

AMENDED ORDINANCE NO. 60-88

BY: Joanne H. Ranft

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 owners at 2390 Bryden Road (Lot number 247; Bexley Park Addition) regarding improvements to be made upon and within the City owned right-of-way of Dawson Avenue.

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

Section 1. That the property owners at 2390 Bryden Road (Lot number 247; Bexley Park Addition) have requested approval to construct a stone retaining wall in the front yard setback of said property which would encroach a distance of approximately 2.5 feet upon and within the Dawson Avenue right-of-way owned by the City of Bexley;

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 owners, in form and substance satisfactory to the City Solicitor, authorizing the encroachment as proposed in accordance with the submitted request on the condition that the property owners assume all responsibility for damage, loss, and injury arising out of the location of said retaining wall 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: October 11, 1988

Albert Meyer
President of Council

Attest: J. W. Herby

Approved: 10/11, 1988

D. H. Madison
David H. Madison, Mayor

September 13, 1988 - 1st reading
September 27, 1988 - 2nd reading
October 11, 1988 - 3rd reading; Amended & Adopted

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

The undersigned property owners and the City of Bexley, Ohio (the "City") agree as follows:

The owners have sought and obtained permission from the City to erect a stone retaining wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the proposed retaining wall and use of the easement/right-of-way area is conditioned upon this Agreement.

Richard J. and Mollie O'Donnell, 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 retaining wall, and said grantees, their successors and assigns, shall defend, at their own cost, every suit in which the City 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, shall at all times maintain the retaining wall in a manner satisfactory to the City; that said grantees, their successors or assigns, upon notice from the City of Bexley, Ohio duly authorized by the Council of the City, shall forthwith remove said retaining wall 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 or desirable; 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 retaining wall, the grantees, their successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof. The right of the property owner to construct the retaining wall shall cease unless said construction shall commence and be completed within ninety (90) days from the date of this Agreement unless extended in writing by the Mayor or his authorized representative.

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.

2390 Bryden Road
Address of Property

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

Lot No. 247; Bexley
Park Addition
Lot No. or Other Description

Stone Retaining Wall
Building or Structure

30' Measured from Center of
of Dawson Avenue
Easement/Right-Of-Way Width -
Property Location

2.5 feet
Maximum Encroachment Into
Easement/Right-Of-Way

Street, Sidewalk &
Public Utilities
Services Existing in Easement/
Right-Of-Way

Ordinance No. 60-88
Approving Authority

Nov. 18, 1988
Date of Agreement

Nov. 18, 1988
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
18th day of November,
1988, by David H. Madison, Mayor of
the City of Bexley, Ohio, and John W. Hornberger,
Auditor of the City of Bexley, Ohio.

Robert C. Fulk
Witness

D. Madison
Mayor

Dorothy Dickhaut
Witness

John W. Hornberger
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
18th day of November, 1988
1988,
by Richard J. & Mollie O. Donnell

Marianna McCullough
Witness

Richard J. Donnell
Property Owner

Dorothy Dickhaut
Witness

Mollie O. Donnell
Property Owner

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

Marianna McCullough
Notary Public

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Notary Public-State of Ohio
MARIANNA McCULLOUGH