

ORDINANCE NO. 24-21

AN ORDINANCE TO AUTHORIZE A THIRD 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, on December 16, 2020, City Council passed Ord. No. 114-20 authorizing and agreeing to the second amendment of Paragraph 19 of the Developer’s Agreement to (a) require Developer to (i) 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 and begin said construction by April 30, 2021, or (ii) in the alternative, allow Developer to enter into an Agreement with the City wherein the City will construct the left-turn lane and Developer will reimburse the City a portion of its costs; (b) permit Developer to continue to construct up to the Sixtieth (60th) unit assuming all building permits fees, tap fees, etc. have been paid; (c) require Developer to use its best efforts to install the Public Improvements along Chenin Run (a private street) between Building #10 and Building #5 as soon as practicable; and (d) require Developer to remove the existing material stockpile north of the proposed Buildings #7 and #8.

WHEREAS, pursuant to and in accordance with the amendment of Paragraph 19(a) of the Developer's Agreement authorized and agreed to by the City Council pursuant to Ord. No. 114-20, the Developer desires to further amend the Developer's Agreement to reflect that, on the terms set forth herein, the City will construct the left-turn lane and the Developer will reimburse the City a portion of its costs therefor;

WHEREAS, after discussion, review and further consideration, Council finds that the health, safety and welfare of the community is best promoted by authorizing a third amendment to the Developer's Agreement to reflect that, on the terms set forth herein, the City will construct the left-turn lane and the Developer will reimburse the City a portion of its costs therefor on the terms set forth herein.

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

Section 1 – That Council hereby agrees to a third amendment of the Developer's Agreement 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 in substantially the form as follows:

19. Miscellaneous Provisions.

(a) Eastbound Left Turn Lane On Chester Road.

Developer and the City hereby agree that the City shall use its best efforts to complete construction of an eastbound left turn lane on Chester Road into the western entrance of the Development by no later than December 31, 2023. Provided that when such construction is completed, Developer shall reimburse the City for the actual cost of construction of such eastbound left turn lane pursuant to plans and specifications reasonably acceptable to Developer, but in no event shall the sum due hereunder exceed \$327,322.25. Developer's obligation to pay such sum shall be secured by Developer's deposit with the City of one of the following, at Developer's election, within ten (10) days of the City's notice to Developer that the City will pass an ordinance to award a contract for such construction: (i) a letter of credit in such amount, drawn on a federally insured financial institution, which names the City as beneficiary, (ii) cash in such amount, (iii) certificates of deposit in such amount conditionally assigned to the City made by a federally insured financial institution (iv) a combination of these items, in such total amount, or (v) such other security as is acceptable to the City ((i) through (iv), "Security"). In addition to such notice, the City also shall provide Developer notice that it has received an acceptable bid for such construction as soon as practicable following the opening of bids therefor. In the meantime, the Developer may continue to construct all remaining units in the Development upon obtaining requisite building permits and paying all required fees in connection therewith.

Section 2 – That Paragraph 19(b) of the Developer's Agreement, as added to the Developer's Agreement pursuant to Ord. No. 114-20 passed on December 16, 2020, is and shall

be unaffected by the third amendment to the Developer's Agreement authorized and agreed to hereunder.

Section 3 - 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 4 - 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 provide for the completion of improvements on Chester Road and the payment therefor and 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: _____

Ordinance No. 24-21 (Con't)

In Five Places as
Provided by Council

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