



## Legislation Details (With Text)

<b>File #:</b>	49308	<b>Version:</b>	1	<b>Name:</b>	11450 Sanitary Sewer & Consent to Occupy PLE
<b>Type:</b>	Resolution	<b>Status:</b>	Passed		
<b>File created:</b>	10/24/2017	<b>In control:</b>	BOARD OF PUBLIC WORKS		
<b>On agenda:</b>	11/21/2017	<b>Final action:</b>	11/21/2017		
<b>Enactment date:</b>	11/27/2017	<b>Enactment #:</b>	RES-17-00891		
<b>Title:</b>	Accepting a Permanent Limited Easement for Public Sanitary Sewer purposes and authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Tom Woody to permit certain private improvements within the proposed Public Sanitary Sewer Easement, for the property located at 3902 Fern Court.				
<b>Sponsors:</b>	Arvina Martin				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. 11450 Fern Court Exhibit B.pdf				

Date	Ver.	Action By	Action	Result
11/21/2017	1	COMMON COUNCIL	Adopt	Pass
11/6/2017	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
11/1/2017	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
10/31/2017	1	BOARD OF PUBLIC WORKS	Refer	
10/31/2017	1	COMMON COUNCIL	Refer	Pass
10/24/2017	1	Economic Development Division	Referred for Introduction	

### Fiscal Note

The proposed resolution authorizes acceptance of a Permanent Limited Easement for public sanitary sewer purposes and authorizes a Consent to Occupy Easement to the adjacent property owner for permitted private improvements located at 3902 Fern Court. No City appropriation is required.

### Title

Accepting a Permanent Limited Easement for Public Sanitary Sewer purposes and authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Tom Woody to permit certain private improvements within the proposed Public Sanitary Sewer Easement, for the property located at 3902 Fern Court.

### Body

WHEREAS, the City of Madison (the "City") has an existing sanitary sewer facility ("Facility"), located along and adjacent to the westerly property line of Lot 12, Block 1, Westmorland-Toepfer Replat, City of Madison, Dane County Wisconsin; and

WHEREAS, during the City's review of a zoning variance application to construct an addition to the garage on the property located at 3902 Fern Court, owned by Tom Woody (the "Owner"), it was discovered that there is no record of an easement being recorded for the City's Facility, as located adjacent to the Owner's property; and

WHEREAS, during said review of said zoning variance application, it was also discovered that a portion of the

proposed garage addition, (the "Permitted Improvement") would encroach into the City's public sanitary sewer easement area, as legally described below and depicted on the attached Exhibit A ("Easement Area"); and

WHEREAS, as a condition of approval of the Owner's zoning variance, the City requested that the owner grant a Permanent Limited Easement for Public Sanitary Sewer Purposes ("Easement"), at no cost to the City; and to obtain a Consent to Occupy Easement ("Consent to Occupy") from the City to legally permit the Owner's Permitted Improvement within the proposed Easement Area and

WHEREAS, the Engineering Division has reviewed and approves the acceptance of the Permanent Limited Easement for Public Sanitary Sewer Purposes and the granting of a Consent to Occupy Easement for the Owner's Permitted Improvement that would encroach into the Easement Area, under the terms and conditions specified therein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to accept a Permanent Limited Easement for Public Sanitary Sewer purposes, and execute a Consent to Occupy Easement, subject to the following terms and conditions:

1. Repair and Maintenance.

- a. The work of repair and maintenance by the City shall be done and completed in a good and professional manner at the sole expense of the City 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 City shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.
- b. All areas affected by the work of the City shall be promptly restored to original grade and vegetation or surface condition, including repair or replacement of pavement and concrete, by and at the expense of the City after completion of said work (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the Owner.
- c. No grade change to the Easement Area shall be made by the Owner without the prior written approval of the City's Engineer.
- d. No above-ground improvements shall be located in the Easement Area by either party, with the exception that grates, sewer access structure (SAS) covers, and other access points to the Facility shall be permitted at grade level.

2. Reservation of Use by Owner. The Owner reserves the right to use and occupy the Easement Area in a manner consistent with the rights herein conveyed, provided that such use and occupancy shall not interfere with or disturb the operation, maintenance, repair, replacement and/or modification of any Facility located therein.

3. Grant of Permission. The City does hereby grant the Owner, its successors and assigns, permission to occupy the Easement Area with the Permitted Improvement. The City, if at all possible, will make every effort to avoid the Permitted Improvement which is located in the Easement Area, during any future maintenance of the Facility. The Owner shall not construct any further building or site improvements in the Easement Area, without express written consent of the City.

4. 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, and employees.

5. Type of Grant. The granting of this Consent to Occupy does not transfer, release, or convey any of the rights the

City may have in the Easement Area by virtue of the Easement. The granting of this Consent to Occupy 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 this Consent to Occupy.

6. Termination. This Consent to Occupy 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 Improvement by the 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 Improvement at the 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 Permanent Limited Easement for Public Sanitary Sewer Purposes and Consent to Occupy  
Easement area:

Located within Lot 12, Block 1, Westmorland-Toepfer Replat, recorded as Document Number 738028, Dane County Registry, being located in the SW ¼ of the NW ¼ of Section 28, T7N, R9E, in the City of Madison, Dane County, Wisconsin, being further described as follows:

Beginning at the southwest corner of said Lot 12; thence N00°35'51"W 129.53 feet to the most northerly corner of said Lot 12; thence S42°41'52"E 17.14 feet along the northeast line of said Lot 12; thence S00°11'06"E 122.04 feet to the northerly line of Fern Court; thence northwesterly along said northerly line of Fern Court, 11.83 feet along the arc of a curve concaved southwesterly having a radius of 318.90 feet and a long chord bearing N64°24'03"W 11.83 feet to the point of beginning.

Contains 1,394 square feet.