From: Faith Fitzpatrick
To: All Alders
Subject: Item 90, Legistar 88148 Merrill Springs View Preservation Easement Amendment
Date: Sunday, May 4, 2025 10:29:48 PM
Attachments: 90.88148.FMS.easement.objection.pdf
original View Preservation Easement.photos.pdf

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Please see attached comments from Friends of Merrill Spring Park concerning a view easement amendment for the Council meeting on May 6. A copy of the original easement with the photo addendum for reference is also attached.

Thank you,

Faith Fitzpatrick
Vice President
Friends of Merrill Spring Park

DATE: May 4, 2025

TO: Board of Parks

Common Council

Alder Guequierre District 19

Mayor Satya Conway-Rhoads

FROM: Friends of Merrill Spring Park Board

RE: Item 90, Legistar 88148 Merrill Springs View Preservation Easement Amendment

The Board of the Friends of Merrill Springs Park has been long involved in the care of the small pocket park that was expanded in 2012 via the City's purchase of land from the Margetis Family. The purchase included a permanent limited easement for view preservation from the house at 5050 Lake Mendota Drive on and over the new purchase area (Document # 4829662, 1/5/2012). The legal description of the easement area was recorded as "Lot 2", certified survey Document # 4504885. The City Files for the Easement include "Subject Property Photo Addendum". Recently the City and current owner of 5050 Lake Mendota Drive (Grantee) drafted an "Amended View Preservation Easement". The Friends of Merrill Spring Park Board have reviewed the proposed amended easement and have concluded that the amendment incorrectly favors and expands the original view easement for the benefit of the grantee over the public. The trees on the original park property provide shoreline erosion protection, park visitor privacy, cooling shade, and enhanced views of wildlife. The Board firmly recommends that the subject property photo addendum attached to the original easement be included in the amendment. The three photographs included in the addendum clearly show that the extent of the 5050 Lake Mendota Drive view toward the original park was limited by a 2-story house on Lot 2 and thick vegetation and trees along the park's fenceline.

Also, the draft easement document needs to be updated to address the following inconsistencies.

In the WITNESSETH Section, the 3rd Whereas paragraph states "… over a portion of Merrill Springs Park….". This statement is incorrect and should be "… over the Easement Area of Lot 2" according to Exhibit A of the original Easement agreement.

In the WITNESSETH Section, the 4th Whereas paragraph states that photos were not taken to document the "Easement View" during the summer following the execution of the easement. However, the original Easement document (January 5 2012, Document 4829662) defined the easement view "as currently exists" and had "subject property photo addendum" from the Appraisal of 5100 Spring Court (City Files File No 5100SpringCourt GPAR) as reference. The photos clearly show that the view toward the west side of Lot 2 and the original park area was blocked by two large oaks and a 2-story cottage, a heavily wooded hillslope extended southward from the spring cistern, and heavy vegetation along the fenceline, and three large trees (2 willows and 1 silver maple) along the

shoreline. These photos were used by the City for an evaluation of this expensive purchase and should be considered sufficient documentation. This paragraph needs to be updated to include the three photos included in the Subject Property Photo Addendum.

Item 1: The amendment specifically needs to include Exhibit D – the Subject Property Photo Addendum from the first easement document.

Item 2. Paragraph 1 of the Easement "Purpose" – The original wording should be kept.

Item 3 Paragraph 2 "Easement Holder's Rights – The updated wording in this paragraph expands the Grantee's vegetation management activities to more than trees and greatly expands their view area to include the original park, the wooded bluff, and its shoreline. The Grantee's rights should remain true to the original view easement -- trimming trees in their original view area in the eastern portion of Lot 2.

Item 4 Vegetation Restrictions – These greatly expand the Grantee's rights beyond the original intent of the easement and unduly impinge on the park's users. For example, the proposed amendment states that trees 10 feet in height shall be allowed in Zone 4. Zone 4 includes the original park area, which was never included in the original easement. There are three highly valuable shore-protecting tall trees in Zone 4 in the original park area (not ever owned by the Harrisons/Margetis Family). The Proposed amendment is saying that the Harrison's or subsequent owners of 5050 Lake Mendota Dr (LMD) may trim these trees to 10 Feet! The area of Zone 4 needs to be corrected by NOT including original park area.

Even though the house and fence along Lot 2 have been taken out since the purchase, the silver maple and concrete slab mark the western extent of the view of the lake from 5050 Lake Mendota Drive.

Exhibit C – The proposed viewshed (light blue line) extends through the full extent of the original park land. It needs to be adjusted to extend the western boundary line northeast along what was the original fenceline between the park and Lot 2. The wooded bluff and hillside as it existed in the original easement shall not be included in this amendment.

The original easement and the city file photos in the addendum are attached.

8331427
Tx:8200805

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
4829662
01/05/2012 12:08 PM
Trans. Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 7

PERMANENT LIMITED EASEMENT FOR VIEW PRESERVATION

The **City of Madison**, a Wisconsin municipal corporation (the "City") being the owner of the property hereinafter described, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does grant, set over and convey to **Bill N. Margetis** (the "Grantee"), a permanent limited easement for view preservation (the "Easement") on and over (the "Easement Area") described on attached Exhibit A, and depicted on attached Exhibit B.

RETURN TO: City of Madison
EDD – Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.s: 251-0709-184-0123-6
251-0709-184-0126-0

WITNESSETH:

WHEREAS, the City is the owner of certain real property located in the City of Madison, Dane County, Wisconsin, as more particularly described on attached Exhibit A; and

WHEREAS, the City desires to grant and record permanent limited easement for view preservation purposes on and over the City's Property to the Grantee.

NOW, THEREFORE, the City hereby grants to and for the benefit of the Grantee, their successors and assigns, a permanent limited easement for view preservation purposes on and over the Easement Area.

This Easement is subject to the following terms and conditions:

1. Purpose. The purpose of the Easement is to preserve the existing view of Lake Mendota from the Grantee's residence located at 5050 Lake Mendota Drive, Madison, WI, legally described as Lot 1, Certified Survey Map No. 12633.

2. Easement Holder's Rights. The Grantee's easement rights include, and are limited to, the restriction on the construction of structures and planting of trees in the Easement Area by the City which would obstruct the Grantee's view of Lake Mendota from the Grantee's residence located at 5050 Lake Mendota Drive, as it currently exists. The Grantee shall also have the right to trim trees in the Easement Area, at the Grantee's expense, to preserve the view of Lake Mendota as currently exists. The existing view from the Grantee's residence shall be established by photographic documentation in the summer following the execution of this Easement. Grantee shall allow representatives of the City onto Grantee's property and into Grantee's residence, at a mutually agreeable time, to make such documentation. Once the documentation is agreed to, it shall be incorporated into this Easement and shall be filed at the City Clerk's Office along with a copy of this Easement.

3. Reserved Rights. The City retains all ownership rights that are not expressly restricted by this Easement and are not inconsistent with this grant; including but not limited to the right to sell, mortgage, or donate the property subject to the terms and conditions of this Easement.

4. Restrictions on Use. Notwithstanding the provisions of Paragraph 1, the Grantee's use of this Easement shall be restricted as follows:

   a. The Grantee shall contact the City Parks Division prior to any tree trimming in the Easement Area. No tree trimming will be allowed in the Easement Area without prior written approval of the City Parks Division, which consent shall not be unreasonably withheld.

   b. Grantee shall not use the Easement Area for open storage of or permanent parking of vehicles or equipment of any kind.

5. Tree Trimming and Maintenance.

   a. The work of tree trimming shall be done and completed in a good and professional manner at the sole expense of the Grantee and shall be performed in such a manner as in no way to interfere with or endanger the use of the Easement Area. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any tree trimming and maintenance activity. To the extent that City Ordinances may otherwise prevent Grantee from exercising its right to trim trees in the Easement Area, the City agrees that the terms of this Easement control and that tree trimming pursuant to the terms and conditions of this Easement is permissible in the Easement Area.

   b. Following any tree trimming activity by Grantee in the Easement Area (or as soon thereafter as weather reasonably permits), the Grantee will promptly restore the Easement Area in a manner satisfactory to the City Parks Division.

   c. Grantee shall not be responsible for the cost of any tree trimming activities undertaken by the City or initiated by the City. Grantee shall not be responsible for restoration or cleanup related to tree trimming activities undertaken by the City or initiated by the City.

6. Termination. In the event the Grantee defaults in the performance of any term or condition of this Easement and fails to remedy such default within thirty (30) days after written notice from the City, the City shall have the right, at its sole option, to declare this Easement void and terminate the same. Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Grantee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Grantee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due

diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

7. Indemnification. The Grantee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, 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 damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Grantee or its agents, employees, or subcontractors, in the performance of activities permitted under paragraphs 5a. or 5b. of this Easement. Negligence on the part of the City and its officials, officers, agents or employees shall not eliminate the indemnification obligation stated in the preceding sentence.

8. Additionally, Grantee's tree trimming contractor shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, Grantee's tree trimming contractor shall furnish to the City a certificate of insurance on a form provided by the City.

9. Authorized Agent. The City of Madison Parks Division or the Park Division's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Easement, with authority to administer this Easement lawfully on behalf of the City.

10. Notices. All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City:
City of Madison Parks Division
Attention: Parks Superintendent
210 Martin Luther King Jr. Blvd.
Room 104
Madison, WI 53703

For Grantee:
Bill Margetis
5050 Lake Mendota Drive
Madison, WI 53705

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

11. Compliance. The City and the Grantee shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.

12. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.

13. Binding Effect. This Easement shall inure to the benefit of the Grantee, their successors and assigns, and shall be binding upon the City, and their respective successors and assigns.

14. Covenants Run with Land. All terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the City and Grantee and their respective successors and assigns. The party named as Grantee in this Agreement and any successor or assign to the Grantee as fee simple owner of Lot 1, CSM 12633, shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in Lot 1, CSM 12633.

Dated this 30TH day of DECEMBER, 2011.

CITY OF MADISON

By: _____
Paul R. Soglin, Mayor

By: _____
Maribeth L. Witzel-Behl, City Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 30TH day of December, 2011, the above named Paul R. Soglin, Mayor of the City of Madison, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, State of Wisconsin
JEROME C. LUND
Print or Type Name
My Commission: 10/19/2014

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 29TH day of December, 2011, the above named Maribeth L. Witzel-Behl, City Clerk of the City of Madison, acting in said capacity and known to me to be the person who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, State of Wisconsin
THOMAS LUND
Print or Type Name
My Commission: 05/25/2015

Drafted by the City of Madison Office of Real Estate Services Project No. 9567

Execution of this easement by the City of Madison is authorized by Resolution Enactment No. RES-11-00965, File ID No. 24359, adopted November 29, 2011.

Exhibit A

Legal Description of Easement Area:

Lot 2, Certified Survey Map No. 12633 as recorded in Dane County Register of Deeds Office in Volume 79, page 236-239 of Certified Surveys, as Document No. 4504885, City of Madison, Dane County, Wisconsin

Address:	5100 Spring Court
Tax Parcel No.	251-0709-184-0123-6

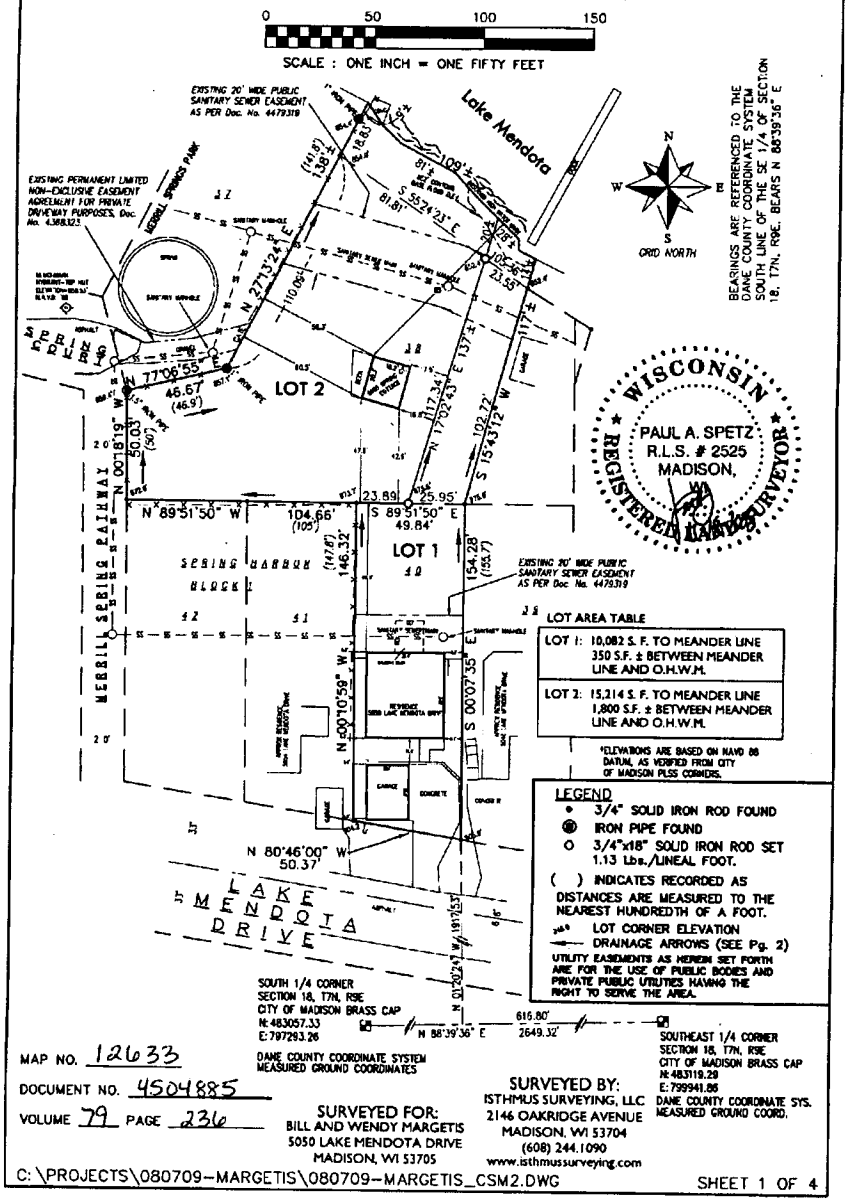
Exhibit B

FORM NO. 985 A
HCMB Inc.
Stock No. 26273

4504885
DANE COUNTY
REGISTER OF DEEDS

CERTIFIED SURVEY MAP

LOT 40 AND PART OF LOT 38, BLOCK ONE, SPRING HARBOR SUBDIVISION, RECORDED IN Vol. 4, Pg. 51–51A, Doc. No. 306247, IN THE FRACTIONAL SE 1/4 OF SECTION 18, T7N, R9E, CITY OF MADISON, DANE COUNTY, WISCONSIN



Viewers are advised to ignore the illegible text on this exhibit. It is presented to show spatial relationships only.

Authorized by:

F:\Recommon\RE Projects\9567 Merrill Springs Park - Margetis Parcel

This page from city files, not recorded with easement document

View north along eastern border of site

SUBJECT PROPERTY PHOTO ADDENDUM

Client: City of Madison		File No.:	5100SpringCourt_GPAR
Property Address: 5100 Spring Court		Case No.:	
City: Madison	State: WI	Zip:	53705

This page from city files, not recorded with easement document

FRONT VIEW OF
SUBJECT PROPERTY

Appraised Date: March 7, 2011
Appraised Value: $ 861,000

REAR VIEW OF
SUBJECT PROPERTY