

City of Philadelphia



(Bill No. 030692)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City, to enter into an agreement with the owner of 1027 Westview Street for the grant of a right-of-way to the City for drainage and sewer purposes through the property from Westview Street to Fairmount Park property, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Water Commissioner, on behalf of the City, is hereby authorized to enter into agreement, substantially in the form set forth in Exhibit A, with the owner of 1027 Westview Street and his successors for the grant of a right-of-way to the City for drainage and sewer purposes through the property from Westview Street to Fairmount Park property.

SECTION 2. The City Solicitor shall include in said agreement such terms and conditions as he may deem necessary to protect the interest of the City.

SECTION 3. The Chief Clerk shall keep on file Exhibit A and shall make it available for inspection by the public during regular office hours.

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

Exhibit A

RIGHT OF WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 200____, by and between, _____, the record owner of a certain Property at **1027 WESTVIEW STREET** in the 21st Ward, Philadelphia, Pennsylvania, hereinafter called "Grantor", and THE CITY OF PHILADELPHIA, hereinafter called "City";

WITNESSETH:

WHEREAS, the properties located on Westview Street from Wissahickon Avenue to Springbank Street and on Springbank Street from Westview Street to Westview Street are currently being serviced by on-site sewerage treatment systems; and

WHEREAS, a number of these systems have outlived their usefulness and can not be replaced under current Commonwealth regulations; and

WHEREAS, in order to provide public sewers for the area, it shall be required to construct a sanitary sewer from Kitchen's Lane through Fairmount Park property and through a portion of a property at 1027 Westview Street; and

WHEREAS, in order to construct and maintain the said public sanitary sewer, the property owner of 1027 Westview Street must grant unto the City a certain right-of-way for drainage and sewer purposes, fifty feet wide, extending across the southeasterly portion of the property in a southwesterly direction from Westview Street to the Fairmount Park property line, under certain terms and conditions; and

WHEREAS, the parties desire to enter into an agreement for the for the grant of said right-of-way; and

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor, the owner of the property at 1027 Westview Street, Philadelphia, Pennsylvania 19119, hereby gives, grants and conveys unto the City its successors and

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

assigns, all their rights, title and interest which they presently have or will acquire in the full, free and uninterrupted use, liberty and privilege of a drainage and sewer right-of-way and easement over, under, along and in the Premises described in Section 2 of this Agreement.

2. Grantor has granted unto the City, its successors and assigns, the full, free and uninterrupted use, liberty and privilege of a right-of-way and easement for drainage and sewer purposes (hereinafter referred to as the "Easement") over, under, along and in the following premises as lies within the land owned by the Grantor, such portion of the following described Affected Property, to wit:

ALL THAT CERTAIN LOT OR PIECE OF GROUND SITUATE IN THE 21ST WARD OF THE CITY OF PHILADELPHIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT on the northwesterly side of Westview Street (50 feet wide). Said point being 970.395 feet southwesterly from the point of intersection of the said northwesterly side of Westview Street and the southwesterly side of Wissahickon Avenue (60 feet wide); Thence southeasterly along the said Westview Street on an arc of a circle curving to the left, with a radius of 360.000 feet, the arc distance of 50.160 feet to a point; Thence South 78 degrees 12 minutes 17.3 seconds West, the distance of 26.730 feet to a point on the property line of Fairmount Park; Thence along said property line of Fairmount Park North 40 degrees 33 minutes 57 seconds West, the distance of 57.040 feet to a point; Thence along a radial line North 78 degrees 12 minutes 17.3 seconds East, the distance of 50.700 feet to a point on the said northwesterly side of Westview Street, being the first mentioned point and place of beginning.

The right-of-way for drainage and sewer purposes, described herein, is according to a "Plan of Proposed Fifty (50) feet wide Drainage Right-of-way through 1027 Westview Street", dated May 12, 2003, prepared by the Philadelphia Water Department Survey Unit, 3585 Fox Street, Philadelphia, PA, 19129.

3. Grantor hereby grants the City, its officers, agents, employees and contractors the right of access, ingress, egress to and from the Premises along with the necessary equipment and materials, for the construction, reconstruction, maintenance,

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

alteration, repair and inspection of any and all future drainage and sewer structures in the said Easement, which the City may hereafter at any time desire to locate therein.

4. It is expressly understood and agreed that the rights and privileges herein granted to the City shall not terminate, cease or diminish unless and until the City may surrender the same in writing, duly executed by its proper officers. Grantor hereby grants the City the right to place said Easement on the City Plan. Grantor covenants and agrees to release the City, all its officers, employees, agents, departments and commissions, from all damages or claims for damages which can, may or might arise by reason of such City Plan changes.

5. Grantor covenants and agrees that no change in grades or other alterations within the lines of the Easement shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of the Easement or abutting thereon unless the plans for such changes of grades, alterations or structures shall be first be submitted to and approved by the Water Department.

6. Grantor warrants that Grantor is the owner in fee of the Easement free and clear of liens, encumbrances, restrictions and other matters of record, has the power and is duly authorized to execute this Right of Way and Easement Agreement, and the City may peacefully and quietly exercise the rights granted hereunder free and clear of rights or consent of third parties.

7. Grantor agrees that this Agreement may be filed of record in the office of the Department of Records of the City of Philadelphia, the same to be public notice of waiver and release of any and all damages which may be sustained by reason of future City Plan changes and the grant of the right-of-way and easement described herein.

8. All notices given under this Easement shall be in writing and shall be deemed to have been duly given if sent by United States certified registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified, at the following addresses:

If to Grantor at: 1027 Westview Street
Philadelphia, PA 19136

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

If to Grantee at: City of Philadelphia
Water Department
Projects Control Unit
ARA Tower, Second Floor
1101 Market Street
Philadelphia, PA 19107

or to such other address as either party may give by notice to the other party.

9. The terms and conditions hereof shall be binding upon and shall endure to the benefit of the parties hereto, their successors and assign and be covenants running with the land affected by the Easement.

10. This is not a conveyance of the real estate included within the Easement nor of any interest in the oil, gas and other minerals in, on or under the real estate covered hereby, but is a grant solely of rights-of-way and easement as described above.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be duly executed the day and year first above written.

**CITY OF PHILADELPHIA
WATER DEPARTMENT**

APPROVED AS TO FORM

By: _____
KUMAR KISHINCHAND
WATER COMMISSIONER

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

GRANTOR

By: _____

By: _____

WITNESS

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

City of Philadelphia

BILL NO. 030692 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 4, 2003. The Bill was Signed by the Mayor on December 18, 2003.



Patricia Rafferty
Chief Clerk of the City Council