



Legislation Details (With Text)

File #: 35693 **Version:** 1 **Name:** 10552 Consent to Occupy Easement 2006 Whenona Drive

Type: Resolution **Status:** Passed

File created: 9/30/2014 **In control:** BOARD OF PUBLIC WORKS

On agenda: 11/18/2014 **Final action:** 11/18/2014

Enactment date: 11/24/2014 **Enactment #:** RES-14-00796

Title: Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Prairie Unitarian Universalist Society (“Owner”) to permit existing private improvements within the existing drainage located at 2006 Whenona Drive.

Sponsors: Maurice S. Cheeks

Indexes:

Code sections:

Attachments: 1. 10552 2006 Whenona Drainage Easement Exhibit A 9-18-2014.pdf

| Date | Ver. | Action By | Action | Result |
|------------|------|-------------------------------|---|--------|
| 11/18/2014 | 1 | COMMON COUNCIL | Adopt | Pass |
| 11/5/2014 | 1 | BOARD OF PUBLIC WORKS | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | Pass |
| 10/27/2014 | 1 | PLAN COMMISSION | Return to Lead with the Recommendation for Approval | Pass |
| 10/7/2014 | 1 | BOARD OF PUBLIC WORKS | Refer | |
| 10/7/2014 | 1 | COMMON COUNCIL | Referred | |
| 9/30/2014 | 1 | Economic Development Division | Referred for Introduction | |

Fiscal Note

\$500 administrative will be deposited into Account No. GN01-78231. Owner to provide \$250 with the balance from Stormwater Utility Account ESTM-56290-810389-00-53W1891.

Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Prairie Unitarian Universalist Society (“Owner”) to permit existing private improvements within the existing drainage located at 2006 Whenona Drive.

Body

WHEREAS, the City has storm sewer facilities located within the existing 10-foot wide public Drainage Easement located in Lot 3, Block 12, Second Addition to Crawford Heights, recorded January 20, 1950 in Volume 13, pages 29 and 29A as Document No. 791057, City of Madison, Dane County Wisconsin; and

WHEREAS, During the City’s review of the site and to convert the use of the home to a business annex, it was discovered that a portion of the dwelling unit encroaches into the City Easement (the “Occupancy Area”) as more particularly depicted on the attached Exhibit A. The Owner desires to obtain the consent of the City for that portion of the structure to remain within the City Easement for continued use as permitted by the City of Madison.

WHEREAS, The City is willing to permit the existence of the structure and maintenance of the building by the Owner within the Occupancy Area under the terms and conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Consent to Occupy Easement for the benefit of Prairie Universalist Society ("Owner") subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant the property Owner, its successors and assigns, permission to occupy the Occupancy Area for the limited purposes allowing the existing structure to remain within the Occupancy Area for continued use as permitted by the City of Madison (collectively, the "Permitted Improvements"), all in accordance with the site plan which has been approved by the City Engineering Division.
2. Construction and Maintenance.
 - a. Owner shall be responsible for all costs of the maintenance of the Permitted Improvements in compliance with applicable codes and ordinances.
 - b. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes to, additions to or alterations of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. Owner shall use and occupy the Occupancy Area in a manner consistent with the rights herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the City Easement.
4. Type of Grant. The granting of this Consent does not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the City Easements. The granting of this Consent shall be deemed to be permissive and shall preclude Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easements and by virtue of the granting of this Consent.
5. Compensation for Damages. Both parties understand and agree that the Permitted Improvements may be removed by the City without replacement or compensation to Owner.
6. Indemnification. Owner shall be liable to and hereby 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 officials, officers, 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 Owner and/or its agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Consent, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.
7. Termination. This Consent shall automatically terminate upon the earliest of the following to occur: (a) the vacation of the City Easement by the City; (b) the removal of the Permitted Improvements by Owner; or (c) the agreement to terminate by the parties hereto, or their successors or assigns. In the event of termination, the Owner shall remove the Permitted Improvements at Owners expense and execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted hereby.

Property Description

Existing Drainage Easement within Lot 3, Block 12, Second Addition to Crawford Heights, recorded in Volume

13, pages 29 and 29A as Document No. 791057, City of Madison, Dane County, Wisconsin.