

Council Communication

August 2, 2016 Business Meeting

Consideration of the sale of an access easement on Parks property at Nutley Street

FROM:

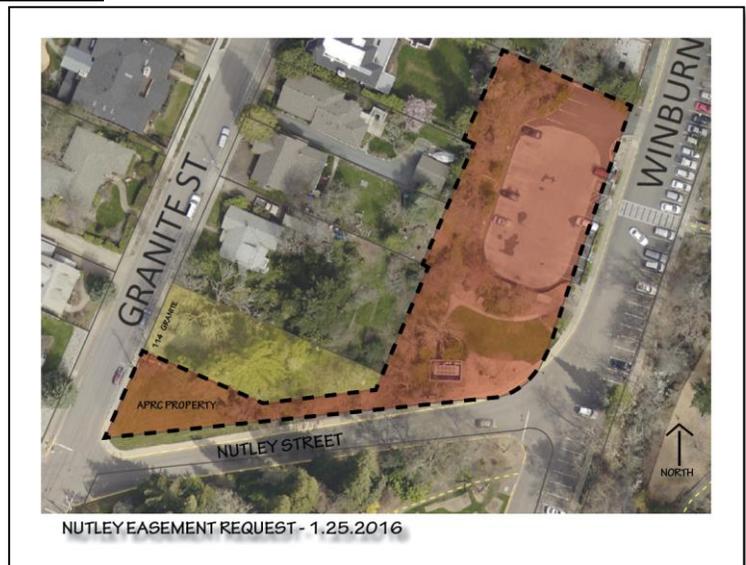
Michael A. Black, Director, Ashland Parks and Recreation Commission, michael.black@ashland.or.us

SUMMARY

Staff is requesting that the City Council affirm a decision of the Commissioners of Ashland Parks and Recreation to sell certain rights to parks property through an easement of approximately 280 SF for sole access to and for establishing permanent placement of the Barnhouse Bungalow, to maintain the historic value of the Structure as placed, and the construction, reconstruction, operation, maintenance, repair, replacement of a driveway and landscaping, and any utility needed by the Structure.

BACKGROUND AND POLICY IMPLICATIONS:

Staff was approached by Amy Gunter, a representative of the property owner at 114 Granite Street, with a request for an easement over parks property from the Nutley St. right-of-way to allow for a vehicular access to the rear (east) of 114 Granite Street. The request is a result of a desire to move the existing home at 114 Granite Street to the rear of the lot to function as an accessory dwelling unit. The existing home is a historic structure in the Skidmore Academy Historic District and possesses the additional distinction of being the part time residence of Johnny Gruelle, the author of *Raggedy Ann and Andy*.



EXISTING CONDITIONS

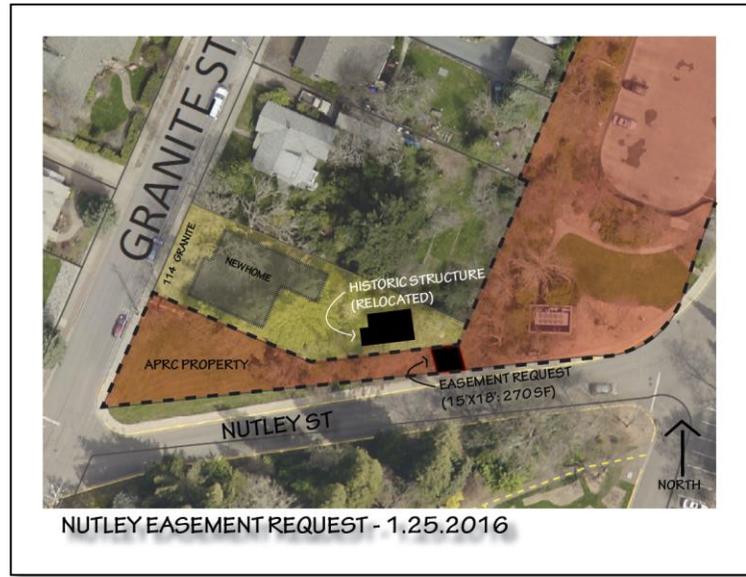
Bounded on the west and east by Granite St. and Winburn Wy. at the cross-street of Nutley, a .75 acre piece of Lithia Park houses a parking lot for the Park, a seasonal ice rink and the chiller apparatus for the ice rink. Additionally, that property contains a small lawn area wrapping from Winburn Way around to Nutley. At the narrowest point, the grassy area is only 15' wide. Lithia Park, in its entirety, is recorded at 100 acres of land.

PROPOSAL

The owner of 114 Granite St. has a desire to build a new larger residence on their property. The historic home is currently located where the new structure will be sited, requiring demolition of the home or relocation. The owner has proposed their plan in a pre-app through planning and the Historic Commission. The owner has not been given approval for building the new home, or relocating the existing home, but they have begun the process of obtaining those approvals.

The graphic to the right shows that the new home would be located on the Granite St. frontage and the historic home would be moved to the rear of the home.

It is our understanding the accessory dwelling would be used as a rental property and guest home for the primary residence. The easement will be required to enter the property by vehicles as per a Ashland City Code requirement. In addition, the owner is requesting that the easement allow utilities to run from Nutley St. to 114 Granite St. under the driveway.



PROPOSED EASEMENT DESCRIPTION

The request is for a vehicle and utility easement at the narrowest point of the APCR parks property. The dimensions of the requested easement are 15' by 17'. The owner of 114 Granite proposes that the easement be paved either with traditional nonporous paving materials or porous materials such as pavers, stones, honeycomb cell grass, etc. In order for the driveway to function correctly, the level of the existing ground would have to be elevated to match the street/sidewalk elevation and smoothed.

APRC FINDINGS

Staff has found that the easement will be necessary for the applicant to obtain permits to relocate the accessory structure at the rear of her lot if she chooses to build a new home in its place. The historic cottage at 114 Granite St. has some significant history and the owner is considering their options as they plan the new home. The owner has expressed interest in moving the historic home and has the area to do so at the rear of her property. The only issue is that she needs legal access from Nutley to allow for ingress and egress of traffic to the lower unit – this is a planning requirement. Since we own the property between 114 Granite and Nutley St., we are virtually her only option for access to the cottage at its new location. This should not be construed to think that with the approval of the Commission, the owner will be required to obtain entitlement through the City of Ashland.

With due authority granted by the Commissioners, staff has negotiated with the applicant and we have agreed to the fee of \$3,372.00 for the easement.

A curb-cut is already present at the site where the easement is being requested and it appears that there has been vehicular access through/over parks property for some time. The access is largely unimproved and the drive path is currently a natural surface that appears to undulate greatly. The

access appears to have been for gardening and moving debris and yard waste from the rear yard of 114 Granite St.

COUNCIL/PARKS COMMISSION GOALS SUPPORTED:

N/A

FISCAL IMPLICATIONS:

N/A. The sale of the easement will increase the revenues of APRC by \$3,372.00

STAFF RECOMMENDATION AND REQUESTED ACTION:

The Commissioners of APRC approved the proposed easement at their July 25, 2016, meeting. Staff requests that the City Council grant the authority to sell the easement to the adjacent property owner as detailed in the attached Right of Way and Easement Agreement.

SUGGESTED MOTION:

I move to approve the sale of an access easement on Nutley Street as detailed in the Right of Way and Easement Agreement document.

ATTACHMENTS:

Easement



Return Document to:
Barbara Christensen, City Recorder,
20 East Main, Ashland, OR 97520

RIGHT OF WAY EASEMENT AND AGREEMENT

1. **Grant.** Subject to all prior easements or encumbrances of record, City of Ashland, (the "Grantor"), owner of property described as a portion of 391E09 TL100 at the northwesterly corner of Winburn Way and Nutley Street (the "Property") hereby grants to, Mardi Mastain, her successors and assigns (the "Grantee"), a permanent, appurtenant and nonexclusive easement for a right of way 17 feet in width together with the right of access to the right of way from adjacent land of Grantor for all activities in connection with the purposes for which this easement has been granted.

2. **Description.** The location of the easement is along the general course(s) now located by Grantee on, over or under the surface of the Property, this easement more particularly described as an area seventeen (17.0) feet in width, more particularly described as follows:

See Exhibit A, herein attached and incorporated, (the "Easement Area").

3. **True and Actual Consideration:** **\$3,372.00**, the sufficiency of which the Grantor deems sufficient.

4.. **Purpose.** This easement is solely for access to and for establishing permanent placement of the Barnhouse Bungalow, (the "Structure"), to maintain the historic value of the Structure as placed, and the construction, reconstruction, operation, maintenance, repair, replacement of a driveway and landscaping, and any utility needed by the Structure including but not limited to water, sewer, electricity, and communications, and whether they are above or underground, and all accessories and appurtenances thereto (hereafter referred to altogether as "Facilities") necessary or desirable to the Structure.

Further purposes of this easement is the present and (without payment therefore) the future right of Grantee to keep the Easement Area and said adjacent lands clear of all brush, trees, timber, structures and other hazards which might endanger Grantee's Easement Area, Structure or Facilities or impede Grantee's activities to operate and maintain the Structure and Facilities.

5. Terms and Conditions.

5.1 Grantee is limited to strict adherence to the purpose of this Easement as set forth in Section 4 above.

5.2 Grantor shall have the right to use the area within the easement in any manner that does not reasonably interfere with Easement Area, Structure and Facilities within the easement area.

5.3 Grantee shall provide Grantor reasonable notice prior to performing work in the Easement Area. Pursuant to such work, Grantee shall:

A. Fill any and all excavations as soon as practicable after opening;

B. Dispose of all brush and debris;

C. Replace in their former condition all improvements, trees, ornamental shrubs and crops, if practicable, as soon as possible after damage or destruction, but if not practicable then pay to Grantor the reasonable value thereof.

D. Accepts all organizing, performance and financial responsibility for maintenance or repair of the Easement Area, Structure and Facilities on the easement.

E. To pay Grantor for any and all damage that may arise from construction, reconstruction, operation, maintenance, repair, replacement, enlargement or removal of the Easement Area, Structure and/or Facilities;

F. Will accept liability for all injuries to persons or property resulting from Grantee's or its duly appointed agents' performance of the stated purposes of this easement. Grantee agrees to indemnify Grantor and hold Grantor harmless against all claims, suits, costs, losses and expenses that may in any manner result from or arise out of the purpose and activities permitted under this easement.

6. Termination. This easement may be terminated at any time by mutual consent of the parties. This easement will be terminated upon abandonment, loss or change of any purpose of the Easement stated in Section 4, or after breach of any term or condition stated in Section 5 by Grantee. "Loss or change of any purpose of the Easement" includes the removal of the structure, or any major or substantive change to the structure that would change its historic nature or designation.

7. **Litigation costs.** In case of suit, action or proceeding to enforce any rights or conditions of this easement or appeal from said suit, action or proceedings, it is mutually agreed that the losing party in such suit, action, proceeding or appeal shall pay the prevailing party therein a reasonable attorney's fee in such amount as set by the court hearing such suit, action, proceeding or appeal.

IN WITNESS WHEREOF, the parties hereto have subscribed this instrument this ____ day of **June**, 2016.

GRANTOR:

GRANTEE:

CITY OF ASHLAND

MARDI MASTAIN

By _____
Dave Kanner, City Administrator

By _____
Mardi Mastain

STATE OF OREGON)
) ss.
County of Jackson)

Personally appeared before me this ____ day of **June, 2016**, **Dave Kanner**, and City Administrator for the City of Ashland, Oregon acknowledged the foregoing instrument to be his voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Jackson)

Personally appeared before me this ____ day of **June, 2016**, **Mardi Mastain**, and acknowledged the foregoing instrument to be her voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____