



Department of Public Works
Infrastructure Services Division

Mariano A. Schifalacqua
Commissioner of Public Works

James P. Purko
Director of Operations

Jeffrey S. Polenske
City Engineer

June 9, 2004

To the Public Improvements Committee

Subject: Common Council Resolution File Number 031168

Dear Honorable Members:

Returned herewith is Common Council Resolution File Number 031168, being a petition for a special privilege submitted by Eve Grubisic and Gayle Riordan, (a mother, the property owner, and her daughter) requesting permission to keep and maintain a large snakelike "sculpture" with plantings, creating a effigy mound with native prairie restoration, within the tree border of the public right-of-way of North Murray Avenue, between East Locust Street and East Park Place.

Our field investigation revealed that the "sculpture" is currently located in the grassy area between the sidewalk and the curb on the west side of North Murray Avenue, adjacent to 2827-29 North Murray Avenue. The "sculpture" is approximately 39 feet long, approximately 3 feet high and shaped like a snake and is made of soil. A 6-foot wide concrete paved sidewalk at this location is unaffected by the "sculpture"; however, they have also had an approximately 30 inch high wood fence/retaining wall constructed along the east edge of the sidewalk for the entire width of the property. Some of the fence support posts are sharp and it would seem to be hazardous, if someone were to lose their balance and fall on the supports. The height of the fence would seem to make the "sculpture" difficult to see from the house. In addition, there are chunks of tree trunks and approximately 12 inch diameter stones located on the other side of the sidewalk in the remaining approximately 3.2-foot wide space that were apparently placed by the abutting property owner, Ms. Grubisic. There is a young tree located "within" the "sculpture".

The placement of these materials in the manner that they were proposed to be established is precedent setting both from the functionality and aesthetic viewpoints. It is first important to note that the space is the tree border section of the sidewalk area. As a reminder, the definition of sidewalk area from Section 115-1-15 of the Milwaukee Code of Ordinances is:

15. **SIDEWALK AREA** means that portion of the street located between the street lot line and the roadway. Where there are curbs, it shall be that portion of the street between the lot line and the face of the curb.

and tree border from Section 115-24-1 is

115-24. Sidewalk Construction; Exceptions.

1. Sidewalks shall be constructed of concrete and constructed in accordance with the specifications of the city. Provided further, that so much of the sidewalk area commonly known as the tree border and located between the curb and the outside line of the sidewalk closest to the curb, may be laid or constructed of stone, brick, concrete pavers or bituminous material where the material and manner of laying are approved by the commissioner.


Further Section 113-12 addresses the subject of the grade of the sidewalk area both at the curblin and lot line. It should be further noted that the provisions of Section 115-3, entitled "Permits for Excavation and/or Installations in Public Ways and Public Access", Section 115-16, entitled "Changing of Grade Prohibited", Section 115-17, entitled "Addition or Removal of Material Prohibited" and Section 115-32, entitled "Obstruction on Public Ways" are what have been violated by the placing of the above mentioned items. For the Committee's information, a copy of these Sections are enclosed as Exhibit 1, in their entirety. The Code implies that there is to be a straight line gradient between the top of curb and lot line grade. The major intent is for the moisture on the sidewalk being able to flow to the grass or roadway, regardless of whether there is a longitudinal gradient on the sidewalk. (One end of the block higher than the other.) With the placement of the material for the "sculpture", this transverse drainage is prevented from occurring. A number of further concerns include: the inability of the door of a car, on the passenger side, being able to open and provide vehicular ingress/egress with the "sculpture" in place; the tree border, in the winter, would not be able to accommodate snow storage, either from the roadway or the sidewalk; erosion control of the piles of dirt as it appears that some of this material could "wash" or be blown into the roadway or sidewalk; and with fill having been placed surrounding the young tree, its survival is compromised. Additionally, at nearly 30 inches in height, the sculpture could create a vision obstruction for smaller children or animals being seen by passing drivers. Free viewing and openness of the rights-of-way are generally what is strived for in an urban environment.

Finally, one needs to look at the issues of consistency and neighborhood aesthetics. Certainly, this is a unique installation; however, this is the public right-of-way, a space to be shared in common. Although freedom of expression and individuality are important traits, installations of this type belong on private property, if allowed at all. And in that regard, perhaps the front yard setback might not even be the appropriate place.

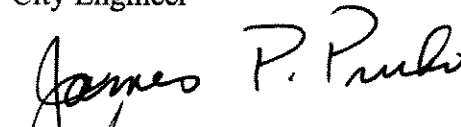
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For all of these reasons, we respectfully recommend that this request for a special privilege to allow for the effigy mound within the public right-of-way be denied by having Common Council Resolution File Number 031168 Placed On File. If this action is taken, we will then formally issue an order for removal of the items placed and for the public right-of-way to be properly restored to its former (or better) condition. A 7 day order will be issued. If the property owner does not comply, the City of Milwaukee will cause removal and proper restoration at no cost to the City.(i.e., the owner will be billed)

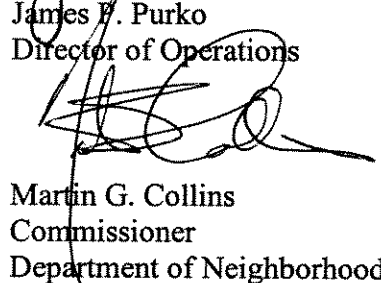
Very truly yours,



Jeffrey S. Polenske, P.E.
City Engineer



James P. Purko
Director of Operations



Martin G. Collins
Commissioner
Department of Neighborhood Services

JJM:cjt

Attachment

c: Alderman Michael S. D'Amato

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utility pole, light pole, cable, conduit, alarm systems, hollow walk, other public and private appurtenances, and any other facility without limitation by reason of enumeration or any combination of the aforementioned installed under, upon, or over any public way or public place.

6. **LOT LINE** means the outer edge of the municipal easement or dedicated area.

7. **PAVEMENT** means the constructed surface of any public way or public place regardless of the type of materials utilized in its construction.

8. **PEDESTRIAN WAY** means the public thoroughfare dedicated or reserved for pedestrian purposes including the sidewalk pavement and the area extending to the lot line on each side.

9. **PERSON** means any natural person or persons, firm or corporation.

10. **PUBLIC PLACE** means city property under the jurisdiction of the common council, owned by or dedicated or reserved for the city for public purposes.

11. **PUBLIC UTILITY** means and embraces every corporation, company, individual, association and their lessees, trustees or receivers appointed by any court that may own, operate, manage or control any plant or equipment whatsoever within the city for the production, transmission, delivery or furnishing of heat, light, water or power or for providing or furnishing telephone, telegraph, radio, television or cable service, either directly or indirectly, to or for the public.

12. **PUBLIC WAY** means any public thoroughfare dedicated, condemned, acquired, or created in accordance with the statutes for street, alley or pedestrian way purposes.

13. **ROADWAY** means that portion of the street intended for vehicular traffic. Where curbs exist, it is that portion of the street between the faces of the curbs.

14. **SIDEWALK** means the paved portion of the sidewalk area or pedestrian way for through pedestrian traffic.

15. **SIDEWALK AREA** means that portion of the street located between the street lot line and the roadway. Where there are curbs, it shall be that portion of the street between the lot line and the face of the curb.

16. **STREET** means every highway within the corporate limits of the city except alleys. It shall be the area between the lot lines including roadway pavement, curb and gutter and sidewalk.

115-2. Commissioner to Prescribe Rules. The commissioner is authorized and empowered to make and prescribe such additional specifications, rules and regulations to implement this chapter not inconsistent with the provisions of this chapter, as he may deem necessary for the public interest in all public places and public ways. A copy of such specifications, rules and regulations shall be kept on file, available to the public, in the office of the commissioner.

115-3. Permits for Excavation and/or Installations in Public Ways and Public Places.

1. No person shall make any excavation and/or installation in any public way or public place for any purpose whatsoever unless he or she possesses a currently-valid permit therefor from the commissioner, except where required by contract with the city for constructing, paving, or reconstructing a street. City forces charged with the duty of repairing or reconstructing streets and city forces charged with the duty of installing, replacing or removing street lighting, alarm systems or traffic control signal devices, poles or standards are not required to secure a permit, except that where electrical conduit is laid in the public way, a permit shall be taken out. If any work for which a permit has been issued has not been started, resumed or completed by the expiration date of the permit, the permit shall lapse and be void, and no work shall be begun, resumed or completed until a new permit is obtained and the appropriate fee paid.

2. The director of the department of public works infrastructure services division, or any official or employe of the division of infrastructure services that the director may designate, may issue a citation for any violation of this section pursuant to s. 50-25.

115-3.5. When Permits Not Issued. Except in an extreme emergency, the commissioner shall not issue a permit for a street excavation which would interfere with traffic that has been rerouted.

115-4. Granting of Permits. 1. Upon application for a permit for excavation or installation, or both, in a public way or public place and payment of the fees and deposits required in s. 115-7, the commissioner may, where not inconsistent with any other ordinance, issue a permit to excavate or disturb the surface of any public way or place.

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7. **APPLICABILITY.** Whenever it shall appear to the common council that because of the extensive paving program to be undertaken by the city during the year, the periods of time or the procedures applicable produce substantial administrative difficulties when carrying out the provisions of this section, the common council by resolution may determine that this section is inapplicable and may in such event establish an alternative procedure by resolution, and in such instance the provisions of the section shall be inapplicable and inoperative.

115-22. Utilities to Change Structures Upon Request. Any public utility operating under a franchise, privilege or permit whether under the ordinances of this city or of the statutes of the state of Wisconsin, owning and maintaining any structures and/or facilities under such franchise, privilege or permit on, under, or over any public way or public place or any property owned by the city or any public board, commission, authority or agency which shall at any time interfere with or obstruct or be in the path of any public works or improvements of any nature whatsoever undertaken by the city in its own behalf, or any public board, commission, authority or agency, shall, upon written notice from such city, public board, commission, authority, or agency or the commissioner of public works, or their duly authorized agents, make such changes in the construction or location, or both, of the structures and/or facilities at the cost and expense of said utility as will permit such public works or improvements.

115-23. Driveways. The commissioner is empowered to determine the type, width, location and number of driveways and to regulate the distance between driveways to provide for the safety of pedestrians, provided, however, any driveway in excess of 30 feet in width must be approved by the common council, or by the local alderman and the commissioner of public works. He may issue a permit for the construction of a standard, depressed or raised street pavement driveway. See s. 81-45 for the required permit fee. All driveways shall be constructed in accordance with the provisions of the specifications of the city which may be supplemented by any

additional reasonable rules and regulations of the commissioner as to the materials used and the manner and methods to be adopted and employed during the construction of such driveways.

115-24. Sidewalk Construction; Exceptions.

1. Sidewalks shall be constructed of concrete and constructed in accordance with the specifications of the city. Provided further, that so much of the sidewalk area commonly known as the tree border and located between the curb and the outside line of the sidewalk closest to the curb, may be laid or constructed of stone, brick, concrete pavers or bituminous material where the material and manner of laying are approved by the commissioner.

2. Sidewalks shall be constructed and conform with established street grades or as otherwise determined by the city engineer where usage or unusual conditions require a change for the welfare and best interest of the city and abutting property owners. This section shall not apply under the following conditions:

a. Temporary sidewalks authorized by the commissioner.

b. Temporary repairs authorized by the commissioner.

c. Repaving of the surface of hollow sidewalks found by the commissioner to be structurally sound.

d. Where the sidewalk crosses a railroad track. Wood planking may be used between the rails and within 2 feet of the outside of said rails where approved by the commissioner.

e. On public bridges.

f. In tunnels.

g. Under other conditions with the approval of the commissioner.

115-25. Restoration of Street Pavement, Curb, Gutter and Sidewalk. When the improvements on or the use of property which is being served by a driveway is so changed that the driveway in the opinion of the commissioner is no longer needed, the owner of the property shall, through the services of a licensed contractor, cause the restoration of the street pavement, curb, gutter and sidewalk to conform with the adjoining street pavement, curb, gutter and sidewalk. Upon failure of the owner of the property to do so, the commissioner is

level of the Milwaukee river as it was in the month of March, A.D., 1836, assumed as a base or datum line from which all elevation and the height of all grades shall be measured in feet and decimal fractions of a foot, and for the purpose of fixing and establishing the level of said base or datum line, it is ordained and declared that the same is the number of feet and decimal fractions of a foot below the permanent bench mark which is hereby established as follows:

ELEVATION

N. Jackson Street and E. Wells Street,
northwest corner....54.830

113-12. Grade and Width of Sidewalk Area. When not otherwise especially provided, the grade or elevation of the sidewalk areas on the sides of the streets in said city shall be as follows, to-wit:

1. **GRADE.** The grade of the sidewalk areas at the curb line shall be the same as the established grade at the center of the street opposite, and the grade of the sidewalk areas at the lot line shall be, on sidewalk areas of a width of less than 10 feet, 2/10 of a foot higher; on sidewalk areas varying from 10 to 13 feet in width, 3/10 of a foot higher; on sidewalk areas varying from 15 to 18 feet in width, 4/10 of a foot higher; and on sidewalk areas of 18 feet in width or more, 5/10 of a foot higher than the established grade at the center of the street opposite.

2. **WIDTH.** When the width of the sidewalk area is over 8 feet, the inner edge of the sidewalk pavement shall in all cases be laid not more than 2 feet from the lot line. When the width of the sidewalk area is 8 feet or less, the inner edge of the sidewalk pavement shall in all cases be laid not more than 6 inches from the lot line. If, in the opinion of the city engineer, it is impractical or inadvisable to conform to this section, the location of the sidewalk pavement shall be determined by the city engineer, subject to the approval of the commissioner of public works.

3. **DEFINITION.** In this section the "sidewalk area" shall be deemed that portion of the street between the roadside or face of the curbing and the lot line. The "sidewalk pavement" shall be deemed the pavement laid in the sidewalk area, and the "inner edge of the sidewalk pavement" shall denote the edge toward the lot line.

4. **COMPLIANCE.** a. All new sidewalk pavements hereafter to be constructed, or any old sidewalk pavements which have to be relaid on any of the streets in the city, where the grade of the sidewalk area is not established by special ordinance, shall be laid in accordance with this section.

b. The width of all sidewalk pavements, either new or reconstructed, shall be determined by the city engineer subject to the approval of the commissioner of public works, and all ordinances establishing the width of the sidewalk pavements are repealed.

113-12.5. Sidewalks, When and Where Laid; Exceptions. Concrete sidewalks shall be installed on both sides of any street whenever said street is improved by installing permanent pavement, curb and gutter; provided, however, that the common council may waive or defer this requirement.

113-13. Procedure When Sidewalks Laid Contrary to Grade. In case any owner or owners, or any agent of any owner or owners, shall hereafter lay or cause to be laid any new sidewalk or relay or cause to be relaid any old sidewalk on any of the streets in the city to a grade deviating from that of any special ordinance establishing the grade of such sidewalk, or contrary to the provisions of this section, the commissioner of public works shall give proper notice to such owner or owners, or agent of such owner or owners, to take up such sidewalk within 10 days and to lay the same according to the established grade. Should such owner or owners, or agent of such owner or owners, refuse or neglect to comply with the order of the commissioner of public works within the specified time, then the said commissioner of public works shall cause such sidewalk to be taken up and relaid to the established grade of the sidewalk and charge the expense of such work against the lot, part of lot or parcel of land in front of which the same has been performed, and cause the same to be collected as other special taxes.

113-14. Grades of Alley Approaches. The grade and slope of the sidewalk pavement at an alley approach may be depressed in the manner provided by ss. 115-24 to 115-26.

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lights and such other protective devices as may be necessary to adequately warn the public of the condition of the area and prevent injury to any person or property.

2. It shall be unlawful for any person without proper authority to remove, throw down, or cause to be removed or thrown down any barrier or barricade or any part thereof; or to remove, or put out or destroy, or turn out or tamper with, or cause to be removed, put out or destroyed, or turned out or tampered with, any light or lamp erected, or put up, in or upon any public way or public place.

3. It shall be unlawful for any unauthorized person to drive through or into barricade areas in any public way or public place unless the person driving through or into such barricaded area secures permission from the commissioner.

115-30. Temporary No Parking Areas, Construction. 1. The commissioner is authorized to place temporary no parking signs in areas in which authorized work is being done or will be done.

2. It shall be unlawful to place, park or allow to stand any vehicle in any public way or public place where temporary no parking signs have been erected, except vehicles being used in such work.

3. It shall be unlawful to remove, throw down, or cause to be removed without proper authority, any such no parking signs.

115-31. Open Stairwell Protection. Open stairwells in the public way shall be protected on all open sides by a railing or permanent barrier at least 3 feet high approved by the commissioner and shall comply with ss. 245-4-11 and 245-5-3.

115-32. Obstruction on Public Ways. 1. No person shall build, place or maintain or cause, permit, or allow to be placed, built, or maintained, or pile, deposit, or place, or permit to be piled, deposited, or placed in, upon, or over any public way or public place in the city any obstruction, encroachment, building, structure, wares, merchandise, rubbish, garbage, wood, coal, dirt or other article or obstruction of any kind whatsoever, or so occupy or obstruct any public way or public place so as to interfere with the complete, free and convenient use of the same by the public or any member thereof, except the following obstructions specifically permitted by law:

a. Newspaper stands as provided by s. 115-33.

b. Permissible projection, obstructions, and encroachments as provided by s. 245-4.

c. Special privilege permits granted pursuant to common council resolution.

d. Food distributor's special privilege pursuant to s. 115-35 and common council resolution.

e. Ducts or conduits in the sidewalk as provided by s. 115-36.

f. Lawn sprinklers in the sidewalk area as provided by s. 115-37.

g. Facilities for the collection and distribution of mail as provided by s. 115-38.

h. Telephone booths as provided for in s. 115-39.

i. Other obstructions of a temporary nature permitted by the commissioner or the common council.

j. Poles permitted under this chapter.

k. Newspaper vending boxes as provided by s. 115-33.5.

L. Bicycle parking facilities as provided by s. 115-32.5.

m. Flower pot holders as provided in s. 115-33.6.

n. Sidewalk area dining facilities as provided by s. 115-32.6.

2. The location of any permitted obstruction shall not be construed or deemed to be a vested interest. A permittee shall remove or modify an obstruction at its own expense whenever the city determines that the public convenience would be enhanced by such removal or modification.

3. The director of the department of public works infrastructure services division, or any official or employe of the division of infrastructure services that the director may designate, may issue a citation for any violation of this section pursuant to s. 50-25.

115-32.5. Bicycle Parking Facilities; Permits.

1. **PURPOSE.** The purpose of this section is to reduce safety hazards to pedestrians by setting aside sidewalk areas under certain conditions for the parking of bicycles, thereby separating the pedestrians from parked bicycles.

2. **DEFINITIONS.** a. A "bicycle locker" shall mean a lockable, enclosed storage compartment designed for the storage of a bicycle and bicycle-related gear.

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115-16. Changing of Grade Prohibited. No person shall alter the grade of any public way or public place unless authorized or directed to do so by the common council or the commissioner.

115-17. Addition or Removal of Material Prohibited. No person shall deposit any material on any public way or public place unless authorized or directed to do so by the common council or the commissioner. No person shall remove any material owned by the city in or on any public way or public place unless authorized or directed to do so by the common council or the commissioner.

115-18. Correction of Improper Construction. Whenever an installation is constructed or a maintenance activity undertaken in violation of this chapter, the commissioner shall order such installation to be removed and properly placed and the area restored. Upon refusal of the person making or maintaining such installation to do so within the time set forth in the order, the commissioner shall cause the necessary work to be done and charge the expense to such person.

115-18.5. Maintenance of Facilities. All facilities located on, under or over any public way, public place or any property owned by the city or any public board, commission, authority or agency for which a franchise, privilege or permit has been issued, shall at all times be kept and maintained in a safe, adequate and substantial condition and in good order and repair. Permittees shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

115-19. Plans of Structures or Facilities Within Public Ways. The commissioner shall prepare or cause to be prepared drawings, plans, and profiles and any deviations therefrom of all structures or facilities installed by the city or any departments thereof on, over and under the public way or public place and shall keep the same until such time as the structure or facility is removed or replaced.

115-20. Submission of Plans. 1. Complete plans for proposed installation, removal, or abandonment of structures and/or facilities under, upon, or over any public way or public place shall be submitted and approved when required by the commissioner before a permit is issued; and complete plans of existing structures and/or facilities used, occupied or maintained in pursuance of a permit, resolution, ordinance or franchise under, upon or over any public way or public place shall be submitted when requested by the commissioner.

2. In the event that actual construction departs from plans submitted prior to the issuance of a permit, complete "as built" plans shall be submitted.

3. Complete plans, as required in sub. 1, shall include all drawings, profiles and plans necessary to clearly indicate the number, location, character, extent and amount of space occupied by the structure and/or facility. The plans shall also include a schedule of operation, including the anticipated commencement date, completion date and total number of working days necessary for the project. Such plans shall be prepared at the expense of the person owning, occupying or maintaining the structure and/or facility.

115-21. Utility Wires, Poles, Cables, etc.

1. **AUTHORITY OF COMMISSIONER OF PUBLIC WORKS.** The purpose of this section is to set forth the duties, powers and functions of the commissioner with respect to effectuating the removal or relocation by public utility companies of poles, aerial wires and cables, and other aerial appurtenances or devices used in the operation of the business of public utility companies when streets are paved or repaved with concrete or with a concrete base and a bituminous surface, within the city so as to maintain, protect, safeguard and advance the public safety and general welfare; and this section is predicated upon the police powers of the city provided for by law.

2. **UTILITY COMPANIES TO COMPLY.** Any public utility company which maintains, uses or has poles, aerial wires and cables, or any other aerial appurtenances and devices, or articles used by such public utility company in the operation of its business, or owned by it, on, along, or upon any city street, highway or thoroughfare, excluding alleys, upon