

Gorton
Blues
Gray
Ellinger
James
Lawless
Beard
Feigel
Stinnett
McChord

A G E N D A

PLANNING COMMITTEE

March 16, 2010
1:00 P.M.

1. **Encroachment Permitting Process** – Stinnett (1-4)
2. **Items Referred to Committee** (5)

“Planning Committee, to which should be referred matters relating to parks, planning and zoning, housing, transportation, grants, legislation and social services.”

Council Rules & Procedures, Section 2.102(1)

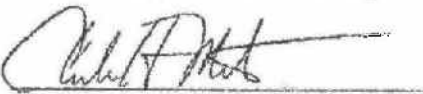


Lexington-Fayette Urban County Government
DEPARTMENT OF ENVIRONMENTAL QUALITY

Jim Newberry
Mayor

Cheryl Taylor
Commissioner

To: Urban County Council - Planning Committee

From: 
Charles H. Martin, P.E., Director
Division of Water Quality

Date: March 8, 2010

Re: Planning Committee Topic - Easement Encroachment Permitting

THE ISSUE FOR THE DIVISION OF WATER QUALITY

In order to construct a permanent structure in a utility easement, a property owner is required to submit an encroachment permit request to the Department of Public Works. In some cases, the permit request must be denied because the encroachment would undermine the long-term operation and maintenance of underground utilities located in the utility easements. In other cases, design of the structure can be modified to allow an encroachment that doesn't undermine long-term maintenance.

Some property owners fail to make an encroachment permit request prior to placing a structure in a utility easement. When the property owner attempts to transfer the property to another owner, the lack of a valid building permit and/or encroachment permit hinders the transfer transaction. The property owner then requests an "after the fact" encroachment permit request. In some cases, the homeowner/builder has built a permanent structure (walls, swimming pools, etc.) that permanently undermines the long-term operation and maintenance of utilities but expects LFUCG to approve anyway.

In the case of these "after the fact" encroachment permit requests, there are only two real outcomes:

1. Encroachment permit denials by LFUCG end up undermining the sale of the property unless the property owner removes the structure.
2. Encroachment permit approvals by LFUCG end up saddling the new property owners with a hidden obligation and places LFUCG in an undesirable position.

In the case of item 2 above, the Division has been advised in the past to grant the permit since it is recorded and should the need for repairs and/or maintenance arise, it will be the owner's responsibility to replace or repair the structure for which the encroachment was granted. In reality, properties often transfer multiple times, resulting in the probability that the property owner at the time the repair is required will have no knowledge that the encroachment exists or that they will be responsible for the cost of replacing or repairing their wall, swimming pool, garage, or whatever structure is impeding access to our infrastructure. The

property owner will be legitimately unhappy and in all likelihood will contact the Administration and Council to request reparations.

What compounds the problem is that the Urban County Government never holds the offenders accountable. In cases where the property owner is entirely dependent on the contractor performing the work, a builder/contractor often goes ahead and builds something for the unsuspecting homeowner, knowing that LFUCG will either approve the permit request or do nothing.

The Division of Water Quality respectfully requests the Planning Committee to consider the issue and how current strategies serve to encourage business practices that are detrimental to sanitary and water quality rate payers in Fayette County.



Lexington-Fayette Urban County Government
DEPARTMENT OF PUBLIC WORKS & DEVELOPMENT

Jim Newberry
Mayor

Mike Webb
Commissioner

MEMORANDUM

To: Paul Schoninger, Council Office
From: Kevin Wente
Date: March 10, 2010
RE: Encroachment Permit Process

This memorandum is in response to the attached message received by Charlie Martin regarding the Encroachment Permit Process. Regardless of who leads the effort to facilitate the process, it will continue to involve both the Departments of Environmental Quality and Public Works & Development. The following are discussion points relating to the process:

A. Maintain the status quo. At present, Carol Schoaff (DWQ) heads the effort to facilitate the process in a reasonable and timely fashion. Given that this process was developed to 'permit' those seeking to encroach upon/within sanitary and stormwater easements, it seems reasonable to keep the process within DWQ.

B. Keep the process with DWQ and have final sign-off by the Commissioner of Environmental Quality. This will require some legislative change with respect to the agreements between LexTran and LFUCG regarding the permitting of bus shelters that encroach upon sanitary and stormwater easements, but maintains the continuity of record keeping within Environmental Quality.

C. Move the process to Public Works & Development (Commissioner's Office). This would require no legislative amendment; however, given the large volume of administrative work that stems from this office, tracking the process within PW&D may impede the timeliness of the current process.

Should you have any questions regarding this request please feel free to contact me at 258-3400.

Kevin Wente, Administrative Officer

ROW Encroachment Agreement Routing Sheet

Address: _____

Date Received: _____

Water Quality Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Engineering Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Traffic Engineering Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Water Quality Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Law Department Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Urban County Engineering Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Commissioner of Public Works Initial _____ Approve _____ Disapprove _____ Date _____

Comments _____

Date Filed with County Clerk _____

Planning Committee- Issues Outstanding

02.05.2010

Issue	Member Referred	Date Referred	Status
• Liberty Road Project Status	Stinnett	Jan 06	Bi Monthly Written Report
• Newtown Pike Status	Blues	Feb 06	Bi Monthly Report
• Loudon Avenue Phase 1 Status	James	Oct 06	Bi Monthly Written Report
• Fence Regulations- Sight Distance Issues	Blues	Dec 07	Jan 10
• Mobile Home Trailer Park Quality of Life	James	Dec 07	On Hold
• Infill Redevelopment Committee Recommendations	Gray	Feb 08	Unknown
• Tree Protection Ordinance	James	Mar 08	Unknown
• Downtown Master Plan	Lawless	Apr 08	Review Recommendations
• Management Audit Recommendations	Crosbie	May 08	Subcommittee Formed
• Art 16 Zoning Ordinance re Rear Yard Parking in Residential Areas	Henson	Apr 09	Related to Moratorium Issue
• Parks Master Plan	Stinnett	Feb 09	Fall 09 - Winter 10
• Downtown Lexington Building Inventory	Feigel	June 09	Financing Sub Committee Formed
• Residential Additions	Lawless	Sept 09	Winter/Spring 10
• Residential Zoning Ordinances	Stinnett	Oct 09	Related to Moratorium Issue
• Encroachment Issue	Stinnett	Jan 10	Related to Moratorium Issue
• Commercial Signage Text Amendment	James	Feb 10	March 2010
• o property is located along a four lane public highway			