

AGENDA ITEM _____
DATE _____

Regular Meeting
September 15, 2015

**MINUTES OF A REGULAR MEETING OF THE CASA GRANDE BOARD
OF ADJUSTMENT HELD ON TUESDAY, SEPTEMBER 15, 2015 AT
6:00 P.M. IN THE COUNCIL CHAMBERS LOCATED AT CITY HALL,
510 E. FLORENCE BOULEVARD, CASA GRANDE, ARIZONA**

I. Call to Order and Pledge:

Chairman Garcia called the meeting to order at 6:00 p.m.

II. Roll Call:

Members Present:

Member Charlene Southern
Member Debra Shaw-Rhodes
Member Clarence Martin
Member Mark Zeibak
Member Gordon Beck
Vice-Chairman Charles Wright
Chairman Rueben Garcia

Members Absent:

City Staff Present:

Paul Tice, Planning and Development Director
Laura Blakeman, City Planner
Linda Harris, Administrative Assistant

**III. Approval of Minutes:
August 25, 2015**

Member Beck made a motion to approve the minutes dated August 25, 2015. Member Martin seconded the motion. A voice call vote was called, all were in favor.

**IV. Changes to the Agenda:
There were no changes to the agenda**

V. New Business:

Request by Deborah Martin, T C Paramount, L.L.C., appealing the following administrative decision:

1. DSA-15-00104: Appeal of a Notice and Order regarding the requirement to obtain a Right-of-Way Encroachment Permit for existing air conditioning equipment and fencing improvements located in the public alley behind 416 N. Florence Street. (Planner Laura Blakeman)

Laura Blakeman, Planner, came forward and presented a brief overview of the case as stated in the Staff Report. She stated that the request is for an Appeal of a Notice and Order regarding the requirement to obtain a Right-of-Way Encroachment Permit for 416 N. Florence Street. The site is located south of 4th Street and east of Florence Street between the Paramount Theatre building and the Ale House building. Mrs. Blakeman overviewed the case. She stated that per city code, the board must hear the appeal tonight and a decision made within 5 days. Mrs. Blakeman explained that an Encroachment Permit was obtained from the Ale House to place a condenser unit for their walk-in refrigerator in the alley behind 416 N. Florence Street which was approved by staff. It was during the review of the Ale House ROW Encroachment Permit, that Staff discovered other existing improvements were located in the alley as well. There was an existing gated chain link fence, an elevated air conditioner unit, and other materials located behind the fence. In researching this matter staff reviewed the original town site map which dates back to 1890. The area in question did not reflect any alleys in any area in the downtown but there are now existing alleys. Mrs. Blakeman stated that staff looked into the legal description for Mrs. Martin's Paramount Theater and 416 N. Florence Street properties and determined that the 416 Florence Street property, illustrated as a hatched area on the map, included alley right of way that was vacated by a previous City Council. To the east of the 416 N. Florence Street building the maps of the County Assessor's Office shows an 18 ft public alley. Staff has determined that this is public right-of-way. Based on these findings, Staff has taken the position that the air conditioning unit and fence that has been placed behind the 416 N. Florence Street property is located within a public alley and that it requires the approval of a ROW Encroachment Permit. Code Enforcement staff issued Mrs. Martin a Notice and Order requiring that these encroachments be removed or a ROW Encroachment Permit be applied for. Mrs.; Martin appealed staff's decision in this matter which is why the appeal is before the Board. Mrs. Blakeman stated that staff is recommending that the board affirm staff's decision that Ms. Martin be directed to obtain a Right-of-Way Encroachment permit. This entails an application and a site plan and fee. Mrs. Blakeman asked for questions from the board.

Member Martin questioned if it was an alley and was closed off for the building. He asked if there were existing walls.

Mrs. Blakeman replied that it was closed off for the building which is now part of the Paramount Theater. She stated that it is no longer an alleyway since the alley was vacated.

Member Shaw-Rhodes commented that it is no longer an alley.

Director Tice explained that it is staff's understanding that alley used to go thru from Marshall Street to Florence Street. However, the western portion of the alley was previously vacated, which shows on Ms. Martin's deed. The deed shows that portion was vacated by the City Council. Director Tice further explained that the question is if Ms. Martin owns the area where the fence and equipment are.

Vice-Chairman Wright questioned Director Tice if he was able to address the handout the board received from Ms. Martin's attorney.

Director Tice replied that he should wait until the applicant comes to podium.

Vice-Chairman Wright questioned if Ms. Martin can show the board that she has ownership of that piece of property

Director Tice replied that from reading her attorneys letter, it appears that he argues that the city has not proven that it is a public alley. The letter also infers that they have no evidence that Mrs. Martin owns the property that the City has classified as a public alley. Director Tice stated that if the letter indicates that if Mrs. Martine does not own the area behind her 416 N. Florence Street building, she may have claims for adverse possession. Director Tice noted that one may not make claims for adverse possession for property owned by the City. If it is determined that the property is not a public alley, then she may or may not have rights for adverse possession.

Vice-Chairman Wright stated that the purpose of his question is to establish ownership by applicant. Can she prove that she does own alley where she placed her equipment?

Director Tice explained that staff took Ms. Martin's deed and drew up a legal configuration and it does not include the area under dispute that staff believes to be an alley. Her legal document does include the vacated alley, the Paramount Theater and potentially a little area that goes to the north. It does not include the alley that is in dispute.

Member Shaw-Rhodes asked for definition of an alley.

Director Tice replied that an alley is public right-of-way owned by the city. He explained that it is a minor street right-of-way which is 18 ft. wide, which is typical, and it is for purpose of putting in utilities such as water, sewer and sometimes access in the alley. Director Tice noted that the GIS map shows we have a sewer main in the alley under discussion.

Member Shaw-Rhodes commented that alleys usually are open ended so they connect to another street.

Director Tice replied that it used to be open ended until the City vacated it the westerly end. He noted that City Council made a decision in the past to give that property away via a right of way vacation action.

Member Shaw-Rhodes stated that it is no longer an alley way to get from one street to another street.

Director Tice replied that records do show there is a sewer main in the alley.

Member Beck questioned if staff knows when it was vacated by the City.

Director Tice replied that staff does not have an answer to that question. Staff has been unable to find records of the City Council's decision to vacate portion of alley. The only reference is Ms. Martin's deed that shows source of property was from alley vacated by City Council.

Member Beck then questioned if we have a copy of the deed. He commented that the biggest problem at this time is determining who owns the property.

Member Ziebak stated that his understanding is that staff has taken the legal description from the property and deed and laid it out which shows that right-of-way is not owned by her.

Director Tice replied "Yes". He stated that he has a copy of the deed, which he passed around to the Board for review. He read the section for the record; "A portion of Block 20, of Casa Grande Townsite, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 1 of Maps, Page 11, more particularly described as follows: The Westerly 70 feet of alley running Easterly and Westerly through said Block 20 and being that portion of said alley heretofore vacated by the Common Council of the City of Casa Grande, and being more particularly described as follows: "

Member Southern questioned if there are other areas in this vicinity that are being used as alleys and driveways.

Director Tice replied that throughout the downtown there is a series of midblock alleys such as one on Marshall. He noted that there are very similar areas throughout the downtown area.

Member Southern commented that in a lot of situations she has worked with, even though nothing was officially dedicated, the mere presence of the alley itself constitutes its dedication because it existed for so long even though not officially dedicated. She questioned if Director Tice has had similar situations in dealing with old records.

Director Tice replied yes.

Member Southern commented that the surveyor could not find evidence that the alley was created.

Member Martin questioned if there is a manhole in the alley for sewer.

Director Tice was not aware of a manhole.

Member Martin questioned if alley is vacated, does the city have access to area if there are no city utilities to maintain or upgrade.

Director Tice noted the city's official mapping does show a sewer main in the subject alley. He explained that if it is determined that this is in an alley and an Encroachment Permit is required, the city will issue the permit to allow the air condition and fence to remain as long as the terms of the Encroachment Permit are met which states that if someone becomes injured, the city will not be held liable and secondly, if the city needs to get access to the property to dig up sewer line or make other necessary repairs, then the encroachments will need to be moved and applicant will take responsibility.

Vice-Chairman Wright questioned if the intention of the original owner who installed the fence with the gate was that the property belonged to him and wanted to keep people out. He asked if this is the intention of the current owner Ms. Martin.

Director Tice responded that this question would best be addressed to Ms. Martin.

Member Southern questioned if the city would be interested in vacating the portion of the alley where the equipment is currently sitting.

Director Tice explained that staff would need to determine if there is any public infrastructure such as sewer main. If it is determined that there is no public infrastructure and alley was vacated, then in accordance with state law half of the public right of way would go to the property owners on either side of the alley which in this case is Ms. Martin on one side and the Industrial Development Authority on the other.

Member Shaw-Rhodes commented on the Encroachment Permit that if something happened and the city had to come in and do some work and the air condition unit was removed, the air condition unit is what supports her business and would essentially be tying her up from her business because this is Arizona and it is hot.

Director Tice replied that if the sewer main breaks in the alley, there will be a bigger problem then removing the AC unit.

Member Shaw-Rhodes responded that staff is not sure if there is a sewer line there.

Director Tice stated that this is correct.

Member Shaw-Rhodes commented that after looking at the fence, it is very old and has been there for a long time. She questioned why this is suddenly an issue now.

Director Tice explained that the property on the left side of the Paramount Theater which is owned by the Industrial Development Authority has leased the space to a new business called the Ale House. The Ale House came to the city and said they needed a condensing unit for their walk in cooler. They applied for a Right-of-Way Encroachment permit to put the condensing unit in the public alley which was approved by the city. Staff became aware of the current situation regarding Mrs. Martin's encroachments in the alley where the gate was locked and the owner of the Ale House could not access the public alley to put in the condensing unit. When staff investigated, it was determined that the fence and air condition unit supporting the Paramount Theater building had been installed without the City's approval. Ms. Martin was requested to obtain an Encroachment Permit and also to allow the fence to be accessed by both her and the operator of the Ale House to be able to service their respective units.

Vice-Chairman Wright stated that he did some work on the Paramount Theater building around 2005-2006 as it was going to be a restaurant at the time. When he did his drawings, the fence was not there. He noted that the air condition unit was there and the ADA handicap ramps but not the fence and the equipment.

Member Beck stated that the deed lists two parcels. He questioned which parcel is parcel 1.

Director Tice replied that parcel 1 would be 133a on the map.

Member Beck noted that the distance from 1 to 5 shows east and west. In looking at deed for parcels 1 and 2, the deed shows them as westerly 70 feet. He questioned why the other parcel (hatched) doesn't go back as far as 133a.

Director Tice replied that the cross hatched area is the 70 feet depth. These lots are probably 20 ft wide so lots 1 thru 5 constitute 100 ft so parcel 2 is the westerly 70 feet of parcel 1, 2 and 3.

Member Beck questioned if the cross hatched area is 70 ft deep

Director Tice replied that it is 70 ft deep and 18 ft wide

Chairman Garcia asked the applicant to come forward.

Deborah Martin, 990 N. Bradbury Dr, Casa Grande came to podium to address the board.

Vice-Chairman Wright asked Ms. Martin if she can provide ownership of the property in question.

Ms. Martin replied that she could not as stated very clear in the letter from her attorney.

Ms. Martin stated that she purchased the property in 2003 and the Hammer family put the fence up. She noted that there was a shed also there that Mr. Hammer had put up.

Member Shaw-Rhodes questioned Ms. Martin if, when she purchased the property and the air condition unit was there, did she by using the property believe that this was part of her property.

Ms. Martin replied that when she purchased the property it was in the Hammer family trust. She explained that years ago Mr. Hammer homesteaded all of the downtown area. Ms. Martin stated that she felt that it was all part of her property. She noted that this is how it was sold to her. There were ladders back there that Mr. Hammer removed when escrow closed and he gave her the keys. She stated that when she got notice she was encroaching on city right-of-way, she was shocked. She stated that when she came in for Certificate of Occupancy and the city did inspections, she was never notified that she was encroaching on city right-of-way.

Member Shaw-Rhodes asked Ms. Martin if she is willing to get an Encroachment permit and let the Ale House put in their air condition unit in the fenced in area and they could have access to the fenced area.

Ms. Martin replied that if it is determined to be city property that this would be possible. She noted that she has never been contacted by the Ale House for keys to open the gate.

Member Shaw-Rhodes questioned Ms. Martin if she is aware of any city access to any kind of sewer line or anything else behind the fence line.

Ms. Martin replied that there is not any that she knows of.

Chairman Garcia asked for further questions.

Member Shaw-Rhodes stated that she feels that the board should make it as easy as possible for tenants in the downtown area and not punish anyone because we are trying to build our downtown. She noted that Ms. Martin has re-done the Paramount Theater and now another new business is coming in.

Ruben made a call to the public; no one came forward.

Member Ziebak commented that it appears the real key point here is the ownership. The city has shown that there is the recorded description and deed and unfortunately Ms. Martin has not been able to show anything that shows her ownership. He noted that we would like to make all appropriate for all of the people down there by exploring all of the options, but at the same time believes that this is city property and we need to progress as if it is.

Vice-Chairman Wrights commented that he agrees. He noted that he tried to emphasize that Ms. Martin felt she owned that piece of property but can't provide any documentation that shows she does. Whether or not her surveyor could or could not come up with any documentation to describe who owns the alleyway is not unheard of when talking about old properties. He stated that if the board does nothing with this project it leaves this property in lurch and that will at some point come back to somebody else that will have to deal with it at some time in the future.

Member Shaw-Rhodes commented that because Ms. Martin has been using as her own property for so long, it almost goes into a homesteading, grandfathered in type situation because she has been using area until new neighbor came in. It was not an issue before and as far as Ms. Martin knows, there was no access for city utility and it is not a drive through alley. Member Shaw-Rhodes stated that she thinks it needs to be vacated.

Vice-Chairman Wright stated that he has done work in the past on the building. He noted that the previous owner of the Paramount tried to rent out the middle portion which is 416 N. Florence Street. He noted that there is a rear exit door behind this property and the Ale House and the Paramount Theater. If the buildings are used separately, then each would need a rear exit into the city right-of-way. If this was to be a private alley then this would not be able to be used as public exits.

Director Tice explained that if the city receives a request to vacate the alley, 9 feet would go to the Paramount Theater and the remaining 9 feet would go to the Ale House. This is per state law. He explained that building which is 416 W. Florence Street would now be exiting to property owned by the Industrial Development Authority. He noted that vacating alley probably does not make sense in order to maintain access to the three doors at the rear of the properties.

Member Shaw-Rhodes asked Ms. Martin if she would be willing to let the Ale House put the air condition unit behind the fence and obtain the Encroachment Permit. She could then provide the Ale House with a key to the gate.

Director Tice replied that the lock on the gate is double keyed. Ms. Martin has a key and the Ale House also has a key.

Member Beck commented that the only thing the board has to go by is the legal description and he feels the inspector did his job properly in giving Ms. Martin the citation. He stated that he does not see where it is a great encumbrance on Ms. Martin to obtain the Encroachment permit should the board decide to deny the request.

Director Tice noted that this item was postponed from the last meeting to give Ms. Martin additional time for her title company to do research. He explained that he informed Ms. Martin that even if the board upholds the notice and instructs her to obtain the Encroachment Permit, if her title company provides her proof of ownership, she will not be required to obtain the Encroachment Permit.

Member Martin questioned if she was cited.

Director Tice replied that she was given a Notice in Order letter for a code violation to obtain an Encroachment Permit.

Member Martin asked if Ms. Martin was charged for the citation and if she applies for the Encroachment Permit will the citation be removed.

Director Tice responded that once the Encroachment Permit is received, the citation will be removed.

Chairman Garcia asked for a motion to approve or deny request DSA-15-00104.

Member Beck made a motion to deny case DSA-15-00104: Appeal of a Notice and Order.

Vice-Chairman Wright seconded the motion.

Member Shaw-Rhodes stated that she would like to amend the motion to say that if Ms. Martin can prove that she does have ownership, then she no longer needs to obtain a Right-of-Way Encroachment Permit.

Member Beck questioned how long of a time frame should be given to Ms. Martin. There was a brief discussion on the amount of time that should be given.

Member Zieback seconded the motion to modify.

Member Beck withdrew his original motion and made a new motion to deny DSA-15-00104 and allow Ms. Martin 30 days to provide proof of ownership.

Vice-Chairman Wright seconded the motion.

Member Shaw-Rhodes stated that she will be abstaining from voting.

The following roll call vote was recorded:

Member Southern	Aye
Member Shaw-Rhodes	Abstained
Member Martin	Abstained
Member Wright	Aye
Member Beck	Aye
Vice-Chairman Zeibak	Aye
Chairman Garcia	Aye

The motion passed 5 – 0 with 2 abstaining.

VI. Call to the Public:

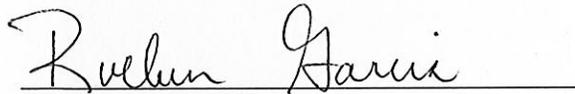
There were no comments received from the public

VII. Adjournment:

Chairman Garcia called for adjournment at 6:52 p.m.

Submitted this **21st day of September, 2015** by Linda Harris, Administrative Assistant to the Casa Grande Board of Adjustment, subject to the Board's approval.

Approved this 12th day of January, 2016 by the Casa Grande Board of Adjustment.


Chairman Garcia