

TEMPORARY ORDINANCE NO. 18-18

PERMANENT ORDINANCE NO. 13-18

AN ORDINANCE TO APPROVE AN EASEMENT FOR FAIRFIELD HOMES, INC.

WHEREAS, the City has the responsibility to manage and preserve the right-of-way for all users; and

WHEREAS, the City is attempting to address encroachments on the right-of-way with a consistent approach; and

WHEREAS, the encroachment of the former Lancaster City School's East School building, now FAIRFIELD HOMES, INC. East School Apartments, onto Oakwood Street occurred approximately seventy-nine (79) years ago and no evidence of failure to obtain building permits has been found;

BE IT ORDAINED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO.

SECTION 1. That due to the encroachment described in Exhibit A as occurring accidentally when the former East School was built and being in existence for approximately seventy-nine (79) years now, the City hereby grants the Easement attached as Exhibit 1, which includes referenced Exhibits A and B, to continue the encroachment, while retaining public and private utility easements to be executed by the Service-Safety Director.

SECTION 2. The Easement in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City and which has been tentatively approved by the Service-Safety Director. The Service-Safety Director for and in the name of the City, is hereby authorized to execute the Final Easement in this matter, provided further that the approval of changes thereto by the Service-Safety Director, and their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Service-Safety Director for and in the name of the City, to execute any amendments or changes to the Final Easement, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 9/24/18 after 1st reading. Vote: Yeas 8 Nays 0

Approved: 9/24/18

Clerk: Jessica Lee Sandy

Offered by: Cory Schoonover

Second by: Melody L. Bobbitt
Requested by Public Works Committee

David C. Cree
President of Council
David L. Scheffler
Mayor



Encroachment Easement

The City of Lancaster, a Municipal Corporation of the State of Ohio ("Grantor"), in consideration of \$1.00 received from Fairfield Homes, Inc. ("Grantee"), whose tax mailing address is 603 West Wheeling Street, Lancaster, OH 43130, does hereby grant, sell, and convey unto Grantee, Grantee's successors and assigns, an easement to build and maintain an encroachment on, under, and across the real property of Grantor described in Exhibit "A" and platted in Exhibit "B" together with the right to make all lawful uses of the encroaching structure.

This easement is granted subject to the following term and conditions:

1. Purpose: Grantee, by its acceptance of this easement, agrees to use it for the exclusive purpose of maintaining a building within the 0.009 acre easement area described in Exhibit "A" and platted in Exhibit "B" attached hereto.
2. Other Consistent Uses: Grantor reserves the right to use the easement area for any purpose not inconsistent with rights granted by this easement.
3. Utility Easements: Grantor reserves a perpetual, non-exclusive easement for general utility purposes on, over, across, and under Grantor's real property described in Exhibit "A" and platted in Exhibit "B" that may be necessary for the supply of gas, water, electrical power, sewage and waste disposal, drainage, telephone, communications, cable television, or other utilities; however, any utility installation under Grantee's structure shall be performed in such a manner as to insure the structural integrity of Grantee's building.
4. Indemnification: Grantee, by its acceptance of this easement, shall indemnify, defend, and hold Grantor harmless against any claims, damages, losses, or expenses arising as a result of Grantee's exercise of the rights granted by this easement.
5. Construction, Maintenance, and Restoration of Property: Grantee shall be responsible for the entire cost of construction of said encroaching building and for the maintenance, repair, or replacement thereof. On the completion of any construction, maintenance, repair, or replacement, Grantee shall replace and restore all dirt, grass, gravel, or pavement that may have been removed or damaged to the condition it was prior to the construction, maintenance, repair, or replacement.
6. Building Restriction: No other buildings or structures shall be constructed in the easement area by Grantor or Grantee besides the currently existing building.
7. Perpetuity: This easement shall be perpetual and will continue to exist if the contemplated building encroachment no longer continues for any reason, including, but not limited to the demolition or destruction of the encroaching structure by fire or otherwise; so long as the then existing owner of the property makes diligent efforts to restore and reconstruct the building on its original location within a reasonable period of time after said demolition or destruction.

8. Title: Grantor hereby warrants that Grantor has full power and authority to grant this easement and has a good and indefeasible fee simple title to the above described easement premises, subject, however, to (a) all legal highways, (b) easements, covenants, and restrictions of record, (c) real estate taxes and assessments not yet due and payable, and (d) zoning, building, and other applicable laws, codes, and regulations.
9. Modification or Termination: This agreement may not be changed, terminated, or modified orally or in any manner other than by agreement in writing signed by the parties hereto.
10. Original: This agreement may be executed in counter parts, each of which when executed by the parties hereto shall be deemed an original when all of which together shall be deemed an original and all of which together shall be deemed the same agreement.
11. Applicable Law: This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

NOW, THEREFORE, the parties hereto have caused this instrument to be executed this _____ day of _____, 2018.

GRANTOR:

The City of Lancaster, Ohio

By: _____

Paul Martin, Service Safety Director

GRANTEE:

Fairfield Homes, Inc.

By: _____

Jennifer L. Walters, President

State of Ohio, County of Fairfield, ss:

I HEREBY CERTIFY on this _____ day of _____, 2018, before me, the undersigned, a Notary Public for the State and County aforesaid, personally appeared Paul Martin, who acknowledged himself to be the Service Safety Director for the City of Lancaster, and as such, being authorized to do so, executed the foregoing instrument as his own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

State of Ohio, County of Fairfield, ss:

I HEREBY CERTIFY on this _____ day of _____, 2018, before me, the undersigned, a Notary Public for the State and County aforesaid, personally appeared Jennifer L. Walters, who acknowledged herself to be the President of Fairfield Homes, Inc., and as such, being authorized to do so, executed the foregoing instrument as her own free act and deed and as the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

This instrument prepared by: Bryan M. Everitt, Attorney for Seller
Dagger, Johnston, Miller, Ogilvie & Hampson, LLP
144 East Main Street, Lancaster, Ohio 43130



**Legal Description
City of Lancaster, Fairfield County, Ohio
Section 6, Township 14N, Range 18W
Easement – 0.009 Acres**

Situated in the City of Lancaster, County of Fairfield, and State of Ohio and in the Congress Lands East of the Scioto River Section 6, Township 14, Range 18 being more particularly bounded and described as follows:

Being located on a parcel described as Tract 2 in Official Record 1746, Page 585, in the Fairfield County Recorder's Office;

Beginning for reference at a $\frac{3}{4}$ " Pipe Found at the north east corner of said Tract 2, being in the south line of Mulberry Street, also being the north east corner of a 35 foot strip of land known as Oakwood Avenue described in Ordinance Numbers 1945 and 1963;

Thence with the south line of Mulberry street and the north line of said Tract 2 and said 35 foot strip of land S89°48'52"W 35.00 feet to a point at the north west corner of said 35 foot strip of land;

Thence through said Tract 2, following the west line of said 35 foot strip of land S00°09'22"W 132.71 feet to a point, being the **TRUE POINT OF BEGINNING**;

Thence on a line through said Tract 2 and said 35 foot strip of land the following three calls:

S89°50'38"E 4.00 feet to a point;

S00°09'22"W 96.00 feet to a point;

N89°50'38"W 4.00 feet to a point in the west line of said 35 foot strip of land;

Thence continuing on a line through said Tract and with the west line of said 35 foot strip of land N00°09'22"E 96.00 feet to the **TRUE POINT OF BEGINNING**;

Containing 0.009 acres, more or less;

Subject to all existing rights-of-way and easements of record.

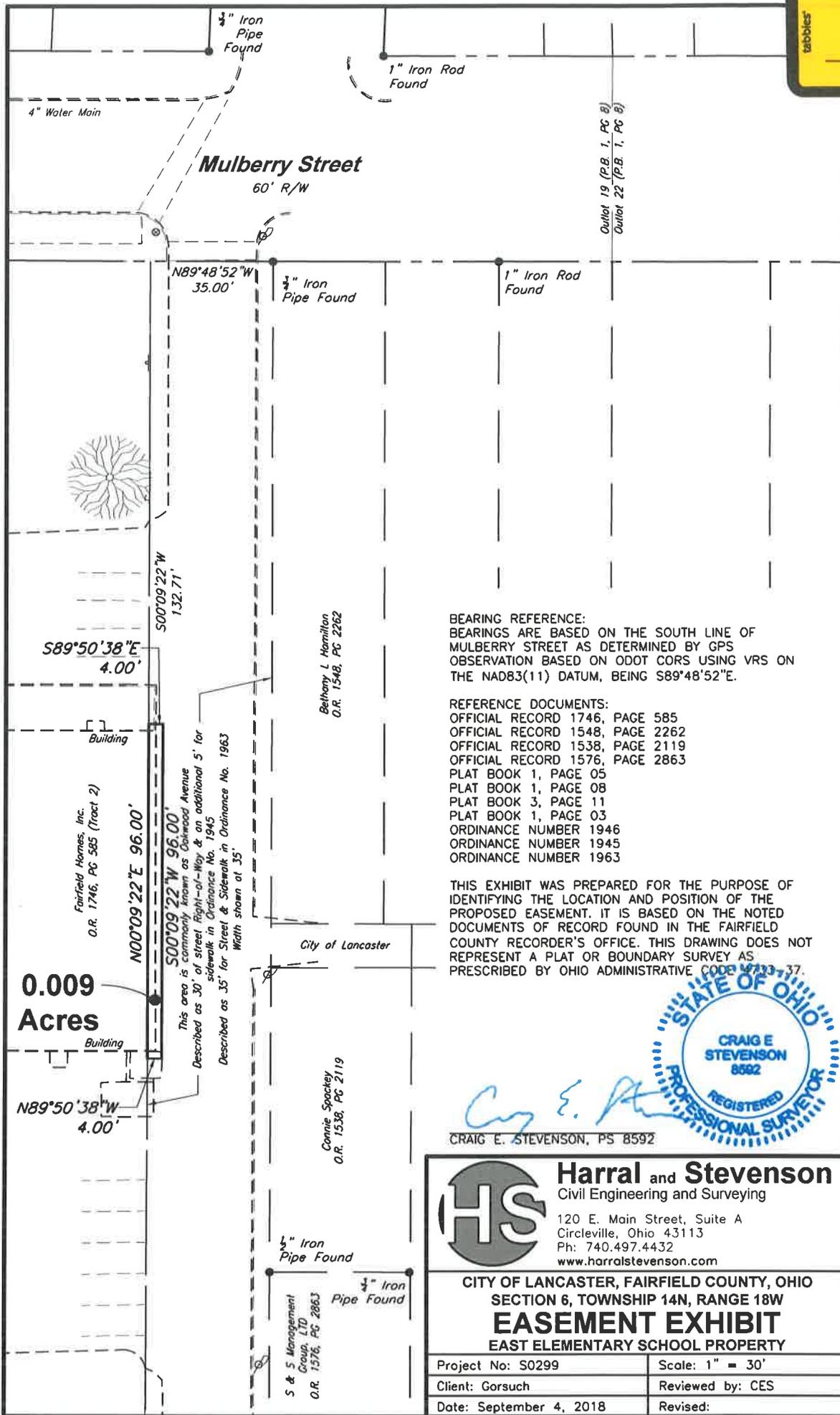
Bearings are based on the south line of Mulberry Street as determined by GPS observation based on ODOT CORS using VRS on the NAD83(11) datum, being S89°48'52"E.

This description was prepared for the purpose of identifying the location and position of the proposed easement. It is based on the noted documents of record found in the Fairfield County Recorder's Office. This description does not represent a boundary survey as prescribed by Ohio Administrative Code 4733-37.


Craig E. Stevenson P.S. 8592
Harral and Stevenson



September 4, 2018
Date



BEARING REFERENCE:
 BEARINGS ARE BASED ON THE SOUTH LINE OF
 MULBERRY STREET AS DETERMINED BY GPS
 OBSERVATION BASED ON ODOT CORS USING VRS ON
 THE NAD83(11) DATUM, BEING S89°48'52"E.

REFERENCE DOCUMENTS:
 OFFICIAL RECORD 1746, PAGE 585
 OFFICIAL RECORD 1548, PAGE 2262
 OFFICIAL RECORD 1538, PAGE 2119
 OFFICIAL RECORD 1576, PAGE 2863
 PLAT BOOK 1, PAGE 05
 PLAT BOOK 1, PAGE 08
 PLAT BOOK 3, PAGE 11
 PLAT BOOK 1, PAGE 03
 ORDINANCE NUMBER 1946
 ORDINANCE NUMBER 1945
 ORDINANCE NUMBER 1963

THIS EXHIBIT WAS PREPARED FOR THE PURPOSE OF
 IDENTIFYING THE LOCATION AND POSITION OF THE
 PROPOSED EASEMENT. IT IS BASED ON THE NOTED
 DOCUMENTS OF RECORD FOUND IN THE FAIRFIELD
 COUNTY RECORDER'S OFFICE. THIS DRAWING DOES NOT
 REPRESENT A PLAT OR BOUNDARY SURVEY AS
 PRESCRIBED BY OHIO ADMINISTRATIVE CODE 15713-37.



CRAIG E. STEVENSON, PS 8592

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CITY OF LANCASTER, FAIRFIELD COUNTY, OHIO
 SECTION 6, TOWNSHIP 14N, RANGE 18W
EASEMENT EXHIBIT
 EAST ELEMENTARY SCHOOL PROPERTY

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|-------------------------|------------------|
| Project No: S0299 | Scale: 1" = 30' |
| Client: Gorsuch | Reviewed by: CES |
| Date: September 4, 2018 | Revised: |