

RESOLUTION NO. 118-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE
4th DAY OF November, 2024.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH BRANDON MOSHER AND DANIELLE MOSHER FOR THE PROPERTY AT 143 EAST FRANKLIN STREET.

WHEREAS, Brandon Mosher and Danielle Mosher own a property located at 143 East Franklin Street, Centerville, Ohio and further described in Exhibit "1", attached hereto (the "Property"); and

WHEREAS, the City of Centerville is proceeding with improvements to Cemetery Drive (the "Project") which requires temporary access to and upon the Property; and

WHEREAS, Brandon Mosher and Danielle Mosher are willing to grant such entry to the Property to assist the City in completing the Project.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to execute the Right of Entry Agreement with Brandon Mosher and Danielle Mosher. A Copy of the Agreement is attached and marked Exhibit "1" and incorporated herein.

Section 2. That the city Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement

Section 3. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 4th day of November, 2024.



Mayor of the City of Centerville, Ohio

ATTEST:


Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 118-24, passed by the Council of the City of Centerville, Ohio, on the 4th day of November, 2024.


Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this "Agreement") is made this ____ day of _____, 2024, between BRANDON MOSHER AND DANIELLE MOSHER, Centerville Residents ("Mosher"), whose address is 143 East Franklin Street, Centerville, Ohio 45458, and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45459, under the following circumstances:

A. Mosher owns the property at 143 East Franklin Street in Centerville, Ohio and further described in Exhibit "A", attached hereto (hereinafter referred to as the "Property").

B. The City is performing a project to make improvements to Cemetery Drive which is adjacent to the Property, which improvements will be partially within the existing right of way and partially within the existing utility easement (hereinafter referred to as the "Project").

C. The City will be under contract with a construction contractor and subcontractors to complete the Project.

D. It is necessary for the contractor and subcontractors to access the Property in order to perform the Project, in the area more particularly depicted in Exhibit "B".

E. Mosher shall grant to the City a right of entry onto the Property for the purpose of access for construction of the Project and other activities, as set forth below.

NOW, THEREFORE, Mosher and the City agree as follows:

1. Consideration. Mosher acknowledges and agrees that the City will make no payments to Mosher pursuant to this Agreement. Mosher acknowledges and agrees that the grant of the right of the entry by Mosher to the City which will allow the City to construct the Project is complete and sufficient consideration for the covenants and agreements of Mosher in this Agreement, subject to other terms set forth herein.

2. Right of Entry. Mosher hereby grants to the City and its contractors and subcontractors the right to enter onto the Property for all purposes related generally to construction of the Project.

3. Construction Requirements. During construction of the Project, the following terms and conditions shall apply:

(a) Unless otherwise mutually agreed, construction of the Project will only occur between the hours of 7:00 AM and 7:00 PM, Monday through Saturday.

(b) Any damage to the Property caused by construction work directly related to the Project will be restored to a condition that reasonably meets or exceeds the condition of the Property at the beginning of the Project. Turf areas damaged by the project will be restored with a seed mix that meets the City's specification. Mosher will be responsible for watering and protecting the seeded area after completion of the Project.

(c) It is necessary for bushes to be removed on the Property as part of the Project, the City shall reimburse Mosher two hundred dollars (\$200.00) for the removal of the bushes. Mosher will be responsible for purchasing, planting, and maintaining all replacement bushes.

(d) It is necessary for two trees and the driveway access onto East Franklin Street to be removed on the Property as part of the Project. The driveway access onto Cemetery Drive will be relocated and replaced.

(e) The City will provide Mosher notice of the Project start date at least two-weeks before work commences.

4. Compliance with Laws. The City will adhere and will require by contract that all contractors and subcontractors on the Property adhere to all applicable federal, state and local laws and regulations at all times during the construction.

5. Term. The term of this Agreement shall commence upon execution of this Agreement and will expire on the date of completion of the Project as determined by the City.

6. Miscellaneous

(a) Governing Law. This Agreement shall be governed and enforced in accordance with the law of the State of Ohio.

(b) Execution of Instruments. The parties to this Agreement shall execute (and, if necessary, acknowledge) and deliver any and all documents and papers and take all such further action as may be necessary or desirable to carry out and effectuate the full purpose and intent of this Agreement.

(c) Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

(d) Exhibits. All exhibits, schedules and any other documents attached to this Agreement are incorporated into this Agreement by this reference and shall be deemed a part of this Agreement as if set forth in full in this Agreement. References to “this Agreement” and words of similar import refer to this Agreement (including all Exhibits and schedules to this Agreement) as an entirety.

(e) Waiver. The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions. No waiver by any party of any condition, or breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

(f) Nontransferability of Agreement. The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed in any manner by any party without the prior, written consent of all other parties to this Agreement.

(g) Benefit. Subject to the restrictions contained in this Agreement with respect to transfer, assignment and conveyance, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

(h) Entire Agreement. This Agreement (including the exhibits attached to this Agreement), and the other documents referred to in this Agreement or delivered pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement.

(i) Amendment. This Agreement may be amended at any time by the joint act of the parties to this Agreement; provided, however, that no amendment shall be valid unless the amendment is in writing and signed by all parties to this Agreement.

(j) Headings. The headings used in this Agreement are for convenience only and this Agreement shall be interpreted as if such headings were omitted.

(k) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement. No new counterparts shall be valid unless the counterpart has been approved in writing and signed by all parties to this Agreement.

7. Signatures. This Agreement is effective as of the Effective Date which reflects the date last signed by the parties. This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally scanned signatures are acceptable to evidence complete agreement.

THE CITY:

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

MOSHER:

By: Wayne S. Davis
Its: City Manager

Date: _____

By: Brandon Mosher
Its: Owner

Date: _____

By: Danielle Mosher
Its: Owner

Date: _____

APPROVED AS TO FORM:

Scott A. Liberman
Municipal Attorney

EXHIBIT A
Property Deed

SURVIVORSHIP DEED

KNOW ALL MEN BY THESE PRESENTS:

Jarrold M. Calhoun and Rebekah J. Calhoun, Husband and Wife, of Montgomery County, State of Ohio, for valuable consideration paid, GRANT(S), with General Warranty Covenants, to Brandon Mosher and Danielle Mosher, Husband and Wife, for their joint lives, remainder to the survivor of them, his or her heirs and assigns, whose tax mailing address is: 143 E. Franklin Street, Centerville, OH 45459, the following REAL PROPERTY:

Situate in the City of Centerville, County of Montgomery, State of Ohio and being Lot Numbered One Hundred Eleven (111) of the revised Plat of said City of Centerville, Ohio formerly known as Lot 31 of Weidner's Addition to the City of Centerville, as recorded in Plat Book "X", Page(s) 1, of the Plat Records of Montgomery County, Ohio. Subject to all restrictions, conditions and covenants and to all legal highways and easements of record.

Property Address: 143 East Franklin Street, Centerville, Ohio 45459
Parcel I.D.: 068001040031

EXCEPTING taxes and assessments due and payable this date and thereafter, which said taxes and assessments the Grantees herein as part of the consideration hereof assume and agree to pay.

Prior Instrument Ref.: File No. 2019-00006338 of the Deed Records of Montgomery County, Ohio.

Grantors releases all rights of dower therein.

EXECUTED this May 16, 2022.

Jarrold M. Calhoun
Jarrod M. Calhoun

Rebekah J. Calhoun
Rebekah J. Calhoun

STATE OF OHIO, COUNTY OF Montgomery :

BEFORE ME, the undersigned authority, a Notary Public in and for said State and County, personally appeared the above-named GRANTORS, Jarrod M. Calhoun and Rebekah J. Calhoun, Husband and Wife, who represented to me to be said persons and who signed the foregoing instrument and acknowledged the same to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on this May 16, 2022.

David R. Miles
Notary Public - State of Ohio

This Instrument Prepared By: David R. Miles, Attorney at Law
1160 East Dayton-Yellow Springs Road
Fairborn, Ohio 45324



JULIE L CARROLL
Notary Public, State of Ohio
My Commission Expires March 27, 2025

Box - ORET

EXHIBIT B
Project Area

