

City Engineering Department  
September 9, 1992

Honorable City Council:

Re: Petition No. 1684. White Castle Systems, Inc. Alley to Easement and Dedication part of the east-west public alley in the block bounded by Gratiot, Mt. Elliott, and Sylvester; also requesting permission to encroach with a masonry screen wall across the alley.

Petition No. 1684 of "White Castle Systems, Inc." requests the conversion of a portion of the east-west public alley, 20 feet wide, in the block bounded by Gratiot, Mt. Elliott, and Sylvester Avenues into an easement for public utilities; also to encroach across the (converted) public alley with masonry screen walls (approximately 4.50 to 6 feet in height with below grade footings).

The encroaching screen walls are necessary to separate commercial and residential properties.

The Community and Economic Development Department has agreed to dedicate a portion of city-owned land required to create a turnaround at the remaining dead-end (east-west) public alley in said block. The public alley turnaround has been approved by the Transportation Division — Department of Public Works (DPW). The petition was referred to the City Engineering Department for investigation and report. This is our report:

Provisions protecting the Water and Sewerage Department's interests in the public sewer are incorporated into the resolution.

All other city departments and privately-owned utility companies have replied they have no objection to the proposed conversion or the encroachment. 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.

An appropriate resolution is attached for consideration by your Honorable Body.

Respectfully submitted,  
CLYDE R. HOPKINS  
Director

By Council Member Everett:

Resolved, The City Engineering Department is hereby authorized and directed to issue permits to "White Castle Systems, Inc." to construct and maintain masonry screen walls encroaching across the east-west (converted public) alley, 20 feet wide, in the block bounded by Gratiot, Mt. Elliott, and Sylvester Avenues, property described as follows:

Part of Lot 49, and Lots 40 thru 43 of "Zender's Subdivision of Outlots 16, 17 and 18, excepting the southerly 827.16 feet thereof, Subdivision of the Leib Farm," City of Detroit, Wayne County, Michigan as recorded in Liber 10, Page 11, Plats, Wayne County Records;

Encroachment to consist of masonry screen walls (approximately 4.50 to 6 feet in height with below grade footings) across the east-west (converted public) alley in said block, abutting the above described property;

Provided, The petitioner shall make application to the Buildings and Safety Engineering Department for a building permit. Simultaneously, the petitioner shall make application to the Board of Water Commissioners to obtain approval to construct over (or near) the public sewer. The masonry screen wall(s) encroachment shall be installed and maintained in accord with plans submitted to and approved by the Buildings and Safety Engineering Department (B&SE) and the Water and Sewerage Department (DWSD) — Sewer Services Section. All costs for plan review, inspection, and permits shall be paid by the petitioner; and further

Provided, If the public sewer or overhead utility wires located (or to be located) in said (converted public) alley shall break, causing damage to any construction, property or materials, the petitioner or their assigns (by acceptance of permits for construction over or near the public sewer and/or overhead utility wires) waives all claims for damages to the encroaching installations and agree to pay the costs incurred in their removal, if removal becomes necessary; and further

Provided, If the public sewer or overhead utility wires located (or to be located) in said (converted public) alley shall break or be damaged as a result of any action on the part of the petitioner or their assigns (by way of illustration but not limitation, such as storage of excessive weights of materials, or any construction not in accordance with Provisions 1 and 2 above), then the petitioner or assigns shall be liable for all costs incidental to the repair of the broken or damaged public sewer and/or overhead utility wires. The petitioner and assigns shall be liable for all claims, damages, or expenses resulting from the action(s); and further

Provided, The permittee (at the time of obtaining said permits) shall file with the Finance Director an indemnity agreement in form approved by the Law Department, saving and protecting the City of Detroit harmless from any and all claims, damages or expenses that may arise by reason of the issuance of said permits and the faithful performance by the permittee of the terms thereof, and in addition to pay all claims, damages or expenses that may arise out of the maintenance of said encroachment; and further

Provided, The (encroachment) 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, and further, that the permittee acquires no implied or other privileges hereunder not expressly stated herein; and further

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

Resolved, All that part of the east-west public alley, 20 feet wide, in the block bounded by Gratiot, Mt. Elliott, and Sylvester Avenues lying southerly of and abutting the easterly 120.07 feet of the south line of Lot 49; also lying northerly of and abutting the north line of Lots 40 thru 43 of "Zender's Subdivision of Outlots 16, 17 and 18, excepting the southerly 827.16 feet thereof, Subdivision of the Leib Farm," City of Detroit, Wayne County, Michigan as recorded in Liber 10, Page 11, Plats, Wayne County Records;

Be and the same is hereby vacated as a public alley and is hereby converted into a public easement of the full width of the alley, which easement 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 an 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 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. 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 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,

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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 (except necessary line fence, and/or the DWSD and B&SE approved masonry screen wall encroachment as referenced above in the encroachment portion of this resolution; including related construction that may be required by DWSD, designed to prevent damage to the public sewer) shall be built or placed upon said easement, nor change of surface grade made, without prior approval of the City Engineering Department,

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 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, That the following city-owned property is hereby dedicated for the purpose of a public alley turnaround:

Land in the City of Detroit, Wayne County, Michigan being part of Lot 49 and the reversionary interests in that part of the vacated north-south public alley (20 feet wide, in the block bounded by Gratiot, Mt. Elliott, and Sylvester Avenues; having been previously vacated by City Council resolution adopted on December 10, 1901 — J.C.C. pages 1175-76) as platted in "Zender's Subdivision of Outlots 16, 17 and 18, excepting the southerly 827.16 feet thereof, Subdivision of the Leib Farm," City of Detroit, Wayne County, Michigan as recorded in Liber 10, Page 11, Plats, Wayne County Records; being more particularly described as follows: Beginning at the southeasterly corner of Lot 12 of said "Zender's Subdivision (City of Detroit, Wayne County, Michigan as recorded in Liber 10, Page 11, Plats, Wayne County Records)" thence N.26°02'00"E., along the easterly line of said Lot 12, 16.32 feet; thence S.63°58'00"E., 34.74 feet; thence S.64°03'00"W., 9.93 feet; thence N.80°03'09"W., 29.86 feet to the point of beginning, containing 369.50 square feet, or 0.0085 acres, more or less; and be it further

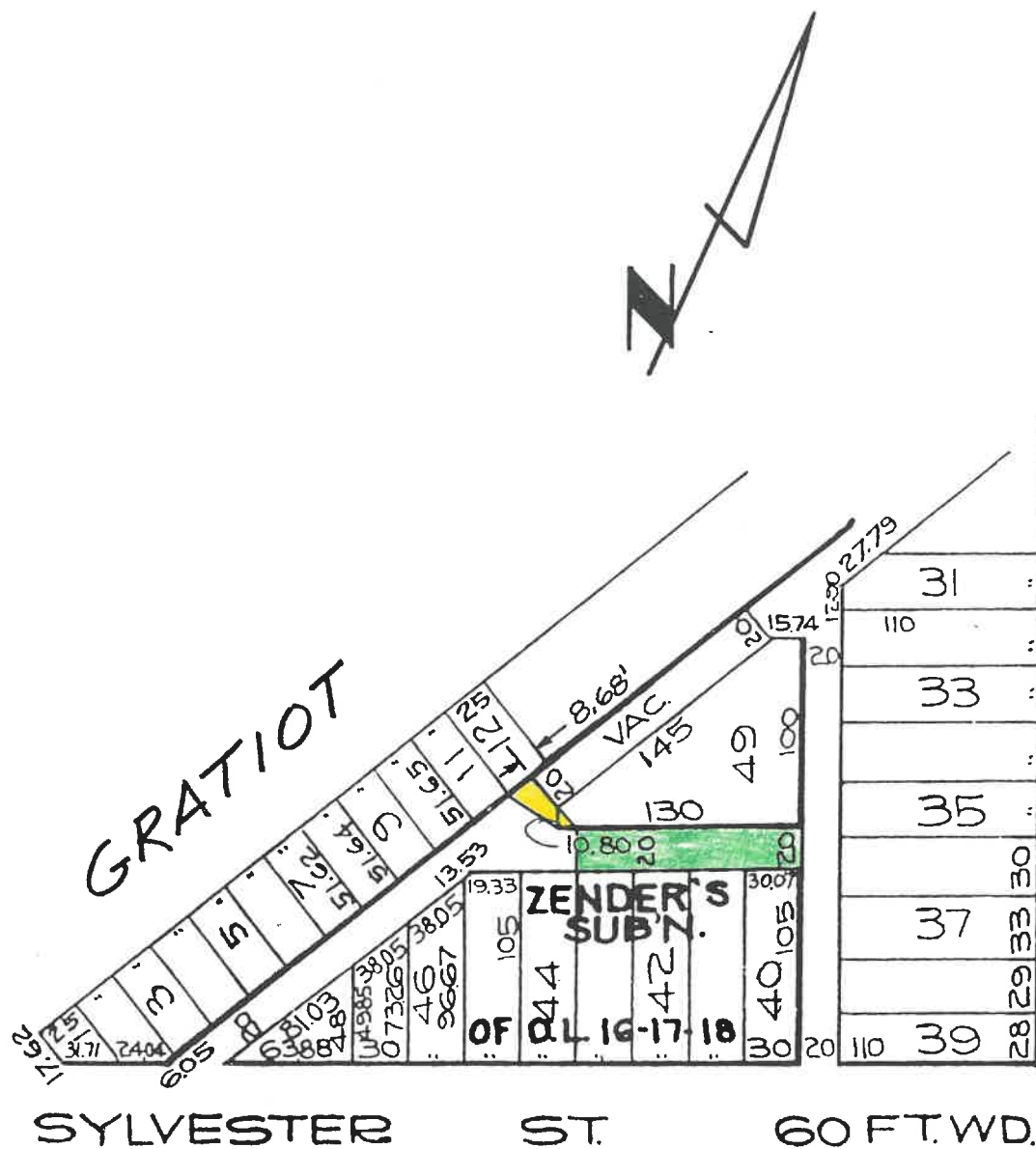
Resolved, That the Department of Public Works — Street Maintenance Division is hereby authorized and directed to prepare the above described public alley turnaround (i.e. make suitable for public use) according to city specifications.

Adopted as follows:

Yeas — Council Members Butler, Eberhard, Everett, Hill, Hood, Kelley, Ravitz, and President Mahaffey — 8.

Nays — None.

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MT. ELLIOTT

CARTO NO. 39-A