

ORDINANCE NO. 102-16

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH AVON 25 REAL ESTATE LLC AND AVON 4 REAL ESTATE LLC AND DECLARING AN EMERGENCY

WHEREAS, Avon 25 Real Estate LLC (hereinafter “Avon 25”) and Avon 4 Real Estate LLC (hereinafter “Avon 4”) own or have an option to purchase real estate located north of the Edward Rose Congregate Care Facility located on Health Campus Boulevard and east of Nagel Road in the City of Avon, Lorain County, Ohio. These parcels are assigned Permanent Parcel No. 04-00-028-101-114 (19.18 acres in the name of Avon 25) and Permanent Parcel No. 04-00-028-101-113 (option to purchase 5.28 acres held by Avon 4) in the records of the Auditor of Lorain County, Ohio (the “Property”);

WHEREAS, both Avon 25 and Avon 4 are owned by Marc Strauss (hereinafter referred to as “Strauss”); and

WHEREAS, Strauss first proposed to develop the Property back in May of 2014 when Council granted Avon 25 a Special Use Permit to operate a Congregate Care Facility on approximately 51.8240 acres of land in Ord. No. 64-14 passed on June 9, 2014; and

WHEREAS, shortly thereafter, a portion of this 52 acres was sold to Rose Senior Living (approximately 32.6412 acres) who went forward with the development of the Rose Congregate Care Facility just off Health Campus Boulevard. pursuant to an amended Special Use Permit granted in Ord. No. 105-14. The remaining 19.1828 acres of land was granted an amended Special Use Permit in Ord. No. 104-14 to allow for the construction of public improvements on that land. Both ordinances were passed on September 8, 2014; and

WHEREAS, construction of said public improvements on the Avon 25 parcel (19.1828 acres) began with the passage of Ord. No. 116-14 on January 12, 2015 authorizing a Developer’s Agreement with Avon 25 for the construction of these improvements; and

WHEREAS, while said public improvements were being constructed, Avon 4 acquired an option to purchase an additional 6.871 acres of land adjacent to and immediately west of the Avon 25 parcel; and

WHEREAS, Avon 4 sought and was granted a Special Use Permit to construct and operate a Congregate Care Facility on this land pursuant to Ord. No. 145-15 passed on December 21, 2015; and

WHEREAS Avon 25 and Avon 4 then sought to develop the combined 26.0538 acre site into a separate nursing home facility and adult senior independent living facility, independent of one another; and

WHEREAS, to pursue this, Avon 25 and Avon 4 presented general development plans for review to Planning Commission in mid-December, 2015. At around the same time, Council

passed a 6-month moratorium on entertaining any applications for congregate care facilities while Planning Commission considered appropriate amendments to the Avon Codified Ordinances; and

WHEREAS, Strauss, on behalf of Avon 25 and Avon 4, insisted on moving forward with his general development plans at the Planning Commission meeting on January 20, 2016; and

WHEREAS, the Planning Coordinator and the Planning Commission Chairperson removed Strauss' applications from the agenda for failing to include Final Development plans for the facilities;

WHEREAS, Strauss appealed their actions to the Avon Board of Zoning and Building Appeals ("Avon BZA") which denied the appeal; and

WHEREAS, Strauss filed a Notice of Appeal to Lorain County Common Pleas Court on July 1, 2016 challenging the action of the Avon BZA; and

WHEREAS, the parties have since held several settlement conferences and have reached an agreement that each believes to be in their best interests; and

WHEREAS, Council, having reviewed said settlement agreement with the City's legal counsel, finds that authorizing the Mayor to enter into said agreement to be in the best interest of the health, safety and welfare of the citizens of Avon.

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

Section 1 - That Council, in an effort to bring about a reasonable resolution of the dispute between the parties and a settlement and dismissal of the action brought against the City in Case No. 16CV189906, Lorain County Court of Common Pleas, hereby authorizes the Mayor, on behalf of City Council, the Board of Zoning and Building Appeals, the Planning Coordinator, the Planning Chair and the City of Avon, to enter into and execute the "Agreement" which is attached hereto and incorporated herein by reference. That upon the Mayor executing same, Avon 25 Real Estate LLC and Avon 4 Real Estate LLC will cause to be entered a "Notice of Dismissal, with prejudice" in the above-referenced case within ten (10) days thereof.

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 such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public or 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 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 to bring about a fair and equitable settlement of the

litigation between the City and Avon 25 and Avon 4 and to avoid incurring additional costs and protracted litigation; therefore, this Ordinance shall be in full force and effect immediately upon its passage 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:

Barbara J. Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

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