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# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
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R-2009-0252      Resolution      Introduced

Resolution Granting a Privilege for Encroachment (Major) to Michael T. Smith (d/b/a Cleveland Avenue Automotive) for property located at 8440 West Cleveland Avenue.

Introduced: 12/1/2009

Controlling Body: Public Works Committee

### COMMITTEE RECOMMENDATION

*Adopt*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>12/1/2009</u>	✓	⊗	Barczak	✓			
			Czaplewski	✓			
			Kopplin				
			Lajsic				
			Narlock				
			Reinke				
			Roadt				✓
	⊗		Sengstock	✓			
			Vitale				
			Weigel	✓			
		TOTAL		4	-		1

### SIGNATURE OF COMMITTEE MEMBER

*Larry Barczak*

Chair

Vice-Chair

Member

### COMMON COUNCIL ACTION

### APPROVAL

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>DEC 01 2009</u>	✓		Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt				✓
			Sengstock	✓			
		✓	Vitale	✓			
		Weigel	✓				
		TOTAL		9	-		1



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2009-0252**

**Final Action:**

DEC 01 2009

Resolution Granting a Privilege for Encroachment (Major) to Michael T. Smith (d/b/a Cleveland Avenue Automotive) for property located at 8440 West Cleveland Avenue.

WHEREAS, Michael T. Smith (d/b/a Cleveland Avenue Automotive) requests from the City of West Allis a certain Privilege for Encroachment Beyond the Lot Line and Within Public Street Right-of-Way consisting of planter boxes constructed of concrete block set in cement abutting the edge of the sidewalk along West Cleveland Avenue (66') and South 85th Street (50') and another set of concrete block planter boxes (not cemented) 12" from the sidewalk edge along South 85th Street (71'), including landscape improvements, on said property located at 8440 West Cleveland Avenue, in the City of West Allis, WI (the "Privilege"); and,

NOW, THEREFORE, BE IT RESOLVED that the City of West Allis grants to Michael T. Smith (d/b/a Cleveland Avenue Automotive)) the Privilege for Encroachment Beyond the Lot Line and Within Public Street Right-of-Way consisting of planter boxes constructed of concrete block set in cement abutting the edge of the sidewalk along West Cleveland Avenue (66') and South 85th Street (50') and another set of concrete block planter boxes (not cemented) 12" from the sidewalk edge along South 85th Street (71'), including landscape improvements, on said property located at 8440 West Cleveland Avenue, in the City of West Allis, WI.

BE IT FURTHER RESOLVED that additional improvements on said area must require prior approval of the Board of Public Works.

BE IT FURTHER RESOLVED that the Mayor and City Administrative Officer, Clerk/Treasurer of the City of West Allis are hereby authorized and directed to execute and deliver the aforesaid Privilege on behalf of the City of West Allis.

ATTR-Encroachment-Cleveland Avenue Automotive

**ADOPTED**

DEC 01 2009

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

**APPROVED**

12/8/09

Dan Devine, Mayor

## PRIVILEGE FOR ENCROACHMENT

### Beyond Lot Line and Within a Public Street Right-of-Way

Michael T. Smith, Northwest Mineral Heights Inc. (d/b/a Cleveland Avenue Automotive), owner(s) of property located at 8440 West Cleveland Avenue, West Allis, hereinafter "Grantee(s)", desire to maintain an encroachment extending beyond the lot line and on the City's right-of-way consisting of installed planter boxes constructed of concrete block set in cement abutting the edge of the sidewalk along West Cleveland Avenue (66') and South 85<sup>th</sup> Street (50') and another set of concrete block planter boxes (not cemented) 12" from the sidewalk edge along South 85<sup>th</sup> Street (71'), including landscape improvements, on that portion of the Right-of-Way on West Cleveland Avenue and South 85<sup>th</sup> Street, Lots 9 and 10, Block 1 in the Kroupa Manor No. 1 subdivision, located in the Northwest ¼ of Section 9, Township 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Beginning at the Southwest corner of Lot 10; thence Easterly, 70.00 feet along the North right-of-way line of West Cleveland Avenue; thence Southerly, 1.00 foot; thence Westerly, 71.00 feet; thence Northerly, 51.00 feet parallel with the East right-of-way line of South 85<sup>th</sup> Street; thence Easterly, 1.00 foot to the said East right-of-way line; thence Southerly, 50.00 feet along said East line to the Point of Beginning of this description. Tax Key No. 487-0254-002. ,

The Board of Public Works is satisfied that the granting of this privilege is not adverse to the public interest.

NOW, THEREFORE, Pursuant to the authority contained in Section 66.0425 of the Wisconsin Statutes, the Board of Public Works does hereby grant the above-described privilege, subject to the following terms and conditions:

1. Upon acceptance hereof, the Grantee(s) shall become primarily liable for damages to persons or property by reason of the granting of this privilege; and the Grantee(s) agree to hold the

City harmless for any damage to their property resulting from snow plowing or snow removal operations.

2. The Grantee(s) shall be obligated to remove the encroachment upon ten (10) days notice by the State of Wisconsin or City of West Allis, and shall be entitled to no damages for removal of the encroachment. Grantee(s) grant permission to the City of West Allis to remove the encroachment if it is not removed pursuant to Sec. 66.0425(2), Wisconsin Statutes, the cost of which shall be at Grantee's expense.

3. The Grantee(s), by acceptance hereof, waives any right to contest in any manner the validity of Section 66.0425 of the Wisconsin Statutes.

4. Any third parties whose rights are interfered with by the granting of this privilege shall have a right of action against the Grantee(s) only.

5. The planter boxes should be at least six inches (6") from the City sidewalk. Since some of the planter boxes are abutting the existing City sidewalk, which makes it very difficult for the repair or replacement of the sidewalk, the City and its contractor will make every reasonable effort to not damage the planter boxes during any work performed on the sidewalk or the adjacent area of the sidewalk. The City and its contractor will not be held responsible for repairs or replacement of any portion of the planter boxes.

6. Grantee(s) will submit to the Plan Commission a landscaping improvement site plan for approval before installing any landscaping.

7. Any modification in the above-described encroachment shall require approval of the Board of Public Works of the City of West Allis.

8. It is understood that Grantee(s), their heirs, successors and assigns, shall file a Bond with the City Clerk/Treasurer in the amount of One Thousand Dollars (\$1,000) and a Certificate of Insurance in the amount of at least Ten Thousand Dollars (\$10,000.00), in a form approved by the

City Attorney, for damages to person or property by reason of the granting of this privilege. The City of West Allis shall be named as an additional insured, as its interest may appear, on the certificate of insurance. The insurance certificate shall further provide that ten (10) day written notice to the City of West Allis shall be provided in the event of any material change, or cancellation of insurance coverage.

9. Grantee(s) shall pay to the City of West Allis as compensation for this privilege the sum of Fifty Dollars (\$50.00).


10. This privilege shall be in force and have effect only upon payment of the required fee and filing of the Certificate of Insurance and Performance Bond referred to above. This privilege shall cease upon the lapse or cancellation of the said insurance coverage. New application and new payment shall then be required to extend grant of privilege.

11. This privilege shall be binding upon and inure to the benefit of the Grantee(s), their respective heirs, successors and assigns.

Dated at West Allis, Wisconsin, this 5th day of December, 2009.

CITY OF WEST ALLIS

BY:   
Dan Devine Mayor

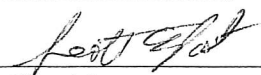
BY:   
Paul M. Ziehler, CAO, Clerk/Treasurer

ACCEPTED BY:  
NORTHWEST MINERAL HEIGHTS INC.  
(D/B/A CLEVELAND AVENUE AUTOMOTIVE)

By:   
Michael T. Smith

Date: 11-06-09

Approved as to form this 23 day  
of Nov., 2009.

  
City Attorney

C/Encroachment/Encrmajor- M Smith