

RECORD OF ORDINANCES

Dayton Legal Blank Co. 10114

Ordinance No. 1981-6

Passed _____

8-18- 19 81

AN ORDINANCE AUTHORIZING AND ENACTING A FLOOD DAMAGE PREVENTION CODE AND DECLARING AN EMERGENCY

WHEREAS, The Municipality of Brookville, Ohio has the legal authority to adopt land use and control measures for promoting the public health, safety and general welfare of its citizens pursuant to the Ohio Constitution, and

WHEREAS, the flood hazard areas of the Municipality of Brookville, Ohio, are subject to periodic inundation which may result in the loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare,

WHEREAS, these flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF BROOKVILLE, OHIO, that:

SECTION I:

It is the purpose of this ordinance to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) protect human life and health;
- (2) minimize expenditure of public money for costly flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business interruptions;
- (5) minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, street and bridges located in areas of special flood hazards;
- (6) help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) ensure that potential buyers are aware that property is in an area of special flood hazard; and
- (8) ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

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SECTION II:

In order to accomplish those purposes set forth in Section I of this ordinance, this ordinance includes methods and provisions for:

- (1) restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (2) requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood water;
- (4) controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION III:

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Accessory structure" means a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

"Appeal" means a request for a review of the Municipal Manager's interpretation of any provision of this ordinance or a request for a variance.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Development" means any man-made change to improve or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

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- (i) they shall not be used for human habitation;
- (ii) they shall be designed to have low flood damage potential;
- (iii) they shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters;
- (iv) they shall be firmly anchored to prevent flotation; and,
- (v) service facilities such as electrical and heating equipment shall be elevated or floodproofed.

3. Mobile Homes

The following standards shall apply to all mobile homes not subject to the house trailer park requirements of Section 3733.01, Ohio Revised Code.

- (1) Mobile homes shall be anchored in accordance with Section VI.A1(2).
- (2) For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, require that:
 - (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
 - (ii) adequate surface drainage and access for a hauler are provided; and,
 - (iii) in the instance of elevation on pilings, that:
 - lots are large enough to permit steps,
 - piling foundations are placed in stable soil
 - reinforcement is provided for pilings more than six feet above the ground level.
- (3) No mobile home shall be placed in a floodway, except in an existing mobile home park or existing mobile home subdivision.

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C. Floodways

Located within areas of special flood hazard established in Section IV. B are designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge, as determined by and certified by a registered professional engineer.
- (2) If Section VI C (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section VI PROVISIONS FOR FLOOD HAZARD REDUCTION.
- (3) Prohibit the placement of any mobile homes, except in an existing mobile home park or existing mobile home subdivision.

SECTION VII:

This ordinance is hereby to be declared an emergency ordinance, the reason for the emergency being the need to provide proper protection for the citizens of the Municipality of Brookville who live in flood hazard areas and it is necessary to preserve the public health, safety and welfare of the citizens of the Municipality of Brookville, Ohio, and this ordinance shall be in force and take effect immediately upon its passage, provided passage is by at least two-thirds (2/3) by the members of council.

PASSED this 18th day of August, 1981

E. Eugene Roeser
E. Eugene Roeser, Clerk

Robert N. Apgar
Robert N. Apgar, Mayor

CERTIFICATE

The aforesigned, Clerk of the Municipality of Brookville, Ohio does hereby certify that the foregoing is a true and correct copy of Ordinance No. 1981-6 passed by the Council of said municipality on the 18th day of August, 1981.

E. Eugene Roeser
E. Eugene Roeser, Clerk

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Code pertaining to house trailer parks shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

- (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations (for mobile homes less than 50 feet long only one additional tie per side shall be required);
- (ii) frame ties be provided at each corner of the mobile home with five additional ties per side at intermediate points (for mobile homes less than 50 feet long only four additional ties per side shall be required);
- (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and,
- (iv) any additions to the mobile home be similarly anchored.

2. Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- (2) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) Individual waste water treatment systems shall be located to avoid impairment to them or contamination from them during flooding.

4. Subdivision Proposals

- (1) All subdivisions proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems

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located and constructed to minimize flood damage;

- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less)

B. Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section IV.B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section V. D.2, Use of Other Base Flood Data, the following provisions are required:

1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation.

2. Nonresidential Construction

- (1) New construction and substantial improvement of any commercial industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (i) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- (iii) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section V A (3)

- (2) An exemption to the elevation or dry floodproofing standards may be granted for accessory structures (e.g., shed, detached garages) containing less than 500 square feet in gross floor area. Such structures must meet the encroachment provisions of Section VI. C (1) and the following additional standards:

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- (ii) the danger to life and property due to flooding or erosion damage;
- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) the importance of the services provided by the proposed facility to the community;
- (v) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (vi) the necessity to the facility of a waterfront location, where applicable;
- (vii) the compatibility of the proposed use with existing and anticipated development;
- (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors or Section V.E.1(4) and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(6) The Municipal Manager shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

2. Conditions for Variances

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot on one-half acre or less in size contiguous to and surrounded by lots

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with existing structures constructed below the base flood level, providing item (i-xi) in Section V.E-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section V.E 1(4), or conflict with existing local laws or ordinances.
- (6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION VI:

A. In all areas of special flood hazards the following standards are required.

1. Anchoring

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All mobile homes not otherwise regulated by the Ohio Revised

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D. Duties and responsibilities of the Municipal Manager shall include:

1. Permit Review

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Review all development permits to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required.
- (3) Review all development permits to determine if the proposed development is located within the designated floodway as indicated in the Flood Boundary and Floodway Map of the Flood Insurance Study. If the proposed development is located within the designated floodway, assure that the encroachment provision of Section VI C (1) is met.

2. Use of Other Base Flood Data

When base flood elevation data have not been provided by the Federal Emergency Management Agency in accordance with Section IV.B BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Municipal Manager shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other source in order to administer Section VI.B-1, SPECIFIC STANDARDS, Residential Construction, and VI B-2, SPECIFIC STANDARDS, Nonresidential Construction.

3. Information to be Obtained and Maintained

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (i) verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed, and
 - (ii) maintain the floodproofing certifications required in Section V.A. (3).
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

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4. Alteration of Watercourses

- (1) Notify adjacent communities and the Ohio Department of Natural Resources, Division of Water, prior to any alteration or relocation of a water course, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that necessary maintenance will be provided for by the applicant for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished.

5. Interpretation of Flood Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section V.E.

E. Variance Procedure

1. Appeal Board

- (1) The Board of Zoning Appeals as established by the Municipality of Brookville shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The Board of Zoning Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Municipal Manager in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the Board of Zoning Appeals or any taxpayer, may appeal such decisions to the Montgomery Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code.
- (4) In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;

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"Existing mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets), is completed before the effective date of this ordinance. This definition shall exclude any house trailer park, as defined in Section 3733.01 of the Ohio revised Code, over which the Public Health Council has exclusive rule making power.

"Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets). This definition shall exclude any house trailer park, as defined in Section 3733.01 of the Ohio Revised Code, over which the Public Health Council has exclusive rule making power.

"Federal Emergency Management Agency" (FEMA) means the agency with the overall responsibility for administering the National Flood Insurance Program.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal water, and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means an official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Habitable floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor."

"Mobile home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities.

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It does not mean include recreational vehicles or travel trailers.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets), is completed on or after the effective date of this ordinance. This definition shall exclude any house trailer park, as defined in Section 3733.01 of the Ohio Revised Code, over which the Public Health Council has exclusive rule making power.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footing or any work beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"Structure" means a walled and roofed building, mobile home, or gas or liquid storage tank that is principally above ground.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications

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which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

SECTION IV :

A. This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Municipality of Brookville, Ohio.

B. The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study for the Village of Brookville, Ohio." This study, with accompanying Flood Boundary and Floodway Maps and Flood Insurance Rate Maps dated October 15, 1981 and any revisions thereto is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at 130 Main Street, Brookville, Ohio.

C. Unless specifically exempted from filing for a development permit as stated in Section V. B no structure or land shall hereafter be located, erected, constructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of this ordinance and all other applicable regulations which apply to uses within the jurisdiction of this ordinance.

D. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. In the interpretation and application of this ordinance, all provisions shall be:

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the governing body; and,
- (3) deemed neither to limit nor repeal any other powers granted under State statutes. Where a provision of this ordinance may be in conflict with a State law, such State law shall take precedence over the ordinance.

F. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger flood can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted

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within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Municipality of Brookville, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

G. Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor of the 4th Degree. Any person who violates this ordinance or fails to comply with any of its requirements (including violations of conditions of and safeguards established in connection with conditions) shall upon conviction thereof be fined or imprisoned as provided by the laws of the Municipality of Brookville. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Municipality of Brookville from taking such other lawful action as is necessary to prevent or remedy any violations.

SECTION V:

A. A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section IV,B. Application for a Development Permit shall be made on forms furnished by the Municipal Manager and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) elevation in relation to mean sea level of the lowest floor, including basement of all proposed structures;
- (2) elevation in relation to mean sea level to which any proposed structure will be floodproofed;
- (3) for any nonresidential structure meet the floodproofing criteria in Section VI.2-(1)
- (4) description of the extenet to which any watercourse will be altered or relocated as a result of proposed development.

B. An application for a Development Permit shall not be required for maintenance work such as roofing, painting, and basement sealing, or for small development activities (except for filling) valued at less than \$500.00.

C. The Municipal Manager is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

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CERTIFICATION OF POSTING

The undersigned, Clerk of Council of the Municipality of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 1981-6 was posted at the Municipal Building, U. S. Post Office and the Brookville National Bank, Brookville, Ohio on the 27th day of August, 1981 to the 25th day of September, 1981 both days inclusive.

E. Eugene Roeser
E. Eugene Roeser, Clerk