

Matthew Stanford  
2501 Jeffy Trail  
Madison, WI 53719  
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608-347-3263

July 23, 2021

Matt Allie  
Division of Public Works  
Engineering Division  
Board of Public Works  
City of Madison  
City-County Building, Room 115  
210 Martin Luther King, Jr. Boulevard  
Madison, WI 53703  
mallie@cityofmadison.com

*Re: Request to address notice of prohibited public greenway encroachment, and in the alternative, notice of appeal*

Dear Mr. Allie:

This letter is intended to serve as notice of the appeal of the alleged violation of the greenway public nuisance ordinance (Madison General Ordinance Section 8.15) indicated on the attached letter to the owner of 2501 Jeffy Trail from City of Madison Engineering Division with Matt Allie listed as the contact and dated July 12, 2021.

As a practical matter, however, as an alternative to proceeding directly to a contested hearing with the Board of Public Works, the owner of 2501 Jeffy Trail would like to work with the Engineering Division to achieve a mutually agreeable result where storm water capabilities are fully maintained and not impacted, undeveloped green space is preserved, resources of the City and property owner are not unnecessarily spent, and the 14 years of a plain and rational boundary recognized by both the City and the prior and current property owners through their by their respective utilization of the property are preserved.

This letter proposes an offer to meet with the Engineering Division to explore the proposed alternative resolution discussed below and to temporarily rescind the Notice of Violation or toll the appeal process to enable good faith discussions to explore the proposed alternative resolution. But, in order to preserve the owner's appeal rights should the Engineering Division not respond to this letter, the letter also, as a technical matter, includes a separate section stating reasons for an appeal as required by MGO Section 8.15(5) should the appeals and formal hearing process be necessary.

**Proposed alternative resolution to work with the Engineering Department to enter into a land swap or other arrangement with the Owner to clearly establish a visually expected, non-irregular boundary line along the storm water berm that also preserves the City's stormwater and greenspace interests.**

The July 12, 2021, letter was a surprise to the owners of 2501 Jeffy Trail, as there has been no indication to the owners that the fence in question is not on the owners' property. The lawn on which the fence in question was well established prior to the construction of the fence eight years ago in 2013 and logically follows the base

of a storm water berm built and maintained by the City shortly after the City purchased land in September 2007 from the prior owners of the residence at 2501 Jeffy Trail.

The residence at 2501 Jeffy Trail was built in 1993, but was located on a much larger lot than exists today. In 2007, the City purchased land from the then- owner of 2501 Jeffy Trail that enabled the City to construct a storm water basin in 2008 to support additional development in the neighborhood. Since that 2007 purchase, the practical extent of the lawn maintained by residence and the storm water basin berm and greenspace maintained by the City has not changed. In short, if the purple lines in the satellite photo attached to the July 12 letter received by the owner are boundary lines that are correct and accurate, they are not consistent with how the prior and current owners of 2501 Jeffy Trail or the City viewed the expected boundary, based on either of the City's or residence owners' actions since 2007 and as supported by historical, visual documentation held by the owner.

Nevertheless, if a discrepancy exists between the technical legal plat boundary and the practical boundary as established by the City's storm water berm and greenspace maintenance, the owners of 2501 Jeffy Trail would like to work with the Engineering Department to formalize any necessary legal changes to the plat to resolve the discrepancy and establish a visually expected and non-irregularly shaped lot boundary.

One option the owner is willing to explore and offer to the Engineering Division could include an arrangement in which the City and owner enter into a land swap agreement in order to formally establish a more regular lot line consistent with the placement and maintenance of the storm water berm by the City. This could be accomplished by the City conveying land to add to the lot of 2501 Jeffy Trail and the owner would convey an equal amount of land from the eastern boundary of the adjoining outlot addressed as 2601 Jeffy Trail to the City. The adjoining outlot addressed as 2601 Jeffy Trail is currently undeveloped and is the same greenspace character as the City of Madison land that would be conveyed to the 2501 Jeffy Trail lot. Importantly, the full stormwater berm would fully remain on City property just as the parties recognize today. The owner is also willing to bear the City's reasonable legal costs of formal land conveyances and redrawing of lot lines, and also as part of an agreement, is open to considering establishing a new covenant on the 2601 Jeffy Trail outlot to prohibit future construction of a residence on the outlot so as preserve the undeveloped greenspace nature of the outlot.

**If the Engineering Department is agreeable to meeting with the owner to discuss this or other alternatives, the owner asks that the Engineering Department contact the owner to set a time to begin discussions with Engineering Department or other staff, and temporarily rescind or toll the Notice of Violation to enable good faith discussions and work between the parties to occur and not be constrained by the technical timelines of the formal hearing and appeal process in MGO 8.15.** Should such discussions not progress, the owner understands that the Engineering Division could reissue the Notice of Violation, and the hearing and appeals timeline would restart.

**Description of reasons for appeal to preserve the owner's right to appeal the notice, if necessary.**

As noted earlier, should the Engineering Division choose not to engage in the exploration of the alternative proposed above, the owner desires to preserve their rights to appeal the Notice of Violation sent on July 12. As a technical matter, MGO Section 8.15(5) requires that reasons for appeal must be included in the required notice of appeal of a Notice of Violation and filed with the City Clerk. Thus, as a formality to preserve the owner's right to appeal the notice, should the appeal process continue, reasons for the appeal include but are not limited to:

- The August 8 date demanded for removal of the fence is impossible to comply with due to current demands on fencing contractors.
- The alleged violation of MGO Section 8.15(1)(a) does not meet the definition of a public nuisance described in MGO Section 8.15(1)(a). The fence is not on a City-owned greenway as defined in the Madison General Ordinances. The location of the fence is outside of the berm utilized to carry and hold storm water on the ground surface.
- The City has not provided necessary legal proof, and the owner does not concede, that the alleged violation is on City-owned property. Consistent with disclaimers provided on the Dane County and other GIS-based property mapping applications that utilize satellite photographs, such applications are not intended for site specific analyses and accuracy varies. As such, reliance on such mapping technology cannot conclusively support the alleged violation and potential fines.
- Under the legal doctrine of acquiescence and the 14- year practical utilization of the land on which the fence sits by both the current and prior owners of 2501 Jeffy Trail and the City, the City is estopped from requiring the removal of the fence, imposing fines, or claiming adverse title to the land on which the fence sits.
- The City is prohibited from requiring the removal of the fence or imposing fines under the doctrine of equitable estoppel.

Should a hearing with the Board of Public Works be required, the owner reserves their right to provide additional testimony, documents, or supporting arguments in support of their appeal, as provided by MGO Section 8.15(5).

### **Next Steps**

Again, the owners wish to work with the City to achieve a mutually agreeable result where storm water capabilities are fully maintained and not impacted, undeveloped green space is preserved, and resources of the City and property owner are not unnecessarily spent. If the Engineering Division is willing to meet with the property owner to explore such options as an alternative to proceeding directly to a hearing with the Board of Public Works, please contact Matthew Stanford, via email or phone at [mas.stanford@gmail.com](mailto:mas.stanford@gmail.com) or 608-347-3263.

Sincerely,

/s/

Matthew Stanford, Esq.

Cc: Greg Fries, P.E., Assistant City Engineer - [gfries@cityofmadison.com](mailto:gfries@cityofmadison.com)  
Kathleen Cryan, Deputy Division Manager - [kcryan@cityofmadison.com](mailto:kcryan@cityofmadison.com)  
City Clerk – [clerk@cityofmadison.com](mailto:clerk@cityofmadison.com)

Attachment: July 12, 2021 Letter – Notice of Prohibited Public Greenway Encroachment



Department of Public Works  
**Engineering Division**  
Robert F. Phillips, P.E., City Engineer

City-County Building, Room 115  
210 Martin Luther King, Jr. Boulevard  
Madison, Wisconsin 53703  
Phone: (608) 266-4751  
Fax: (608) 264-9275  
[engineering@cityofmadison.com](mailto:engineering@cityofmadison.com)  
[www.cityofmadison.com/engineering](http://www.cityofmadison.com/engineering)

**Deputy City Engineer**  
Gregory T. Fries, P.E.

**Deputy Division Manager**  
Kathleen M. Cryan

**Principal Engineer 2**  
John S. Fahrney, P.E.  
Christopher J. Petykowski, P.E.  
Janet Schmidt, P.E.

**Principal Engineer 1**  
Christina M. Bachmann, P.E.  
Mark D. Moder, P.E.  
James M. Wolfe, P.E.

**Facilities & Sustainability**  
Bryan Cooper, Principal Architect

**Land Information & Official Map Manager**  
Eric T. Pederson, P.S.

**Financial Manager**  
Steven B. Danner-Rivers

July 12, 2021

2501 Jeffy Trail  
Madison, WI 53719

RE: Prohibited Public Greenway Encroachment

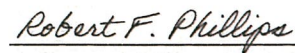
Dear Resident,

During a recent inspection of the City stormwater management system in your area, a fence was observed extending from the back yard of this property onto City of Madison Stormwater Utility property. Please be advised that City-owned greenways cannot be used for any purposes besides those in accordance with Madison General Ordinance Section 8.15, see attached. Private use of City-owned lands, including fences, is prohibited per Madison General Ordinance 8.15. The location of the property line and fence are shown in the attached image, for reference.

Please have the fence relocated to private property by August 3, 2021. If at that time the fence has not been removed from the public greenway, it will be considered a violation of public land use and a citation will be issued. Per MGO 8.15, you have fifteen (15) days after the mailing of this Notice of Violation to appeal the allegation of violation to the Board of Public Works. Such appeal must be in writing and must inform the Board of the reasons why the aggrieved person believes the order has been issued in error.

If you have any questions or need additional information, please contact Matt Allie at (608) 266-4058 or [mallie@cityofmadison.com](mailto:mallie@cityofmadison.com). We appreciate your cooperation and understanding as we work to protect City property for its intended use.

Sincerely,

  
\_\_\_\_\_  
Robert F. Phillips, P.E.,  
City Engineer

RFP: maa  
cc: Greg Fries, P.E., Deputy City Engineer  
Kathy Cryan, Deputy Division Manager  
Alder Barbara Harrington-McKinney, District 1



## 8.15 REGULATION OF PRIVATE USE OF GREENWAYS, PARK LANDS, AND THE SOUTHWEST BIKE PATH.

(1) Greenways and Park Lands.

(a) Public Nuisance. Private use of City-owned or leased greenways and park lands including, but not limited to, fences, retaining walls, outbuilding sites, dog runs, play equipment and gardens, storage of piers, boat hoists, or other private personal property, planting or pruning of trees and shrubs, mowing of grass on park lands, chemical treatment of grass on park lands or greenways, or mowing of grass on greenways when posted for no mowing is a public nuisance and is prohibited unless approval to use City-owned or leased greenways is obtained pursuant to Subdivision (b) or the private use is pursuant to a valid permit issued under Sec. 8.33, MGO. (Am. by Ord. 12,992, 1-25-02; Ord. 13,177, 11-5-02; ORD-10-00109, 11-17-10; ORD-13-00109, 6-12-13)

(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. (Cr. by ORD-06-00175, 12-8-06)

(2) Southwest Bike Path.

(a) Public Nuisance. Except as set forth in (b), private use of the Southwest Bike Path right-of-way for fences, retaining walls, sheds or other outbuildings, gardens and/ or other landscaping, stairs, play equipment, dog runs parking of vehicles or storage of personal property is a public nuisance and is prohibited.

(b) 1. Vegetation including but not limited to grasses, perennials, small shrubs and trees. No vegetation, however, shall be planted in any drainage ditch or swale abutting the bike path, which at maturity will be closer than fifteen (15) horizontal feet or sixteen (16) vertical feet from the edge of the bike path surface. Planting of any tree that will attain twenty (20) or more feet at maturity requires prior approval of the Forestry Section of the Madison Parks Department.

2. Fences that existed prior to April 1, 2000 may remain, as long as they do not present a hazard for the users of the bike path, as determined by the City Engineer. All such fences, however, shall be removed when the property is transferred to a new owner after the above date. PUBLIC PROPERTY Sec. 8.15(2)(b)3. 8 - 11 Rev. 3/15/11

3. Stairs for private use shall be allowed only if they comply with current building codes; the owner provides evidence of insurance, naming the City as an additional insured; indemnifies the City for any and all claims relating to the stairs; and obtains a permit from City Engineering.

4. Temporary mesh fences not exceeding thirty (30) inches in height, for the purpose of delineating gardens. Such fences shall not extend the full width of a property or otherwise give the appearance of defining private property.

5. Retaining walls not exceeding twenty-four (24) inches. Retaining walls, terraces, foot paths, and small stepping stones are permitted only to the extent that they delineate gardens, and they may not function as stairs.

6. Outbuildings without foundations that existed prior to April 1, 2000 may remain as long as they do not present a hazard to the users of the bike path, as determined by the City Engineer. All such outbuildings, however, shall be removed when the property is transferred to a new owner after the above date.
7. Outbuildings with permanent foundations that existed prior to April 1, 2000 may remain as long as they do not present a hazard to the users of the bike path and if a permit is obtained from City Engineering.
- (c) Notwithstanding the exceptions in (b) above, any private encroachment that interferes with the operation, maintenance or future construction of the bike path or appurtenances, as determined by the City Engineer, is a public nuisance and is prohibited.
- (3) Bicycle-Sharing Facilities. It shall not be a violation of this ordinance for bicycle-sharing facilities that are part of a City-sponsored bicycle-sharing program, as those terms are defined in Sec. 10.33, MGO, to be placed on City-owned or leased greenways and park lands or the Southwest Bike Path, provided that the owner of the facility has a valid bicycle-sharing facility privilege under Sec. 10.33 for the location and the Board of Parks Commissioners and/or the City Engineer, or their designees, as the case may be, approve the actual location of the bicycle-sharing facilities that will be located on City-owned or leased greenways and park lands or the Southwest Bike Path. (Cr. by ORD-11-00044, 3-23-11)
- (4) Abatement. If the City determines that a public nuisance exists pursuant to (1) or (2), notice to remove such public nuisance or cease such public nuisance activity shall be sent to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. If the public nuisance is not removed within the time specified in the notice, the City shall remove the public nuisance or cause it to be removed. The cost of abatement shall be assessed as a special charge to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. Any property held by the City after removal is subject to disposal thirty (30) days after a notice of removal is mailed to the owner, occupant or person causing, maintaining, or permitting the public nuisance. (Renumbered by ORD-06-00175, 12-8-06; ORD-10-00109, 11-17-10; Renum. By ORD-11-00044, 3-23-11)
- (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. (Renumbered by ORD-06-00175, 12-8-06; ORD-10-00109, 11-17-10; Renum. by ORD-11-00044, 3-23-11) Sec. 8.15(6) PUBLIC PROPERTY Rev. 3/15/11 8 - 12
- (6) Penalty. Any person violating this ordinance shall, upon conviction thereof, be subject to a forfeiture of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense. In addition to any other penalty imposed by this ordinance, the City Attorney may maintain an action pursuant to Ch. 823, Wis. Stats. to abate the nuisance. (Cr. by Ord. 5672, 11-17-76; Am. by Ord. 12,836, 6-26-01; Renumbered by ORD-06-00175, 12-8-06; Renum. by ORD-11-00044, 3-23-11)
- (Section 8.15 Am. by ORD-08-00019, 2-23-08)