

ORDINANCE NO. 89-06 AC CMS

AN ORDINANCE AUTHORIZING THE CITY SOLICITOR TO EXECUTE
A PROPOSED SETTLEMENT AGREEMENT AND JUDGEMENT ENTRY CONCERNING A LAWSUIT
PRESENTLY PENDING IN THE LORAIN COUNTY COURT OF COMMON PLEAS 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 concur-
ring:

SECTION 1. That the City Solicitor is hereby authorized and directed
to execute the proposed settlement agreement and Judgement Entry attached
hereto concerning Lorain County Common Pleas Court Case No. 88 CV 099971,
and captioned Merrill T. Standen, et al vs. City of Oberlin, Ohio.

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 the 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, to-wit:

"to provide the settlement of a pending lawsuit at the earliest possible
date"

and shall take effect immediately upon passage.

PASSED: 1st Reading - January 17, 1989 EMERGENCY
2nd Reading -
3rd Reading -

ATTEST:



Clerk of Council



Chairman of Council

POSTED: January 19, 1989

EFFECTIVE DATE: January 17, 1989

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

MERRILL T. STANDEN, ET AL,)	CASE NO. 88 CV 099971
)	
Plaintiffs,)	
)	JUDGE JOSEPH E. CIRIGLIANO
-vs-)	
)	
THE CITY OF OBERLIN,)	<u>JUDGMENT ENTRY</u>
)	
Defendant.)	

This matter came on to be heard upon the proposed offer of settlement previously submitted by the parties hereto. Upon the stipulation of the parties, Merrill T. Standen and Marie Standen (hereinafter referred to as Standen), Oberlin Land Development Company (hereinafter referred to as Company), collectively referred to hereinafter as Plaintiffs, and the City of Oberlin, Ohio, hereinafter referred to as Defendant, it is hereby ordered:

1. Plaintiff Company shall, on or about February 15, 1989, file a Petition for Annexation with the Lorain County Commissioners seeking to annex the 95-plus acres of land owned by Company which it purchased from Standen, and located in Pittsfield Township, to the City of Oberlin. It is contemplated that said annexation petition shall include additional acreage abutting and/or adjoining that owned by Plaintiff Company. Plaintiff Company shall cooperate with any adjoining and/or abutting land owners in all phases and aspects of said annexation proceeding and shall do all things necessary and

Vocational School, a copy of which has previously been provided to Plaintiff Company. Said front footage assessment shall be paid in cash to the City at the time the tap-in is made for the proposed Ames department store building. Plaintiff Company shall also pay an estimated water and sewer impact fee of \$31,131.00 to the Defendant at the time the tap-in is made for the proposed Ames department store building. Said impact fee was determined based on calculations set forth in a memorandum from the Oberlin City Engineer/Public Works Director to the Oberlin City Manager and dated October 27, 1988. It is contemplated that the City of Oberlin will initiate the proposed improvements within a reasonable period of time. If the construction costs for the proposed project are determined to be less than the Engineer's estimate, then, in that event, Plaintiff Company shall be entitled to a reimbursement upon a proportional basis. Conversely, if the actual construction costs are greater than the Engineer's estimate, Plaintiff Company shall be required to reimburse the Defendant for its proportional share of said additional expense. Said water and sewer impact fee relates to the proposed Ames department store building under construction only, and only to water and sewer impact for said building.

3. Defendant agrees to grant to Plaintiff Company a second sewer and water tap-in permit for sewer and water to service the proposed restaurant building, and only the proposed restaurant building, abutting State Route 58 South and located

part of the impact fee upon a proportional basis. Conversely, if the actual construction costs are greater than the Engineer's estimate, Plaintiff Company shall be required to reimburse the Defendant for its proportional share of said additional expense. Plaintiff Company shall also pay the applicable tap-in fees assessed by Oberlin City Ordinance and assume the cost of all work necessary to achieve the water and sewer tap-in.

5. Plaintiff Company agrees that it will pursue the annexation of the 95-plus acres in Pittsfield Township with all due diligence, do all things necessary and proper concerning same, and pursue said annexation proceedings through the Supreme Court of Ohio, if made necessary by injunction action or a denial of the petition by the Lorain County Commissioners, for whatever reason. Further, it is contemplated that the annexation petition will be a joint petition which will include other property owners located in the general area. Plaintiff Company agrees to fully cooperate with said other property owners, their agents and legal counsel, so that the annexation of said 95-plus acreage, plus more land, has its best chance of success. In the event that Defendant determines, in its sole discretion, that Company is not pursuing the annexation of its property and that in the general area to the City of Oberlin with all due diligence and to the best of its ability, then, in that event, Defendant may file a Motion with this Court to have this Court determine whether, in fact, due diligence has been pursued. If the Court determines that due diligence has not

by Plaintiff Company, in addition to the proposed Ames department store and proposed restaurant, including an expansion of those structures, then, in that event, additional impact fees for not only water and sewer service, but also storm drainage, open space and park, and highway improvements will be necessary. However, nothing contained herein shall relieve the Plaintiff Company from the responsibility of providing adequate storm drainage facilities and/or highway improvements necessary for safe ingress and egress to or from the developed property.

9. Plaintiff Company agrees that in the event any legal proceedings are instituted in opposition to the aforementioned proposed annexation which name the City of Oberlin, Ohio, as a party defendant it will reimburse legal expenses incurred by the City of Oberlin up to and not exceeding the amount of \$2,000.00. Said reimbursement shall be paid in cash to Defendant immediately upon demand, accompanied by evidence to confirm the expense of the City.

10. The Court specifically finds that the policy of the City of Oberlin, Ohio, as set forth in Section 909.04 of the Codified Ordinances of the City of Oberlin, which requires annexation prior to any tap-in of City utility lines, such including water lines, waste water collection lines, and storm water collection lines, is valid and enforceable, rationally related to a legitimate public purpose, nondiscriminatory, constitutional, and not in violation of Public Law 92-500, commonly referred to as the "Clean-Water Act".

Approved:

Merrill T. Standen, Plaintiff

Oberlin Land Development Company,
Plaintiff

J. G. Tassie, Attorney for
Plaintiffs

Thomas J. Dougan, Attorney for
Plaintiffs

CITY OF OBERLIN, OHIO

by: _____
Eric R. Severs, City Solicitor