

AMENDED ORDINANCE NO. 57 -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 owner at 654 Euclaire Avenue (Lot number 20; Bexley Plaza Addition) regarding improvements to be made upon and within the City owned right-of-way of Euclaire Avenue.

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

Section 1. That the property owner at 654 Euclaire Avenue (Lot number 20; Bexley Plaza Addition) has requested approval to construct a stone retaining wall in the front yard setback of said property which would encroach a distance of approximately 18 inches upon and within the Euclaire 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 assumes 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.

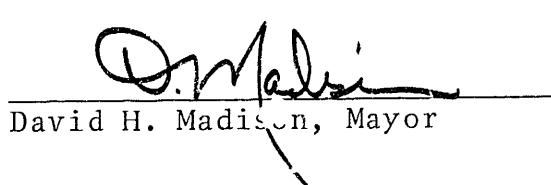
Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: October 11, 1988

  
President of Council

Attest: John. Shely

Approved: 10/11, 1988

  
David H. Madison, Mayor

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

CONSENT AND  
OLD HARMLESS AGREEMENT

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 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.

James Wolgamot, his 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, his 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, his successors or assigns, shall at all times maintain the retaining wall in a manner satisfactory to the City; that said grantee, his 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, his 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.

654 Euclaire Avenue  
Address of Property

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

Lot No. 20; Bexley  
Plaza Addition  
Lot No. or Other Description

Stone Retaining Wall  
Building or Structure

25' Measured from Center of  
Euclaire Avenue  
Easement/Right-Of-Way Width -  
Property Location

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

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

Ordinance No. 57-83  
Approving Authority

Nov. 2, 1988  
Date of Agreement

Nov. 2, 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  
2<sup>nd</sup> day of November, 1988, by David H. Madison, Mayor of  
the City of Bexley, Ohio, and John W. Hemborg,  
Auditor of the City of Bexley, Ohio.

Marianna McCullough  
Witness

D. Madison  
Mayor

Marianna McCullough  
Witness

John W. Hemborg  
Auditor

MARIANNA MCCULLOUGH  
Notary Public - 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  
2<sup>nd</sup> day of November, 1988, by James D. Wogaman.

Deborah E. Foulk  
Witness

James D. Wogaman  
Property Owner

Witness

Property Owner

Marianna McCullough  
Notary Public

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

Robert W. Miller  
Code Enforcement Officer  
City of Bexley, OH  
Building Department  
22 E. Main St., 43209

August 22, 1988

Attn: Dorothy Pritchard

To Whom It May Concern:

A few months back, I built a stone retaining wall at the edge of what I thought to be my property boundaries. I was not aware that the City of Bexley had a "city right-of-way" extending from the sidewalk on my property side  $1\frac{1}{2}$  feet towards my home.

I built this stone retaining wall so as to improve my property, not merely for aesthetic reasons. I have not been able for the past five years or so (since I bought the property) to grow grass in my front yard. I felt that if I were to rototill the yard, level it out, add new topsoil, and enclose this in some way - by way of a stone wall - I would improve my chances of successful growing of grass (which in the past has been nearly impossible). Even in this drought, I have better grass than I have ever succeeded in before.

For this reason, I am appealing the order to remove the retaining wall; likewise, I am requesting permission to leave the retaining wall as is. Thank-you for your consideration in this matter.

Sincerely,

James D. Wolgamot

*James D. Wolgamot*



## *City of Bexley, Ohio*

2242 EAST MAIN STREET, 43209

235-8694

### NOTICE OF PUBLIC MEETING

This is to inform you that a public meeting will be held by the Council of the City of Bexley, Ohio, at 7:00 p.m., Tuesday, October 11, 1988, at Bexley City Hall, 2242 East Main Street, to consider adoption of Ordinance No. 57-88. This Ordinance, if approved, will allow for the construction of a stone retaining wall in the front yard setback of 654 Euclaire Avenue. All interested parties are invited to attend.