



CITY OF WASHINGTON, ILLINOIS
Committee of the Whole Agenda Communication

Meeting Date: August 12, 2024

Prepared By: Jon Oliphant, AICP, Planning & Development Director

Agenda Item: S. Elm Street Easement Execution Consideration

Explanation: Cana Lutheran Church has approached the City about dedicating an ingress/egress easement to the south of its building at 104 S. Elm Street to allow for public access to S. Elm from the City's parking lot at 105 S. High Street and the adjacent alley. The City purchased that lot earlier this year and it was recently reconstructed to allow for public parking. It has one-way access from S. High. Vehicular traffic must either do a 180-degree turnaround to exit on the alley to the north of the lot or use the north-south alley to the east of the lot in order to access Catherine Street.

While there is approximately 15' of pavement width to the south of the church building, there is no dedicated right-of-way or an ingress/egress easement that provides for public access between the alley and S. Elm. Cana understands that this area will be utilized by pedestrians and vehicles if it is not physically blocked.

Fiscal Impact: The City would not financially compensate Cana for the granting of the easement. The City would be responsible for any future maintenance, including snow removal. A survey with a metes and bounds legal description would need to be completed in order to more specifically identify the area that would be subject to the easement execution. That survey would be initiated if the Council is supportive of having this easement.



Action Requested: Staff recommends the execution of an ingress/egress easement document to provide public access from the City's parking lot to S. Elm. It would also assist with the City's snow plowing of the public parking lot with a minimal additional annual cost. Staff seeks support to move ahead with the execution of the easement pending the completion of a survey.



Location Map

Proposed Easement Location

Legend

-  Proposed Easement
-  City Parking Lot



Date: 8/7/2024

This map indicates approximate data locations and may not be 100% accurate. Parcels are provided and maintained by Tazewell County.



This document prepared by

Jay H. Scholl
DAVIS & CAMPBELL L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Voice: (309) 673-1681
Fax: (309) 673-1690
Email: jhscholl@dcamplaw.com

Return after recording to:

City of Washington
301 Walnut Street
Washington, IL 61571

INGRESS/EGRESS EASEMENT

THIS INGRESS/EGRESS EASEMENT (this "Easement") is executed on or as of this _____ day of _____, 2024, by The Fellowship at Cana, Inc., d/b/a Cana Lutheran Church, an Illinois not-for-profit corporation ("Grantor"), in favor of the City of Washington, Illinois, an Illinois municipal corporation ("Grantee"). Grantor and Grantee are individually referred to as a "Party" and collectively, the "Parties").

WHEREAS, Grantor is the owner of that certain parcel of real estate being more particularly described as follows ("Grantor Parcel"):

Lots 1, 2, 3, and 4 and the North 10 feet of Lot 5, Block 3 in Holland, Dorsey, Wathen & Robinson's Addition; ALSO, the vacated alley between Lot 4 and Lots 1, 2, and 3, Block 3 in Holland, Dorsey, Wathen & Robinson's Addition as shown by Ordinance No. 729 dated December 6, 1955, and recorded in Book 525, page 526 in the Recorder's Office; Ordinance No. 1422 dated July 2, 1984, and recorded in Book 3030, page 68 in the Recorder's Office and Ordinance No. 1423 dated July 2, 1984, and recorded in Book 3071, page 71 in the Recorder's Office, situated in the County of Tazewell and State of Illinois.

PIN: 02-02-24-109-013

WHEREAS, Grantee is the owner of those certain parcels of real estate being more particularly described as follows ("Grantee Parcels"):

Parcel 1

Lot Fifty-seven (57) of the Original Town, now City of Washington, situated in the County of Tazewell and State of Illinois.

PIN: 02-02-24-109-005

Parcel 2

Part of Lot 58 and Part of the north 4 feet of Lot 59 as shown on the plat of the Original Town of Washington recorded in Plat Book G at Page 1, lying in the Northwest Quarter of Section 24, Township 26 North, Range 3 West of the Third Principal Meridian, Tazewell County, Illinois, being more particularly described as follows: Commencing at the northeast corner of said Lot 58, said northeast corner also being the Point of Beginning. From said Point of Beginning, thence South 00 degrees 53 minutes 22 seconds East (bearings assumed for description purposes only) along the east line of said Lots 58 and 59, a distance of 64.45 feet to the southeast corner of said north 4 feet; thence South 88 degrees 33 minutes 34 seconds West along the south line of said north 4 feet, 99.01 feet; thence North 00 degrees 53 minutes 22 seconds West, 64.34 feet to a point on the north line of said Lot 58; thence North 88 degrees 29 minutes 56 seconds East along said north line, 99.01 feet to the Point of Beginning. Said parcel contains 0.146 acres (6,375 square feet), more or less.

PIN: Part of 02-02-24-109-006

WHEREAS, Grantor has agreed to grant to Grantee an easement over a portion of the Grantor Parcel for the purpose of ingress and egress from the Grantee Parcels to S Elm Street.

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree that the Grantor Parcel shall be held, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the following easements, covenants and restrictions.

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into and made a part of this Easement.

2. Grant of Easement. Grantor hereby grants and conveys to and for the benefit of Grantee and the Grantee Parcels, and each of their respective successors and assigns, a non-exclusive, irrevocable easement for ingress and egress over, upon, and across that portion of the Grantor Parcel necessary for the passage and accommodation of people and passenger vehicular traffic to and from the Grantee Parcels to the public highways contiguous to the Grantor Parcel that is currently known as S Elm Street, such area being approximately fifteen (15) feet in width and generally depicted on Exhibit A (the "Easement Area"). The easement described in this Easement shall run with the land and be binding on Grantor's successors and assigns and shall

continue until such time as the Grantee Parcels are no longer used for purposes of a public parking lot, at which time this Easement shall terminate.

3. Maintenance and Repair. Except as otherwise provided in this Agreement, Grantee and its successors and assigns shall be responsible for performing all maintenance and repair on the Easement Area, including the removal of snow accumulations; provided that, in the event any damage is caused by Grantor or its employees, tenants, contractors, agents, guests, or licensees, then Grantor shall be responsible for payment of repairing said damage. Such maintenance and repair shall keep the Easement Area in good working order and be in accordance with the usual and customary standards of Grantee and its successors and assigns with respect to maintaining the Grantee Parcels; provided that, the Easement Area shall, in any event, be maintained in a neat, well-kept, clean and sanitary condition.

4. Modification of the Easement Area. Grantor and Grantor's successors and assigns may not modify or alter the Easement Area in a manner that materially alters the nature of the Easement Area or the rights of Grantee under this Easement.

5. Indemnification/Insurance. To the extent permitted by law, each Party shall indemnify and hold each the other Party harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) ever incurred by the other Party in connection with any the exercise of any right or omission of any obligation created herein, except to the extent caused by the negligence or willful act of such Party, its/their employees, tenants, contractors, agents, guests, or licensees. Each Party shall maintain or cause to be maintained in full force and effect commercial general liability insurance with respect to the loss of life, personal injury and/or damage to property arising from or out of any occurrence (the "Commercial General Liability Insurance"). The Commercial General Liability Insurance shall have a combined single limit of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage arising out of any one occurrence, and with minimum excess or umbrella policy limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence insuring against personal injury, bodily injury and property damage. The Commercial General Liability Insurance obtained by each Party shall be procured from a company licensed in the State of Illinois. Upon request, each Party shall provide a certificate of such Commercial General Liability Insurance coverage to the requesting Party hereto.

6. Notices. Any and all notices, elections or demands permitted or required to be made under this Easement shall be in writing, signed by the party giving such notice, election or demand, and shall be delivered by hand delivery or by overnight delivery service (such as Airborne, Federal Express, UPS or similar service) for next day delivery, delivery charges prepaid, to the other party at the addresses below, or at such other address within the continental United States of America as such party may designate in writing by written notice to the other party sent in accordance with the terms of this section.

To Grantor:

The Fellowship at Cana
d/b/a Cana Lutheran Church

Attn: Senior Pastor
104 S. Elm Street
Washington, IL 61571

With a Copy To: Jeffrey J. Gaster
Miller, Hall & Triggs, LLC
416 Main St., Suite 1125
Peoria, IL 61602

To Grantee: City of Washington
Attn: City Administrator
301 Walnut Street
Washington, IL 61571

7. Force Majeure. Neither Party shall be liable for delay in delivery or nonperformance in whole or in part (other than a failure to pay any amount due hereunder), nor shall the other Party have the right to terminate this Easement, where delivery or performance has been affected by a condition beyond such Party's reasonable control, including fires, floods, earthquakes, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God or acts, or omissions or delays in acting by any government authority; provided, however, that the Party affected by such a condition shall, within ten (10) days of its occurrence, give notice to the other Party stating the nature of the condition, its anticipated duration and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the nonperforming Party shall use commercially reasonable efforts to remedy its inability to perform.

8. Further Assurances. Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, easements, documents and instruments, as may be necessary or as the other Party may reasonably request in connection with this Easement or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other Party its rights and remedies under this Easement.

9. Relationship of Parties. The relationship between the Parties is that of independent contractors. Neither Party, nor any employee or agent of a Party, shall have the authority to bind or act on behalf of the other Party without its prior written consent. No employee or agent of a Party shall be considered to be an employee of the other Party. Each Party shall be solely and entirely responsible for its acts and the acts of its affiliates, and for the acts of its and its affiliates employees, consultants, and agents, during performance of this Easement. This Easement shall not constitute, create, or in any way be interpreted as a joint venture, partnership, or business organization of any kind.

10. Amendments; Modifications. This Easement may not be amended or modified except in a writing duly executed and recorded in the Tazewell County Recorder's office by the Parties.

11. Severability. If any provision, sentence, phrase or word of this Easement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Easement, or the application of such provision, sentence, phrase or word to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. The Parties shall make a good faith effort to replace the invalid or unenforceable provision with a valid one that conforms as nearly as possible with the original intent of the Parties.

12. Waiver. Any term or condition of this Easement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by either Party of any term or condition of this Easement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Easement on any future occasion.

13. Governing Law; Dispute Resolution. This Easement shall be governed and construed in accordance with the laws of the State of Illinois, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Easement to the substantive law of another jurisdiction. Any action to enforce this Easement shall have venue in the courts of Tazewell County, Illinois.

14. Remedies. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies that the Party would otherwise have at law, in equity, by statute or otherwise. In the event that the owner of the Grantor Parcel or the Grantee Parcels interferes with the rights created under this Easement, the owner of the other parcel may, in addition to all other remedies available to it under law, seek injunctive relief, without bond.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed and delivered as of the day and year first above written.

GRANTOR:

The Fellowship at Cana, Inc., d/b/a Cana Lutheran Church

By: _____

Name: _____

Its: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of The Fellowship at Cana, d/b/a Cana Lutheran Church, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he or she signed, sealed, and delivered the foregoing instrument as such _____, and as the free and voluntary act of The Fellowship at Cana, d/b/a Cana Lutheran Church, for the uses and purposes therein set forth; and on his or her oath stated that he or she was duly authorized to execute said instrument..

Given under my hand and notarial seal on _____, 2024.

Notary Public

GRANTEE:

City of Washington, Illinois

By: _____
Gary W. Manier, Mayor

Attest:

By: _____
Valeri L. Brod, City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF TAZEWELL)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Gary W. Manier and Valeri L. Brod, personally known to me to be the Mayor and the City Clerk, respectively, of the City of Washington, Illinois, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the foregoing instrument as such Mayor and City Clerk, and as the free and voluntary act of the City of Washington, Illinois, for the uses and purposes therein set forth; and on their oath stated that they were duly authorized to execute said instrument.

Given under my hand and notarial seal on _____, 2024.

Notary Public

EXHIBIT A

**DEPICTION OF THE
EASEMENT AREA**

The Easement Area is generally depicted in the area outlined in red.

