

RESOLUTION NO. 2009-16

A RESOLUTION DECLARING THE NECESSITY AND INTENT OF THE CITY OF KENT TO APPROPRIATE A TEMPORARY EASEMENT IN 202,002 SQUARE FEET OF CERTAIN REAL PROPERTY OWNED BY AKRON BARBERTON CLUSTER RAILWAY COMPANY (ABC) FOR THE PURPOSE OF CONSTRUCTING THE NEW FAIRCHILD/CRAIN AVENUE BRIDGE, STREET WIDENING, CHANGING THE GRADE, DRIVEWAY, WALK CONSTRUCTION, AND GRADING IN FURTHERANCE OF PUBLIC ROADWAY RECONSTRUCTION OF SR 43, FAIRCHLD AVENUE, CRAIN AVENUE AND NORTH WATER STREET WHICH IS SITUATED ON BOTH SIDES OF THE CUYAHOGA RIVER, NEAR THE INTERSECTIONS OF FAIRCHILD AVENUE AND SR 43; CRAIN AVENUE AND SR 43; AND THE NEW INTERSECTION NEAR NORTH WATER STREET AND CRAIN AVENUE, IN THE CITY OF KENT, OHIO AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to establish the new Fairchild/Crain Avenue Bridge, street widening, changing the grade, driveway, walk construction, and grading in furtherance of public roadway reconstruction on the east and west sides of the Cuyahoga River near the intersections of Fairchild Avenue and SR 43; Crain Avenue and SR 43, and North Water Street and Crain Avenue, in the City of Kent, Ohio, and

WHEREAS, negotiations between duly authorized representatives of the City and the owners of the parcel described in the resolution have failed to result in any determination of reasonable compensation for the parcel described in Section 1 below, and the complete terms of the reconstruction of the railroad crossing acceptable to the City and the Owner.

NOW, THEREFORE, BE IT RESOLVED by the Council of The City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That it is deemed necessary and it is hereby declared to be the intent of this Council to appropriate a temporary easement in 202,002 square feet of certain real property owned by Akron Barberton Cluster Railway Company (ABC), for the purpose of making, repairing, opening, widening, straightening, changing the grade of, and extending streets or roads and building the new Fairchild/Crain Avenue Bridge or other public places. The parcel to be appropriated is situated along the east side of the Cuyahoga River and is more fully described as follows:

PARCEL 78-T

Situated in the City of Kent, County of Portage and State of Ohio, being part of Lot 25, 30 and 31 of Original Franklin Township, T-3-N, R-9-W, being a parcel of land lying on the left side of the centerline of right-of-way of W. Main Street (100 feet), also known as being part of the Akron Barberton Cluster Railway Company (ABC) right-of-way shown on Valuation map V-7-OHIO/2, as shown on the POR-CRAIN AVENUE plans made for the City of Kent, Ohio by ARCADIS U.S., Inc. and as recorded in Reception Number _____ of the records of Portage County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a ¾" round iron bar in a monument box found at the intersection of the centerline of right-of-way of N. Water Street (80 feet) and the centerline of right-of-way of W. Main Street (100 feet), said monument box found at Station 10+00.00 on the centerline of right-of-way of W. Main Street and at Station 42+70.11 on the centerline of right-of-way of N. Water Street and Station 10120+95.40, 232.57' right of centerline of right-of-way of ABC Railroad;

Thence **South 89° 18' 31" West 206.78'** along the centerline of said W. Main Street to the easterly right-of-way of ABC railroad at Station 10121+30.54, 29.14 left of centerline of right-of-way of ABC Railroad;

Thence **North 00° 41' 29" West 50.00'** to a point on the north right-of-way line of said W. Main Street and a point on the easterly right-of-way line of the ABC Railroad, also being the southwest corner of land owned by Star of the West Milling Co. of Ohio recorded in Volume 487, Page 738, at Station 10120+81.66, 20.30' left of the centerline of right-of-way of ABC Railroad, also being the TRUE PLACE OF BEGINNING of the temporary easement herein described:

1. Thence **South 89° 18' 31" West 36.08'** continuing along said north right-of-way line of W. Main Street to the westerly right-of-way line of the ABC Railroad, also being the easterly right-of-way line of CSXT Railroad, to Station 10120+87.89, 15.26' right of the centerline of right-of-way of ABC Railroad;
2. Thence continuing with said westerly right-of-way line and with the arc of a curve to the left, said curve having a delta of 05° 40' 49", a radius of 2280.00', a tangent of 113.11' and a chord of 225.94' with a chord bearing of North 06° 34' 32" East, an **arc distance of 226.04'** to a point of tangency, said point being at Station 10118+60.51, 13.78' right of the centerline of right-of-way of ABC railroad;
3. Thence **North 03° 44' 08" East 336.46'** continuing with said westerly right-of-way line of ABC railroad and said easterly right-of-way line of CSXT Railroad to Station 10115+24.04, 13.59' right of the centerline of right-of-way of ABC Railroad;
4. Thence **North 00° 45' 45" East 199.58'** continuing with said westerly right-of-way line of ABC railroad and the said easterly right-of-way line of CSXT Railroad to Station 10113+24.72, 23.84' right of the centerline of right-of-way of ABC Railroad;
5. Thence **North 02° 21' 13" East 538.48'** continuing with said westerly right-of-way line of ABC railroad and the said easterly right-of-way line of CSXT Railroad to a point on the north line of Lot 25 and the south line of Lot 30, to Station 10107+86.39, 36.53' right of the centerline of right-of-way of ABC Railroad;
6. Thence **North 89° 53' 47" West 2.00'** along said north line of Lot 25, and said south line of Lot 30, to a westerly right-of-way line of said ABC Railroad and an easterly right-of-way line of said CSXT Railroad to Station 10107+86.52, 38.52' right of the centerline of right-of-way of ABC Railroad;
7. Thence **North 02° 21' 13" East 263.50'** continuing with said easterly and westerly right-of-way line, to Station 10105+11.58, 44.73' right of the centerline of right-of-way of ABC Railroad;
8. Thence continuing with said westerly right-of-way line and with the arc of a curve to the right, said curve having a delta of 16° 51' 08", a radius of 1607.00', a tangent of 238.05' and a chord of 470.96' with a chord bearing of North 07° 09' 57" East, an **arc distance of 472.66'** to a point, said point being at Station 10100+60.70, 54.16' right of the centerline of right-of-way of ABC railroad;
9. Thence continuing with said westerly right-of-way line and with the arc of a curve to the right, said curve having a delta of 28° 00' 55", a radius of 1607.28', a tangent of 400.97' and a chord of 778.09' with a chord bearing of North 27° 54' 19" East, an **arc distance of 785.90'** to a point, said point being at Station 10093+00.58, 53.42' right of the centerline of right-of-way of ABC railroad;
10. Thence **South 50° 21' 01" East 110.57'** to the easterly right-of-way of ABC Railroad, to Station 10093+01.25, 57.15' left of the centerline of right-of-way of ABC Railroad;
11. Thence **South 32° 07' 43" West 242.58'** continuing with said easterly right-of-way line of ABC railroad to Station 10095+52.31, 67.82' left of the centerline of right-of-way of ABC Railroad;
12. Thence **South 89° 29' 00" West 24.77'** continuing with said easterly right-of-way line of ABC railroad to Station 10095+65.62, 46.76' left of the centerline of right-of-way of ABC Railroad;
13. Thence continuing with said easterly right-of-way line and with the arc of a curve to the left, said curve having a delta of 13° 27' 03", a radius of 1853.00', a tangent of 218.51' and a chord of 434.01' with a chord bearing of South 23° 39' 25" West, an **arc distance of 435.01'** to a point, said point being at Station 10100+14.29, 58.87' left of the centerline of right-of-way of ABC railroad;
14. Thence **South 20° 47' 37" West 48.52'** continuing with said easterly right-of-way line of ABC railroad to Station 10100+64.61, 54.56' left of the centerline of right-of-way of ABC Railroad;

15. Thence **North 73° 10' 23" West 18.02'** continuing with said easterly right-of-way line of ABC railroad to Station 10100+63.92, 36.56' left of the centerline of right-of-way of ABC Railroad;
16. Thence **South 20° 44' 12" West 110.00'** continuing with said easterly right-of-way line of ABC railroad to Station 10101+74.40, 24.93' left of the centerline of right-of-way of ABC Railroad;
17. Thence continuing with said easterly right-of-way line and with the arc of a curve to the left, said curve having a delta of 01° 08' 51", a radius of 1543.45', a tangent of 15.46' and a chord of 30.91' with a chord bearing of South 10° 18' 06" West, an **arc distance of 30.91'** to a point, said point being at Station 10102+06.00, 25.57' left of the centerline of right-of-way of ABC railroad;
18. Thence **South 00° 13' 48" East 106.75'** continuing with said easterly right-of-way line of ABC railroad to Station 10103+14.56, 40.59' left of the centerline of right-of-way of ABC Railroad;
19. Thence **South 86° 25' 04" West 20.56'** continuing with said easterly right-of-way line of ABC railroad and the centerline of right-of-way of Crain Avenue (Width Varies), to Station 10103+17.88, 20.29' left of the centerline of right-of-way of ABC Railroad;
20. Thence continuing with said easterly right-of-way line and with the arc of a curve to the left, said curve having a delta of 01° 56' 05", a radius of 5716.00', a tangent of 96.52' and a chord of 193.01' with a chord bearing of South 04° 40' 18" West, an **arc distance of 193.02'** to a point, said point being at Station 10105+11.58, 20.00' left of the centerline of right-of-way of ABC railroad and the northerly right-of-way of proposed Fairchild Avenue;
21. Thence **South 03° 42' 15" West 144.95'** continuing with said easterly right-of-way line of ABC railroad and passing over the a standard highway easement (Fairchild Avenue) to Station 10106+56.53, 20.00 left of the centerline of right-of-way of ABC Railroad;
22. Thence **South 89° 53' 59" East 10.02'** continuing with said easterly right-of-way line of ABC railroad to a north line of said ABC Railroad to Station 10106+55.90, 30.00' left of the centerline of right-of-way of ABC Railroad;
23. Thence **South 03° 42' 27" West 126.31'** continuing with said easterly right-of-way line of ABC railroad to the north line of Lot 25, said north line also being the south line of Lot 30, to Station 10107+82.21, 29.99' left of the centerline of right-of-way of ABC Railroad;
24. Thence **North 89° 53' 47" West 7.01'** along said north line of Lot 25, and said the south line of Lot 30, to Station 10107+82.65, 23.00' left of the centerline of right-of-way of ABC Railroad;
25. Thence **South 03° 42' 49" West 151.74'** with said easterly right-of-way line of ABC railroad to Station 10109+34.39, 22.97' left of the centerline of right-of-way of ABC Railroad;
26. Thence **South 89° 52' 11" East 13.41'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10109+33.55, 36.35' left of the centerline of right-of-way of ABC Railroad;
27. Thence **South 03° 42' 49" West 516.05'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10114+49.60, 36.27' left of the centerline of right-of-way of ABC Railroad;
28. Thence **South 89° 43' 51" West 7.44'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10114+50.12, 28.84' left of the centerline of right-of-way of ABC Railroad;
29. Thence **South 03° 48' 12" West 40.10'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10114+90.22, 28.77' left of the centerline of right-of-way of ABC Railroad;
30. Thence **North 89° 48' 01" East 10.22'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10114+89.52, 38.97' left of the centerline of right-of-way of ABC

Railroad;

31. Thence **South 03° 37' 23" West 34.45'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10115+23.97, 39.01' left of the centerline of right-of-way of ABC Railroad;
32. Thence **North 86° 22' 37" West 10.00'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10115+23.98, 29.01' left of the centerline of right-of-way of ABC Railroad;
33. Thence **South 03° 37' 23" West 55.06'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10115+79.04, 29.09' left of the centerline of right-of-way of ABC Railroad;
34. Thence **South 04° 26' 31" West 205.97'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10117+85.00, 26.44' left of the centerline of right-of-way of ABC Railroad;
35. Thence **South 89° 53' 11" East 13.80'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10117+84.13, 40.21' left of the centerline of right-of-way of ABC Railroad;
36. Thence **South 04° 33' 23" West 176.88'** continuing with said easterly right-of-way line of said ABC Railroad to a south line of said railroad to Station 10119+59.59, 39.18' left of the centerline of right-of-way of ABC Railroad;
37. Thence **South 89° 18' 31" West 8.18'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10119+60.48, 31.05' left of the centerline of right-of-way of ABC Railroad;
38. Thence **South 00° 41' 29" East 37.00'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10119+96.68, 35.55' left of the centerline of right-of-way of ABC Railroad;
39. Thence **South 89° 18' 31" West 23.83'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10119+99.75, 11.93' left of the centerline of right-of-way of ABC Railroad;
40. Thence **South 00° 41' 29" East 24.50'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10120+23.88, 15.26' left of the centerline of right-of-way of ABC Railroad;
41. Thence **South 10° 37' 07" West 20.40'** continuing with said easterly right-of-way line of said ABC Railroad to Station 10120+44.12, 14.22' left of the centerline of right-of-way of ABC Railroad;
42. Thence **South 00° 41' 29" East 38.50'** continuing with said easterly right-of-way line of said ABC Railroad to the TRUE PLACE OF BEGINNING.

The above described parcel contains 212,993 square feet of land, which includes 4,951 square feet in the present road occupied, resulting in a net take of 208,042 square feet of land of which is contained within Portage County Auditor's Permanent Parcel Numbers 170311000001850, 17031100000280 and 179001700000021 and subject to all legal highways and easements of record. The described area contains part of a proposed standard highway easement which contains 6,040 square feet, resulting in a net take of 202,002 square feet of land of which is contained within Portage County Auditor's Permanent Parcel Numbers 170311000001850, 17031100000280 and 179001700000021.

This description was prepared by Shelley Rubish in January 2008 under the direct supervision of Charles A. Hauber, Registered Surveyor Number 8034 and is based on a field survey performed by Finkbeiner, Pettis & Strout, Inc. (now known as ARCADIS U.S., Inc.) in 2004 under the direction and supervision of Michael E. Durbin, Registered Surveyor Number 7528.

Bearings in this description are based on the Ohio Coordinate System, NAD83(86), North Zone.

The stations referred to herein are from the centerline of right-of-way of ABC Railroad as found on the City of Kent Right-of-Way Plan POR-CRAIN AVENUE.

Iron pins set in the above description are 5/8 inch diameter by 30 inch long rebars with a plastic cap stamped "HAUBER 8034" or a drill hole set depending upon the nature of the material that is present at each corner after construction.

It is understood the area of land above described contains 202,002 square feet, more or less.

Grantor claims title by instrument(s) of record in Deed 1169, Page 708 of the records of Portage County.

This instrument prepared by ARCADIS G & M of Ohio, Inc. for the City of Kent, Ohio.

SECTION 2. That the City Manager be and he is hereby authorized and directed to cause written notice of the adoption of this Resolution to be given to each owner, person in possession, or person having an interest of record in the above-described parcel. This notice shall be served by the City Manager, or by a person designated by him for that purpose, by personally handing a copy of this notice to this owner or person or his authorized agent, or by leaving a copy thereof at the usual place of residence of this owner or person or if this owner, person or agent cannot be found, by publication once a week for three (3) consecutive weeks in an English newspaper of general circulation in the City of Kent. A return of service shall be made in the manner provided by law.

SECTION 3 That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this resolution is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: _____
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2009-16 was duly enacted this 21st day of
January, 2009, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL