

ORDINANCE NO. 29 -87

BY: Albert Meyer

An Ordinance authorizing the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Bexley with the property owner at 266 Preston Road (lot number 50; Marion Heights Addition; City of Columbus) regarding improvements to be made upon and within the City of Bexley owned right-of-way of Westland Avenue.

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

Section 1. That the property owner at 266 Preston Road (lot number 50; Marion Heights Addition; City of Columbus) has requested approval to replace an existing fence with a 4' high wood fence within the City of Bexley owned right-of-way of Westland Avenue.

Section 2. That the Mayor and the Auditor be, and they hereby are, authorized to enter into a Consent and Hold Harmless Agreement with the property owner, a copy of which is attached hereto and made a part hereof as if fully rewritten, authorizing the encroachment as proposed in accordance with the submitted site plan on the condition that the property owner assume all responsibility for all maintenance of improvements on the right-of-way and for damages, loss, and injury arising out of the location of said fence including any additional cost to the City of Bexley incurred in connection with its use of the right-of-way occasioned by the location of the structure.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 28, 1987

J. Schmidt  
President of Council

Attest: J. H. ...

Approved: April 28, 1987

April 14, 1987 - 1<sup>st</sup> reading  
April 28, 1987 - suspended & passed

D. H. Madison  
David H. Madison  
Mayor

C O N S E N T

H O L D   H A R M L E S S   A G R E E M E N T

The undersigned property owner and the City of Bexley, Ohio, agree as follows:

The owner has sought and obtained permission from the City of Bexley to replace an existing fence with a 4' high wood fence as indicated below on the property described below and in the easement/right-of-way as described. Approval of the proposed fence or structure and use of the easement/right-of-way area is conditioned upon this Agreement.

Craig D. and Charlene Barclay, their successors and assigns shall save the City harmless from any and all damages which may arise from or grow out of the construction and installation of the 4' high wood fence, and said grantees, their successors and assigns, shall defend, at their own cost, every suit in which the City of Bexley, Ohio shall be made a party, brought and prosecuted for the recovery of any such damages; that the occupancy of public property is hereby permitted merely as an accommodation to the said grantees and that no right, title or interest of the public is waived or abridged in any way thereby; that said grantees, their successors or assigns, upon notice from the City of Bexley, Ohio, shall forthwith remove said fence and shall yield to said City all rights to occupy the space used for such structure, whenever said City shall determine the same to be necessary; that said structure shall be so constructed as to not interfere with or damage any utility facilities and in the event that changes become necessary to construct and accommodate said fence, the grantees, their successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof. Additionally, said grantees, their successors and assigns, shall at their own cost, maintain the 4' high wood fence, the existing wall on which it is constructed, and all other existing structures on City of Bexley easement/right-of-way. No other improvements shall be constructed on City of Bexley easement/right-of-way without prior authorization by the City Council of Bexley, Ohio.

This Agreement shall not be construed as in any way limiting the rights presently held by the City in the easement/right-of-way area, or the use thereof for public purposes, except to promote the construction and maintenance of the below mentioned structure in the easement/right-of-way.

266 Preston Road  
Address of Property

Street Right-Of-Way  
Type of Easement/Right-of-Way

Lot 50; Marion Heights,  
City of Columbus, Ohio  
Lot No. or other Description

4' high Wood Fence  
Building or Structure

15' Measured from Center of  
Westland Avenue  
Easement/Right-Of-Way Width-  
Property Location

11'  
Maximum Encroachment Into  
Easement/Right-Of-Way

Streets & Public Utilities  
Services Existing in Easement/  
Right-Of-Way

Ordinance No. 29 -87  
Approving Authority (Council)

May 6, 1987  
Date of Agreement

May 6, 1987  
Date of Agreement

This Agreement shall be binding on and for the benefit of the parties hereto and their respective successors and assigns.

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this 6 day of May, 1987, by David H. Madison, Mayor of the City of Bexley, Ohio, and, John W. Homburger, Auditor of the City of Bexley, Ohio.

Robert C. Furell  
Witness

[Signature]  
Mayor

Marianna McCullough  
Witness

[Signature]  
Auditor

Marianna McCullough  
Notary Public

**MARIANNA McCULLOUGH**  
Notary Public - State of Ohio  
My Commission Expires 6-6-90

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of May, 1987, by

John W. Homburger and David H. Madison

[Signature]  
Witness

Charles P. Barclay  
Property Owner

[Signature]  
Witness

Craig D. Barclay  
Property Owner

Kathleen Marie Rose  
Notary Public  
my commission expires July 1, 1990