

ORDINANCE NO. 24 -93

BY: John H. Offenberg

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 2462 Powell Avenue (Lot Number 20; Bullitt Park Place Addition) regarding improvements to be made upon and within the City owned right-of-way of Powell Avenue.

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

Section 1. That the property owner at 2462 Powell Avenue (Lot Number 20; Bullitt Park Place Addition) have requested approval to construct a 24 inch high stone retaining wall in the front yard setback of said property which would encroach a distance of approximately 24 inches upon and within the Powell 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 owner, 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 owner 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: May 25, 1993

J. Loehner  
President of Council

Attest: [Signature]

Approved: 5/25/93, 1993

D. Madison  
David H. Madison  
Mayor

Apr. 27, 1993 - 1<sup>st</sup> reading  
May 11, 1993 - 2<sup>nd</sup> reading  
May 25, 1993 - 3<sup>rd</sup> reading  
Adopted

084/2462Powl

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 owner and the City of Bexley, Ohio (the "City") agree as follows:

The owner has sought and obtained permission from the City to erect a 24 inch high 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.

Victoria G. Wolfe, her 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 grantee, her 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 grantee and that no right, title or interest of the public is waived or abridged in any way thereby; that said grantee, her successors or assigns, shall at all times maintain the retaining wall in a manner satisfactory to the City; that said grantee, her 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 grantee, her successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof.

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 structures in the easement/right-of-way.

2462 Powell Avenue  
Address of Property

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

Lot 20; Bullitt Park Place  
Lot No. or Other Description

Stone Retaining Wall  
Building or Structure

30 Feet Measured from  
Center of Powell Avenue  
Easement/Right-Of-Way Width -  
Property Location

24 inches  
Maximum Encroachment Into  
Easement/Right-Of-Way

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

Ordinance No.     -93  
Approving Authority

\_\_\_\_\_  
Date of Agreement

\_\_\_\_\_  
Date of Agreement

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

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1992, by \_\_\_\_\_, Mayor of the City of Bexley, Ohio, and \_\_\_\_\_, Auditor of the City of Bexley, Ohio.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Auditor

\_\_\_\_\_  
Notary Public

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1992, by \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Notary Public