

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-90

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

**APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BEREA AND MR. PATRICK R. LEAHY, AND GRANTING A LICENSE FOR THE USE OF AN AREA OF PUBLIC PROPERTY LOCATED NEXT TO HIS PROPERTY.**

**WHEREAS**, the present owner of the home and property at 212 Wyleswood Drive has, for over 12 years, used and maintained an area of city-owned land identified as a part of the unimproved section of Glenwood Drive between Wyleswood Drive and Fairpark Street; and

**WHEREAS**, the present owner of that property, having lived there for over 12 years, and having continuously mowed and otherwise maintained the city-owned property which is next to his lot, now desires to memorialize his relationship with this property; and

**WHEREAS**, The City of Berea has had and presently has no plans to improve the area of land on which the unimproved section of Glenwood Drive has been, and remains; and

**WHEREAS**, the City of Berea presently has no plans to improve the area of land on which the unimproved section of Glenwood Drive exists, but does intend to keep it as a dedicated right-of-way which may be improved in the future; and

**WHEREAS**, the owner has agreed, in a Memorandum of Understanding, to accept a license for the use of that area of the Glenwood Drive right-of-way located next to his lot, and to accept responsibilities for the continued and ongoing mowing and maintenance of the city-owned right of way and property.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That, subject to the conditions and agreements set forth in the Memorandum of Understanding and License Agreement between the City of Berea and Patrick R. Leahy, which Memorandum is attached hereto as Exhibit "A" and incorporated herein, Patrick R. Leahy is granted a License to use the area on the city-owned right-of-way and property immediately adjacent his side lot line for, among other uses, the maintenance of a previously constructed fence. However, the continued use of the existing fence is conditioned upon approval of a uniform open space variance by the Berea Municipal Planning Commission. Should the requested uniform open space variance not be approved by the Berea Municipal Planning Commission by February 1, 2016, Patrick R. Leahy will have the option of constructing a fence with at least 25% uniform open space upon the above described area of City property.

**SECTION 2.** That the License granted herein is limited to the current owner of the home and property at 212 Wyleswood Drive, is not transferrable, and does not run with the land.

**SECTION 3.** That the Mayor be and he is hereby authorized to execute a Memorandum of Understanding and License Agreement with Patrick R. Leahy, in substantially the form which is attached to this Legislation as Exhibit "A" and incorporated herein.

**SECTION 4.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

# COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2014-90

By Maxwell Sponsored By Mayor Kileem

SECTION 5. That this Ordinance shall take effect, and be in force, from and after the earliest period allowed by law.

PASSED: December 15, 2014

ATTEST: [Signature]  
Clerk of Council

[Signature]  
President of Council

APPROVED: December 16, 2014  
[Signature]  
Mayor

Approved as to Form:  
[Signature]  
Director of Law

## Memorandum of Understanding and License Agreement for use of an area of city property

This Memorandum of Understanding (MOU) and License Agreement is made by and between the City of Berea, an Ohio Municipal Corporation (CITY), and Mr. Patrick R. Leahy of 212 Wyleswood Drive. This Memorandum of Understanding relates to, and sets conditions and requirements for, the use by Mr. Leahy, pursuant to a License granted by the Berea City Council, of an area of a city owned property located along the west border of his property for his use.

Whereas, Patrick R. Leahy has owned and lived at 212 Wyleswood Drive for over 12 years; and

Whereas, Mr. Leahy accesses the garage he has on his property and which he has used and maintained for all of his time of ownership by means of a city owned right-of-way along an unimproved section of Glenwood Drive; and

Whereas, Mr. Leahy, has, for the entire time he has owned the home and property at 212 Wyleswood Drive, maintained the gravel portion of Glenwood Drive and maintained the grass area of the right-of-way alongside his property; and

Whereas, Mr. Leahy now desires to construct a fence along the west side of his lot, but to locate that fence on the city-owned right-of-way of Glenwood Drive; and

Whereas, the City believes that it is appropriate to allow Mr. Leahy to continue to use the area of city-owned land which he has used and maintained and to construct a fence on it, but to limit that use to him during the time he is the owner of the property.

Now, therefore, in consideration of the foregoing premises and of the following agreements and covenants, The City of Berea and Mr. Patrick R. Leahy agree as follows:

1. The City of Berea hereby grants to Mr. Patrick R. Leahy an exclusive License to use that area of the city-owned property located along his west side property line where he has maintained the gravel street and the grass area next to it.
2. That the License granted herein is personal to Mr. Patrick R. Leahy for so long as he continues to own his property but that it shall lapse and expire if and when he sells or otherwise transfers the property to a new owner.
3. That Mr. Patrick R. Leahy agrees to continue to mow and maintain the city-owned land and right-of-way located along his west side property line during the period of this License.
4. That the license granted herein does not run with the land.

This license is granted and agreement is made pursuant to Ordinance No. 2014-\_\_, adopted by the Berea City Council on the \_\_ day of \_\_\_\_\_, 2014 and effective on the \_\_ day of \_\_\_\_\_, 2014.

This Memorandum of Understanding and License Agreement executed this \_\_\_\_ day of \_\_\_\_\_, 2014 by:

CITY OF BEREA

\_\_\_\_\_  
By: Cyril M. Kleem, Mayor

PROPERTY OWNER

\_\_\_\_\_  
Patrick R. Leahy

Approved and prepared by:  
James N. Walters III,  
Attorney at Law  
Law Director, City of Berea  
OH S. Ct. Reg. No. 0023298