

RESOLUTION NO. 2009-17

A RESOLUTION DECLARING THE NECESSITY AND INTENT OF THE CITY OF KENT TO APPROPRIATE A PERPETUAL EASEMENT IN 6,040 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 perpetual easement in 6,040 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-SHV

Situated in the City of Kent, County of Portage and State of Ohio, being part of Lot 30 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 N. Water Street (80 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 G & M of Ohio, 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 3/8" iron pin in a monument box found at the intersection of the westerly line of Original Lot 31 and the centerline of right-of-way of Lake Street (60 feet) at Station 60+27.16 on the centerline of right-of-way of Lake Street, also being Station 60+58.51, 10.00' left of the centerline of right-of-way of N. Water Street and Station 10102+90.73, 80.12' left of the centerline of right-of-way of ABC Railroad;

Thence **South 00° 13' 42" East 357.74'** along the westerly line of Original Lot 31, parallel with and 10.00' from the centerline of right-of-way of N. Water Street (passing over a bolt found 8.25' from said 3/8" iron pin) to Station 10106+50.78, 108.55' left of the centerline of right-of-way of ABC Railroad;

Thence **South 89° 46' 18" West 30.00'** perpendicular from the centerline of right-of-way line of N. Water Street to the northeast corner of a parcel of land now or formerly owned by Larry R. Wright and Mary B. Wright recorded in Instrument Number 200110003, at Station 10106+52.84, 78.62' left of the centerline of right-of-way of ABC Railroad;

Thence **North 89° 53' 59" West 56.74'** to the easterly right-of-way of said ABC Railroad, at Station 10106+56.53, 20.00' left of the centerline of right-of-way of ABC Railroad;

Thence **North 03° 42' 15" East 56.79'** along said easterly right-of-way of said ABC Railroad, to an iron pin set at Station 10105+99.75, 20.00' left of the centerline of right-of-way of ABC Railroad, said iron pin also being the TRUE PLACE OF BEGINNING of the highway easement herein described:

1. Thence **North 71° 12' 28" West 65.59'** to the westerly right-of-way line of said ABC Railroad, also being the easterly right-of-way line of CSXT Railroad, at Station 10105+82.66, 43.33' right of the centerline of right-of-way of ABC Railroad;
2. Thence **North 02° 21' 13" East 59.59'** along said westerly right-of-way line of ABC Railroad, and along said easterly right-of-way line of CSXT Railroad, at Station 10105+11.58, 44.73' right of the centerline of right-of-way of ABC Railroad;
3. Thence along said easterly right-of-way of CSXT Railroad, and along said westerly right-of-way line of ABC Railroad, along the arc of a curve to the right, said curve having a delta of 01° 14' 31", a radius of 1607.00', a tangent of 17.42' and a chord of 34.83' with a chord bearing of North 00° 38' 22" West, an **arc distance of 34.83'** to Station 10104+88.42, 47.38' right of the centerline of right-of-way of ABC Railroad;
4. Thence **South 71° 12' 28" East 69.78'** to the easterly right-of-way of said ABC Railroad, at Station 10105+06.53, 20.00' left of the centerline of right-of-way of ABC Railroad;
5. Thence along said easterly right-of-way of ABC Railroad, along the arc of a curve to the left, said curve having a delta of 00° 03' 02", a radius of 5716.00', a tangent of 2.53' and a chord of 5.05' with a chord bearing of South 03° 43' 46" East, an **arc distance of 5.05'** to Station 10105+11.58, 20.00' left of the centerline of right-of-way of ABC Railroad;
6. Thence **South 03° 42' 15" West 88.16'** to the TRUE PLACE OF BEGINNING.

The above described parcel contains 6,040 square feet of land, which includes 0 square feet in the present road occupied, resulting in a net take of 6,040 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.

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 G & M of Ohio, 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 6,040 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: 1/21/09
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2009-17 was duly enacted this 21st day of
January, 2009, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL