

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 curbline 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