

AMENDED ORDINANCE NO. 5 -89

BY: Joanne H. Rufft

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 2363 Sherwood Road (Lot number 334; T. Miller Farm Subdivision) regarding improvements to be made upon and within the City owned right-of-way of Sherwood Road and Dawson Avenue.

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

Section 1. That the property owners at 2363 Sherwood Road (Lot 334; T. Miller Farm Subdivision) have requested approval to construct a stone retaining wall with a maximum height of 18 inches in the front yard setback of said property which would encroach a distance of approximately 6 inches upon and within the Sherwood Road right-of-way and approximately 3.5 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 construction of the stone retaining wall shall be completed 60 days after the beginning of it's construction or by October 31, 1989, whichever shall occur first.

Section 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: February 28, 1989

Albert Myers
President of Council

Attest: John W. Hunkeler

Approved: Feb 28, 1989

D. Madison
David H. Madison, Mayor

Feb. 28, 1989 - 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 with a maximum height of 18 inches 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.

Brian L. and Rita J. Herzberger, 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 be completed 60 days after the beginning of construction or by October 31, 1989, whichever shall occur first. The owners acknowledge that failure to complete construction of the retaining wall by the above stated time may necessitate it's removal and is a violation of the Bexley Building and Housing Code which provides for a fine of not more than two hundred fifty dollars (\$250.00) a day, for each day the violation exists.

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.

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|---|--|
| <u>2363 Sherwood Road</u> Address of Property | <u>Street Right-Of-Way</u> Type of Easement/Right-Of-Way |
| <u>Lot No. 334; T. Miller</u> <u>Farm Subdivision</u> Lot No. or Other Description | <u>Stone Retaining Wall</u> Building or Structure |
| <u>30' Measured from Centers of</u> <u>Sherwood Road & Dawson Avenue</u> Easement/Right-Of-Way Width - Property Location | <u>6 inches on Sherwood Road &</u> <u>3.5 feet on Dawson Avenue</u> Maximum Encroachment Into Easement/Right-Of-Way |
| <u>Street, Sidewalk &</u> <u>Public Utilities</u> Services Existing in Easement/ Right-Of-Way | <u>Ordinance No. 5 -89</u> Approving Authority |
| <u>February 28, 1989</u> Date of Agreement | <u>February 28, 1989</u> 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 First day of March, 1989, by David H. Madison, Mayor of the City of Bexley, Ohio, and John W. Hornberger, Auditor of the City of Bexley, Ohio.

Robert C. Foulk
Witness

D. Madison
Mayor

Marianna McCullough
Witness

John W. Hornberger
Auditor

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

Marianna McCullough
Notary Public

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this Sixteenth day of March, 1989, by Brian and Rita Herzberger.

Marianna McCullough
Witness

Brian L. Herzberger
Property Owner

Brian L. Herzberger
Witness

Rita J. Herzberger
Property Owner

Marianna McCullough
Notary Public

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

STATE OF OHIO
COUNTY OF FRANKLIN, SS.

On this 16th day of March, 1989, personally appeared before me, a Notary Public in and for said County and State, Brian L. Herzberger, who being duly sworn, executed or acknowledged the above Consent and Hold Harmless Agreement as his own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal, the day and year above written.

Marianna McCullough
NOTARY PUBLIC

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

STATE OF OHIO
COUNTY OF FRANKLIN, SS.

On this 16th day of March, 1989, personally appeared before me, a Notary Public in and for said County and State, Rita J. Herzberger who being duly sworn, executed or acknowledged the above Consent and Hold Harmless Agreement as her own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal, the day and year above written.

Brian L. Herzberger
NOTARY PUBLIC
Attorney, No Expiration