MADISON ORDINANCE REVISIONS: CHANGES TO ENCROACHMENT RESPONSE IN GREENWAYS AND PONDS

City of Madison, WI

Engineering Division

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OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

- WHAT IS AN ENCROACHMENT AND WHY IS IT PROBLEMATIC?
- WHY DID WE NEED TO CHANGE?
- WHAT DOES THE INABILTY TO ALLOW/PERMIT ENCROACHMENTS MEAN IN PRACTICE?
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- EXAMPLES
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OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

- **WHAT IS AN ENCROACHMENT AND WHY IS IT PROBLEMATIC?**
  - **Encroachments, in this sense, are where private uses are on public spaces.**
  - **They are usually problematic as it may interfere with the public's use the City's ability to maintain or use the space the way it was intended.**
  - **These encroachments also generally benefit the party that is encroaching, <u>however there are exceptions.</u>**

OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

▸WHY DID WE NEED TO CHANGE?

- Some encroachments are very expensive or problematic to order their removal.
- Under existing ordinances, most encroachments into City greenways/ponds <u>cannot</u> be authorized, even if similar encroachments may be approved/permitted on other City owned lands such as within right of way or in parks.
- City needs to retain the ability to remove encroachments that interferes with City operations or that presents a risk to the public health, safety and welfare.

OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

- **WHAT DOES THE INABILTY TO ALLOW/PERMIT ENCROACHMENTS MEAN IN PRACTICE?**
- **Currently if Engineering encounters an encroachment in a pond or greenway there are two options:**
  - **1) order the encroachment be removed**
  - **2) Ignore the issue**
  - **Some encroachments are easy to remove while others would be onerous to remove – examples to follow. Change would allow for permitting difficult or expensive encroachments until the encroachment can be removed.**
  - **Yearly fees collected based on land value. Insurance required that indemnifies the City.**
  - **Fees can be waived in certain instances where the public is benefited by the encroachment, such as in a trail system open to the public for use.**

OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

▸ WHAT WOULD THE PROPOSED CHANGE ALLOW?

- **The proposed ordinance revision would amend Sec. 8.15(1) to create a <u>limited exception</u> to this prohibition and allow for encroachments into greenways that are solely managed by the Engineering Division, including lands managed by the Stormwater Utility (such as ponds and other detention basins).**

- **This change would not permit encroachments into city park lands.**
- **This change would not permit illegal dumping.**

OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

▸WHAT IS A GREENWAY "PRIVILEGE"?

- A greenway "privilege" will be similar to a privilege in street under Sec. 10.31, and would be within the discretion of the City Engineer to grant. The City will retain the ability to remove any encroachment that interferes with City operations or that presents a risk to the public health, safety and welfare.

*Note the term "privilege" as it relates to encroachments, comes directly from the State Statutes (Wis. Stat. Sec. 66.0425). Under that statute, a privilege is defined as "the authority to place an obstruction or excavation beyond a lot line, or within a highway in a town, village, or city, other than by general ordinance affecting the whole public."

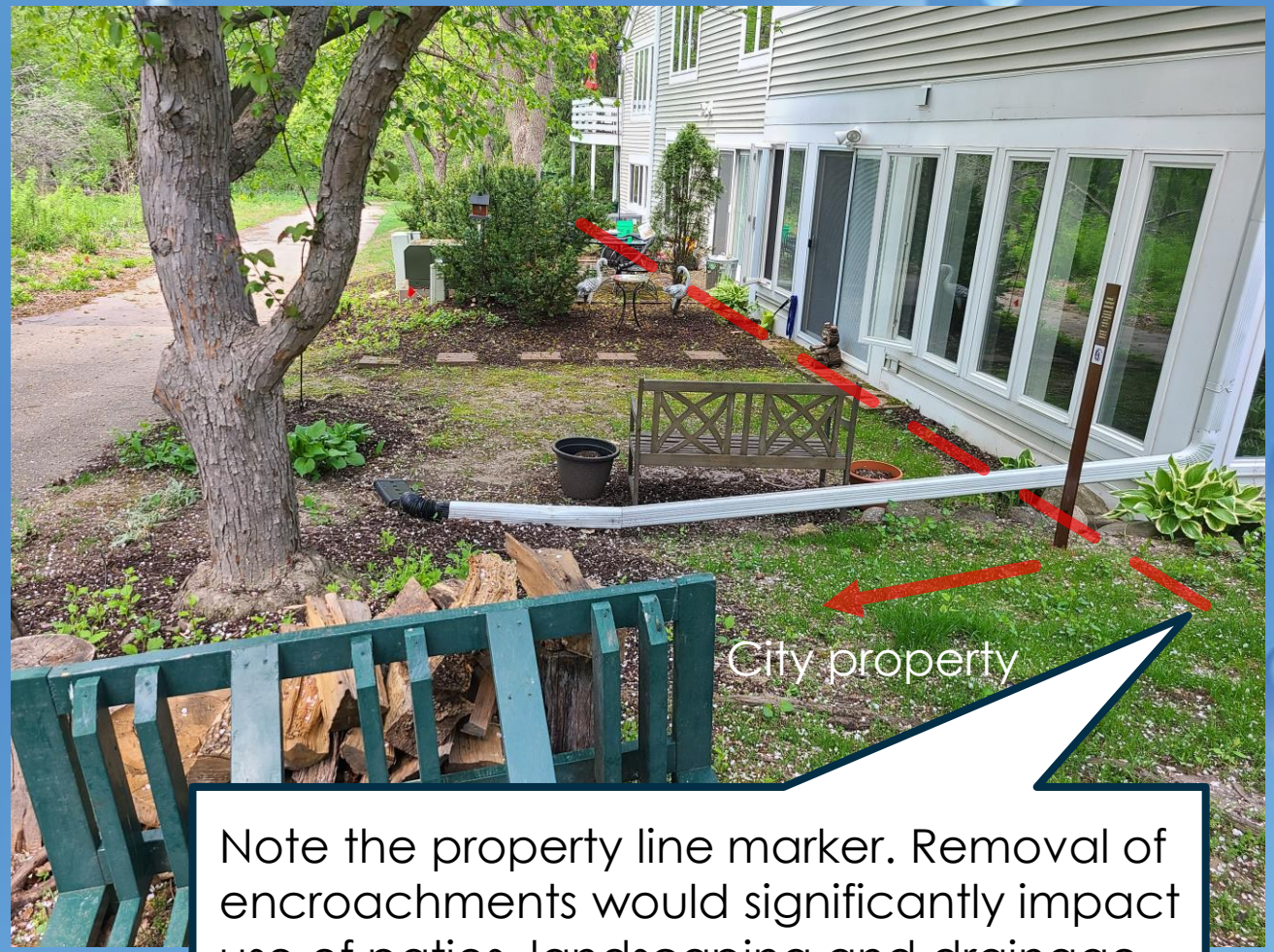
OVERVIEW – ORDINANCE CHANGES REGARDING ENCROACHMENTS

▸ SPECIFICALLY THE PROPOSAL WILL:

- **Allowed permitted uses for extensive encroachments, including permanent fencing, retaining walls, stairs, outbuildings, hardscape and parking areas.**
  - **These would require the granting of a greenway privilege under the proposed section 37.05(11).**
- **Gardens and temporary fencing <u>may</u> be allowed with notification and approval of the City Engineer as long as they do not preclude the intended use of the property.**

EXAMPLES OF ENCROACHMENTS THAT COULD BE ADDRESSED WITH THIS CHANGE.

EXAMPLE ENCROACHMENTS



Note the property line marker. Removal of encroachments would significantly impact use of patios, landscaping and drainage, as well as privacy concerns.

EXAMPLE ENCROACHMENTS

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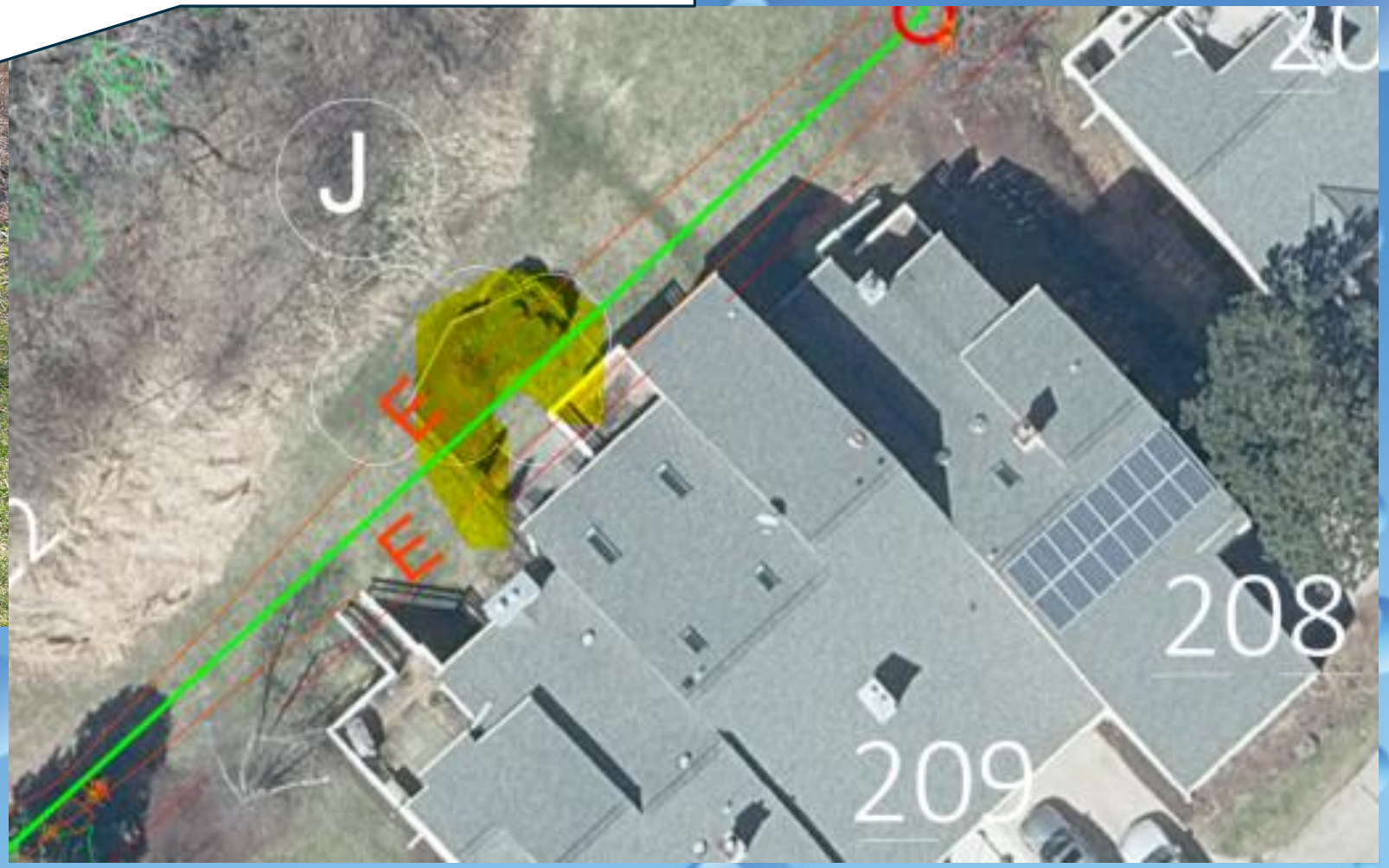
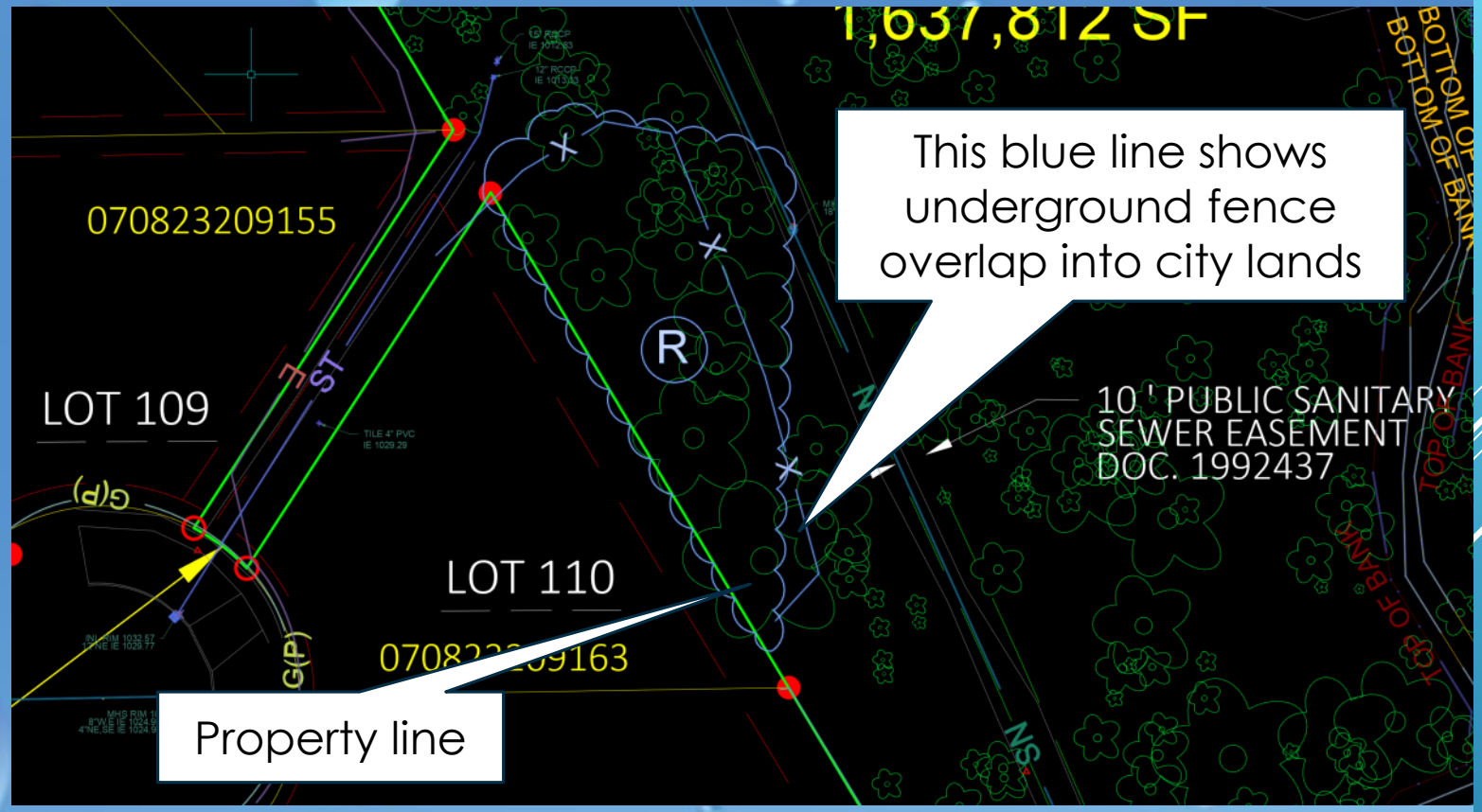
Most of this retaining wall is on city lands would be expensive and require redoing significant amount of landscaping

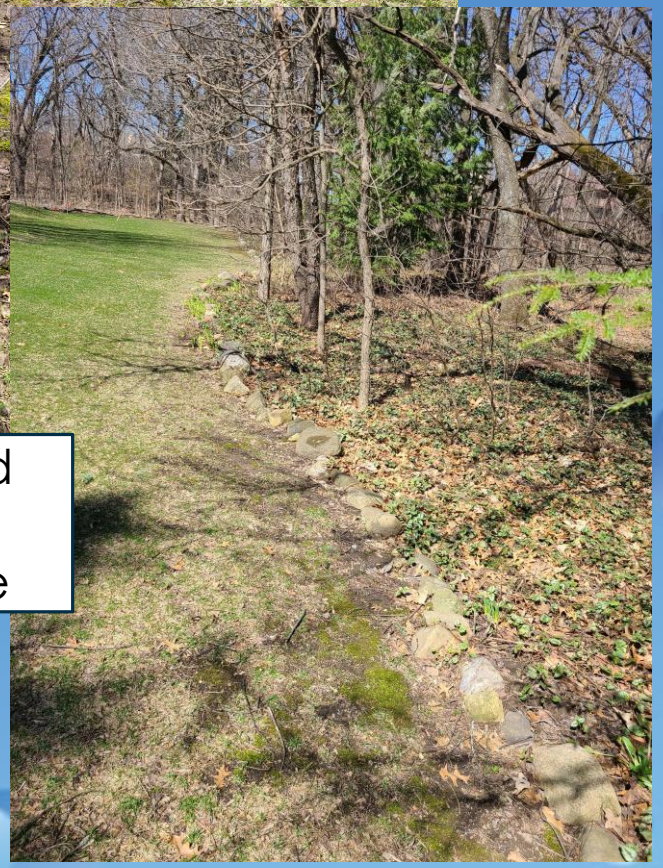


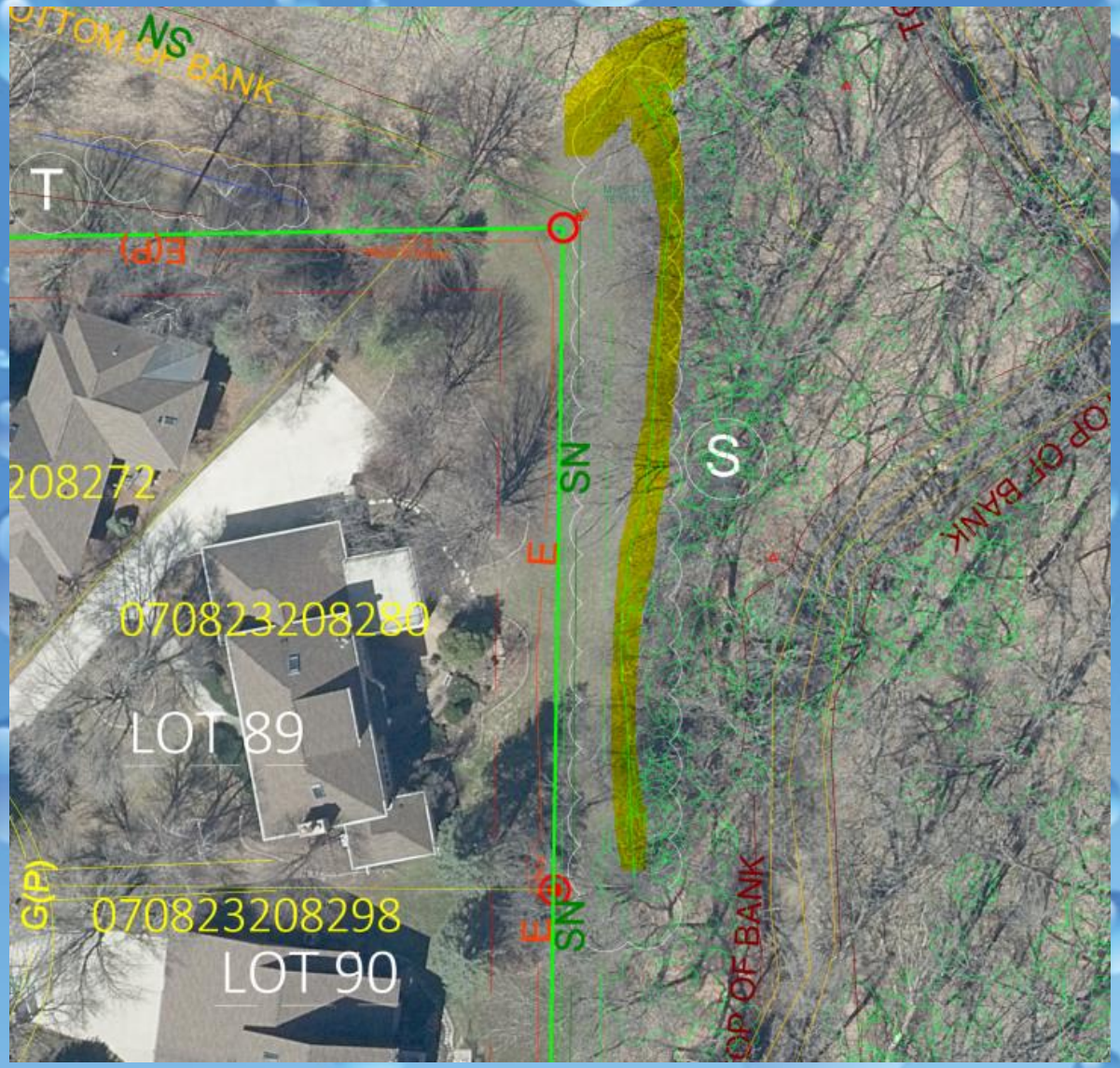
EXAMPLE ENCROACHMENTS – INVISIBLE FENCE



EXAMPLE ENCROACHMENTS

Landscaping makes yard appear bigger than it is, however easy to remove





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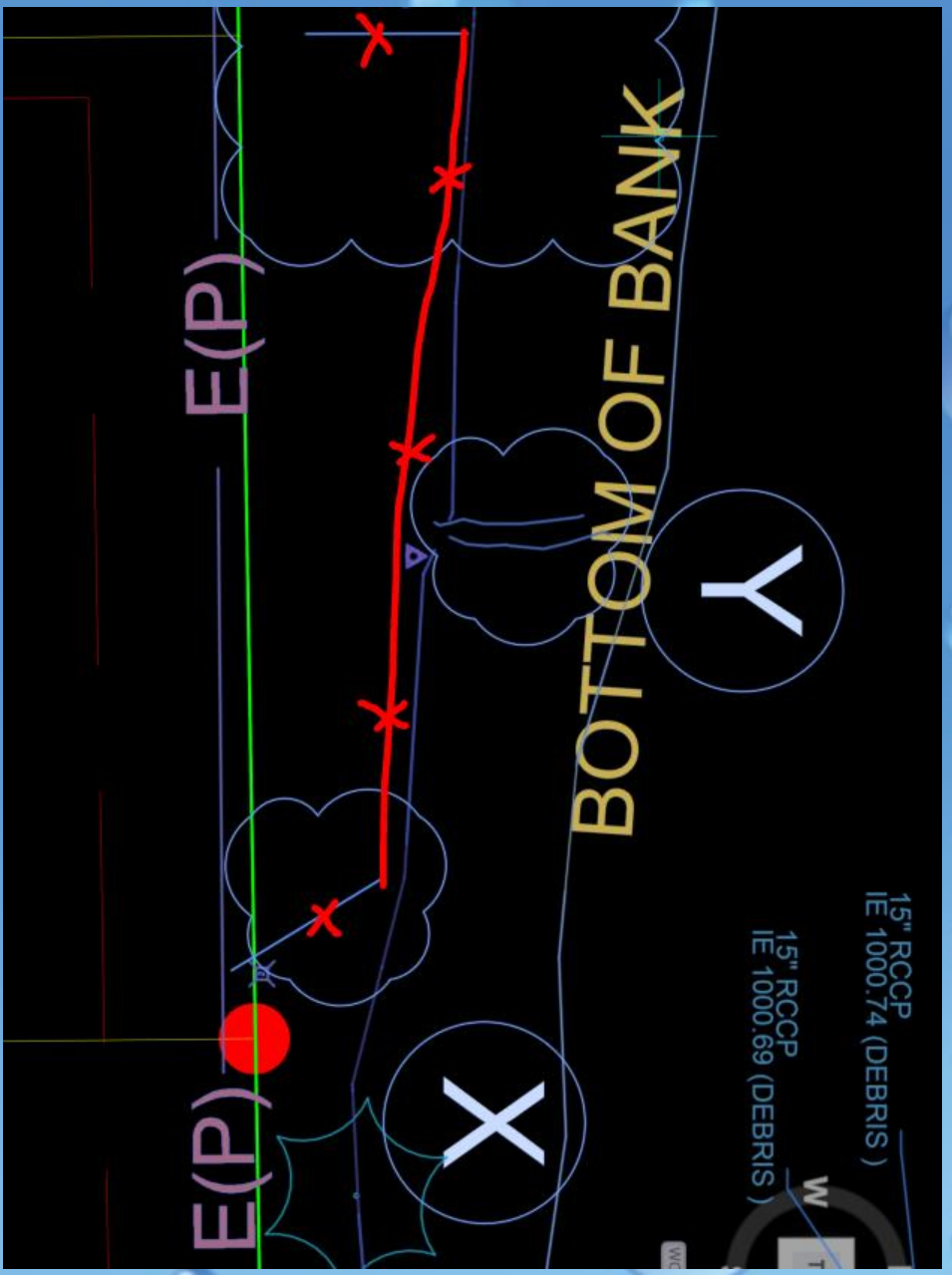

Fenced in portions of city property

EXAMPLE ENCROACHMENTS

Private lighted trail maintained by HOA around pond and greenway. Open to the public for use and limited impacts on city's use of pond or greenway

HOW WILL THE REVISION BE IMPLEMENTED

What locations does the ordinance apply to?

Greenways managed solely by the **Engineering Division**, including lands managed by the Stormwater Utility, are subject to this ordinance change.

HOW WILL THE REVISION BE IMPLEMENTED

What encroachments would be allowed <u>without</u> a privilege in greenway permit?

- Mowing. Unless posted for no mowing, mowing of grass on greenways is permitted.

- Gardens. Vegetable gardens, including any associated protective fencing or cages, and confined compost bins are authorized with City Engineer notification, review and approval.

HOW WILL THE REVISION BE IMPLEMENTED ?

What Encroachments are allowed <u>with</u> a privilege in greenway?

- Fences. Temporary fencing not exceeding 30 inches tall that is used to delineate a garden and that does not run the full length of a property line is authorized provided it is removed annually. Temporary construction fencing is allowed if it is needed to protect or secure a construction site. Permanent fencing is only allowed with a valid Greenway Privilege.

- Constructed stairs. Stairs of any type.

- Retaining Walls. Retaining walls of any size, regardless of type (gravity or walls including poured concrete or mortared stone/masonry.

- Outbuildings. Outbuildings, including buildings or structures of any type, such as sheds, chicken coops, and garages, whether they include a foundation or not. No outbuildings to be used for human habitation.

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HOW WILL THE REVISION BE IMPLEMENTED ?

What Encroachments are allowed <u>with</u> a privilege in greenway?

- Hardscape. The use of wood, stone, concrete, masonry, galvanized metal or other hard landscaped materials to construct patios, decks, fire pits, raised garden beds, and paths.

- Parking Areas. May be allowed if does not interfere with use of City lands.

- Improvements of Public Benefit. Improvements that are deemed to be in the public interest, may require a valid Greenway Privilege issued under Sec. 37.05(11). Examples include an encroachment into public lands for a walking/biking access path where the entirety of said path is open to the public but the path is privately owned.

HOW WILL THE REVISION BE IMPLEMENTED ?

Maintenance of encroachment:

The person responsible for the permissible encroachment accepts full responsibility for the care and maintenance of the permissible encroachment, and understands that permissible encroachments in the greenway are **made at their own risk**, and that they **may be removed at any time by the City without compensation**. The person seeking to place any permissible encroachments in the greenway is responsible for contacting Digger's Hotline to identify and mark any underground utilities prior to digging within the greenway.

Removal of the encroachment:

Any greenway encroachments remaining upon the expiration of a Greenway Privilege or that not maintained consistent with Para. 4, shall become a public nuisance, subject to Subd. (a), and abatement under Subs. (4).

Removal of the encroachment (the City maintains the right to remove):

Any private encroachment of a greenway that ultimately interferes with the use, operation, maintenance or future planning, development or construction of the adjacent greenway or appurtenances, or that presents a risk to the health, safety and welfare of the public, as determined by the City Engineer or the Director of Building Inspection Division, shall be considered a public nuisance and is prohibited under this Subsection.