

ORDINANCE NO. 114-20

**AN ORDINANCE TO AUTHORIZE A SECOND AMENDMENT TO THE
DEVELOPER'S AGREEMENT WITH JAF ACQUISITIONS, LLC AND CONCORD
VILLAGE PHASE TWO, LLC FOR THE CONSTRUCTION OF PUBLIC
IMPROVEMENTS
AND DECLARING AN EMERGENCY**

WHEREAS, JAF Acquisitions, LLC and Concord Village Phase Two, LLC (hereinafter referred to as "Developer") sought to complete the existing Concord Village development off of Chester Road by developing land and constructing 83 additional residential units north and west of the area already developed; and

WHEREAS, Developer submitted plans and specifications for the construction of public water and sanitary sewer lines within the development to Planning Commission on April 17, 2019 and City Council approved same and authorized the execution of a Developer's Agreement between the City and Developer (the "Developer's Agreement") on May 13, 2019 in Ord. No. 42-19; and

WHEREAS, on December 19, 2019 City Council passed Ord. No. 126-19 accepting a portion of these public improvements; and

WHEREAS, per the original Developer's Agreement, the Developer was permitted to obtain building permits for up to 28 residential units prior to completion of construction of public improvements on Chester Road, viz., an eastbound left-turn lane into the development's western entrance. However, due to weather, the timing of the City's own improvement project along Chester Road and complications related to the coronavirus, construction of the left-turn lane on has yet to begin; and

WHEREAS, when building permits for the first twenty-five (25) residential units were issued, the Developer sought permission for an additional fourteen (14) residential units to be constructed before construction of the left-turn lane was complete; and

WHEREAS, on August 10, 2020 City Council passed Ord. No. 79-20 authorizing an amendment to Paragraph 19(a) of the Developer's Agreement to allow for building permits to be issued for fourteen (14) additional residential units (39 units total) before construction of the eastbound left-turn lane was complete; and

WHEREAS, circumstances beyond the control of the Developer prevented commencement of the eastbound left-turn lane on Chester Road in the Fall of 2020; and

WHEREAS, now the Developer intends to present plans and specifications to Planning Commission by no later than March of 2021 for the construction of the left-turn lane with a Developer's Agreement for that portion of the project slated to go before City Council no later than April of 2021; and

WHEREAS, in order to continue construction of residential units within Concord Village during the balance of 2020 and the first quarter of 2021, the Developer has requested that

City Council amend Paragraph 19(a) of the Developer's Agreement for a second time to allow for building permits to be issued for twenty-two (22) additional units before construction of the eastbound left-turn lane begins in the Spring of 2021; and

WHEREAS, after discussion, review and further consideration, Council finds that the health, safety and welfare of the community is best promoted by authorizing a second amendment to the Developer's Agreement to increase the number of buildable units in Concord Village Phase Two pending the construction of road improvements on Chester Road.

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

Section 1 – That Council hereby agrees to a second amendment to amend Paragraph 19(a) of the Developer's Agreement with JAF Acquisitions, LLC and Concord Village Phase Two, LLC passed on May 13, 2019 in Ord. No. 42-19 as follows:

19. Miscellaneous Provisions.
(a) Eastbound Left Turn Lane On Chester Road.

As a condition of the approval of the Planning Commission on April 17, 2019, the Developer is required, and hereby agrees, to construct an eastbound left turn lane on Chester Road into the western entrance of the Development pursuant to plans and specifications approved by the City. Said construction shall begin by April 30, 2021. In the alternative, the Developer agrees to enter into an Agreement with the City wherein the City will construct the left-turn lane and the Developer will reimburse the City a portion of its costs (to be determined at a later date). In the meantime, the Developer may continue to construct up to the Sixtieth (60th) unit assuming all building permits fees, tap fees, etc. have been paid. No building permits shall be issued for the sixty-first (61st) unit or beyond unless construction of the left-turn lane has begun. The rights, duties and financial guarantees for the construction of the Chester Road turn lane will be set forth in a separate Developer's Agreement approved by vote of a majority of the members of City Council and executed by the parties hereto on or near April 30, 2021.

- (b) Developer will use its best efforts to install the Public Improvements along Chenin Run (a private street) between Building #10 and Building #5. Developer will construct the portion of Chenin Run between Building #10 and Building #5 (see, Exhibit A, attached map, incorporated herein) as soon as practicable. In addition, Developer will remove the existing material stockpile north of the proposed Buildings #7 and #8.

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 amend Paragraph 19(a) of the Developer's Agreement with JAF Acquisitions, LLC and Concord Village Phase Two, LLC to increase the number of units to be constructed in Concord Village No. 2 prior to completion of improvements on Chester Road; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

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

ATTEST:

Barbara Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

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