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Clerk of Council

City of Willoughby Hills

Council
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RAYMOND C. SOMICH

ORDINANCE NO. 2012-46

AN ORDINANCE PROVIDING FOR THE CONSENT AND RATIFICATION OF THE TERMS AND CONDITIONS SET FORTH IN THE AGREED JUDGMENT ENTRY AND ORDER DATED AUGUST 31, 2012, CASE TITLED WILLOUGHBY HILLS IMPORTS, LLC VS. THE CITY OF WILLOUGHBY HILLS, CASE NO. 12CV001192 AND DECLARING AN EMERGENCY.

WHEREAS, on or about August 11, 2011, Willoughby Hills Imports, LLC entered into a Purchase and Sale Agreement, as “Buyer” with Azzi Ghassan, as “Seller” for the purchase of 0.9357 acres of commercial real property located at 28500 Chardon Road, Willoughby Hills, Ohio, Permanent Parcel Nos. 31A008C000540 and 31A008C000550; and

WHEREAS, said properties had the zoning designation of “B-2” (Commercial Campus/Mixed Use) pursuant to the Willoughby Hills Planning and Zoning Code, Chapter 1137.02(e) which does not permit the sale or leasing of vehicles on the property; and

WHEREAS, Willoughby Hills Imports, LLC filed suit in the Common Pleas Court of Lake County, Ohio seeking a declaration that (1) the prohibition by the City’s Codified Ordinances of Willoughby Hills Imports, LLC’s proposed use of certain commercial real property limited solely to said real estate located at 28500 Chardon Road, Willoughby Hills, Ohio, which Willoughby Hills Imports, LLC is under contract to acquire, is arbitrary, capricious and unreasonable as applied solely to this property and does not advance the health, safety, morals or general welfare of the City, such that it is, therefore, unconstitutional and (2) Willoughby Hills Imports, LLC is entitled to develop and use said property and its adjacent property on which it operates an automobile dealership in accordance with Willoughby Hills Imports, LLC’s current and proposed uses; and

WHEREAS, Willoughby Hills Imports, LLC further sought an order (1) requiring the City to issue all approvals and permits necessary for Willoughby Hills Imports, LLC’s development and use of the subject properties in accordance with the current and proposed uses pursuant to a “B-3” zoning classification or use variance, subject to Willoughby Hills Imports, LLC’s presentation to and the approval of the City’s Planning Commission and other applicable administrative bodies as required by the City’s Codified Ordinances and any other applicable law, and (2) requiring the City to re-zone the properties to a “B-3” zoning classification; and

WHEREAS, The Court of Common Pleas of Lake County in the above case titled *Willoughby Hills Imports, LLC vs. The City of Willoughby Hills*, Lake County Case No. 12CV001192 in its Order and Journal Entry dated August 31, 2012 ruled in favor of Willoughby Hills Imports, LLC, establishing in sum, that (1) Willoughby Hills Imports, LLC, its successors and assigns, are entitled to use and maintain the subject parcels only for in particular, motor vehicle sales and service and, generally, for the uses now permitted as of right in the areas within the City have a “B-3” zoning classification; (2) the Subject Parcels only shall be re-zoned to a “B-3” zoning classification; (3) the City shall issue all approvals and permits for the development, use and maintenance by Willoughby Hills Imports, LLC, its successors and assigns, of the Subject Parcels only in accordance with the existing and Proposed Use and the Preliminary Site Plan attached to the Complaint as “Exhibit B”, subject further to compliance by Willoughby Hills Imports, LLC, its successors and assigns, with all other ordinances of the City applicable to the development and use of the Subject Parcels, including without limitation, Willoughby Hills Imports, LLC presentation to and the approval of the City’s Planning Commission and other administrative bodies if and to the extent required by law, which approval shall not be unreasonably withheld, conditioned or delayed, it being acknowledged and agreed by the City that no such approval may be withheld, conditioned or delayed based upon the zoning classification of the Subject Parcels or the Proposed

Use (4) the parties shall execute any and all such further agreements and documents as are necessary to memorialize and/or carry into effect the terms of this Judgment and Order and consents thereto shall not be unreasonably withheld; (5) that the parties, their successors and assigns, shall be free, as they should so mutually agree, to modify and terms and conditions of site development, use and maintenance so as to effectuate and not unreasonably hinder the development and use of the Subject Parcels in accordance with the purposes and intent set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. As mandated and ordered in the Agreed Judgment Entry and Order dated August 31, 2012 in the Case titled *Willoughby Hills Imports, LLC vs. The City of Willoughby Hills*, Lake County Case No. 12CV001192, Willoughby Hills Imports, LLC, their successors and assigns are to devote their respective properties to the uses as stipulated in said Agreed Judgment Entry and Order attached hereto as "Exhibit A", consisting of nine (9) pages, and incorporated herein by reference.

SECTION 2. A map defining the 0.9357 acres of commercial real property located at 28500 Chardon Road, Willoughby Hills, Ohio, Permanent Parcel Nos. 31A008C000540 and 31A008C000550 is attached hereto and marked as "Exhibit B".

SECTION 3. As ordered, adjudged and decreed, Willoughby Hills Imports, LLC and the City shall execute any and all such further agreements and documents necessary to memorialize and/or carry into effect the terms of the Agreed Judgment Entry and Order and consents thereto shall not be unreasonably withheld.

SECTION 4. Upon Council approval and adoption of said Ordinance the terms and conditions of the Agreed Judgment Entry and Order are hereby approved and ratified.

SECTION 5. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 6. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the usual daily operation of a Municipal Department and further reason being to be in compliance with the Agreed Judgment Entry and Order dated August 31, 2012 in the Case titled *Willoughby Hills Imports, LLC vs. The City of Willoughby Hills*, Lake County Case No. 12CV001192; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: September 13, 2012

Submitted to the Mayor for his approval
on this 13 day of September, 2012

ATTEST

Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council

David A. Reichelt
David A. Reichelt
President of Council

Approved by the Mayor

September 13, 2012
Robert M. Weger
Robert M. Weger
Mayor