Legislation Details (With Text)

File #:	36325	**Version:**	1	**Name:**	10588 Consent to Occupy Easement - Carpenter
Type:	Resolution			**Status:**	Passed
File created:	11/24/2014			**In control:**	BOARD OF PUBLIC WORKS
On agenda:	1/6/2015			**Final action:**	1/6/2015
Enactment date:	1/9/2015			**Enactment #:**	RES-15-00017

Title: Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Christopher D. Carpenter to permit private improvements within the existing sanitary sewer easement, for the property located at 5006 Lake Mendota Drive.

Sponsors: Mark Clear

Indexes:

Code sections:

Attachments: 1. 10588 Consent Exhibit A .pdf, 2. 10588 Consent to Occupy Easement.pdf, 3. 10589 San Sewer Easement.pdf, 4. CARPENTER_EXHIBT A_ PERMANENT PUBLIC STORM SEWER EASEMNET.pdf, 5. CARPENTER_EXHIBT A_ PERMITTED ENCROACHMENTS.pdf

Date	Ver.	Action By	Action	Result
1/6/2015	1	COMMON COUNCIL	Adopt	Pass
12/17/2014	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
12/15/2014	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
12/2/2014	1	BOARD OF PUBLIC WORKS	Refer	
12/2/2014	1	COMMON COUNCIL	Referred	
11/24/2014	1	Economic Development Division	Referred for Introduction	

Fiscal Note

$500 administrative has been deposited into Account No. GN1-78231.

Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Christopher D. Carpenter to permit private improvements within the existing sanitary sewer easement, for the property located at 5006 Lake Mendota Drive.

Body

WHEREAS, the City of Madison (the “City”) has an existing sanitary sewer easement, per Document No. 975456 (the “Easement”), located within the South 150 feet of the West 6 feet of Lot 2 , Block 1, Spring Park (the “Easement Area”), City of Madison, Dane County Wisconsin; and

WHEREAS, during the City’s review of a conditional use permit to construct a new garage on the property owned by Christopher D. Carpenter (the “Owner”), located at 5006 Lake Mendota Drive, it was discovered that several existing improvements including retaining walls and a corner of the existing house, along with a proposed stone retaining wall encroach into the City’s Easement Area, as legally described on below, and depicted on the attached Exhibit A; and

WHEREAS, as a condition of approval of the Owner’s conditional use permit, the City required the owner to obtain a Consent to Occupy Easement from the City to legally permit the Owner’s improvements within the Easement Area; and

WHEREAS, the Engineering Division has reviewed and approves the granting of a Consent to Occupy Easement for the Owner's improvements that encroach into the Easement Area, as depicted on the attached Exhibit A, 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 Consent to Occupy Easement ("Consent Easement"), 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 Easement Area for the limited purposes to include existing retaining walls, existing house corner, and proposed new stone retaining wall, as legally described below and depicted on attached Exhibit A (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 Consent Easement 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 this Consent Easement does not transfer, release, or convey any of the rights the City may have in the Easement Area by virtue of the City's Easement. The granting of this Consent Easement 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 Easement and by virtue of the granting of this Consent Easement.

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 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 Easement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.

7. Termination. This Consent Easement shall automatically terminate upon the earliest of the following to occur: (a) the release 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 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.

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Legal Description of Consent to Occupy Easement area:

The South 150 feet of the West 6 feet of Lot 2, Block 1, Spring Park, City of Madison, Dane County, Wisconsin

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