

September 22, 2021
Board of Public Works

**Item 10: Appeal of determination that a public nuisance exists
under MGO 8.15(1) at 2501 Jeffy Trail. (1st AD)**

Matthew Stanford
2501 Jeffy Trail

Resident's Request of the Board

The Board has explicit and broad authority under 8.15(1) to reverse or "modify" a determination that a public nuisance exists.

- Thus, the Board could determine a public nuisance does not exist contingent on the owner entering into a consent agreement.
- For these parcels, it is mutually beneficial to the City and owner to allow a fence along the engineered storm water berm rather than on the plat lines.

Potential Motion?

Reverse the public nuisance determination contingent upon the owner entering into a consent agreement with the City in which the fence may be maintained if:

- Storm water capabilities are maintained and not unreasonably impacted
- Undeveloped green space in the neighborhood is preserved





Technical Issue: Preservation of Appeal Rights

Should the Board choose to act to affirm determination that the fence is a public nuisance under MGO 8.15:

- The resident continues to assert its technical responses identified in the request for appeal letter including:
 - That as a legal matter, the nuisance ordinance only applies to “greenways” and “park land,” and the space the fence is located meets neither of the definitions.
 - The “primary purpose” of a “greenway” as defined in MGO 16.23, must be “to carry storm water on the ground.”
 - The fence is located outside the storm water berm and thus is not on land utilized “to carry storm water on the ground.”
 - The outlot is not a “greenway” because the requirements in 236.29, Wis. Stats., for a dedication for storm water purposes were not fully met.

Potential Mutually Beneficial Options

- ***Encumbrance of dual lot to preserve undeveloped green space in exchange for preservation of the fence/fence easement.***
- ***Agreement for homeowner to remove invasive plants for the City on the City-side of the berm within X feet of the fence.***
- ***Agreement for homeowner to temporarily remove the fence should earth-moving maintenance of the berm be required.***
- ***Other practical, reasonable interests of the Division of Engineering?***
- ***List is not definitive, but examples of potential resolutions.***

Why was the fence located as it was?

- *Based on all available visual cues, the fence was built on what one would reasonably believe was the lot line.*
 - *Useful to show visual history of the lot.*
- *Contracted with Struck and Irwin; based on previous experience, expected that Struck and Irwin would find lot markers and construct within the lot.*
- *Not disputing a mistake was made; what is the best resolution to the mistake?*

Timeline

1993 – Residence at 2501 Jeffy Trail constructed.

- Was located in a rural lot, much larger than exists today.*

2007 – Then owner of 2501 Jeffy Trail subdivided and sold parcels of the original property, including for the storm water basin

- Creation of a new plat.*

2005 Dane
County DCI
map

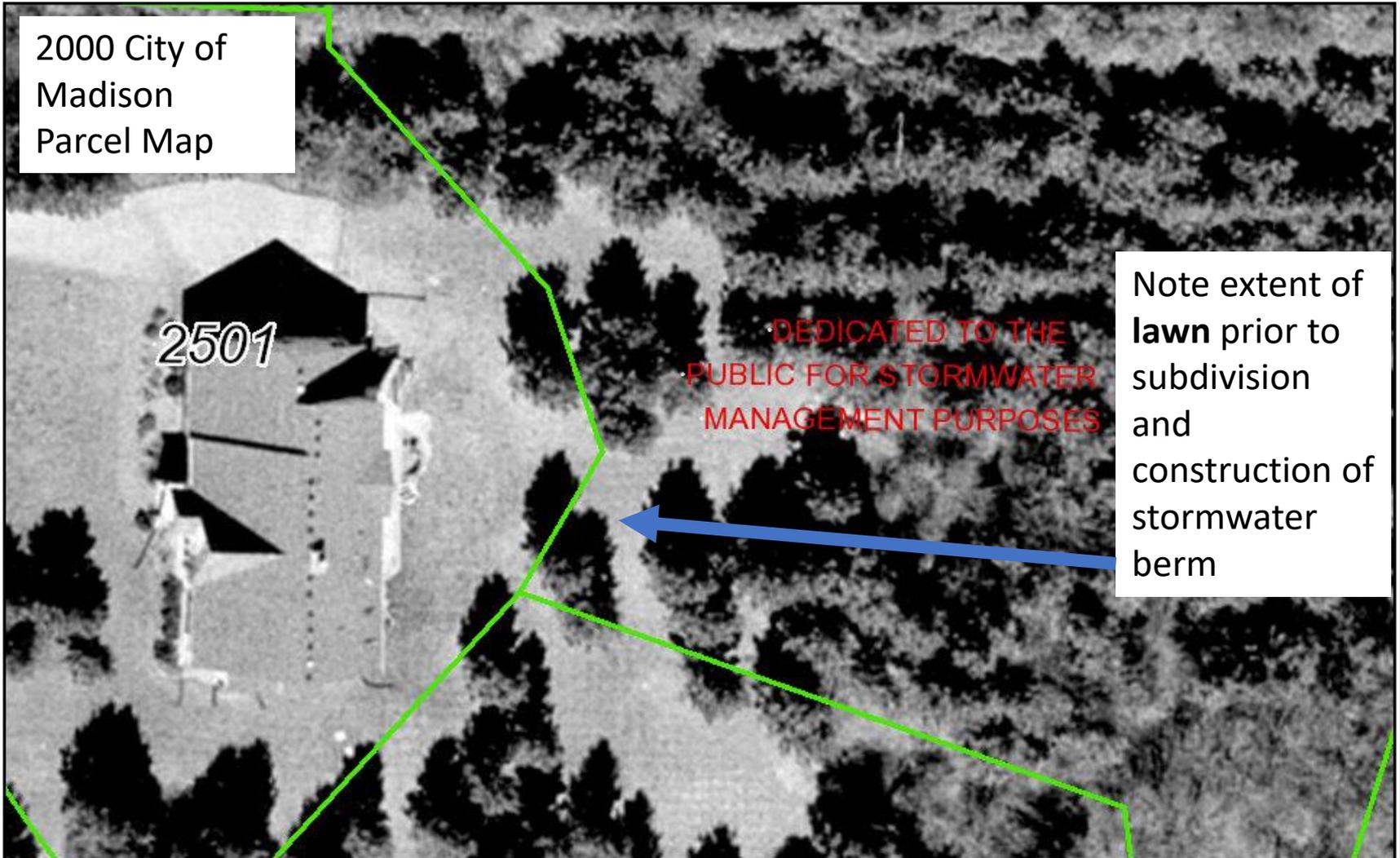
Lot lines reflect
the plat
established in
2007.

These lines were
not the plat in
existence at the
time of this 2005
photo.

Dual lot that is
a part of the
2501 Jeffy Trail
residence.



City of Madison, Wisconsin Property Map

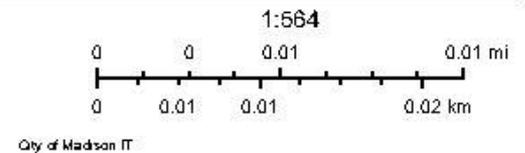


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--- Municipal Limits
□ Parcels

Additional Address
Situs Address

Street Names
Place Name



Timeline

1993 – Residence at 2501 Jeffy Trail constructed.

2007 – Then owner of 2501 Jeffy Trail subdivided and sold parcels of the original property, including for storm water basin

2007 – As directed and approved by the City, the dry storm water basin was constructed and has since been maintained as the expected property boundary.

- The basin is roughly an L shaped berm that roughly, but not precisely, follows the apparent plat boundaries.*
- During the berm's construction, land was disturbed on both sides of the property line, but the only area within the land “dedicated for storm water purposes” that was seeded was on the berm.*

City of Madison, Wisconsin Property Map



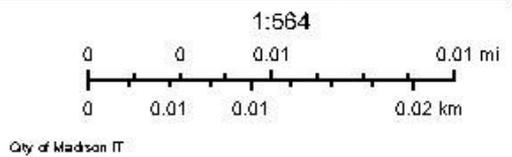
2007 City of Madison Parcel Map

This aerial shows the location of the berm in relation to the plat line.

Also note that the City only seeded on the berm.

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- Municipal Limits
- Additional Address
- Street Names
- Parcels
- Situs Address
- Place Name



City of Madison, Wisconsin Property Map



2010 City of Madison Parcel Map

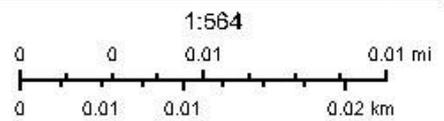
Note the lawn and berm line after the berm was constructed matches the seed line.

2501

DEDICATED TO PUBLIC FOR RECREATION MANAGEMENT PURPOSES

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- Municipal Limits
- Additional Address
- Street Names
- Parcels
- Situs Address
- Place Name



2010 Dane
County DCI
map



Illustrates
broader
context of
area.

Timeline

1993 – Residence at 2501 Jeffy Trail constructed.

2007 – Then owner of 2501 Jeffy Trail subdivided and sold parcels of the original property, including for City storm water basin

2007 – The City constructed the dry storm water basin that has since been maintained as the expected property boundary.

2008 – 2013 – Visual evidence shows that prior to the fence construction, the City and Residence maintained the property up to the base of the berm.

September
2008 Google
Earth map

Note the lawn
and berm line
on the year
after the berm
was
constructed.



City of Madison, Wisconsin Property Map



2010 City of Madison Parcel Map

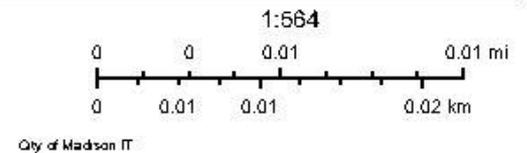
Note the lawn and berm line is the same in 2010.

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--- Municipal Limits
□ Parcels

+ Additional Address
+ Situs Address

+ Street Names
+ Place Name



Timeline

1993 – Residence at 2501 Jeffy Trail constructed.

2007 – Then owner of 2501 Jeffy Trail subdivided and sold parcels of the original property, including for City storm water basin

2007 – The City constructed the dry storm water basin that has since been maintained as the expected property boundary.

2008 – 2013 – Visual evidence shows the City and Residence maintained the property up to the base of the berm.

2013 – Current owners constructed a fence directly on the dividing line between the established lawn and base of the storm water berm.

Since 2013 – The City has mowed and maintained the green space and berm and have raised no concerns.

City of Madison, Wisconsin Property Map

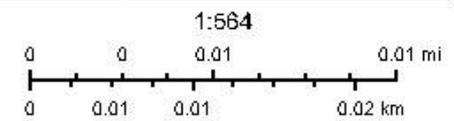


2010 City of Madison Parcel Map

Note the lawn and berm line prior to fence construction in 2013.

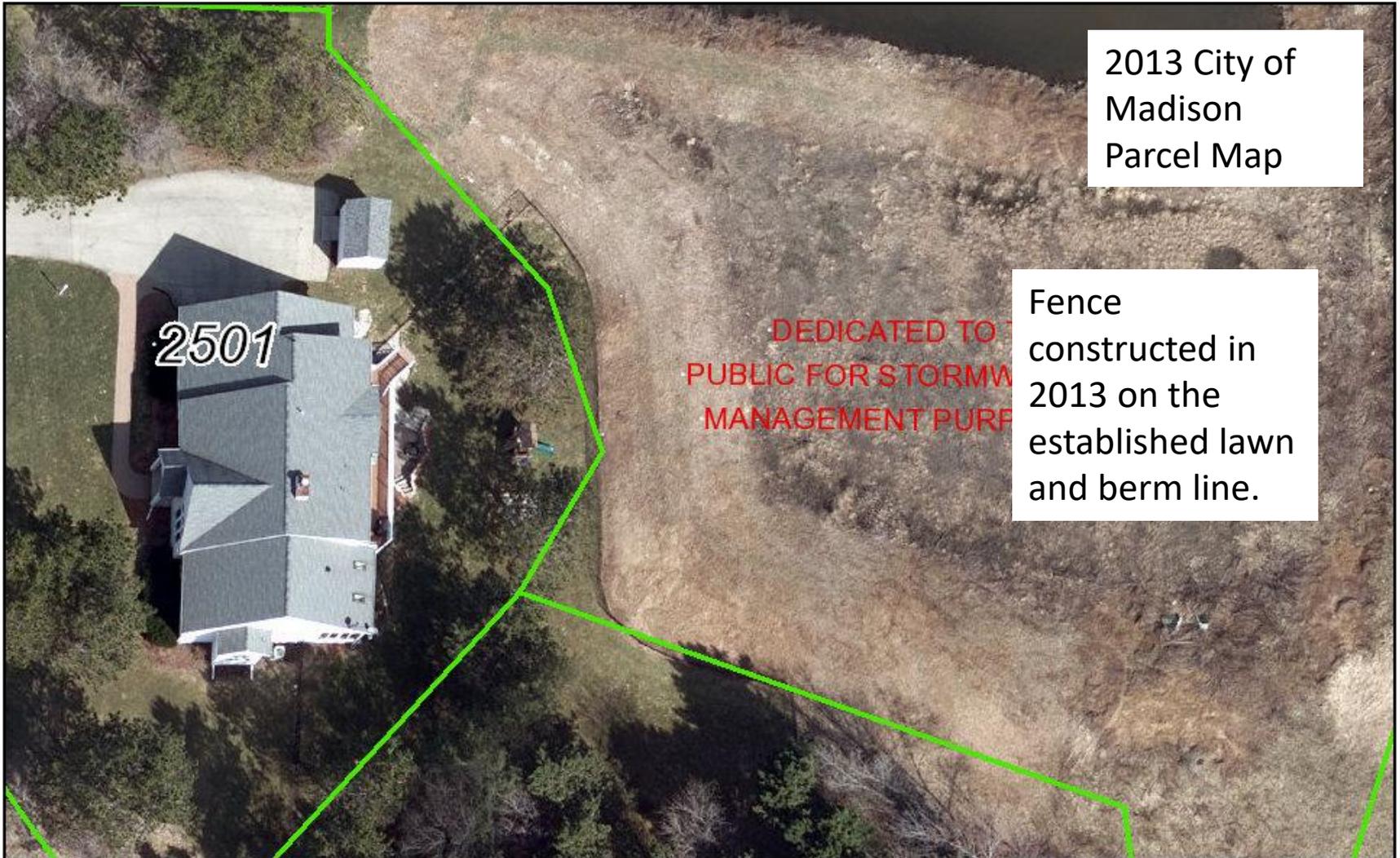
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- Municipal Limits
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City of Madison IT

City of Madison, Wisconsin Property Map



2013 City of Madison Parcel Map

Fence constructed in 2013 on the established lawn and berm line.

DEDICATED TO PUBLIC FOR STORMWATER MANAGEMENT PURPOSES

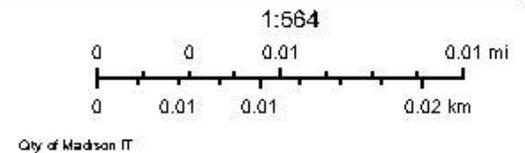
2501

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--- Municipal Limits
▭ Parcels

+ Additional Address
+ Situs Address

+ Street Names
+ Place Name



City of Madison, Wisconsin Property Map

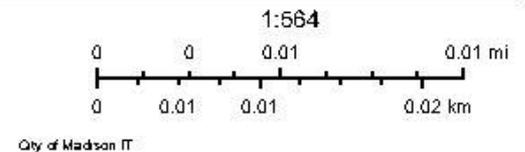


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--- Municipal Limits
▭ Parcels

Additional Address
Situs Address

Street Names
Place Name



City of Madison, Wisconsin Property Map

2020 City of
Madison
Parcel Map

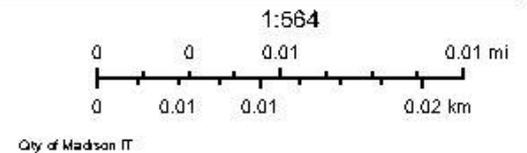


9/1/2021, 8:03:11 AM

--- Municipal Limits
▭ Parcels

+ Additional Address
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+ Place Name









2014 Dane
County DCI
map

Neither the City
nor the residence
have followed the
plat lines precisely.

Note that the city
encroachment of
the 2501 Jeffy
Trail's double lot
during a 2014
storm water
redesign to
accommodate
Trevor Way.

2020 Dane
County DCI
map

Neither the City
nor other
residence have
followed the plat
lines precisely in
this area.



Potential Mutually Beneficial Options

- ***Consent agreement to encumber portion of dual lot to preserve undeveloped green space in exchange for removing the determination that a nuisance exists or formalizing an easement.***
- ***Agreement could be contingent on homeowner will remove invasive plants for the City on the City-side of the berm within X feet of the fence.***
 - *MGO 23.29 requires all owners (including City) to destroy invasive and noxious weeds, including wild parsnip and Canadian thistle.*
- ***Agreement could be contingent on homeowner agreeing to temporarily remove the fence should earth-moving maintenance of the berm be required.***
- ***List is not definitive, but examples of potential resolutions to explore that are mutually beneficial.***

Potential mutually beneficial resolutions

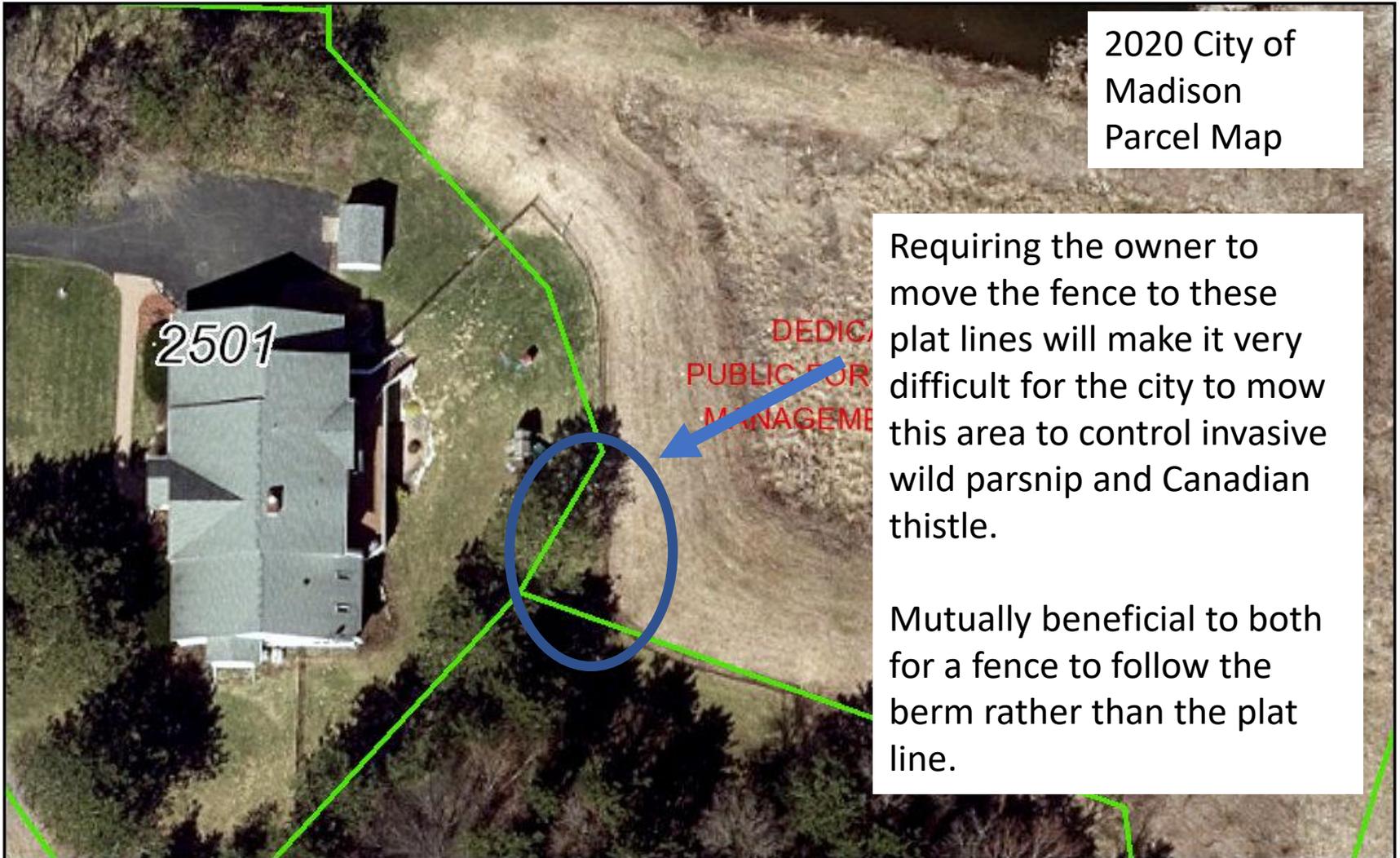
2501 Jeffy Trail includes this undeveloped subplot.

The owner is willing to explore preserving the undeveloped subplot in exchange for an agreement to preserve the existing fence.

To preserve an equal amount of undeveloped greenspace, the owner could offer to preserve an equal amount of green space in exchange for preserving the existing fence alleged to encroach on the technical plat.



City of Madison, Wisconsin Property Map

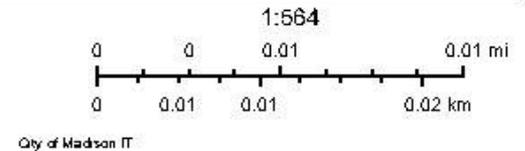


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The City and Board's hands are NOT tied to advance practical alternatives:

- The City has, and regularly uses, discretion to apply and enforce its ordinances when interests of fairness and equity apply. This is why the ordinance gives broad appeal authority to the Board.
- The Board has explicit and broad authority under 8.15(1) to reverse or “modify” a determination that a public nuisance exists. Thus, the Board could determine a public nuisance does not exist contingent on a consent agreement.

8.15(1) Greenways and Park Lands .

(5) Appeal . Any person aggrieved by a determination that a public nuisance exists may appeal within fifteen (15) days of the mailing of the notice to remove the public nuisance or cease such public nuisance activity. Appeal shall be to the Board specified on the notice and will be either the Board of Public Works or the Board of Park Commissioners, depending on which Board has the control and management of the public property at issue. All requests for appeal shall be filed with the City Clerk and must inform the Board of the reasons for the appeal. Within thirty (30) days, the Board shall hold a hearing at which the parties may offer testimony and documents. Within twenty (20) days of the hearing, **the Board shall affirm, modify, or reverse the determination that a public nuisance exists.** Appeal from the action of the Board shall be to Circuit Court within thirty (30) days of the determination of the Board.

8.15(1) Greenways and Park Lands .

(b) The **City Engineer** may approve planting native grasses and/or forbs or removal of invasive species in a City-owned or leased greenway, provided that:

- 1. the applicant is the owner of land abutting the greenway where the use is proposed;**
- 2. the City's ability to maintain the greenway is not adversely impacted by the proposed use;**
- 3. the applicant pays to the City Treasurer a fee of one hundred twenty-five dollars (\$125);**
- 4. the applicant agrees to indemnify, defend, and hold harmless the City** and its officers, employees and agents against all loss or expense by reason of any claim or suit, or of liability imposed by law upon the City or its officials, agents, or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising from, in connection with, caused by or resulting from activities related to an approved use of a greenway, whether caused or contributed to by the negligent acts of the City, its officials, employees, or agents.

The approval may contain conditions, including but not limited to, the duration of the approval and the geographic limits for the proposed use. **The applicant shall notify all property owners within one hundred (100) feet** of the greenway where the proposed use is located at least three (3) days prior to the date the proposed use begins.

The City and Board's hands are NOT tied to advance practical alternatives:

236.293, Wisconsin Statutes:

Restrictions for public benefit. Any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body or which names a public body or public utility as grantee, promisee or beneficiary, vests in the public body or public utility the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction. **The restriction may be released or waived** in writing by the public body or public utility having the right of enforcement.

Resident's Request of the Board

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Potential Motion?

Reverse the public nuisance determination contingent upon the owner entering into a consent agreement with the City in which the fence may be maintained if:

- Storm water capabilities are maintained and not unreasonably impacted
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Potential Motion?

“Pursuant to MGO 8.15(5), the determination that the existing fence at 2501 Jeffy Trail is a public nuisance exists is reversed.”

Any questions that you would like me to address?