

**PLANNING AND ZONING BOARD
CITY OF FORT LAUDERDALE
CITY HALL COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA
WEDNESDAY, DECEMBER 15, 2010 – 6:30 P.M.**

Cumulative

Board Members	Attendance	June 2010-May 2011	
		Present	Absent
Patrick McTigue, Chair	P	6	1
Rochelle Golub, Vice Chair	P	6	1
Maria Freeman	A	5	2
Leo Hansen	P	6	0
Catherine Maus	P	6	1
Mike Moskowitz	A	3	3
Michelle Tuggle	P	7	0
Tom Welch (6:36)	P	6	1
Peter Witschen	P	6	1

Staff

Greg Brewton, Director of Planning and Zoning
 Sharon Miller, Assistant City Attorney
 Yvonne Redding, Planner II
 Thomas Lodge, Planner II
 Terry Burgess, Zoning Administrator
 Mohammed Malik, Chief Zoning Examiner
 Cheryl Felder, Service Clerk
 Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

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	<u>Case Number</u>	<u>Applicant</u>
1.	1-P-10	Alex Gheorghiu
2.	4-P-10	Keen-Dollar Enterprises, Inc.
3.	Communications to the City Commission	
4.	For the Good of the City	

Special Notes:

Local Planning Agency (LPA) items (*) – In these cases, the Planning and Zoning Board will act as the Local Planning Agency (LPA). Recommendation of approval will include a finding of

consistency with the City's Comprehensive Plan and the criteria for rezoning (in the case of rezoning requests).

Quasi-Judicial Items ()** – Board members disclose any communication or site visit they have had pursuant to Section 47-1.13 of the ULDR. All persons speaking on quasi-judicial matters will be sworn in and will be subject to cross-examination.

Chair McTigue called the meeting to order at 6:34 and all stood for the Pledge of Allegiance. The Chair introduced the Board members, and Director Brewton introduced the Staff members present. Attorney Miller explained the quasi-judicial process used by the Board.

Motion made by Vice Chair Golub, seconded by Mr. Hansen, to approve the minutes of the November 9, 2010 meeting. In a voice vote, the **motion** passed unanimously.

Mr. Welch joined the meeting at 6:36 p.m.

Motion made by Vice Chair Golub, seconded by Mr. Hansen, to approve the minutes of the November 17, 2010 meeting. In a voice vote, the **motion** passed unanimously.

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|---------------------------------|---|-------------|
| 1. <u>Alex Gheorghiu</u> | Thomas Lodge | 1P10 |
| Request: | Right-of-Way Vacation | |
| Legal Description: | A portion of Right-of-Way as the Southwest corner of the Intersection of NE 23 rd Street and Bayview Drive being located at the Northeast corner of Lot 1 Block 17, CORAL RIDGE GALT ADDITION, according to the plat thereof, as recorded in P.B. 27, P. 46 of the Public Records of Broward County, Florida | |
| Project Description: | Vacate a 13 foot Right-of-Way | |
| General Location: | Southwest corner of NE 23 Street and Bayview Drive | |
| District: | 1 | |
| | DEFERRED FROM THE NOVEMBER 17, 2010 MEETING | |

Alex Gheorghiu, Applicant, said he had purchased the property in 2004, then learned in 2008 that 13 ft. of fencing encroached on City property. The issue is presently before the Property and Right-of-Way Committee. The fence does not impede any sight triangles and no utilities are located on the property.

He explained that the wall was permitted in 1964, and had been a closed permit.

Chair McTigue noted that a letter in support of the Applicant had been received from the President of the Coral Ridge Homeowners' Association.

Thomas Lodge, Planner, said the Application was to vacate a 209 sq. ft. section on the corner of 23 Street and Bayview Drive. The 209 sq. ft. currently lie within the wall around the Applicant's property. The wall was constructed in 1964 and included a portion of the right-of-way.

Should the Board approve the Application, the right-of-way condition is as follows: no portion of the right-of-way which lies outside the tangents to the curb shall be vacated, with the effect of keeping a constant width on 23 Street and onto Bayview Drive.

Ms. Maus asked if the wall is the same height it has always been. Mr. Lodge said it was 5 ft. in height when constructed. The Applicant had added 16 in. to its height.

Mr. Lodge said when the wall was constructed, it was done "legally at the time," although the portion of the wall that juts into the right-of-way has been "essentially City property...all that time." He noted that it does not meet the current requirement for a 3 ft. setback from the property line, and the height that was added "was done illegally."

Ms. Maus asked if the height is permitted within the City. Director Brewton said the permissible height for a wall in the Applicant's district is 6 ft. 6 in.

Ms. Maus noted from the Property and Right-of-Way Committee's minutes that they had expressed concern regarding a sight triangle. There was some confusion regarding whether that Committee had determined a sight triangle existed. She asked if a member of the Engineering Department had made a determination regarding a sight triangle. Director Brewton said Engineer Dennis Girisgen stated he "did not feel that the sight triangle would be an issue."

Vice Chair Golub asked if the Board does not vote to vacate the right-of-way, the fence would be grandfathered or if it must be removed. She noted that the Applicant could conform a piece of his fence to the required limit without vacating the property. Chair McTigue asked if the wall would need to be "moved back" or if the Applicant would only need to reduce the height addition. Mr. Lodge said the wall became an issue when the Applicant "[added] onto a nonconforming use," which is not allowed.

Chair McTigue asked if an error had been made when the wall was first permitted. Mr. Lodge said he believed the wall was permitted legally, but an error was made when no one realized it extended into the right-of-way.

Chair McTigue asked if the Application is to "vacate this whole piece." Mr. Lodge said everything inside the 209 sq. ft. area of the wall was included, and only the portion of the right-of-way inside the wall would be vacated.

Chair McTigue asked if this would "also be okay for the 3 ft. setback." Attorney Miller said the Applicant would have to go back before the Board of Adjustment.

Mr. Hansen asked if the owner would be considered to have purchased the land. Mr. Lodge explained that the vacation would be "given to" the owner.

Vice Chair Golub asked if there is an issue of adverse possession, since the Applicant has been using the land as his own. Attorney Miller said there are very strict criteria for adverse possession, and this case would not qualify.

There being no further questions from the Board at this time, Chair McTigue opened the public hearing.

Ron Laffey, President of the Coral Ridge Homeowners' Association, said the issue was brought before that Association's Board of Governors. They determined that the Applicant wishes to upgrade his home and is "trying to make it better," and approved the project.

As there were no other members of the public wishing to speak on this Item, Chair McTigue closed the public hearing and brought the discussion back to the Board.

Vice Chair Golub asked if the Applicant has paid taxes on the piece of land. Mr. Lodge said the tax bill has not been checked.

Motion made by Mr. Witschen, seconded by Ms. Maus, to recommend approval with Staff conditions. In a roll call vote, the **motion** passed 7-0.

2. **Keen-Dollar Enterprises, Inc.** **Yvonne Redding** **4P10**

Request:	Right-of-Way Vacation
Legal Description:	Portion of SW 29 Street lying north of and adjacent to Tract "A" BROWARD TRUCK ADDITION, according to P.B. 60, P. 34 of the Public Records of Broward County, Florida
Project Description:	Vacate a portion of SW 29 Street Right-of-Way
General Location:	North of SW 30 Street and west of South Andrews Avenue abutting the FEC Railroad
District:	4

Scott McLaughlin, representing the Applicant, said the request is to vacate a portion of the right-of-way on SW 29 Street. The Applicant is providing a 40 ft. access easement to the existing alley and easements for the water main and water meter.

Yvonne Redding, Planner, said the Applicant has been asked by the Property and Right-of-Way Committee to maintain access to the alley for ingress/egress, fire access, and utilities. This is a dead-end right-of-way and does not affect the City's street pattern or grid. The City has no objection to the vacation if the requested access is maintained by the Applicant.

Ms. Maus asked what is proposed for the area. Ms. Redding said it will be used for the Applicant's trucks and equipment. Keen-Dollar owns the property on the south, and the north portion is owned by the railroad. There are no plans at this time to develop the property, but trucks and equipment would be able to park on the property without obstructing the 40 ft. accessway.

Ms. Maus asked to know the hardship criteria for vacation. Ms. Redding said it is when the area is no longer used for public access, and utilities must be moved or maintained by the Applicant. She clarified that these are the appropriate criteria, but there is not a hardship requirement.

There being no further questions from the Board at this time, Chair McTigue opened the public hearing.

Charles Pettit stated he represented Alban Mascia and Arthur R. Mascia, owners of the commercial property at the north end of the alley. He introduced Sergio Leyva, who represents the tenant of that property, Central Tire.

He said the issue is that the alleyway leads to the back of this commercial two-story building, and the owners are concerned about fire prevention. Mr. Pettit provided the Board with a picture showing a truck parked on the area for which the vacation is requested. He described the truck as "completely blocking the alleyway from the south side."

Mr. Pettit said the vacation allows for a right-of-way into the alleyway, which would give access for purposes of fire prevention. He said he was not certain that this right-of-way would provide sufficient room for a fire truck, and the owners were not convinced there would be no fire prevention issues if the vacation is granted.

Ms. Maus asked Ms. Redding to address Mr. Pettit's concern. Ms. Redding said for fire access, the fire truck would go "down a 10 ft. alley." The concern was that a truck would need to back out if the alley is blocked in a certain area. She noted, however, that the Applicant is aware of the blockage that is occurring and will maintain sufficient access for ingress/egress for fire vehicles.

Ms. Maus observed that the second photo presented by Mr. Pettit did not show sufficient ingress/egress. Ms. Redding said Code issues are involved in the case shown in the photo.

Mr. Hansen requested clarification that the property owners represented by Mr. Pettit were against the vacation. Mr. Pettit confirmed this. Mr. Hansen noted if there is street frontage on two sides of the building, an owner is "allowed an additional area increase...under that type of construction." He said he would want to make sure the owners affected by the vacation understand they would be giving up this potential area increase. Mr. Pettit said this is not an issue for the owners he represents.

Attorney Miller requested that Ms. Redding state which lots on the map are owned by the individuals Mr. Pettit represented. Ms. Redding confirmed that these were lots 1 and 2 abutting 28 Street.

Ms. Tuggle noted that the truck shown in Mr. Pettit's photograph was located in the "triangle that's...west of the vacation." Ms. Redding said this was correct. Ms. Tuggle noted that the truck was blocking both the right-of-way to be vacated as well as another alley. Ms. Redding showed an aerial view, noting the location of the truck in the photo.

Ms. Tuggle noted if the right-of-way is vacated, the property represented by Mr. Pettit would not have the access "all the way around" that it had once had. Ms. Redding said there would be a 10 ft. alley "that will run behind" as well as the 40 ft. access easement.

Director Brewton clarified that the right-of-way runs east to west, and the alley runs north to south. Ms. Redding said the alley that runs behind the Mascias' property "is not being touched." The right-of-way "at the far end past his property" would be vacated, with the 40 ft. access easement. She said the 40 ft. easement would maintain access to the property.

Ms. Tuggle asked if there is sufficient space for a fire truck "coming down the alley and turning left...back to Andrews [Avenue]." Director Brewton asked if the request for right-of-way vacation has been reviewed by the Fire Department. Ms. Redding said the Fire Department and Engineering "had no objection" to the request for vacation.

Ms. Tuggle asked if the owners represented by Mr. Pettit were satisfied with the Fire Department's acceptance of the vacation and 40 ft. easement. Mr. Pettit said if it has been reviewed by and is acceptable to the Fire Department, they had no testimony or opposition in objection to it.

Director Brewton said during the Development Review Committee process, the Fire Department had offered neither comments nor objections to the Application.

Vice Chair Golub asked who would get the title to the vacated land if the vacation is granted, and who would be responsible for maintaining both "the piece that's not vacated and the alley to the north."

Mr. McLaughlin said there has been "a long-standing problem with trucks parking in the right-of-way." The landowner has no control over the right-of-way; however, the vacation would give "half of [the right-of-way]... to the north owner, half of it going to the south owner." The landowners would then have control over the easement to ensure that it is not blocked "and would be able to say who parks where [and] what access has to stay open."

He added if the access does not remain open, the property owner would be cited for a Code violation.

Vice Chair Golub asked if the Applicant "own[s] the access to the alley," to whom the easement would be granted. Mr. McLaughlin said it would be granted "to the public, for public access to that alley."

Vice Chair Golub noted that the alley is not currently maintained, and asked if it would be possible to "require some assistance...to maintain that alley or put signs up." Attorney Miller said public access easements are similar to rights-of-way, and the underlying owner would be responsible for its maintenance. The remainder of the alley would be under City jurisdiction, as it is today.

Vice Chair Golub asked if the easement would be "granted by the owner to the north." Attorney Miller confirmed this. She also confirmed that the owner to the north would have to privately work through any "financial responsibility for maintenance" with the owner to the south. Mr. McLaughlin said these owners have agreed to maintain the easement.

Vice Chair Golub asked if there were details the Board should include in the vacation that would make its practical application "easier for the City and the public," such as requiring them to be jointly responsible for maintenance. Attorney Miller said the Board would have no authority over the piece of property to the south, as the vacation "as a matter of law goes half and half." The access easement would be entirely on the northern half of the vacation.

Mr. McLaughlin clarified that Keen-Dollar, the Applicant, owns "all the lots to the south and the lot east of the alley." FEC Railroad owns "everything west of the alley." The entire easement would be Keen-Dollar's responsibility to maintain. Of the two owners to the north, Keen-Dollar owns the northeast portion.

Mr. McLaughlin clarified the ownership of several lots shown on the plat map of the area. Vice Chair Golub asked how FEC Railroad would access some of its lots shown. Mr. McLaughlin showed these lots could be accessed through multiple points, including FEC Railroad's right-of-way. He noted the packet includes a letter of agreement from FEC Railroad.

As there were no other members of the public wishing to speak on this Item, Chair McTigue closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Witschen, seconded by Ms. Maus, to approve. In a roll call vote, the **motion** passed 7-0.

3. Communications to the City Commission

None.

4. For the Good of the City

Ms. Maus asked if a timetable was available that would show when the Neighborhood Development Criteria Review (NDCR) would come back to the Board. Director Brewton said at this time a timetable is not yet available, and he hoped to be able to provide it at the next meeting.

There being no further business to come before the Board at this time, the meeting was adjourned at 7:22 p.m.

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

Kathleen McGuire
Chair

J. O'Malley
Prototype