

**RESOLUTION NO. 36-2017**

**INTRODUCED BY: MAYOR DONEGAN AND COUNCIL AS A WHOLE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLMSTED FALLS MAKING FINDINGS AND CONCLUSIONS FROM THE PUBLIC HEARING AUTHORIZED BY RESOLUTION 16-2017 AND RELATED TO THE PRIVATE BRIDGE OVER BAKER'S CREEK ON THE PRIVATE DRIVE OF EAST RIVER ROAD, ORDERING THE ABATEMENT OF NUISANCE CONDITIONS RELATED THERETO BY AUTHORIZING AND DIRECTING THE CITY ENGINEER TO PROCEED WITH PLANS AND SPECIFICATIONS FOR THE REPLACEMENT OF THE BRIDGE, AUTHORIZING AND DIRECTING THE MAYOR TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE SAME, AUTHORIZING AND DIRECTING THE COLLECTION OF THE COSTS OF THE SAME FROM AFFECTED PROPERTY OWNERS, AND DECLARING AN EMERGENCY**

**WHEREAS**, this Council has previously adopted Resolution 16-2017 which, among other things, authorize the conducting of a public hearing related to the question of the existence of nuisance conditions related to the private bridge over Baker's Creek on the private drive of East River Road; and

**WHEREAS**, this Council conducted public hearings on the same on May 8, 2017 and June 5, 2017; and

**WHEREAS**, as a result of the public hearings along with the testimony and exhibits presented by all parties and affected persons, and having duly considered all of the matters and materials arising from the public hearing, this Council makes certain findings and certain conclusions as indicated in the findings and conclusions from public hearings attached hereto as Exhibit "1." Now therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OLMSTED FALLS, CUYAHOGA COUNTY, OHIO, THAT:**

**SECTION 1.** This Council hereby adopts the "findings and conclusions" as shown on Exhibit "1" attached hereto and incorporated herein, including, among other things, the conclusion that the private bridge over Baker's Creek as it currently exists constitutes a nuisance for which the health, safety and welfare of the neighborhood and the city requires its abatement as herein after provided.

**SECTION 2.** The City Engineer is authorized and directed to proceed with plans and specifications for the replacement of the bridge.

**SECTION 3.** That the Mayor is authorized and directed to advertise for bids and enter into one or more contracts for the replacement of the bridge.

**SECTION 4.** That the cost associated with remedying the nuisance conditions shall be allocated as indicated in the findings and conclusions contained in Exhibit "1" and in the amounts as indicated in the aforesaid findings and conclusions.

**SECTION 5.** That the director of finance is authorized and directed to collect the proportionate charges as indicated in the findings and conclusions contained in Exhibit "1" and/or certify the costs associated therewith onto the tax duplicate for collection with other taxes as called for in the aforesaid findings and conclusions.

**SECTION 6.** That the funds necessary to effectuate the purposes hereinabove stated to replace the bridge over Baker's Creek are hereby appropriated for the same.

**SECTION 7.** That the director of law is authorized to proceed to take any and all legal actions necessary to effectuate the abatement of said nuisance and the recovery of the costs allocated to the affected property owners.

**SECTION 8.** The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meetings of this Council (except as maybe permitted under R.C. 121.22(G)); and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public (except as maybe permitted under R.C. 121.22(G));, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 9.** This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City for further reason it is immediately necessary to abate the nuisance of the bridge for the health safety and welfare of the affected neighborhood and emergency safety response. This Resolution shall therefore take effect immediately upon passage by the affirmative vote of not less than five (5) members elected to Council and signature by the Mayor.

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*Linda Garrity, Council President*

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
*Ann Marie Donegan, Mayor* \_\_\_\_\_  
*Date*

APPROVED AS TO FORM: \_\_\_\_\_  
*Gregory M. Sponseller, Director of Law*

ATTEST: \_\_\_\_\_  
*Angela Mancini, Clerk of Council*

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

	Yea	Nay
Garrity	_____	_____
Haviland	_____	_____
Sculac	_____	_____
Gorski	_____	_____
Stibich	_____	_____
Duncan	_____	_____
Miller	_____	_____

## EXHIBIT 1

### OLMSTED FALLS CITY COUNCIL

As set forth in its RESOLUTION NO. 16-2017, Olmsted Falls City Council has undertaken the task of ascertaining the existence of a public nuisance of the private bridge over Baker's Creek on the private drive of East River Road in order to determine the right, necessity and reasonable means for its abatement. As set forth below, Council issues its findings and conclusions thereon.

#### FINDINGS

1. As incorporated by reference herein, RESOLUTION NO. 16-2017 reflects the Council's and Administration's joint effort to address the long-standing deterioration of the private bridge and access way over Baker's Creek.

2. In furtherance of RESOLUTION NO. 16-2017 Olmsted Falls City Council convened two public hearings on May 8, 2017 and June 5, 2017, respectively, for the express purpose of gathering evidence, anecdotal accounts and other information upon which to make a reasonable decision on how best to resolve the long-standing problem posed by the bridge's deteriorating condition. The full record is public and shall be maintained as such at the Olmsted Falls City Hall.

3. The record developed in the course of the two public hearings substantiates the initial findings enumerated in RESOLUTION No. 16-2017. The minutes of those two public hearings are incorporated herein.

4. Certain professional expertise and opinion have been provided by the following: (a) The Report (*Field Inspection and Observation of East River Road Bridge, City of Olmsted Falls, Ohio*), PowerPoint slides, Commentary and Curriculum Vitae of the City Engineer, Chagrin Valley Engineering Ltd.; (b) The Commentary and Documents provided by Olmsted Falls Fire Chief Chad Gluss.

5. The record also reflects extensive input from residents who had the opportunity to question and respond to the observations and opinions as expressed by their neighbors, officials and professionals.

6. Council accordingly finds that residents, Council and the administration collectively have had full opportunity to engage in substantive discussion of the facts and issues germane to the bridge problem.

7. Council finds to be material those exhibits that are identified on the list that is attached and incorporated into these findings. The listed materials are to be made part of the public record to be maintained in the Olmsted Falls City Hall.

8. As reflected in the Exhibits of record, ten (10) private properties directly relate to the private bridge over Baker's Creek and to the private drive commonly known as East River Road. They are:

<u>PPN</u>	<u>CURRENT OWNER</u>
1. 291-14-001	Sterkel
2. 291-14-005	Scheutzow
3. 291-14-011	Boesken
4. 291-14-012	School/Koehl
5. 291-14-013	Nyland
6. 291-14-014	Guzik
7. 291-14-015	Norton
8. 291-14-016	Norton
9. 291-14-017	Abramovich
10. 291-14-018	Hanh

9. The private bridge rests upon portions of three of the above-listed private properties. They are:

<u>PPN</u>	<u>CURRENT OWNER</u>
1. 291-14-005	Scheutzow
2. 291-14-011	Boesken
3. 291-14-013	Nyland

10. Nine (9) of the ten (10) private properties listed above in Finding No. 8 require ingress and egress via the private bridge over Baker's Creek. They are:

<u>PPN</u>	<u>CURRENT OWNER</u>
1. 291-14-001	Sterkel
2. 291-14-005	Scheutzow
3. 291-14-011	Boesken
4. 291-14-012	School/Koehl
5. 291-14-014	Guzik
6. 291-14-015	Norton
7. 291-14-016	Norton
8. 291-14-017	Abramovich
9. 291-14-018	Hahn

11. One (1) of the ten (10) private properties listed above in finding No. 8 does not require ingress and egress via the private bridge over Baker’s Creek. It is:

<u>PPN</u>	<u>CURRENT OWNER</u>
1. 291-14-013	Nyland

**CONCLUSIONS**

1. The private bridge over Baker’s Creek is so structurally compromised and unsafe as to constitute a public nuisance, as that term is defined under law. *See e.g. Ohio Revised Code Chapter 715; Olmsted Falls Building Code Chapters 1472 and 1474.*

2. The City of Olmsted Falls has the authority to and shall exercise such authority as is necessary to abate the nuisance. *See R.C. 715.44; Olmsted Falls Section 1472.07.*

3. The City of Olmsted Falls need not and shall not acquire or otherwise dedicate to public use the bridge and East River Road in order to abate the nuisance.

4. Based upon its review of numerous recorded deeds of the East River Road properties, (the attached list and copies of the deeds are incorporated herein and made part of the public record), Council concludes that no deed provision has been made to ascribe responsibility for maintenance of the bridge, nor is the bridge, nor other structure, nor thoroughfare, nor means of ingress and egress described in any way in such deeds.

5. Based upon all of the evidence, history, anecdotal accounts and documentation, and professional expertise and opinion, Council shall appropriate such funds and shall take such steps as are necessary to cause the removal and replacement of the bridge and thereby impose upon the 10 private properties identified herein their proportionate cost for such abatement, said sums to be levied as special assessment if necessary, in such sum and in such manner as are authorized by law; as set forth herein below and based upon the Engineer’s estimate of \$ \_\_\_\_\_.

6. Council determines the proportionate cost for abatement to be ascribed to the ten (10) private properties listed above in finding No. 8 as follows:

<u>PPN</u>	<u>CURRENT OWNER</u>	<u>PERCENTAGE</u>
1. 291-14-001	Sterkel	9.09%
2. 291-14-005	Scheutzow	9.09%
3. 291-14-011	Boesken	9.09%
4. 291-14-012	School/Koehl	9.09%
5. 291-14-013	Nyland	9.09%
6. 291-14-014	Guzik	9.09%
7. 291-14-015	Norton	9.09%

8. 291-14-016	Norton	9.09%
9. 291-14-017	Abramovich	9.09%
10. 291-14-018	Hahn	9.09%
11.	City of Olmsted Falls	9.10%

7. Council shall enact legislation to effectuate these conclusions.

8. The attached list of exhibits, each of which is incorporated herein by reference and which shall be maintained by public record, reflects the substantive basis for Council’s decision to abate the nuisance.

**EXHIBIT LIST**

- RESOLUTION NO. 16-2017 and attached Exhibits.
- Minutes of Olmsted Falls City Council Public Hearings of May 8, 2017 and June 5, 2017 plus materials submitted to Clerk of Council at or following same, as of June 14, 2017.
- A complete copy of the “Binder” of documentation supplied by resident John Guzik, 9615 East River Road.
- *Field Inspection Observations of East River Road Bridge City of Olmsted Falls, Ohio plus Curriculum Vitae of William Sheehy, P.E., Chagrin Valley Engineering Ltd., plus PowerPoint presentation, submitted May 8, 2017.*
- Olmsted Falls Fire Department communications of March 13, 1992, March 25, 1992, and August 26, 2008.
- Letter of July 5, 2016 from Gayle Boesken, Paul and Lori Scheutzow, Ted and Marie Nyland.
- Olmsted Falls Planning Commission minutes (approved) of September 1, 2009.
- Numerous recorded deeds compiled alternatively by City Law Director Greg Sponseller and private attorney Mark Porter, set forth below.

**DEEDS**  
**(Recorded in Cuyahoga County)**  
**(East River Road Properties)**

**PORTER**

1. 9/12/1877; Baker to Rocky River Stone Quarry Co.
2. Vol. 5468, pp. 83-84; 9/29/1942 Bott/Arff to Lewis
3. Vol. 9701, p. 625; 5/11/1959 Lewis to Reany
4. Vol. 10626, pp. 39-40; 9/19/1963-2 Reany to Alexander
5. Vol. 15216, pp. 572-576; 12/31/1979 Reany to Reany (2 parcels) [PPN: 260-18-11]
6. Vol. 84-3212, pp. 17-19; 7/17/1984 Reany to Haun [PPN: 291-14-0187]
7. Vol. 87-7987, pp. 50-51; 12/11/1987 Reany to School & Koehl [PPN: 291-14-12]
8. Vol. 94-06679, p. 47; 7/12/1996 Reany to Nylands [PPN: 291-14-013]
9. Vol. 96-07331, pp. 28-29; 7/30/1996 Reany to Boeskens [PPN: 291-14-011]
10. Vol. 84-0225, pp. 38-39; 1/17/1984 (illegible copy)
11. 20020614048 (2 pp.); 6/14/2002 Pataky to Scheutzows [PPN: 291-14-005]

**SPONSELLER**

1. Vol. 90-2019. 2 pp.; 8/20/1990 Pepke to Nortons [PPN: 291-14-015]
2. 201009010639 (3 pp.); 9/1/2010 Maura to Thomas Norton [PPN: 291-14-016]
3. 201412080250 (3 pp.); 12/8/2014 Golden to Abramovich (2 parcels) [PPN: 291-14-017]
4. 94-06679, p. 47; 7/12/1996 Reany to Nylands [PPN: 291-14-013]
5. Vol. 84-3212, pp. 17-20; 7/17/1984 Reany to Haun [PPN: 291-14-018]



6. Vol. 87-7987, pp. 50-51; 12/11/1987 Reany to School & Koehl [PPN: 291-14-12]
7. 201407210344 (2 pp.); 7/21/2014 Boesken to Boesken [PPN: 291-14-011]
8. 201701310537 (3 pp.); 1/31/2017 Setter to Sterkel & Nicholson [PPN: 291-14-001]
9. 200103150832 (2 pp.); 3/15/2001 Kwit to Guziks [PPN: 291-14-014]
10. 200206141048 (2 pp.); 6/14/2002 Pataky to Scheutzows [PPN: 291-14-005]