

SUBSTITUTE ORDINANCE NO. 23-87

BY: Albert Meyer

An Ordinance to approve the settlement of a dispute between the City of Bexley, Ohio, and Clifton Trace Associates, Inc., the developer of the planned unit development know as Lyonsgate, to adopt certain amendments to the Detailed Development Plan approved by Amended Ordinance No. 31-85, and to declare an emergency.

WHEREAS, a dispute has arisen between the City and Clifton Trace Associates, Inc., the developer of Lyonsgate (the "Developer"), with respect to the compliance of certain actions undertaken by or on behalf of the Developer with the Detailed Development Plan approved by Amended Ordinance No. 31-85; and,

WHEREAS, the City and the Developer have agreed to the terms on which such dispute shall be settled; and,

WHEREAS, the settlement requires the amendment of certain provisions of said Detailed Development Plan; and,

WHEREAS, this Council has determined that the proposed settlement, including the proposed amendments to the Detailed Development Plan, are in the best interest of the City and its residents and are compatible with the Detailed Development Plan and the rezoning of the subject property by Amended Ordinance No. 31-85; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1: That the settlement of the dispute between the City and the Developer set forth in the letter dated February 25, 1987, from the City's special counsel to counsel for the Developer, a copy of which is attached to this Ordinance and incorporated herein by this reference, is hereby approved.

Section 2. That the Utility Plan designated Exhibit D to the Detailed Development Plan is hereby amended in accordance with the revised Utility Plan inclusive of the Columbus and Southern Ohio Electric Company Plan numbered 0-149, the Ohio Bell Telephone Company Plan, and the composite Utility Plan dated January 26, 1987, all of which are attached hereto and incorporated herein by this reference, and that a copy of said revised Utility Plan to be designated Amended Exhibit D, shall be attached to the Detailed Development Plan on file with the City of Bexley.

Section 3. That no further changes or additions to the Utility Plan shall be made without the express prior approval of Council and no water, sewer, gas, electric, television cable and/or telephone line or other structure or facility shall be constructed upon the subject property, except upon application to and issuance by the Director of Public Service of a permit therefore pursuant to Section 1228.01 of the Codified Ordinances of the City of Bexley.

Section 4. That the Tree Preservation Plan attached as Exhibit E to the Detailed Development Plan is hereby amended to include the revised Tree Preservation Plan and the contingency Tree Planting Plan prepared by Arbor, Inc., and Riepenhoff Landscape, Inc., both of which are attached hereto and incorporated herein by this reference and that a copy of said revised Tree Preservation Plan and contingency Tree Planting Plan be designated Amended Exhibit E and shall be attached to the Detailed Development Plan on file with the City of Bexley.

Section 5. That, upon approval by the City's special counsel, the Mayor and Auditor are hereby authorized to sign such agreements as shall be deemed necessary, desirable or appropriate to effect the purposes of this Ordinance.

Section 6. That this Ordinance is an emergency ordinance necessary for the immediate preservation of the public peace, health and safety so that construction of the proposed development can proceed at the earliest possible date, and this Ordinance shall go into force and effect upon its passage and approval by the Mayor.

Passed: April 28, 1987

J. Boehm
President of Council

ATTEST:

John W. Stuber
Clerk of Council

April 28, 1987 - passed

APPROVED: April 28, 1987

D. Madison
David H. Madison,
Mayor

KNEPPER WHITE ARTER & HADDEN

IN CANTON
ARTER & HADDEN
CITIZENS SAVINGS BUILDING
110 CENTRAL PLAZA SOUTH
CANTON OHIO 44702
216/453-1166
TELECOPIER 216/453-2364

180 EAST BROAD STREET, FOURTH FLOOR
COLUMBUS, OHIO 43215
614/221-3155
TELECOPIER 614/221-0479

IN DALLAS
ARTER HADDEN & WITTS
5353 RENAISSANCE TOWER
DALLAS, TEXAS 75270
214/741-7561
TELECOPIER 214/741-7139

IN CLEVELAND
ARTER & HADDEN
1100 F. J. J. BUILDING
CLEVELAND, OHIO 44115
216/696-1100
TELECOPIER 216/696-2645
TELEX 98 5384

February 25, 1987

IN WASHINGTON
ARTER & HADDEN
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
202/775-7100
TELECOPIER 202/857-0172
TELEX 6502156242 MCI

PLEASE RESPOND TO:
Columbus

Gerald H. Swedlow, Esq.
65 East State Street
Columbus, Ohio 43215

Re: Lyonsgate

Dear Gerry:

Confirming our conversations and conferences over the last few months, my client, the City of Bexley, expresses through this letter its position concerning the controversy that has arisen with your client, the developer of Lyonsgate pursuant to Amended Ordinance No. 31-85.

As we are all acutely aware, some trenching for electric lines occurred in October, 1986, and resulted in damage to trees associated with the project. Quite clearly the trenching activity violated both the Tree Preservation Plan described in paragraph 10 of the Detailed Development Plan and also Bexley Codified Ordinance 1228.01, which provides that no electric power or telephone lines or associated facilities shall be constructed without prior permission from City Council. It is also likely that Bexley Codified Ordinance 1244.06, which requires adherence to the Detailed Development Plan, was violated by the trenching activity, and that paragraph 9 of the Detailed Development Plan, dealing with utilities, may have been violated.

As you know, we have advised the City that in light of the foregoing, an action for an injunction, revocation of building permit(s), or refusal to issue building permit(s) are legal remedies with a substantial likelihood of success. As you know, we have also recommended to the City that it forebear from seeking or invoking these remedies if a satisfactory settlement with the developer can be achieved. The terms of such a settlement are as follows:

1. Submission by the developer of a complete preservation, replacement and landscaping plan for the areas in which trees have been damaged, which plan must be approved by the City Council. It is my understanding that such a

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plan was submitted on January 16, 1987, and an amended version is to be submitted on February 25, 1987.


2. Submission by the developer of a revised and complete Utility Plan, including water, sewer, gas, electricity, cable television and telephone, to reflect the actual utility installation and, to the extent currently practicable, future utility installations. The submission and approval terms of the Utility Plan are to be the same as the landscaping and preservation plan described in paragraph 1, above.
3. Quarterly written reports to the City, through Mr. Sheehan's Office, on implementation of the Detailed Development Plan.
4. The escrowing of the sum of Five Thousand Dollars (\$5,000.00) with an escrow agent mutually acceptable to the City and the developer, or the procurement of a letter of credit running to the City in the same amount, to secure the cost of additional landscaping and replacement of damaged trees, shrubs, and the like.
5. In the event that the City feels compelled to commence legal action in regard to the developer for perceived future violations, the developer agrees not to assert any defense of time-bar, statute of limitations, laches, waiver or estoppel. This is designed to assure the City that if it is required to take future legal action for perceived violations, the developer does not take the position that "the City should have done this earlier and has now waited too long".
6. Reimbursement to the City of its costs incurred as a result of the current controversy over Lyonsgate. To date, the City has incurred costs of Six Thousand Eight Hundred Sixty-nine Dollars Ninety Cents (\$6,869.90), and it is reasonably expected to incur additional costs that will bring the total to approximately Seven Thousand Five Hundred Dollars (\$7,500.00).

It is our intention to recommend that this letter be incorporated by reference into an ordinance to be introduced before the City Council on March 10, 1987. In order to accomplish this goal, I need any additional observations or questions from you by Wednesday, March 4, 1987, so that the prior submission to City Council members can be accomplished by March 6, 1987.

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Your responsiveness and cooperation in bringing this matter to an amicable solution and settlement is appreciated by both the City and the undersigned.

Cordially,



Geoffrey Stern

GS/mkm

cc: Hon. David H. Madison
Mr. Stanley H. Sheehan
James H. Gross, Esq.