

## **RESOLUTION NO. 49-2021**

Introduced by Sam Artino

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONDITIONAL VACATION AGREEMENT WITH STEPHEN A. WEST, JULIE A. WEST AND MEGAN C. WEST PURSUANT TO THEIR PETITION TO THE CITY OF HURON REQUESTING VACATION OF A PORTION OF KIRKWOOD ROAD.**

**WHEREAS**, Stephen A. West, Julie A. West and Megan C. West submitted a petition to the City of Huron requesting vacation of the portion of Kirkwood Road immediately adjacent to their properties identified in the records of the Erie County, Ohio Auditor as Permanent Parcel Numbers 45-00487.000, 45-00488.000, 45-00489.000, 45-00181.001 and 45-00181.000 on June 15, 2021; and

**WHEREAS**, at their regular meeting of June 22, 2021, the Huron City Council referred the matter to the Planning Commission for review and recommendation and scheduled the Public Hearing on the petition for July 27, 2021 at 6:30pm; and

**WHEREAS**, the Planning Commission considered the petition request at its regularly scheduled meeting on June 23, 2021, and recommended to City Council that the vacation of Kirkwood Road be approved as submitted; and

**WHEREAS**, the Huron City Council held a Public Hearing on the petition on July 27, 2021, and accepted the petition as submitted subject to Council's final approval of the requested vacation by Ordinance; and

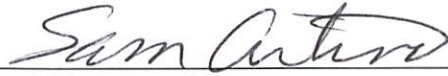
**WHEREAS**, in order to memorialize the terms of the transaction, a Conditional Vacation Agreement has been agreed to by the parties.

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

**SECTION 1.** That the City Manager be, and he hereby is, authorized and directed to enter into a Conditional Vacation Agreement with Stephen A. West, Julie A. West and Megan C. West relating to their petition requesting vacation of a portion of Kirkwood Road, which agreement shall be in substantially the form of Exhibit "A" attached hereto and made part hereof.

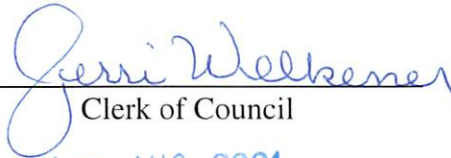
**SECTION 2.** That this Council finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and its committees, if any, which resulted in formal actions, were taken in meetings open to the public in full compliance with the law, including Section 121.22 of the Revised Code.

**SECTION 3.** That this Resolution shall go into effect and be in full force and effect from and after the earliest date allowed by law.



Sam Artino, Mayor

ATTEST:

  
Clerk of Council

ADOPTED:

10 AUG 2021



## **CONDITIONAL VACATION AGREEMENT**

*(Kirkwood Road, Huron, Ohio)*

THIS CONDITIONAL VACATION AGREEMENT (this "Agreement"), made and entered into, by and among **The City of Huron, Ohio**, an Ohio municipal corporation (herein called "City"), and **Stephen A. West, Julie A. West and Megan C. West** (which with their respective heirs, legal and estate representatives are herein collectively referred to as "Residents"), is to EVIDENCE THAT:

### **RECITALS:**

WHEREAS Kirkwood Road became a dedicated road in the City pursuant to a certain plat for the Grand Forest Beach Allotment dated August 24, 1922 and recorded with the Erie County Recorder's Office on September 19, 1922 as Volume 8, Pages 15 and 16 of the Plat Records of Erie County (the "Dedication Plat");

WHEREAS the Residents have collectively executed a Petition ("Petition") in accordance with Ohio Revised Code §723.04, et. seq. requesting that the City vacate a portion of Kirkwood Road in the City;

WHEREAS the Residents own the fee simple interest in the real estate adjacent and contiguous to Kirkwood Road as follows:

1. Stephen A. West and Julie A. West are the joint owners of Erie County Permanent Parcel No. 45-00487.000, commonly known as Kirkwood, Huron, Ohio 44839, the legal description for which is attached hereto as Exhibit A-1;
2. Stephen A. West and Julie A. West are the joint owners of Erie County Permanent Parcel No. 45-00488.000, commonly known as Kirkwood, Huron, Ohio 44839, the legal description for which is attached hereto as Exhibit A-1;
3. Stephen A. West and Julie A. West are the joint owners of Erie County Permanent Parcel No. 45-00181.000, commonly known as 315 Laurel, Huron, Ohio 44839, the legal description for which is attached hereto as Exhibit A-1;
4. Stephen A. West and Julie A. West are the joint owners of Erie County Permanent Parcel No. 45-00489-000, commonly known as Kirkwood, Huron, Ohio 44839, the legal description for which is attached hereto as Exhibit A-1; and
5. Megan C. West is the owner of Erie County Permanent Parcel No. 45-00181.001, commonly known as 319 Laurel, Huron, Ohio 44839, the legal description for which is attached hereto as Exhibit A-1.

WHEREAS, the parties desire to enter into this Agreement, which conditions any proposed vacation on the approval of the City in accordance with the Ohio Revised Code as set forth Section 7 hereof.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals/Defined Terms. The RECITALS set forth above are expressly incorporated into, and made a part of, this Agreement as if fully rewritten herein.

2. Proposed Vacation. The schematic attached hereto Exhibit B-1 (attached hereto and incorporated herein by reference) shows the **current ownership** of the Resident's lands in relationship to Kirkwood Road. The schematic attached hereto Exhibit B-2 (attached hereto and incorporated herein by reference) shows the **proposed ownership of the Residents lands in relationship to the proposed vacation of Kirkwood Road**. The schematic attached hereto Exhibit B-3 (attached hereto and incorporated herein by reference) shows the **proposed ownership of the Residents lands in relationship to the proposed vacation of Kirkwood Road post-split and consolidation** as may be approved by the City and Erie County.

3. Material Terms. Subject to the terms and conditions of Section 7 of this Agreement, the parties hereto agree as follows:

- (a) The Residents acknowledge and agree that, pursuant to §1121.05(f) of the Codified Ordinances of the City ("Ordinances"), that the current zoning district adjoining the side of such public way shall be extended automatically, depending on the side or side to which such lands revert, to include the right of way that vacated, and such lands shall be subject to our regulations of the extended district or districts.
- (b) The Residents acknowledge and agree that to the extent the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any railroad or public utility, whether owned privately or by any governmental authority, located on, over, or under the portion of lands affected by such vacation, is not required for purposes of the City, any affected public utility shall be deemed to have a permanent easement in such vacated portion or excess portion of such street, alley, or highway for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities.
- (c) The Residents acknowledge and agree that, in general, when a city vacates a street or public alley, the land which the street or alley was on passes in equal halves to the adjacent lot owners, subject to such rights as other owners may have as a means of access to their properties. The parties hereto expressly stipulate to the vacated lands passing in equal halves to the adjacent lot owners. Therefore, subject to the provisions of Section 7 hereof, upon vacation of the relevant lands by the City, abutting lot owners, as to that portion of the alley abutting their properties, shall be vested with a fee simple interest in ½ of the width of the strip of land which formerly comprise the dedicated road subject, however, to those rights that other owners may have in the alley as a necessary means of access to their properties (if any).
- (d) The Residents acknowledge and agree that this Agreement shall serve as each particular Resident's written consent to such proposed vacation pursuant to Ohio Revised Code §723.06 (such that published notice of same shall not be required pursuant to Ohio Revised Code §723.07).
- (e) To the extent the City elects to approve the proposed vacation (subject to the provisions of Section 7 hereof), the vacation of Kirkwood Road, which has been dedicated to public use, shall, to the extent to which it is vacated, operate as a revocation of the acceptance thereof by the City, but the right of way and easement therein of any lot owner shall not be impaired by such City action.

- (f) The costs associated with all engineering and surveying, and preparation of all schematics, drawings, lot split and consolidation plat(s), and vacation plat shall be borne by Residents.
- (g) The costs associated with all title work, if desired by one or more of the Residents, including title searches and Commitment fees, costs of title premiums, conveyance fees (if any), and recordation costs shall be borne by the Residents. For avoidance of doubt, the City has not performed title work save and excepting obtaining the last deeds of record for each of the parcels referenced in this Agreement, and the City has not performed any title, lien, mortgage, dockets or other title-related searches, any and all of which may be undertaken by the Resident's as they may choose.
- (h) The Residents acknowledge that it is each of the Residents sole and exclusive obligation and responsibility to provide written notice of the impending vacation to any lienholder(s), mortgagee(s), or other parties that have any interest in the respective Resident's properties of the impending vacation, which vacation will result in a change to the current legal description of all of the Residents lands post-vacation.
- (i) The Residents acknowledge and agree that they will be accepting the lands status post-vacation in their current "**AS IS, WHERE IS, WITH ALL FAULTS**" condition without any oral, written, express, or implied representations, warranties or guarantees by the City as to the quality or physical or environmental condition of the land(s) being vacated, and the City shall provide ample time for any one or more of the Residents to inspect the land(s) to be vacated to ensure the Resident(s) receiving a portion of the vacated lands are satisfied with same.
- (j) The Residents acknowledge and agree that no remuneration or other financial consideration is being paid by any party to the Agreement to or from any other party to same, and no additional consideration is required of any party hereto other than the mutual promises being made herein (the sufficiency of which is acknowledged by all parties hereto).

The City shall determine what public utilities, public infrastructure, and physical improvements require modification, removal, elimination, or other attention, if any, and whether one or more easements, conditions or reservations are to be reserved for by the City for public purposes. The City, at its sole cost and expense, shall bear all costs associated with infrastructure changes and preparation of one or more easements, conditions or reservations that may be required by the City.

4. Duration. This Agreement shall "run with the land" and the rights granted herein shall continue in full force and effect in perpetuity for all purposes not inconsistent with the purposes of this Agreement.

5. Cost of Modification to Improvements. The cost of any maintenance, repair and/or replacement of the physical, non-natural improvements to the lands to be vacated, and/or modification, removal, elimination, or other attention to any and all non-natural improvements thereon or to be constructed thereon, as determined by the City in the City's sole and absolute discretion, shall be at Resident's sole cost and expense.

6. Assignment. No party may assign its rights under this Agreement to any other person or party without the consent of all other parties.

7. Conditions Precedent. This Agreement, and the obligation(s) and performance of the parties relating to the proposed vacation as requested by the Residents, is expressly conditioned upon:

- (a) the Council of the City determining, after public hearing and after determining there is good cause for such vacation, and that the proposed vacation will not be detrimental to the general interest, if at all, in accordance with Ohio Revised Code §723.04. For avoidance of doubt, in the event the City determines after public hearing that there is insufficient good cause to permit the vacation, or if the City determines that the proposed vacation will be detrimental to the general interest, and thereby fails to pass an Ordinance permitting the vacation, then this Agreement shall automatically terminate and be of no further force or effect whatsoever;
- (b) the City Engineering inspecting Kirkwood Drive to determine what public utilities, public infrastructure, and physical improvements require modification, removal, elimination, or other attention, if any, and whether one or more easements, conditions or reservations are to be reserved for by the City for public purposes, and the City being amenable to infrastructure changes, if any, both substantively and the estimated and actual costs relating to same;
- (c) the City determining, by and through a title company of the City's choosing, that the vacated lands may will qualify for title insurance (if elected by one or more of the Residents) that the streets and alleys in Section D of the Dedication Plat that are stated to be "dedicated to public use forever" may be insured post-vacation; and
- (d) that, upon completion of the vacation by Ordinance and after public hearing as required by Ohio law, the original Ordinance shall be recorded in the official records of the Erie County Recorder.


8. Miscellaneous. The City, on behalf of itself and its successors and assigns, represents, covenants and warrants that the title of the lands to be vacated are held by the City in fee simple except for taxes and assessments which are a lien but not yet due and payable, zoning restrictions and easements and restrictions of record. This Agreement and the easements (if any) and rights granted hereunder are and shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns and the same shall run with the land

IN WITNESS WHEREOF, City and Residents have hereunto set their hands to this Agreement to be effective as of the date set forth below.

THE CITY OF HURON

By:   
Matthew Lasko, City Manager

Date: 8/11/2021

  
Stephen A. West

  
Julie A. West

  
Megan C. West

Date: 1/10/22

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STATE OF OHIO )  
 ) SS:  
COUNTY OF ERIE )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named City of Huron, Ohio, by and through Matthew Lasko, its City Manager, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and the free act and deed of said municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Huron, Ohio, this 11<sup>th</sup> day of August, 2021.

Terri Welkener  
Notary Public



TERRI S. WELKENER  
Notary Public, State of Ohio  
My commission expires July 30, 2024

STATE OF OHIO )  
 ) SS:  
COUNTY OF Erie )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Stephen A. West and Julie A. West, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Huron, Ohio, this 10<sup>th</sup> day of January, 2021. 2022

Terri Welkener  
Notary Public



TERRI S. WELKENER  
Notary Public, State of Ohio  
My commission expires July 30, 2024

STATE OF OHIO )  
 ) SS:  
COUNTY OF Erie )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Megan C. West, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Huron, Ohio, this 10<sup>th</sup> day of January, 2021. 2022

Terri Welkener  
Notary Public



TERRI S. WELKENER  
Notary Public, State of Ohio  
My commission expires July 30, 2024

This Instrument Prepared By:  
Todd A. Schrader, Esq.  
Seeley, Savidge, Ebert & Gourash  
26600 Detroit Road - Suite 300  
Westlake, Ohio 44145  
216-535-4517

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**EXHIBIT A-1**

**Permanent Parcel No. 45-00487.000**

Being Sub-lots 713 and 714 on Kirkwood Road in the Grand Forest Beach Allotment as shown by the recorded plat in Volume 8 of Maps, Pages 15 and 16 Erie County, Ohio Records.



**EXHIBIT A-2**

**Permanent Parcel No. 45-00488.000**

Being Sub-lot 715 on Kirkwood Road in the Grand Forest Beach Allotment as shown by the recorded plat in Volume 8 of Maps, Pages 15 and 16 Erie County, Ohio Records.

**EXHIBIT A-3**

**Permanent Parcel No. 45-00489.000**

Being Sub-lot 716 on Kirkwood Road in the Grand Forest Beach Allotment as shown by the recorded plat in Volume 8 of Maps, Pages 15 and 16 Erie County, Ohio Records.

#### **EXHIBIT A-4**

##### **Permanent Parcel No. 45-00181.000**

Being situated in the State of Ohio, County of Erie, City of Huron, Grand Forest Beach Allotment (PV 8 PG 15) Lots 721, 737 & 738 and Part Lots 720 & 722 and being more definitely described as follows:

Beginning at a point marking the Southeast corner of Lot 738 in said Grand Forest Beach Allotment;

- (1) Thence South 89°43'00" West a distance of 190.00 feet to a point on the West line of Lot 720, the same being the East right-of-way line of Kirkwood Road (30FT);
- (2) Thence North 00°17'00" West along the West line of Lots 720, 721 & 722, the same being the East right-of-way line of Kirkwood Road (30FT), a distance of 102.40 feet to a point, marking the Southwest corner of a parcel owned by Sara J. Klingman (RN 201610217);
- (3) Thence North 89°43'00" East along the South line of said Klingman parcel, a distance of 95.00 feet to a point;
- (4) Thence South 00°17' 00" East continuing along said South line, a distance of 2.40 feet to a point;
- (5) Thence North 89°43'00" East continuing along said South line, a distance of 95.00 feet to a point on the West right-of-way line of Laurel Road (30FT), marking the Northeast corner of said Lot 737;
- (6) Thence South 00°17'00" East along the East line of Lots 737 & 738, a distance of 100.00 feet to the point of beginning, containing 0.4414 acre, of which 0.0597 acre is in Lot 720 and 0.1090 acre is in Lot 721 and 0.0545 acre is in Lot 722 and 0.1090 acre is in Lot 737 and 0.1090 acre is in Lot 738, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung, Jr., Professional Surveyor No. 5667 in April 2017, taken from existing plat records and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

## **EXHIBIT A-5**

### **Permanent Parcel No. 45-00488.001**

Being situated in the State of Ohio, County of Erie, City of Huron, Grand Forest Beach Allotment (PV 8 PG 15) Lots 719, 739 and Part Lots 720 & 740 and being more fully described as follows:

Beginning at a point, marking the Northeast corner of Lot 739 in said Grand Forest Beach Allotment:

- (1) Thence South 00°17'00" East along the East line of Lots 739 & 740, the same being the West right-of way line of Lauren Road (30 FT), a distance of 75.00 feet to a point, marking the Northeast corner of a parcel owned by Robert C. Hoffman (RN 201609366);
- (2) Thence South 89°43'00" West along the north line of said Hoffman parcel, a distance of 95.00 feet to a point;
- (3) Thence North 00°17'00" West continuing along said North line, a distance of 2.40 feet to a point;
- (4) Thence South 89°43'00" West continuing along said North line, a distance of 95.00 feet to a point, marking the Southwest corner of said Lot 719;
- (5) Thence North 00°17'00" West along the West line of Lots 719 & 720, the same being the East right-of-way line of Kirkwood Road (30 FT), a distance of 72.60 feet to a point;
- (6) Thence North 89°43'00" East a distance of 190.00 feet to the point of beginning, containing 0.3219 acre, more or less, of which 0.1090 acre is in Lot 719 and 0.0492 acre is in Lot 720 and 0.1090 acre is in Lot 739 and 0.0545 acre is in Lot 740, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung, Jr. Professional Surveyor No. 5667 in April 2017, taken from existing plat records and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.