

ORDINANCE NO. 119-23

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
AN AGREEMENT TO PURCHASE REAL ESTATE LOCATED AT
37570 FRENCH CREEK ROAD IN THE CITY OF AVON, PERMANENT PARCEL
NO. 04-00-010-113-080, FROM OROSZ FAMILY LTD.
AND DECLARING AN EMERGENCY**

WHEREAS, as the City continues to grow, so does its need to acquire additional lands for public use; and

WHEREAS, the Mayor seeks authorization from Council to enter into a Purchase Agreement with Orosz Family, Ltd. for the purchase of a parcel of land consisting of approximately 8.5718 acres located at 37570 French Creek Road in the City of Avon; and

WHEREAS, Council has had an opportunity to meet with the Mayor and discuss the purchase of the subject property, including the terms of the transaction as set forth in the proposed Purchase Agreement; and

WHEREAS, Council deems it to be in the best interests of the health, safety and welfare of the community that the City acquire the land being offered for sale at 37570 French Creek Road for use as public property and authorizes the Mayor to execute a purchase agreement to further said acquisition without delay.

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

Section 1 - That the Mayor is hereby authorized to enter into a Purchase Agreement with Orosz Family, Ltd. to acquire a parcel of land located at 37570 French Creek Road in the City of Avon, Permanent Parcel No. 04-00-010-113-080 (8.5718 acres). Said Agreement, in substantially the form as presented, is attached hereto as Exhibit A and incorporated herein by reference.

Section 2 - Council hereby authorizes the payment of funds from the General Fund No. 101 in an amount equal to that set forth in the Purchase Agreement, together with any costs of closing. Payment is to be made pursuant to the directives of the Finance Director who is authorized to increase the appropriation by a reasonable amount to cover any engineering, legal and closing fees associated with this purchase.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity for the City to acquire additional land for public use whenever the opportunity presents itself and without delay; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: November 27, 2023 DATE SIGNED: November 27, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: November 28, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: November 29, 2023
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director, City of Avon

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. 119-23, passed by the Council of said City on November 27, 2023.

IN WITNESS WHEREOF, I have on this 28th day of November, 2023, affixed my signature and official seal.

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

PURCHASE AGREEMENT
(Real Estate)

THIS PURCHASE AGREEMENT (the 'Agreement') is made at Avon, Ohio, by and between, **OROSZ FAMILY LTD**, 37570 French Creek Road, Avon, Ohio, hereafter the "Seller" and **THE CITY OF AVON, OHIO**, an Ohio municipal corporation, herein referred to as the "Buyer" (both of whom are being collectively herein referred to as the "Parties"), upon the following terms, provisions, and conditions:

1. DESCRIPTION OF PROPERTY

Seller agrees to sell and convey to the Buyer and the Buyer agrees to purchase from Seller at the price and upon all the terms, provisions and conditions herein contained, real property located at 37570 French Creek Road, PPN: 04-00-010-113-080, consisting of approximately 8.5718 acres of land with an in-use 80 x 90 storage facility, situated in the City of Avon, and identified by the legal description attached hereto and incorporated herein as Exhibits A and B. The sale and purchase shall include all rights, privileges and easements, if any, pertaining to said property.

2. PRICE and TERMS OF PAYMENT

The total purchase price, in cash, to be paid by the Buyer to the Seller for the property described in the above Paragraph 1 shall be the sum of **THREE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$365,000.00)**, payable to Network Land Title Agency located at 105 Cleveland St, Suite 200, Elyria, OH 44035, as escrow agent for the Parties, prior to or upon the date designated herein for closing.

3. CONDITIONS PRECEDENT

This Agreement and the obligation of the Buyer to complete and close this Agreement is subject to the satisfaction of the following conditions precedent prior to the closing date:

- a) passage of an ordinance by Avon City Council authorizing the purchase of the property described in Paragraph 1 above at the price and upon all of the terms, provisions and conditions set forth in this Agreement.
- b) receipt by the Buyer of a Phase 1 Environmental Study if the Buyer decides to commission such study, and
- c) receipt of a title commitment for the property acceptable to the Buyer. It shall be the Buyer's obligation to order a title commitment.

In the event any of the conditions precedent set forth in (a) through (c) above are not satisfied prior to the closing date, the Buyer may, upon written notice to the Seller, terminate this Agreement and upon such termination the Parties shall be mutually released from any further obligations of performance under the terms of this Agreement and the escrow agent shall return any earnest money deposited to the Buyer.

4. DEPOSIT OF FUNDS AND DOCUMENTS/APPOINTMENT OF ESCROW AGENT

All funds and documents necessary to complete this transaction shall be deposited into escrow within three (3) days prior to closing with Network Land Title Agency, hereafter referred to as "Network Land Title", who shall serve as escrow agent for this transaction. The escrow agent shall serve subject to its standard conditions of acceptance of escrow.

5. TITLE EXAMINATION

The Buyer shall order a title examination of the real property described in paragraph 1 of this Agreement through Network Land Title. Network Land Title shall, within 10 days of receipt of the order, prepare and furnish to the Buyer and the Seller its written Title Commitment showing the results of its title examination of the property.

In the event the Buyer objects to any defects appearing in the title commitment as a result of the title examination, the Buyer shall notify the Seller and Network Land Title of any such objections and the Seller shall have 60 days to cure any defects in title to the satisfaction of the Buyer. In the event the Seller fails or refuses to cure any defects in title objected to by the Buyer, the Buyer may, at its option, either: (a) accept title to the property subject to the defects which will be deemed as a waiver of the objections to title made by the Buyer, or (b) terminate this Agreement upon written notice to the Seller, and, upon such termination, the Parties shall be mutually released from any further obligations of performance under this Agreement and the escrow agent shall return any earnest money deposited to the Buyer.

6. EVIDENCE OF TITLE

At closing, Seller shall deposit a General Warranty deed with release of dower into escrow conveying to the Buyer a good and marketable title with general warranty covenants and subject to zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments for the current half of the taxable year and thereafter.

7. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to the Buyer as follows:

- a) that they are the fee simple owners of the property described in Exhibits A & B and that there are no leases affecting the property or tenants in possession of the property,
- b) that they have not received notice of any pending or threatened condemnation proceedings or proposed taking of part of all of the property by any governmental authority,
- c) that, to the best of their knowledge, they have not received notice from any governmental authority that they are in violation of any laws, ordinances, statutes, rules or regulations pertaining to the property or any part thereof. However, Seller acknowledges that the storage facility located on the property has been used as a storage facility for as long as they have owned the parcel. See Exhibit C, Seller's affidavit, incorporated herein by reference.

- d) that they have not been notified of and, to the best of their knowledge, the property does not contain any underground storage tanks, asbestos, environmental contamination or other environmentally hazardous waste which would require remediation under Federal and/or State laws. Seller has shared an environmental study they had commissioned for the property with the Buyer and Buyer is free to conduct their own Phase 1 Environmental, and
- e) that, to the best of their knowledge, there are no legal actions or proceedings which would inhibit the delay or closing of this transaction in accordance with the terms and provisions of this Agreement.

8. TITLE INSURANCE

At closing, Network Land Title shall issue to the Buyer an Owner's Fee policy of title insurance in the full amount of the purchase price as evidence that the Buyer has received good and marketable title to the property free and clear of all liens and encumbrances whatsoever except zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments, both general and special, for the current half of the taxable year and thereafter.

9. CLOSING COSTS

At closing, the escrow agent shall prorate all real estate taxes and assessments between the Parties as of the date of closing based on the figures appearing on the latest available tax duplicate which shall be reflected on the HUD-1 Settlement Statement to be prepared by the escrow agent. The HUD-1 Settlement Statement shall also reflect a summary of the costs to the Parties for closing this transaction.

10. CLOSING DATE

The closing date shall occur within 72 hours of the time the Buyer notifies the escrow agent that all of the conditions precedent stated above have been satisfied and provided that the escrow agent is in receipt of all funds and documents required to close this transaction. If possible, the closing take place on or before December 31st, 2023. Otherwise, closing shall occur on or before January 26, 2024, unless the Closing Date is extended by mutual agreement of the parties. If closing does not occur on or before January 26, 2024, either party may terminate this

agreement. At closing, the escrow agent shall record the warranty deed transferring title to the property to the Buyer with the Lorain County Recorder.

11. DEFAULT

In the event either party defaults in the performance of its obligations under this Agreement and this transaction fails to close, the non-defaulting party shall have all rights and remedies at law or in equity to proceed against the defaulting party for specific performance of this Agreement and damages resulting from the breach of this Agreement by the defaulting party.

12. GOVERNING LAW

This Agreement and all of its terms and provision shall be construed in accordance with and governed by the applicable laws of the State of Ohio.

13. BINDING EFFECT

This Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the Seller and Buyer have signed this Agreement on the dates set forth below.

SELLER: OROSZ FAMILY LTD.

 11/10/23
JULIETTE A. REIDY-FLYNN DATE

BUYER: THE CITY OF AVON.

 11/28/23
BRYAN K. JENSEN, MAYOR DATE

Instrument Prepared by:

John A. Gasior
36815 Detroit Road
Avon, Ohio 44011
(440) 934-7676
jgasior@ssgavonlaw.com

EXHIBIT A (To Purchase Agreement)

LEGAL DESCRIPTION

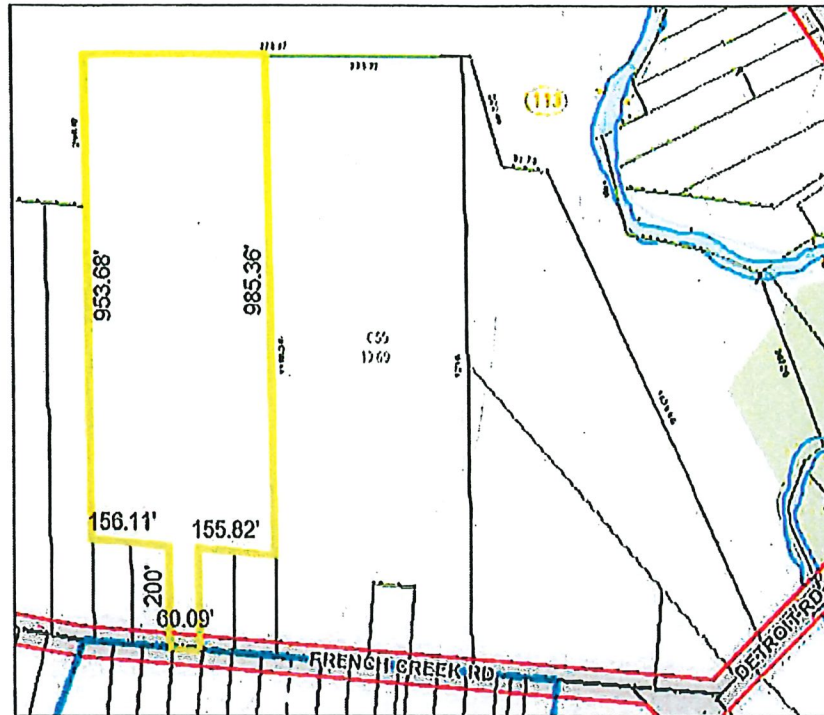
Situated in the City of Avon, County of Lorain and State of Ohio: and being known as part of Section No. 10, Avon Township, now is the City of Avon, and more definitely described as follows: Beginning at the intersection of the center line of the Sheffield French Creek Road and the line between lands now or formerly owned by Harold and Clara Olsen on the West and Ruby Nicholson on the East; thence North 1 degree 00' East in the Olsen-Nicholson Line, a distance of 200 feet to a point, said point shall be the principal place of beginning; thence South 84 degrees 45' 35" East, a distance of 156.11 feet to an iron pin set in the West side line of a proposed 60 feet road; thence South 0 degrees 06' 30" West in the West side line of the proposed 60 foot road, a distance of 200 feet to the center line of Sheffield French Creek Road; thence South 84 degrees 45' 30" East along the center line of said Sheffield Creek Road, a distance of 60.09 feet; thence North 0 degrees 06' 30" East in the East line of the proposed 60 foot road, a distance of 200 feet to an iron pin; thence South 84 degrees 43' 30" East a distance of 155.82 feet to the West line of land now or formerly owned by Fannie C. Rosenbaum; thence North 0 degrees 06' 30" East in the West line of said Fannie C. Rosenbaum's land about 985.36 feet to the Northeast corner of the Grantor's land; thence in a Westerly direction in the Grantor's North line to the Grantor's Northwest corner; thence South 1 degree 00' West, in the Grantor's West line, a distance of about 953.68 feet to the principal place of beginning. Enclosing a parcel of land containing 8.5718 acres of land, be the same more or less, but subject to all legal highways.

Property Address: 37570 French Creek Road
Avon, Ohio 44011

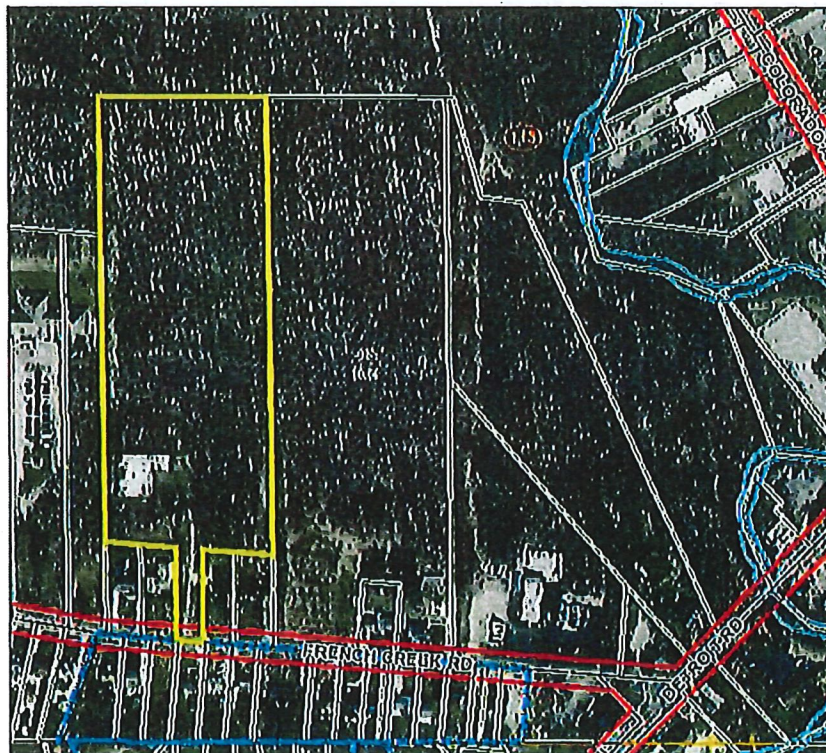
Permanent Parcel No.: 04-00-010-113-080

EXHIBIT B (To Purchase Agreement)

Tax Map



Aerial Map



AFFIDAVIT OF
JULIETTE A. REIDY-FLYNN
(On behalf of OROSZ FAMILY LTD.)

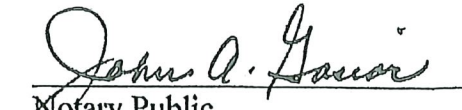
I, Juliette A. Reidy-Flynn, being duly sworn, deposes and says from her own personal knowledge, the following:

1. My name is Juliette A. Reidy-Flynn and I live at 4232 Springvale Circle, Avon, OH 44011
2. I am a member of Orosz Family Ltd.;
3. The property located at 37570 French Creek Road has been owned by Orosz Family Ltd. since 2002.
4. The 80x90 building located on the property has been used by Orosz Family Ltd. for storage since the day it was purchased; and
5. The structure continues to be used today and up to the point of sale as a storage facility; and

FURTHER AFFIANT SAYETH NAUGHT.


JULIETTE A. REIDY-FLYNN
Member
Orosz Family Ltd.

Sworn to and subscribed in my presence by the above-named, Joanne Reidy on this 10th day of November, 2023.


Notary Public



JOHN A. GASIOR, Attorney at Law
Notary Public, State of Ohio
My Commission
has no Expiration date
Section 147.03 R.C.

37570 French Creek Rd.
Avon, Ohio 44011



Driveway



Warehouse



Subject site & building exterior



Subject site
