

ORDINANCE NO. 12 -62

By Crahan

To authorize the acceptance of a release and waiver executed by Robert H. Jeffrey, II, and Joseph A. Jeffrey.

WHEREAS, the deed of gift heretofore executed, delivered on February 23, 1943 and recorded in D. B. 1209, page 498, Recorder's Office, Franklin County, Ohio, Robert H. Jeffrey and Mary Allen Jeffrey, his wife, conveyed certain premises to the City of Bexley to be used exclusively for public purposes; and

WHEREAS, the heirs of said Robert H. Jeffrey are willing to waive some of the conditions, restrictions and limitations contained in said deed so that the City may enter into a lease with the Bexley Civic Improvement Association.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, STATE OF OHIO:

Section 1. That the release and waiver dated June 10th, 1962, and executed by Robert H. Jeffrey and Joseph A. Jeffrey, a copy of which release is attached hereto and made a part hereof, and which release permits the City of Bexley to lease a part of the Jeffrey property to the Bexley Civic Improvement Association for the purpose of constructing and operating thereon a swimming pool and related facilities is hereby accepted by the City of Bexley.

Section 2. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: June 19, 1962.

Attest:

J. P. Quiscott
Clerk of Council

[Signature]
President of Council

Approved: June 19th, 1962

H. T. Schneider
Mayor

RELEASE AND WAIVER

KNOW ALL MEN BY THESE PRESENTS That:

WHEREAS, by deed of gift heretofore executed, delivered on February 23, 1943 and recorded in Deed Record Volume 1209, page 498, Recorder's Office, Franklin County, Ohio, Robert H. Jeffrey and Mary Allen Jeffrey, his wife, conveyed certain premises therein described to the City of Bexley to be used exclusively for public purposes; and

WHEREAS, said City of Bexley accepted said deed pursuant to Ordinance No. 5-43 duly passed on the 23rd day of March, 1943 by the Council of the City of Bexley; and

WHEREAS, said deed of gift contained certain conditions, restrictions and limitations upon the use of said premises by the City of Bexley and its successors and assigns which said City of Bexley by its acceptance of said deed agreed to abide, carry out, observe and perform, to-wit:

"1. The care, custody, control, management, improvement and supervision of said premises shall always be in and exercised by said City of Bexley through its proper departments, officers, boards and employees.

2. Said premises shall always be used and maintained exclusively for public park, playground, athletic, recreational, instructional and educational purposes, including meetings and gatherings sponsored or authorized by said City; and the use of any building now or hereafter erected on said premises shall be limited to such educational, recreational and social purposes.

3. Having in mind that much of the planting now a part of said premises, including trees, shrubbery and the like, has been collected and installed over a long period of years and represents especially chosen specimens and varieties, such that, collectively, they constitute an arboretum having both educational and other values, such trees, shrubbery and other planting shall, insofar as practicable, be maintained, preserved and from time to time renewed, to the end that these portions of the premises now planted or in woodland may remain so.

4. All the covenants, conditions and restrictions herein contained shall be binding upon said City of Bexley and its successors and assigns;" and

WHEREAS, the Bexley Civic Improvement Association, an Ohio corporation not for profit whose stated purpose, among others, is to construct and operate recreational and educational facilities and programs, desires to lease from said City of Bexley a certain part of the premises described and conveyed in said deed of gift situate in the State of Ohio, County of Franklin, City of Bexley and being more particularly described as follows:

Beginning at a point in the northerly line of Clifton Avenue, said point being westerly a distance of 630 ft. from the westerly line of Parkview Avenue; thence Northerly and at right angles to Clifton Avenue a distance of 160 ft. more or less to the southerly line of an existing drive; thence Westerly and parallel to the northerly line of Clifton Avenue a distance of 570 ft. more or less to a point, said point being the northerly extension of the westerly line of an existing drive; thence Northerly and at right angles to the northerly line of Clifton Avenue a distance of 290 ft. more or less to the top of bank of Alum Creek; thence Southwesterly and along the top of bank of Alum Creek a distance of 550 ft. more or less to the northerly line of Clifton Avenue, 60 ft. in width; thence Easterly and along the northerly line of Clifton Avenue, 60 ft. in width, a distance of 875 ft. more or less to the place of beginning; subject to all easements and restrictions shown of record.

and to use said premises for the construction and operation of a swimming pool or pools and related facilities; and

WHEREAS, a copy of a lease in substantially the form proposed to be entered into by the City of Bexley and Bexley Civic Improvement Association is attached to this instrument and marked "Appendix A"; and

WHEREAS, certain rights, demands, actions, or causes of action might arise in favor of the undersigned, the only heirs of Robert H. Jeffrey for breach or violation of one or more of the aforesaid conditions, limitations and restrictions contained in said deed of gift if such a lease were entered into by said City of Bexley and Bexley Civic Improvement Association;

NOW, WHEREFORE, the undersigned, being the only heirs of Robert H. Jeffrey, being of lawful age, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby remise, release, waive and forever discharge any and all rights, demands, actions and causes of action which might arise in our favor during the term of such a lease, or any renewal or renewals thereof, as a result of a breach or violation of one or more of the conditions, restrictions and limitations contained in said deed of gift in the event such a lease were entered into by the City of Bexley and the Bexley Civic Improvement Association.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10th day of June, 1962.

Signed in the presence of:

James E. Pohlman

Virginia B. Jeffrey
As to Robert H. Jeffrey, III

Robert H. Jeffrey, III
Robert H. Jeffrey, III

James E. Pohlman

Virginia B. Jeffrey
As to Joseph A. Jeffrey

Joseph A. Jeffrey
Joseph A. Jeffrey

APPENDIX A

LEASE

This lease, made this _____ day of June, 1962 by and between the City of Bexley, Lessor, and Bexley Civic Improvement Association, an Ohio corporation not for profit, of Bexley, Ohio, Lessee.

WITNESSETH:

Lessor hereby lets and leases to Lessee the following described premises situate in the State of Ohio, County of Franklin, City of Bexley and being more particularly described as follows:

Beginning at a point in the northerly line of Clifton Avenue, said point being westerly a distance of 630 ft. from the westerly line of Parkview Avenue; thence Northerly and at right angles to Clifton Avenue a distance of 160 ft. more or less to the southerly line of an existing drive; thence Westerly and parallel to the northerly line of Clifton Avenue a distance of 370 ft. more or less to a point, said point being the northerly extension of the westerly line of an existing drive; thence Northerly and at right angles to the northerly line of Clifton Avenue a distance of 290 ft. more or less to the top of bank of Alum Creek; thence Southwesterly and along the top of bank of Alum Creek a distance of 550 ft. more or less to the northerly line of Clifton Avenue, 60 ft. in width; thence Easterly and along the northerly line of Clifton Avenue, 60 ft. in width, a distance of 875 ft. more or less to the place of beginning; subject to all easements and restrictions shown of record.

TO HAVE AND TO HOLD the said premises unto Lessee, its successors and assigns, for and during the term of ten (10) years commencing July 1, 1962, or at such later date as may be determined in accordance with the provisions hereinafter contained and to be completed ten (10) years from such date whichever is later.

The Lessee yielding and paying therefor as rent for said premises the sum of \$1.00 per year, payable on the 1st day of July in each year during the term hereof.

Lessee, by notifying Lessor in writing on or before June 1, 1972 of its intention to extend this lease shall have the option to extend it for a further term of ten (10) years from June 30, 1972.

The Lessee is to use said land for the purpose of constructing and operating a swimming pool or pools and related facilities only, for the use and benefit of all of the residents of the City of Bexley.

Lessee represents and warrants that it is a corporation not for profit and that no part of its income, earnings or profits do or shall inure to the benefit of any private individual.

Lessee may charge and receive dues and fees for the use of the facilities installed by it on the leased premises. Lessee agrees that all net income of Lessee, not required for the payment of expenses, maintenance and repairs of the facilities, or for improvements or additions to recreational facilities located on said leased premises, will be used by Lessee to repay indebtedness incurred by Lessee for construction of such swimming pool or pools and related facilities.

The Lessee agrees that it will not begin construction of the swimming pool or pools or related facilities on said leased premises unless and until:

1. The Lessor shall have approved the plans and specifications for such pool or pools and related facilities;
2. Lessee shall have furnished to the Lessor such assurances, as the Lessor shall deem satisfactory, of Lessee's ability to complete such pool or pools and related facilities in accordance with such plans and specifications.

Lessee agrees that if such plans and specifications call for the moving of the caretaker's cottage from its present location on said premises, the cost of moving said caretaker's cottage, including the cost of constructing all facilities necessary to continue the utility services presently servicing said caretaker's cottage, shall be borne by the Lessee.

Lessee agrees that title to all improvements and equipment installed and placed on said leased premises by Lessee shall vest in Lessor from the time the same are installed or placed on said leased premises.

Lessee agrees that it will at all times use and occupy said premises in a careful, safe and lawful manner and will comply with all laws and regulations of duly constituted authorities relating to the activities engaged in by Lessee on the leased premises.

Lessee agrees to indemnify and save Lessor and the leased premises harmless from all loss, costs, damages and expenses, including court costs and attorneys' fees on account of any claims, demands, actions or causes of action of every kind and character, by whomsoever made or asserted against Lessor, arising out of Lessee's occupancy to or possession of the leased premises.

Lessee further agrees to provide and pay for such policies of liability insurance protecting Lessee and Lessor as Lessor may from time to time require.

Lessee agrees that it will pay any and all taxes and assessments which may be assessed on its activities conducted on said leased premises, and any taxes or other charges charged against Lessor or the leased premises which would not be so chargeable if this lease had not been made and the activities of Lessee hereunder had not occurred.

Lessor may terminate this lease by Lessee and any and all rights of Lessee hereunder at any time upon breach by Lessee of any covenant, promise or agreement contained in this lease.

Lessor may terminate this lease by Lessee and any and all rights of Lessee hereunder upon thirty (30) days written notice to Lessee if Lessor determines, by resolution or otherwise, that Lessee is financially unable to operate the swimming pool or pools and related facilities on said leased premises.

Lessor may, if it determines, by resolution or otherwise, that Lessee's use of said leased premises is not in the public interest of all of the residents of the City of Bentley, select at Lessee's next annual meeting all, or any number, of the members of Lessee's board of trustees; provided, however, that written notice of such determination

and intention to select be given Lessee at least ten (10) days prior to such annual meeting.

Use of the facilities on the leased premises shall be available to all residents of the City of Bexley and shall be limited to residents of the City of Bexley, provided that guests of residents, who reside outside the City of Bexley, may be permitted to use such facilities in accordance with such rules and regulations as Lessee shall from time to time adopt with respect thereto.

IN WITNESS WHEREOF, the said Lessor and Lessee have hereunto set their hands and seals on the day and year first above written.

Signed in the presence of:

CITY OF BEXLEY

By _____

As to City of Bexley

BEXLEY CIVIC IMPROVEMENT ASSOCIATION

By _____

As to Bexley Civic Improvement Association

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named City of Bexley by _____,

_____ who acknowledged that he did sign and seal the foregoing instrument for and on behalf of said City of Bexley, and that the same is the free act and deed of said City of Bexley, and his free act and deed personally and as such _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this _____ day of June, 1962.

Notary Public

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

Before me, a Notary Public in and for said County and State,
personally appeared the above named Bentley Civic Improvement Association
by _____, its _____, who
acknowledged that he did sign and seal the foregoing instrument for and on
behalf of said corporation, by authority of its Board of Directors, and that
the same is the free act and deed of said corporation, and his free act and
deed personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
official seal at _____, this _____ day of June,
1962.

Notary Public