

City of Willoughby Hills

ORDINANCE NO. 2008-5

AN ORDINANCE DECLARING IMPROVEMENTS TO CERTAIN PROPERTY IN THE CITY TO BE A PUBLIC PURPOSE, DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BENEFIT THE PROPERTY, EXEMPTING SUCH IMPROVEMENTS TO THE PROPERTY FROM REAL PROPERTY TAXATION, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT AND SUCH OTHER DOCUMENTS AS MAY BE NECESSARY, AND ESTABLISHING A TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS AND RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40, 5709.42 AND 5709.43 AND DECLARING AN EMERGENCY.

WHEREAS, Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 provide that this Council may declare certain improvements to property within the City to be a public purpose, thereby authorizing the exemption of those improvements from real property taxation for a period of time and provide for the making of service payments in lieu of taxes by the owner of such parcels for the purpose of paying for public infrastructure improvements which directly benefit the property for which the improvement was declared to be a public purpose and establish a municipal public improvement tax increment equivalent fund into which such service payments shall be deposited; and

WHEREAS, this Council desires to make the public infrastructure improvements in the City described in Exhibit "A", consisting of (1) page attached hereto (the "Public Infrastructure Improvements") that once made would benefit or serve the property known as Permanent Parcel Nos. 31A-11E-25; 31A-11E-28; and 31A-11E-30 (the "Development Property"), which Development Property is further described in Exhibit "B-1" and "B-2", consisting of (3) pages attached hereto, the improvements to which Development Property are declared to be a public purpose; and

WHEREAS, the City has determined that it is necessary and appropriate and in the best interests of the City to provide for service payments in lieu of taxes with respect to New Construction on the Development Property (the "Service Payments") pursuant to Section 5709.42 of the Ohio Revised Code; and

WHEREAS, the City wishes to enter into a Development Agreement with 9091 LLC, the owner of the Development Property, to pay Service Payments which will pay for the costs of the Public Infrastructure Improvements (the "Development Agreement") consisting of (20) pages, attached hereto as Exhibit "C"; and

WHEREAS, the Property is located in the Willoughby-Eastlake School District and the Board of Education of the Willoughby-Eastlake School District has been provided notice in accordance with Section 5709.83 of the Ohio Revised Code.

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

SECTION 1. The Council hereby creates and confirms that the improvements to Property known as Permanent Parcel Nos. 31A-11E-25; 31A-11E-28; and 31A-11E-30 currently owned by 9091 LLC, as described in Exhibit B, are determined to be Public Improvements.

SECTION 2. The Public Infrastructure Improvements described in Exhibit "A" are hereby designated as those Public Infrastructure Improvements that benefit or serve directly the Development Property and are necessary for the public health, safety and welfare.

SECTION 3. The City hereby declares that the increase in assessed value of the Development Property by reason of all New Construction is a public purpose and determines that not more than 75% of the taxes generated from real property taxation from the New Construction for the Willoughby-Eastlake School District is exempt from real property taxation and 100% of the taxes generated from real property taxation from the New Construction for all non-school political subdivisions' and taxing districts' is exempt from real property taxation for a period of not more than 10 years. The exemption will commence separately for each portion of the New Construction, as of the first tax year that each and any portion of the value of the New Construction appears on the tax list and duplicate or would appear on the tax list and duplicate but for the exemption and will extend for (1) the date the New Construction, or any portion thereof, has been exempt from taxation for a period of 10 years or (2) the date on which the City has collected into the Fund established in Section 6 hereof the total amount of Service Payments available for and sufficient (i) to pay for the costs of the Public Infrastructure Improvements, (ii) to pay the principal, interest and premium, if any, on financing for such costs of the Public Improvements, or (iii) to reimburse the City for other City funds used by the City to pay such costs or such principal, interest or premium, prior to the receipt of Service Payments, all as further provided in Section 6 (the "Exemption Period").

SECTION 4. The Willoughby-Eastlake School District (the "School District") shall receive not less than 25% of the taxes generated from real property taxation from the New Construction based on the School District's tax millage. The School District shall further receive such income tax sharing as it may be entitled to under Section 5709.82 of the Revised Code.

SECTION 5. As provided in Section 5709.42 of the Revised Code, and as more specifically provided in the Development Agreement, the owner or owners of the Development Property are hereby required to, and shall make, annual Service Payments to the County Treasurer on or before the final dates for payment of real property taxes, which Service Payments shall be deposited in the Municipal Public Improvement Tax Increment Equivalent Fund established in Section 6 hereof. This Council hereby authorizes the City Mayor, Finance Director and Law Director, and other appropriate officers of the City, to provide such information and certifications, and execute and deliver or accept delivery of such instruments, as are necessary and incidental to collect those Service Payments, and to make all such arrangements as are necessary and proper for payment of said Service Payments and to enter into the Development Agreement, substantially pursuant to the terms and conditions in said agreement attached hereto as Exhibit "C," or a substantial form of the same, to the terms of which Development Agreement are hereby approved. Further the Mayor is authorized and directed to execute any and all documents in furtherance of the purpose and intent as noted herein.

SECTION 6. This Council hereby establishes pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the SOM Center Public Improvement Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited all of the Service Payments distributed to the City with respect to the New Construction on the Development Property, by or on behalf of the County Treasurer as provided in Section 5709.42 of the Ohio Revised Code, and hereby provides that all of the moneys deposited in the Fund shall be used for any or all of the following purposes:

(i) to pay any and all acquisition, construction, installation, financing costs, and any and all other direct and indirect costs of the Public Improvements, including those costs set forth in Ohio Revised Code Section 133.15(B);

(ii) to pay the interest on, principal of, and any premium on bonds or notes or other obligations, including refunding bonds or notes or other obligations, issued by the City to finance costs of the Public Improvements until such notes or bonds or other obligations are paid in full, other than those costs paid from special assessments collected by the City as provided in the Contract; and

(iii) to reimburse the City for any funds used by the City to pay costs of the Public Improvements, or to pay interest, principal, or premium, on any of the aforesaid notes, bonds, loans or other obligations, other than those costs or financing to be paid from special assessments collected by the City as provided in the Contract, prior to receipt of Service Payments; and

(iv) to reimburse to the Developer any funds advanced by the Developer towards the costs of the Public Improvements.

No money in the fund will be used for the purpose of housing renovation and the Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which said Fund shall be dissolved in accordance with said Section 5709.43.

SECTION 7. Pursuant to Section 5709.40 of the Ohio Revised Code, the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development of the State of Ohio within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 2 hereof remains in effect, the Mayor of the City or other authorized officer of this City shall prepare and submit to the Director of the Department of Development of the State of Ohio the status report required under Section 5709.40 of the Ohio Revised Code.

SECTION 8. 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 of any of its committees that resulted in such formal action were held in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 9. 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 for the further reason that this Ordinance is required to be immediately effective to allow for the City's undertaking of the Improvements, which are necessary to revitalize the City in an environmentally safe and sound manner; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five (5) members of Council elected thereto or six (6) affirmative votes if all members of Council are present at the meeting at which it is passed; otherwise it shall be in full force and effect after the earliest period allowed by law.

PASSED: 17, 2008

Submitted to the Mayor for his approval
on this 14 day of February, 2008

ATTEST:

Victoria Ann Savage, CMC
Victoria Ann Savage, CMC
Clerk of Council

Kevin D. Malecek
Kevin D. Malecek
President of Council

Approved by the Mayor
February 14, 2008

Robert M. Weger
Robert M. Weger
Mayor