

RESOLUTION NO. 78-09

A RESOLUTION CONCERNING THE ISSUANCE OF A REVOCABLE PERMIT TO BRUMBAUGH PROPERTIES LLC AND GRAND JUNCTION CONCRETE PIPE COMPANY

Recitals.

A. Brumbaugh Properties, LLC and Grand Junction Concrete Pipe Company, LLC, hereinafter referred to as the Petitioners, represent they are the owner of the following described real properties in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

Brumbaugh Properties LLC

BEG 25FT S OF NW COR SW4NE4 SEC 18 1S 1E E 308.1FT S 75FT W 308.1FT N 75FT TO BEG EXC W 30FT FOR RD ROW PER B-2240 P-427/428 MESA CO RECORDS - 0.48AC and identified by Mesa County: Tax Schedule Number 2943-181-00-069.

Grand Junction Concrete Pipe Company

LOT 3 WAL-MART TWO SUB SEC 18 1S 1E & ALSO BEG 25FT S & 308.1FT E OF NW COR SW4NE4 SD SEC 18 E 509.65FT S 473.3FT M-L TO NE COR TR AS DESC B-978 P-565 CO CLKS OFF W TO A PT S OF BEG N TO BEG EXC N 5FT FOR ROW DESC B-1050 P-308 CO CLKS OFF and identified by Mesa County: Tax Schedule Number 2943-181-15-004.

B. The Petitioners have requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioners to install, maintain and repair fencing, outdoor storage and vehicular access within the following described public right-of-way:

The full width of the undeveloped right-of-way for Gunnison Avenue along the north side of the properties heretofore described, between the easterly right-of-way of the north-south alley east of 28-1/2 Road to the eastern terminus of the undeveloped Gunnison Avenue right-of-way near Harris Road (see attached Exhibit A) containing approximately 49,200 square feet.

C. Relying on the information supplied by the Petitioners and contained in File No. RVP-2009-101 in the office of the City's Public Works and Planning Department, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

1. That the City Manager is hereby authorized and directed to issue the attached Revocable Permit to the above-named Petitioners for the purpose aforescribed and within the limits of the public right-of-way aforescribed, subject to each and every term and condition contained in the attached Revocable Permit.

PASSED and ADOPTED this 5th day of October, 2009.

Attest:

/s/ Bruce Hill
President of the City Council

/s/ Stephanie Tuin
City Clerk

REVOCABLE PERMIT

Recitals.

A. Brumbaugh Properties LLC and Grand Junction Concrete Pipe Company hereinafter referred to as the Petitioner, represent it is the owner of the following described real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

Brumbaugh Properties LLC

BEG 25FT S OF NW COR SW4NE4 SEC 18 1S 1E E 308.1FT S 75FT W 308.1FT N 75FT TO BEG EXC W 30FT FOR RD ROW PER B-2240 P-427/428 MESA CO RECORDS - 0.48AC and identified by Mesa County: Tax Schedule Number 2943-181-00-069.

Grand Junction Concrete Pipe Company

LOT 3 WAL-MART TWO SUB SEC 18 1S 1E & ALSO BEG 25FT S & 308.1FT E OF NW COR SW4NE4 SD SEC 18 E 509.65FT S 473.3FT M-L TO NE COR TR AS DESC B-978 P-565 CO CLKS OFF W TO A PT S OF BEG N TO BEG EXC N 5FT FOR ROW DESC B-1050 P-308 CO CLKS OFF and identified by Mesa County: Tax Schedule Number 2943-181-15-004.

B. The Petitioner has requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioner to install, maintain and repair fencing, outdoor storage and vehicular access within the following described public right-of-way:

The full width of the undeveloped right-of-way for Gunnison Avenue along the north side of the properties heretofore described, between the easterly right-of-way of the north-south alley east of 28-1/2 Road to the eastern terminus of the undeveloped Gunnison Avenue right-of-way near Harris Road (see attached Exhibit A) containing approximately 49,200 square feet.

C. Relying on the information supplied by the Petitioner and contained in File No. RVP-2009-101 in the office of the City's Community Development Department, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby issued to the above-named Petitioners a Revocable Permit for the purpose aforescribed and within the limits of the public right-of-way aforescribed; provided, however, that the issuance of this Revocable Permit shall be conditioned upon the following terms and conditions:

1. The Petitioners' use and occupancy of the public right-of-way as authorized pursuant to this Permit shall be performed with due care or any other higher standard of care as may be required to avoid creating hazardous or dangerous situations and to avoid damaging public improvements and public utilities or any other facilities presently existing or which may in the future exist in said right-of-way.

2. The City hereby reserves and retains a perpetual right to utilize all or any portion of the aforescribed public right-of-way for any purpose whatsoever. The City further reserves and retains the right to revoke this Permit at any time and for any reason.

3. The Petitioners, for themselves and for their successors, assigns and for all persons claiming through the Petitioner, agrees that it shall defend all efforts and claims to hold, or attempt to hold, the City of Grand Junction, its officers, employees and agents, liable for damages caused to any property of the Petitioners or any other party, as a result of the Petitioners' occupancy, possession or use of said public right-of-way or as a result of any City activity or use thereof or as a result of the installation, operation, maintenance, repair and replacement of public improvements.

4. The Petitioners agree that it shall at all times keep the above described public right-of-way in good condition and repair.

5. This Revocable Permit shall be issued only upon the concurrent execution by the Petitioners of an agreement that the Petitioners and the Petitioners' successors and assigns shall save and hold the City of Grand Junction, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of, or in any way related to, the encroachment or use permitted, and that upon revocation of this Permit by the City the Petitioners shall, at the sole cost and expense of the Petitioners, within thirty (30) days of notice of revocation (which may occur by mailing a first class letter to the last known address), peaceably surrender said public right-of-way and, at their own expense, remove any encroachment so as to make the aforescribed public right-of-way available for use by the City or the general public. The provisions concerning holding harmless and indemnity shall survive the expiration, revocation, termination or other ending of this Permit.

6. This Revocable Permit, the foregoing Resolution and the following Agreement shall be recorded by the Petitioners, at the Petitioners' expense, in the office of the Mesa County Clerk and Recorder.

Dated this _____ day of _____, 2009.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Acceptance by the Petitioners:

Brumbaugh Properties LLC

Grand Junction Concrete Pipe Company

AGREEMENT

Brumbaugh Properties LLC and Grand Junction Concrete Pipe Company, for themselves and for their successors and assigns, does hereby agree to:

(a) Abide by each and every term and condition contained in the foregoing Revocable Permit;

(b) Indemnify and hold harmless the City of Grand Junction, its officers, employees and agents with respect to all claims and causes of action, as provided for in the approving Resolution and Revocable Permit;

(c) Within thirty (30) days of revocation of said Permit by the City Council, peaceably surrender said public right-of-way to the City of Grand Junction;

(d) At the sole cost and expense of the Petitioners, remove any encroachment so as to make said public right-of-way fully available for use by the City of Grand Junction or the general public.

Dated this _____ day of _____, 2009.

Brumbaugh Properties LLC

By: _____
Manager's Name, Managing Member

State of Colorado)
)ss.
County of Mesa)

The foregoing Agreement was acknowledged before me this ___ day of _____, 2009, by Manager's Name, Managing Member of Brumbaugh Properties LLC.

My Commission expires: _____
Witness my hand and official seal.

Notary Public

EXHIBIT A: REVOCABLE PERMIT UNDEVELOPED GUNNISON AVENUE RIGHT-OF-WAY

