ORDINANCE NO.87-04

By: Mr. Weber

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 2322 Sherwood Road (Lot No. 333; Bexley Park Addition) regarding improvements made upon and within the City owned street right-of-way adjacent to Sherwood Road.

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

Section 1. That the property owners at 2322 Sherwood Road (Lot No. 333; Bexley Park Addition) have requested approval to construct a 1'3" high retaining wall within the street right-of-way; said retaining wall is to be approximately 32' in length running parallel and adjacent to Sherwood Road.

Section 2. That the Mayor and 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 its use of 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: 12 . 14 , 2004

Clerk of Council

11/09/04 First Reading
11.23.04 Second Madely
12.14.04 Shud Reading
Parsed

Approved: 12/14, 2004

David H. Madison, Mayor

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owner has sought and obtained permission from the City of Bexley to install a 1'3" high retaining wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the retaining wall and use of an easement/right-of-way area which is public property is conditioned upon this Agreement.

The property owner, his successors and assigns (collectively the "Owner") 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 retaining wall for any reason and shall defend, at his 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 grantee abridged in any way thereby; that the Owner, upon notice from the City of Bexley, Ohio duly authorized by the Council of Bexley, Ohio, shall forthwith remove said retaining wall from the public property occupied by it and shall yield to said City all rights to occupy the public property used for such fence whenever said City shall determine the same to be necessary or desirable; that the Owner releases the City, its employers and agents, from any liability for whatsoever; that said retaining wall shall be so constructed as to not interfere with or damage any utility facilities or to impede nor interfere within 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 retaining wall to be necessary or desirable, the Owner shall promptly make any such changes, relocations, or rearrangements solely at his 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 retaining wall in the easement/right-of-way area.

2322 Sherwood Road	Street	
Address of Property	Type of Easement/Right-of-Way	
Lot No. 333;		
Bexley Park Addition	1'3" high retaining wall	
Lot Number or Other Description	Building or Structure	
	2'	
Easement/Right-of-Way Width	Maximum Encroachment Into	

Property Location	Easement Right-of-Way
Storm, Sewer, Sidewalks, Street Services Existing in Easement/ Right-of-Way	Ordinance No. – 04 Approving Authority (Council)
Date of Agreement	Date of Agreement
This Agreement shall be binding or their respective successors and assigns.	and for the benefit of the parties hereto and
STATE OF OHIO, COUNCIL OF FRANK	LIN: SS:
The foregoing instrument was ackno	wledged before me this
day of <u>December</u> , 2004	by David H. Madison.
Mayor of the City of Bexley, Ohio, and	Dary W. Gualman, Auditor
of the City of Bexley, Ohio.	
Saw Chunoch	Mayor
Chinda Paison Witness	Auditor

Notary Public Anita S. Foley

Notary Public, State of Ohio

My Commission Expires July 23, 2008

Rhonda Passon	Joel K Too	В
Witness	Property Owner	
Witness	Property Owner	-
STATE OF OHIO, COUNTY OF FRANKLIN: S	S:	
The foregoing instrument was acknowledge	ed before this	day of
Notary Public	3 Coler	п

Anita S. Foley
Notary Public, State of Ohio
My Commission Expires July 23, 2008