



OFFICE OF THE CITY ATTORNEY

Letter to the Commission

TO: Mayor Phillip Levine and Members of the City Commission

FROM: Raul Agulla, City Attorney *R. Agulla*
Eve A. Boutsis, Chief Deputy City Attorney *E. Boutsis*

DATE: October 21, 2015

SUBJECT: Update on AT&T Surface Parking Lot at 1030 15th Street.

During the October 14, 2015 City Commission meeting the City Commission discussed Agenda Items R9J and R9M, both relating to 1030 15th Street. These discussion items were placed on the Agenda by Commissioner Michael Grieco. During the discussion the Commission directed that there be no curb cut going into Lenox Avenue and that there be additional landscaping and canopy. Following discussion, the Commission requested that the City Attorney's Office provide a progress report via LTC within 10 days.

Representatives for AT&T appeared at the City Commission meeting, at which time the AT&T representatives agreed to work with the City Administration in coming up with options to resolve the entrance and exit issues relating to the lot. In 1999 AT&T's predecessor in interest, BellSouth, obtained a Conditional Use Approval for the site as a commercial parking lot and storage building area. At that time, the applicant voluntarily agreed to a concession with the neighbors which would preclude any entry or exit way from the site onto Lenox Avenue (hereinafter "1999 voluntary proffer"). The site plans were modified accordingly and no entrance was constructed on Lenox. The 1999 voluntary proffer did not make it into the final order. However, AT&T, which advised the City Commission that it is the successor in interest, was always aware of the 1999 voluntary proffer¹.

In January 2005, AT&T appeared before the Planning Board for a modification of its Conditional Use Permit and for a lot split application. No disclosure was made to the Planning Department or Planning Board of the 1999 voluntary proffer. The modified plans reflect an exit off of Lenox, which contradicts the 1999 voluntary proffer, although the condition was not specifically addressed by AT&T, and staff was not made aware of the 1999 voluntary proffer.

¹ The 1999 voluntary proffer was inadvertently left out of the Planning Board order, but is reflected in the "After Action" (minutes) of the Planning Board meeting.

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Nevertheless, during the October 14, 2015 Commission meeting AT&T agreed to provide options to the City to resolve the new proposed entry and exit off of Lenox, which contradicts the 1999 voluntary proffer.

Since the October 14, 2015 Commission meeting AT&T has been in constant contact with the Administration, and has been working with the Public Works Department, Fire Department and Planning Department on a solution to the underlying issue. AT&T has suggested several options for an exit out of the site, other than an entry/exit off of Lenox Avenue. AT&T has suggested three proposed options. The option preferred by the City Administration is to make the existing entry and exit off of Michigan larger, and to close off the proposed exist off of Lenox. Additional landscaping is also being proposed. AT&T is currently designing the proposed modification, which, if acceptable, can be approved administratively by Planning.

AT&T and the Administration anticipate an amicable final resolution to the underlying issue, by having the dual entrance/exit off of Michigan, and a recorded covenant memorializing the 1999 voluntary proffer placed against the property.

AT&T anticipates having the final plans for Planning Department, Public Works Department and Fire Department Review within a week.