



Legislation Text

File #: 39092, **Version:** 1

Fiscal Note

No fiscal impact.

Title

Executing a Consent to Occupy Easement and authorizing the Mayor and the City Clerk to grant a Partial Release of Public Storm and Sanitary Sewer Easement for the benefit of James N. Kapinus to permit certain private improvements within the existing Public Storm and Sanitary Sewer Easement on the property located at 913 Lorena Parkway.

Body

WHEREAS, the City of Madison (the "City") has a Public Storm and Sanitary Sewer Easement (the "Easement") for existing storm and sanitary sewer facilities ("Facilities"), located along the westerly property line of Lot 1, plat of Hickory Edge, City of Madison, Dane County Wisconsin; and

WHEREAS, James N. Kapinus is the owner of the property at 913 Lorena Parkway (the "Owner"), being located on Lot 1, plat of Hickory Edge, City of Madison, Dane County Wisconsin; and

WHEREAS, during the City's review of a building permit, it was discovered that there is an existing house foundation, boulder retaining wall, fencing, and concrete block (collectively, "Private Improvements") that encroach into the City's existing Easement, as legally described below and depicted on the attached Exhibit A (the "Easement Area"); and

WHEREAS, the Owner was informed of said encroachments by the City, and the Owner has requested a Consent to Occupy Easement from the City to legally permit the Owner's Private Improvements within the Easement Area; and

WHEREAS, the City of Madison Engineering Division has reviewed and approves both the granting of a Partial Release of Public Storm and Sanitary Sewer Easement ("Release") for the existing foundation to remain, as well as the execution of a Consent to Occupy Easement ("Consent") for the Owner's Private Improvements that encroach into the Easement Area, as legally described below and depicted on the attached Exhibit A (the "Consent Area"), under the terms and conditions specified therein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Partial Release of Public Storm and Sanitary Sewer Easement and grant a Consent to Occupy Easement subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant the Owner, its successors and assigns, permission to occupy the Easement Area for the limited purposes to include existing boulder retaining walls, fencing, and concrete block, as legally described below and depicted on attached Exhibit A 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 Consent 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 Public Storm and Sanitary Sewer 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 Consent Area by virtue of the Easement. 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 Easement Area and by virtue of the granting of this Consent.
5. Compensation for Damages. Both parties understand and agree that the Permitted Improvements within the remaining Easement Area 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 there from, 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 release of 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 Owner's 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.

Legal Description of the Partial Release of Public Storm and Sanitary Sewer Easement area:

Area "A"

Part of a 20 foot wide Public Storm and Sanitary Sewer Easement per Doc. 2625824 to be released:

A part of Lot 1, plat of Hickory Edge, recorded in Vol. 56-197A of Plats, page 617 as Document No. 2625824, located in a part of the Northwest 1/4 of the Northeast 1/4 of Section 1, T6N, R9E, City of Madison, Dane County, Wisconsin being more fully described as follows: Commencing at Northwesterly most corner of said Lot 1; thence N41°50'38"E (recorded as N41°29'31"E), 15.44 feet along the Northwesterly line of said Lot 1 to the point of beginning; thence continuing N41°50'38"E (recorded as N41°29'31"E), 15.44 feet along said Northwesterly line; thence S01°29'19"W, 88.74 feet along the East line of said easement to a point on the South line of said Lot 1; thence N73°35'13"W (recorded as N73°38'39"W), 10.35 feet along said South line of said Lot 1; thence N01°29'19"E, 42.87 feet; thence N14°19'56"W, 6.90 feet; thence N17°55'44"E, 6.65 feet; thence N01°29'19"E, 18.43 feet to the point of beginning. Containing 827 square feet.

Legal Description of the Consent to Occupy Easement area:

Area "B"

Part of a 20 foot wide Public Storm and Sanitary Sewer Easement per Doc. 2625824 to remain:

A part of Lot 1, plat of Hickory Edge, recorded in Vol. 56-197A of Plats, page 617 as Document No. 2625824, located in a part of the Northwest 1/4 of the Northeast 1/4 of Section 1, T6N, R9E, City of Madison, Dane County, Wisconsin being more fully described as follows: Beginning at Northwesterly most corner of said Lot 1; thence N41°50'38"E (recorded as N41°29'31"E), 15.44 feet along the Northwesterly line of said Lot 1; thence S01°29'19"W, 18.43 feet, thence S17°55'44"W, 6.65 feet; thence S14°19'56"E, 6.90 feet; thence S01°29'19"W, 42.87 feet to a point on the South line of said Lot 1; thence N73°35'13"W (recorded as N73°38'39"W), 10.35 feet along said South line to the Southwest corner of said Lot 1; thence N01°29'19"E (recorded as N01°07'21"E), 59.87 feet along the West line of said Lot 1 to the point of beginning. Containing 659 square feet.

Area "C"

7 foot wide portion of a 22 foot wide Public Sanitary Easement Per Document 2625824 to remain:

A part of Lot 1, plat of Hickory Edge, recorded in Vol. 56-197A of Plats, page 617 as Document No. 2625824, located in a the Northwest 1/4 of the Northeast 1/4 of Section 1, T6N, R9E, City of Madison, Dane County, Wisconsin being more fully described as follows: Beginning at Northwesterly most corner of said Lot 1; thence N41°50'38"E (recorded as N41°29'31"E), 10.81 feet along the Northwesterly line of said Lot 1; thence S01°29'19"W, 69.97 feet along the east line of said easement to a point on the South line of said Lot 1; thence N73°35'13"W (recorded as N73°38'39"W) , 7.24 feet along said South line to the Southwest corner of said Lot 1; thence N01°29'19"E (recorded as N01°07'21"E), 59.87 feet along the West line of said Lot 1 to the point of beginning. Containing 454 square feet.