

ORDINANCE NO. 44-01

BY: Mark Masser

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 180 South Remington Road (Lot No. 214; Ardmore Subdivision) regarding improvements to be made upon and within the City-owned right-of-way on South Remington Road.

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

Section 1. That the property owners at 180 South Remington Road (Lot No. 214; Ardmore Subdivision) have requested approval to allow a 36 inch high stone retaining wall in the front yard setback of said property which would encroach a distance of approximately 24 inches upon and with 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 owners, in form and substance satisfactory to the City Attorney, 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 their 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: 7-24, 2001

Arne H. Porter
President of Council

Attest: Richard A. Levin
Clerk of Council

6/12/01 Just reading
6/26/01 Second reading
7/10/01 Third reading
 Jailed
7/24/01. Removed from
 Table. Passed

Approved: 7/24, 2001

David H. Madison
David H. Madison, Mayor

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owner has sought and obtained permission from the City of Bexley to construct a stone wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the stone wall and use of an easement/right-of-way area that is public property is conditioned upon this Agreement.

Sanford and Leslie Melmed, his successors and assigns (collectively the "Owners"), shall save the City harmless from any and all damages which may arise from, or grow out of, the construction, installation, maintenance, repair, relocation, removal or replacement of the stone wall for any reason and 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 the Owners, upon notice from the City of Bexley, Ohio, duly authorized by the Council of Bexley, Ohio, shall forthwith remove said stone wall from the public property occupied by it and shall yield to said City all rights to occupy the public property used for such sidewalk whenever said City shall determine the same to be necessary or desirable; that the Owners release the City, its employees and agents, from any liability for damage to the stone wall arising out of or in connection with any cause whatsoever; that said stone wall shall be so constructed as to not interfere with or damage any utility facilities or to impede nor interfere with in any way the use of the easement/right-of-way area, streets, alleys, sidewalks, and curbs by the City and the public; and in the event that the City determines changes to the stone wall to be necessary or desirable, the Owner shall promptly make any such changes, relocations, or rearrangements solely at their expense.

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

180 South Remington Road
Address of Property

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

Lot No. 214; Ardmore Subdivision
Lot Numbers or Other Description

Stone wall
Building or Structure

30 Feet Measured from the
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. 89-90
Approving Authority

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 2nd day of September, 2001 by David H. Madison, Mayor of the City of Bexley, Ohio, and Richard A. Levin, Auditor of the City of Bexley, Ohio.

Janice Apple
Witness

David H. Madison
Mayor

Sara Chumock
Witness

Richard A. Levin
Auditor

Anita S. Hughes
Notary Public
ANITA S. HUGHES
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JULY 26, 2003

STATE OF OHIO, COUNTY OF FRANKLIN:
SS:

The foregoing instrument was acknowledged before me this 2nd day of September, 2001 by SANFORD & Leslie Melmed

Shawn B. Bunn
Witness

S. Melmed
Property Owner

Deborah A. Rogers
Witness

Leslie Melmed
Property Owner



DEBORAH A. ROGERS
Notary Public, State of Ohio
My Commission Expires 8/25/03

Deborah A. Rogers
Notary Public