



MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer
FROM: William R. Gray, P.E., Public Works Director
Barbara H. Stiehl, Assistant to the Public Works Director
DATE: December 4, 2003
RE: Request to Occupy Right-of-Way on Fish Alley, South of 115 West Main Street

INTRODUCTION

Carolyn and Norman Baxley have requested permission from the City of Urbana to occupy an area of right-of way on Fish Alley, east of Crane Alley to 44 feet to the east at the terminus of Fish Alley for the purpose of storing trash receptacles and maintaining an HVAC unit. Attached is Exhibit A that shows the location proposed in this agreement. The said alley provides access to City and utility companies representatives and currently does not serve any other public purpose.

In order for Mr. and Mrs. Baxley to store trash receptacles and maintain an air conditioning unit in City right-of-way, a license agreement is necessary. Attached please find a draft agreement for use of right-of-way, which outlines the conditions for permitting Mr. and Mrs. Baxley to occupy the public right-of-way with trash receptacles and an HVAC unit.

FISCAL IMPACTS

There would be no financial impacts to the City since the storage of trash receptacles and the installation and maintenance for the HVAC unit are solely at Mr. and Mrs. Baxley's expense. Additionally, Mr. and Mrs. Baxley are indemnifying the City against any losses, claims, etc., that may occur as a result of the trash receptacles and HVAC unit at this location.

RECOMMENDATION

It is recommended that "AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR USE OF RIGHT-OF-WAY" be approved.

Attachments: Exhibit A
Agreement
Ordinance

ORDINANCE NO. 2003-12-141

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
AN AGREEMENT FOR USE OF RIGHT-OF-WAY
(Fish Alley)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
URBANA, ILLINOIS, as follows:

Section 1. That the Agreement for Use of Right-of-Way (Fish Alley,
between the east right-of-way of Crane Alley and 44 feet to the east at the
terminus of Fish Alley) between the City of Urbana and Norman and Carolyn
Baxley, in the form of a copy of said Agreement attached hereto and hereby
incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the
same is hereby authorized to execute and deliver and the City Clerk of the
City of Urbana, Illinois, be and the same is hereby authorized to attest to
said execution of said Agreement as so authorized and approved for and on
behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____,
2003

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
2003

Tod Satterthwaite, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

[115 West Main Street]

THIS AGREEMENT, made and entered into this _____ day of _____, 2003, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter “City”), and Norman and Carolyn Baxley (hereinafter “Owner”),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Owner do mutually covenant and agree as follows:

A. Fish Alley is a 12-foot dedicated right-of-way between the east right-of-way of Crane Alley and 44 feet to the east at the terminus of Fish Alley.

B. The Owner is herein granted by the City a limited right to occupy the right-of-way for the purposes of storing trash receptacles with screening and installing and maintaining an HVAC unit within said right-of-way. This limited right is wholly dependent upon the Owner, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Owner expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Owner, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Owner of the hereinabove described right-of-way shall at all times be subordinate to the City’s use of said right-of-way.

C. The purpose of the herein permitted right to occupy such right-of-way shall be limited solely to the purposes described above, which are shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter “Director”), this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

D. When so instructed by the Director, the Owner will cause the trash receptacles, screening and/or HVAC unit to be removed, as nearly as possible in conformance with the Director’s request, within thirty (30) days after receipt of written notice from the Director. The Owner is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in kind of the right-of-way.

E. In the event of an emergency, defined as imminent peril to person or property, or when the Owner has inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the Owner consents and agrees that the City or its duly authorized agent may remove the trash receptacles, screening and/or HVAC unit, or any portion thereof, and charge all costs and expenses incurred

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Norman and Carolyn Baxley
[115 West Main Street]

in such removal, disposal, and restoration to the Owner. Should the Owner fail in any way to make timely payment to the City for such costs and expenses, the Owner agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

F. The Owner agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the storing of trash receptacles, screening and/or the installation and maintenance of an HVAC unit, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Owner shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

G. The Owner acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance, replacement or repair of the trash receptacles, screening and/or HVAC unit.

H. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

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AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Norman and Carolyn Baxley
[115 West Main Street]

In witness to their Agreement, the Parties have executed this _____ day of _____, 2003.

CITY OF URBANA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

OWNERS

By: _____
Norman Baxley

By: _____
Carolyn Baxley

APPROVED:

By: _____
Legal Counsel

* * *

Prepared by and please return recorded copy to:

Steve Holz, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801



EXHIBIT A

 Area of Proposed Agreement



City of Urbana
 Public Works Dept
 Engineering Division
 Date 09/25/03 PLC

