

RESOLUTION NO. R-22-19

A RESOLUTION DECLARING IT NECESSARY TO IMPROVE ELIZABETH AVENUE, JOSEPH STREET, PUTH DRIVE, AND DETROIT ROAD BY THE CONSTRUCTION OF AN APPROXIMATELY 6,100-FOOT SANITARY SEWER SYSTEM ALONG ELIZABETH AVENUE, PUTH DRIVE, JOSEPH STREET AND DETROIT ROAD BETWEEN ADDRESSES 34008 AND 34901, TOGETHER WITH ALL NECESSARY APPURTENANCES AND RELATED IMPROVEMENTS THERETO; AND DECLARING AN EMERGENCY

WHEREAS, an area located along Detroit Road between addresses 34008 and 34901 and in the vicinity of Elizabeth Avenue, Joseph Street, and Puth Drive consisting of approximately one hundred and seven (107) parcels of land (hereinafter referred to as the “Affected Area”) is not serviced by a public sanitary sewerage disposal system due to the unavailability of wastewater treatment facilities in that area; and

WHEREAS, parcels within the Affected Area are currently served by individual on-site sewage disposal systems that have been found to be operating in an inadequate or failing nature; and

WHEREAS, on June 14, 2011, the Ohio Environmental Protection Agency (the “Ohio EPA”) conducted a municipal storm water program audit and noted the odor of sewage emanating from the Affected Area and determined that illicit discharges were occurring from the individual on-site sewage disposal systems into the public storm drainage systems. On August 26, 2011, the City received a Notice of Violation letter from the Ohio EPA that confirmed the presence of illicit discharges within the Affected Area; and

WHEREAS, that given the size of the residential lots in the Affected Area, replacement or repair of existing on-site sewage disposal systems were deemed by the Ohio EPA not to be an unacceptable solution to remedy the unsanitary conditions related to the illicit discharges; and

WHEREAS, the Ohio EPA requested that the City enter into Director’s Final Findings and Orders pertinent to remedying this public nuisance and required the City to install wastewater treatment facilities in the affected area, viz., sanitary sewers; and

WHEREAS, that City Council, after reviewing the proposed Director’s Final Findings and Orders, found that they were reasonably related to eliminating the aforementioned public nuisance and authorized the Mayor to execute same on behalf of the City pursuant to Ord. No. 37-13, passed on April 1, 2013; and

WHEREAS, that Council, in order to provide and improve sanitary sewer service to the property owners, remedy the Notice of Violation issued by Ohio EPA, and to ensure the habitability of the current and future residences within and throughout the Affected Area, and thus improving the health, safety and welfare of the citizens of the City, desires to improve Elizabeth Avenue, Joseph Street, Puth Drive, and a portion of Detroit Road, noted herein as the Affected Area, by the construction of an approximately six thousand one hundred (6,100) foot

public sanitary sewer system, together with all necessary appurtenances and related improvements thereto, as more particularly described below (the "Improvements"); and

WHEREAS, Council desires to specially assess a part of the costs of the Improvements on the specially benefited lots and lands proximate thereto;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 – That it is necessary to improve Elizabeth Avenue, Joseph Street, Puth Drive, and Detroit Road in the City by the construction of an approximately six thousand one hundred (6,100) foot sanitary sewer from Detroit Road address 34008 to address 34901 as well as along the entirety of Elizabeth Avenue, Puth Drive, and Joseph Street together with all necessary appurtenances and related improvements thereto.

Section 2 – That these Improvements shall be constructed as shown on the plans described below and now on file in the office of the Clerk of this Council.

Section 3 – The Improvements are so situated in relation to each other that in order to complete the Improvements in the most practical and economic manner, they should be improved at the same time, with the same kind of materials and in the same manner and, accordingly, shall be treated as a single improvement in accordance with Revised Code Section 727.09.

Section 4 – That it is hereby determined and declared that the Improvements are conducive and necessary to the public health, convenience and welfare of the City and the inhabitants thereof.

Section 5 – That the plans, specifications, estimate of cost and profiles of the proposed Improvements, known as the Elizabeth Avenue, Joseph Street, Puth Drive and Detroit Road Sanitary Sewer Improvement Phase 2, prepared by Aaron P. Appell, P.E., of the Bramhall Engineering and Surveying Company (the "Design Engineer"), and now on file in the office of the Clerk of this Council, are hereby approved.

Section 6 – That the City will pay the following portions of the costs of the Improvements:

- (a) the costs of intersections;
- (b) two percent of the cost of the Improvement;
- (c) the excess of any remaining costs above \$12,000.00 per Single Family Lot as defined in Exhibits C and D to this Resolution or \$12,000.00 per each potential subdivided lot for lots of sufficient dimensions to be subdivided into multiple buildable lots now or at some point in the future; and
- (d) any other amounts that this Council determines the City will pay in the ordinance of assessment for the Improvements to be passed by this Council in accordance with Revised Code Section 727.25.

Section 7 – That the remainder of the costs of the Improvements will be assessed in proportion to the benefits which may result from the Improvements upon all lots and lands bounding and abutting the Improvements between and including the termini of the Improvement, including the parcels identified on Exhibit A to this Resolution, as such Exhibit may be amended before its adoption by this Council. Those lots and lands are determined to be specially benefited by the Improvements due to, among other things, the necessity of remedying the Ohio EPA Notice of Violation and ensuring the present and future habitability of residences in the Affected Area. The cost of the Improvement includes each of the following:

- (a) the costs set forth in Revised Code Section 727.08, as applicable, including, without limitation, the cost of preliminary and other surveys, plans, specifications, profiles and estimates and of printing, serving and publishing notices, resolutions and ordinances, the amount of damages resulting from the Improvements assessment in favor of any owner of land affected by the Improvements and the interest thereon, the cost, incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing, appropriating, and otherwise acquiring therefor any required real estate or interests therein, expenses of legal services including obtaining an approving legal opinion in connection with the issuance of bonds and notes to finance the Improvements, the cost of labor and material;
- (b) interest on any bonds and notes issued in anticipation of the levy and collection of the special assessments; and
- (c) all other necessary or incidental costs connected with the Improvement.

Section 8 – That the Avon City Engineer who has been authorized and directed to prepare and did file in the office of the Clerk of this Council the estimated assessments of the cost of the Improvements described in this Resolution. The estimated assessments were based upon the estimate of cost of the Improvements on file in the office of the Clerk of this Council and were prepared pursuant to the provisions of this Resolution. Attached hereto is an Assessment Parcel Map noted as Exhibit B, the Preliminary Assessment Cost Calculations noted as Exhibit C and the Preliminary Parcel Assessment Parcel Spreadsheet noted as Exhibit D as prepared by Avon City Engineer Ryan E. Cummins, P.E. of Chagrin Valley Engineering, Ltd. The Clerk shall cause notice of the adoption of this Resolution and the filing of said estimated assessments to be served on the owners of all lots and lands to be assessed as set forth above and as provided in Revised Code Section 727.13.

Section 9 – That the assessments to be levied shall be paid in 20 annual installments, with interest on deferred payments at the same rate as shall be borne by the bonds to be issued in anticipation of the collection thereof or if no bonds are issued, at the rate of interest provided by this Council in the assessing ordinance; provided, that the owner of any property assessed may, at such property owner's option, pay such assessment in full within 30 days after passage of the assessing ordinance; provided that an owner of assessed property may elect to have a credit against the amount owed to the City in the amount of the consideration to be paid by the City for an easement from that owner required for the construction and completion of the Improvements described in this Resolution.

Section 10 – That bonds of the City may be issued in anticipation of the collection of assessments by installments and in an amount equal thereto and notes of the City may be issued in anticipation of the issuance of such bonds and the levy of such assessments.

Section 11 – That the remainder of the entire cost of the Improvements, after application of the assessments provided in this Resolution, will be paid by the issuance of bonds in the manner provided by law or from other funds lawfully available for this purpose.

Section 12 – That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Resolution were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 13 – That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to begin construction as soon as possible within the current construction season and to fulfill the mandate of the Ohio EPA, and provided it receives the affirmative vote of at least six members elected to Council; therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

BY: _____
Robert Butkowski, Council President Pro Tem

DATE SIGNED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director