

**ORDINANCE NO. 71-23**

**AN ORDINANCE AUTHORIZING AN EXTENSION OF TIME  
WITHIN WHICH TO COMPLETE IMPROVEMENTS IN  
CONCORD VILLAGE SUBDIVISION NO. 3  
AND DECLARING AN EMERGENCY**

**WHEREAS**, pursuant to Ord. No. 42-22, passed on April 25, 2023, Council authorized the City to enter into a Development Agreement for the installation of improvements in Concord Village Subdivision No. 3 with Concord Village Phase Two, LLC; and

**WHEREAS**, due to unforeseen events and through no fault of their own, the Developer was not able to install said improvements as per the twelve (12) month deadline of May 25, 2023, and hereby requests an extension of one (1) year to May 25, 2024 within which to complete said construction; and

**WHEREAS**, Council finds that it is in the best interest of the health, safety and welfare of the community to extend the time for installation of improvements to May 25, 2024.

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

Section 1 - That Council hereby agrees to extend the time within which to complete installation of improvements by Concord Village Phase Two, LLC, within the Concord Village Subdivision No. 3 to May 25, 2024. (See Concord Village Phase Two, LLC's request attached hereto as Exhibit A.)

Section 2 - 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 deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

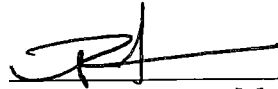
Section 3 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to approve an extension of time within which to complete improvements in Concord Village Subdivision No. 3; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: May 8, 2023      DATE SIGNED: May 8, 2023

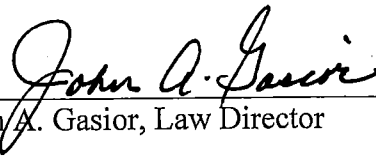
By: Brian Fischer  
Brian Fischer, Council President

Ordinance No. 71-23 (Con't)

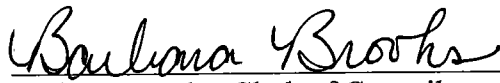
DATE APPROVED BY THE MAYOR: May 9, 2023

  
\_\_\_\_\_  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John A. Gasior, Law Director

ATTEST:


  
\_\_\_\_\_  
Barbara Brooks, Clerk of Council

Posted: May 10, 2023  
Electronically and at City Hall as  
Provided by Council

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

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 71-23, passed by the Council of said City on May 8, 2023.

IN WITNESS WHEREOF, I have on this 9<sup>th</sup> day of May, 2023, affixed my signature and official seal.

  
\_\_\_\_\_  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio

## BERNS, OCKNER & GREENBERGER, LLC

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April 25, 2023

VIA EMAIL [jgasior@ssgavonlaw.com](mailto:jgasior@ssgavonlaw.com)

John A. Gasior, Law Director  
City of Avon  
36080 Chester Road  
Avon, Ohio 44011

**Re : Ordinance No. 42-22  
Request for Extension of Time to Meet Timing to Commence Work**

Dear John:

As a follow up to our discussions, Developer, pursuant to Section 3 of the Development Agreement entered into under to Ordinance 42-22, hereby requests a twelve (12) month extension of the time to Commence Work upon the Development, until and including May 25, 2024. (All capitalized terms used in this letter are defined as in the Development Agreement.)

Under Section 3 of the Development Agreement, “‘Commence Work’ means Developer has completed all preconstruction engineering and design and has received all necessary licenses and/or permits and commenced physical preparations of the Development Property for the pouring of foundations of the Units.” Section 3 of the Development Agreement also provides that Developer shall Commence Work upon the Development no later than twelve (12) months after rezoning of the Development Property to R-3 has become effective.” Ordinance No. 42-22, which rezoned the Development Property, was passed on April 25, 2022, and became effective May 25, 2022, so that Developer is required to Commence Work upon the Development later than May 25, 2023. Finally, it provides that, “[i]n the event that Developer is unable at any time to meet the timing set forth above through no fault of its own, the parties shall meet to discuss an agreed upon extension of up to twelve (12) months, which shall not be unreasonably withheld from the City.”

Developer anticipates that by May 25, 2023, it will Commence Work with respect to the portion of the Development Property on which the first 41 Units are to be constructed by that date. However, through no fault of Developer, the US Army Corp of Engineers has not issued the wetland permit necessary to Commence Work upon the remainder of the Development Property despite Developer’s timely application for that wetland permit. Until that wetland permit is issued, Developer cannot, with respect to the remainder of the Development Property, Commence Work.

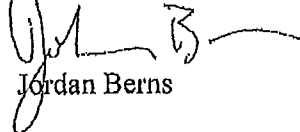
John A. Gasior, Law Director  
April 25, 2023  
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As such, Developer requests a twelve (12) month extension of the time to Commence Work upon the Development, until and including May 25, 2024.

As we have discussed, because such extension is expressly authorized by the Development Agreement, an amendment of the Development Agreement is not necessary to provide such extension. Rather, the City may grant such extension by such action as it deems necessary.

Thank you for your consideration. Please contact me regarding the next steps necessary with regard to the requested extension.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jordan Berns", with a horizontal line extending to the right.

Jordan Berns

JB:rls

cc: Jason Friedman (via email)