

KEVIN D. MALECEK
President of Council

DAVID A. REICHEL
Vice President of Council

VICTORIA ANN SAVAGE, CMC
Clerk of Council

City of Willoughby Hills

ORDINANCE NO. 2009-64

Council
CHRISTOPHER L. BIRO
NANCY E. FELLOWS
DAVID M. FIEBIG
FRANK A. GERMANO
RAYMOND C. SOMICH

AN ORDINANCE CONSENTING TO AND APPROVING THE COURT ORDER AND JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS OF LAKE COUNTY, OHIO IN THE CASE TITLED 9091, LLC, ET. AL. VS. CITY OF WILLOUGHBY HILLS, OHIO, CASE NO. 07CV0359, DATED OCTOBER 3, 2007.

WHEREAS, 9091, LLC, et al is the owner of two parcels of real estate located within the corporate boundaries of the City of Willoughby Hills, PPN# 31-A-011-E-00-028-0 and PPN#31-A-011-E-00-030-0; and

WHEREAS, the subject parcels are zoned "R-1", traditional single-family residential and pursuant to Willoughby Hills Codified Ordinances (Section 1133.02), may only be utilized for single-family dwellings; residential care facilities; as the site of municipal offices and public buildings such as schools, libraries, museums, and hospitals; as public park land; for agricultural use; and for other uses incidental to those permitted uses; and

WHEREAS, 9091, LLC, et al filed suit in the Common Pleas Court of Lake County, Ohio seeking a declaration that, due to the location and topography of the two subject parcels of real property located within Willoughby Hills, restriction of the use of these parcels to residential, agricultural, and public-use facilities is not constitutional and asserts that the restrictions on permitted uses imposed by the City's zoning code are arbitrary and unreasonable as applied to the property and have no substantial relation to the health, safety, morals, or general welfare of the City and are, therefore, unconstitutional; and

WHEREAS, The Court of Common Pleas of Lake County in the above case titled 9091, LLC, et al vs. The City of Willoughby Hills, Case No. 07CV0359 in its Order and Journal Entry dated October 3, 2007 ruled in favor of 9091, LLC, et. al., establishing in sum, that the Subject Parcels are so closely allied with the commercially zoned lands as to render them, at a minimum, undesirable for residential use and, as detailed herein (Journal Entry, marked as Exhibit A, consisting of twenty-four (24) pages), in reality wholly unsuitable for continued residential use...(and) the view amenity is not one of a residential district but, rather, of a commercial district."

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

SECTION 1. The City of Willoughby Hills consents to and approves the *Court Order and Judgment Entry of the Court of Common Pleas of Lake County, Ohio* in the case titled *9091, LLC, et. al. vs. City of Willoughby Hills, Ohio, Case No. 07CV0359*, dated October 3, 2007.

SECTION 2. Pursuant to the Court Order and Judgment Entry of the Court of Common Pleas of Lake County, Ohio in the case titled 9091, LLC, et. al. vs. City Willoughby Hills, Case No. 07CV0359, attached hereto and marked as "Exhibit A", consisting of twenty-four (24) pages, 9091, LLC, et. al., its successors and assigns, is entitled, in those areas of the Subject Parcels (PPN#31-A-011-E-00-028-0 and PPN#31-A-011-E-00-030-0) to be re-platted into the new Parcel "C", to use and maintain these lands for, in particular, motor vehicle sales and service and, generally, for the uses now permitted as of right in the "E", research and office district.

SECTION 3. Subject Parcels (PPN#31-A-011-E-00-028-0 and PPN#31-A-011-E-00-030-0) shall be consolidated and re-platted into new parcels known as “C” and “D” with complete legal descriptions for said new parcels “C” and “D” contained in Exhibit A, attached hereto and are incorporated herein with 9091, LLC, et. al. retaining all of its legal rights and interests in parcel “C”.

SECTION 4. The City of Willoughby Hills accepts the New Parcel “D” as gifted to the City by 9091, LLC, et. al. via quit-claim deed. The City shall provide 9091, LLC with all due assistance related to this transfer, in particular, timely cooperation regarding valuation of these lands, improvements thereon, and expenses pertaining thereto for tax purposes. Transfer of ownership of new parcel “D” occurring upon total completion of site development and the issuance of occupancy permits.

SECTION 5. The City of Willoughby Hills shall issue all approvals and permits for the development and maintenance by 9091, LLC, its successors and assigns, of those lands of the Subject Parcels which are incorporated into the new parcel “C” and that it shall be permitted to develop these lands in accord with the site development plan, attached hereto (within Exhibit A) prepared by Land Design Consultants, as well as the landscape plan and associated renderings prepared by Anthony Paskevich and Associates, all dated August, 2007, also attached hereto (within Exhibit A) and which presently are on file with the City and which are incorporated herein by this reference as part of the Court Order, subject further to compliance by 9091, LLC, its successors and assigns, with all other ordinances of the City applicable to the development of these lands, except to the extent held non-enforceable by said Judgment Entry and/or in conflict with the terms of the settlement as embodied in said Judgment and Order.

SECTION 6. Site preparation and the installation of all landscape improvements, including vegetation, for new parcel “D” shall be performed at the sole expense of 9091, LLC and be done in compliance with the landscape plan, above-referenced, prepared by Anthony Paskevich and Associates.

SECTION 7. Acceptance of the deed by the City shall be conclusive evidence that 9091, LLC performed fully its duties and obligations regarding new parcel “D” excepting the continuing duty explicitly set forth herein, to wit: 9001 LLC shall have continuing responsibility, at its sole cost, for the care and maintenance of new parcel “D”, specifically, vegetation planted and fencing erected thereon. 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 settlement and consents thereto shall not be unreasonably withheld; it is further ordered and adjudged and decreed that the parties, their successors and assigns, shall be free, as they should so mutually agree, to modify the terms and conditions of site development and maintenance so as to effectuate and not unreasonably hinder the development and use of the site in accord with the purposes and intents set forth herein.

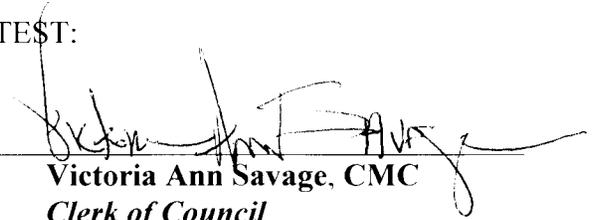
SECTION 8. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 9. This Ordinance shall be in full force and effect at the earliest time permitted by law.

PASSED: September 10, 2009

Submitted to the Mayor for his approval
on this 10 day of September 2009

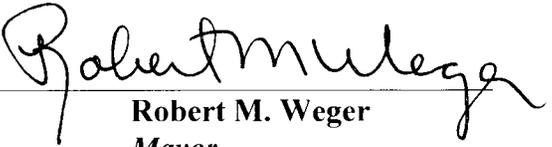
ATTEST:


Victoria Ann Savage, CMC
Clerk of Council


Kevin D. Malecek
President of Council

Approved by the Mayor

September 10, 2009


Robert M. Weger
Mayor