

ORDINANCE NO. 2019 – 21

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH HOME SAVINGS AND LOAN COMPANY AND DECLARING AN EMERGENCY

WHEREAS, in 2003, Home Savings extended secured construction financing to Joanne and Alan Schneider (the “Schneiders”) and to certain entities owned or controlled by the Schneiders, including Pearl Development Company, LLC, Ruby Development Company, LLC, and Garnett Development Company, LLC (collectively the “Schneider Entities”); and

WHEREAS, the secured construction financing included two cognovit promissory notes in the original principal amounts of \$3,320,000.00 and \$3,700,000.00, which were secured by three mortgages on the Cornerstone Properties (“Home Savings Liens”); and

WHEREAS, in 2003, the Schneider Entities subsequently entered into a Project Development Agreement with Parma Heights concerning development of the Cornerstone Properties; and

WHEREAS, in 2004, pursuant to the Project Development Agreement, the Schneider Entities filed a Petition with Parma Heights requesting Parma Heights to levy a special assessment against the Cornerstone Properties to finance Parma Heights’ construction of certain infrastructure improvements; and

WHEREAS, at the end of 2004, the Schneiders’ investment scheme fell apart and in December 2004, the Ohio Department of Commerce filed a complaint against the Schneiders in Cuyahoga County Court of Common Pleas (the “Court”), which was assigned Case No. CV-04-548887; and

WHEREAS, in 2005, the Ohio Department of Commerce filed a Motion Requesting Appointment Of A Receiver And An Order Freezing Defendants’ Assets And Request For Expedited Hearing relating to the Schneiders and the Schneider Entities, which the Court granted and appointed Matthew Fornshell as Receiver (“Receiver”); and

WHEREAS, multiple cases were consolidated with Case No. CV-04-548887, including Case Nos. 559117, 560633, 558095, 559879, 564814, 569073, and 592402 (collectively the “Lawsuit”); and

WHEREAS, Parma Heights completed improvements on or benefitting the Cornerstone Properties in 2005 or 2006; and

WHEREAS, in 2006, after completion of improvements on or benefitting the Cornerstone Properties, Parma Heights passed an ordinance levying a special assessment against the Cornerstone Properties in the amount of \$2,695,852.55 payable within 30 days after the ordinance or in 40 biannual installments over 20 years; and

WHEREAS, in 2006, Parma Heights certified the special assessment, which included \$2,695,852.55 in construction costs and \$1,047,338.19 in estimated interest over the entire 20-year repayment period, to the Cuyahoga County Auditor for collection; and

WHEREAS, in 2007, pursuant to a Court-authorized sale, the Receiver sold the Cornerstone Properties to a third party; and

WHEREAS, in 2007, the Court subsequently issued a Findings and Order of Distribution establishing the procedures for the submission and payment of creditors' claims and creating a Secured Creditor Allocation to fund the receivership; and

WHEREAS, in 2008, the Court entered an order granting Parma Heights' Motion to Intervene in the Lawsuit;

WHEREAS, in 2011, the Receiver transferred a portion of the proceeds of the sale of the Cornerstone Properties to a Secured Creditor Allocation account to fund the receivership; and

WHEREAS, in the course of the Lawsuit, disputes arose between Home Savings and Parma Heights concerning the validity and amount of Parma Heights' special assessment lien ("Parma Heights Lien") and the priority thereof vis-à-vis the Home Savings Liens; and

WHEREAS, on March 14, 2018, the Court of Appeals for the Eighth Appellate District, Cuyahoga County (the "Appellate Court") issued a Journal Entry and Opinion ("Appellate Decision") in Case Nos. CA 104201, 104206, and 104232 (collectively the "Appeal"): (A) finding that Home Savings and Parma Heights were the only two secured creditors with claims to the remaining balance of the Cornerstone Properties sale proceeds; (B) finding that Parma Heights had a valid and enforceable special assessment lien against the Cornerstone Properties sale proceeds in the amount of \$2,695,852.55, thus placing the Parma Heights Lien in a senior position, ahead of the Home Savings Liens; and (C) remanding the Lawsuit to the Court to determine the amount of interest, if any, to which Parma Heights was entitled to recover from the Cornerstone Properties sale proceeds; and

WHEREAS, in October 2018, pursuant to an order of the Court, the Receiver transferred \$2,400,000.00 of the Cornerstone Properties sale proceeds to Parma Heights, for application to the Parma Heights Lien, and \$2,400,000.00 of the Cornerstone Properties sale proceeds to Home Savings, for application to the Home Savings Liens; and

WHEREAS, the Receiver has reported he is holding \$1,775,899.89 in Cornerstone Properties sale proceeds as of March 31, 2019,

WHEREAS, disputes remain between Home Savings and Parma Heights concerning the proper allocation of receivership fees and expenses paid with Cornerstone Properties sale proceeds between Home Savings and Parma Heights, whether Parma Heights is entitled to recover interest, and, if so, the amount of interest; and

WHEREAS, although the Parties continue to have disputes concerning the final distribution of the remaining Cornerstone Properties sale proceeds, the Parties are now desirous of settling all issues between them upon the terms set forth in a Settlement Agreement and Mutual Release (a copy of which is attached hereto as Exhibit A) so as to avoid the risk, uncertainty, and delay occasioned by further litigation; and

WHEREAS, Council desires to authorize the Mayor to enter into the Settlement Agreement and Mutual Release with Home Savings.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARMA HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. The Mayor is authorized to enter into a settlement agreement with Home Savings and Loan Company pursuant to terms and conditions approved by the Director of Law and substantially similar to a copy of which is attached hereto as Exhibit A and incorporated as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Ordinance is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality and for the further reason that the approval of the Settlement Agreement will conclude the litigation between the City of Parma Heights and Home Savings and Loan; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 6-10-2019 
PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan 6-10-2019
CLERK OF COUNCIL APPROVED

FILED WITH
THE MAYOR: 6-10-2019 
MAYOR