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City of Willoughby Hills

Council
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JOHN PLECNIK

ORDINANCE NO. 2014-20

AN ORDINANCE PROVIDING FOR THE CONSENT AND RATIFICATION OF THE TERMS AND CONDITIONS SET FORTH IN THE AGREED JUDGMENT ENTRY AND ORDER DATED FEBRUARY 13, 2014 CASE TITLED BISHOP-WILLOUGHBY COMPANY, LTD. VS. THE CITY OF WILLOUGHBY HILLS, CASE NO. 13CV002709 AND DECLARING AN EMERGENCY.

WHEREAS, on or about November 14, 2013, Bishop-Willoughby Company, LTD entered into a letter of intent to Lease, as “Lessor” with proposed Tenant, as “Lessee” for the lease of commercial real property located at 2821 Bishop Road, Willoughby Hills, Ohio, Permanent Parcel Nos. 31-A-008-D-00-031-0 and 31-A-008-D-00-032-0, the “Property”; 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, the current zoning designation of B-2 for the Property does not permit the Intended Use of the Property by Proposed Tenant; and

WHEREAS, Bishop-Willoughby Company, LTD 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 intended use of certain commercial real property located at 2821 Bishop Road, Willoughby Hills, Ohio (the “Property”) by Bishop-Willoughby Company, LTD’s proposed tenant, American Heritage Motorcycles, LLC or its designee (“Proposed Tenant”), 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) Bishop-Willoughby Company, LTD is entitled to develop and use the Property for the retail sale, rental and repair of motor vehicles, including motorcycles, parts and accessories, and clothing (the “Intended Use”); and

WHEREAS, Bishop-Willoughby Company, LTD further sought an order (1) requiring the City to issue all approvals and permits necessary for Proposed Tenant’s development and use of the Property for the Intended Use pursuant to a B-3 zoning Classification or use variance, subject to Bishop-Willoughby Company, LTD’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 *Bishop-Willoughby Company, LTD vs. The City of Willoughby Hills*, Lake County Case No. 13CV002709 in its Order and Journal Entry dated February 13, 2014, ruled in favor of Bishop-Willoughby Company, LTD, establishing in sum, that (1) Bishop-Willoughby Company, LTD, its successors and assigns, are entitled to use and a maintain the Property for the retail sale, rental and repair of motor vehicles, including motorcycles, parts and accessories, and clothing and, generally, for he uses now permitted as of right in the areas within the City have a B-3 zoning classification; (2) the Property 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 Bishop-Willoughby Company, LTD, its successors and assigns, of the Property in accordance with the Intended Use, subject further to compliance by Bishop-Willoughby Company, LTD, its successors and assigns, with all other ordinances of the City applicable to the development and use of the Property, including without limitation, Bishop-Willoughby Company, LTD’s 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 Property or the Intended 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) 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 Property 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 February 13, 2014 in the Case titled *Bishop-Willoughby Company, LTD vs. The City of Willoughby Hills*, Lake County Case No. 13CV002709, Bishop-Willoughby Company, LTD, their successors and assigns are to devote their respective Property to the uses as stipulated in said Agreed Judgment Entry and Order attached hereto as "Exhibit A", consisting of eight (8) pages, and incorporated herein by reference.

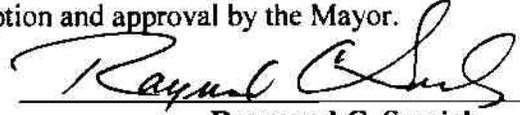
SECTION 2. As ordered, adjudged and decreed, Bishop-Willoughby Company, LTD and the City shall execute any and all such further agreements and documents necessary to memorialize and/or carry into effect the terms of the Agreed Judgment Entry and Order and consents thereto shall not be unreasonably withheld.

SECTION 3. 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 4. 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.

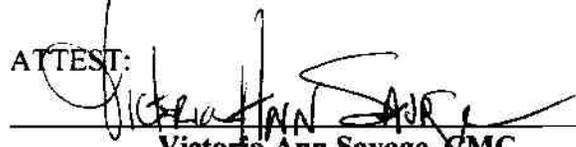
SECTION 5. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the usual daily operation of a Municipal Department and further reason being to be in compliance with the Agreed Judgment Entry and Order dated February 13, 2014 in the Case titled *Bishop-Willoughby Company, LTD vs. The City of Willoughby Hills*, Lake County Case No. 13CV002709; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: March 27, 2014


Raymond C. Somich
President of Council

Submitted to the Mayor for his approval on this 27 day of March, 2014

Approved by the Mayor
March 27, 2014

ATTEST:

Victoria Ann Savage, CMC
Clerk of Council


Robert M. Weger
Mayor