

ORDINANCE NO.

55-03

AN ORDINANCE ACCEPTING THE STREET DEDICATION PLAT FOR BLACK RIVER LANE (FORMERLY RIVERFRONT PLACE) NOW WITHIN THE CITY OF LORAIN AND DECLARING AN EMERGENCY

Mail Eof
Lorain City Council
N. Greer
200 W Erie Ave
Lorain, Ohio 44052

WHEREAS, the Lorain City Planning Commission approved the street dedication plat of Black River Lane (formerly Riverfront Place) now within the City of Lorain at their regular meeting held on May 2, 2001;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LORAIN:

SECTION 1: That the street dedication plat of Black River Lane (formerly Riverfront Place) is hereby approved and accepted.

SECTION 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements including Ohio Revised Code 121.22.

SECTION 3: That this Ordinance is hereby declared to be an emergency, the nature of which is the immediate need to continue the economic development and growth of the community and to accept real property interests which are beneficial to Lorain and its citizens without undue delay and burden in order to preserve the health, welfare and safety of the citizens of the City of Lorain. Therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor, providing it receives the statutory requirements for passage, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED:

April 21, 2003 *[Signature]*

PRESIDENT OF COUNCIL
PRO-TEM

ATTEST:

[Signature]
CLERK

APPROVED:

April 21, 2003 *[Signature]*
MAYOR

Rtrtpl.w.e

NO TRANSFER NECESSARY

MARK R. STEWART
LORAIN COUNTY AUDITOR

6-4-2003 *[Signature]*
DEPUTY

I, NANCY A. GREER, CLERK OF COUNCIL OF THE CITY OF LORAIN, OHIO, CERTIFY THE FOREGOING IS A TRUE AND ACCURATE COPY OF Ord. NO. 55-03 ON THE 21 DAY OF April, 19 03 BY COUNCIL AND TAKEN FROM THE RECORDS IN THE OFFICE OF THE CLERK.

5-22-03
DATE

[Signature]
CLERK OF COUNCIL

1462
cm

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April 13, 2004

Mr. Mark Stewart
Lorain County Auditor
300 Middle Avenue
Elyria, Ohio 44035

Re: Street Dedication Plat for Black River Lane

Dear Mr. Stewart:

Howard Goldberg of the City of Lorain has asked me to send you a letter setting forth my view as to whether the real property tax exemption application for tax year 2004 and request for remission of taxes, penalties and interest for tax year 2003 filed by the City of Lorain (the "City") for the Pellet Terminal property, which includes a small portion of the land for the street dedication of Black River Lane (the "Property"), satisfies your office's requirement that all taxes must be paid prior to acceptance of a plat or street dedication. I believe that it should.

First, I should note that I can find no statutory authority that real estate taxes must be paid before a county auditor accepts a plat or street dedication. I assume that the requirement is a standard specifically adopted by Lorain County. Nonetheless, if there is such a statutory or local requirement, that requirement should be satisfied by the fact that an application for exemption from real property taxation has been filed with your office and has been forwarded to Ohio Tax Commissioner for approval. While the Tax Commissioner has not issued a journal entry granting tax exemption and remission to the Property, the law is clear that the exemption and remission will ultimately be granted.¹

Ohio law provides that certain real estate is exempt from real property taxation. Specifically, Ohio Revised Code ("R.C.") §5713.08 provides that the tax commissioner can authorize tax exemption for qualifying property as long as taxes have been paid through the date of acquisition and R.C. §5713.081 provides the tax commissioner can remit delinquent taxes,

¹ The application was filed with your office on February 13, 2004 and presumably forwarded to the Tax Commissioner. As I am sure you are aware, the Tax Commissioner is notoriously behind in his review of real property tax exemption applications, in some cases taking two or more years.

OK To file plat MS 4/20/04

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RECEIVED
AUDITOR

Mr. Mark Stewart
April 13, 2004
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penalties and interest for up to three years as long as the property was owned and used for an exempt purpose by the qualifying entity for those years.

R.C. §5709.08 provides that public property used exclusively for a public purpose is exempt from taxation. Obviously, property owned by a municipal corporation is public property and a public street is a public purpose. Moreover, on numerous occasions the Ohio Board of Tax Appeals has concluded that municipality – owned property held pursuant to an urban renewal plan for future economic development is a public purpose entitled to exemption from taxation. See, e.g., *City of Tiffin v. Tracy* (March 25, 1994), B.T.A. No. 92-X-1022, 1994 WL 106611, unreported; *City of Cincinnati v. Limbach* (June 8, 1990), B.T.A. Case No. 87-G-320, unreported; *City of Canton v. Limbach* (March 13, 1992), B.T.A. Case No. 89-E-431, unreported.

In this case, the City acquired the Property on July 17, 2002 from ISG Cleveland Inc. (which claims title by or through a quit-claim deed from LTV Steel Company, Inc.). The acquired Property was heavily contaminated from its prior use. The City plans to remediate it and then sell it for future development. Because the Property was acquired prior to the tax lien date for tax year 2003 (i.e., January 1, 2003), the Tax Commissioner has jurisdiction to consider the application for exemption for tax year 2004 and remission of taxes, penalties and interest for tax year 2003. Further, the City's planned use is consistent with other fact patterns for which the Tax Commissioner has granted tax exemption pursuant to R.C. §5709.08. Because the likelihood of receiving tax exemption and remission is very high, the City correctly determined not to pay the tax for tax year 2003. The fact that the exemption and remission has not yet been granted should not cause you as the Lorain County Auditor to delay acceptance of the City's request for the Black River Lane dedication.

As a footnote, the sooner the City can develop this Property, the sooner it can be returned to productive use. At that time, the Property will be restored to the tax list. Dedication of Black River Lane is one step in the development process.

If you have any questions or need any further information, please contact me.

Very truly yours,



Carol Mahaffey

CM/svg

cc: Mr. Howard Goldberg