

ORDINANCE NO. 25-16

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH GARLAND GRIFFIN HOMES, INC. AND AUGUST PROPERTIES, LLC, AUTHORIZING THE PURCHASE OF CERTAIN PROPERTY OWNED BY GARLAND GRIFFIN HOMES, INC. AND DECLARING AN EMERGENCY

WHEREAS, Garland Griffin Homes, Inc. (“Garland”) owns a parcel of real estate approximately 56.9 acres located in the northwest quadrant of the Riegelsberger Road and Jaycox Road intersection in the City of Avon, Lorain County, Ohio, and is assigned Permanent Parcel No. 04-00-023-107-025 in the records of the Auditor of Lorain County, Ohio (the “Property”);

WHEREAS, August Properties, LLC (“August Properties”) holds a mortgage interest in the Property (the “Mortgage”);

WHEREAS, Garland proposed to develop the Property for detached, single-family houses in a development to be called the Creekside Subdivision;

WHEREAS, following a storm event on May 12, 2014 (“5/14 Storm Event”), the Property and its vicinity were temporarily flooded and the City determined to reexamine the storm water conditions its citizens were being subjected to and to take steps necessary to help resolve and improve those conditions;

WHEREAS, following the 5/14 Storm Event, the City determined it was necessary for the health, safety and welfare of its citizens to revoke approvals for the Creekside Subdivision Phase 1 Final Plat, and communicated to Garland the City’s intention to appropriate the Property from Garland;

WHEREAS, Garland obtained an appraisal valuing the Property at \$3,125,000 and the City obtained an appraisal valuing the Property at \$2,000,000;

WHEREAS, on January 26, 2015, the City adopted Resolution No. R-3-15, in which the Council deemed it necessary to appropriate the Property and declared the City’s intent to appropriate it in the City’s name and for its use;

WHEREAS, on February 23, 2015, the City adopted Ordinance No. 22-15, in which the City appropriated the Property and authorized the City’s legal counsel to file a petition for appropriation in the Court of Common Pleas of Lorain County, Ohio;

WHEREAS, in March 2015, the City commenced an action known as City of Avon v. Garland Griffin Homes, Inc., Lorain County Court of Common Pleas, Case No. 15CV186021 (the “Lawsuit”), by which the City sought a declaratory judgment concerning its authority to revoke Garland’s Creekside Subdivision Phase 1 Final Plat approvals;

WHEREAS, Garland counterclaimed against the City and the City officials in the Lawsuit;

WHEREAS, August Properties intervened in the Lawsuit;

WHEREAS, representatives of the City, Garland and August Parties have tentatively agreed to settle their disputes and resolve all outstanding issues between them with regard to the claims alleged in the Lawsuit;

WHEREAS, the parties have prepared a settlement agreement and mutual release (the “Agreement”), which has been submitted to Council;

WHEREAS, the Agreement requires the City to purchase the Property for the sum of \$2,350,000.00; and

WHEREAS, Council desires to approve the Agreement and to authorize the Mayor to execute the Agreement on behalf of the City and to execute all such other instruments and take such other actions as he may reasonably deem necessary or appropriate to fulfill the terms of the Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the Mayor is hereby authorized to execute and deliver the Settlement Agreement in substantially the form previously submitted to Council with any modifications deemed necessary or appropriate by the Mayor and the Law Director.

Section 2 - The City shall purchase the Property for the sum of \$2,356,345.86 pursuant to the terms of the Settlement Agreement. The Finance Director is hereby authorized to make payment from the Parkland Acquisition Fund No. 408 in said amount. To further facilitate this payment, the Finance Director is also authorized to transfer funds from the Recreation Income Tax Fund No. 240 in the amount of \$325,000 and from the General Fund no. 101 in an amount not to exceed \$40,000 into the Parkland Acquisition Fund No. 408 for this purpose. Further, the Finance Director is authorized to increase the appropriation for any additional engineering or legal expense associated with this Settlement Agreement.

Section 3 - The City is authorized to pay such closing costs and other costs associated with the acquisition of the Property as the Agreement requires the City to pay or as may otherwise be necessary or appropriate to complete the City’s acquisition of the Property.

Section 4 - The Mayor and the Finance Director are authorized and directed to execute and deliver such other instruments on behalf of the City as they may deem necessary or

appropriate and that the Law Director shall approve as to form to fulfil the obligations of the City pursuant to the Agreement and acquire title to the Property.

Section 5 - The Mayor and the Finance Director are authorized and directed to take such other actions on behalf of the City as they may deem necessary or appropriate to fulfill the obligations of the City pursuant to the Agreement and acquire title to the Property.

Section 6 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including the City's Charter, Codified Ordinances and any applicable provisions of Section 121.22 of the Ohio Revised Code.

Section 7 - This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City and for the further reason that acquisition of the Property is necessary to further efforts to control flooding; therefore, this Ordinance shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Craig Witherspoon, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Ellen R. Young
Clerk of Council

Posted: _____

In Five Places as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director