



COPY

August 2, 1999

Mary A. Scheuhing, Esq.
617 Whitehead Street
Key West, FL 33040

Re: 1406 Leon Street

Dear Ms. Scheuhing:

Thank you for your letter of July 19th regarding Ms. Vicki Gordon's easement at 1406 Leon Street. Please forgive my delay in getting back to you as I was on vacation last week.

Regarding paragraphs 1 and 2 of your brief history of Ms. Gordon's problems with the City, I am not sure whether a building permit was initially issued and misplaced. I do know that last fall Ms. Gordon was advised that she would need variances and an easement to complete her development goals. The Board of Adjustment granted her the variances in February of 1999, and the City Commission granted her the easement with conditions in April of 1999.

At the April 6th City Commission meeting, the easement's approval was based on a re-drawing by the City Planner of the encroaching walls. The dimensions contained in the text of the easement are based on this drawing. Enclosed is a copy of the drawing for your review. It shows the removal of portions of the two walls in order to aid traffic sightlines. Code Enforcement, however, has advised me that the walls have yet to be reconstructed to conform to the grant of easement.

At the April 6th City Commission meeting, which Ms. Gordon attended, I advised the City Commission that it could add an annual rental amount of \$400.00 to the easement grant. At that point, the ordinance amending section 1.27 of the Code of Ordinances to establish annual rental fees for easements was in process (and, indeed, was enacted on May 18th).

In Ms. Gordon's case I didn't view the City as acting retroactively in its imposing of this fee. Ms. Gordon would have conditions to fulfill before her easement could be executed and recorded. As I mentioned, those conditions have not all been fulfilled, despite the persistence of Ms. Gordon that you described in paragraph 4 of your letter. If anything, the City should not have executed its portion of the Easement Agreement on July 9th.

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We are of course concerned that Ms. Gordon be treated fairly. If as you suggest in paragraph 5 of your letter that it is unfair to include Ms. Gordon in the group who must pay a rental fee, I would be glad to remove the rental amount from the easement. Would you please provide me with a legal argument to this effect, citing case law if possible. Please take into consideration my point that the easement is not subject to execution until Ms. Gordon fulfills the conditions.

In the meantime, I have advised the City Clerk not to allow the completion of the execution of the easement until these issues are resolved.

Very truly yours,

Robert Tischenkel
City Attorney

Enclosure

cc: Cheryl Smith
City Clerk