

ORDINANCE NO 1804 AC CMS

AN ORDINANCE AUTHORIZING AND APPROVING AN AGREEMENT WITH
C. M. & M. DEVELOPMENT, INC., FOR A TEMPORARY TAP-IN
TO THE CITY UTILITY SYSTEMS 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 C. M. & M. Development, Inc., of Lima, Ohio, is hereby
authorized to receive a temporary short-term tap-in to the utility systems of
the City of Oberlin, upon the terms and conditions set forth in the agreement
attached hereto as "Exhibit A", and the City Manager is hereby authorized to
execute same on behalf of the City.

SECTION 2. That Ordinance No. 1791 AC CMS passed on June 4, 1984, is
hereby repealed.

SECTION 3. 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, in-
cluding Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance is hereby declared to be an emergency
measure necessary for the immediate preservation of the public peace, health
and safety of the citizens of the City of Oberlin, Ohio, to-wit:

"to facilitate the annexation of certain real property to the
City of Oberlin"

and shall take effect immediately upon passage.

PASSED: 1st Reading - August 13, 1984 (EMERGENCY)
2nd Reading -
3rd Reading -

ATTEST:


Clerk of Council


Chairman of Council

POSTED: August 14, 1985

Ordinance 1804 "Exhibit A"

AGREEMENT

This Agreement is made and entered into this 17th day of August, 1984, by and between the City of Oberlin, Ohio, an Ohio Charter Municipal Corporation, 85 South Main Street, Oberlin, Ohio, 44074, hereinafter referred to as "CITY", and C.M. & M. Development, Inc., an Ohio Corporation, 2320 North Dixie Highway, Lima, Ohio, 45801, hereinafter referred to as "C.M. & M.", under the following terms and conditions:

WHEREAS, C. M. & M. is the owner of approximately 53.5795 acres of unimproved real property located in Russia Township and contiguous to and adjacent to the corporate line of the CITY, and,

WHEREAS, C.M. & M. has, on the 23rd day of May, 1984, filed an annexation petition with the Commissioners of Lorain County, Ohio, requesting the annexation of said property to the City of Oberlin, Ohio, and

WHEREAS, C.M. & M. desires to construct a commercial structure upon said real property but cannot obtain a zoning or building permit from the Clerk, Zoning Inspector, or Trustees of Russia Township, Ohio, because the Ohio Environmental Protection Agency will not approve the sanitary sewer system contemplated by C.M. & M., and

WHEREAS, The City of Oberlin may not extend utilities to the property owned by C.M. & M. and mentioned hereinbefore as a result of Section 909.04 of the Codified Ordinances of the City of Oberlin, and

WHEREAS, the CITY is willing to provide C.M. & M. with a temporary utility tap-in based upon the filing of the annexation petition by C.M. & M., and

WHEREAS, C.M. & M. is willing to accept said temporary tap-in pursuant to certain conditions and understandings.

NOW, THEREFORE, it is agreed between the parties as follows:

1. C.M. & M. has filed an annexation petition with the Commissioners of Lorain County, Ohio, on May 23, 1984, said petition having been set for hearing before said Board of Commissioners on

September 20, 1984. Said petition requests the annexation to the CITY of approximately 53.5795 acres of land located in Russia Township, Lorain County, Ohio, as more specifically identified by the survey prepared by Laundon, Simon, Cahl and Associates, Inc., in January of 1984. C.M. & M. will proceed with due diligence to complete said annexation proceeding at the earliest possible date.

2. In reliance upon the filing of the annexation petition by C.M. & M., the CITY agrees to extend a temporary, short-term utility tap-in to C.M. & M. to facilitate their contemplated development of the property mentioned hereinbefore.
3. Said temporary, short-term tap-in shall be authorized and effective only until C.M. & M. completes their annexation proceedings and said property is accepted for annexation by the CITY, but in any event said temporary, short-term tap-in shall automatically expire on June 30, 1985.
4. It is contemplated by the parties that C.M. & M. will be successful in their petition to annex to the City of Oberlin and that, upon annexation, they will apply for and receive a permanent utility tap-in. However, the issuance of a permanent utility tap-in is in no way dependent upon the issuance and authorization of the temporary, short-term tap-in set forth herein, and the CITY makes no representations, warranties, guarantees, or statements of any kind concerning the availability of a permanent utility tap-in servicing the property unless and until all ordinances, regulations, laws and other applicable rules of the CITY, and all applicable statutes, rules and regulations of the State or other governmental authorities are complied with to the satisfaction of the CITY.
5. If for any reason C.M. & M. does not successfully complete the annexation proceeding which is presently pending by June 30, 1985, the CITY shall have the absolute right, but not the duty, to terminate the temporary, short-term tap-in,

cap any sewer and/or water pipe or pipes relative to said temporary, short-term tap-in, restore the ground to its condition prior to the installation of said tap-in, and charge C.M. & M. with the reasonable cost for said work, labor and material.

6. Additionally, the authorization, issuance, installation, or use of said temporary, short-term tap-in by C.M. & M., its agents, employees, assigns, subcontractors, grantees, and vendees, shall give rise to no vested right to the continuance of said temporary, short-term tap-in, nor shall it give rise to any vested interest or right to a permanent tap-in of any kind.

Further, the CITY shall not be responsible or liable in any fashion for any damages (remote, proximate, direct or indirect), that may be sustained or incurred by either C.M. & M. or any entity, person or corporation claiming by, through, or in concert with them.

7. C. M. & M. further understands and agrees that it proceeds at its own risk with development of said property as said temporary, short-term tap-in is, as indicated, temporary in nature and the issuance of a permanent tap-in is contingent upon the performance by C.M. & M. of each and every event set forth in this Agreement with the CITY, and annexation to the CITY.
8. C.M. & M. further understands and agrees that prior to the start of the construction of any extension or work representing the temporary, short-term tap-in, C.M. & M. will prepare a complete set of plans and specifications setting forth each and every item requested to be set forth in said plans and specifications by the Oberlin City Engineer/Public Works Director. The plans shall be prepared by a registered professional engineer and shall be accompanied by permits to install and the appropriate fees so that they can be submitted

by the CITY to the Ohio E.P.A. for review and approval. The CITY so desires to review and control such plans and specifications as it is contemplated that said property will shortly become annexed to the CITY as set forth hereinbefore.

9. C.M. & M. further understands and agrees that once Ohio Environmental Protection Agency approval is received relative to the plans and specifications set forth in Paragraph 8 hereinbefore, but prior to construction, the tap fees set forth in the Codified Ordinances of the CITY must be paid to the CITY in cash. The tap fees are determined based upon the size of the service line.
10. C.M. & M. further understands and agrees that it will extend the water and sewer lines north of the existing water and sewer lines, even of a temporary nature, as far along the frontage of the property on North Oberlin Road in Russia Township, Ohio, as the Oberlin City Engineer/Public Works Director requires, and, in no event for a distance less than called for by the Ordinances of the CITY. All costs and expenses arising out of or relating to said extension shall be the sole cost and expense of C.M. & M.
11. C.M. & M. shall submit to the Oberlin City Engineer/Public Works Director the formal and final plans for the construction of any improvement to be built upon the property prior to the beginning of construction. No construction shall commence until said plans and specifications receive the written approval of the City Engineer. This is necessary as the CITY and C.M. & M. contemplate that said improvement and the property surrounding it will become annexed to the City of Oberlin by June 30, 1985.
12. C.M. & M. agrees and understands that it will comply with the City of Oberlin Zoning Code, Building Code, and all other applicable CITY ordinances concerning the use of the property

and the construction and set-back requirements for any improvements to be located thereon. Such improvement or improvements shall also comply with the Oberlin off-street parking ordinance.

13. C.M. & M. agrees and explicitly understands that once annexed to the City of Oberlin the property will automatically be zoned "R-1A", Single-Family Dwelling District, pursuant to Section 1329.03 of the Codified Ordinances of the CITY. C.M. & M. explicitly understands that the CITY does not warrant, guarantee, or represent in any way that the proposed use of any structure that C.M. & M. may contemplate placing upon said real property will comply with the applicable zoning relative to the property once annexation has been completed. C.M. & M. explicitly understands that more than likely they will have to proceed with a request for re-zoning for said property after annexation, and, if they proceed with construction prior to the completion of the pending annexation proceedings, C.M. & M. proceeds at its own risk concerning the zoning of the property.
14. C.M. & M. further agrees and understands that the CITY does not represent, warrant, guarantee or agree in any way, shape, fashion or form that the annexation petition presently pending before the Board of Lorain County Commissioners, if certified to the City Council of the City of Oberlin will be ultimately approved and accepted by the City Council of the City of Oberlin. C.M. & M. understands that the acceptance of said annexation to the City of Oberlin is contingent upon the action of the City Council of the CITY at the time the annexation petition is presented to them at a duly called and constituted meeting, and that the approval of this Agreement by said City Council in no way shall bind said City Council or any future City Council to approving said annexation request.

15. C.M. & M. expressly understands and agrees that all expenses, costs, charges, or other fees that are related to or arise out of this Agreement and the installation of the temporary, short-term tap-in, shall be the sole burden and expense of C.M. & M. and the CITY, its agents, servants, assigns, and employees shall not be liable for same.
16. C.M. & M. further agrees to hold the CITY harmless from any claim, cause of action, complaint or other matter arising out of or relating to, either directly or indirectly, with the authorization of and/or installation of the temporary, short-term tap-in set forth herein, and this Agreement; and will, at the request of the CITY, do all things reasonable and proper requested by the CITY in order to defend the CITY and settle any such claims and causes of action.
17. C.M. & M. further agrees and expressly understands that there is presently in effect within the corporate limits of the City of Oberlin, Chapter 531 of the Codified Ordinances of the CITY. Said Chapter 531 prohibits the sale or possession for consumption of beverages in certain non-returnable or disposable containers. C.M. & M. understands that their contemplated use of the property may come into conflict with said Municipal Ordinance, and, accordingly, realizes and understands that the CITY makes absolutely no representations that any proposed activity or enterprise that C.M. & M. may desire to locate upon the property being annexed will not be subject to prosecution pursuant to Chapter 531 of the Codified Ordinances. However, it is further understood by both parties, that the Oberlin City Council shall consider, at a regular City Council meeting scheduled after the signing of this Agreement, an ordinance amending Section 531 of the Codified Ordinances, so as to allow a warehousing operation such as proposed by C.M. & M.

IN WITNESS WHEREOF the parties have hereunto set their hands to triplicate copies hereof, each of which shall be considered an original, on the date and year first above written.

WITNESSES:

CITY OF OBERLIN, OHIO

Karen S. Smith

By:

Dale S. Sugerman
Dale S. Sugerman, City Manager

Rebecca A. Kroll

C.M. & N. DEVELOPMENT, INC.

Rebecca A. Kroll

By:

Gene A. Mauk
Gene A. Mauk, President

Karen S. Smith