

APPROVED
PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING
CITY HALL 8TH FLOOR
COMMISSION CONFERENCE ROOM
THURSDAY, DECEMBER 15, 2011 – 10:00 A.M.

Committee Members Present

Peter Partington, Chair
Tony Irvine, Engineering
Scott Sundemeier, Facilities Manager
John Gossman, Code Enforcement Supervisor
Anthony Fajardo, Urban Design and Development
Terry Rynard, Assistant Director, Parks and Recreation (dep. 10:30)
Robert Dunckel, Assistant City Attorney

Staff

Victor Volpi, Liaison, Senior Real Estate Officer
Carrie Sarver, Assistant City Attorney (arr. 10:13)
Dennis Girisgen, Public Works (arr. 10:48)
Antoinette Butler, Transportation and Mobility, Parking Division
Larry Teich, Environmental Resource Supervisor
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Call to Order

Chair Partington called the meeting to order at 10:09 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 OCTOBER 20, 2011 MINUTES

Motion made by Mr. Fajardo, seconded by Mr. Irvine, to approve the minutes of the October 20, 2011 meeting. In a voice vote, the **motion** passed unanimously.

ITEM TWO

LICENSE AGREEMENT

Address: 825 E. Sunrise Boulevard

Mr. Volpi explained that the Applicant, Pet Supermarket Inc., would like to develop a dog park on a vacant lot abutting City property. They plan to install landscaping, irrigation, a parking lot, and various amenities.

Terry Rynard, Assistant Director of Parks and Recreation, stated that the City Commission had given the Applicant consent to work with the City on developing the prospective dog park. The Application will also need to go before the Development Review Committee (DRC) and the Planning and Zoning Board, as the park would be a public purpose use. The Applicant would develop and manage the property for five years. The City will retain the right to sell the property at any time within this five-year period.

Attorney Dunckel stated he would prefer to see the Application after its review by the DRC. Mr. Irvine agreed that technical review is the DRC's responsibility, while the Committee is an advisory body.

Attorney Sarver arrived at 10:13 a.m.

Attorney Dunckel noted that the entrance to the dog park would be through the property owned by Pet Supermarket, and asked if it would be considered an accessory use. Ms. Rynard said this would not be the case.

Attorney Dunckel observed that a draft license and maintenance agreement were included in the Item's backup materials; while the agreements appeared to be similar to a revocable license, he felt a lease might be the more appropriate structure. He noted that the clause for termination by the City could be included in a lease.

Ms. Rynard asked why a lease would be preferable to a maintenance agreement. Attorney Dunckel said the Applicant would have exclusive use and possession of the property. Ms. Rynard pointed out that the City Commission had been adamant that the use would be a public purpose, and noted that Parks and Recreation did not have any interest in working with the use if it is exclusive.

Attorney Dunckel stated that the Applicant would be responsible for the maintenance of the property and making improvements. Ms. Rynard said this was the case as long as the property would be open to public use. Attorney Dunckel concluded that a lease could be drafted to include the City's requirements. He asked that the City Attorney's Office make the final determination of whether a lease or a license agreement would be more appropriate for the property.

Chair Partington requested clarification of the planning issue related to the Application. Mr. Fajardo explained that park uses are not permitted in the property's zoning district, and the property must meet the criteria for a public purpose use.

Attorney Dunckel observed that park property could not be leased without a supermajority vote of the City Commission. Mr. Fajardo clarified that the property would not be rezoned, but would be given a public purpose designation, which functions in the same way as rezoning. It also follows a similar process to a rezoning request, as the Application would require approval from the DRC, the Planning and Zoning Board, and two public readings before the City Commission. Should the public purpose use be discontinued in the future, the property's zoning would not be affected.

Chair Partington asked what the property's hours of operation would be. Ms. Rynard said they would be regular park hours, which are typically from 6 a.m. to 9 p.m. It would also be subject to other park rules set forth by Parks and Recreation, and would open and close separately from Pet Supermarket.

Chair Partington asked if overflow parking would be provided by Pet Supermarket. Ms. Rynard confirmed this. Attorney Dunckel asked if Pet Supermarket had enough additional parking spaces to cover the park's parking requirement. It was noted that the DRC would ultimately address this issue.

Attorney Dunckel asked if there was any abutting residential property to the proposed park. Ms. Rynard said there was multi-use residential property to the north of the park. There is a wall between the park and the residential area.

Mr. Gossman asked what the park's monument sign would say. Ms. Rynard advised that the Applicant has been told they may not put their name on this sign.

Attorney Dunckel referred the Committee to the Applicant's letter to City Commissioner Charlotte Rodstrom, which states that the City would pay the real estate taxes on the property. He advised that the City not agree to this, and that they ask the Applicant to pay any applicable taxes. Mr. Volpi observed that the City is not typically charged taxes for a property unless they collect money on that property.

Mr. Irvine asked if there was a mechanism to protect the City from any additional liability related to the property. He explained that his concern was the Applicant may not maintain the property adequately. Attorney Dunckel said there would be insurance and indemnification requirements.

Mr. Gossman observed that a potential Code Enforcement issue could arise if there are barking-dog complaints from the abutting residential properties or waste issues. He asked if the City or Parks and Recreation would assume responsibility if this should happen, noting that an issue of this nature occurred on Broward Boulevard.

Attorney Dunckel asked if any other dog parks in the City abutted a residential area. Mr. Fajardo noted that any non-residential use abutting a residential area would be subject to neighborhood compatibility and a buffer yard as well as the existing wall, and advised that landscaping could be added if this appeared to be an issue.

Motion made by Attorney Dunckel, seconded by Mr. Irvine, to recommend approval of an agreement, subject to the City Attorney's discretion as to whether it is structured as a license and maintenance agreement or as a lease agreement, contingent upon this getting public purpose approval, going through DRC Site Plan Level 3/Site Plan Level 4, being sensitive to the neighbors and barking dogs, and that it will be subject to City of Fort Lauderdale Parks and Recreation rules, including the hours of operation, including the closing of access from Pet Supermarket during the hours when the park is not open to the public, and that Pet Supermarket be responsible for any property taxes, if any. In a voice vote, the **motion** passed unanimously.

Ms. Rynard left the meeting at 10:30 a.m.

ITEM THREE

FOUNDATION IN THE R / W OF SE 1ST AVENUE & ALLEYWAY

Address: 644 S. Andrews Avenue #500

Mr. Volpi observed that Items 3 and 4 are part of the same development.

Jeff Lis, representing the Applicant, Legacy of Broward LLC, stated that the Applicant was issued a notice to proceed with the development of a ground-level facility with five levels of parking above. This facility would provide parking for the new courthouse. Mr. Lis advised that a number of "housekeeping" issues required attention, including existing utilities and easements on the site.

He advised that the County has entered into a land purchase agreement with Legacy of Broward LLC, and there is a very tight time frame associated with the due diligence items, culminating in site plan approval. The Applicant has met several times with City Staff to develop a level of comfort between the City and County regarding the construction of the garage. Hearings have been held before the City's Historic Preservation Board and the City Commission. At the City Commission meeting, the Commissioners indicated unanimous interest in seeing the parking garage constructed; at the same time, they awarded historic designation to the Coca-Cola building next to the site.

Mr. Lis concluded that his goal is to begin a dialogue with the Committee that will hopefully culminate, within the next 30 days, with recommendations to the City Commission at their January 17, 2012 meeting. It is hoped that the City

Commission will hear the Committee's and the Historic Preservation Board's recommendations on that date, and will issue final DRC approval at the same time.

He stated that the typical setback along an alleyway is 3 ft.; however, in this case, the City has requested that the parking garage be pushed back to the property line in order to expand the pedestrian area on Andrews Avenue. Mr. Fajardo confirmed this. Mr. Lis continued that the 13x13 foundation, which would be 4 ft. to 6 ft. deep, would allow the structural load of the garage to be centered on the foundations, except along the alleyway. The only utility in the 14 ft. alley at present is a 10 in. sewer line that runs down the alleyway and through the site. The plan is to cut off the sewer line and reroute it to complete the connection while removing the line from beneath the property. Because the sewer line is 7 ft. out, the structure's foundations would only come out 6 ft. The sewer line is 10 ft. deep, which is deeper than the building's foundation.

Mr. Irvine observed that a sewer line is installed with a backhoe, and asked how this could be accessed so close to the garage's foundation. He noted that the line cannot be sheet piled if the building extends into the alleyway setback, and proposed removing the line completely rather than keeping it close to the building's foundation.

Attorney Dunckel added that because the building would ultimately be County property, but was not likely to indemnify the City, it would be the City's responsibility if any utilities were damaged or access to the sewer line became expensive.

Mr. Lis requested that a meeting be scheduled with Mark Darmanin of the Utilities Department to address these issues. He clarified that the alley was vacated, but the utility easement remains, as the sewer line goes all the way through the alley. Attorney Dunckel suggested that the sewer line be moved to the property's eastern boundary. Mr. Lis noted that there is already a sewer line in that area, which approaches 1st Street.

Mr. Irvine stated that he and Mr. Darmanin would both be very uncomfortable with the building's foundation so close to the sewer line. Mr. Lis noted that the same concern would exist without the 3 ft. extension into the alleyway. Mr. Irvine said he did not feel this public expense was necessary when something else could be done, and suggested removing and relocating the sewer and its services. Mr. Lis said he did not know who was tied into this service at present.

Chair Partington asked if the alley is currently used. Mr. Lis said it provides access to parking, but noted that this was going to go away. Chair Partington suggested vacating the alley. Mr. Lis explained that due to the 30 day time frame

in which he was required to operate, he did not have sufficient time to proceed with a vacation.

Attorney Dunckel reiterated that he would recommend relocating the sewer. Mr. Lis agreed that he would speak to Mr. Darmanin to determine the options available.

He continued that a drainage line also remains in the easement near the property. Because the drainage line will serve no further purpose after the existing building is demolished, the Applicant would like to demolish the line as well. In addition to the City's easement, there is also a Florida Power & Light (FPL) easement, with overhead lines from FPL, Comcast, and AT&T coming down the east side of the alley. Mr. Lis advised that he has reached an agreement with FPL and Comcast to place their lines underground from the corner of the Coca-Cola building. Sufficient room will be required to underground these lines in the 60 ft. right-of-way between the curb and the property line, as landscaping is required between the property line and the building. Mr. Irvine advised that an engineering permit would be sufficient to address this.

Mr. Lis added that he could potentially be asked to place landscaping in the right-of-way as well. Chair Partington asked if this would help meet the property's landscaping requirement. Mr. Fajardo said there is a provision that would allow landscaping in the right-of-way to be used toward the requirement. Attorney Dunckel noted that a maintenance agreement might be sufficient in this case.

Mr. Girisgen arrived at 10:48 a.m. Chair Partington briefly described the requests Mr. Lis had made thus far.

Mr. Irvine noted that if no one save the Applicant was using the sewer line in the alley, they could tie into the piece of the line that ran from east to west and terminate the north-south piece. He cautioned that even if no one else on the block used this line, users would tie into it from the north side of 6th Street.

Mr. Lis observed that if the gravity line ran east to west on 6th Street, there would be a problem with terminating the line; however, if it ran west to east, the properties to the north could be tied into the line to the east. Mr. Irvine asked where the north-south flow would go if the easement was vacated. Mr. Lis said it would go out the alleyway to the gravity.

Chair Partington added that the utility easement through the existing garage would have to be terminated. Mr. Lis said they could not get rid of the utility easement, as the Applicant would need to maintain it for FPL and Comcast; however, there would be no reason to maintain it for water or sewer drainage, as this would not go beneath the garage.

Mr. Irvine agreed that the City would need to vacate its easement, with the conditions of relocation or finding adequate alternate provisions for its franchised utilities. He explained if the public easement is retained, it was conceivable that someone from the City could decide they want to exercise the City's easement rights.

Mr. Lis explained that these are the issues he must resolve between today and January 17, 2012, in order for the City Commission to sign off on the Committee's recommendations and other requirements for the property within the necessary timeline. He noted that the Applicant has already met with the City Manager to request a special meeting with the PROW Committee, if necessary, unless the details could be arranged without holding an additional meeting.

Chair Partington asked what would be going before the City Commission on January 17. Mr. Lis replied that these included a potential 30-day call-up, which is likely to be waived; the recommendation by the Historic Preservation Board, which could also be waived; and the Committee's recommendation.

Mr. Lis continued that he did not know if all the documentation to support the recommendations would need to be complete by January 17, but there would need to be some confirmation that documents would be available in the future. Attorney Dunckel explained that the documents must be in existence if the City Commission approves execution at a regular meeting; if it is a Conference Agenda meeting, the documents do not have to be presented. He advised that a special meeting be held in advance of January 17, so the necessary Agenda Items can be prepared for that meeting. Chair Partington noted that this would be the first week of January.

Mr. Irvine asked what the Committee would be discussing at the special meeting. He suggested that they make recommendations contingent upon the relocation of the utility: in this case, the project would only need to come back before the Committee if they were unable to come up with a relocation plan.

Chair Partington asked if Mr. Irvine would be comfortable with an agreement conditioned on the satisfactory resolution of the relocation issue through Public Works. Mr. Irvine explained he did not want to place undue pressure on this Department, particularly in Mr. Darmanin's absence. He added that he did not want to be so cooperative with a developer that the City became responsible for the bills associated with vacating rights-of-way in a case like this.

Motion made by Mr. Irvine, seconded by Attorney Dunckel, that this Committee favorably recommend allowing the installation and construction of the foundation within the alley right-of-way, the mechanism for doing this to be determined by the City Attorney's Office; and that this recommendation be subject to the relocation of the sanitary sewer existing in the right-of-way; and in the event that

Address: SW 23 Street

Mr. Volpi advised that the Applicant is seeking an agreement to develop a preserve. The property was purchased by the City to maintain drainage in the neighborhood, and the Florida Department of Transportation (FDOT) would like to place the historic Bascule Bridge and other improvements on the property to create a park-like environment. A deed restriction would be necessary, with all wetland mitigation credits going to FDOT.

Chair Partington briefly left the meeting at 11:13 a.m. Mr. Irvine temporarily assumed the Chair during this absence. Chair Partington returned at 11:14 a.m.

Larry Teich, representing the Applicant, said the City's Historic Society would like to move the Bascule Bridge, which has been designated a historic monument, onto the property. FDOT has tentatively negotiated with the Historic Society toward this end. In return for receiving the Bridge, FDOT is asked to fund the move, install the foundation for the Bridge, and convert it to a pedestrian walkway. He referred the members to a map of the property, which showed the preliminary plans.

He continued that FDOT would get wetland mitigation credits as well as the historic Bridge; they would also like a perpetual easement across the roadway, to be constructed by FDOT on the preserve. This would give them parking space below I-95 and would allow them to increase the wetlands.

He clarified that the preserve is one of three sites intended to serve as mitigation for the River Oaks area. There would also be a request for \$100,000 from FDOT for future maintenance after 2020, when they will no longer want the responsibility for the Bridge. FDOT proposes \$260,000 worth of wetland plantings and monitoring over a five-year period.

Chair Partington asked if any part of the Application has been before the City Commission. Mr. Teich said only the land bridges had been presented thus far. The City has purchased the land for the preserve.

Chair Partington requested clarification of the wetland mitigation credits that would go to FDOT. Mr. Teich said the City purchased the property with a grant from the Florida Department of Environmental Protection (FDEP), which requires that a deed restriction be placed on the property so it would never be developed. The property is not technically a wetland, but a wet retention area; in the process of its development, it will be made into a wetland, for which FDOT would receive mitigation credits. In return, they would be able to build roads through wetlands, using these credits against that construction.

Mr. Irvine stated he was concerned with giving FDOT all the mitigation credits, noting that when the City has dredging projects, they seek mitigation. He asked if FDOT must receive all the credits or if they might be shared with the City. Mr. Teich said FDOT would like to receive all of these credits. He noted that there are already two to three acres of wetlands in the area, for which there would be no credits, as they currently exist; this leaves roughly three to five acres of wetland credits. He suggested it would be possible to negotiate these.

Chair Partington asked if the surrounding neighborhood's residents were aware of the project. Mr. Teich said FDOT has met with the neighborhood, whose main concern is flooding.

Chair Partington noted that the City received a grant to acquire the land in order to help with the drainage problem in the area, and that FDOT was helping with the project, with mutual benefit. Mr. Teich said the bridge must be removed from its current location, which significantly restricts the waterway. The proposal is to reconfigure the channel and install a new bridge once the historic bridge has been moved to a new location.

Mr. Teich clarified that the bridge is currently located on the west side of I-95, and showed the Committee the plans for relocating the bridge onto the preserve once the new railway is installed. A new access road will also be installed, with parking underneath I-95.

Mr. Irvine observed that he did not see any plans that appeared to be incompatible with the neighborhood or the purpose for which the land was purchased. Mr. Teich added that there is no river access located beneath I-95, and no boats could be launched from this location. The pilings that hold up I-95 do not inhibit access to the channel. The City will maintain the bridge. Mr. Teich added that he has requested \$100,000 for this maintenance in a draft agreement.

Chair Partington asked how the land would be used to mitigate the neighborhood's drainage problems. Mr. Teich said the area would be turned into wetlands, and some of the flow from the neighborhood would ultimately be directed into the wetland. He cautioned that should there be periods of very heavy rain, flooding in the area would still occur.

Attorney Dunckel agreed that there are times in which the City is also required to show wetland mitigation, and felt the City should be aggressive in retaining some of the mitigation credits as part of the partnership with FDOT. In addition, he advised that the agreement should be reviewed in great detail with the Florida Department of Environmental Protection (FDEP). Mr. Teich agreed with this proposal, pointing out that he had made several additions to the document originally provided to him by FDOT, noting that the bridge itself would be examined to ensure it was suitable for pedestrian traffic.

Mr. Girisgen asked what would become of the bridge if the City declined FDOT's offer. Mr. Teich said FDOT would have to find an alternative location for the bridge or financially mitigate it. It could not be left in place due to the restrictions it creates for the navigable waterway.

Mr. Girisgen asked if it would cost FDOT a great deal of money to care for the bridge if the City declined to enter into an agreement. Mr. Teich confirmed this. Mr. Girisgen observed that this could be one reason the City should receive some mitigation credits if they took over the care of the bridge.

Mr. Teich said he did not have any issues with this negotiating stance. Mr. Irvine stated that the City did not want to create any unreasonable hardship for FDOT, but did not wish to give away all the mitigation credits. He proposed that the City could retain 50% of these credits.

Attorney Dunckel asked for clarification of the Historical Society's role in the issue. Attorney Sarver confirmed that the City would not need to be concerned about a potential historic designation. Mr. Fajardo confirmed that the bridge has not been locally designated as a historic site.

Mr. Teich said he is currently waiting for feedback from FDOT on the changes and recommendations he had presented to them for the agreement. He said he would like to go before the City Commission for approval of the draft agreement in order to ensure they are on the right track with regard to land usage.

Motion made by Chair Partington, seconded by Mr. Irvine, to recommend review for compliance with FDEP grant conditions any declarations of restrictive covenants flowing from the grant conditions, and that this Committee considers that the City should not trade away all the wetland mitigation credits to FDOT, and the Committee recommends retaining 50% of the wetland mitigation credits.

Mr. Girisgen asked if Mr. Teich was aware of any cost implications for maintaining the bridge. Mr. Teich said he was not aware of any specific cost requirements. Mr. Girisgen asked which Department would assume these costs. Mr. Teich said the Parks and Recreation Department was aware of the issue and was involved in the planning process.

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 11:56 a.m.