

ORDINANCE # 305

AN ORDINANCE OF BOROUGH OF BALLY, BERKS COUNTY PENNSYLVANIA re PERMANENT CLOSURE OF, VACATION OF AND RENUNCIATION OF FORMER STREET DESIGNATION OF NORTH FIFTH STREET

WHEREAS, the Borough of Bally, Berks County PA is a Borough within Berks County, and the Commonwealth of Pennsylvania (hereinafter, "the Borough");

WHEREAS, Subchapter D of Title 8, including without limitation sections 1731, *et seq.*, of the Consolidated Statutes Commonwealth of Pennsylvania, provides, in relevant part, that: "Council has the authority to...vacate or close a street or portion of a street previously opened or laid out"; and

WHEREAS, such statute expressly authorizes the Borough to take such action upon the completion of certain required notice provisions and other procedural steps; and

WHEREAS, it is the judgment of this Borough that it is consistent with the health, safety, and welfare of the public to vacate the earlier action designating North 5th Street as a public road within the Borough of Bally; and

WHEREAS, the empowering statute identified above permits the Borough to address the conditions under which such vacation of a prior street designation shall occur;

NOW THEREFORE the Borough Council of the Borough of Bally, Berks County, PA in lawful session duly convened hereby ENACTS AND ORDAINS as follows:

Section 1. The Borough of Bally hereby vacates the previously designated and identified public street known as "North Fifth Street", to include "N. 5th Street", and any other designation previously indicated for that parcel of real property, and renounces and claim to such parcel of real property, as more specifically described in the real property description attached hereto as Exhibit A except as further defined below.

Section 2. The passage of this Ordinance and the vacation of the previously identified street shall have no effect upon any conveyance described below in this paragraph and shall instead specifically, forever and completely reserve the rights held now and/or in the future by:

- the Borough of Bally or its successors in interest and/or assigns to the easement, right-of-way, and/or other access and property rights in the Easement Agreement and rights conveyed as granted on 2 July 2002, and recorded at Volume 3588, page 1983 of the Berks County Recorder of Deeds office, and/or as later filed with said office, in amendment or other such form or format;
- the Borough of Bally Municipal Authority, its successors in interest and/or assigns to the right of way, easement and/or other access and property rights conveyed as granted on or about 16 November 1971, and recorded at Volume 297, page 96, *et seq.*, of the Berks County Recorder of Deeds office, and/or as later filed with said office, in amendment or other such form or format; and

- the Borough of Bally Municipal Authority, its successors in interest and/or assigns to the right of way, easement and/or other property rights conveyed as granted on or about 16 November 1971, and recorded at Volume 297, page 104, *et seq.*, of the Berks County Recorder of Deeds office, and/or as later filed with said office, in amendment or other form or format.

Section 3. No portion of this Ordinance is intended to change, alter, amend, expand or restrict any rights granted under any transaction between the landowners upon which the earlier designation of the street was imposed with the sole exception of the termination of, abandonment of, and vacation of the earlier street designation, in any manner, and this Ordinance is intended to specifically retain any and all such rights, duties and the right of any municipal entity to act as permitted under such grant of easement, right-of-way or other license as permitted under such transaction. No portion of this Ordinance is intended to change, alter, amend, expand or restrict any rights granted under any public utility easement, grant of right of way or similar interest or property rights conceded to any public utility or provider of similar public service, as set forth in the granting document of such entity.

Section 4. In the event that any provision, section, sentence, clause or portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any of the remaining provisions of this Ordinance. It is hereby declared to be the intent of the Borough Council of the Borough that the remainder of this Ordinance shall be and remain in full force and effect notwithstanding the fact that such portion thereof shall be invalid or unconstitutional.

Section 5. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed insofar, but only insofar, as the same are in direct conflict with this ordinance, but this ordinance is intended to be interpreted consistently with all other health, safety and regulatory statutes and ordinances and provide additional remedies where possible.

Section 6. This Ordinance shall take effect five (5) days subsequent to its passage.

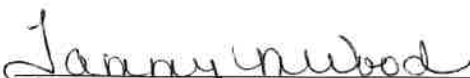

ORDAINED and ENACTED as an Ordinance of the Borough of Bally, Berks County, Pennsylvania, in lawful session duly assembled this 7th day of March, 2023.

BOROUGH OF BALLY
BOROUGH COUNCIL



Glenn Mutter, Council President

Attest:


Tammy Wood, Borough Secretary
David C. Schott MAYOR