



Legislation Text

File #: 51455, **Version:** 1

Fiscal Note

The proposed resolution authorizes a Consent to Occupy Easement to permit private improvements within an existent public sanitary sewer easement located at 802 Atlas Avenue. City Engineering has reviewed and approved the Owner's plans and the Owner will be responsible for the construction, maintenance, and liability of the private improvements. No City appropriation is required.

Title

Authorizing the execution of a Consent to Occupy Easement for the benefit of Beck's Enterprises of Dane County, LLC, to permit private improvements within the City's sewer easement on the property located at 802 Atlas Avenue.

Body

WHEREAS, Beck's Enterprises of Dane County, LLC ("Owner") is the owner of the property located at 802 Atlas Avenue and legally described at Lot 3, Block 1, Madison Industrial Subdivision No. 1, located in the Southeast 1/4 of the Northeast 1/4 of Section 9, Town 7 North, Range 10 East, City of Madison, Dane County, Wisconsin ("Owner's Property"); and

WHEREAS, the City has certain sanitary sewer facilities ("Facilities") located within the fifteen foot (15') sewer easement along the westerly side of the Owner's Property, which easement was dedicated pursuant to the plat of Madison Industrial Subdivision No. 1 recorded September 12, 1963 with the Dane County Register of Deeds as Document No. 1082745 ("Easement"); and

WHEREAS, the Owner has constructed a timber retaining wall within the Easement and also desires to construct a split rail fence within the Easement, as depicted on attached Exhibit A; and

WHEREAS, City Engineering Division staff have reviewed the Owner's plans and are willing to permit the existence and maintenance of said improvements by the Owner within the Easement, subject to the terms and conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a Consent to Occupy Easement, subject to the following terms and conditions:

1. Grant of Permission. The City will grant the Owner, its successors and assigns, permission to occupy a portion of the Easement for the limited purposes of constructing, installing and maintaining a timber retaining wall and split rail fence (collectively, "Permitted Improvements"), all in accordance with the site plan which has been conditionally approved by the City Engineering Division. The City does not grant the Owner, its successors and assigns, permission to occupy the Easement with any building or footings, with the exception of the aforementioned Permitted Improvements. The Permitted Improvements are depicted on Exhibit A.
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 applicable codes and ordinances.
 - b. The subterranean depths of the fence posts of the split rail fence, or any other subterranean improvement or excavation required to install, construct or maintain the Permitted Improvements,

shall be no deeper than eighteen inches (18") to prevent damage to the Facilities.

- c. The Owner, at its sole expense, shall be responsible for the cost to repair any damages to the Facilities resulting from the Owner's construction of the Permitted Improvements or occupancy of the Easement.
 - d. The Owner shall, at its sole expense, televise the public sanitary sewer line upon the completed construction of the Permitted Improvements and submit the results to the City Engineering Division for review. Should the City Engineering Division determine repairs are needed, said repairs shall be made at the Owner's sole expense. Notwithstanding the foregoing, the Owner may request the City to televise the public sanitary sewer line upon the completed construction of the Permitted Improvements and reimburse the City in full for said televising costs.
 - e. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes 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. The Owner shall use and maintain the Permitted Improvements in a manner consistent with the rights herein conveyed, and shall ensure that such use and maintenance shall not interfere with or disturb the City's rights under the Easement.
4. Type of Grant. The granting of the Consent does not transfer, release, or convey any of the rights the City may have in the Owner's Property 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 Facilities.
6. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the vacation of the Easement by the City; (b) the abandonment of the Permitted Improvements by the Owner; or (c) the agreement to terminate 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 hereby.
7. Indemnification. The Owner shall be liable to and 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 the 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 this transaction.