

President Mahaffey — 9.
Nays — None.

**Department of Public Works
City Engineering Division**

February 25, 2004

Honorable City Council:

Re: Petition No. 2033. HWSFDS L.L.C./ Bacall Development (1) Requesting conversion to easement the north-south public alley; also (2) Requesting permission to maintain existing berm encroachments within the eastern berm area of Audubon; and the northern berm area of Harper all in the block bounded by Audubon, Whittier, Harper and Ford Freeway.

Petition No. 2033 of the "HWSFDS L.L.C./Bacall Development" at 7660 Bransbury, West Bloomfield Mich. 48324 requests conversion of the north (easterly)-south (westerly) public alley, 20 feet wide, in the block bounded by Audubon Avenue, 60 feet wide, Whittier Avenue, 60 feet wide, Harper Avenue, 86 feet wide, and the Edsel Ford Freeway into a private easement for utilities.

(NOTES: The petitioner's existing tree plantings are encroaching into the eastern berm area (about 12.70 feet wide) of Audubon Avenue, 60 feet wide between Harper Avenue and the Ford Freeway; also three trees are placed in existing public sidewalk wells along the northern berm area (about 18.00 feet wide) of Harper Avenue, 86 feet wide.

The request was approved by the Traffic Engineering Department — DPW and the Michigan Department of Transportation (for parking passenger vehicles only) with certain restrictions.

The Michigan Department of Transportation, SBC Communication, Detroit Edison Company, Public Lighting Department, and the Water and Sewerage Department (all) will require unimpeded access to service their existing facilities. Any fence and gate installation must provide 15 feet clearance(s) for utility maintenance vehicles.

All other city departments and private utility companies have reported no objection to the conversion of public right-of-ways into private easements for utilities. Should damages to utilities occur the petitioner shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations. Provisions protecting utility installations are part of this resolution.

Council granted previously temporary public alley closing and request to maintain existing encroachments (Petition No. 623) on July 31, 1996. The last request (Petition No. 623) expired on July 1, 2001.

I am recommending adoption of the attached (renewal) resolution.

Respectfully submitted,

SUNDAY JAIYESIMI
City Engineer

City Engineering Department — DPW
By Council Member S. Cockrel:

Whereas, The following petition to close the public alley and request to maintain existing encroachments in the block bounded by Audubon Avenue, 60 feet wide, Whittier Avenue, 60 feet wide, Harper Avenue, 86 feet wide, and the Edsel Ford Freeway have been previously granted by City Council:

Petition No. 623 on July 31, 1996 (J.C.C. Pgs. 1812-1815)

Resolved: All that part of the north-south public alley, 20 feet wide, in the block bounded by Audubon, Whittier, Harper Avenue and The Edsel Ford Freeway lying Northerly of and abutting the North line of Lots 90 through 105; also lying Southerly of and abutting the South line of the Edsel Ford Freeway right-of-way line as platted in "Morang's Three Mile Drive Annex, being a Subdivision of part of Lot 7 of Plat of Subdivision of the Back Concession of Private Claims 262 and 272, City of Detroit and Gratiot Township," City of Detroit, Wayne County, Michigan as recorded in Liber 47, Page 72, Plats, Wayne County Records;

Be and the same is hereby vacated as public alley and is hereby converted into a private easement for public utilities of the full width of the alley, which easements shall be subject to the following covenants and agreements, uses, reservations and regulations, which shall be observed by the owners of the lots abutting on said alley and by their heirs, executors, administrators and assigns, forever to wit:

First, Said owners hereby grant to and for the use of the public easement or right-of-way over said vacated public alley herein above described for the purposes of maintaining, installing, repairing, removing, or replacing public utilities such as water mains, sewers, gas lines or mains, telephone, electric light conduits or poles or things usually placed or installed in a public alley in the City of Detroit, with the right to ingress and egress at any time to and over said easement for the purpose above set forth,

Second, Said utility easement or right-of-way in and over said vacated alley herein above described shall be forever accessible to the maintenance and inspection forces of The Michigan Department of Transportation (MDOT) and the utility companies, or those specifically authorized by them, for the purpose of inspecting, installing, maintaining, repairing, removing, or replacing any sewer, conduit, water main, gas line or main, telephone or light pole or any utility facility placed or installed in the utility easement or right-of-way. MDOT and the utility companies shall have the right to

cross or use the driveways and yards of the adjoining properties for ingress and egress at any time to and over said utility easement with any necessary equipment to perform the above mentioned tasks, with the understanding that MDOT and the utility companies shall use due care in such crossing or use, and that any property damaged by MDOT and the utility companies, other than that specifically prohibited by this resolution, shall be restored to a satisfactory condition.

Third, Said owners for their heirs and assigns further agree that no buildings or structures of any nature whatsoever including, but not limited to, retaining or partition walls, shall be built or placed upon said easements, nor change of surface grade made, without prior approval of the City Engineering Division — DPW,

Fourth, That if the owners of any lots abutting on said vacated alley shall request the removal and/or relocation of any existing poles or other utilities in said easement, such owners shall pay all costs incidental to such removal and/or relocation, unless such charges are waived by the utility owners,

Fifth, That if any utility located in said property shall break or be damaged as a result of any action on the part of said owners or assigns (by way of illustration but not limitation) such as storage of excessive weights of materials or construction not in accordance with Section 3, mentioned above, then in such event said owners or assigns shall be liable for all costs incidental to the repair of such broken or damaged utility; and further

Provided, That if it becomes necessary to remove the paved return at the entrances (into Whittier and Audubon Avenues), such removal and construction of new curb and sidewalk shall be done under city permit and inspection according to City Engineering Division — DPW specifications with all costs borne by the abutting owner(s), their heir or assigns; and be it further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds; and be it further

Resolved, The City Engineering Division — DPW is hereby authorized and directed to issue permits to "HWSFDS L.L.C./Bacall Development" whose post office address is 7660 Bransbury, West Bloomfield Mich. 48324 to maintain existing encroachments within the following two public sidewalk space(s) (meaning the space between the lot line of the property and the street curb line):

(1) The eastern berm area (about 12.70 feet wide) of Audubon Avenue, 60 feet wide, between Harper Avenue and the Edsel Ford Freeway to maintain five existing privately owned trees; said part of public street right-of-way lying westerly of

and abutting the west line of Lot 90 as platted in "Morang's Three Mile Drive Annex, being a Subdivision of part of Lot 7 of Plat of Subdivision of the Back Concession of the Back Concession of Private Claims 262 and 272, City of Detroit and Gratiot Township," City of Detroit, Michigan as recorded in Liber 47, Page 72, Plats Wayne County Records; also

(2) The northern berm area (about 18.00 feet wide) of Harper Avenue, 86 feet wide, between Audubon and Whittier Avenues to maintain three existing public sidewalk tree wells; said part of public street right-of-way lying southerly of and abutting the south line of Lots 90 through 105 as platted in "Morang's Three Mile Drive Annex, being a Subdivision of part of Lot 7 of Plat of Subdivision of the Back Concession of the Back Concession of Private Claims 262 and 272, City of Detroit and Gratiot Township," City of Detroit, Wayne County, Michigan as recorded in Liber 47, Page 72, Plats Wayne County Records;

Provided, The petitioner shall file with the Finance Department an indemnity agreement approved by the Law Department, saving and protecting the City of Detroit from any and all claims which may arise therefrom. Also, the petitioner shall be required by the Law Department in conjunction with the Finance Department — Risk Management Division to present proof of financial capability (bonds or insurance) to pay any claims, damages or expenses that may arise as a result of the installation, maintenance or use of existing plant materials (not previously approved by the Recreation Department in accord with Detroit Code Section 57, Article 2) within public street right-of-way; and further

Provided, That such use of public property shall be under the rules and regulations of the City Engineering Division — DPW in conjunction with the Traffic Engineering Division — DPW and the Recreation Department; and further

Provided, That the property owned by the petitioner and adjoining the herein above described part(s) of public street right-of-way shall be subject to the proper zoning or regulated use (Board of Zoning Appeals Grant) over the total area of said east and north berms or public sidewalk space(s) (meaning the space between the lot line of the property and the street curb line); and further

Provided, All costs for the maintenance, permits and use of the privately owned trees and/or sidewalk tree wells within public street right-of-way shall be borne by the petitioner; and further

Provided, That the petitioner shall maintain a safe and convenient concrete public sidewalk along said north berm area of Harper Avenue. Since three existing tree wells are placed in the north berm

area of Harper Avenue, the remaining concrete public sidewalk shall be maintained a minimum of 6.00 feet wide. Also, the public sidewalk line and grades shall be approved by the City Engineering Division — DPW prior to any new concrete pour in accord with Detroit Code Section 50, Article 4. The construction, placement, and maintenance of any public sidewalk shall be subject to city permits, inspection, and specifications. Further, the petitioner shall pay all costs to construct and maintain the concrete public sidewalk in front of property owned by HWSFDS L.L.C./Bacall Development. (NOTE: All public rights-of-way shall be maintained safe and convenient for public travel.) The petitioner shall be liable for all claims, demands, costs, damages, expenses, and causes of action of every kind and character arising in favor of any person, or other legal entity on account of personal injuries or death or damages to property, caused by or claimed or alleged to have arisen out of failure to property install and maintain any berm area encroachments, and public sidewalk within public street rights-of-way. The installation and maintenance of said encroachment(s) shall comply with the rules and regulations of the City Engineering Division — DPW and the Department of Public Works Traffic Engineering Division; and further

Provided, The City Detroit retains all rights and interests in said above described area(s) of public street rights-of-way. Further, the city and all utility companies retain their rights to establish, maintain, inspect and service any utilities within or over said area. The utility companies shall have the right to cross or use the driveway and yard of the adjoining property for ingress and egress at any time to and over said area with any necessary equipment to perform the above mentioned tasks. The utility companies shall use due care in such crossing or use. Any property damaged by the utility companies (other than that specifically prohibited by this resolution) shall be restored to a satisfactory condition; and further

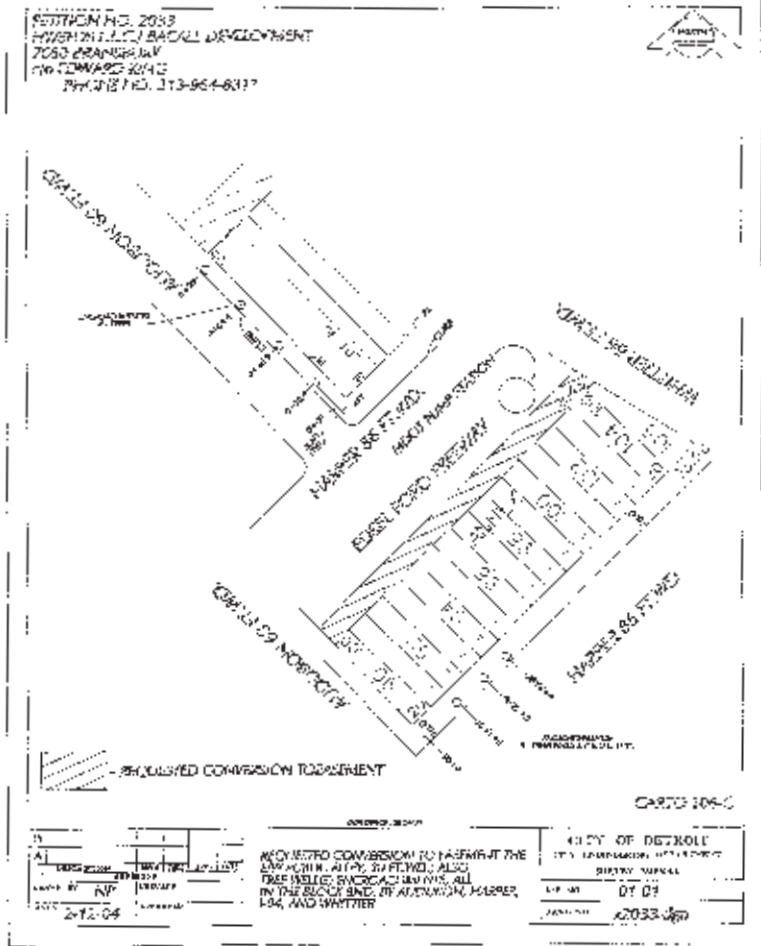
Provided, If it becomes necessary to repair or replace the utilities located or to be located in the public rights-of-way, by the acceptance of this permission, the encroachment owners for themselves, their heirs or assigns, waive claims for any damages to the encroaching installations and agree to pay the costs incurred in their removal, if their removal becomes necessary, and to restore the property affected to a condition satisfactory to the City Engineering Division — DPW at the encroachment owner's expense; and further

Provided, Said permission to use the above described berm area(s) or public sidewalk space(s) (meaning the space between the lot line of the property and the street curb line) may be rescinded at any time by the Department of Public Works. Further, the issuance of permits does not waive the rights of the city to use the area for street widening or other purposes; and further

Provided, That said permittee shall be subject to any tax under the provisions of the General Property Tax Act, which may be levied against it pursuant to law; and further

Provided, That no rights in the public streets, alleys or other public places shall be considered waived by this permission which is granted expressly on the condition that said encroachment(s) shall be removed at the expense of the permittee at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW at the permittee's sole cost and expense; and further

Provided, That said permits issued by the City Engineering Division — DPW and/or the Buildings and Safety Engineering Department are granted with the distinct understanding that in the event the City Charter, or Detroit Code(s) or ordinance(s), or resolution(s), or City policies (governing the placement of encroachments in public rights-of-way) are amended to provide for the levying, thereafter, of a fee, charge or rental, to be hereafter determine upon, for the occu-



pany of public streets, alleys or other public places, that the permittee will pay said fee, charge or rental provided for in said Charter, or code(s), or ordinance(s), or resolution(s), or policies; also said permittee does hereby bind itself thereunto, and to accept said permits on the conditions hereby imposed, and in the event said permittee shall contest the validity of said Charter, or code(s), or ordinance(s), or resolution(s), or policies of said fee, charge or rental, or upon refusal to pay same, these permits shall immediately become void; and further

Provided, This resolution is revocable at the will, whim or caprice of the City Council, and permittee hereby waives any right to claim damages or compensation for removal of encroachment(s), and further, that the permittee acquires no implied or other privileges hereunder not

expressly stated herein; and further

Provided, The installation and maintenance of existing encroachments (the three public sidewalk tree wells, and plant materials) within public street rights-of-way; said installations require the filing of an indemnity agreement, bonds or insurance, and the securing of permit(s) referred to herein shall be construed as acceptance of this resolution by the permittee; and further

Provided, That the encroachment permit shall not be assigned or transferred without the written approval of the City Council; and further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.

Adopted as follows:

Yeas — Council Members Bates, K.