

**Department of Public Works
City Engineering Division**

October 6, 2010

Honorable City Council:

Re: Petition No. 251 — Giffles-Webster Engineers request to vacate a portion of Asbury Park Avenue right-of-way to allow construction of berm adjacent to part of existing railroad tracks, relative to Garden View Estates Phase 3.

Petition No. 251 of "Giffles-Webster Engineers", whose address is 407 E. Fort Street, Suite 600, Detroit, MI 48226 request on behalf of the Detroit Housing Commission for conversion to easement a portion of Asbury Park Avenue, 60 feet wide, and to install and maintain an encroachment of a wall in Asbury Park Avenue all between Van Buren Avenue, 60 feet wide, to the west and the Railroad right-of-way. The purpose for this request is to construct a berm area and noise barrier for "Garden View Estates Component Phase 3".

Giffles-Webster Engineers intends to build a berm area (mound of dirt) four (4) feet high from grade with a wall (eight feet high) with removable section at the top of said berm area to act as a noise barrier from the adjacent active railroad tracks. All abutting property owners have no objections to the closure of Asbury Park right-of-way.

The petition was referred to the City Engineering Division — DPW for investigation and report. This is our report.

The Traffic Engineering Division — DPW reports no objections to the requested conversion to easement and encroachment of the wall in the easement area.

The Detroit Water and Sewerage Department has no objections to the requested conversion to easement and encroachment of the wall on the easement provided a minimum of ten (10) feet horizontal clearance is maintained between the wall foundation and the water main.

The Public Lighting Department (PLD) reports no structure or barricades can be built over any PLD installations. As per PLD requirements, any structure proposed to be built shall maintain 4-1/2 feet horizontal clearance from any the PLD conduit banks and manholes. The contractor should take necessary precautions not to damage PLD overhead lines, manholes and conduit banks. The contractor will be liable for and damages to any PLD underground Facilities. PLD requires unrestricted easement rights with 24 hours heavy vehicles access to the requested area of encroachment.

All other involved City departments and privately owned utility companies reported no objections or that satisfactory arrangements have been made.

Respectfully submitted,

MANILAL PATEL
Interim City Engineer
City Engineering Division — DPW

By Council Member Jenkins:

Resolved, Land in the City of Detroit, Wayne County, Michigan being Asbury Park Avenue, 86 feet wide lying North of Van Buren Avenue and South of the Chesapeake and Ohio Railroad right-of-way, and being more particularly described as follows: Beginning at the intersection of the North line of Van Buren Avenue, 60 feet wide, opened by dedication on April 11, 2007, J.C.C. Pgs. 810-818, and the West line of Asbury Park, 86 feet wide; thence N00°12'52"W along said West line of Asbury Park, 233.54 feet to the southwest line of the Chesapeake and Ohio Railroad right-of-way; thence S42°49'34"E along the southwest line of the Chesapeake and Ohio Railroad right-of-way 127.03 feet to the East line of Asbury Park Avenue; thence S00°12'52"E along said East line of Asbury Park Avenue 140.05 feet; thence S89°47'08"W a distance of 86 feet to the point of beginning.

Be and the same is hereby converted into private a easement for public utilities of the full width of the street, 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 street and by their heirs, executors, administrators and assigns, forever to wit:

First, Said owners hereby grant to and for the use of the public easements or rights-of-way over said vacated public street 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 the public street 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 rights-of-way in and over said vacated street herein above described shall be forever accessible to the maintenance and inspection forces of 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 rights-of-way. 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 task, with the understanding that the utility companies shall use due care in such crossing or use, and that any property damaged by 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, concrete slabs or driveways, retaining or partition walls, shall be built or placed upon said easement, 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 street 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

Whereas, Petition No. 251 of "Giffles-Webster Engineers", whose address is 407 E. Fort Street, Suite 600, Detroit, MI 48226 request on behalf of the Detroit Housing Commission request to maintain encroachments into Asbury Park Avenue, 86 feet wide, all between Van Buren Avenue, 60 feet wide, to the west and the Railroad right-of-way with a eight (8) feet tall wall. This encroachment will be a noise barrier from the adjacent active railroad tracks activities, and further

Resolved, The City Engineering Division — DPW is hereby authorized and directed to issue permits to "Giffles-Webster Engineers" to install and maintain encroachments into Asbury Park Avenue, 86 feet wide, all between Van Buren Avenue, 60 feet wide, to the west and Railroad right-of-way, with a eight (8) feet tall screen wall encroachment lying 20.00 feet parallel and East of the West right-of-way line of Asbury Park Avenue. 86 feet wide, between Van Buren Avenue, 60 feet wide, to the west and the Railroad right-of-way, attached is a site plan drawing detailing the location of the eight (8) feet tall wall location;

Whereas, Approval of this petition the Detroit Water and Sewerage Department (DWSD) does not waive any of its rights to its facilities located in the street, and at all time, DWSD, its agents or employees, shall have the right to enter upon the street to maintain, repair, alter, service, inspect or install its facilities. All costs incident to the damaging, dismantling, demolishing, removal and replacement of

structures or other improvements herein permitted and incurred in gaining access to DWSD's facilities for maintenance, repairing, alteration, servicing and inspection by DWSD shall be borne by the petitioner. All cost associated with gaining access to DWSD's facilities, which could normally be expected had the petitioner not encroached into the alleys shall be borne by DWSD, and further

Provided, All construction performed under this petition shall not be commenced until after five (5) days written notice to DWSD. Seventy-two (72) hours notice shall also be provided in accordance with P.A. 53 1974, as amended, utilizing the MISS DIG one call system, and further

Provided, That if DWSD facilities located within the street shall break or be damaged as the result of any action on the part of the petitioner, then such event the petitioner agrees to be liable for all costs incident to the repair, replacement or relocation of such broken or damaged DWSD facilities; and be it further

Provided, That the petitioner shall hold DWSD harmless for any damages to the encroaching device constructed or installed under this petition which may be caused by the failure of DWSD's facilities; and be it further

Provided, That if at any time in the future the petitioner shall request removal and/or relocation of DWSD's facilities in the street being encroached upon the petitioner agrees to pay all costs for such removal and/or relocation; and be it further

Provided, That no structure can be built over PLD installations, as per PLD requirements, any structure proposed to built shall maintain a minimum of 10 feet horizontal clearance for the overhead PLD lines and installations. The contractor will liable for any and all damages to any PLD underground or overhead facilities; and further

Provided, The petitioner, "Giffles-Webster Engineers on behalf of the Detroit Housing Commission and/or their assign" shall make application to the Buildings and Safety Engineering Department for a building permit (if necessary). The screen wall project (a eight feet tall screen wall encroachment shall be installed and maintained in accord with plans submitted to and approved by Buildings and Safety Engineering Department and/or City Engineering Division. All cost for plan review, inspection, and building permits shall be paid by the petitioner; and further

Provided, That such use of the public rights-of-way shall be under the rules and regulations of the City Engineering Division in conjunction with the Buildings and Safety Engineering Department (if necessary). The City of Detroit retains all

rights to establish, maintain, inspect, and service any utilities within or over said public alley; and further

Provided, All costs for the construction, maintenance, permits, and use of the screen wall project encroachment(s) within the said public right-of-ways shall be borne by the petitioner. The installation and maintenance of said encroachment(s) shall comply with the rules and regulations of the City Engineering Division — DPW (in conjunction with Buildings and Safety Engineering Department, if necessary), and Traffic Engineering Division — DPW; and further

Provided, If it becomes necessary to repair or replace the utilities located or to be located in the public right-of-ways, by the acceptance of this permission, the screen wall project encroachment(s) 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 (in conjunction with Buildings and Safety Engineering Department, if necessary) at the encroachment owner's expense; 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 said permits issued by the City Engineering Division — DPW and/or the Buildings and Safety Engineer-

ing 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 right-of-ways are amended to provide for the levying thereafter, of a fee, charge or rental, to be hereafter determined upon, for the occupancy 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 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, That the eight (8) feet tall wall project 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 the Wayne County Register of Deeds.

