

**PUBLIC WORKS COMMITTEE REPORT  
OCTOBER 19, 2011 1:20 PM  
City Council Chambers**

**Members Present:** Jason Wiener (chair), Ed Childers, Dick Haines, Marilyn Marler, Renee Mitchell, Dave Strohmaier, Pam Walzer, Jon Wilkins, Cynthia Wolken

**Members Absent:** Lyn Hellegaard, Bob Jaffe

**Others Present:** Steve King, Kevin Slovarp, Dan Jordan, Doug Harby, Susan Firth, Jackie Corday, Sally Stansberry

**I. ADMINISTRATIVE BUSINESS**

A. Approval of the minutes of – [October 12, 2011](#) Approved as submitted

B. Announcements –None

C. Public Comment on Non-Agenda items – None

**II. CONSENT AGENDA ITEMS These referrals were discussed and voted on all together.**

1. Approve the right of way encroachment permit for the carriage house located in the alley adjacent to 1204 Poplar. ([memo](#))—Regular Agenda (Doug Harby)(**REMOVE FROM AGENDA**)

**Recommended Motion: The committee recommends the City Council approve and authorize a right-of-way encroachment permit for 1204 Poplar for the carriage house located in the adjacent alley.**

Approve an approximately 337 square foot encroachment easement on Mt. Jumbo Open Space for outbuilding improvements located adjacent and north of 1204 Poplar owned by Sally and William Stansberry. ([memo](#))—Regular Agenda (Jackie Corday)(**REMOVE FROM AGENDA**)

**Recommended Motion:**

1. **The committee recommends the City Council approve and authorize the 1204 Poplar Street encroachment easement to allow the historical carriage house and attached west-side shed buildings located north of the residence on Mt. Jumbo Open Space to remain in place under the terms set forth in the attached encroachment easement.**
2. **The committee recommends the City Council approve and authorize the \$2359.00 price for the easement be spent to improve the City's Mt. Jumbo Open Space.**

Jason Wiener said both the encroachment permit and the encroachment easement were separate issues but for the same property and unless there were any objections they would consider them both at the same time. There were no objections.

Doug Harby, Project Manager, stated the right-of-way encroachment permit was a request from the property owners Sally and William Stansberry. The carriage house was built in the early 1900's and was constructed within the alley right-of-way and partially in the platted lots to the north into Mt. Jumbo Open Space. An alley vacation was considered but regulations governing public right-of-way is for half of the alley go to each adjacent owner and this would increase the encroachment on the Open Space property. The alley is not developed and the topography of Mt. Jumbo in this location would severely limit the potential development of the alley as an access to the other properties. The structures have been used as storage/garage and the recommendation of Public Works is that this use remains and

any change of use would revoke the right-of-way. Public Works supports this right-of-way encroachment permit and asks the committee to approve it.

Jackie Corday, Open Space Manager, stated the total footprint of the carriage house and storage shed encroachment into the Open Space is 257 square feet, the fenced in area encloses approximately 80 square feet, adding these together brings the total size of the encroachment easement to 337 square feet. The current owners, Sally and William Stansberry, were made aware at the time of purchase in the 1980's, that the carriage house and shed encroached into City property but they were not aware that the carriage house also encroached into the privately owned Klapwyk property which became the Mt. Jumbo Open Space in 1997. When the Stansberrys were preparing to replace the roof and do some general restoration on the building Steve Loken who they hired to do the work, asked them to have the property boundaries surveyed when he noticed the backyard fencing did not line up with the house. Territorial Landworks did the survey which showed the shed and carriage house were built in the alley right-of-way and on Open Space. A permanent encroachment will add value to private property and so in order for the public to benefit from giving up public land, the Parks and Recreation Department asked for an appraisal of the land and payment for the value received. Using the County appraisal and a Market Analysis, the price of \$2,359.00 was assessed for the permanent encroachment easement. This amount includes a 30% discount because this is an easement and not fee title, and because the easement does not allow a change in use to residential or commercial. The Missoula Parks Board unanimously voted to recommend the City Council approve the easement encroachment with the addition of attorney fees and a termination clause; Senior Deputy City Attorney, Susan Firth, reviewed and approved these additions. The request by Sally Stansberry that the easement not restrict the conversion of the carriage house to residential was denied. The Stansberry's will pay \$2,359.00 for the easement and will be solely responsible for maintaining the outbuilding improvements.

Renee Mitchell asked Sally Stansberry if they had been assessed county and city property taxes over the years and if she could provide that amount; Ms. Stansberry said they were taxed and she probably could get the amount. Renee Mitchell said she is in favor of granting this easement without charging them. She also asked why the Open Space property was not surveyed when it was dedicated.

Jackie Corday answered that the Mt. Jumbo purchase was approximately 1,465 acres in 1996 and the legal description that was used was in the Klapwyks deed because to survey all that land would have cost tens of thousands of dollars. The normal practice is not to survey unless some issue is raised.

Jon Wilkins asked if the restriction to not allow the building to be used for commercial or residential apply to the Stansberrys or to anyone else in the future. Could the use be changed?

Jackie Corday replied that the language in this encroachment easement would restrict the use; however in the future an amendment could be requested if both the City and the property owner agreed to the amendment.

Jon Wilkins made the motion to pass the agreement as it is written.

Jason Wiener stated that under the current zoning the lot the house is on is large enough to accommodate an additional dwelling unit. He favors passing this without the easement to include the restriction on residential use. Given the facts that this structure and the land underneath it that the Stansberry's have been paying taxes on and by right they would be permitted to convert this.

Pam Walzer asked if there was a utility right-of-way in this alley. Doug Harby said there were no utilities in the alley.

Jason Wiener said there are three motions to vote on: 1. the encroachment permit, 2. the encroachment easement and 3. authorize the price of the easement.

Renee Mitchell asked if the plans are to restore the carriage house to be used for storage. She feels the home has been very well maintained and to repair this structure would be an asset to the neighborhood.

Sally Stansberry replied that it currently functions as a garage/storage space and they use it for the normal activities you would use a garage for such as to fix things, etc. The original intention was to do the restoration and repairs and that and after looking at the cost for that they thought it would be nice to include a small living area upstairs. She would still like that option but it does not change the original use and the current plans are to restore the building without a living area.

Jon Wilkins amended his original motion to include all three motions that the committee recommends the City Council: 1. approve and authorize a right-of-way encroachment permit for 1204 Poplar for the carriage house located in the adjacent alley; 2. approve and authorize the 1204 Poplar Street encroachment easement to allow the historical carriage house and attached west-side shed buildings located north of the residence on Mt. Jumbo Open Space to remain in place under the terms set forth in the attached encroachment easement; and 3. approve and authorize the \$2359.00 price for the easement be spent to improve the City's Mt. Jumbo Open Space.

Dave Strohmaier asked for clarification of any significant differences between the permit and the easement.

Jackie Corday answered by explaining this is the fourth time in three years she has come before the council with encroachment easement requests and in each of those instances Parks and Recreation has tried to treat everyone equally. In all of those cases they had an appraisal and the property owners paid back a percentage of the value because these encroachments are permanent and the owners can exclude the public. The encroachment permit is not permanent and the encroachment easement is permanent.

Doug Harby said the encroachment permit is for the property owner's private use; the revocation of the right-of-way if there is a change of use is added because the right-of-way is still a public right-of-way and if there is a change of use the permit has to be revisited; that way if there is ever a need for the alley the City would not have given up the public's right to use the alley, they are just allowing the private owner to use it as it is being used now.

Renee Mitchell made a motion to amend the referral to reduce the amount of the price of the encroachment easement by half.

Jon Wilkins stated that with other encroachments some of those owners also thought they owned the property. He doesn't think you could say with any certainty the Stanberry's paid taxes on that portion. He would not want to set precedence here so he cannot support this amendment.

Jason Wiener offered some clarification based on the property information data base, this property is rectangular in shape that shows the alley behind it, listing the square footage as 11,700 square feet; the out building is listed as an improvement on the property suggesting the area in the alley is not being assessed.

Jackie Corday responded that in the survey done by Territorial Landworks, the actual legal description is 11,700 square feet in an exact rectangle, which would mean they could not have been paying taxes on the property but paid on the improvement.

The motion to amend the price of the encroachment by half failed by voice vote.

The amended motion made by Jon Wilkins to include all three motions passed with eight ayes (Wiener, Childers, Haines, Marler, Strohmaier, Walzer, Wilkins, and Wolken) and one nay (Mitchell).

Mitchell agreed to allow the item to be placed on the consent agenda.

### III. HELD AND ONGOING AGENDA ITEMS

1. Discussion on the sizes of grease interceptors for the restaurant industry ([Grease Interceptor PowerPoint](#)) ([memo](#)).—Regular Agenda (Stacy Rye and Bob Jaffe) (Referred to committee: 04/21/08)
2. Review infrastructure conditions at the locations of serious and fatal traffic accidents: 2007-2009 ([memo](#)).—Regular Agenda (Jason Wiener) (Referred to committee: 01/25/10)
3. T4 America partner support ([memo](#)) – Regular Agenda (Stacy Rye) (Referred to committee: (Referred to committee: 08/16/10)
4. Resolution to change the speed limit on Reserve Street between Brooks and 39<sup>th</sup> Street. ([memo](#))—Regular Agenda (Wayne Gravatt) (Referred to committee: 01/24/11)
5. Approve the agreement for consultant services with Eli & Associates, Inc. on Project 10-034 England Boulevard right turn lane improvements. ([memo](#)) - Regular Agenda (Kevin Slovarp) (Referred to committee 05/16/2011)
6. Infrastructure condition inventory and maintenance requirements. ([memo](#))—Regular Agenda (Ed Childers) (Referred to committee: 07/11/11)
7. Discuss the school speed zones. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 09/26/2011)
8. Discuss the timing of various traffic lights around the city. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 09/26/2011)

### IV. ADJOURNMENT

The meeting adjourned at 1:55 P.M.

Respectfully Submitted,  
Peggy Diamond, Program Specialist  
City Public Works Department