



Legislation Text

File #: 58875, **Version:** 1

Fiscal Note

The City's Engineering Division has reviewed and approved the proposed Consent to Occupy Easement. No City appropriation is required.

Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of David L. Stein and Jennifer Grantham Stein Revocable Trust to allow private improvements within an existing platted Easement for All Public Uses upon the property located at 6226 N. Highlands Avenue. (19th A.D.)

Body

WHEREAS, the property located at 6226 N. Highlands Avenue in the City of Madison is owned by David L. and Jennifer Grantham Stein Revocable Trust (together, the "Owner"), which is more particularly described as Lot 25, Plat of Sky View Terrace ("Property") and

WHEREAS, an existing Easement for All Public Uses ("Easement") was granted to the City of Madison ("City") over the Property via the Plat of Sky View Terrace, recorded in the Register of Deeds Office in Volume 19 of Plats, Pages 15 - 16 as Document No. 0918879, City of Madison, Dane County, Wisconsin ("Plat"); and

WHEREAS, the Owner submitted an application to the City for a demolition permit to demolish an existing single-family residence on the Property, along with a site plan depicting a proposed single-family residence with portions of the proposed driveway and retaining wall improvements encroaching upon a portion of the Easement; and

WHEREAS, as a condition of application and site plan approval, the City is requiring the Owner to obtain a Consent to Occupy Easement from the City to legally allow the Owner's new improvements to be located within that certain portion of the Easement, as described on attached Exhibit A and depicted on attached Exhibit B ("Consent to Occupy Area"); and

WHEREAS, the City's Storm Water Engineering Division has reviewed and approved the Consent to Occupy Easement for the Owner's improvements that encroach into the Easement, provided that the key terms and conditions are met prior to document execution, as specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Consent to Occupy Easement ("Consent"), the key provisions of which are as follows:

1. Grant of Permission.

- a. The City will grant the Owner, its successors and assigns, permission to occupy the Consent to Occupy Area, for the limited purposes of constructing, installing and maintaining a private driveway and retaining wall ("Permitted Improvements"), all in accordance with the site plan and associated storm water plans, which was conditionally approved by the City Engineering Division.
- b. The City does not grant the Owner, its successors and assigns, permission to occupy the Consent to Occupy Area with any building or footings.

- c. The Permitted Improvements may remain in the Easement area pursuant to the City Engineer's approval of the study of public storm water and overflow on the Property and through the Easement.
2. Construction and Maintenance.
 - a. The Owner shall be responsible for all costs of design, construction/installation and maintenance of the Permitted Improvements in compliance with all applicable codes and ordinances.
 - b. The Owner shall be responsible for any required repair and/or maintenance of the Permitted Improvements and any associated scouring of the ground surface around the Permitted Improvements lying within the Easement that may occur from public storm water flowing within the Easement area.
 - c. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes to or alteration of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. The Owner shall use and occupy the Consent to Occupy 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 Easement.
4. Type of Grant. The granting of the Consent shall not transfer, release, or convey any of the rights the City may have in the Consent to Occupy Area by virtue of the Easement. The granting of the Consent shall be deemed to be permissive and shall preclude the Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the Easement and by virtue of the granting of the Consent.
5. Compensation for Damages. Both parties understand and agree that the Permitted Improvements may be disturbed or removed by the City without replacement or compensation to the Owner. The Owner shall not hold the City liable for any future expense to move said Permitted Improvements, if needed, for maintenance of the any public facilities installed in the Easement area.
6. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the release of the Easement by the City; (b) the removal of the Permitted Improvements by the Owner; or (c) the agreement to terminate the Consent by the parties, or their successors or assigns. In the event of termination, the Owner shall execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted by the Consent.
7. Indemnification. The 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 the 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, or employees. This paragraph shall survive termination and assignment or transfer of the Consent.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete the actions contemplated in this resolution. The execution of any document shall be contingent upon the determination, by the City Engineer, that any impacts of the Permitted Improvements upon the existing public storm water drainage within the Easement area have been properly mitigated by the Owner.