

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2011-222

Council Meeting Date: 08-08-2011

Date Adopted: 08-08-2011

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY APPROVING LICENSE AGREEMENT FOR INSTALLATION OF A WALL AT 9 COUNTRYSIDE DRIVE

Councilperson Cucco submitted the following resolution, which was duly seconded by Councilperson Muñoz.

WHEREAS, Donald B Wahlig and Elizabeth Wahlig, the owners of 9 Countryside Drive, Block 290, Lot 44 on the Tax Map, have had constructed a wall, which was inadvertently partially located in the municipal sanitary sewer easement on their property; and

WHEREAS, the Wahligs have requested permission to allow the wall to remain pursuant to a license agreement; and

WHEREAS, based upon an inspection by the Public Works Department that indicates that, even though a portion of the wall is in the municipal easement, the wall does not cover the sewer pipe and therefore appears to cause minimal interference with the use of the easement; and

WHEREAS, the form of the License Agreement is attached hereto; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey, that the License Agreement, in form attached hereto, is hereby approved, and the Mayor and Clerk are hereby authorized to execute same.

APPROVED, this 8th day of August, 2011.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO			X	
LESNEWICH			X	
MUÑOZ	X			
VYZAS			X	
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 8th day of August, 2011

Wendi B. Barry, Borough Clerk

LICENSE AGREEMENT

This License Agreement made this 22nd day of July, 2011 by and between the Borough of New Providence, County of Union, State of New Jersey, having an office at 360 Elkwood Avenue, New Providence, New Jersey 07974 (hereinafter referred to as "Licensor"), and Donald B. Wahlig and Elizabeth Wahlig, having an address at 9 Countryside Drive, New Providence, New Jersey 07974 (hereinafter referred to as "Licensees").

RECITALS

1. The Licensees' property, known as 9 Countryside Drive, New Providence, New Jersey, Lot 7, Block 290 on the Tax Map of the Borough of New Providence (the subject premises), consists of a single residential dwelling, the westerly side of which is traversed by a 20 foot wide sanitary sewer easement.
2. Licensees sought and received a permit to construct a new driveway and retaining wall on the westerly side of their property. A portion of the retaining wall was inadvertently constructed on a portion of the sanitary sewer easement, all as more particularly shown on the survey prepared by Thomas Benjamin, P.E. and L.S., of Benjamin & Wizorek, dated July 19, 2011, and attached as Exhibit A.
3. The retaining wall has been completely constructed, although it does not appear to interfere with the sanitary sewer pipe that traverses the easement. To remove the retaining wall at this time would be a major expense for the Licensee.
4. The Licensees are willing to agree, if the license is granted, that, should the wall have to be removed to service the sanitary sewer, they will pay for its removal and restoration of the area on which the retaining wall is located.
5. Licensor is willing to grant a license to Licensees so the retaining wall may remain as constructed within said easement subject to certain terms and conditions.

WITNESSETH

1. The Licensor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, grants to Licensees the right, to be exercised as set forth herein, to allow the above described retaining wall to remain in place. Said license is granted upon the condition that the Licensees will, after performing any work in or upon the Licensor's sanitary sewer easement, restore to the extent reasonably practicable, the ground of the sanitary sewer easement to the condition in which the easement was found before such work was undertaken, except for any underbrush and weeds removed, provided, however, that Licensee's access and installations do not cause damage to or interfere with the operation, maintenance or use of any portion of the easement by Licensor.

2. Licensees, at their expense, shall be solely responsible for, shall obtain all necessary permits for, and shall maintain, the retaining wall permitted hereby, and shall indemnify and save harmless Licensor against all liens, claims of mechanics and materialmen furnishing labor and materials in the construction and maintenance of said retaining wall. In the event that, to facilitate municipal access to and work in the sanitary sewer easement, the retaining wall shall be removed by Licensor or its representative, Licensee shall reimburse the Licensor for the cost of removal, and shall be responsible for the repair and restoration thereof.
3. Licensees agree to defend, indemnify and save harmless Licensor and to assume all liability for death or injury to any persons and all liability for loss, damage or injury, including without limitation environmental pollution or contamination of any sort, to any property incurred or sustained by Licensees arising from, growing out of or resulting from Licensee's installation, use repair, replacement, alteration, operation, restoration or removal of said retaining wall in the Licensor's sanitary sewer easement, including costs, reasonable attorneys' fees and other expenses incurred by Licensor in defending any such claim, unless such loss, damage or injury is due to the negligence of the Licensor, its employees, agents or invitees.
4. Licensees waive and release all claims against Licensor, its officers, agents, employees and servants, and agrees that they shall not be liable for injury to person or damage to property sustained by Licensees or by any user of Licensees' property or any other person occurring in or about the Licensor's sanitary sewer easement resulting directly or indirectly from any existing or future condition, defect, matter or thing in the sanitary sewer easement or any part of it or from Licensees' retaining wall which become out of repair.
5. Licensor shall have the right to terminate this license upon written notice to Licensees, in the event that: (a) Licensees shall default in the performance of any of the obligations imposed upon her herein and shall not, after being notified by Licensor of the existence of default, immediately take all reasonable steps to cure the default; or (b) it shall be determined by Licensor, in its sole discretion, that such installation or use of said retaining wall interferes with, impedes, obstructs or creates a hazard for, the operation, maintenance or use by Licensor of its sanitary sewer easement; or (c) Licensees abandon, remove, or fail to use the rights granted by this license for any period exceeding six (6) months. Licensees shall have sixty (60) days from receipt of written notice to cure any default under this agreement, unless an emergency or hazard exists, in which case such period of time to cure may be shorter. In the exercise of its rights hereunder to terminate, Licensor shall give Licensees sixty (60) days written notice, unless an emergency or hazard exists, in which case such notice may be shorter. Licensees may terminate this agreement upon sixty (60) days written notice to Licensor. Upon termination of this agreement for any reason, Licensees, at Licensees' sole cost and expense, shall remove the retaining wall and shall restore the area as provided in paragraph 7 hereof.

6. No notice or demand related to or required by this agreement shall be effective unless the notice or demand is in writing and is either delivered personally to the party for whom intended or to an office of such party or sent by U.S. certified mail return receipt requested. If sent to Licensees the notice or demand must be sent to 9 Countryside Drive, New Providence, New Jersey 07974. If notice or demand is sent to Licensor, it must be sent to the Borough Administrator, Borough of New Providence, 360 Elkwood Avenue, New Providence, New Jersey 07974.
7. In the event of termination of this license as provided above or otherwise, the retaining wall installed under the terms of this license shall be removed by Licensees, the area of the Licensor's sanitary sewer easement where the retaining wall was installed shall be restored by Licensees to as good condition as existed immediately prior to the installation of the shed. Unless an emergency exists, Licensees shall have a reasonable time, not to exceed 60 days, to effectuate removal of such retaining wall and restoration of the property as required under this paragraph.
8. Licensees may assign this agreement, on written notice to Licensor, to their successor in title. This agreement shall be binding upon the successors and assigns of the parties hereto.

ATTEST:

BOROUGH OF NEW PROVIDENCE
County of Union, State of New Jersey

WENDI B. BARRY, Clerk

By: _____
J. BROOKE HERN, Mayor (Licensor)

Dated: _____

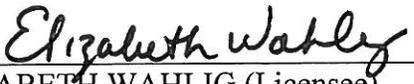
ATTEST:



Susan C. Taylor
Attorney At Law of New Jersey



DONALD B. WAHLIG (Licensee)



ELIZABETH WAHLIG (Licensee)

Dated: July 22, 2011

STATE OF NEW JERSEY :
: ss:
COUNTY OF UNION :

BE IT REMEMBERED that on this 22ND day of JULY, 2011, before me, the subscriber, personally appeared DONALD B. WHALIG and ELIZABETH WAHLIG who, being duly sworn on his/her oath, did depose and make proof to my satisfaction that he/she is the person named in the within instrument, and that he/she acknowledged that he/she signed, sealed and delivered the same as and for his/her act and deed for the uses and purposes therein expressed.


Donald B. Wahlig


Elizabeth Wahlig

Sworn and subscribed to
before me the date aforesaid.

Christine Piri

A Notary Public of new Jersey
My Commission Expires on: 3/14/16

