

ORDINANCE NO. 20, 2016

APPROVING THE CONSTRUCTION OF A RETAINING WALL 209 HARVEY COURT ON VILLAGE PROPERTY BY THE OWNER, BIAGIO LAMASSA, REQUIRING EXECUTION AND RECORDING OF AN INDEMNITY AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, Biagio Lamassa has built a retaining wall in the front yard of his property located at 209 Harvey Court within the Village of St. Bernard; and

WHEREAS, The wall was built along the sidewalk in front of their property; and

WHEREAS, the Village of St. Bernard owns the streets, sidewalks and adjacent lands beyond the sidewalk called Village right-of-ways; and

WHEREAS, the Village seeks to limit all liability of the wall by executing an indemnity agreement with the adjacent land owners and recording the agreement to run with the land and bind both present and future land owners of the adjacent property; and

WHEREAS, Biago Lamassa agrees to sign the indemnity agreement and thereby agree to hold the Village harmless from all liabilities arising from the existence of the retaining wall; now therefore,

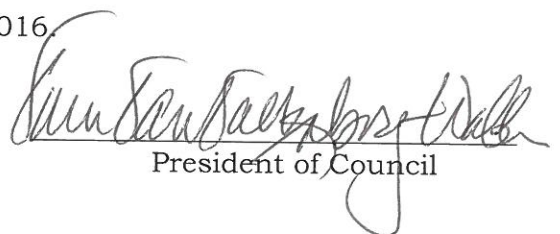
BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:

Section 1. The Village of St. Bernard hereby approves the retaining wall, as defined pursuant to as built on Village property located on the side of 209 Harvey Court, by land owners, Biagio Lamassa.

Section 2. That such approval, as set forth in Section 1 of this ordinance, is hereby conditioned on the proper execution of an indemnity agreement, as attached hereto, by property owners, and where such agreement shall be recorded with the Hamilton County Recorder's Office and shall be binding upon all future land owners of the property located at 209 Harvey Court.

Section 3. This Ordinance is hereby declared to be an emergency measure necessary to the immediate preservation of the public peace, health and safety. Therefore, this Ordinance shall take effect immediately by and upon its passage, and the approval of two-thirds of the members of said Council. However, this Ordinance shall take effect on the earliest date provided by law if approved by no more than the majority of the members of Council and in that event the emergency provisions herein are set at naught.

Passed this 20th day of October, 2016.


President of Council

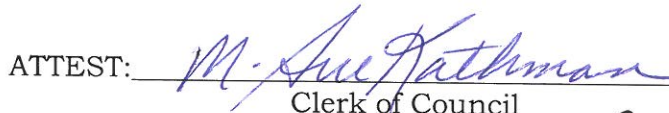
ATTEST:

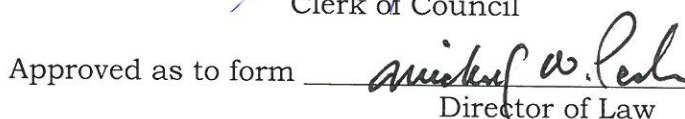

Clerk of Council

Approved this 20th day of October, 2016.


Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 20, 2016, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing 10-20, 2016.

ATTEST:  DATE 10-20-16
Clerk of Council

Approved as to form  DATE 10-20, 2016
Director of Law

ORIGINAL

AGREEMENT

This Agreement entered into this 26th day of September, 2016 by the Village of St. Bernard, Ohio and Biagio Lamassa.

WHEREAS, The Village of St. Bernard, (the "Village") is the owner of certain public sidewalk that is adjacent to the private property located at 209 Harvey Court, St. Bernard, Hamilton County, Ohio 45217 and more fully described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Lamassa"); and,

WHEREAS, Biagio Lamassa ("Lamassa") is the owner of the Lamassa Property; and,

WHEREAS, Lamassa desires to construct a Retaining Wall (the "Wall") to improve the Lamassa Property; and,

WHEREAS, Lamassa desires to construct the Wall in such a manner that the completed Wall would extend onto the property owned by the Village; and,

WHEREAS, Lamassa and the Village agree that the construction of the Wall will benefit the public good, Lamassa and the Village hereby agree, covenant, and acknowledge as follows:

Lamassa agrees, covenants, and acknowledges that construction of the Wall will be completed in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Lamassa agrees, covenants, and acknowledges that the Wall will be constructed in strict compliance with the plans and specifications detailing the construction of the Wall attached hereto and incorporated herein as Exhibit "B"; and,

Lamassa agrees, covenants, and acknowledges that Lamassa will maintain the Wall as well as any and all land enclosed by the Wall in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Lamassa agrees, covenants, and acknowledges that they will defend and hold harmless and indemnify the Village forever for any claims or actions of any nature whatsoever that may arise from the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and,

Lamassa agrees, covenants, and acknowledges that this agreement shall be recorded in the Official Record of the Recorder of Hamilton County, Ohio; and,

Lamassa agrees, covenants, and acknowledges that this agreement shall be binding upon any and all future transfers of the Property; and,

Lamassa agrees, covenants, and acknowledges that no additional property rights whatsoever shall accrue in favor of Lamassa and/or any future transferees of the property or any other persons or entities by operation of law or equity, including, but not limited to, adverse possession or prescriptive easement by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and,


Lamassa agrees, covenants, and acknowledges that the Village shall not relinquish any ownership interest in the certain public sidewalk by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and

Lamassa agrees, covenants, and acknowledges that, in the event that the Village finds it necessary at any time after the execution of this agreement to utilize any or all of its property encroached upon by the Wall, Lamassa, at Lamassa's expense, shall, immediately upon request of the Village, remove the Wall in a good and workmanlike manner according to local and state law and according to industry specifications and practices.

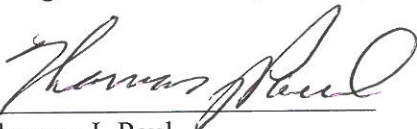
In return for the above agreements, covenants, and acknowledgements by Lamassa, the Village agrees as follows:

The agrees, covenants, and acknowledges that Lamassa is permitted to construct the Wall pursuant to the above agreements, covenants, and acknowledges that Lamassa is permitted to construct the Wall pursuant to the above agreements, covenants, and acknowledgements made herein by Lamassa.

Approved as to form by:


Mike Peck
Law Director
Village of St. Bernard, Ohio

Village of St. Bernard, Ohio by:


Thomas J. Paul
Service Director
Village of St. Bernard, Ohio

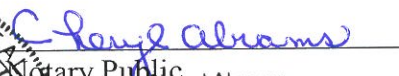

Witness


Witness

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

Sworn and subscribed to before me this 26th day of September, 2016 by Thomas J. Paul




Cheryl Abrams
Notary Public, State of Ohio
My Commission Expires 07-09-2019


Biagio Lamassa

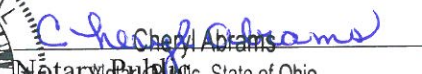
Witness

Witness

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

Sworn and subscribed to before me this 26th day of September, 2016 by Biagio Lamassa.




Cheryl Abrams
Notary Public, State of Ohio
My Commission Expires 07-09-2019