

ORDINANCE NO. 13-49

AN ORDINANCE AMENDING SECTIONS 311.03, 371.05, AND 521.17 (USE OF STREETS) OF THE CITY OF DELAWARE CODIFIED ORDINANCES.

WHEREAS, the City of Delaware desires to update existing code sections pertaining to pedestrians on the street to promote public safety, and

WHEREAS, the current code sections are both under and over inclusive, and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Delaware, State of Ohio:

SECTION 1. That Section 311.03 is hereby amended as follows:

311.03 ~~TOY VEHICLES ON MISUSE OF STREETS.~~

(a) No person ~~on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device~~ shall go upon **OR OCCUPY THE PORTION OF ANY STREET OR** ~~any roadway~~ **INTENDED FOR PURPOSES OF VEHICULAR TRAVEL FOR A PURPOSE OTHER THAN CROSSING THE STREET OR AS PERMITTED IN 371.05 OR AS OTHERWISE PERMITTED BY LAW.** ~~except while crossing a street on a crosswalk and except on streets set aside as play streets.~~

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

SECTION 2. That Section 371.05 is hereby amended as follows:

371.05 WALKING IN STREET ALONG HIGHWAYS.

(a) Where a sidewalk is provided and its use is practicable, no pedestrian shall **OCCUPY OR** walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available, any pedestrian walking along and upon a ~~highway~~ **STREET** shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a ~~highway~~ **STREET** shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.

(d) Except as otherwise provided in Section 313.03 and 371.01, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

(e) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(ORC 4511.50)

SECTION 3. That existing Section 521.17 Playing Ball in Streets is hereby repealed.

SECTION 4. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

VOTE ON RULE SUSPENSION:

YEAS 6 NAYS 0
ABSTAIN 0

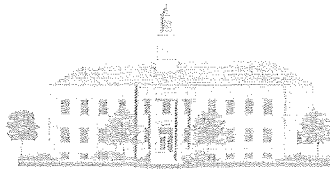
PASSED: 8/12, 2013

YEAS 6 NAYS 0
ABSTAIN 0

ATTEST:

Christine Shaw
CITY CLERK

Ly L. Miller
MAYOR



CITY OF DELAWARE

To: R. Thomas Homan, City Manager
From: Bruce Pijanowski, Chief of Police
Date: June 3, 2013
Re: Delaware Codified Ordinance 521.17 Playing Ball in Streets – for background information and recommendation

At your request, I have prepared the following report and recommendation regarding the issue of basketball hoops in the city's right of way. This can be reviewed by the Parking and Safety Committee as they consider the matter at their upcoming June 17th meeting.

I. Background

This issue comes about as a result of a complaint that was received regarding a Delaware resident that had painted a basketball court on the roadway and had a basketball hoop in the right of way. Delaware Police Department Community Service Officer Kyle Tomlin investigated the complaint, and spoke with the homeowners about the situation. They were advised that playing basketball in the street was in violation of the Delaware Codified Ordinance, and were asked to remove their basketball hoop from the right of way. The home owners, in turn, contacted your office and their Council representative and spoke at Council on May 13, 2013 to request that the local ordinance be reviewed.

As is normal practice, Public Works generated a letter to send to the home owner. Additional letters were prepared as a result of CSO Tomlin's review of the neighborhood which found several other homes that had placed basketball hoops in the right of way. Those letters, as well as the letter to the home owner who was the subject of the original complaint, were placed on hold pending the resolution of this matter.

I. Current Code

In its entirety, the current code states:

521.17 PLAYING BALL IN STREETS.

(a) No person shall throw, pitch, bowl, knock with a bat, stick, board or any other substance, or in any manner propel in, on or over any public street, sidewalk, alley, square or space within the City, any ball, stone or solid substance.

This section prohibits any type of sports play in or over city streets. There is an additional play related ordinance that should be considered as well. Delaware Codified Ordinance 311.03, Toy Vehicles on Street prohibits the use of skateboards, sleds, or any other toy vehicle from using the street other than to cross. The two code sections together effectively regulates street use to vehicular traffic only.



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An additional section to consider for consistency but that is not necessarily within my realm includes 312.03 Standards for Issuance of Permit, for parades assemblages and street closings. In particular this section requires liability insurance and an indemnification agreement. This applies to a street that is closed for an event such as a parade. The discussion about modifying our current ordinance will occur elsewhere, but this area is important to keep in mind for consistency and liability protection.

While our ordinance has been on the books for decades, there is no record that we have ever written a citation for a violation of the ordinance. There is history of one written warning which was issued in 2012 for repeated violations of the ordinance.

Our current practice is to enforce this ordinance on a complaint driven basis, with most of the complaints coming from Public Works regarding obstructions that strike or interfere with their operations on city streets. On the receipt of a complaint, Public Works generates a warning letter asking that the obstruction (typically a basketball hoop) be removed from the right of way. (See Appendix B for a listing of complaints that were filed and complaints that are pending.) This warning carries a reference to our ordinance prohibiting playing in the street. The Police Dept. community service officer will typically follow up on the letter and attempt to talk with the owners of the obstruction, and ensure that it is moved. As noted, no citations have been written as a result.

As of late last year, the community service officer has taken it upon himself to police the surrounding neighborhood when we received complaints of this nature. This is done out of an interest for fairness and consistency, as many times those that are complained on note the existence of other basketball hoops in the surrounding area. This has occurred since approximately last year; and total activity amounts to 21 warning letters. We currently do not direct police officers to actively enforce this section of law.

II. Practice in other communities

I researched the legislation in Dublin, Westerville, Powell, Columbus, and Gahanna. Dublin, Westerville, Powell and Columbus have legislation that specifically addresses playing in the street or placing basketball hoops on public property. Gahanna has legislation that prohibits placing obstructions in the street or right of way. In researching ordinances for other municipalities (not mentioned above), this type of legislation was found to be common. Gahanna's ordinance is referenced as representative of several other local municipalities. (See Appendix A for a synopsis of various ordinances.)

In addition to researching ordinances, I spoke with representatives from the Powell, Dublin and Westerville Police Departments to get a sense of how they handle complaints and violations of their ordinances.

Powell has ordinances that prohibit toy vehicles on the street as well as a restriction that prohibits recreational structures from being erected in the public right of way or easements. These ordinances



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were specifically derived from issues that Powell was having with Medics striking basketball hoops and causing damage to the emergency unit's lights. It was noted that when the ordinance first went into effect, there were some complaint from the public, but that has passed. Powell officers have discretion in how the ordinance is enforced and to date there have been no instances of enforcement or complaints from the public.

Westerville has an ordinance that prohibits playing games of sport, or operating skateboards, etc., in the street. This ordinance is not actively enforced by Westerville officers, but is used on a case by case basis to achieve compliance when there are complaints. To date, there have been no formal charges for playing ball in the street. Westerville also has zoning ordinances that prohibiting placing items in the right of way.

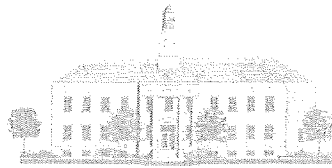
Dublin is similar to Powell and Westerville in that they prohibit any games of sport in the street. Dublin also prohibits basketball hoops and other obstructions in, on, above, or below city owned property. Dublin will typically issue a warning if a complaint is received, and that tends to remedy the problem. There is no history of formal charges being filed for a violation of this ordinance in Dublin. Dublin has also experienced the issue of basketball hoops in the right of way, and resolves it with a conversation with the homeowner. In addition to the obstruction and playing in street violations, Dublin will also refer these complaints to code enforcement for violations in regard to deed restrictions.

What is evident from the agencies polled and from the ordinances available is that playing in the street is not a high profile activity for law enforcement. Typically, these ordinances are invoked on a complaint driven basis, and are used as a tool to achieve the desired end result as opposed to strict enforcement.

I would submit that this is no different than the public discussions that occurred prior to the passage of the formalized park hours. While we have the black and white rule, it is incumbent on the police department to understand what the values and desires of the community are in executing the rule. We understand that a person walking their dog in the park is not deserving of a criminal charge. Someone who is intent on damaging park property, or using the grounds for illegal activities was the focus of the legislation. Knowing that, officer's use discretion in how they apply the law.

The Delaware Police Department and the comparable municipalities all operate the same way in regard to the basketball hoop / playing in the street concern. The ordinance is used as a tool to achieve compliance when there is a complaint or a safety issue. We understand that citing someone for playing in the street is not viewed as reasonable by the community. We have found that compliance is achieved simply by addressing complaints on an informal level. We exercise discretion in choosing to send warning letters and communicating with violators so that both the end result and the manner of obtaining it are reasonable.

III. Recommendations:



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Preferred Option:

The recommendation of the Delaware Police Department in regard to playing in the street is to maintain the current legislation and response. Both the Public Works Department and Engineering Department concur with this recommendation.

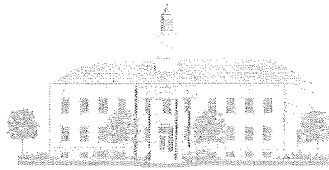
One must consider the intent of the legislation, the response by the enforcing agency, and whether the intent and the response are consistent. In recent history, it is apparent that they are. While the problems have been addressed, there has been no formal enforcement of the criminal violation.

Also to consider is current history in Delaware. We have enacted both a distracted driver ordinance that prohibits texting while driving, and we have initiated a residential speed program to help educate the public to the dangers of speeding in residential areas, both which came about as a result of issues and concerns voiced in our community. The broader issue to consider here is how we have all three of these conversations (distracted driving, residential speed, and playing in the street), and conclude them all in a way that ensures that we are keeping the public safe. We must look at the issues with logic and reason and make conclusions with safety in mind.

On a state level, The Ohio Department of Transportation recommends that children should not be encouraged to play in the roadway. ODOT also does not provide or recommend "Children at Play," or similar signs because they do not provide the desired safety benefit. In fact, of concern is the fact that these facts may cause people to feel that they have an added degree of safety, when they do not. We must also consider the collateral issues such as items in the right of way. Do we want unrestricted placement of basketball hoops in the right of way in the community from an aesthetics view? If we allow basketball hoops, do we also allow soccer goals, hockey nets, etc.? Additionally, do we consider requiring proof of liability insurance to use the right of way and street, such as we do with street closings and sidewalk cafes?

Additional factors also play into this recommendation. Children at play tend to focus on their play activities, not on the environment around them. They do not understand or have an appreciation for the vehicular dynamics of how cars work and how quickly they can stop. They do not understand that drivers can be distracted – by a cell phone, adjusting the radio, coughing or simply a glance into the rearview mirror. The amount of time needed to refocus could be more than the time it takes a child to dart out from behind a parked car – another factor that is prevalent in our neighborhoods. While most drivers will gladly wait a few seconds for the street to clear, of concern is the driver that is not aware that the street is occupied or about to be occupied because of some distraction.

To change the ordinance to allow for playing in the street and the placement of objects in the right of way would increase the risk to those that are being enabled to do so. It is evident that some of the driving force that prompted this inquiry was in regard to the availability of play space for young families



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with children. This recommendation should in no way be interpreted to be dismissive of that need. It is, however, based on public safety and the intuitive belief that placing children in roadways will unnecessarily expose them to danger, and potentially expose the city to liability. It is the recommendation here that these two issues be considered exclusive of each other.

Option B:

If maintaining the current statute is not preferred by Council, then an alternate option to help mitigate some of the liabilities noted above would be to modify (in **bold**) the existing ordinance to read as follows:

521.17 PLAYING BALL IN STREETS.

*(a) No person shall throw, pitch, bowl, knock with a bat, stick, board or any other substance, or in any manner propel in, on or over any public street, sidewalk, alley, square or space within the City, any ball, stone or solid substance. **This ordinance does not apply to non-collector residential streets.***

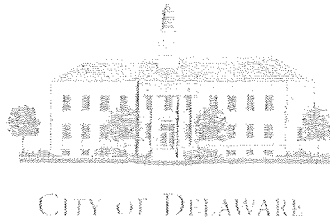
This modified language would address concerns related to high volume traffic areas, namely by allowing street play only on residential streets that are not collector streets. City Staff is not in favor of creating some type of public use permit for street sports as it will create additional regulation and administrative demands. This would have to be debated more thoroughly, however, and would require consulting with Planning and the City Attorney for input regarding the issue of permitting to include liability insurance, revocability, and other rules such as a code of standards and requirements for placement and removal of public way obstructions.

As noted previously, we currently prohibit most public way uses, and if we open the door to basketball hoops we may open the door to other uses as well. Any legislation should be narrowly defined to minimize unintended consequences.

Conclusion:

Current ordinance appears to be working in that it is used as a tool to address issues, and is not applied with a strict enforcement approach. Given the discussions we have had about distracted driving and residential speed concerns, it is recommended for public safety reasons that we leave our ordinance as it is and do not permit playing in the streets. This should not be viewed as dismissive of the need for safe play spaces for children, but rather suggestive that the street is not safe for play.

Chief B. P. 1
6/12/13



Appendix A:

Dublin:

72.019 Toy Vehicles on Streets; sled, toy vehicle, skateboard prohibited except while crossing.

96.16 No person on or adjacent to any city-owned property shall place, deposit, build, or construct any encroachment, whether temporary or permanent, including but not limited to buildings, parking, driveways, sidewalks, sheds, swimming pools, patios, decks, play structures or other accessory structures, fences, antennae and basketball courts or other sport courts, in, on, above, or below the city-owned property.

Westerville:

311.03 PLAYING IN STREETS; SKATEBOARD, ROLLER SKATES AND IN-LINE SKATES.

(a) No person shall play or engage in any games of sport, or ride upon or operate a skateboard, roller skates or in-line skates, on any roadway such as tends to obstruct or impede the free use of such public roadway.

(b) No person shall ride upon or operate a skateboard, roller skates or in-line skates upon a sidewalk within the Uptown District as defined in Chapter 1147 of the Codified Ordinances, upon a sidewalk within a shopping center, or upon a sidewalk or parking lot where signs are erected prohibiting such operation.

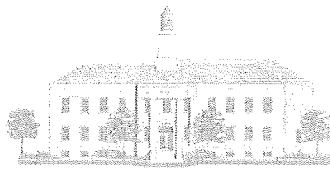
(c) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

Powell

311.03 TOY VEHICLES ON STREETS.

(a) No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth



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degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

1147.14 RECREATIONAL STRUCTURES.

(a) Purpose. It is the purpose of this section to promote the public health, safety, and welfare through the regulation of recreational structures.

(b) Recreational Structure Defined. A "recreational structure" means any structure used for recreational activity. Recreational structures include, but are not limited to, basketball goals, goal nets, backstops, trampolines, half-pipes, quarter pipes, ramps, and playground equipment. The Zoning Administrator may decide what will be determined to be a recreational structure. See Section 1147.06 for regulations on swimming pools.

(c) Prohibited from Public Right of Way and Easements. Due to issues of public safety, both vehicular and pedestrian, created by the location of recreational structures in the public right of way and some easements, recreational structures are prohibited from being located in any public right of way and/or easement designated for the purpose of public access.

(d) Basketball Goals. Basketball goals may be erected in the front yard. Basketball goals attached to poles are permitted alongside the driveway as long as the pole is set back at least two (2) feet from the side property line and five (5) feet from the front property line.

(e) Recreational Structures Prohibited in Front Yard. Due to issues of blighting and reduction of property values created by the location of recreational structures in front yards, recreational structures, except basketball goals as stated in subsection (d) above, are prohibited from being located in the front yard.

Columbus

902.02 - Obstructing sidewalks, bikeways or streets.

(a)

No person, regardless of intent, shall place, deposit, maintain, or use, or cause or permit to be placed, deposited, maintained, or used upon any street, alley, sidewalk, bikeway as defined in Section 900.03, highway, or right-of-way any materials, containers, vending equipment, structures, appliances, furniture, merchandise, bench, stand, sign, or advertising of any kind, or any other similar device or obstruction except as authorized by the director public service and/or their designee, as required by Chapter 903 of the Columbus City Code.



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(1)

Any person, regardless of intent, who places, deposits, maintains, or uses, or causes or permits to be placed, deposited, maintained, or used upon any street, alley, sidewalk, bikeway, highway, or right-of-way any obstructions as defined in Section 902.02(a), except as authorized by the director public service and/or their designee as required by Chapter 903 of the Columbus City Code, shall remove such obstructions.

(2)

In addition to any civil and/or criminal penalties set forth in this chapter, upon failure of any person to remove such obstructions as defined in Section 902.02(a), then the removal service may be rendered by the appropriate city agency and the person billed at the current hourly rates of the agency's equipment and personnel.

(3)

Failure to pay such bill within ten (10) days shall be grounds for revocation of any and all city permits, licenses, performance bonds, and letters of credit issued to or posted by such person and for refusal to issue any new permits or licenses for so long as the bill remains unpaid.

(b)

No person shall knowingly erect, or cause to be erected or permit to remain standing:

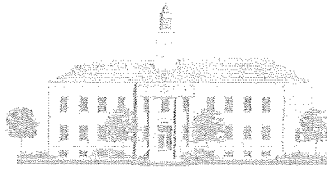
(1)

Any porch, portico, veranda, stairs, steps, cellar doors, area, or other projection, extending over or upon the sidewalk, or shared-use path as defined in Section 900.03 of any street, alley, or public highway in the city, provided that, the city council may grant the right to construct areaways under sidewalks or shared-use paths upon the condition that they are constructed to the approval of the chief building inspector;

(2)

Any house, building, wall, fence, post, pole, rocks, blocks, timbers, curbs, landscaping materials, or other structure in such a manner that any part thereof shall stand or project beyond the line of any lot or parcel of ground into any street, alley, sidewalk, bikeway, highway, or right-of-way. Mailbox supports, street trees as defined in Chapter 912 of the Columbus City Codes and utility poles are not regulated by this section.

(a)



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No person being the owner of any lot abutting on a street or avenue of the city which is enclosed by a fence shall have the gate at the entrance of such lot from the street or avenue so constructed as to be allowed to swing outward over the street or avenue or the sidewalks or shared-use path unless such gates shall be so constructed and supplied with springs, chain, and weight or other appliances as to automatically close such gates and keep them closed when not in use.

(b)

No person shall play at a game of ball upon any street or street park in the city.

Gahanna: (also Upper Arlington, Grove City, Worthington, Reynoldsburg)

311.01 PLACING INJURIOUS MATERIAL OR OBSTRUCTION IN STREET.

(a) No person shall place or knowingly drop upon any part of a street, highway or alley any tacks, bottles, wire, glass, nails or other articles which may damage or injure any person, vehicle or animal traveling along or upon such street, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

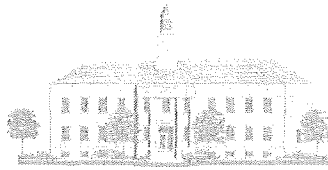
(b) Any person who drops or permits to be dropped or thrown upon any street any noxious, destructive or injurious material shall immediately remove the same.

(c) Any person authorized to remove a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle.

(d) No person shall place any obstruction in or upon a street without proper authority.

(e) No person, with intent to cause physical harm to a person or vehicle, shall place or knowingly drop upon any part of a highway, lane, road, street or alley any tacks, bottles, wire, glass, nails or other articles which may damage or injure any person, vehicle or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(f) (1) Except as otherwise provided in this subsection, whoever violates any provision of subsections (a) to (d) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the



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offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates subsection (e) of this section is guilty of a misdemeanor of the first degree. (ORC 4511.74)

Grove City: (Worthington, Reynoldsburg)

311.02 PARADES AND ASSEMBLAGES; PERMIT.

(a) No person, group of persons or organization shall conduct or participate in any parade, procession or assemblage upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Director of Public Safety and/or the Chief of Police.



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Appendix B

From: Linda Mathews
Sent: Thursday, May 02, 2013 8:43 AM
To: R Thomas Homan
Subject: Basketball Hoop Letters

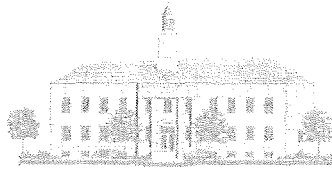
Tom,

These are the locations that have received letter for basketball hoops since last September. The initial problem was on the stub street of Hazel Blue Way and then others followed:

Hazel Blue Way
6 Scottwood Ct
19 Deerfield Pl
54 Beech Ct
77 Baywood Dr
146 Flintwood Dr
155 Leawood Dr
168 Trestletree Ct
204 Leawood Dr
207 Plum Ct
215 Dogwood Dr
300 Pecan Ct
306 Pecan Ct
347 Pecan Ct
476 Federal Cir
515 Federal Cir
644 Congress Ct
664 Congress Ct
670 Congress Ct
163 Knight Dream St
307 Indigo Blue St

The addresses pending for letters are:

196 Stonhope Ct (both Kyle Tomlin and I have spoken with the resident)
287 Linwood St
213 Whitewater Ct
219 Whitewater Ct
231 Whitewater Ct
254 Whitewater Ct



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456 Wheatfield Dr
372 Wheatfield Dr
330 Wheatfield Dr

Please advise if you need any additional information on this from me.

Linda Mathews
Customer Service Liaison
City of Delaware Ohio
Public Works Department
440 E. William St.
Delaware, OH 43015
740-203-1810
740-203-1899 Fax
lmathews@delawareohio.net