

RESOLUTION NO.: 2013-R72
SPONSOR: MAYOR NORTON
INTRODUCED: NOVEMBER 26, 2013 **ASSIGNED TO:** PLANNING

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONSENT JUDGMENT ENTRY TO RESOLVE LITIGATION FILED BY JOSEPHINE MURDOCCO, JEFFREY A. DAVIS, JULIE A. DAVIS, AND REDWOOD MANAGEMENT COMPANY REGARDING THE ZONING OF TWO PARCELS OF PROPERTY CONSISTING OF APPROXIMATELY 12.36 ACRES, AND DECLARING AN EMERGENCY

WHEREAS, Redwood Management Company previously entered into an Agreement to purchase property located at 3946 S. Arlington Road and 3990 S. Arlington Road, Uniontown, Ohio 44685, from Josephine Murdocco and from Jeffrey and Julie Davis; and

WHEREAS, the purchase of this property was conditioned upon the rezoning of the property for the use desired by Redwood Management Company; and

WHEREAS, Planning & Zoning Commission originally provided a negative recommendation for this rezoning to Green City Council; and

WHEREAS, Green City Council, via Ordinance 2012-12, originally denied the rezoning by a vote of 2-5; and

WHEREAS, Redwood Management proceeded to file an Administrative Appeal regarding the denial of the rezoning in the Summit County Common Pleas Court as well as a lawsuit challenging the constitutionality of the City's Zoning Code with respect to this property (these cases were consolidated into one (1) case currently pending before Judge Amy Corrigall Jones of the Summit County Common Pleas Court); and

WHEREAS, one of the principal contentions in the litigation was whether the rezoning was improperly denied by reliance upon a concept plan for the use of the property rather than the merits of the rezoning request; and

WHEREAS, due to the cost and uncertainty of litigation, the parties desire to resolve all matters with respect to the rezoning only as the terms set forth in the Consent Judgment Entry attached as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE

City Council authorizes the Mayor and the Law Director to enter into the Consent Judgment Entry to resolve the litigation before Judge Amy Corrigall Jones in the Summit County Common Pleas Court, Case No. 2013-12-0867 (Exhibit "A"). City Council authorizes the execution and filing of this Consent Judgment Entry with the understanding that it will rezone the two (2) parcels of property located at 3946 S. Arlington Road and 3990 S. Arlington Road, Uniontown, Ohio 44685, from R-1 (single family residential) to R-2 (multifamily residential) with the further

understanding that any proposed project for the property will still proceed through a site plan review and approval process set forth in Green Codified Ordinances.

SECTION TWO:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meeting of this Council and any deliberations of this City and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION THREE:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: December 10, 2013

Molly Kapeluck
Molly Kapeluck, Clerk

Dave France
Dave France, Council President

APPROVED: Dec 10, 2013

Richard G. Norton
Richard G. Norton, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW FIRE MAY PLAN FIRE

ENACTED EFFECTIVE: Dec 10, 2013

ON ROLL CALL: Colopy -yes France -yes Humphrey ^{Mustain} Knodel -yes
Neugebauer -yes Reed -yes Summerville -yes
Adopted 6-0-1

Suburbanite publication on Dec 15 and Dec 22, 2013

Molly Kapeluck
Molly Kapeluck, Clerk

11/20/2013 Approved as to form and content by Stephen J. Pruneski, Law Director SP 11/19/13

Resolution 2013-R72
Exhibit "A"

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

REDWOOD MANAGEMENT COMPANY,)	CASE NO. 2013 02 0867
et al.,)	
)	JUDGE AMY CORRIGALL JONES
Plaintiffs,)	
)	
v.)	CONSENT JUDGMENT ENTRY
)	
CITY OF GREEN, OHIO CITY COUNCIL,)	
et al.,)	
)	
Defendants.)	

Pursuant to the Agreement of the Appellants/Plaintiffs, Redwood Management Company (“Redwood”), Vincent Murdocco,¹ Josephine Murdocco, Jeffrey A. Davis, and Julie A. Davis (collectively, the “Owners”), on behalf of themselves, their members, directors, owners, agents, employees, and their heirs, successors, and assigns, and the City of Green, Ohio (the “City”) the City of Green, Ohio City Council (the “Council”) the City of Green, Ohio Planning and Zoning Commission (“Commission”) (the City, Council, and the Commission collectively referred to as “Green”), on behalf of themselves, their elected and appointed officials, administrators, agents, employees, successors, and assigns, by and through the City’s Law Director and City Council, the parties agree and stipulate that the following judgment may be entered, resolving all issues arising out of the Complaint for Declaratory Judgment, Monetary, Injunctive, and Other Relief (“Complaint”) and the Ohio Revised Code Chapter 2506 Administrative Appeal (“Administrative Appeal”) filed by Owners, relating to the rezoning of certain real property located at 3946 S. Arlington Road Uniontown, Ohio 44685 and 3990 S. Arlington Road

¹ Pursuant to the suggestion of death filed with this Court, Mr. Murdocco died on July 9, 2013. Mr. Murdocco’s wife, Appellant Josephine Murdocco, succeeds to his interest in the subject

Uniontown, Ohio 44685, known as Summit County, Ohio Permanent Parcel Nos. 28-04525, 25-04446, and 28-02904, constituting approximately 12.36 acres, more or less (collectively, “Property”). It is the agreement of the parties and the Order of this Court that this matter be reduced to a judgment on the terms set forth in this Consent Judgment Entry.

SETTLEMENT

1. Owners and Green agree to enter into this Consent Judgment Entry for the purpose of resolving this action, which includes but is not limited to rezoning the Property from R-1 single family residential to R-2 multifamily residential as set forth in the City’s Ordinances as of the date of this Entry.

2. The Property is rezoned from R-1 single family residential to R-2 multifamily residential in accordance with the City’s Long Range Comprehensive Land Use Plan and Policy Guide and Green’s Codified Ordinances.

3. This Court and Green authorize the Owners, their heirs, successors, and/or assigns, to use the Property for the uses set forth in the R-2 multifamily residential district under Green’s Ordinances in effect at the time of this Consent Entry, provided that Owners, their heirs, successors, and/or assigns proceed through the site plan review and other administrative processes as required under Green’s Ordinances. This Consent Entry does not and shall not be construed as approving of any site plan, as such Entry only relates to the rezoning of the Property. Green agrees in good faith to review any site plans or other applications filed by the Owners, their heirs, successors, and/or assigns relative to development of the Property under the R-2 multifamily residential zoning.

Property and litigation as joint tenant with a right of survivorship. Consequently, pursuant to Ohio Civil Rule 25(A)(2), no further action is needed.

4. The Parties agree to work in good faith and execute or provide authorization to effectuate this Agreement, including but not limited to executing additional documents to accomplish its intent.

MISCELLANEOUS PROVISIONS

A. Subject to Green's fulfillment of its obligations in this Agreement, Owners, for themselves and their respective heirs, successors, assigns, agents, officers, members, representatives, attorneys, employees, insurers, and predecessors, hereby release Green and its agents, officers, elected officials, appointed officials, board members, representatives, attorneys, employees, insurers, successors, predecessors, and assigns, from any and all claims relating to the zoning of the Property or Owners' application for rezoning, whether known or unknown, foreseen or unforeseen, accrued or contingent, direct or indirect, from the beginning of time to the date of this Consent Judgment Entry, including, without limitation, any claims, demands, liability, obligations, damages, costs, losses, debts, and expenses in any manner arising from or related to the actions referenced above.

B. Subject to Owners' fulfillment of the requirements in this Agreement, Green, for itself and its agents, officers, elected officials, appointed officials, members, representatives, attorneys, employees, insurers, successors, predecessors, and assigns, hereby release Owners and their respective heirs, successors, assigns, agents, officers, members, representatives, attorneys, employees, insurers, and predecessors, from any and all claims relating to the Property, whether known or unknown, foreseen or unforeseen, accrued or contingent, direct or indirect, from the beginning of time to the date of this Consent Judgment Entry, including, without limitation, any claims, demands, liability, obligations, damages, costs, losses, debts, and expenses in any manner arising from or related to the actions referenced above.

C. The invalidity or unenforceability of any particular provision of this Consent Judgment Entry will not affect the other provisions, and this Consent Judgment Entry will be construed in all respects as if such invalid or unenforceable provision were omitted.

D. This Consent Judgment Entry will be governed by and construed in accordance with the laws of the State of Ohio. Owners and Green agree and consent to the continuing jurisdiction of the Summit County Court of Common Pleas to enforce this Consent Judgment Entry and associated claims or hear any dispute regarding this Consent Judgment Entry and associated claims.

E. Owners and Green acknowledge that this Consent Judgment Entry contains the entire agreement between them with regard to the subject matter, and that the terms of the Consent Judgment Entry are contractual and not a mere recital. No representations or warranties have been made or relied upon that are not set forth in this Consent Judgment Entry. This Consent Judgment Entry represents the complete and integrated understanding between the Owners and Green pertaining to the terms and conditions described in this Agreement.

F. This Consent Judgment Entry may be executed and delivered by the respective parties in separate counterparts, each and all of which when taken together will constitute one and the same document.

G. Each party will be responsible for payment of its respective legal fees, court costs, and other costs incurred in the actions or in connection with this Consent Judgment Entry or its negotiation.

H. Owners and Green represent that in reaching this Consent Judgment Entry that they received or had the right to receive legal advice as to their respective rights.

I. The individuals who have signed this document represent that they have full authority to bind the parties and the parties have the authority to perform all of their respective

obligations set forth under the terms of this Consent Judgment Entry. This Consent Judgment Entry must be recorded in the chain of title of the Property as provided and will bind the parties, and all of their heirs, successors and assigns.

J. The rights as authorized run with the land and are transferable by Owners, to any successor owner of the Property.

JUDGE

Approved By:

Date

John P. Slagter, Esq.
Attorney for Plaintiffs

Date

Stephen Pruneski, Esq.
Attorney for Defendants

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