

Tom Beach - 2446 University Appeal; File No. 10-797-728; Applicant 2446 University Avenue, LLC; File 9125

From: "Brad Beisel" <bradb@bdmnlaw.com>
To: <tom.beach@ci.stpaul.mn.us>
Date: 10/6/2010 11:21 AM
Subject: 2446 University Appeal; File No. 10-797-728; Applicant 2446 University Avenue, LLC; File 9125
CC: "Mark Cemensky" <mcemensky@yahoo.com>, "Kyle Hegna" <KHegna@wilkersonhegna.com>
Attachments: 1970 Documents.pdf; 1974 Survey and Deed.pdf; 1977 Deeds.pdf; Easement Agreement Torrens 2094316.pdf; Easement Agreement Abstract 4201773.pdf; Litigation Docs.pdf; answer and counterclaim.pdf

*Sent to St. Paul City attorney Offices
c/o Tom Beach Per instructions.*

Dear City Attorney:

I represent Mark Cemensky, the owner of property located at 2420 University Avenue. I am writing to defend the recommendation of City Staff (Tom Beach) that the revocation of the parking permit for the 10 parking spaces along the East side of the building located at 2446 University Avenue be sustained. As summarized below, the owner of 2446 University Avenue has no legal access to the parking spaces. The only way that the parking spots in question can be accessed is to drive over my client's property. My client has not given that permission and therefore persons attempting to use the parking spaces will need to trespass onto my client's property in order to do so. As a point of reference, below left is the Cemensky property as depicted in the 1974 survey, with the easement that existed at that time shown in yellow and the pink showing Cemensky land that is not subject to an easement which abuts the parking area owned by 2446 University. Below right is the same area shown on the 2006 John Oliver survey. In the 2006 survey the Cemensky parcel is shown outlined in blue and the pink is the easement area as agreed to by both owners. You can see the consistency in the easement location from the 1970s to the present.

UNIVERSITY AVENUE

94.0

1
Story
Brick

1 Story Brick

Access
Easement

37.05
the
feet,

137.05

Deck

Garage

Lot
is a
d arc

57.8

is,
ind
F

1 Story
Brick

162.95

AUDITOR'S SUBDIVISION

162.95

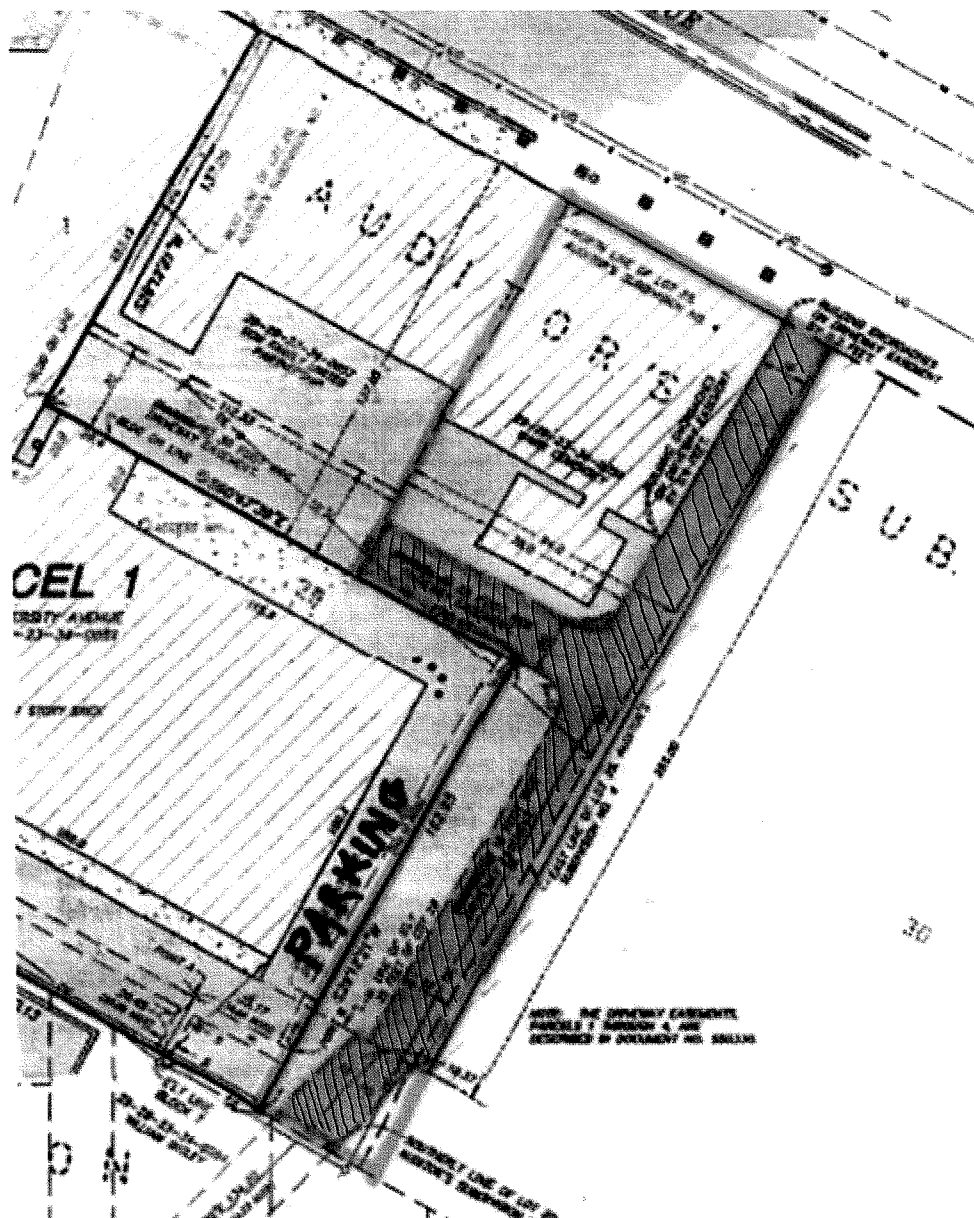
300
Easterly line of Lot 25



MZ

57.8

38.2



BACKGROUND

The original 2004 application for approval of the 10 parking spaces along the building at 2446 University Avenue was granted in error and upon the mistaken presumption that the owner of the parking spaces had access to them. This fact is now recognized by Zoning Specialist Tom Beach, who is the same person who granted the original application in October 2004 and is the basis upon which the parking permit revocation is based. The fact of the matter is that the owner's of 2446 University have never had access to the spaces that they now designate as parking going back at least to 1970.

The chain of title to my client's property demonstrates conclusively that the present legal description for 2420 University Avenue extends back farther than the 1970's. From at least 1970 to the present an easement agreement has been in affect which describes the same property that the current 2009 easement agreement describes. The 2009 easement agreement is well known to Mr. Beach and his department and acknowledged by the owners of 2446 University Avenue. Indeed, that easement agreement, which was recorded on both the Abstract and Torrens parcels at issue in this matter, settled a lawsuit brought by 2446 University Avenue against my client. Copies of the summons and complaint and my clients answer and counterclaim are attached. The

case was never filed with Ramsey County District Court therefore there is no file number on the documents. Pursuant to the settlement reached between the parties the attorneys agreed that the case would never be filed and thus no formal dismissal documents were required.

In any event, the original easement giving access over my client's property dates back at least to 1970 when a series of documents, including a survey from May of 1970 were executed and recorded. Those documents are attached as the "1970 Documents" in 1974 another survey was done for Thomas E. Leonard, a predecessor owner of my client's property and the best available copy for that survey is attached as "1974 Survey and Deed". The colored areas are my highlighting. The pink portion on that drawing is property owned by my client which is not subject to any easement either before 1974 or anytime thereafter, including the present day. My client's ownership of the property highlighted in pink completely deprives the owner's of 2446 University of any legal right to access the parking places at issue.

In 1977 additional conveyances of my client's property were made which also included the easement in question. These are attached as the "1977 Deeds". The Leonard family owned my client's property until it was deeded to Mr. Cemensky by a Personal Representative's Deed in 2001. At no time in this entire chain of title has there been any access over my client's property other than that which is set forth in the chain of conveyances described above. To repeat, that exact access easement was confirmed and reiterated in the 2009 easement agreement that was the result of the suit by 2446 University against my client.

DISCUSSION.

I have no idea what happened in 2004 which made Mr. Beach conclude that there was a way for the parking spaces at issue to be accessed over my client's property. However, he has now recognized that fact and it forms the logical basis for the withdrawal of the mistakenly granted parking permit.

Counsel for 2446 University can argue all he wants about the process for revocation of the parking permit or the grounds stated by the zoning committee or the perceived practical effect of the ruling, but he cannot get around one simple and fundamental fact, namely the parking spaces cannot be used by 2446 University without trespassing over my client's property. To maintain the parking permit would be to invite further conflict and litigation which my client went to considerable trouble and expense to dispose of. No ruling with respect to the parking places can ever grant the necessary access to those spaces and thus allowing the parking permit to exist would be futile and contrary to the acknowledged state of title to the properties in question.

Counsel for 2446 University argues that "the requirement that 2446 University must obtain an easement from the neighboring property owners is arbitrary and capricious". Nothing could be farther from the truth. Obtaining an easement to allow legal use of the parking permits is the opposite of arbitrary and capricious, it is a necessary legal prerequisite for granting the parking permit.

There is no basis upon which to reverse the zoning department's determination that the parking permit granted to 2446 University Avenue was mistaken in its inception and cannot now be maintained, especially in view of the very recent acknowledgment of the property rights of the parties by 2446 University Avenue itself. Allowing a parking permit will only encourage my client to use self help remedies such as putting up fences or barriers along his property line to block access to the parking spaces. This would be an unnecessary escalation of the tensions in the area and would be completely contrary to the acknowledged state of title to the properties in question. The decision of the zoning commission to revoke the parking permit should be sustained. Thank you for your consideration in this matter.

Brad
Bradley N. Beisel
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