

ORDINANCE NO. 07-27 AC CMS

**AN ORDINANCE APPROVING AN AMENDMENT TO THE SUBDIVISION
CONSTRUCTION AGREEMENT BETWEEN THE CITY OF OBERLIN AND NORRIS
BUILDERS, INC., FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS IN
OBERLIN RESERVE SUBDIVISION PHASE III AND DECLARING AN EMERGENCY**

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the attached amendment to the Subdivision Construction Agreement between the City of Oberlin and Norris Builders, Inc., relating to the construction of certain public improvements in Phase III of Oberlin Reserve Subdivision No. 1, is hereby approved.

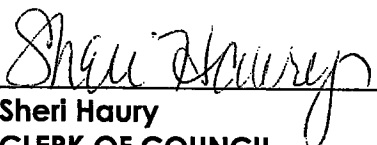
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

"to approve an amendment to a subdivision public improvement construction agreement as soon as possible in order to avoid additional construction delays", and shall take effect immediately upon passage.

PASSED: 1st Reading – February 20, 2007 (E)
 2nd Reading –
 3rd Reading –

ATTEST:



Sheri Haury
CLERK OF COUNCIL



Daniel Gardner
PRESIDENT OF COUNCIL

POSTED: February 21, 2007

EFFECTIVE DATE: February 21, 2007

ORIGINAL

City of Oberlin

Amendment to Subdivision Construction Agreement

This Amendment to Subdivision Construction Agreement is entered into on the 26th day of February, 2007, by and between the City of Oberlin, Ohio, hereinafter referred to as "CITY", and Norris Builders, Inc., hereinafter as "SUBDIVIDER-DEVELOPER".

WITNESSETH:

WHEREAS, CITY and SUBDIVIDER-DEVELOPER entered into a Subdivision Construction Agreement on June 4, 2002, related to the proposed construction of public improvements in Oberlin Reserve Subdivision, Phases II and III; and

WHEREAS, SUBDIVIDER-DEVELOPER is in the process of completing the installation of the public improvements of Oberlin Reserve Subdivision Phase III; and

WHEREAS, During the installation of those public improvements, as identified and set forth in the Subdivision Construction Agreement between the parties as referenced hereinbefore, certain contaminated land was discovered which prevents the timely completion of some of the public improvements contemplated by said original Subdivision Construction Agreement; and

WHEREAS, CITY and SUBDIVIDER-DEVELOPER desire to enter into this Amendment to Subdivision Construction Agreement to provide a solution for the delays that have been caused as a result of the discovery of said contaminated lands.

NOW, THEREFORE, in consideration of the foregoing representations, CITY and SUBDIVIDER-DEVELOPER agree that the original Subdivision Construction Agreement between the parties as referenced hereinbefore is hereby modified and amended as follows:

Section 1. Permanent Turnaround:

Unless otherwise recommended by the SUBDIVIDER-DEVELOPER and approved by the Planning Commission, the SUBDIVIDER-DEVELOPER shall construct the Permanent Turnaround in accordance with the Subdivision Construction Agreement dated June 4, 2002.

The SUBDIVIDER-DEVELOPER shall construct the Permanent Turnaround within two years of the date of written notice from the CITY that the site is ready for construction of the Permanent Turnaround. In construction of the Permanent Turnaround the SUBDIVIDER-DEVELOPER shall comply with all applicable provisions of the Subdivision Construction Agreement, including but not limited to: Section VIII, Pre-Construction Procedures; Section IX, Performance Bond; Section X, Inspection of Improvements; Section XI, Inspection Costs incurred by CITY; Section XII, Modification of Improvement Plans; Section XIII, Acceptance of Land and Improvements; and Section XIV, Maintenance Guarantee.

The SUBDIVIDER-DEVELOPER and the City agree to equally share the cost of proper sub-grade preparation in the area known as cell #1. Sub-grade preparation shall be certified by a soils engineer prior to construction of the Permanent Turnaround.

After providing written notice to the SUBDIVIDER-DEVELOPER that the site is ready for the construction of the Permanent Turnaround, the CITY will not issue any further Building Permits for residential construction in the Oberlin Reserve Phase III Subdivision until such time as the Permanent Turnaround has been constructed and accepted by Ordinance of Oberlin City Council.

Following acceptance of the Permanent Turnaround the SUBDIVIDER-DEVELOPER shall immediately restore the site of the Temporary Turnaround to its pre-constructed state. The CITY will not release the performance bond guaranteeing construction of the Permanent Turnaround until such time as the Temporary Turnaround has been removed from service and any and all components of the public infrastructure related thereto have been restored to the satisfaction of the City Engineer.

Section 2. Temporary Turnaround:

The CITY will not issue any Building Permits for residential construction in the Oberlin Reserve Phase III Subdivision, excepting only the two most easterly lots, S/L 47 and S/L 70, until such time as a Temporary Turnaround has been constructed and approved for use.

The Temporary Turnaround shall be constructed on S/L 62 located as shown in the December 20, 2006, drawing provided by J.A.R. Engineering and attached hereto as Exhibit 1. The cross-section of the Temporary Turnaround is subject to final approval of the City of Oberlin Fire and Public Works Departments for compliance with the applicable provisions of the Fire Code and the Public Works standards.

The SUBDIVIDER-DEVELOPER agrees to provide a temporary access easement to the CITY for those portions of the Temporary Turnaround located outside of the public right-of-way.

The SUBDIVIDER-DEVELOPER expressly acknowledges that no Building Permits for residential construction on S/L 58, S/L 59 and S/L 62 will be issued while the Temporary Turnaround is in use.

Section 3. Site Restoration:

The SUBDIVIDER-DEVELOPER agrees to restore, at its sole expense, the drainage swale located in the Ramsey Right-of-Way to its approved grade, or to an approved grade to be determined, as approved by the City Engineer. The SUBDIVIDER-DEVELOPER shall seed the disturbed areas of the swale and all other areas of the drainage easement along the northerly edge of the Oberlin Reserve Phase III Subdivision as soon as possible. The City Code Administrator will not issue any Occupancy Permits, in accordance with Section XVI of the Subdivision Construction Agreement, until such time as the swale has been constructed or re-constructed and approved for use by the City Engineer.

The SUBDIVIDER-DEVELOPER agrees to restore, at its sole expense, those areas, north and south of the proposed extension of Reserve Avenue in the Ramsey Right-of-Way, used by the SUBDIVIDER-DEVELOPER to stockpile topsoil during the construction of Oberlin Reserve Phase III, to its Pre-development condition. "Pre-development condition" shall mean that woody materials and construction debris shall be removed and that a suitable finish grade, acceptable to the City Engineer, will be established in all areas of the Ramsey Right-of-Way impacted by the construction of Oberlin Reserve Phase III. These areas shall be re-seeded with an appropriate seed mix or mixes approved by the Public Works Director. These areas to be restored shall be restored in conjunction with the construction of the Permanent Turnaround or sooner.

Section 4. Reservation of Rights:

The CITY expressly reserves its right to seek reimbursement from the SUBDIVIDER-DEVELOPER for all costs and expenses it has incurred in the remediation of solid wastes disturbed by the SUBDIVIDER-DEVELOPER or SUBDIVIDER-DEVELOPER'S agents, contractors or employees. The City and SUBDIVIDER-DEVELOPER both agree that nothing contained in this Amendment to Subdivision Construction Agreement shall be deemed an admission as to any solid waste issues.

Section 5. Ratification:

In all other respects, the Subdivision Construction Agreement of June 4, 2002, is hereby ratified and confirmed.

In witness whereof, the parties have hereto set their hands to this AMENDMENT TO SUBDIVISION CONSTRUCTION AGREEMENT on this 26th day of February, 2007.

WITNESSES:

CITY OF OBERLIN, OHIO

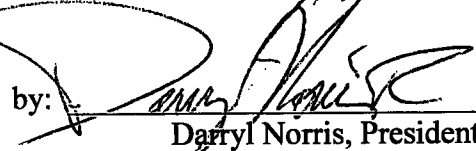
Paula Malick

by: 
Gary Boyle, Interim City Manager

Shari Haring

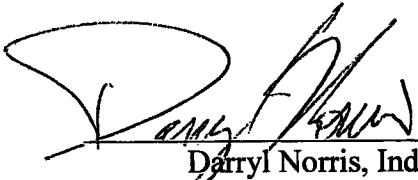
NORRIS BUILDERS, INC.

Paula Malick

by: 
Darryl Norris, President

Shundra Phillips

Paula Malick


Darryl Norris, Individually

Shundra Phillips

Approved as to form:


Eric R. Severs
Oberlin Law Director

The Law Firm of
TAYLOR & BREUNIG CO., L.P.A.
"The Barristers Building"
409 East Avenue, Suite B
Elyria, Ohio 44035-5717

JAMES N. TAYLOR
KURT A. BREUNIG

ERIK A. BREUNIG

TELEPHONE: (440) 323-5700
FACSIMILE: (440) 284-2818
WEBSITE: BARRISTERS-TBR.COM

March 1, 2007

Mr. Gary Boyle
Interim City Manager
City of Oberlin
85 S. Main Street
Oberlin, Ohio 44074

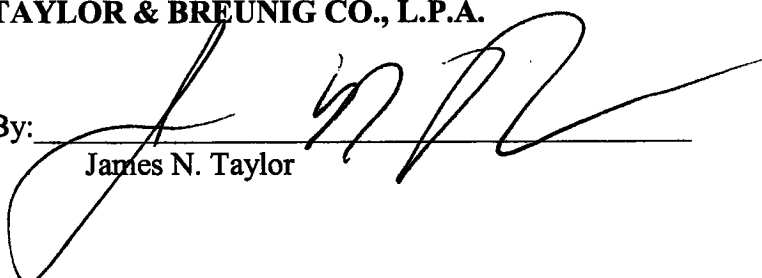
RE: Oberlin Reserve Subdivision Phase III

Dear Mr. Boyle:

Please accept this correspondence as a follow-up to my telephone conversation with Eric Severs, The Law Director for the City of Oberlin. Please be advised that Norris Builders, Inc. understands that the City of Oberlin will release the bond for Phase III posted by Norris Builders, Inc. In consideration of said release it is agreed that before any occupancy permits will be granted in Oberlin Reserve Subdivision Phase III, a new performance bond will be placed equal to the cost of the permanent turnaround to be built pursuant to the Amendment to Subdivision Construction Agreement for the Oberlin Reserve Subdivision.

Very truly yours,

TAYLOR & BREUNIG CO., L.P.A.

By: 
James N. Taylor

JNT:mam

APPROVED:


DARRYL NORRIS, PRESIDENT
NORRIS BUILDERS, INC.

cc: Eric Severs, Law Director

City of Oberlin

85 South Main St. Oberlin, OH 44074

Public Works Department

February 14, 2007

TO: Gary Boyle, Interim City Manager

FROM: Jeff Baumann, Public Works Director *JB*

RE: Amendment to the Subdivision Construction Agreement for the Construction of Oberlin Reserve Phase III

The construction of the permanent turnaround at the west end of Reserve Avenue has been delayed by the discovery of buried wastes in the Ramsey R/W. In order to allow the Developer to proceed with residential construction, staff (Eric Severs, Dennis Kirin, you and I) negotiated the terms of a proposed amendment to the Subdivision Construction Agreement with Mr. Norris. These terms have been incorporated by Law Director Severs into the Amendment. A copy of the most recent version of this amendment is attached. Although, it is currently under review by Mr. Norris and his legal counsel, we expect it to be substantially the same as the draft attached hereto.

Section 1 of this amendment provides for terms and conditions applicable to the construction of the permanent turnaround. These terms and conditions effectively mirror the existing requirements of the Subdivision Construction Agreement. Please note the proposed permanent turnaround is the original design approved by the Planning Commission and memorialized in the signed Subdivision Construction Agreement. The turnaround is configured as the extension of Reserve Avenue to the west limits of the Ramsey R/W. In the center of the right-of-way there will be extensions north and south to provide for the turnaround. When approved, these extensions were presumed to provide future connection to the bike path with the street itself providing connectivity to the west. The Developer is under no obligation to construct the cul-de-sac proposed by the Planning Commission in the fall of 2006. If the Developer so chooses, there is a mechanism by which he can return to the Planning Commission to change the configuration of the turnaround.

Section 2 provides terms and conditions for the construction of a temporary turnaround. The temporary turnaround is a requirement of the Fire Code. For dead end streets of this length, development is prohibited 150' beyond the last available turnaround. At present this limits Mr. Norris to construction on the two most easterly lots of Phase III only, s/l 47 and s/l 70. The temporary turnaround has been located, in consultation with Mr. Norris, to provide access for construction to all but the lot on which it is to be constructed, s/l 62 and the two most westerly lots, s/l 58 and s/l 59. This location also avoids potential construction conflicts with solid waste and wetlands regulations.

Section 3 provides for the Developer to re-establish the required grades in the drainage swale located in the Ramsey R/W. Although the Developer had constructed the swale in substantial conformance with the approved drawings, it was during construction that additional wastes were discovered and dispersed around the site. Remediation activities have, not surprisingly, necessitated re-establishment of approved grades so that the swale functions as intended. Additionally, in the construction of Phase III, the Developer stockpiled soils in the Ramsey R/W at the end of Reserve Avenue. These are to be removed and the site restored.

This amendment provides a mechanism for the Developer to petition the City to accept the balance of Phase III improvements, allows the Developer to begin residential construction on almost all of the lots and provides the City's leverage to ensure that the permanent improvements as approved are ultimately constructed. As such I recommend that it be passed by City Council on emergency and in any event it should be passed by City Council prior to the acceptance of Phase III improvements.

City of Oberlin

Amendment to Subdivision Construction Agreement

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In all other respects, the Subdivision Construction Agreement of June 4, 2002, is hereby ratified and confirmed.

In witness whereof, the parties have hereto set their hands to this AMENDMENT TO SUBDIVISION CONSTRUCTION AGREEMENT on this ____ day of February, 2007.

WITNESSES:

CITY OF OBERLIN, OHIO

by: _____
Gary Boyle, Interim City Manager

NORRIS BUILDERS, INC.

by: _____
Darryl Norris, President

Darryl Norris, Individually

Approved as to form:

Eric R. Severs
Oberlin Law Director