

1st reading 10-2-19
2nd reading 11-6-19
3rd reading 11-13-19
Voted On " " "
Ayes 7 Nays 0
PASSED DEFEATED

ORDINANCE NO. 2019-26

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
MEMORANDUM OF UNDERSTANDING TO OBTAIN AN
OPTION TO PURCHASE 80.3 ACRES OF REAL PROPERTY
FRONTING ON HARVARD ROAD AND RUNNING BETWEEN
ORANGE PLACE SOUTH AND BRAINARD ROAD FROM
SHARON BRIONES, ELLIOT WEINTRAUB AND JAY
WEINTRAUB, AND DECLARING AN EMERGENCY.**

WHEREAS, this Council has determined that, due to the development of the area around the 80.3 acres of real property owned by Sharon Briones, Elliot Weintraub and Jay Weintraub (the "Owners") and fronting on Harvard Road and running between Orange Place South and Brainard Road in Orange Village (the "Property"), there is a development opportunity for the 24.4 acre portion of the property that is adjacent to Orange Place South (the "Developable Property"); and

WHEREAS, given the current zoning and significant wetlands on the Property, the Owners have been unable to find a purchaser willing to pay an acceptable price; and

WHEREAS, this Council has determined that it is in the public's interest to join together with the Owners to attempt to obtain grant money or other assistance necessary to acquire and conserve the 55.9 acres of the Property not identified as the Developable Property (the "Conservation Property"), while working with the Owners and interested developers in developing plans acceptable to the Village for the ultimate development of the Developable Property; and

WHEREAS, the Property must be rezoned via a referendum before the Developable Property may be developed;

WHEREAS, the Owners have indicated that they are willing to accept no less than \$9,500,000 for the Property and this Council has determined that it is in the public's interest to work with the Owners to achieve this price by applying for grants to enable the Village to purchase the Conservation Property and work with the Owners to enhance the value of the Developable Property by cooperating on a rezoning for acceptable development uses; and

WHEREAS, this Council desires to authorize the Mayor to enter into memorandum of understanding (the "MOU") whereby the Owners will grant the Village a 24-month option to purchase the Property, which is appended hereto and marked "Exhibit A."

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. It is hereby confirmed that it is in the public interest that Village obtain a 24-month option to purchase the real property owned by the Owners and fronting on Harvard Road and running between Orange Place South and Brainard Road in Orange Village (PPN: 901-03-019; 901-03-020; 901-03-022; 901-03-023; 901-03-027; 901-03-032; 901-05-002).

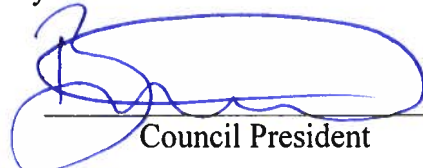
SECTION 2. That the Mayor is hereby authorized and directed to enter into a memorandum of understanding in a form substantially similar to the memorandum of understanding attached hereto and incorporated herein as "Exhibit A," with the Owners for the 24-month option to purchase the Property, with the purchase price to be at least Nine Million Five Hundred Thousand and 00/100 Dollars (\$9,500,000.00), which is hereby found and determined to be a reasonable price for the Property.

SECTION 3. That the Mayor and all other necessary Orange Village officials are hereby authorized and directed to execute all other documents and provide all other information necessary or helpful in order to sell the Property.

SECTION 4. That the actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting 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 105 of the Codified Ordinances of Orange Village.

SECTION 5. That 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 Orange Village and, further, that in order to permit the real property specified herein to be sold timely by the closing date proposed in the Agreement; wherefore, this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor, provided it receives the affirmative vote of five (5) members of Council, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: Nov. 13, 2019

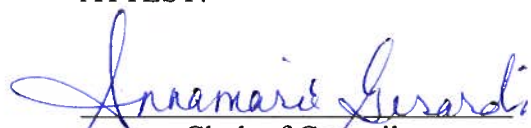


Council President

Submitted to the Mayor for approval on this 13th day of NOVEMBER, 2019

Approved by the Mayor this 13th day of NOVEMBER, 2019

ATTEST:



Clerk of Council



Mayor

MEMORANDUM OF UNDERSTANDING

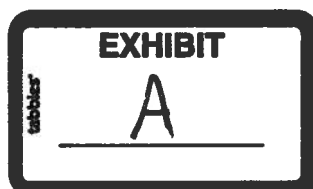
THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into as of the 21st day of September, 2019, by the undersigned members of the Weintraub Family (the "Family") and Orange Village, Ohio (the "Village").

I. Factual Background

The Family, directly or through trusts, owns approximately 80.3 acres of land fronting on Harvard Road and running between Orange Place South and Brainard Road (the "Property"). The Property is located in a U-1 Zoning District, which requires 1.5 acre residential lots. The Family has owned and has been trying to sell the Property for decades. However, given the current zoning and the significant wetlands on the Property the Family has not been able to find a purchaser willing to pay an acceptable price.

Given the development of the area around the Property, the Village administration believes that there is a development opportunity for a portion of the property that is adjacent to Orange Place South and would like to see if it can put together a win-win transaction that enables the Family to sell the developable portion of the Property to one or more developers for uses that are compatible with the surrounding developments and allows for the conservation of the remainder of the Property in its natural state to provide a suitable buffer for the residential properties adjacent to the Property and an amenity for the Village's residents. Attached as Exhibit A is a site plan that outlines the possible developable area of approximately 24.4 acres (the "Developable Property") and the possible conservation area of approximately 55.9 acres (the "Conservation Property"). The allocation of Developable Property and Conservation Property may be modified to accommodate the Family's interests and acceptable Development Uses (as defined below). The Village envisions that the Conservation Property would become subject to a conservation easement or other appropriate restriction that would preserve the Conservation Property but would allow for the construction of walking trails and other low-impact related uses that would allow the Conservation Property to be enjoyed by the public ("Conservation Uses"). Conservation Uses would not include high-impact uses such as ball fields, swing sets or other similar recreational amenities.

The Village and the Family have discussed joining together to enable the Village to attempt to obtain grant money or other assistance necessary to acquire and conserve the Conservation Property, while working with the Family and interested developers in developing plans acceptable to the Village for the ultimate development of the Developable Property for uses such as office (including medical office), hotel, restaurant, low-impact retail, residential or upscale senior living community ("Development Uses"). The Family recognizes that the Developable Property will need to be re-zoned to allow for Development Uses and that any re-zoning would require the approval of Orange Village voters. While the Village administration cannot assure the Family that any proposed re-zoning of the Developable Property will ultimately be approved, the Village Administration can assure the Family that it will work cooperatively and proactively with the Family and potential developers in connection with any proposed re-zoning for acceptable Development Uses. The referendum vote for zoning change approval must combine the Conservation Property with the Developable Property in one vote, as one issue to be voted upon by the citizens of Orange Village.



The Family has indicated that its asking price for the Property is \$11,500,000, but that it would be willing to accept not less than \$9,500,000. The Village has agreed to work with the Family to attempt to achieve this price by (i) applying for grants to enable the Village to acquire the Conservation Property and (ii) working with the Family to enhance the value of the Developable Property by cooperating on a re-zoning for acceptable Development Uses. The Family shall be under no obligation to sell only a portion of the Property.

II. Understandings.

In order to advance the joint vision of the Village and the Family as set forth in Section I, above, the parties agree as follows:

(a) The Family will grant to the Village a 24-month option (such 24-month period being the "Option Period") to purchase the Property for a purchase price of Nine Million Five Hundred Thousand and no/100 Dollars (\$9,500,000), which will be comprised of grants obtained by the Village as it relates to the Conservation Property and cash or other consideration acceptable to the Family from a developer for the Developable Property. The Village recognizes that the Family also may desire to obtain a charitable deduction related to the donation of a portion of the value of the Conservation Property to the extent that the appraised value of the Conservation Property exceeds the amount of grants or other funds that the Village is able to raise to acquire the Conservation Property.

(b) Within ten (10) business days after Village Council's adoption of legislation approving this MOU, the Village will present a draft of an Option Agreement for consideration by the Family, with the goal of executing such Option Agreement within twenty (20) business days from the date of such approval.

(c) The Family acknowledges that the Village does not intend to take title to the Developable Property, but rather intends to assist the Family and its real estate broker in attracting a developer or developers to acquire the Developable Property for acceptable Development Uses.

(d) During the Option Period, the Family will have the right to continue to market the Property for sale. If the Family receives an offer for the Property that it intends to accept, it will notify the Village and the Village will have sixty (60) days to agree to match the offer and a period of one hundred eighty (180) days to close. Only upon the express written approval of the Family, the Village's right may be assignable in whole or in part by the Village to a third party.

(e) During the Option Period, the Village will make application for grants and other funds, at no cost to the Family, that will enable the Village to acquire or otherwise preserve the Conservation Property for the Conservation Uses. The Village will keep the Family advised as to the applicable state or federal programs under which the Village intends to seek grants or other funds. The Family will cooperate with the Village in connection with such applications and in order to enable the Village to receive any grants or other funds awarded to it, including, without limitation, the execution and delivery of such documents and instruments as are required under the programs pursuant to which the grants or other funds are awarded.

(f) In the event that during the Option Period, it becomes apparent to the Village that it will not be able to obtain grants or other funds that would enable the Village to acquire or otherwise preserve the Conservation Property as described above, the Village will notify the Family and the Family will have the right to terminate the Option Period upon ten (10) day written notice.

(g) During the Option Period, the Village administration will make the appropriate personnel available (including, specifically, the Mayor) to meet at mutually agreeable times with developers that are interested in developing the Developable Property for acceptable Development Uses. In the event that a developer acceptable to the Family and the Village proposes to buy the Developable Property (or a portion thereof) for acceptable Development Uses on terms acceptable to the Family, the Village administration will cooperate with the Family and such developer in order to bring forth and support an ordinance for the re-zoning of the Developable Property for such Development Uses, and the Conservation Property for Conservation Uses, it being acknowledged by the Family, however, that the ultimate approval of any re-zoning rests with the voters in the Village.

III. Miscellaneous.

(a) This MOU shall be governed by and construed in accordance with the laws of the State of Ohio.

(b) This MOU sets forth the entire understanding of the parties in respect of the subject matter hereof and supersedes any prior agreements, written or oral, between the parties in respect of the subject matter hereof. This MOU may be amended only by an instrument in writing signed by the parties.

(c) The parties acknowledge that the ultimate parameters of any transaction or transactions related to the Property are not knowable as of the date of this MOU. This MOU is intended to evidence the parties' good faith intentions to work together in connection with the ultimate development and conservation of the Property. The parties agree to cooperate together and work in good faith to accomplish the purposes of this MOU.

(d) This MOU may be executed in counterparts, and all such counterparts shall constitute the same agreement. This MOU may be delivered by facsimile or electronic mail and the signature of any party to this MOU appearing on a counterpart delivered in such manner shall be as binding upon the delivering party as if such party had delivered a counterpart of this MOU with such delivering party's original signature affixed thereto.

(e) The Family understands that this MOU shall require the approval of the Village Council to be binding upon the Village. The Village will submit this MOU to Village Council for approval as promptly as possible after the date of full execution of this MOU.

(signature page follows)

IN WITNESS WHEREOF, the parties have entered into this MOU as of the day and year first above written.

VILLAGE:

ORANGE VILLAGE, OHIO

By: 
Kathy U. Mulcahy, Mayor

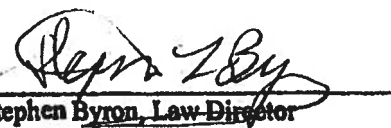
FAMILY:


ELLIOT WEINTRAUB

SHARON BRIONES

JAY WEINTRAUB

APPROVED AS TO LEGAL FORM:


Stephen Byron, Law Director

IN WITNESS WHEREOF, the parties have entered into this MOU as of the day and year first above written.

VILLAGE:

FAMILY:

ORANGE VILLAGE, OHIO

By: _____
Kathy U. Mulcahy, Mayor

ELLIOT WEINTRAUB

SHARON BRIONES



JAY WEINTRAUB

APPROVED AS TO LEGAL FORM:

Stephen Byron, Law Director

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VILLAGE:

FAMILY:

ORANGE VILLAGE, OHIO

By: _____
Kathy U. Mulcahy, Mayor

ELLIOT WEINTRAUB



SHARON BRIONES

JAY WEINTRAUB

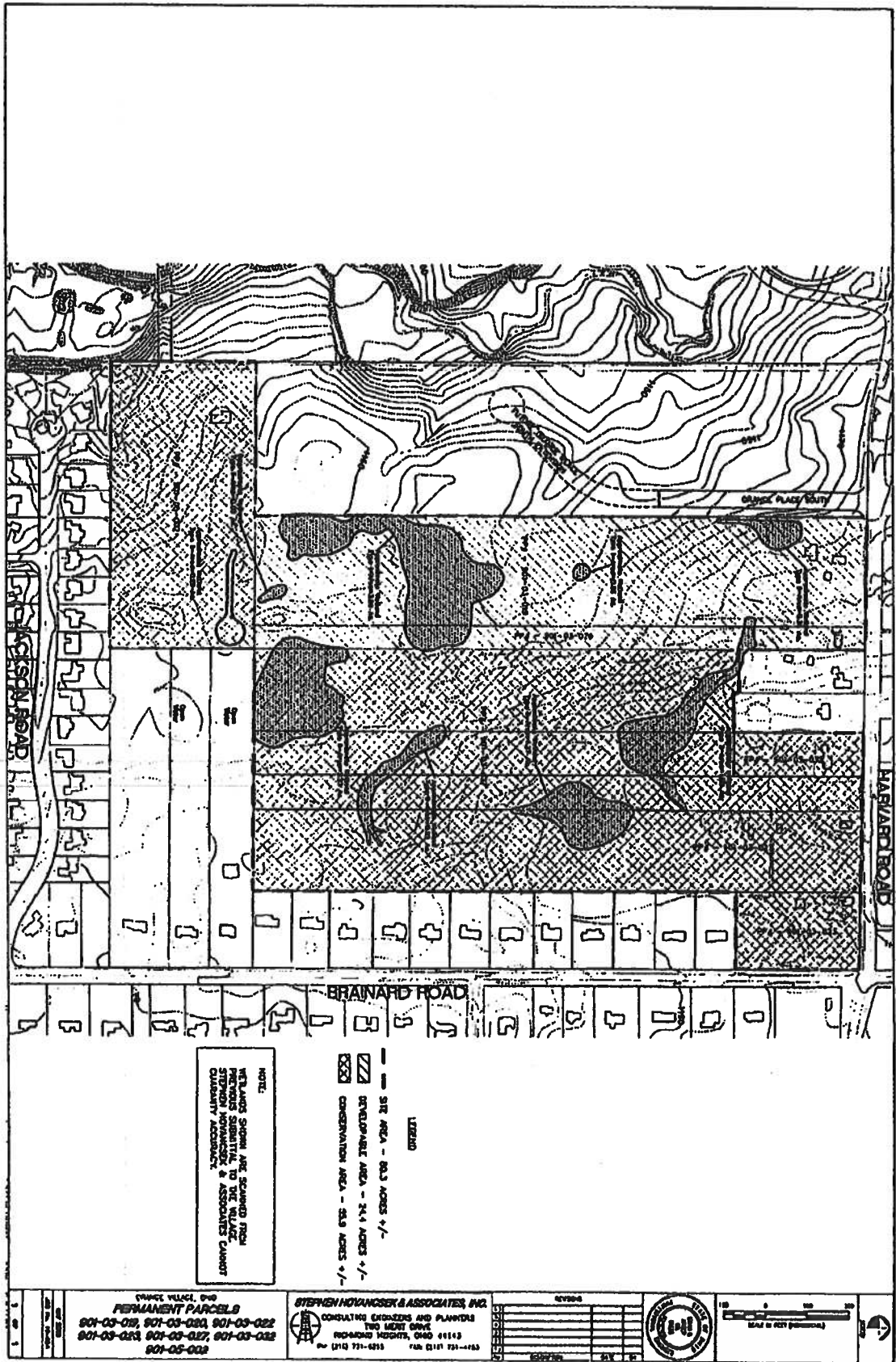
APPROVED AS TO LEGAL FORM:

Stephen Byron, Law Director

EXHIBIT A

SITE PLAN

[See attached]



NOTE:
 WETLANDS SHOWN ARE SCANNED FROM
 RECORDS SUBMITTED TO THE WILDERNESS
 DIVISION OF THE U.S. DEPARTMENT OF
 AGRICULTURE'S AGRICULTURAL SERVICE.

- LEGEND
- SITE AREA - 80.3 ACRES +/-
 - ▨ DEVELOPABLE AREA - 24.4 ACRES +/-
 - ▩ CONSERVATION AREA - 55.9 ACRES +/-

PERMANENT PARCELS
 901-03-001, 901-03-002, 901-03-003
 901-03-004, 901-03-005, 901-03-006
 901-03-007

STEPHEN HUYANGSEK & ASSOCIATES, INC.
 CONSULTING ENGINEERS AND PLANNERS
 TWO MERRILL DRIVE
 FRODOBORN HEIGHTS, OHIO 43143
 TEL: (614) 771-0225 FAX: (614) 771-4143

NO.	DESCRIPTION	DATE

