



## Takoma Park City Council Meeting – April 5, 2017 Agenda Item 5

### **Voting Session**

Resolution ratifying execution of a Consent Order resolving litigation regarding the alley connecting Winding Hill Way and Flower Avenue

### **Recommended Council Action**

Vote on the Resolution.

### **Context with Key Issues**

Marcial Properties, Inc., the owner of the real property across which the alley connecting Winding Hill Way and Flower Avenue runs, installed gates across the alley in 2016. Prior to the installation of the gates, residents of Winding Hill Way and their guests, City vehicles, and emergency vehicles utilized the alley for ingress and egress between Winding Hill Way and Flower Avenue. The City filed suit against the property owner asserting that it had obtained a prescriptive easement over the alley as a result of the use of the alley by the public and City vehicles for the twenty years preceding the property owner's purchase of the property in 2007. Based on the advice of the City Attorney and consideration of the cost, delay, and risks of continued litigation, the Council authorized the settlement of the suit in accordance with the terms set forth in the attached consent order.

### **Council Priority**

Engaged, Responsive & Service-oriented Government

### **Environmental Impact of Action**

None.

### **Fiscal Impact of Action**

The City will pay \$15,000.00 and incur the cost of installing lock boxes on the gates, possibly installing speed humps, and maintaining the alley.

### **Racial Equity Impact**

None.

### **Attachments and Links**

Consent Order and Resolution

Introduced by:

**CITY OF TAKOMA PARK, MARYLAND  
RESOLUTION 2017-\_\_\_**

**SETTLEMENT OF CIRCUIT COURT CASE  
*City of Takoma Park v. Marcial Properties, Inc.***

WHEREAS, on March 16, 2017, the City Council voted in closed session to authorize the settlement of this case pursuant to advice of the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that the City Attorney is authorized to execute the Consent Order under which the City of Takoma Park will obtain a right of way easement over the alley connecting Winding Hill Way to Flower Avenue, requiring defendant to keep the right of way free of parked cars and other obstructions in exchange for the City's payment of \$15,000.00, granting the Defendant the right to retain gates across the alley and close the gates overnight so long as Defendant owns the property, and installing speed humps if feasible under City law.

BE IT FURTHER RESOLVED that the City Manager and City Attorney are hereby authorized to execute documents and take any action necessary to carry out the intent of the Consent Order.

Adopted this \_\_\_ day of April 2017.

ATTEST:

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Jessie Carpenter, CMC  
City Clerk

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF TAKOMA PARK, MARYLAND

Plaintiff

v.

MARCIAL PROPERTIES, INC.

Case No. 424800V

**CONSENT ORDER**

The parties, having reached agreement in full settlement of this matter, it is this \_\_\_\_ day of \_\_\_\_\_, 2017, by the Circuit Court for Montgomery County, Maryland, hereby,

ORDERED, that Marcial Properties, Inc., shall and hereby does, grant the City of Takoma Park, Maryland (the "City"), a public right of way easement ("Easement") over the real property described in the deed dated February 28, 2007, and recorded on March 21, 2007, at Liber 34005, Folio 408, among the Land Records of Montgomery County, Maryland, as follows:

Northerly Twenty (20) foot front on Flower Avenue by the full depth thereof of Lot numbered Seventeen (17) in Block numbered Fifty-Eight (58) in the subdivision known as "B.F. Gilbert's Addition to Takoma Park, Section Two," as per plat recorded in Plat Book A at Plat 51 among the Land Records of Montgomery County, Maryland excepting therefrom the five (5) foot strip along Flower Avenue conveyed by Q.V. Seek to the Town of Takoma Park for the widening of Flower Avenue by the deed dated August 17, 1922, and recorded in Liber 322 at Folio 256, among the aforesaid Land Records

("Lot Seventeen Strip"); and it is further

ORDERED that the Easement shall be over the southern 12-foot front of the Lot 17 Strip by the full depth of Lot 17; and it is further

ORDERED, that so long as Marcial Properties, Inc., remains the owner of the Lot 17 Strip, the City's rights with respect to the Easement shall be limited by agreed upon terms, which shall

be set forth in this Order. Upon transfer of ownership of the Lot 17 Strip, the terms of this Order limiting the City's rights shall have no force or effect; and it is further

ORDERED, that the City shall pay to Marcial Properties, Inc., the fixed sum of Fifteen Thousand Dollars (\$15,000.00), within fifteen (15) days of the entry of this Order, as full and valuable consideration for the Easement described herein; and it is further

ORDERED, that the City will maintain, at its sole and separate expense, the area of the Easement; and it is further

ORDERED, that the City will prepare, at its sole and separate expense, the requisite documents to record the Easement in the Land Records of Montgomery County, Maryland; and it is further

ORDERED, that Marcial Properties shall cooperate in promptly executing all documents necessary for the recording of the Easement; and it is further

ORDERED, that the gates that currently obstruct access, ingress, and egress to the Easement area shall remain in place with a lock box installed on them. Marcial Properties, Inc., may close the gates daily in the evening at 9:00 p.m., Sunday through Thursday, and at 7:00 p.m. on Fridays and Saturdays. The gates, if closed in the evening, shall remain closed until 6:00 a.m., and commencing at 6:00 a.m. daily, may be opened by local residents, City of Takoma Park employees, or police or fire officials, and shall be open during the day until closed in the evening by Marcial Properties, Inc., in accordance with this Order; and it is further

ORDERED, the gates at either end of the Easement shall remain open at all times when ice or snow has accumulated on local roadways; and it is further

ORDERED, that Marcial Properties, Inc., shall ensure that the Easement remains clear of

parked vehicles or other obstructions other than the gates at either end of the Easement at all times; and it is further

ORDERED, within six (6) months of the entry of this Order, if allowed by law, the City, at its expense, will install speed humps and place a sign allowing access to local traffic only; and it is further


ORDERED, that Marcial Properties, Inc., will not be responsible for damage to the gate caused by third parties.

IT IS SO ORDERED.

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JUDGE

APPROVED AS TO FORM AND CONTENT:

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