



REQUEST FOR LEGISLATION
April 1, 2010

FROM: Edward B. Koryzno Jr., City Manager

SUBJECT: Agreement for Use of City Right-of Way to Repair Building at 400 N. River St.

Background: On December 22, 2009, City Council approved an extension until February 5, 2010, of a temporary Traffic Control Order (TCO) for 400 N. River St. The TCO was initially issued because a dangerous condition existed at this location. During council's February 16, 2010 meeting, I recommended extending the TCO until March 3, 2010 and Council approved this recommendation. The basis for my recommendation was the importance of securing specific actions from the property owner (Mr. Beal) regarding the building's rehabilitation or demolition and the continued use of the city's right-of-way.

The City Attorney prepared an agreement, which included provisions addressing removal of the support system in the right-of-way, providing a performance bond, providing plans for the rehabilitation or demolition of the building, dates corresponding to specific actions taken and penalties for failure to act. Mr. Beal and the City were unable to reach an agreement regarding the use of the right-of-way and City Council, at the March 2, 2010 meeting, authorized the City Attorney to initiate action to require the owner to remove the support system from the City's right-of-way.

Since March 2, staff has continued to meet with Mr. Beal outside of court to resolve his use of the right-of-way, with an emphasis on protecting the public's safety. The original agreement offered to Mr. Beal has been modified and Mr. Beal has agreed to the modifications. These modifications include; removal of references to rehabilitating the walls, installing a roof, certificates of occupancy or financing sources.

Additions to the agreement include providing the City with a letter of credit in the amount of \$60,000 to ensure compliance with the terms of the agreement; granting a right-of-way permit if terms are met; a 15 day notice to Beal to cure any default; access by the City to the letter of credit to ensure performance of the agreement's terms, and milestone completion dates, which begin when the agreement is signed.

In return for using the City's right-of-way, the proposed agreement protects the public's safety by including provisions requiring Mr. Beal to pay for an independent engineering firm selected by the City to evaluate the safety of the support structure and remaining walls, specific dates upon which Mr. Beal must submit plans, begin rehabilitation of the structure, remove the support system from the right-of-way, and a default clause that allows the City to access a bond or letter of credit in the amount of \$60,000, to remove the structure, if he does not comply with the provisions of the agreement.

If this agreement is satisfactory to City Council, I propose issuing a permit to work in the right-of-way rather than approving a Traffic Control Order. The permit would be issued by the City Manager and contingent upon complying with the terms of the agreement.

Recommendation: That City Council considers approving the proposed "Agreement for Use of City Street and to repair fire damaged building with Historic Equities Fund 1 LLC" and a right-of-way permit contingent upon compliance with the agreement.

Attachments: Proposed Agreement for Use of City Street and to Repair Fire Damaged Building; Resolution approving the agreement

Council Agenda Date: _____ Council Agenda Item No. _____

City Manager Approval: _____

City Manager Comments:

Finance Director Approval: _____



RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

A resolution approving agreement and right-of-way permit in regard to 400-412 North River Street, Ypsilanti, Michigan.

WHEREAS the property at 400 North River Street, Ypsilanti, Michigan, is an historic structure; and

WHEREAS said property suffered a very serious fire; and

WHEREAS the structure in its present fire-damaged condition is a danger to the public and a nuisance; and

WHEREAS City Council approved temporary utilization of the part of the public right-of-way for temporary shoring of the building pending repairs; and

WHEREAS the owner has been slow in performing repairs; and

WHEREAS the City has authorized the City Attorney to bring legal action to remove the obstructions to the City right-of-way and take down the property as a nuisance; and

WHEREAS the owner has agreed to enter into an agreement with the City to, among other things, post a bond and adhere to a rigid time table for the repair of the structure and removal of the obstructions in the right-of-way; and

WHEREAS City Council finds that it would be in the public interest to have the structure restored in a historic manner;

NOW THEREFORE City Council resolves:

1. That the City Attorney hold off litigation pending the owner's faithful performance of the agreement.
2. The Mayor and City Clerk are authorized to sign the proposed Agreement, a copy of which is attached hereto, for an on behalf of the City.
3. The City shall issue a temporary right-of-way permit for the repairs, subject to faithful performance of said Agreement and Revocation in default thereof.
4. The City Manager be authorized to monitor the situation and take any actions necessary, including revocation of the right-of-Way permit on any default of the owner and authorization of litigation in the matter by the City Attorney.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE:

AGREEMENT FOR USE OF CITY STREET
AND TO REPAIR FIRE DAMAGED BUILDING
(Version 4-1-10)

This agreement is made between **THE CITY OF YPSILANTI**, One South Huron Street, Ypsilanti MI 48197, a Michigan home-rule city (hereinafter CITY), and Historic Equities Fund 1 LLC (hereinafter BEAL).

The parties acknowledge that BEAL is the owner of certain property on the northeast corner of the intersection River and Cross Streets in the City of Ypsilanti commonly known as 400-412 River Street, Ypsilanti MI 48198 (hereinafter PROPERTY).

BEAL acquired the property with the intention of rehabilitating it and making it a structure suitable for occupancy and meeting all city, state, and federal codes.

A fire occurred on the premises late in 2009. In order to stabilize the remaining structure, the CITY granted a temporary Traffic Control Order allowing certain use of the streets and right-of-way of CITY by BEAL to temporarily stabilize the PROPERTY.

The traffic control order has ended and BEAL has requested some additional time to use CITY right-of-way in order to develop a plan for rehabilitation of the building, and in the meantime to stabilize the building.

BEAL has asked CITY to grant additional use of the CITY street and right-of-way.

CITY is desirous of cooperating with BEAL, of having the property rehabilitated and reconstructed And protecting the public's safety while BEAL uses the right-of-way.

The parties agree that the PROPERTY in its present condition is a nuisance and subject to demolition.

BEAL is desirous and anxious to avoid demolition so that he may apply for certain grants and financing to complete his project.

CITY is willing to approve a traffic control order, or grant a right of way permit, but only on certain conditions. The conditions are set forth in this agreement and BEAL has reviewed all said conditions and agrees to them.

THEREFORE THE PARTIES AGREE:

That in consideration of CITY extending and renewing a certain Traffic Control Order or granting a limited right of way permit, agree as follows:

1. The CITY agrees to extend the Traffic Control Order or grant a limited Right of Way Permit.
2. BEAL, within 15 days of the date of this agreement shall obtain and furnish to CITY a performance bond (or letter of credit) in the amount of \$ \$60,000 to ensure the faithful performance of the terms of this Agreement. Said bond or letter of credit shall be callable and the proceeds used to protect the public's safety up to and including demolition of the structure by the City in the event of any default by BEAL.
3. BEAL shall provide the city with construction stabilization plans including elevations of stabilized south, west, and east facades and all supporting engineering data concerning moving and removal of all materials in the City right-of-way, overhaul and removal of fire debris, within 15 days of the date of this agreement.
4. The CITY shall obtain the services of an independent engineering firm to provide an opinion as to the safety of the building within 10 days of the date of this agreement. BEAL shall provide the engineering firm full access to the property for inspection. BEAL agrees to pay and reimburse the CITY for any costs thus incurred, up to a maximum of \$4,000.

5. Within 30 days of the date of this agreement, BEAL shall move the existing support beams and shoring structures extending into River Street not less than 19 feet closer to the structure, and obtain a building permit and required construction documents.
6. Within 180 days of the date of this agreement, BEAL shall completely remove all shoring and structures from the CITY right-of-way.
7. Within 90 days, BEAL shall provide CITY with architectural engineering plans and drawings and specifications for the rehabilitation and renewal of the building.
8. Within 15 days, BEAL shall apply for a building permit to begin construction and rehabilitation of the building.
9. Within 120 days, BEAL shall either enter into a contract with a qualified contractor for the rehabilitation work, or begin work on the rehabilitation with his own firm.
10. Default. In the event of the default by BEAL of any of the above-mentioned items, the parties agree that the CITY, after 15 days notice to BEAL to cure the default, may notify the bond company or access the letter of credit and take immediate action to demolish the structure and protect the public's safety.
11. Insurance. Within 10 days of the date of this agreement BEAL shall obtain and maintain adequate insurance on the building and the project in the amount of not less than \$2 Million protecting the City of Ypsilanti in a form to be approved by the City Attorney and furnish a copy of the policy to the City Clerk and City Attorney.

12. During all of the construction and rehabilitation, BEAL shall apply for any and all permits that are necessary and required for the job.

Dated: April 1, 2010

CITY OF YPSILANTI, a Michigan
home-rule city

BY: _____

BY: _____

Historic Equities Fund 1 LLC
BY: STEWART BEAL, member

Approved as to form and content:



JOHN M. BARR P-10475
Ypsilanti City Attorney