

Cont. to R. Payne  
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LORAIN COUNTY

IN THE COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

FAIRWAY'S, INC.	*	CASE NO. 93083-84
	*	
Plaintiff,	*	JUDGE FLOYD D. HARRIS
	*	
vs.	*	
	*	
CITY OF AVON LAKE, et al	*	JUDGMENT ENTRY
	*	
Defendants.	*	
	*	

This matter came on upon the Complaint of the Plaintiff, Answer and Amended Answer of the Defendants, and after pre-trials and conferences, the parties have agreed to settlement of all issues herein, subject to approval of the Court, as follows:

1. The Defendant City has begun and shall continue the process for the construction of a sanitary sewer to serve not only the Plaintiff's real property, including, but not limited to, Plaintiff's proposed Sweetbriar Subdivision, modified to contain twenty-four (24) proposed sublots in a part of original Avon Township Section No. 20 in two separate phases, but other lands as well located on and abutting Jaycox Road.

2. Plaintiff shall develop said proposed Subdivision in two phases. Phase I shall consist of twelve (12) sublots, all

twelve (12) of such sublots being located south of the present Heider drainage ditch, and being numbered Sublots 1 through 12 on said proposed plat. Phase II shall also consist of twelve (12) sublots, all of which will be located north of the present Heider drainage ditch and being numbered Sublots 13 through 24 on the proposed plat for Phase II. A sanitary sewer assessment for the Jaycox Road frontage of Phase I shall be paid in full when said Phase I of the proposed Subdivision is approved by the proper municipal authorities and prior to recording of such plat with the Lorain County Recorders Office. The sanitary sewer assessment for Sublots 13 through 24 contained in Phase II of the Sweetbriar Subdivision shall be paid in full upon final plat approval of Phase II, or within five (5) years from the date the sewers are installed and operational, whichever is sooner. Said proposed Sublots 13 through 24 shall be and hereby are encumbered with a covenant running with said land for payment of the said sanitary sewer assessment as provided above.

3. The sanitary sewer assessment and fees for said improvements of a sanitary sewer shall be assessed and paid by the Plaintiff for all other real property it owns which abuts on both sides of Jaycox Road, in the same manner as all other real property fronting on Jaycox Road is assessed and paid by other affected property owners.

4. The total assessment charged the abutting property owners for the Jaycox Road sanitary sewer shall be an amount equal to Forty One Percent (41%) of the cost of the project, excluding any required pump station and forced main. It is currently estimated that the Forty One Percent (41%) allocation will result in a cost of \$20.50 per front foot. In addition to the front footage cost, there will be an additional assessment

for the cost of each lateral sewer required to service Plaintiff's property.

5. Capacity for seventy (70) residential units (excluding the presently proposed Sweetbriar Subdivision) in the Lake Road sanitary sewer trunk line and the Jaycox Road Pump Station being constructed as a portion of the current Jaycox Road sanitary sewer project by the City of Avon Lake (or a third party developer) for the development of real property presently owned by Plaintiff, Fairway's, Inc., between Walker Road and the present Norfolk and Western Railroad right of way on Jaycox Road shall be guaranteed to Plaintiff for a period of ten (10) years from the date the said Jaycox Road sanitary sewers are installed and operational. Such guarantee shall be assignable by Plaintiff only to Ronald Palmer or a partnership or a corporation of which Ronald Palmer or Fairway's, Inc. is the majority owner. Furthermore such guarantee shall only be applicable to said parcels of real property presently owned by Plaintiff, Fairway's, Inc. that abut said Jaycox Road sanitary sewer improvement on Jaycox Road.

6. Said pump station being constructed as a portion of the Jaycox Road Sanitary Sewer Project by the City of Avon Lake shall be capable of handling a minimum of 360 (Three Hundred and Sixty) residential units and shall be paid for on a pro-rated basis at the time a building permit for construction of a new unit is issued on a per unit basis. Such prorated cost or fee shall include the interest paid by the City of Avon Lake incurred as its cost for financing the said pump station construction costs. The interest cost amount to be fixed from a predetermined schedule of actual interest payments made by the City up to the time said building permit for each new unit to be constructed is

issued.

In the event said pump station is constructed by a third party at no cost or expense to the City of Avon Lake or any of the other Defendants, then, no charge for such construction costs or interest shall be due nor payment made for such items.

7. In the event the capacity of 360 units for said pump station is reached, and there is capacity available in the Lake Road sanitary sewer trunk line for the sewer district being served by said pump station, then the City shall construct whatever is necessary, if anything, to allow said sewer district to continue being developed and served by sanitary sewers. The cost of such improvement to be paid for on a prorata basis as each new unit is constructed at the time building permits are issued for such work.

8. The said Jaycox Road sanitary sewer being constructed by the City shall extend south on Jaycox Road within the municipal limits to within 100 feet of the present Norfolk and Western Railroad right of way.

9. The agreement to be entered into between the City and the general contractor for the construction of said Jaycox Road sanitary sewer project shall contain provisions whereby Jaycox Road, between Walker Road and south to the southerly municipal limits, shall not be closed to vehicular traffic due to construction work on said project, except for minimal periods of from four to eight hours and then only when absolutely necessary. Prior to closing said road at such times, the general contractor shall give at least forty-eight (48) hours advance notice to the City of the necessity for such closings. Plaintiff shall be allowed to temporarily place rerouting advertising signs for vehicular traffic to the Sweetbriar Golf Club in the City's right

of ways, subject to the approval of such signs and the proposed placements thereof by the City Engineer who shall exercise his reasonable judgment on same in accordance with the Ohio Director of Transportation's promulgated regulations. Said construction contract shall also contain a provision for a penalty of One Thousand Dollars (\$1,000.00) per day for each day or portion thereof that the general contractor may violate such covenant.

10. Bid specifications for said Jaycox Road sanitary sewer project shall be available for public inspection and review, as well as bid proposals for said project.

11. The storm sewer drainage plans and proposed improvement plans for the proposed Sweetbriar Subdivision development as submitted by the Plaintiff to the City's Engineer on April 26, 1985, and which were thereafter modified in accordance with the request of the City Engineer by letter dated May 20, 1985, and which were also modified to include three additional sublots, are acceptable to the City and will require no modification except the inclusion of the location of the sanitary sewer when such information becomes available. A copy of the proposed general subdivision plan, improvement plans, and proposed plats for Sweetbriar Subdivision Phase I and Sweetbriar Subdivision Phase II are attached hereto, marked Exhibit "B", and incorporated herein by reference. The development of said subdivision, including both Phase I and Phase II, will not require lowering of the water levels in the Sweetbriar Golf Club course, and no improvements or repairs shall be required on the existing roadway, except for the addition of a ground berm as indicated on the improvement plans. All reasonable standards shall be used to evaluate future storm sewer proposals taking into consideration the then attending circumstances.

12. The City of Avon Lake's present sanitary trunk sewer fee, which was established to create a fund for the development of trunk sewers throughout the City, shall be paid on a per lot basis at such time as an occupancy permit for each such lot is applied for.

13. Except as may be otherwise set forth herein, the proposed Sweetbriar Subdivision shall meet all standard and usual subdivision, planning and zoning regulations laws and ordinances ordinarily required of any and all other proposed subdivisions for platting purposes.

14. The City of Avon lake shall proceed with the legislative and administrative steps required to complete the competitive bidding process and shall award the sanitary sewer construction contract no later than April 1, 1986. Final construction of the sewer project shall be completed and the sanitary sewers shall be operational no later than June 1, 1987.

15. Notwithstanding any provisions contained herein to the contrary, Plaintiff is not prohibited from requesting the City of Avon Lake to modify or change the zoning classification for any property fronting on Jaycox Road or included within the Jaycox Road sewer district. Plaintiff may also present modified or redesigned general and improvement plans for any portion of the property currently contained in the proposed Sweetbriar Subdivision, Phases I and II. However, any rezoning request or modification shall not affect Plaintiff's obligation for the payment of the sewer assessments as provided for in this entry.

It is hereby ordered that said settlement agreement be and is hereby approved and same shall be implemented and carried out by all parties as set forth herein.

It is further ordered that the Plaintiff's claims for declaratory judgment, mandamus and monetary relief are dismissed with prejudice.

Each party to pay their own costs.

*Floyd D. Harris*

For Judge Floyd D. Harris

APPROVAL:

*Kenneth R. Resar*  
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Attorney for Fairway's, Inc.

*Russell Provenza*  
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Attorney for City of Ayon Lake

*Gregory A. White*  
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Prosecuting Attorney  
Attorney for Defendant, Dorothy L. Essex,  
Lorain County Recorder

*Thomas A. Dugan*  
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Attorney for remaining Defendants