

ORDINANCE NO. 93-24

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN
AGREEMENT TO PURCHASE REAL ESTATE LOCATED AT 3192
STONE RIDGE ROAD IN THE CITY OF AVON, PERMANENT PARCEL
NO. 04-00-011-102-055, FROM ERICKSON J. STIFFLER
AND DECLARING AN EMERGENCY**

WHEREAS, because 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 Erickson J. Stiffler for the purchase of a parcel of land consisting of approximately 0.4 acres located at 3192 Stoney Ridge 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 3192 Stoney Ridge 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 Erickson J. Stiffler to acquire a parcel of land located at 3192 Stoney Ridge Road in the City of Avon, Permanent Parcel No. 04-00-011-102-055 (0.4 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 General Fund No. 101 in an amount equal to that set forth in the Purchase Agreement, together with any costs associated with conducting inspections, etc., including the 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: October 7, 2024 DATE SIGNED: October 7, 2024

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: October 16, 2024

Bryan K. Jensen
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: October 17, 2024
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. 93-24, passed by the Council of said City on October 7, 2024.

IN WITNESS WHEREOF, I have on this 16th day of October 2024, affixed my signature and official seal.

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

EXHIBIT A TO ORDINANCE NO. 93-24

PURCHASE AGREEMENT

This PURCHASE AGREEMENT (the 'Agreement') is made and entered into at Avon, Ohio, by and between ERICKSON J. STIFFLER, of 329 Donigan Road, Sunbury, Ohio 43074, an individual herein referred to as the 'Seller' and THE CITY OF AVON, OHIO, an Ohio municipal corporation, located at 36080 Chester Road, Avon, Ohio 44011, herein referred to as the 'Buyer'. Network Land Title Agency, located at 105 Cleveland Street, Suite 200, Elyria, Ohio 44035-6137, (440/322-5300) shall serve as escrow agent for this transaction subject to its standard conditions of acceptance of escrow. Buyer and Seller, collectively herein referred to as the 'Parties', agree to go forward upon the following terms and conditions:

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, the real property consisting of one (1) parcel of real estate (hereinafter referred to as "the property") situated in the City of Avon, Lorain County, Ohio and identified as Lorain County Auditor's Permanent Parcel No. 04-00-011-102-055. Said property consists of approximately 0.4 acres land and buildings located at 3192 Stoney Ridge Road. The sale of the property shall include all rights, privileges and easements, if any, pertaining to said property. A legal description for the parcel described above is attached hereto and marked Exhibit A.

Article One: Purchase Price

1.01 **Amount.** The total purchase price to be paid by the Buyer to the Seller for the property described in Paragraph 1 above shall be the sum of **THREE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$395,000.00)**

1.02 **Down Payment.** The sum of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** representing the Buyer's earnest money deposit shall be deposited into escrow with

Network Land Title Agency in Elyria, Ohio, as escrow agent for the Parties, within five (5) business days of the date of execution of this Agreement by the Buyer and credited toward the total purchase price at closing, and

1.03 **Balance.** The further sum of **THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00)** shall be due upon closing as herein provided.

Article 2: Escrow

2.01 **Opening of Escrow.** An escrow shall be opened pursuant to this Agreement at Network Land Title Agency, 105 Cleveland Street, Suite 200, Elyria, Ohio 44035-6137, (440/322-5300) who shall serve as escrow agent for this transaction subject to its standard conditions of acceptance of escrow.

2.02 **Closing Date.** The closing date of this transaction shall take place on or before January 31, 2025. Delivery of said title to the Buyer shall take place immediately upon closing, free and clear of all uses and occupancies. The Buyer's obligation to purchase the Property pursuant to this Agreement is **EXPRESSLY CONDITIONED ON:**

Acceptance by Council. Acceptance by Avon City Council shall be in the form of an Ordinance authorizing the Mayor to enter into this Purchase Agreement for the acquisition of said real estate.

Marketable Title. The conveyance to the Buyer of good and marketable title to the property, as evidenced by the deposit into escrow at closing by Seller of a General Warranty Deed to the Buyer subject only to liens, encumbrances, restrictions, easements, or conditions as may be approved in writing by the Buyer; provided however, Buyer may only object to those matters which adversely and materially impair marketability of title. As further assurance that Seller is conveying good and marketable title to the property, the Title Company shall cause to be issued to the Buyer an Owner's Fee Policy of Title Insurance, subject only to the exceptions

stated above. Upon the execution of this Agreement, Buyers shall cause to be ordered from the Title Company a commitment for an Owner Policy and an ALTA survey, and a copy of each shall be sent to Buyer for Buyer's review. Within ten (10) days of receipt of the commitment and the survey, Buyer shall notify Seller in writing of any liens, encumbrances, restrictions, easements, or conditions shown therein which are objectionable to Buyer. If so notified, the items that are objectionable to Buyer shall be considered "title defects" and Seller, on or about November 26, 2024, will have the right, but not the obligation to resolve such defects. If the title defects cannot be removed by Seller by January 31, 2025, or any extensions of the closing date as may be agreed to by the Buyer for the correction of these title defects, this Agreement shall be null and void and all funds and documents previously delivered to the parties or deposited into escrow shall be returned to the respective parties who delivered or deposited such funds or documents, and there shall be no further liability between the parties.

Inspection of the Property. Buyer satisfactorily completing a diligent inspection of the property and satisfying itself as to the feasibility of the property for its intended use within thirty (30) days of the date of execution of this Agreement, but not later than November 15, 2024.

Buyer's inspection may include, without limitation, tests of the subsurface soil conditions of the property, inspection of buildings and fixtures on said property, boundary surveys, engineering reports, feasibility studies, and environmental inspections. Buyer and Buyer's agents shall have access to the property for such inspections but will not interfere with Seller's occupancy.

Inspections will be kept to a minimum. Buyer will immediately repair all damages it causes and will indemnify, defend and hold Seller harmless on all claims resulting from such investigations.

2.03 Failure of Conditions. Should any of the conditions specified in paragraph 2.02, above, of this Agreement fail to be fulfilled by November 22, 2024, or for such other period of time as the parties may otherwise agree to in writing, Buyer shall have the power, exercisable by

the giving of written notice to the escrow agent and to Seller, to cancel such escrow, terminate this Agreement, and recover any amounts paid by them to Seller or to the escrow agent on account of the purchase price of said property. The exercise of such power by Buyer shall not, however, constitute a waiver by Buyer of any other rights Buyer may have against Seller for breach of this Agreement. The escrow agent shall be, and is hereby, irrevocably instructed by Seller on such failure of conditions and receipt of such notice from Buyer to refund immediately to Buyer all moneys and instruments deposited by him in escrow pursuant to this Agreement.

2.04 Prorations. There shall be prorated in escrow between Seller and Buyer on the basis of thirty (30)-day months, as of 5:00 p.m. on the day of closing:

(1) Real property taxes and assessments levied or assessed against said property as shown on the latest available tax bills without further re-proration.

2.05 Expenses of Closing. The expenses of closing described in this Article shall be paid in the following manner:

(1) The full cost of the title examination, title commitment and premium for the Owner's Fee Policy of Title Insurance described in paragraph 2.02, above, of this Agreement shall be divided equally between the Seller and the Buyer.

(2) The cost of preparing, executing, and acknowledging any deeds or other instruments required to convey title to Buyer or his nominees in the manner described in this Agreement shall be paid by Seller.

(3) Any costs of transfer and recordation of title shall be paid by Buyer shall be paid by Seller.

(5) The fee charged by the escrow agent for escrow services to close this Agreement shall be paid by Seller and Buyer in equal amounts.

(6) Any amounts required to discharge any liens or encumbrances against the property shall be paid by Seller.

Article Three: Representations and Warranties of Seller

3.01 Warranties of Seller

Seller hereby represents and warrants to Buyer, to the best of Seller's knowledge, the following:

(1) There are no other parties in possession of any part of said property as lessees, tenants at sufferance, or trespassers. Any tenants must vacate the property prior to the closing date of January 31, 2025 or earlier, if agreed to by the parties. Buyer has the right to extend the closing date until the property is vacated.

(2) Seller has received no written notice of any pending or threatened condemnation or similar proceeding or assessment affecting said property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority;

(3) Seller has received no written notice of any violation of any applicable laws, ordinances, regulations, statutes, rules, and restrictions relating to said property, or any part thereof;

(4) Said property has full and free access to and from Stoney Ridge Road via an access easement from the Avon Local School District. Seller has no written notice of any pending or threatened governmental proceeding which would impair or result in the termination of such access.

(5) The property is in compliance with all applicable laws, rules, regulations and ordinances, including, without limitation, building, zoning and environmental laws, rules, regulations and ordinances.

(6) There are no actions, suits or proceedings against Seller with respect to the property, and Seller has received no written notice of any investigations or actions, suits or proceedings at law or in equity pending or threatened against Seller that would adversely affect this transaction or the property being sold hereunder.

(7) As of the date of closing, all documents delivered hereunder to Buyer and all warranties herein made by Seller are accurate and complete, and there has been no material change in any of the facts, circumstances or subject matter of this transaction of which Buyer has not been informed.

Article Four: Breach

4.01 **By Seller.** Should Seller default on the full and timely performance of any obligations under the terms of this Agreement for any reason other than Buyer's default, Buyer may:

(1) Bring suit for damages and/or Specific Performance against Seller.

4.02 **By Buyer.** Should Buyer fail to consummate the purchase of said property, the conditions to Buyer's obligations set forth in paragraph 2.02 of this Agreement having been satisfied and Buyer being in default, and Seller not being in default hereunder, Seller may:

(1) Receive One Hundred Percent (100%) of the down payment from the escrow agent, such sum being agreed on as liquidated damages for the failure of Buyer to perform the duties, liabilities, and obligations imposed on it by the terms and provisions of this Agreement. Seller agrees to accept and take said cash payment as its total damages and relief and as Seller's sole remedy hereunder in such event and such relief is not intended as a penalty.

Article Five: Miscellaneous

5.01 **Assignment of Agreement.** This Agreement shall be binding on the respective heirs, executors, administrators, successors, and to the extent assignable, on the assigns or nominees of the parties hereto.

5.02 **Survival of Covenants.** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein.

5.03 **Termination of Lease.** The parties acknowledge that there exists two (2) leases on the property executed between the Seller and the Lessees. The Buyer does not agree to the assumption of these leases. Therefore, the premises are to be vacated prior to the date of closing.

5.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the address set forth in Paragraph One (1) herein and opposite the signature of such party hereto.

5.05 **Ohio Law to Apply.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be constructed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.06 **Prior Agreements Superseded.** This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the aforesaid subject matter.

5.07 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, and vice versa, unless the context requires otherwise.

5.08 **Descriptive Heading.** The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections which precede or follow them and have no effect whatsoever in determining the rights or obligations of the parties.

5.09 **Personal Property and Fixtures.** Upon relinquishing possession of the premises, the Seller shall relinquish ownership of any and all items of personal property on the premises, including but not limited to the following: Refrigerators, kitchen stove, light fixtures, washer/dryer, lawnmowers, tools, etc. Any personal property remaining on the premises upon transfer of title shall become the property of the Buyer.

5.10 **Exchange Cooperation.** Buyer hereby acknowledges that it is the intent of Seller to effect an IRC Section 1031 tax deferred exchange, which will not delay the closing or cause additional expense to Buyer. Seller's rights under this agreement may be assigned to a Qualified Intermediary, for the purpose of completing such an exchange. Buyer agrees to cooperate with Seller and Qualified Intermediary in a manner necessary to complete the exchange.

5.11 **Effective Date.** The effective date of this Agreement shall be the latest of the execution dates of the parties as set forth below.

SELLER:

Witness:

Mitch Wilson

Witness:

Scott Olmstead

ERICKSON J. STIFFLER

329 Domigan Road
Sunbury, Ohio 43074

10/09/2024
DATE OF EXECUTION

BUYER:

Witness: John A. Gasior

Witness: _____

Prepared by:
John A. Gasior, Law Director
City of Avon
36815 Detroit Road
Avon, Ohio 44011
(440) 934-7676
jgasior@ssgavonlaw.com



BRYAN J. JENSEN, MAYOR

City of Avon, Ohio
36080 Chester Road
Avon, Ohio 44011

10/15/24
DATE OF EXECUTION

EXHIBIT A

LEGAL DESCRIPTION

Situated in the City of Avon, County of Lorain, State of Ohio, and is described as follows:

And known as being part of Original Avon Township Section No. 11, and bounded and described as follows:

Beginning in the center line of the Ridgeville-Lorain Road, North $37^{\circ} 0'$ East, a distance of 86.53 feet from the Northeasterly corner of land conveyed to Agnes C. Mittleman by deed recorded in Volume 281, Page 621, Lorain County Deed Records; Thence North $37^{\circ} 0'$ East, along the center line of said Road, a distance of 81.52 feet; Thence North $82^{\circ} 55'$ West, along the Southerly line of a proposed Street, a distance of 268.4 feet to an iron pin, and passing through an iron pin on the westerly line of said road; Thence South $7^{\circ} 05'$ West, at right angles to the last described line, a distance of 70.66 feet to an iron pin; Thence South $82^{\circ} 55'$ East, parallel to the Northerly line of land so conveyed to Agnes C. Mittleman, a distance of 227.76 feet to the place of beginning, and containing within said bounds .402 acres of land, be the same more or less, but subject to all legal highways.

PPNs: 04-00-011-102-055

Property Address: 3192 Stoney Ridge Road
Avon, Ohio 44011