

ORDINANCE NO. 63-21

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REVOCABLE USE PERMIT FOR 1225 MOORE ROAD, PERMANENT PARCEL NO. 04-00-009-000-015, TO OCCUPY A PORTION OF THE CITY RIGHT OF WAY ALONG A SECTION OF MOORE ROAD (EAST SIDE) A WIDTH OF APPROXIMATELY 637.45 FEET AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ohio Revised Code Section 5515.01, the City of Avon can grant permission to a private owner to use or occupy a portion of the Right of Way within the municipality; and

WHEREAS, Lawrence J. and Cynthia A. Tracey own property at 1225 Moore Road in the City of Avon upon which is erected a split rail fence that currently encroaches, and has encroached for some time, into the Moore Road Right of Way.

WHEREAS, the Ohio Department of Transportation (ODOT) plans to make improvements to Moore Road beginning in Avon Lake and extending south to Chester Road in the City of Avon; and

WHEREAS, in order to permit the Traceys to continue to maintain their fencing along Moore Road, the City must enter into a Revocable Use Permit pursuant to ORC Section 5515.01; and

WHEREAS, Council has reviewed the proposed Revocable Use Permit and finds it to be in compliance with all the provisions of ORC Section 5515.01 and determines it to be in the best interests of the health, safety and welfare of the citizens of Avon that said permit be granted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the Mayor is hereby authorized to enter into a Revocable Use Permit with Lawrence J. and Cynthia A. Tracey, their successors and assigns, as the owners of Permanent Parcel No. 04-00-009-000-015 authorizing them to temporarily occupy a portion of the City Right of Way at 1225 Moore Road, a width of approximately 637.45 feet. A copy of the Revocable Use Permit is marked Exhibit A, attached hereto and incorporated herein by this reference.

Section 2 - That the Clerk of Council is hereby directed to file the Revocable Use Permit with the Lorain County Recorder.

Section 3 - That is found and determined that all formal actions of this Council concerning and relating to the passage 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 which resulted in

such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public, health, safety, and welfare of the citizens of the City of Avon, Ohio, the immediate emergency being the necessity to enter into a revocable use permit with the owners of 1225 Moore Road to occupy a part of the Right of Way in the City of Avon, Ohio along a 637.45 section of Moore Road and running the entire width of PPN 04-00-009-000-015; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: August 9, 2021 DATE SIGNED: August 9, 2021

BY: Brian Fischer
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR: August 10, 2021

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara J. Brooks
Barbara J. Brooks, Clerk of Council

POSTED: August 10, 2021
In five places as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director

REVOCABLE USE PERMIT

**CITY OF AVON
LORAIN COUNTY, OHIO**

And

**LAWRENCE J. AND CYNTHIA A. TRACEY
1225 Moore Road
Avon, Ohio 44011
PP# 04-00-009-000-015**

Under the provisions of Section §§ 5515.01 of the Ohio Revised Code, permission is hereby granted to use or occupy a part of the Right-of-Way in the City of Avon, Ohio along a section of the eastside of Moore Road and running the width of PPN 04-00-009-000-015, approximately 637.45 feet. The property is currently owned by Lawrence J. and Cynthia A. Tracey. The permitted encroachment is solely for an existing split rail fence to remain in the public right of way.

The revocable use area is identified in the legal description and survey map, both of which are attached hereto and incorporated herein by this reference. (Exhibits A and B, respectively).

This revocable use permit is hereby granted with the understanding that the property owner will abide by all the conditions set forth in Ohio Revised Code Section 5515.01.

The granting of this permit shall not be construed as an abridgement or waiver of any rights which the **CITY OF AVON** has in exercising its jurisdictional powers and this permit shall be binding upon the **CITY OF AVON** and the permittee, his/her/its heirs, successors and assigns.

The **CITY OF AVON**, at any time and for any reason, may order the removal of the encroachments, i.e., the split rail fence, that is the subject of this revocable use permit. If for any reason the **CITY OF AVON** or its duly authorized representative(s) deems it necessary to order the removal, reconstruction, relocation or repair of the encroachments, it shall be promptly undertaken at the sole expense of the owners (permittees) thereof. Failure on the part of the permittee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the **CITY OF AVON** deems necessary, and the City may remove the encroachment at the permittee's sole expense. The permittee agrees to indemnify and save the **CITY OF AVON** harmless from any claims by any person for personal injury or damages allegedly arising from the existence or maintenance of the encroachment.

No alterations may be made to the encroachments except that the permittee may perform such routine maintenance as is required to keep the encroachment in good condition. If the encroachment is removed or destroyed, no new facilities shall be permitted to encroach on Avon Street right-of-way without a new express, written consent of the **CITY OF AVON**. The encroachment for which this permit is issued shall be subject to all permits required by the **CITY OF AVON**. A photograph of the existing encroachment is attached to and incorporated into this permit as Exhibit C.

Any requests relative to the encroachment shall be made in writing to the following:

CITY OF AVON
Law Director
36815 Detroit Road
Avon, Ohio 44011

Dated at Avon, Ohio this 18th day of August, 2021.

By: Lawrence J. Tracey
LAWRENCE J. TRACEY

STATE OF OHIO, COUNTY OF LORAIN

The foregoing instrument was acknowledged before me this 18th day of August, 2021 by Lawrence J. Tracey.



By: Jesse Parker
NOTARY PUBLIC

By: Cynthia Tracey
CYNTHIA A. TRACEY

STATE OF OHIO, COUNTY OF LORAIN

The foregoing instrument was acknowledged before me this 18th day of August, 2021 by Cynthia A. Tracey.



By: Jesse Parker
NOTARY PUBLIC

Accepted this 10th day of August, 2021.

By: [Signature]
Bryan K. Jensen, Mayor
City of Avon

STATE OF OHIO, COUNTY OF LORAIN

The foregoing instrument was acknowledged before me this 10th day of August, 2021 by Bryan K. Jensen, Mayor for the City of Avon.

By: Rose Frances Seighman
NOTARY PUBLIC

Prepared By:

John A. Gasior, Esq.
Law Director



Rose Frances Seighman

NOTARY PUBLIC
STATE OF OHIO

My Commission Expires
August 2, 2025

EXHIBIT 'A'

RX SA-RP

Page 1 of 4
Rev. 04/21

Ver. Date 04/08/2021

PID #111590

**PARCELS #1 thru 3
LOR-MOORE ROAD – C.R. 78
SPECIAL AGREEMENT - REVOCABLE PERMIT**

A Special Agreement – Revocable Permit to Occupy the Right-of-Way to the owner of 1225 Moore Road – C.R. 78 (Lawrence J. & Cynthia A. Tracey) for the existing wood fence that has encroached on the public right-of-way.

[Surveyor's description of the premises follows]

SPECIAL AGREEMENT #1

Situated in the City of Avon, County of Lorain, State of Ohio and known as being a part of Original Avon Township, Section #9 and being a **0.0216 acres (943 sq.ft.) Special Agreement #1** for an existing fence located within a ±22.28 acre (deed) parcel of land as conveyed to Lawrence J. & Cynthia A. Tracey by deed dated May 17, 2012 as recorded in Instrument #2012-0413484 (PP #004-00-009-000-015) of Lorain County Deed Records and being a parcel of land lying on the right side of the centerline and within the right-of-way of Moore Road – C.R. 78 (width varies) and further bounded and described as follows;

Beginning at the point of intersection of the Southerly line of said Tracey's land (PP #04-00-009-000-015) with the existing Easterly right-of-way line of said Moore Road at 30.00 feet right of Station 24+33.38 of said centerline of right-of-way of Moore Road;

Thence **North 00°17'58" East**, along said Easterly right-of-way line of Moore Road, a distance of **13.11 feet** to a point at 30.00 feet right of Station 24+46.49 of said centerline of right-of-way of Moore Road and the **Place of Beginning** of the Premises herein intended to be described;

Course I Thence **North 89 degrees 42 minutes 02 seconds West**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **6.62 feet** to a point at 23.38 feet right of Station 24+46.49 of said centerline of right-of-way of Moore Road;

Course II Thence **North 00 degree 08 minutes 17 seconds East**, a distance of **138.39 feet** to a point at 22.99 feet right of Station 25+84.88 of said centerline of right-of-way of Moore Road;

Course III Thence **South 89 degrees 42 minutes 02 seconds East**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **7.01 feet** to a point thereon at 30.00 feet right of Station 25+84.88 of said centerline of right-of-way of Moore Road;

Course IV Thence **South 00 degree 17 minutes 58 seconds West**, along said existing Easterly right-of-way line of Moore Road, a distance of **138.39 feet** to the **Place of Beginning** and containing **0.0216 acres (943 sq.ft.)** of land, more or less which is part of Lorain County Auditor's Permanent Parcel #04-00-009-000-015;

SPECIAL AGREEMENT #2

Situated in the City of Avon, County of Lorain, State of Ohio and known as being a part of Original Avon Township, Section #9 and being a **0.0122 acres (530 sq.ft.) Special Agreement #2** for an existing fence located within a ± 22.28 acre (deed) parcel of land as conveyed to Lawrence J. & Cynthia A. Tracey by deed dated May 17, 2012 as recorded in Instrument #2012-0413484 (PP #004-00-009-000-015) of Lorain County Deed Records and being a parcel of land lying on the right side of the centerline and within the right-of-way of Moore Road – C.R. 78 (width varies) and further bounded and described as follows;

Beginning at the point of intersection of the Southerly line of said Tracey's land (PP #04-00-009-000-015) with the existing Easterly right-of-way line of said Moore Road at 30.00 feet right of Station 24+33.38 of said centerline of right-of-way of Moore Road;

Thence **North 00°17'58" East**, along said Easterly right-of-way line of Moore Road, a distance of **203.16 feet** to a point at 30.00 feet right of Station 26+36.54 of said centerline of right-of-way of Moore Road and the **Place of Beginning** of the Premises herein intended to be described;

Course I Thence **North 89 degrees 42 minutes 02 seconds West**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **6.04 feet** to a point at 24.70 feet right of Station 26+36.54 of said centerline of right-of-way of Moore Road;

Course II Thence **North 00 degree 22 minutes 22 seconds West**, a distance of **81.37 feet** to a point at 23.01 feet right of Station 27+17.90 of said centerline of right-of-way of Moore Road;

Course III Thence **South 89 degrees 42 minutes 02 seconds East**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **6.99 feet** to a point thereon at 30.00 feet right of Station 27+17.90 of said centerline of right-of-way of Moore Road;

Course IV Thence **South 00 degree 17 minutes 58 seconds West**, along said existing Easterly right-of-way line of Moore Road, a distance of **81.37 feet** to the **Place of Beginning** and containing **0.0122 acres (530 sq.ft.)** of land, more or less which is part of Lorain County Auditor's Permanent Parcel #04-00-009-000-015;

SPECIAL AGREEMENT #3

Situated in the City of Avon, County of Lorain, State of Ohio and known as being a part of Original Avon Township, Section #9 and being a **0.0017 acres (72 sq.ft.) Special Agreement #3** for an existing fence located within a ± 22.28 acre (deed) parcel of land as conveyed to Lawrence J. & Cynthia A. Tracey by deed dated May 17, 2012 as recorded in Instrument #2012-0413484 (PP #004-00-009-000-015) of Lorain County Deed Records and being a parcel of land lying on the right side of the centerline and within the right-of-way of Moore Road – C.R. 78 (width varies) and further bounded and described as follows;

Beginning at the point of intersection of the Southerly line of said Tracey's land (PP #04-00-009-000-015) with the existing Easterly right-of-way line of said Moore Road at 30.00 feet right of Station 24+33.38 of said centerline of right-of-way of Moore Road;

Thence **North 00°17'58" East**, along said Easterly right-of-way line of Moore Road, a distance of **304.15 feet** to a point at 30.00 feet right of Station 27+37.53 of said centerline of right-of-way of Moore Road and the **Place of Beginning** of the Premises herein intended to be described;

Course I Thence **North 89 degrees 42 minutes 02 seconds West**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **5.27 feet** to a point at 24.73 feet right of Station 27+37.53 of said centerline of right-of-way of Moore Road;

Course II Thence **North 03 degree 13 minutes 53 seconds West**, a distance of **12.77 feet** to a point at 23.94 feet right of Station 27+50.28 of said centerline of right-of-way of Moore Road;

Course III Thence **South 89 degrees 42 minutes 02 seconds East**, perpendicular to said existing Easterly right-of-way line of Moore Road, a distance of **6.06 feet** to a point thereon at 30.00 feet right of Station 27+50.28 of said centerline of right-of-way of Moore Road;

Course IV Thence **South 00 degree 17 minutes 58 seconds West**, along said existing Easterly right-of-way line of Moore Road, a distance of **12.75 feet** to the **Place of Beginning** and containing **0.0017 acres (72 sq.ft.)** of land, more or less which is part of Lorain County Auditor's Permanent Parcel #04-00-009-000-015;

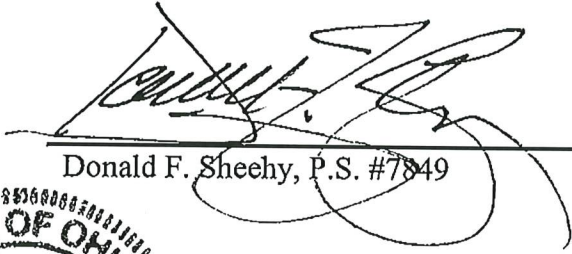
Basis of Bearing for this legal description is **North 00°17'58" East** as the centerline of Moore Road – C.R. 78 (width varies) as evidenced by monuments found and is the same as calculated and reproduced from Ohio Plane Coordinate System, North Zone 3401 by ties to the O.D.O.T. VRS Network;

The stations referred to herein are from the centerline of right-of-way of Moore Road – C.R. 78 in the City of Avon, Lorain County, Ohio, as shown on the Schematic Plan (Sheet 2 of 21) of the "Improvement Plans for LOR-Moore Road C.R. 78" as recorded in AFN _____ of Lorain County Map Records as prepared by Chagrin Valley Engineering, Ltd. in 2021;

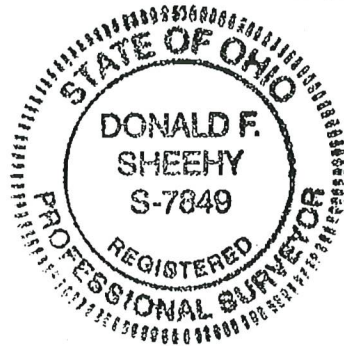
This description was prepared under the supervision of and reviewed by Donald F. Sheehy, P.S. #7849 from surveys made under the supervision of Donald F. Sheehy, P.S. #7849 for Chagrin Valley Engineering, Ltd. in conjunction with the "Improvement Plans for LOR-Moore Road C.R. 78" as prepared by Chagrin Valley Engineering, Ltd. in 2021 for the State of Ohio Department of Transportation;

4.12.2021

Date:



Donald F. Sheehy, P.S. #7849



SPECIAL AGREEMENT #1

LINE TABLE	
NO.	DIRECTION
L1	N 89°42'02" W
L2	N 00°08'17" E
L3	S 89°42'02" E
L4	S 00°17'58" W

SPECIAL AGREEMENT #2

LINE TABLE		
NO.	LENGTH	DIRECTION
L5	6.04'	N 89°42'02" W
L6	81.37'	N 00°22'22" W
L7	6.99'	S 89°42'02" E
L8	81.37'	S 00°17'58" W

SPECIAL AGREEMENT #3

LINE TABLE		
NO.	LENGTH	DIRECTION
L9	5.27'	N 89°42'02" W
L10	12.77'	N 03°13'53" W
L11	6.06'	S 89°42'02" E
L12	12.75'	S 00°17'58" W

P.P.#04-00-004-102-167
1260 Moore Rd.
Avon Associates Limited

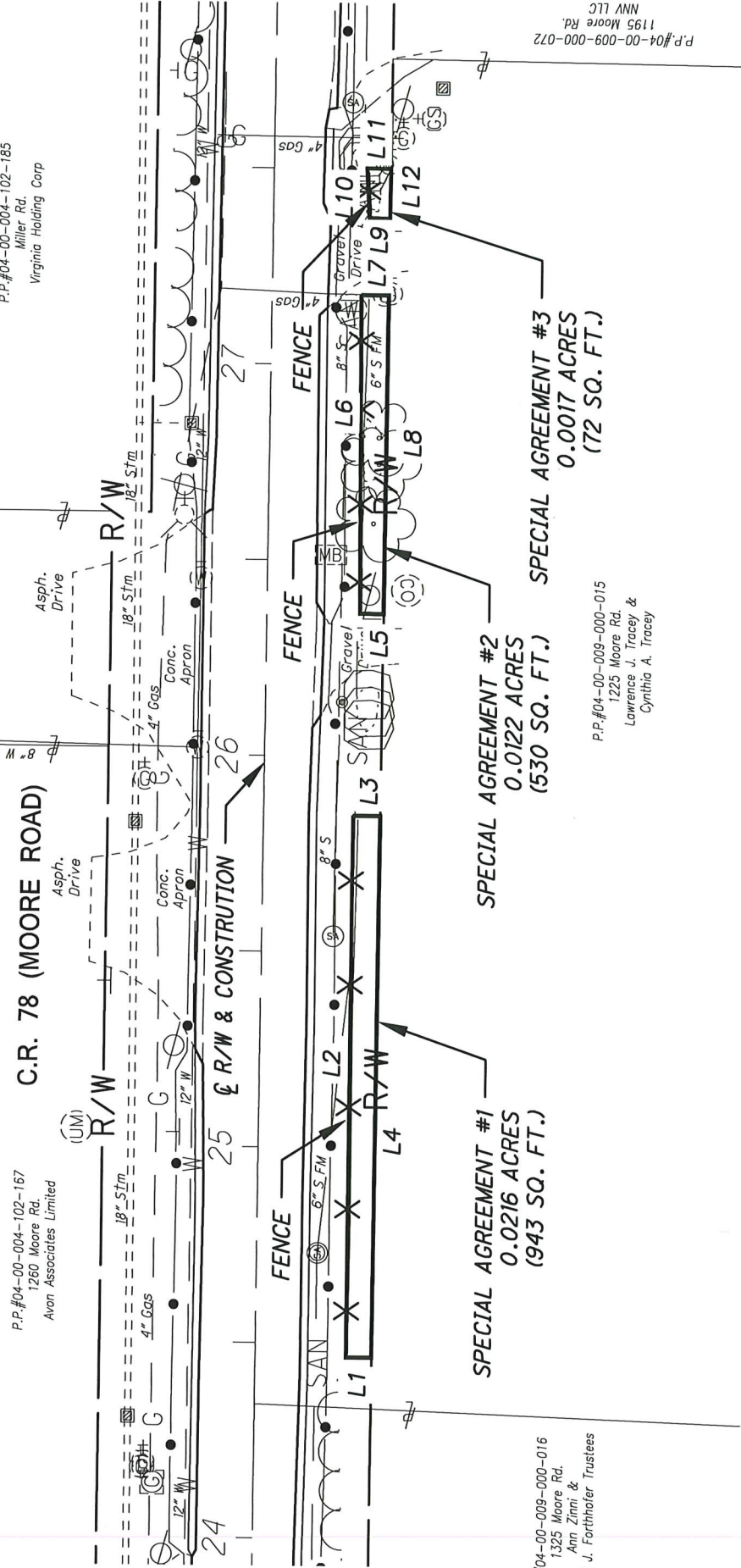
C.R. 78 (MOORE ROAD)

P.P.#04-00-004-102-185
Miller Rd.
Virginia Holding Corp

N.T.S.



P.P.#04-00-004-102-166
1280 Moore Rd
Westlake Tool & Die



P.P.#04-00-009-000-016
1325 Moore Rd.
Ann Zinni &
Daniel J. Forthofer Trustees

SPECIAL AGREEMENT #1
0.0216 ACRES
(943 SQ. FT.)

SPECIAL AGREEMENT #2
0.0122 ACRES
(530 SQ. FT.)

SPECIAL AGREEMENT #3
0.0017 ACRES
(72 SQ. FT.)

P.P.#04-00-009-000-015
1225 Moore Rd.
Lawrence J. Tracey &
Cynthia A. Tracey

P.P.#04-00-009-000-072
1195 Moore Rd.
NNW LLC

EXHIBIT B

PREPARED BY
CHAGRIN VALLEY ENGINEERING, LTD.
Creative Engineers. Intelligent Solutions.
22899 Forbes Road, Suite B, Cleveland, Ohio 44146-5667
Phone • 440.439.1999 Fax • 440.439.1767 www.cveintllc.com

SPECIAL AGREEMENT - REVOCABLE PERMIT
FROM: CITY OF AVON, LORAIN COUNTY, OHIO
TO: LAWRENCE J. & CYNTHIA A. TRACEY

Untitled Map

Write a description for your map.

EXHIBIT C

Revolocable Use Permit

Legend

1225 Moore Rd



Special Agreement Area #1

Special Agreement Area #2

Special Agreement Area #3

Google Earth

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7.38 ft