

Memorandum

TO: Whom It May Concern

FROM: Alycia Esson, Clerk of Council

DATE: August 29, 2022

RE: Ordinance No. 2021-62

Please be advised that a clerical error was just brought to the attention of the Clerk of Council regarding Ordinance No. 2021-62. As referenced in the attached agenda and minutes, and read by title at 3 or more Council meetings, Proposed Ordinance No. 6-4 was entitled:

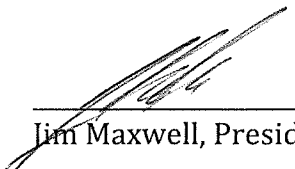
AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH DMARK DEVELOPMENT LLC. FOR THE SALE OF PERMANENT PARCEL NUMBERS 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, FOR THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

At the December 6, 2021 Regular Council Meeting, Council adopted this Ordinance as Ordinance No. 2021-62, but the Clerk inadvertently presented the previously adopted MOU Ordinance with DMark for signatures, thus even though the Purchase Agreement Ordinance was adopted and Exhibit "A" of the Purchase Agreement, which is the actual purchase agreement, was properly signed, the already adopted MOU was resigned in error and filed along with the purchase agreement exhibit.

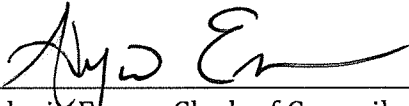
The Mayor did not veto proposed Ordinance No. 6-4, which became Ordinance No. 2021-62, and thus the Ordinance was properly passed in to law, however, this memo is to note that the Ordinance referenced above was adopted on December 6, 2021 and the actual legislation, although unsigned, is attached to this memo and is the correct version of Ordinance No. 2021-62.

Apologies for any and all confusion.

Thank you.



Jim Maxwell, President of Council



Alycia Esson, Clerk of Council

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2021-62

By: Leon R. Dozier, Sr.

Sponsor: Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH DMARK DEVELOPMENT LLC. FOR THE SALE OF PERMANENT PARCEL NUMBERS 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, FOR THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Berea passed Ordinance No. 2021-27 on June 7, 2021, authorizing the Mayor to enter into a Memorandum of Understanding with Dmark Development LLC. granting an exclusive right to market designated properties for development and eventual sale, including Permanent Parcel Nos. 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014; and

WHEREAS, the purpose of Ordinance No. 2021-27 was to further the City's desire to develop the parcels for the specific purposes of creating a vibrant destination development corridor that serves the surrounding neighborhood, business community, and key stakeholders and to return underutilized municipally owned parcels to active use; and creating positive economic, residential, employment and fiscal benefits for the neighborhood and the City; and

WHEREAS, a key component of the plan includes developing a separate new residential townhouse area; and

WHEREAS, as a result of the exclusive right to market the property, Dmark Development LLC. and Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes, for the construction of residential townhouses, have signed a letter of intent to enter into a purchase agreement to develop Permanent Parcel Nos. 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, which are no longer needed for municipal purposes, for the construction of a residential townhouse development; and

WHEREAS, upon the City's sale of the parcels referenced herein to Dmark Development LLC., they will, in turn, sell the parcels to Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes, for the express purpose of constructing a residential development; and

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2021-62

WHEREAS, the building of a residential development is in furtherance of the purposes stated in Ordinance No. 2021-27; and

WHEREAS, the economic interests of the City are best served by the sale of the above-referenced parcels, which will provide the City with additional revenue from real estate taxes, offer new residential housing products to the City, attract new residents to the City and will serve as an anchor for further development in the north end of Berea.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Mayor is authorized to enter into a Purchase Agreement with Dmark Development, LLC. for the sale of Permanent Parcel Nos., 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014 as further described in Exhibit A, for the price of Three Hundred Thousand Dollars (\$300,000), in substantial conformance with the Purchase Agreement, attached hereto as Exhibit B and incorporated herein by reference.

SECTION 2. That the Mayor and any other city administrator as necessary, is hereby authorized to prepare and/or execute any and all documents necessary to effectuate the purposes of this ordinance.

SECTION 3. 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 of any of its committees that resulted in such 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 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that it is in the interests of the City to sell the vacant municipal properties in order that development of the properties may begin in a timely manner. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2021-62

PASSED:

President of Council

ATTEST: _____
Clerk of Council

APPROVED:

Mayor

APPROVED AS TO FORM:

Director of Law

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into between Dmark Development LLC, an Ohio limited liability company, ("Purchaser"), and the City of Berea, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio ("Seller"). The date of this Agreement ("Execution Date") shall be the last date of execution by either of the parties. This offer shall expire 30 days after the effective date of the legislation authorizing this transaction.

ARTICLE 1 PROPERTY

Seller agrees to sell and Purchaser agrees to buy Cuyahoga County permanent parcels 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014 located in the City of Berea, Ohio ("Property") as outlined on Exhibit 1 attached hereto and incorporated herein by reference, together with all of the improvements, appurtenances, rights, privileges, licenses, and easements belonging thereunto.

ARTICLE 2 PURCHASE PRICE AND EARNEST MONEY

- A. The total purchase price for the Property ("Purchase Price") shall be Three Hundred Thousand Dollars (\$300,000.00) payable in cash on the Closing Date ("Closing Date").
- B. Within three (3) business days of the full execution of this Agreement by Purchaser and Seller, Purchaser shall deposit Five Thousand Dollars (\$5,000) into an escrow account with Northstar Title Services, LLC ("Escrow Agent" and "Title Company"), as Earnest Money ("Earnest Money"), to be credited against the Purchase Price at Closing. The Earnest Money shall be deposited into a federally insured interest-bearing account, with all interest accruing to Purchaser unless otherwise provided herein.

ARTICLE 3 CONTRACT LIMITATIONS AND CONTINGENCIES

- A. The Parties acknowledge that the sole purpose of this Agreement is to facilitate the development of a residential townhouse project, by selling the Property to Dmark Development LLC, who shall then sell to Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes, or any of their principals or affiliates to build the residential townhouse project and ultimately sell the townhouses to individual residential purchasers.
- B. This Purchase Agreement is contingent upon evidence provided to the Seller no later than 30 days after execution, of a binding agreement between Dmark Development LLC and Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes or any of their principals or affiliates, to build the residential townhouse project.

ARTICLE 4 RESPONSIBILITIES OF THE PARTIES UPON EXECUTION OF THIS AGREEMENT.

- A. Upon the execution of this Agreement, the Seller shall not:
 - 1. Permit any third party to adversely affect Seller's title to the Property; or
 - 2. Enter into any contracts or agreements pertaining to the Property that are not cancelable upon thirty (30) days-notice.

- B. The Parties acknowledge that prior to the Execution Date, the Seller has provided the Purchaser with copies of the most recent environment reports and assessment, including any UST reports and any other environmental or hazardous materials reports, and a copy of the City's Title Insurance Policy; and any engineering reports, soil reports and any drainage, wetlands and other physical inspection reports related to the Properties in possession of the Seller at the time of Execution.

ARTICLE 5 RESPONSIBILITIES OF THE PARTIES DURING THE STUDY PERIOD

- A. The Study Period is the time period for the Purchaser to take all necessary steps to conduct investigations, inspections, examinations, tests, borings and surveys and to investigate and evaluate the potential and suitability of the Property for residential townhouse development as contemplated in Article 3.

The Study Period shall commence on the Execution Date of this Agreement and shall terminate no later than 150 days thereafter, unless extended in writing by the Seller.

- B. Seller shall arrange access to all areas of the Property to enable Purchaser and its agents to enter the Property and to conduct investigations, inspections, examinations, tests, borings, and surveys.

The Purchaser shall, at its own cost, promptly repair any damage to the Property caused by the Purchaser's investigations, inspections, examinations, tests, borings and surveys.

- C. The Purchaser hereby indemnifies and holds the Seller harmless from and against any and all claims, losses, costs, damages, liabilities, including reasonable attorney fees and expenses caused by or arising out of the Purchaser's entry on the Property or the performance of such investigations, inspections, examinations, tests, borings or surveys.

- D. Within thirty (30) days after the execution of this Agreement, the Purchaser or its designee shall obtain a Commitment issued by the Escrow Agent for an ALTA Owner's Title Insurance Policy Form 2006, in an amount equal to the purchase price showing title to the Property in Seller's name and designating the Purchaser as the proposed insured.

1. The Commitment shall be accompanied by copies of any documents or exceptions listed as affecting title to the Property.

2. The Purchaser may obtain an ATLA survey prior to the expiration of the Study Period, showing the location of the Property and all easements, rights of way and other matters listed as exceptions to the Commitment that are capable of being shown on the survey.

- E. Within sixty (60) days of receipt of the Commitment, the Purchaser shall have the right to object, in writing, to any matters disclosed in the Commitment or Survey.

1. Upon receipt of Objections, the Seller shall have thirty (30) days to resolve such Objections and shall undertake to do so in good faith. However, the Seller shall not be required to resolve such Objections, except for the discharge of any liens at Closing.
2. If the Seller does not resolve such objections in thirty (30) days, the Purchaser, in its sole discretion and within fifteen (15) days of receipt of notice that the Seller failed to resolve such objections, may either:

- a. Terminate this Agreement. The Earnest Money and any accrued interest shall be paid to the Purchaser. The Seller shall pay any escrow and/or title charges actually incurred. Thereupon both parties shall be relieved of all further obligations contained in this Agreement, except those obligations that expressly survive the termination of this Agreement; or
- b. Waive the objection and accept title at Closing without any reduction in the Purchase Price.

A failure by the Purchaser to affirmatively terminate this Agreement or affirmatively waive the Objection(s), in accordance with E(2)(a) or (b) shall be construed as a Waiver of the Objection by the Purchaser.

3. The Purchaser shall not be required to provide a notice to cure or remove any mortgage lien, security interest, judgment, personal property tax, mechanics or other Lien capable of cure by payment of a liquidated sum (liens), as the Purchaser shall be deemed to have objected to such Liens, and the Seller shall cause such Lien to be released on or before the Closing Date, at its expense, but only in the event such Liens in the aggregate are less than the net Purchase Price due the Seller.

F. Termination of This Agreement During the Study Period

1. If during the Study Period, the Purchaser determines that for any reason, except for the reason stated in Article 5(F)(2) below, that the Property is not suitable for a residential townhouse project, the Purchaser may, in its sole discretion, terminate this Agreement and thereupon, this Agreement shall be null and void and neither party shall have any further rights or obligations, except for those rights and obligations that, by their terms, survive any such termination. The Earnest money and any accrued interest shall be paid to the Purchaser. The Purchaser shall be responsible for any escrow /or title charges accrued to the date of termination.
2. If by the end of the Study Period, the Purchaser is unable to secure a binding Agreement between Dmark Development LLC and Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes or any of their principals or affiliates to build a residential townhouse project on the Property, this Agreement shall terminate, and the Earnest Money and any accrued interest shall be forfeited by the Purchaser. Upon deducting accrued Title or Escrow costs, the remaining balance of the Earnest Money and accrued interest shall be payable to the Seller.

ARTICLE 6 RESPONSIBILITIES OF THE PARTIES DURING THE APPROVAL PERIOD

- A. The Approval Period is the 150-day period following the completion of the Study Period, unless extended in writing by the Seller.
- B. During the Approval Period, the Purchaser and/or representatives or affiliates of Triban Investment, LLC., an affiliate company of Knez Homes, in partnership with K. Hovnanian Homes are required to obtain approvals for any zoning issues related to the use of the property and approval of the Planned Unit Development by Berea City Council and the Berea Municipal Planning Commission and other necessary project-related approvals.

- C. Upon receipt of necessary zoning approvals, the Purchaser shall have the right to post a development sign on the Property, provided such sign is in compliance with all applicable laws and agrees to promptly remove the sign should Closing not occur.

ARTICLE 7 CLOSING AND ESCROW CHARGES

- A. Closing shall occur no later than 300-days from execution, unless extended in writing by the Seller.

- B. Title to Premises

Seller shall convey insurable and marketable title to the Property to the Purchaser by General Warranty Deed, warranting title to be free and clear of all liens and encumbrances, except matters of public record.

- C. Taxes and Assessments

Real estate taxes for the Property shall be prorated as of 12:01 a.m. on the Closing Date and based on the most recent tax bill as designated by the Cuyahoga County Fiscal Officer. The Seller shall pay taxes attributable to the Property until the Closing Date, and the Purchaser shall pay all taxes incurred on or after the closing date.

- D. Seller's Responsibilities at Closing

No later than three (3) days prior to the Closing Date, the Seller shall deliver to the Escrow Agent the following:

1. A General Warranty Deed in a form acceptable to the Purchaser, duly executed and acknowledged by the Seller, conveying title to the Property by the Purchaser; and
2. Such other documents as may be required by the Purchaser, Escrow Agent or Title Company, including but not limited to, a customary form of an owner's/ seller's affidavit, "gap" indemnity (and any other affidavits or agreements reasonably requested by the Title Company in connection to the Closing and issuance of the title policy, settlement statement, a Resolution or Ordinance passed by the Council of the City of Berea authorizing the sale of the Property and any other such documents contemplated under a contemporaneous closing by the Seller.

- E. Purchaser's Responsibilities at Closing

In order to facilitate a simultaneous closing with Triban, no later than one (1) day prior to the Closing Date, the Purchaser shall deliver to the Escrow Agent the following:

1. The Purchase Price, less the Earnest Money, plus or minus all net prorations, closing costs and other funds required to be paid by the Purchaser in accordance with this Agreement; and

2. Such other documents as may be reasonably required by the Seller, Escrow Agent or Title Company.

F. Escrow and Costs

At such time as the Escrow Agent has in its possession all funds representing the Purchase Price and all documents required from the Purchaser and the Seller, the Escrow Agent shall cause the Deed to be recorded at the Cuyahoga County Recorder's Office. The escrow shall be subject to the Escrow Agent's standard conditions of acceptance, except if there is any conflict or inconsistency between the Escrow Agent's standard conditions and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall govern.

Except as otherwise stated herein, the Purchaser shall be responsible for all costs and fees, including but not limited to the cost of recording the deed, costs associated with any mortgage loan obtained by the Purchaser, escrow fees, cost of the title exam and the issuance of the Commitment and cost to obtain the Title Policy and any transfer tax or conveyance fee.

The Seller shall be responsible for any amounts that are required to satisfy outstanding Liens.

ARTICLE 8 BROKER

Purchaser and Seller warrant and represent each to the other that neither has dealt with any real estate broker or finder in connection with this transaction.

ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS

A. As a material inducement for Purchaser to enter into this Agreement, Seller represents, warrants and covenants as follows:

1. Except as may be set forth in the Commitment, no other party has an interest in the Property. The Property shall be delivered at Closing free and clear of all tenancies and free and clear of all personal property located outside of any buildings on the Property; and
2. No legal actions or administrative proceedings of any type (including condemnation, eminent domain, or similar proceedings) are pending or contemplated against the Property; and
3. Seller has all necessary power and authority, subject to the approval of the Council of the City of Berea, to execute this Agreement and perform all of its obligations hereunder and convey the Property; and
4. Seller has no knowledge and has not received written notice of any violations of any law, statute, ordinance, or other governmental regulation by or affecting the Property which has not been cured; and
5. On the Closing Date, there will be no outstanding contracts made by Seller for any improvements to the Property that have not been fully paid for and Seller shall cause to be discharged all mechanics or materialmen's liens arising from any labor or materials furnished to the Property on behalf of Seller prior to the Closing Date; and

6. The Property does not contain any asbestos, environmental contamination, or environmentally hazardous waste which has not been remediated in compliance with all applicable laws relating to residential uses; and
 7. The representations and warranties set forth in Article 7.A. are true and correct on the Effective Date, shall be true and correct on the Closing Date, and shall survive the Closing.
- B. As a material inducement for Seller to enter into this Agreement, Purchaser represents and warrants that:
1. Purchaser has all necessary power and authority and no consent of any third party is required for Purchaser to execute this Agreement, perform all of its obligations hereunder and purchase the Property and
 2. Purchaser and Purchaser's principals or partners are not affiliates of Seller or Seller's principals.

ARTICLE 10 REMEDIES

- A. Except where a remedy is otherwise specified herein, if Seller breaches any of its covenants, agreements, representations, or warranties, and if such breach has not been cured within thirty (30) days after written notice thereof, the Purchaser may:
1. Terminate the Agreement. The Seller shall pay all title and escrow charges incurred and the Earnest Money shall be returned to Purchaser and thereafter each party shall be released of all further liability hereunder; or
 2. Enforce specific performance of the Seller's obligations, including monetary damages in an amount not to exceed Purchaser's actual out-of-pocket expenses exclusive of Purchaser's Earnest Money, which shall be returned to Purchaser.
- B. Except where a remedy is otherwise specified herein, if the Purchaser defaults in its obligations and if such default has not been cured within thirty (30) days after written notice thereof, then this Agreement shall terminate. The Purchaser shall pay all title and escrow charges incurred. The Earnest Money and any accrued interest shall be paid to the Seller.

ARTICLE 11 ENTIRE AGREEMENT

This instrument constitutes the entire Agreement between the parties with respect to the transaction herein contemplated and supersedes the terms of the Memorandum of Understanding between the City of Berea and Dmark Development LLC, executed on or about on or about June __, 2021, as it relates to the sale and/or development of Permanent Parcel Nos. 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, and shall not be modified unless in writing and signed by all parties hereto.

ARTICLE 12 NOTICE

All notices, demands and requests which may be given or which are required to be given by either Party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and addressed to the Party listed below. Notice shall be deemed effective upon personal service on the other Party or its legal counsel; or one business day after the Notice is sent for over-night delivery; or two business days after Notice is sent by Express Mail through the U.S. Postal Service; or on the date the Notice is sent by a confirmed email account. Notice to one Purchaser shall be deemed to have been served on the other Purchaser.

Notice to the Seller:

Matt Madzy
City of Berea, Ohio
11 Berea Commons
Berea, OH 44017
mmadzy@cityofberea.org

Notice to the Purchaser:

Dmark Development LLC
100 North Main St., Suite 125
Chagrin Falls, OH 44022
davecerny@roadrunner.com

OR

Mark J. Jablonski
Dmark Development LLC
2572 Fenwick Rd.
University Heights, OH 44118
mark@centermarkdev.com

ARTICLE 13 ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Purchaser may not assign its rights and obligations hereunder to any third party without the prior written consent of the Seller.

ARTICLE 14 MISCELLANEOUS

- A. The Parties agree that time is of the essence and that the failure of a Party to perform any act on or before the date specified herein for shall be deemed cause for the termination of this Agreement the other Party, without prejudice to other remedies available for default hereunder, but subject to any express notice and cure provision set forth in this Agreement.
- B. Each term, covenant, and condition contained herein shall remain in full force and effect until the same has been fully performed.
- C. Seller and Purchaser agree to cooperate in furtherance of this transaction and to execute any and all documents reasonably required to complete this transaction. In the event of a dispute between the parties, the prevailing party shall be entitled to reimbursement for its costs, including reasonable attorney fees incurred as a result of such dispute. Seller hereby authorizes Purchaser to apply for any necessary governmental approval(s) required for Purchaser's intended use of the Property as a residential townhouse project, including zoning.
- D. This Agreement shall be construed in accordance with the laws of the State of Ohio. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement.

- E. Risk of loss to any improvements located on the Property or to the Property shall remain with the Seller until transfer of possession to the Purchaser on the Closing Date. In the event of any damage to or destruction of the Property or any portion thereof prior to the Closing, Seller shall promptly give Purchaser written notice thereof. In the event of an insured loss prior to Closing, Purchaser shall have the option of:
1. Accepting the Property in its damaged condition as the result of such insured loss and receive the Seller's insurance proceeds together with Seller's insurance deductible at Closing; or
 2. Terminating this Agreement. The Earnest Money and all accrued interest shall be returned to Purchaser and the Seller shall be responsible for payment of the costs of escrow incurred.
- If prior to the Closing, any portion of the Property is subject to a bona fide written threat of condemnation by a body having the power of eminent domain or condemnation, the Purchaser may elect to terminate this Agreement. The Earnest Money and all accrued interest shall be returned to Purchaser and the Seller shall be responsible for payment of the costs of escrow.
- F. This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.
- G. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

ARTICLE 15 COMPUTATION OF TIME

In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which any period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday. "Business day" shall mean any day other than Saturday, Sunday or other day that commercial banks in the State in which the Property is located are authorized or required to close under applicable law.

ARTICLE 16 ETHICS AND CONFLICT OF INTEREST

The Purchaser represents, warrants and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws including by not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. The Purchaser further represents, warrants, and certifies that neither the Purchaser nor any of its employees or agents will do any act that is inconsistent with such laws.

ARTICLE 17 NON-DISCRIMINATION AND COMPLIANCE WITH APPLICABLE LAWS

The Purchaser, as a term of the contract, shall comply with Civil Rights Act of 1964, any and all other statutes, rules and regulations pertaining to non-discrimination.

ARTICLE 18 EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

PURCHASER:

By: _____
David F. Cerny, Co-Manager

Date: _____

By: _____
Mark J. Jablonski, Co-Manager

Date: _____

SELLER:

By: Cyril M. Kleem
Mayor Cyril M. Kleem

Date: _____

APPROVED AS TO FORM:

Carl J. [Signature]
Director of Law



Cuyahoga County GIS Viewer



Date Created: 9/2/2021

Legend

- ☐ Municipalities
 — Right Of Way
 — Platted Centerline
☐ Parcel

400	0	200	400 Feet
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Projection:

WGS 1984 Web Mercator Auxiliary Sphere

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be

accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Cuyahoga County -

Enterprise GIS

PUTTING CUYAHOGA COUNTY ON THE MAP

BEREA CITY COUNCIL

Monday, December 6, 2021 - 7:30p.m.

REGULAR MEETING AGENDA

I. INTRODUCTION

- A. Call to Order
- B. Roll Call of Members
- C. Pledge of Allegiance
- D. Sunshine Compliance with Ohio R.C. 121.22 and Codified Ordinance Chapter 109 (Sunshine Laws)
- E. Approval/Amendment of Minutes: **November 15, 2021 – Public Hearing #1**
November 15, 2021 – Public Hearing #2
November 15, 2021 – Regular Council Meeting

II. ADMINISTRATIVE REPORTS

- A. Mayor's Administrative Report and Comments
- B. Report and Comments by the Officers of the Administration
 - 1. Director of Finance – Mrs. Morris
 - 2. Director of Law & Public Safety – Mrs. Jones
 - 3. Director of Public Service – Mr. Armagno

III. COMMENDATIONS

IV. ACCEPTANCE OF READING OF PETITIONS

V. PRESENTATION OF MATTERS BY THE PUBLIC

VI. COUNCIL COMMITTEE REPORTS AND ANNOUNCEMENTS

VII. LEGISLATION

A. For Third Reading:

- 1. ORD. 6-4: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH DMARK DEVELOPMENT LLC. FOR THE SALE OF PERMANENT PARCEL NUMBERS 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, FOR THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.
- 2. RES. 11-1: A RESOLUTION REQUESTING THE FISCAL OFFICER TO ADVANCE TAXES FROM THE PROCEEDS OF TAX LEVIES PURSUANT TO SECTION 321.34 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

3. ORD. 11-2: AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO PURCHASE THROUGH THE ODOT STATE CONTRACT PROGRAM AND/OR THE STATE OF OHIO PURCHASING PROGRAM, OR DIRECTLY PURCHASING FROM A STATE APPROVED VENDOR AT A PRICE LOWER THAN THAT AVAILABLE THROUGH THE ODOT STATE CONTRACT PROGRAM AND/OR THE STATE OF OHIO PURCHASING PROGRAM, OR, ALTERNATIVELY, TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACT(S) FOR THE PURCHASE OF MOTORIZED VEHICLES, EQUIPMENT, MACHINERY, MATERIALS, SUPPLIES OR OTHER ARTICLES FOR USE IN ONE OR MORE CITY DEPARTMENTS, AND DECLARING AN EMERGENCY.
4. ORD. 11-3: AN ORDINANCE AUTHORIZING AND RATIFYING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACT(S) FOR THE PURCHASE OF VARIOUS PRODUCTS AND SERVICES FOR THE DAY-TO-DAY OPERATIONS OF THE CITY OF BEREA'S SERVICE DEPARTMENT.
5. ORD. 11-4: AN ORDINANCE AUTHORIZING THE CITY DIRECTORS TO PARTICIPATE IN VARIOUS COOPERATIVE PURCHASING PROGRAMS, AND DECLARING AN EMERGENCY.
6. ORD. 11-5: AN ORDINANCE REPEALING AND REPLACING CHAPTER 311, WATER, OF TITLE THREE, PUBLIC UTILITIES, OF PART THREE, STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREA, AND DECLARING AN EMERGENCY.

B. For Second Reading:

1. ORD. 11-6: AN ORDINANCE AUTHORIZING THE MAYOR TO MAKE APPLICATION FOR, AND, IF AWARDED, TO ENTER INTO A COOPERATION AGREEMENT WITH THE COUNTY EXECUTIVE OF CUYAHOGA COUNTY, OHIO, AND THE DEPARTMENT OF DEVELOPMENT FOR THE UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS MADE AVAILABLE BY THE HOUSING AND COMMUNITY DEVELOPMENT ACTS OF 1974, 1977, 1980 AND 1983, AS AMENDED, AND TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE PURPOSES SPECIFIED IN THE CDBG AGREEMENT, AND DECLARING AN EMERGENCY.
2. ORD. 11-7: AN ORDINANCE AUTHORIZING THE MAYOR TO MAKE APPLICATION FOR, AND, IF AWARDED, TO ENTER INTO A COOPERATION AGREEMENT WITH THE COUNTY EXECUTIVE OF CUYAHOGA COUNTY, OHIO, AND THE DEPARTMENT OF DEVELOPMENT FOR A GRANT THROUGH THE 2022 COMMUNITY DEVELOPMENT SUPPLEMENTAL GRANT PROGRAM AND TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE PURPOSES SPECIFIED IN THE CDSG AGREEMENT, AND DECLARING AN EMERGENCY.
3. ORD. 11-9: AN ORDINANCE ENACTING NEW SECTION 125.03 TO ESTABLISH THE PROCEDURES FOR THE DISPOSITION OF PERSONAL PROPERTY NO LONGER NEEDED FOR MUNICIPAL PURPOSES OR PUBLIC USE, OR ARE OBSOLETE OR UNFIT FOR THE USE FOR WHICH THEY WERE ACQUIRED.

4. ORD. 11-10: AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE BARBERRY, WOODLAWN, MAPLE AND FOURTH AVENUE RECONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.
5. ORD. 11-11: AN ORDINANCE APPOINTING ANTHONY ALEXANDER TO THE BEREА TAX INCENTIVE REVIEW COUNCIL (TIRC) PURSUANT TO CHAPTER 5709 OF THE REVISED CODE, AND DECLARING AN EMERGENCY.
6. ORD. 11-12: AN ORDINANCE AMENDING SECTION 101.02, GENERAL DEFINITIONS, TO ADD DEFINITIONS OF A PUBLIC MEETING OPEN TO THE PUBLIC AND VOTING AT SUCH MEETINGS.
7. ORD. 11-13: AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,810,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2013, DATED MARCH 26, 2013, AND DECLARING AN EMERGENCY.
8. ORD. 11-14: AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$5,175,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2015, DATED MARCH 24, 2015, AND DECLARING AN EMERGENCY.
9. ORD. 11-16: AN ORDINANCE APPROPRIATING FROM THE VARIOUS FUNDS TO INDIVIDUAL ACCOUNTS FOR THE CURRENT EXPENDITURES AND OTHER EXPENSES OF THE CITY OF BEREА FOR THE FISCAL YEAR ENDING DECEMBER 31, 2021, AND EXPRESSLY REPEALING ORDINANCE NO. 2021-61.
10. ORD. 11-17: AN ORDINANCE TO MAKE TEMPORARY APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES FROM THE VARIOUS FUNDS OF THE CITY OF BEREА, STATE OF OHIO, FROM JANUARY 1, 2022, ENDING MARCH 31, 2022.
11. ORD. 11-18: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREА AND THE BEREА POLICE LIEUTENANTS REPRESENTED BY THE FRATERNAL ORDER OF POLICE, LODGE 15, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.
12. ORD. 11-19: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREА AND THE BEREА POLICE SERGEANTS REPRESENTED BY THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.
13. ORD. 11-20: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREА AND THE BEREА POLICE PATROL REPRESENTED BY THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

14. ORD. 11-21: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREA AND THE BEREA FIREFIGHTERS, REPRESENTED BY LOCAL 1836 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

C. For First Reading:

1. ORD. 12-1: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE NORTHEAST OHIO AREAWIDE COORDINATING AGENCY AND TO GRANT A TEMPORARY, NON-EXCLUSIVE, REVOCABLE LICENSE FOR THE PURPOSE OF INSTALLING, OPERATING AND MAINTAINING TWO ELECTRIC VEHICLE CHARGING STATIONS ON A PORTION OF PERMANENT PARCEL NO. 364-11-026, OWNED BY THE CITY OF BEREA, AND DECLARING AN EMERGENCY.

VIII. REPORT AND COMMENTS BY THE PRESIDENT OF COUNCIL

IX. REPORT AND COMMENTS BY THE MEMBERS OF COUNCIL

- A. Councilman McManis, Ward 2
- B. Councilman Skoczen, Ward 5
- C. Councilwoman Smith, Ward 4
- D. Councilman Zacharyasz, At-Large
- E. Councilman DeVito, At-Large
- F. Councilman Dozier, Ward 1
- G. Councilman Maxwell, Ward 3

X. CORRESPONDENCE (November 11, 2021 – December 1, 2021)

XI. OTHER BUSINESS

- A. Report and Comments by the Clerk of Council

XII. ADJOURNMENT

MINUTES OF A REGULAR COUNCIL MEETING
December 6, 2021 – 7:30p.m.

Council of the City of Berea, Ohio, met in regular session in the Council Chamber on December 6, 2021 and the meeting was called to order by President Pro Tempore of Council Jim Maxwell at 7:30p.m. Present: Bill DeVito, Leon Dozier, Chris McManis, Rick Skoczen, Kim Smith and Gene Zacharyasz. Absent: Council President Jeff Dettmer. Also present via Zoom: Mayor Cyril M. Kleem, Director of Public Works Tony Armagno, Director of Law and Public Safety Barb Jones and the Director of Finance Andrea Morris.

The Pledge of Allegiance followed.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea. The certificate of compliance is on file in the Clerk's office.

Moved by Mr. Skoczen, seconded by Mr. Dozier, that the minutes from the November 15, 2021 Public Hearing #1 be approved. Vote on the motion was all ayes and no nays. The motion carried.

Moved by Mr. McManis, seconded by Mr. Skoczen, that the minutes from the November 15, 2021 Public Hearing #2 be approved. Vote on the motion was all ayes and no nays. The motion carried.

Moved by Mr. McManis, seconded by Mr. Skoczen, that the minutes from the November 15, 2021 Regular Council Meeting be approved. Vote on the motion was all ayes and no nays. The motion carried.

MAYOR'S ADMINISTRATIVE REPORT AND COMMENTS

Mayor Kleem announced that the joint committee that is being formalized to discuss North End flooding and sewer issues will include 5 residents, 4 members of the Administration including himself, 3 members of Council and the Council President. Not everyone has been contacted yet, but that will happen soon. The Administration is, simultaneously, working on data for the committee to review, and some of that data includes information that has been gathered with regard to the North End development referenced in proposed Ordinance No. 6-4, which has been put on hold due to concerns about a tie in to the Emerson sewer system. Mayor Kleem noted that some of this information has been given to Council already, and has assisted him in formulating four particular elements that the North End joint committee should focus on and evaluate with the goal of alleviating the flooding issues and developing the parcels in question.

Mayor Kleem stated that the first element to consider is whether or not the new development will worsen the basement flooding issue. The Emerson sewer system has been determined to have more than enough capacity for the townhouse development, but inflow and infiltration is the problem, meaning that during heavy rains, stormwater goes in to the sanitary system. With regard to the City owned properties, hard surface has already been reduced by 84%, so there is less runoff today than there was before the City took ownership. Any development must manage its discharge, which will be achieved through the creation of a detention basin that will collect and hold water while storm sewers are in active use, and then

release it slowly. Therefore, the development will not increase flooding issues according to the data, even if the project is tied in to the Emerson system. However, the committee may raise other concerns on this front, or find there is still a plausible risk, and this needs to be determined.

Mayor Kleem stated that the second element for the committee to consider is a review of the storm sewer connections from the proposed development site. While the sewer on Front is not deep enough to accommodate the entire project site, a portion of the site could be directed to the Front Street sewer or, as an alternative, the City could install a storm sewer from the Williams Ford property through the treelawns on North Rocky River Drive, thus avoiding the storm sewer on Emerson. This proposal is expensive, but does avoid an Emerson connection.

Mayor Kleem continued that the third thing for the committee to consider is a potential solution that is unrelated to the townhouse development and this is a sanitary relief connection from the neighborhood sanitary sewer to the regional sanitary sewer on Sheldon. NEORS has long been opposed to this, however, due to recent improvements in the neighborhood and subsequent regional studies, they are now comfortable with a new flow connection which would allow water in the sanitary to flow more quickly in to the regional system. The improvement, which could be thought of as a second drain in a bathtub, would reduce the likelihood of sewer surcharge and basement flooding. The fact that NEORS is open to this is an enormous development!

Mayor Kleem explained that the fourth element for the committee to consider is the creation of a Tax Increment Finance (TIF) district. A TIF is a tool Cities use to finance public improvements using property taxes from a development. The Browns Training Camp was a TIF project. In short, property taxes from the development site would provide the Berea City Schools and Polaris with 55% of the taxes and the City with 45%. Without a TIF, the City would only receive 15% of taxes. City Council would need to create the North End neighborhood as the TIF district and the money generated, which would be approximately \$200,000-\$2500,000 per year, would be dedicated to public property improvements in the district for up to 30 years. Improvements related to roads and sewers in the district could be paid for, as could some private property improvements if they directly impact the publicly owned system.

Mayor Kleem concluded by stating that due to the fact that he has just highlighted several options to help alleviate flooding concerns, he recommends that Council adopt Ordinance No. 6-4 and allow the committee to review all parts of his proposal in detail. If the Ordinance is adopted, the final phase comes in the form of a Planned Unit Development (PUD) which requires both Council and Planning Commission approval and takes many months. In the meantime, the committee can make its recommendations to Council.

Mayor Kleem added that working committees do not make decisions, but rather analyze data and information and present recommendations to the Mayor and Council.

In response to a question from Mr. Maxwell, Mayor Kleem stated that TIF funds could pay for sewer connections and/or the creation of a new sewer line to Sheldon. With regard to reimbursement, Mrs. Morris stated that the lookback period is typically the beginning of the year when the project was started, and in response to an inquiry from Mr. Zacharyasz stated that, in a

TIF district, the taxes are collected on whatever parcels are included in the legislation. Mr. Maxwell clarified that the taxes are not new, they would just be redirected.

Mr. McManis asked what the \$200,000-\$250,000 figure is based on and Mr. Madzy replied that it is determined based upon the estimated value per townhouse, and the Administration has used a very conservative number.

General discussion commenced concerning whether the public has had time to review the potential project and Mr. Skoczen stated that two public meetings were held. Mr. Maxwell then referenced a list of questions that was received from Daune Jaynes on behalf of the North End residents, noting that they have been answered.

Mayor Kleem explained that this project has 3 phases, the first being the Memo of Understanding with DMark, followed by the sale of the property to DMark, and the PUD review. Until the PUD process commences, the developers can only provide general information and concepts. Once they own the land they can move forward with concrete plans and specifics. If, however, the PUD is not approved, the deal is over. During the last PUD review, the City hosted approximately 15 public meetings.

General discussion commenced regarding where the sanitary relief connection would go, and Mr. Armagno explained that one recommendation is to run a new sewer down Bryant up to Sheldon and divert 35-40% of flow.

Dennis Knowles asked if NEORSD has determined there to be a problem on public property, and Mr. Armagno responded that they performed studies based on actual data and identified that I & I is present in the system, but they did not study how it is getting in there. That would require a lot more precise testing on every property and sewer.

Mr. Knowles felt that residents who have been adversely affected by this flooding should receive compensation retroactively.

REPORT AND COMMENTS BY THE OFFICERS OF THE ADMINISTRATION:

Andrea Morris – Director of Finance:

Mrs. Morris had no report.

Barb Jones – Director of Law & Public Safety:

Mrs. Jones had no report.

Tony Armagno – Director of Public Service:

Mr. Armagno explained that he met with Columbia Gas to discuss their schedule of projects for next year and they have identified a first quarter project at North Rocky River Drive, Karen Drive and Nancy Drive, and a third quarter project at Pearl Street, Third Avenue and Beech Street. They will also have relocations to do prior to the Barberry project.

Mr. Armagno continued by announcing that Fabrizi has been awarded the contract for the demolition of the bridge and they will likely begin in February, with completion in early summer.

Mr. Maxwell asked that Mr. Armagno look at the contractor sign at Race and Woodmere to see if it can now be removed. Mr. Armagno stated that contractor signs are usually kept up until the punch list items have been addressed, but he will take a look.

In response to a question from Mr. Skoczen, Mr. Armagno replied that leaf collection will continue for the next 2 weeks and if Council Members receive calls, they can direct residents to the City Service Garage, as leaves will be collected as long as weather permits.

Mr. Skoczen added that he will send a list of dilapidated street signs to him for review.

In response to inquiries from Mr. McManis, Mr. Armagno stated that the low bid for the bridge demolition was \$249,963.50, which is within the budgeted \$300,000 and allows for some contingencies. With regard to the road condition study that was conducted, more information will follow early in the new year.

Marty Compton – Director of Recreation:

Mr. Compton was not present.

COMMENDATIONS: **NONE**

PETITIONS: **NONE**

AUDIENCE PARTICIPATION:

Anthony Alexander addressed comments that were made about him at the last Regular Council Meeting, noting that he was not able to attend the meeting where an ordinance was introduced to appoint him to the Tax Incentive Review Council. Mr. Alexander stated that he felt it was extremely unprofessional for Mr. McManis to site his job as a DJ and host and allow for audience laughter, when his resume also includes his work as a supervisor who takes care of people with disabilities. It was unprofessional to pick and choose parts of his resume to make a point. He noted that he has done work with Meyers University regarding how to make businesses successful, so he finds it disheartening that people would mock his qualifications for this position.

Mr. Alexander continued by stating that he is a volunteer member of Planning Commission, which is a very important position, and he is proud of that role and assumed it with no prior experience, after being approved by Council. He operates under the assumption that Council Members should help people and not put them down.

Mr. McManis thanked Mr. Alexander for appearing here tonight, and expressed regret that he felt his profession was being laughed at during the last meeting. Mr. McManis said that the Mayor misrepresented his point about the resume and DJ job, adding that all he was doing was pointing out that there was not a lot of experience with tax related issues on the resume, and he assumed these qualifications would be necessary.

Mr. McManis stated that he has no control of what people find to be funny, and recognized that the way the conversation flowed made him feel uncomfortable. The point being made was that Berea has a lot of people and, perhaps, one person should not fill two appointments. Nevertheless, the intent was not to demean or make fun of Mr. Alexander or his career and experience. That is not something he did or will ever do.

Angel Alexander, Mr. Alexander's daughter, stated that what a person in a position of power says is very important. The way in which things are said and addressed is important, and should be done respectfully at all times. Her Dad felt disrespected, and she does not like that he was made to feel that way. She cautioned people in positions of power to be respectful because others are watching.

Gay Grizzell noted that she, too, expected an appointee to the Tax Incentive Review Council to have a tax background, and understood the point Mr. McManis was trying to make. She is, however, sorry if someone took it the wrong way.

Gail Grizzell thanked Mayor Kleem and Mr. Armagno for addressing the area that connects The Mall to Shelley Parkway because it looks really nice and she is sure her neighbors appreciate it, as well.

Mrs. Grizzell next asked why the Mayor will be selecting residents to sit on the North End committee when he does not know who has a dog in the fight. She wants people on the committee who are dealing with flooding issues and who are invested in the outcome.

Mrs. Grizzell continued by noting that she called the federal government and asked if ARP funds could be used for infrastructure, and they told her that they could be used.

Mrs. Grizzell next asked when the leading expert in Lakewood will be addressing Council, or if he will be on the committee. Mayor Kleem responded that that expert has provided the City with some information but will not be participating further, and noted that he is selecting the committee members because he is the Mayor and has that responsibility. His hope is that this committee will be a working committee and focus and discuss particular issues that are of value to resolving the issues. The discussion should not revolve around who has what problem, that information has been conveyed for months, but rather how to address those problems and find solutions. Ultimately, the Administration needs to be on board with whatever is decided, but he hopes residents will work with the Administration toward the same solution.

With regard to the comments made by Mr. Alexander and his daughter, Mayor Kleem stated that he, too, has become concerned with the recent loss of decorum at these meetings, noting that allegations have been thrown around, whether by members of Council or the public, in a manner that is inappropriate and disappointing. These meetings need to regain their civility.

Eddy Lott asked when the North End committee will meet and how long progress will take. Mr. Maxwell responded that a solution will not come over night because the problem is quite complicated. He committed to working diligently, should he be asked to join the committee. Mayor Kleem added that if the committee can focus and stay on track, they could wrap up in a few months. The topics being discussed, however, will be the four elements he addressed earlier,

and not a list of accusations. The committee is not a necessity, and either is the Administrations appearance at Council Meetings, but he is choosing to have the committee and to be here.

Mr. Maxwell stated that it is the Mayor's job to appoint committee members. Not everyone may agree with who he selects, but this is how government works. In addition, recent Council meetings have been heated and lost some decorum, but Council does appreciate the fact that the Administration is here because it is a benefit to the City overall. The two branches of government need to work together to get problems solved and tackle others with civility.

Marty Lott referenced Mayor Kleem's point about rowing in the same direction, but noted that, when dealing with the public, the Mayor can't keep lashing out at those who are presenting concerns. He should want to hear from those who have something to say. Mr. Maxwell stated that no one knows, as of yet, who the Mayor has selected to sit on the working committee, and Mr. Lott raised an issue with how long it has taken to get this committee going.

Mayor Kleem responded that he has heard the complaints and understands the issue, as evidenced by the fact that he asked an outside engineering firm to look at the Emerson issue, an issue he never considered before North End residents brought it forward. Mayor Kleem said he has heard them and takes their issues seriously.

COUNCIL COMMITTEE REPORTS AND ANNOUNCEMENTS:

None

LEGISLATION – THIRD READING:

ORDINANCE NO. 6-4: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH DMARK DEVELOPMENT LLC. FOR THE SALE OF PERMANENT PARCEL NUMBERS 362-02-003; 362-02-009; 362-02-011; 362-02-012; 362-02-014; 362-03-002; 362-03-013; and 362-03-014, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, FOR THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Maxwell stated that he is mildly placated by the information that Mayor Kleem presented, including the 4 actionable items that the committee will discuss, and is comfortable moving forward with the understanding that stop gaps are in place. He cautioned Council Members to be clear on what they are voting on and not use this Ordinance as a pawn in some other agenda.

Mr. McManis stated that Council requested a presentation of collected information and not a condensed email version. He wants to see the actual reports.

Mr. DeVito was comfortable moving forward since final decisions will be made by Council and Planning Commission.

Mr. Skoczen was ready to move forward so that the developer can produce specific plans and information that is not available now and will not become available until the sale is made.

Mrs. Smith said that the end goal is to develop the property, whether it be this project or another, so this step must occur in order to help facilitate this goal.

Mr. Zacharyasz was also comfortable moving forward, adding that the developer is just as invested as the City in a successful project.

Mr. Dozier felt the information that was emailed to Council was sufficient, and thus was ready to move forward.

Mr. McManis noted that while the goal is to develop the land, the priority should be to protect the residents, and the City needs to make sure proper infrastructure is in place before taking on a project of this size.

Erika Coble stated that there has not been a lot of time for public input.

Mr. Maxwell reiterated that he is satisfied with the information provided by the Mayor, including the 4 elements of his plan, although he would have preferred an in-person presentation. He added that people have had the opportunity to express their opinions on the development and the public will have many more opportunities, as well.

Gail Grizzell reminded Council that all Members had been under the assumption that the Administration had taken care of the North End flooding issue, and thus they had been following the direction of the Mayor. She cautioned them to make sure this is not happening once again, and to let Ordinance No. 6-4 stand until after the committee deliberates. Mr. Skoczen responded that the committee will include Council Members, Residents and the Administration, all of whom are stakeholders in getting this right together. The information will be available to all.

Moved by Mr. Dozier, seconded by Mrs. Smith, that Ordinance No. 6-4 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, Skoczen, Smith and Zacharyasz. Nays: McManis. The motion carried.

RESOLUTION NO. 11-1: A RESOLUTION REQUESTING THE FISCAL OFFICER TO ADVANCE TAXES FROM THE PROCEEDS OF TAX LEVIES PURSUANT TO SECTION 321.34 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Resolution.

Moved by Mr. Skoczen, seconded by Mrs. Smith, that Resolution No. 11-1 be approved. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 11-2: AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO PURCHASE THROUGH THE ODOT STATE CONTRACT PROGRAM AND/OR THE STATE OF OHIO PURCHASING PROGRAM, OR DIRECTLY PURCHASING FROM A STATE APPROVED VENDOR AT A PRICE LOWER THAN THAT AVAILABLE THROUGH THE ODOT STATE CONTRACT PROGRAM AND/OR THE STATE OF OHIO PURCHASING PROGRAM, OR, ALTERNATIVELY, TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACT(S) FOR THE PURCHASE OF MOTORIZED VEHICLES, EQUIPMENT, MACHINERY, MATERIALS,

SUPPLIES OR OTHER ARTICLES FOR USE IN ONE OR MORE CITY DEPARTMENTS, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Skoczen, seconded by Mr. Zacharyasz, that Ordinance No. 11-2 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 11-3: AN ORDINANCE AUTHORIZING AND RATIFYING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACT(S) FOR THE PURCHASE OF VARIOUS PRODUCTS AND SERVICES FOR THE DAY-TO-DAY OPERATIONS OF THE CITY OF BEREA'S SERVICE DEPARTMENT.

The Clerk read the title of the Ordinance.

Moved by Mr. Zacharyasz, seconded by Mr. Dozier, that Ordinance No. 11-3 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 11-4: AN ORDINANCE AUTHORIZING THE CITY DIRECTORS TO PARTICIPATE IN VARIOUS COOPERATIVE PURCHASING PROGRAMS, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Skoczen, seconded by Mr. McManis, that Ordinance No. 11-4 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 11-5: AN ORDINANCE REPEALING AND REPLACING CHAPTER 311, WATER, OF TITLE THREE, PUBLIC UTILITIES, OF PART THREE, STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREA, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Dozier, seconded by Mrs. Smith, that Ordinance No. 11-5 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

LEGISLATION – SECOND READING:

ORDINANCE NO. 11-6: AN ORDINANCE AUTHORIZING THE MAYOR TO MAKE APPLICATION FOR, AND, IF AWARDED, TO ENTER INTO A COOPERATION AGREEMENT WITH THE COUNTY EXECUTIVE OF CUYAHOGA COUNTY, OHIO, AND THE DEPARTMENT OF DEVELOPMENT FOR THE UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS MADE AVAILABLE BY THE HOUSING AND COMMUNITY DEVELOPMENT ACTS OF 1974, 1977, 1980 AND 1983, AS AMENDED, AND TO ADVERTISE

FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE PURPOSES SPECIFIED IN THE CDBG AGREEMENT, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Armagno noted that the public hearing was held last Thursday and the Administration is now reviewing the ideas presented and will have the projects decided before third reading.

Proposed Ordinance No. 11-6 stands on second reading.

ORDINANCE NO. 11-7: AN ORDINANCE AUTHORIZING THE MAYOR TO MAKE APPLICATION FOR, AND, IF AWARDED, TO ENTER INTO A COOPERATION AGREEMENT WITH THE COUNTY EXECUTIVE OF CUYAHOGA COUNTY, OHIO, AND THE DEPARTMENT OF DEVELOPMENT FOR A GRANT THROUGH THE 2022 COMMUNITY DEVELOPMENT SUPPLEMENTAL GRANT PROGRAM AND TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE PURPOSES SPECIFIED IN THE CDSG AGREEMENT, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-7 stands on second reading.

ORDINANCE NO. 11-9: AN ORDINANCE ENACTING NEW SECTION 125.03 TO ESTABLISH THE PROCEDURES FOR THE DISPOSITION OF PERSONAL PROPERTY NO LONGER NEEDED FOR MUNICIPAL PURPOSES OR PUBLIC USE, OR ARE OBSOLETE OR UNFIT FOR THE USE FOR WHICH THEY WERE ACQUIRED.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-9 stands on second reading.

ORDINANCE NO. 11-10: AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE BARBERRY, WOODLAWN, MAPLE AND FOURTH AVENUE RECONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-10 stands on second reading.

ORDINANCE NO. 11-11: AN ORDINANCE APPOINTING ANTHONY ALEXANDER TO THE BEREA TAX INCENTIVE REVIEW COUNCIL (TIRC) PURSUANT TO CHAPTER 5709 OF THE REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-11 stands on second reading.

ORDINANCE NO. 11-12: AN ORDINANCE AMENDING SECTION 101.02, GENERAL DEFINITIONS, TO ADD DEFINITIONS OF A PUBLIC MEETING OPEN TO THE PUBLIC AND VOTING AT SUCH MEETINGS.

The Clerk read the title of the Ordinance.

Mr. Maxwell provided a brief overview of this Ordinance and Mr. Skoczen stated that he received a call from someone who read about this on Cleveland.com and clarified that virtual attendance would be used in limited and extenuating circumstances only. It is not a hybrid approach. The expectation is that Members will appear in person.

Moved by Mr. Maxwell, seconded by Mr. Skoczen, that Ordinance No. 11-12 be placed in the Coordinating Committee and put on the December 13, 2021 Council Work Session agenda. Vote on the motion was all ayes and no nays. The motion carried.

ORDINANCE NO. 11-13: AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,810,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2013, DATED MARCH 26, 2013, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance. The Fiscal Officer's Certificate is on file in the Clerk's office.

Proposed Ordinance No. 11-13 stands on second reading.

ORDINANCE NO. 11-14: AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$5,175,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2015, DATED MARCH 24, 2015, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance. The Fiscal Officer's Certificate is on file in the Clerk's office.

Proposed Ordinance No. 11-14 stands on second reading.

ORDINANCE NO. 11-16: AN ORDINANCE APPROPRIATING FROM THE VARIOUS FUNDS TO INDIVIDUAL ACCOUNTS FOR THE CURRENT EXPENDITURES AND OTHER EXPENSES OF THE CITY OF BEREA FOR THE FISCAL YEAR ENDING DECEMBER 31, 2021, AND EXPRESSLY REPEALING ORDINANCE NO. 2021-61.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-16 stands on second reading.

ORDINANCE NO. 11-17: AN ORDINANCE TO MAKE TEMPORARY APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES FROM THE VARIOUS FUNDS OF THE CITY OF BERE, STATE OF OHIO, FROM JANUARY 1, 2022, ENDING MARCH 31, 2022.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-17 stands on second reading.

ORDINANCE NO. 11-18: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BERE AND THE BERE POLICE LIEUTENANTS REPRESENTED BY THE FRATERNAL ORDER OF POLICE, LODGE 15, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mrs. Jones announced that while the City has 6 unions, there are 4 proposed Ordinances so far, and 3 tentative agreements. Council will have these agreements as soon as they become available.

Proposed Ordinance No. 11-18 stands on second reading.

ORDINANCE NO. 11-19: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BERE AND THE BERE POLICE SERGEANTS REPRESENTED BY THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-19 stands on second reading.

ORDINANCE NO. 11-20: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BERE AND THE BERE POLICE PATROL REPRESENTED BY THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-20 stands on second reading.

ORDINANCE NO. 11-21: AN ORDINANCE APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BERE AND THE BERE FIREFIGHTERS, REPRESENTED BY LOCAL 1836 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 11-21 stands on second reading.

LEGISLATION – FIRST READING:

ORDINANCE NO. 12-1: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE NORTHEAST OHIO AREAWIDE COORDINATING AGENCY AND TO GRANT A TEMPORARY, NON-EXCLUSIVE, REVOCABLE LICENSE FOR THE PURPOSE OF INSTALLING, OPERATING AND MAINTAINING TWO ELECTRIC VEHICLE CHARGING STATIONS ON A PORTION OF PERMANENT PARCEL NO. 364-11-026, OWNED BY THE CITY OF BEREA, AND DECLARING AN EMERGENCY.

Mr. Armagno stated that NOACA has received funding for vehicle charging stations and identified a location in Berea as a preferred site. The agreement does need to be signed by December 22, 2021, so if Council wants to proceed, the Ordinance will need to be suspended on second reading.

Mrs. Smith asked if there was any thought to placing a station by Coe Lake, since parking is already difficult around the bank and the City does not have a large number of electric cars. Mr. Armagno replied that the proposed location is the preferred location because of its proximity to the college and drive through accessibility. While he understands that downtown business owners already have concerns with parking availability, these stations are supposed to be a draw to bring people to the City, which will benefit businesses.

Mrs. Smith inquired about how long it takes to charge a car, and Mr. Armagno stated that there is a short charge of about 10-15 minutes and a long charge of about an hour. He added that two to three parking spaces will be used.

General discussion commenced concerning who will pay for the install and Mr. Armagno explained that NOACA will pay for installation and may pay for maintenance for a limited period of time, after which the City becomes responsible. With this project being so new, annual maintenance costs are unknown, but the City will work with their consultant to establish a fee schedule, and the City will be obligated to maintain the station for 5 years.

Mrs. Morris explained that the funds generated will likely go in to the capital fund and Mr. Armagno added that there will not be a large profit since the cost is based on electrical charge.

Mayor Kleem said that he has some reservations about this piece, but would like the input of Council and the downtown business owners before moving forward.

Proposed Ordinance No. 12-1 stands on first reading.

REPORT AND COMMENTS BY THE PRESIDENT OF COUNCIL

Mr. Dettmer was not present.

REPORTS AND COMMENTS BY THE MEMBERS OF COUNCIL

Mr. McManis had no report.

Mr. Skoczen thanked everyone involved with putting on the Jack Frost Fest, adding that there were kids everywhere and everyone had a great time. He also thanked the staff that helped escort Santa through the neighborhoods on Sunday.

Mr. Skoczen reminded everyone that tomorrow is the 80th Anniversary of Pearl Harbor, an event that took the lives of many, and changed the lives of more.

Mr. Skoczen concluded his report by welcoming the 65 new homeowners and renters who have moved in to Ward 5 this past year, adding that he will get some cards and contact information out to them.

Mrs. Smith had no report.

Mr. Zacharyasz had no report.

Mr. DeVito reminded drivers that it is dark in the mornings, so please watch for kids on their way to school and be careful.

Mr. Dozier had no report.

Mr. Maxwell referenced an email that was received by Council last week, announcing that Paul Anzalone has taken a new position, thus resigning from the City. Mr. Maxwell wished him well, adding that he left the City better than it was before he worked here!

CORRESPONDENCE

The November 11, 2021 – December 1, 2021 Correspondence is available in the Clerk's office.

OTHER BUSINESS:

Mrs. Esson announced that Council's Inauguration will take place on January 2, 2022, stated that she will miss Mr. Anzalone so much, and thanked Megan Pochatek and all who helped with the wonderful Jack Frost Fest, adding that she saw some Council Members in the parade.

Mrs. Esson concluded by thanking Mayor Kleem for inviting on-duty Police Officers over to his house for Thanksgiving dinner, adding that our Police Department is full of wonderful people and the gesture was so kind and appreciated.

There being no further business before Council, it was moved by Mr. Skoczen, and seconded by Mr. DeVito, that the Regular Council Meeting be adjourned. Vote on the motion was all ayes and no nays. The motion passed and President Pro Tempore Maxwell declared the meeting adjourned at 9:47p.m.

Jim Maxwell
President Pro Tempore of Council

Alycia Esson
Clerk of Council

CERTIFICATE OF COMPLIANCE

The regular meeting of Council of the City of Berea, Ohio, held on the 6th day of December, 2021, was conducted in compliance with Codified Ordinances Section 109 and Ohio Revised Code Section 121.22.

Alycia Esson
Clerk of Council