

2501 Jeffy Trail  
Prohibited Public Greenway  
Encroachment Removal

City of Madison Board of Public Works Meeting

Wednesday, September 22<sup>nd</sup>, 2021

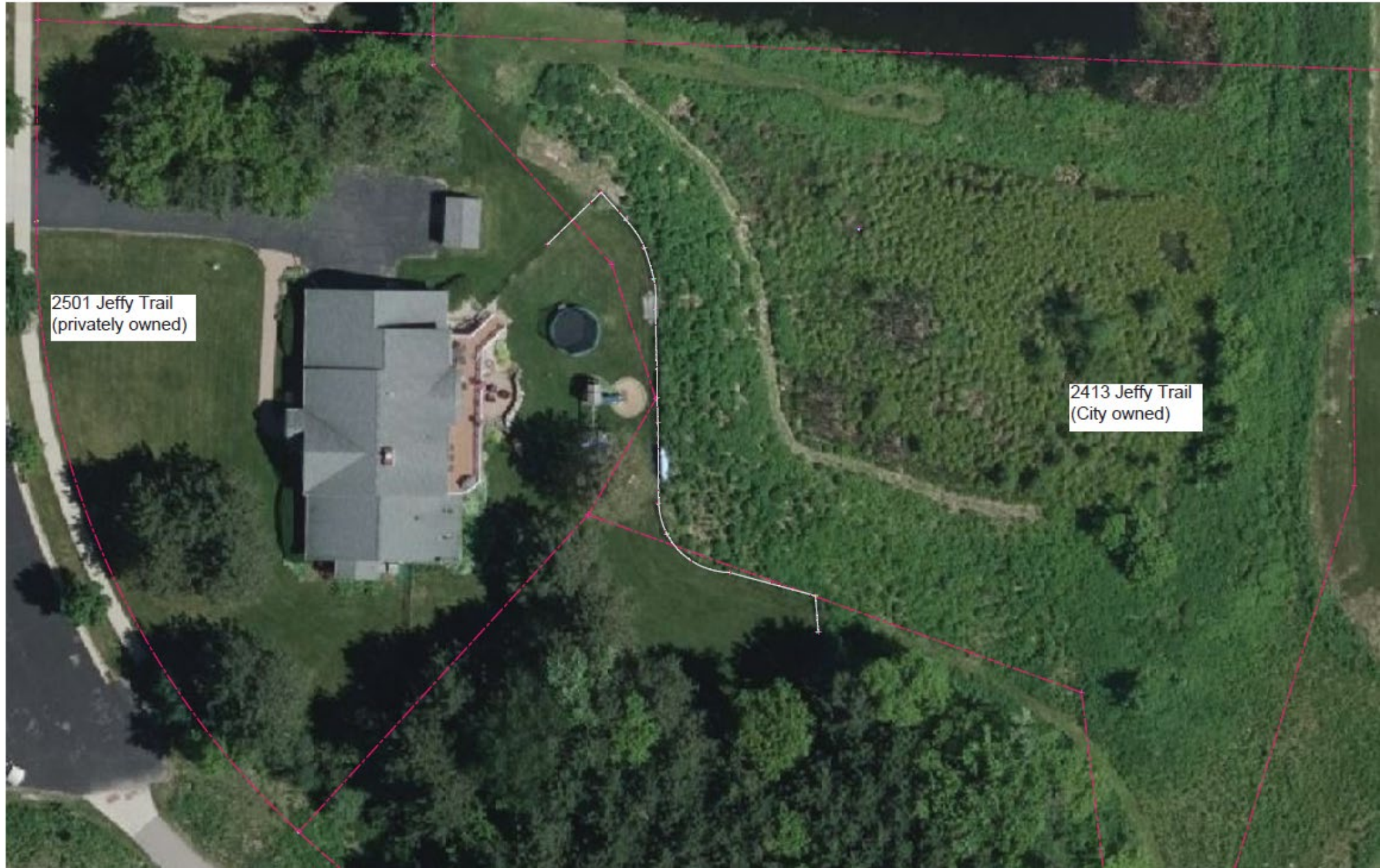
# Timeline

- **2007** – Lot subdivided and platted for development
- **2013** – Home at 2501 Jeffy Trail is purchased
- **2013** – Fence is installed by current owners
- **June 21, 2021** – City staff observe prohibited greenway encroachment
- **July 12, 2021** – Notice of prohibited public greenway encroachment is sent to Attorney Stanford at 2501 Jeffy Trail
- **July 23, 2021** – City staff receive response from Attorney Stanford
- **September 3, 2021** – City staff meet with Attorney Stanford

# Prohibited Encroachment Survey

- Chain link fence surveyed
- Property line surveyed and staked up to fence
- 125 linear feet of fence is located on property owned by City of Madison Stormwater Utility

Property Line and Fence Line Survey  
at 2501 Jeffy Trail and 2413 Jeffy Trail



2501 Jeffy Trail  
(privately owned)

2413 Jeffy Trail  
(City owned)

Looking Southeast Along Surveyed Property Line  
Between 2501 Jeffy Trail and 2413 Jeffy Trail



# Response to Reasons for Appeal

- The August 8 date demanded for removal of the fence is impossible to comply with due to current demands on fencing contractors.
- The City is willing to be flexible on the deadline for removal of the fence as long as Attorney Stanford is making progress towards removal.

# Response to Reasons for Appeal

- 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.
- This is not correct. The property is clearly owned by City of Madison Stormwater Utility and is a greenway. The City makes no exceptions for allowing a private fence on City-owned property.

# Response to Reasons for Appeal

- 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.
- The City has addressed this by conducting a survey of the encroachment and property line. This was completed by a registered land surveyor and the encroachment is confirmed.



# Response to Reasons for Appeal

- 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.
- This is not correct. First, mowing of a greenway by a resident is not prohibited unless posted as a no mow area. It is the fence that is the public nuisance. Regardless, our failure to identify the encroachment earlier does not preclude the City from enforcing its ordinances. This would be true even if the fence were constructed 14 years ago.

# Response to Reasons for Appeal

- The City is prohibited from requiring the removal of the fence or imposing fines under the doctrine of equitable estoppel.
- This is not correct. The City has addressed encroachments in the past when they become known and generally have had the property owner resolve the issue within such timeframes.