wells, and that none of the wells are placed within 10 ft. of the City of Fort Lauderdale's utility. In a voice vote, the **motion** passed unanimously.

ITEM FOUR

PARKING IN RIGHT-OF-WAY

Address: 2301 Las Olas Boulevard

Mr. Volpi advised that the Seven Isles Homeowners' Association would like to pave part of SE 23 Street for parking for an electric security vehicle.

Robert Lietz, representing the Applicant, explained that the area the Association hoped to pave would be a bay for the vehicle.

Ms. Alarcon said Parking and Fleet Services had no objection to the Application, but cautioned the Committee that a right-of-way is intended to be available to the general public and cannot be signed or reserved for any reason. She stated that the Association may use this space for their vehicle, but if another vehicle parks in the space, the City will not enforce the space as reserved and will not allow it to be signed.

Mr. Irvine asked if the space could be designated as "parking by permit only." Ms. Alarcon said the Association could go through the residential parking permit program if they wished to apply, but advised that they would not meet the necessary criteria.

Chair Partington asked what the dimensions of the space would be. Mr. Lietz said the space is 6 ft. x 6 ft., which could accommodate the small electric car.

Ms. Alarcon noted that the City is under a consent decree with regard to Americans with Disabilities Act (ADA) compliance, and pointed out that the 6x6 space does not meet ADA requirements. She expressed concern that the City should make sure they are not taking action that could put the City at a legal disadvantage. Chair Partington stated that while the City should attempt to build new fixtures that are ADA-compliant, the parking space would not be covered by the consent decree, which lists specific items.

Ms. Alarcon said with respect to parking, the consent decree requires that any new development must apply ADA guidelines. As the space in question would be

considered on-street parking, it could fall into this category. She reiterated that if the space is required to be ADA-compliant, it would have to be larger than 6x6 ft.

Mr. Irvine said he felt the space could be made ADA-compliant without making the consent decree part of the Committee's approval. Chair Partington pointed out that the parking space would not be intended to be a handicap-accessible space; he did not know whether or not this triggered the requirement to put in an ADA-compliant access ramp, but felt that it was not likely to do so.

Mr. Terrell said the request is to use the right-of-way for a specific purpose, although access to the public could not be denied. He did not feel ADA compliance would therefore be an issue. It was noted that the sidewalk is being diverted around the proposed space by a curb cut. Mr. Volpi clarified that this would mean the actual space is 6 ft. x 11 ft. rather than 6x6 ft. Chair Partington advised that under these circumstances he would agree that the curb cut must be ADA-compliant.

John Fitzgerald, also representing the Applicant, explained that a neighbor deeded the property over in order to create the right-of-way; the Association has an exclusive lease to use the donated property strictly for their guardhouse. He asked if this would mean it was not a public parking space.

Mr. Irvine commented that the right-of-way is not deeded to the City; the City Attorney's Office had expressed concern, however, that allowing uses that are "not strictly right-of-way purposes" in the right-of-way could subject the City to a claim of abandonment of the right-of-way. The deed is intended only to protect the City from such a suit.

Mr. Fitzgerald asked if the exclusivity of the lease had any effect in this case. Mr. Irvine said the exclusivity does not supersede right-of-way purposes, and asserted that the City could use the right-of-way as they saw fit. Mr. Volpi clarified that the City remains in control of the road; should they abandon this control, the underlying fee reverts to the abutting property owner. The deed is insurance to the City that the owner would not claim the property.

Mr. Fitzgerald said the lease is only for use as a guardhouse, not for any general parking. Chair Partington reiterated that the lease is basically an insurance policy so the City cannot be said to have abandoned the right-of-way, but confers no other legal rights on the Association.

Mr. Gossman said when Code Enforcement receives complaints that individuals are parking in rights-of-way in front of a resident's home, they are unable to enforce this: it is legal to park in a right-of-way in a residential area, even if this means the parking is done in front of private property. Ms. Alarcon added that

while the City is not required to sign a right-of-way as ADA-compliant, they are required to make it ADA-compliant.

Chair Partington expressed concern that a car could park in the space, blocking the sidewalk to an extent, and then the City would receive calls that the sidewalk was being blocked by a vehicle. He said he was not certain what the City could do in this case. Mr. Gossman asserted that if a vehicle is blocking the sidewalk, that was a Code violation and the vehicle could be towed.

Mr. Girisgen suggested that in order to discourage other vehicles from using the space, the Applicant could place physical markers such as bollards around the perimeter of the 6x11 space. Chair Partington noted that these could be used to prevent vehicles from extending over the sidewalk.

Mr. Volpi asked how often the vehicle would be parked in the space. Mr. Lietz said security patrols the neighborhood hourly.

Mr. Irvine suggested that while the space could not be signed for private parking, it could perhaps be signed for subcompact parking only or other size or type restrictions. Ms. Alarcon asserted that there is no such thing as subcompact or motorcycle parking in the City's Ordinances, although it is grandfathered in some areas.

Motion made by Mr. Terrell, seconded by Mr. Irvine, that the Committee approve [the Application] as requested.

Chair Partington asked why the **motion** did not refer to the previous discussion regarding ADA compliance. Mr. Terrell said the process already requires ADA review. He added the **amendment** that the approval should be subject to an engineering permit. Mr. Irvine **seconded** the **amended motion**.

Mr. Girisgen asked if another revocable license was required in addition to the existing lease. Mr. Volpi said the area in question must be treated exactly like a right-of-way. Chair Partington clarified that the Committee is recommending the Application subject to an engineering permit, and Mr. Girisgen's Department would review the ADA requirements and state that no prohibitive signage may be posted on the site. Mr. Irvine reiterated the suggestion of physical restrictions such as bollards, curb stops, or landscaping.

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

Chair Partington commented that some years ago, he had created engineering permits for a number of parking spaces in a median, which resulted in a change in an Ordinance. Mr. Girisgen said the Ordinance, which states that the proposal

of use of a median for parking must go before the City Commission, would be reviewed by his office.

ITEM FIVE

SIDEWALK CLOSING

Address: 201 SE 6 Street

Mr. Volpi explained that a sidewalk portion of the right-of-way would be closed so new windows and a curtain wall could be installed in the Broward County Courthouse.

Chair Partington asked why the Application had come before this Committee. Mr. Girisgen said it would close a sidewalk in a busy area of the City for more than three days, which requires City Commission approval. Mr. Girisgen confirmed that the closure of a sidewalk in a quieter area would not come before either the Committee or the City Commission.

Chair Partington asked where pedestrians would walk during the closure. Georgette Peat, representing the Applicant, said they could cross the street at the crosswalk and walk on the other side of the road. A pedestrian tunnel could not be created at the site because there was insufficient room to fit equipment into the area between the sidewalk and the building.

Chair Partington asked if Mr. Girisgen agreed a tunnel could not be created. Mr. Girisgen said he was not sufficiently informed on the project to say a tunnel was impossible; however, he agreed that lifting glass over a pedestrian tunnel did not seem to be a good solution. Mr. Fajardo also expressed concern that an area with heavy pedestrian traffic would result in pedestrians walking in the right-of-way rather than crossing the street.

Chair Partington suggested creating a space with barricades in which pedestrians could walk by partitioning an area outside the work site. Mr. Girisgen asked if this space would then need to be covered, noting that Florida Building Code Chapter 33 specifies the height of a work area vs. where its setback must be.

Ms. Peat said a flag person would be posted at the site to ensure pedestrians crossed the street, and asserted that the sidewalk should still be closed.

Mr. Terrell said he felt it would be safer to ask all pedestrians to cross the street rather than to create a tunnel. Chair Partington said the issue was whether or not pedestrians could be forced to cross to the other side of a road.

Ms. Alarcon stated that one consideration is how the City can continue to be pedestrian-friendly as its density increases. She expressed concern that forcing

pedestrians to cross the road would encourage people to jaywalk and create accidents. She felt the City had a responsibility to provide the safest possible pedestrian path, and agreed that a pedestrian tunnel would be more likely to properly move pedestrian traffic.

Mr. Terrell proposed using barricades to create a walkway in the street. Chair Partington agreed. Ms. Peat pointed out this meant she would have to appear before the Committee again to request a lane closure in the street. Mr. Girisgen said this would depend upon what is being closed: if there is the option of keeping a pathway open in the road, this would circumvent the need for a revocable license, as neither the sidewalk nor the road is being closed. He noted again that this would be subject to Chapter 33 of the Florida Building Code, which may still specify that the walkway be covered.

Chair Partington disagreed, stating that he felt the barricades could be used or the walkway could be covered, but not both. He reiterated that his preference would be for the creation of a safe pedestrian area next to the curb; if this cannot be done without covering the area, the current Application should proceed. Mr. Girisgen said if this was the Committee's recommendation, he would ask that the request include a full-time flagman to direct pedestrian traffic. Ms. Peat said this was already part of the existing plan. She noted that she has worked in the area for the last month, and there is very little pedestrian traffic in the area, as most of it is coming from another direction.

Motion made by Chair Partington, seconded by Mr. Irvine, that the Committee approve a pedestrian MOT plan, with the first preference being that the pedestrian path is created within the roadway on the north side of the road, and that should be subject to an MOT; if that is found not to be practical by [Mr. Girisgen], then the Committee recommends approval of the plan as presented, subject to the revocable license.

Mr. Girisgen added that the plan as presented should be subject to the presence of a full-time flagman. Chair Partington recalled that Mr. Girisgen would write the conditions for this license.

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

ITEM SIX

**FLORIDA POWER AND LIGHT EASEMENT
APPROVAL FOR MOONEY POINT / LAS OLAS
CIRCLE**

Address: 2900 East Las Olas Boulevard

Mr. Volpi clarified that Mooney Point is the name of the plat in question. Ms. Butler distributed drawings of the sites, noting that there was a change to the

location sought for the easement since the Committee had last seen the Application.

Ms. Butler began with the easement requested for the 15 Street Boat Ramp. Ms. Alarcon recalled that the Committee asked Parking and Fleet Services to put the easement on the property rather than in the right-of-way; this change has been made. The proposal is for a 10 ft. Florida Power and Light (FPL) easement along the south side of the right-of-way line on 15 Street.

Mr. Irvine noted that there are areas which will still require a right-of-way agreement in addition to what is proposed for the parking lot. Ms. Butler said to the west, there is a proposed 10 ft. right-of-way agreement area, and an additional 15 ft. right-of-way crossing to the condominiums to the north.

Mr. Irvine commented that he did not see the necessity of crossing to the condominiums with undergrounding. Mr. Terrell observed that this north/south agreement was not included in the July Application. Joel Browesky, representing the 15 Street Boat Ramp, explained that this agreement specifies where underground services will be located for the condominiums.

Chair Partington confirmed that all the areas, including the three in rights-of-way, will be subject to the standard FPL undergrounding agreement. He noted that this question comes back to why undergrounding is being done in the north/south area. Mr. Irvine said he understood the undergrounding to be for the benefit of Parking and Fleet Services with respect to ingress/egress to the parking lot. It was clarified that the south side cannot be undergrounded without making the connection to the condominiums to the north.

Chair Partington asked what the practical effect of signing the agreements with FPL for the rights-of-way would be, pointing out that the agreements mean if the City wants to move utilities, it must be done at the City's expense. He asked if the agreements confer any additional rights to FPL. Ms. Alarcon said she did not believe it did, but advised that she would need to clarify this with the City Attorney's Office.

Mr. Irvine noted that the north/south area is a service drop. Mr. Terrell confirmed this. Mr. Irvine pointed out that the City already gives away a lot of rights in this right-of-way, and asked if they would be given away for service feeds as well.

Mr. Terrell noted that there are several underground service fees where there are no easements. Chair Partington asked if there is a recent underground service fee for which FPL has not said an agreement is required. He stated that the City had approached FPL to underground their lines at the City's expense, which automatically triggers the agreement whereby the City must assume any

expense for moving underground lines in the future. He noted that this would be much more expensive than moving overhead lines underground.

Mr. Terrell said he did not understand why the lines in question could not remain overhead. Mr. Irvine added if the lines are undergrounded and FPL has their way, they would be issuing permits to the City to allow the City to work in its own rights-of-way. Ms. Alarcon reiterated that the lines needed to be moved from overhead because of boats coming into the marina. Mr. Irvine said the underground service could be connected without using the right-of-way.

Chair Partington asked why the areas other than the north/south piece could not be undergrounded, and then later the City could reach out to FPL and request an underground feed. Ms. Alarcon said the building is currently fed by an overhead line from the condominium to the east side of the lot; the rest of the property is undergrounded. The requested area would incur the least cost for this service.

Mr. Irvine noted that the agreement with FPL would cover the distribution and transmission lines, and stated that the request is for neither, but is a service fee. He asserted that FPL could put in a service without owning the City's right-of-way.

Mr. Terrell pointed out that the agreement does not say FPL is taking any of the City's rights, but states if the lines must be moved, the City must pay for it.

Chair Partington asked if a transformer would be placed in any of the areas in rights-of-way. Mr. Browesky said there is a transformer in an underground vault in the right-of-way at the east end. There was disagreement regarding whether or not the transformer was underground or above-ground. Chair Partington noted that this was the most likely piece of equipment to be moved in the future at the City's expense.

Mr. Volpi advised that the FPL easement is standard, and does not restrict them to transmission. Ms. Alarcon noted that the lines are distribution lines to the condominiums. Ms. Butler confirmed that the transformer in question is located above ground and feeds both the marina and City property.

Chair Partington noted Mr. Irvine's concern was that by agreeing to the north/south easement request, the City could be setting a precedent that they would sign similar agreements when only a service feed is involved. Mr. Irvine said he did not want every underground service to be subject to such an agreement.

Motion made by Mr. Irvine, seconded by Mr. Terrell, that the Committee recommends approval of the easement and the agreement as submitted, the easement across the north 10 ft. of the marina property and the agreement areas

as shown on the east and west ends of the marina and crossing to the vault and the condominiums to the north, with the easements to be worked out by the City Attorney's Office.

Chair Partington clarified that the easement is in favor of FPL, and the agreements and easement travel with the drawing provided and spell out the areas included in the rights-of-way.

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

The discussion moved on to Mooney Point. Ms. Butler explained that these FPL easements would allow for the relocation of two streetlight poles onto the CRA property. She noted that Mr. Terrell had said there was no other way to proceed with this relocation.

Ms. Alarcon advised that the City was approached by the Venetian with a request to put in an ADA ramp to allow for access to the sidewalk. In designing for the ramp, it was discovered that there was not the minimum 31 in. clearance to allow wheelchair access without moving the light poles. The City must also raise the sidewalk and put in a curb to create the proper ADA-accessible route. The existing access route presents a liability to the City if it is not rectified.

Mr. Terrell confirmed that the proposal was the most practical solution. He advised that because the property in question belongs to the CRA, he still felt the proposal would need to go before the CRA Board, which is aware of the request. Ms. Alarcon agreed that the request would need to go before the CRA Board, but pointed out that the property will be developed in the future. She suggested that the City Attorney's Office could provide for the easement until the property is redesigned or redeveloped.

Chair Partington clarified that the process would be for the Committee to make a recommendation; then the Application would go to the City Commission for approval. He was not certain that the Application would need to go before the CRA Advisory Board.

Mr. Terrell noted that one pole has a guy wire going into the property, and asked that this pole be made self-supporting. This would reduce the easement from 20 ft. to 10 ft.

Motion made by Mr. Terrell, seconded by Mr. Gossman, that the Committee approves [the Application], subject to FPL's removal of the guy wire and the easement being 10 ft. wide.

Mr. Irvine noted that the existing descriptions on renderings are "placeholders," and a more thorough legal description must be prepared.

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 11:37 a.m.

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