

ORDINANCE NO. 96-16

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR, DIRECTOR OF PUBLIC SERVICE, TO ENTER INTO AN EASEMENT AGREEMENT WITH SUTTON BANK RELATIVE TO A DRAINAGE CHANNEL AND SANITARY SEWERS; AND DECLARING AN EMERGENCY.

WHEREAS, Sutton Bank is the owner, in fee simple, of the land described in Exhibit A attached hereto and made a part hereof and more particularly depicted in Exhibit B attached hereto and made a part hereof, hereinafter referred to as "Easement Area"; and

WHEREAS, this Council desires to obtain from the Owner, an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain drainage channel and sanitary sewers upon the Easement Areas; now therefore,

BE IT ORDAINED by the Council of the City of Ashland, State of Ohio, 5 members thereto concurring:

Section 1. That the Mayor, Director of Public Service be, and hereby is, authorized and directed to enter into an easement agreement with Sutton Bank; a copy of which is attached hereto and made a part hereof.

Section 2. That for the reason that the easement is immediately necessary in order for the continued operation and maintenance of said existing drainage channel and sanitary sewers within the City, this Ordinance is declared to be an emergency measure, immediately necessary for the preservation of the public peace, property, health, safety and welfare of said City of Ashland.

Section 3. That this Ordinance shall take effect and be in force from and after its passage by Council and approval pursuant to Section 12 of the Charter of the City of Ashland, Ohio.

Passed: October 4, 2016

Ruth G. Detrow
Ruth G. Detrow, President of Council

Attest: Jody M. Toms
Jody M. Toms, Clerk of Council

Approved: Glen P. Stewart
Glen P. Stewart, Mayor

Approved as to form and correctness:

Richard P. Wolfe II
Richard P. Wolfe II, Director of Law

Date: October 4th, 2016

EXHIBIT A
DESCRIPTION OF EASEMENTS
FOR
THE CITY OF ASHLAND, OHIO

Channel and Sanitary Sewer Easement

Situated in the City of Ashland (South Ashland), Township of Montgomery, County of Ashland, State of Ohio and being known as a part of the Northwest Quarter of Section No. 18, Township 22 North, Range 16 West and being a part of the land described in a deed to Sutton Bank as recorded in Official Records Volume 698, Page 741 of the Ashland County Deed Records and more fully described as follows:

Commencing for boundary at an iron pin found at the Northeast corner of Lot No. 4382, South Ashland of Abbie Creek Phase 1 as recorded in Plat Cabinet No. 1, Page 358 of the Ashland County Plat Records, said iron pin also being at the Southeast corner of Lot No. 2250, South Ashland;

Thence South 69° 42' 31" West, a distance of 112.26 feet to a point;

Thence South 82° 10' 52" West, a distance of 226.54 feet to a point on the North line of Lot No. 4383, South Ashland;

Thence North 46° 27' 35" East, along the North line of Lot No. 4383, South Ashland, a distance of 39.05 feet to an iron pin found;

Thence North 61° 10' 38" East, along the North line of Lot No. 4383, South Ashland, a distance of 120.80 feet to an iron pin found;

Thence South 85° 30' 08" East, along the North line of Lot No. 4383 and Lot No. 4382, South Ashland and the South line of Lot No. 2250, South Ashland, a distance of 196.19 feet to the true place of beginning, containing 0.292 Acres but subject to all legal highways and easements of record.

SURVEYOR'S CERTIFICATION:

I hereby certify that this description was prepared from the notes of a survey made July 2007 and July 2016 by the office of Grindle and Bender, Ashland, Ohio and Lowell E. Bender, Registered Surveyor No. 4978. All bearings are assumed and are for the determination of angles only. All distances are in feet and decimals thereof. All iron pins set are 5/8" x 30" with cap.

Sanitary Sewer Easement

Situated in the City of Ashland (South Ashland), Township of Montgomery, County of Ashland, State of Ohio and being known as a part of the Northwest Quarter of Section No. 18, Township 22 North, Range 16 West and being a part of the land described in a deed to Sutton Bank as recorded in Official Records Volume 698, Page 741 of the Ashland County Deed Records and more fully described as follows:

Commencing for reference at an iron pin found at the Northeast corner of Lot No. 4377, South Ashland of Abbie Creek Phase 2 as recorded in Plat Cabinet No. 1, Page 359 of the Ashland County Plat Records;

Thence South 04° 07' 47" West, along the East line of Lot No. 4377, South Ashland, a distance of 89.42 feet to a point, the true place of beginning for the easement herein described;

Thence South 89° 30' 07" East, a distance of 120.99 feet to a point;

Thence South 70° 28' 46" East, a distance of 49.34 feet to a point;

Exhibit A
Page 2

Thence South 47° 56' 51" East, a distance of 250.24 feet to a point on the proposed North right-of-way line of Southview Drive;

Thence North 42° 25' 28" East, a distance of 58.62 feet to an iron pin found on the North right-of-way line of Southview Drive (60.00 feet wide) of Abbie Creek Phase 1 as recorded in Plat Cabinet No. 1, Page 358 of the Ashland County Plat Records ;

Thence South 43° 59' 57" East, along the Southwesterly line of Southview Drive, a distance of 20.04 feet to a point;

Thence South 42° 25' 28" West, a distance of 77.24 feet to a point;

Thence North 47° 56' 51" West, a distance of 266.13 feet to a point;

Thence North 70° 28' 46" West, a distance of 42.01 feet to a point;

Thence North 89° 30' 07" West, a distance of 118.91 feet to a point on the East line of Lot No. 4376, South Ashland of Abbie Creek Phase 2 as recorded in Plat Cabinet No. 1, Page 359 of the Ashland County Plat Records ;

Thence North 04° 07' 47" East, along the East line of Lot No. 4376 and Lot No. 4377, South Ashland, a distance of 20.04 feet to the true place of beginning, containing 0.226 Acres but subject to all legal highways and easements of record.

SURVEYOR'S CERTIFICATION:

I hereby certify that this description was prepared from the notes of a survey made July 2007 and July 2016 by the office of Grindle and Bender, Ashland, Ohio and Lowell E. Bender, Registered Surveyor No. 4978. All bearings are assumed and are for the determination of angles only. All distances are in feet and decimals thereof. All iron pins set are 5/8" x 30" with cap.

EASEMENT

KNOW ALL MEN BY THESE PRESENTS that the Sutton Bank, hereinafter referred to as the Grantor, for the consideration of One Dollar (\$1.00) this day received, and for other good and valuable considerations, a part of which is hereinafter enumerated, does hereby grant to the City of Ashland, Ohio, a municipal corporation, the Grantee, its successors and assigns, easements for channel and sanitary sewers, together with the right to construct, maintain, repair and reconstruct channel and sanitary sewers in and through the following tract of land as more fully described and shown on the attached "Exhibit A" which is incorporated herein;

The Grantor does hereby further give and grant, for the aforesaid consideration, to the City of Ashland, Ohio, a municipal corporation, the Grantee, its successors and assigns, the right to use the land adjacent to the above described parcel for temporarily storing excavation materials and construction materials during the initial construction of said channel and sanitary sewers, providing that no land shall be used for such purposes but that which is absolutely necessary for the purposes set forth.

It is further provided that nothing shall be done, by virtue of this paragraph, to interfere with the Grantor's regular and daily operations and use of said property, except as herein provided.

As a part of the consideration for the above grant, the Grantee covenants and agrees as follows:

(1) That the Grantee will not unduly delay or retard the construction of said channel and sanitary sewers after having begun the construction thereof, but will proceed with due diligence to completion, and that within thirty (30) days after the completion of the original construction or installation of said channel and sanitary sewers, it will remove all surplus excavation materials, equipment, tools, construction materials and any and all personal property and machinery belonging to said Grantee; and that it will restore as reasonably as possible to the same condition as when first occupied all land which it occupied for the said channel and sanitary sewers or for the purpose of constructing said channel and sanitary sewers, except that nothing shall be required to be done by virtue of this article to disturb or affect said channel and sanitary sewers installed by virtue of the above grant.

(2) That the Grantee will indemnify and hold harmless the said Grantor from all damages to the Grantor's buildings, fences, trees (except those agreed to be removed), driveways or walks which are existing or which may be hereafter erected, constructed, placed or planted on said lands by said Grantor, which damages are caused by or arise out of the presence, construction, inspection, repair, maintenance, reconstruction or use of said channel and sanitary sewers access by the Grantee. The Grantee also will indemnify and hold the said Grantor harmless from liability as to all other damages caused either to the Grantor or third parties who claim damages from Grantor, relating to any damages caused or which arise out of the presence, construction, inspection, repair, maintenance, reconstruction or use of said channel and sanitary sewers by the Grantee.

(3) The Grantor hereby covenants for itself, his heirs, administrators, executors, guardians, assigns, and any and all other successors in interests, at the time and sealing of these presents, that it is seized of a good and marketable title to the interest herein conveyed, that said title is free and clear of any clouds, defects, liens and encumbrances, save and except easements and restriction of record and zoning ordinances, and said Grantor will warrant and defend said premises unto the Grantee, its successors and assigns, against all lawful claims and demands whatsoever except as above excepted.

The foregoing grants are made upon the following express conditions:

(a) The grantee, its successors and assigns, shall have the right at any and all times to enter upon the tract hereinbefore described, to construct, inspect, repair, maintain, reconstruct or use said channel and sanitary sewers.

(b) The Grantor reserves the right to occupy and use the above described land for any and all purposes whatsoever, not inconsistent with the grants and privileges herein conveyed, except that no building or other permanent structure shall be placed within ten (10) feet of the centerline of said channel and sanitary sewers.

(c) The Grantor shall not plant trees within this easement without first having received the written consent of the Grantee.

IN WITNESS WHEREOF, the said Sutton Bank has hereunto set their hand to this Easement, and the said The City of Ashland, Ohio, has caused its corporate seal to be affixed to this Easement, this ____ day of _____, 2016.

For: Sutton Bank

For: The City of Ashland, Ohio

By _____

By _____
Glen P. Stewart, Mayor

By _____

By _____
Larry Paxton, Director of Finance

The State of Ohio)

:ss.

County of _____)

Before me, a Notary Public in and for said County and State, personally appeared Sutton Bank, by

_____ and, by _____,
(name/title) (name/title)

who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed as such officers, and their free act and deed personally.

In Testimony Whereof, I have hereunto set my hand and official seal, this _____ day of _____, 2016.

Notary Public

Sutton Bank Easement
Page 3 of 3

The State of Ohio)
:ss.
County of Ashland)

Before me, a Notary Public in and for said County and State, personally appeared the above named The City of Ashland, Ohio, a municipal corporation, by Glen P. Stewart, its Mayor and Director of Public Service, as attested by Larry Paxton, its Director of Finance, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed of said corporation and their free act and deed personally and as such officers.

In Testimony Whereof, I have hereunto set my hand and official seal at Ashland, Ohio, this _____ day of _____, 2016.

Notary Public

This instrument Prepared By:
Shane A. Kremser, P.E. City Engineer
City of Ashland, Ohio

Official Record Volume 698, Page 741
PPN P44-169-0-0001-01

The City of Ashland
PROPOSED LEGISLATION
Ordinance – Easement Agreement

DATE: September 28, 2016

TO: Honorable Mayor Glen P. Stewart & City Council

FROM: Shane Kremser, P.E., City Engineer

LEGISLATION SUMMARY: This Ordinance authorizes and directs the Mayor to enter into an easement agreement for existing stormwater drainage facilities and sanitary sewers that service the Abbie Creek and Fairview residential subdivisions.

LEGISLATIVE HISTORY: None

LEGISLATIVE PURPOSE: Due to the bankruptcy of the original developer, further planned phases of the Abbie Creek subdivision were not constructed. As such, easements for the existing sanitary sewers that service Abbie Lane and portions of Fairview Drive were not executed. The easement for the existing drainage channel is required for the operation of the existing storm water management facility.

FISCAL IMPACT: Future costs for routine maintenance and upkeep of the public sanitary sewers and drainage channel.

DIRECTOR'S RECOMMENDATION: After reviewing with the Mayor, it is recommended that this Ordinance be passed so that the Mayor can enter into an Easement Agreement with the current owner.