



CITY COUNCIL SPECIAL MEETING PACKET

September 28, 2022 @ 6:30pm Smith Park Shelter House

1. Call to Order: Mayor Mike Lowrey
2. Roll Call: Clerk of Council
3. Invocation:
4. Pledge of Allegiance:
5. Action on Minutes:
6. Communications:
7. City Manager's Report:
8. Committee Reports:
9. Comments from Members of the Public: *Comments limited to 5 minutes or less

10. RESOLUTIONS: NONE

11. ORDINANCES: (0 - Intro; 3 – Action*)

***A. Ordinance 2022-42 (Public Hearing & Action Tonight)**

AN ORDINANCE CHANGING THE ZONING OF APPROXIMATELY 115.3 ACRES AT 8805 E. NEW CARLISLE ROAD, BETHEL TOWNSHIP, MIAMI COUNTY, OHIO FROM A-2, GENERAL AGRICULTURE DISTRICT – BETHEL TOWNSHIP TO R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT AND APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN CONTINGENT UPON SUCCESSFUL ANNEXATION

***B. Ordinance 2022-43 (Public Hearing & Action Tonight)**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH CAP 5 DEVELOPMENT, LLC AND THE CURRENT PROPERTY OWNERS

***C. Ordinance 2022-44 (Public Hearing & Action Tonight)**

AN ORDINANCE REGARDING THE ARRANGEMENT FOR PROVISION OF IMPROVEMENTS FOR AN R-PUD PLANNED UNIT DEVELOPMENT DISTRICT

12. Other Business: NONE
13. Executive Session: NONE
14. Return to Regular Session: N/A
15. Adjournment

ORDINANCE 2022-42

AN ORDINANCE CHANGING THE ZONING OF APPROXIMATELY 115.3 ACRES AT 8805 E. NEW CARLISLE ROAD, BETHEL TOWNSHIP, MIAMI COUNTY, OHIO FROM A-2, GENERAL AGRICULTURE DISTRICT – BETHEL TOWNSHIP TO R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT AND APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN CONTINGENT UPON SUCCESSFUL ANNEXATION

WHEREAS, an agent representing the owners of approximately 115.3 acres at 8805 E. New Carlisle Rd., Bethel Township, Miami County, Ohio (the “Subject Property”) submitted an application to the City of New Carlisle to change the zoning of the Subject Property from its current zoning classification A-2, General Agriculture District – Bethel Township to R-PUD, Residential Planned Unit Development, and a Preliminary Planned Unit Development Plan; and

WHEREAS, the owners of the Subject Property intend on petitioning the Board of County Commissioners of Miami County for annexation of the Subject Property into the City of New Carlisle; and

WHEREAS, on June 23, 2022, the City’s Planning Board held a public hearing on the application of the requested zoning change and the Preliminary Planned Unit Development Plan, after notice of the time and place of the public hearing had been given as required by law; and

WHEREAS, after the public hearing, the City’s Planning Board voted to recommend approval of the requested zoning change and the Preliminary Planned Unit Development Plan, with conditions/modifications; and

WHEREAS, on August 31, 2022, Council held a public hearing on the requested zoning change and Preliminary Planned Unit Development Plan, and recommendation of the Planning Board, after notice of the time and place of the public hearing had been given as required by law; and

WHEREAS, Council has determined that the implementation and approval of the requested zoning change and Preliminary Planned Unit Development Plan is in the best interests of the residents of the City.

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS, that:

SECTION 1. The City approves the requested zoning change application and Preliminary Planned Unit Development Plan with the conditions/modifications recommended by the Planning Board.

SECTION 2. Contingent upon and subject to a successful annexation petition, the zoning of the Subject Property, which is more particularly described on the attached Exhibit A, shall be changed from A-2, General Agriculture District – Bethel Township to R-PUD, Residential Planned Unit Development, and subject to the Preliminary Planned Unit Development Plan attached hereto as Exhibit B.

SECTION 3. Contingent upon and subject to a successful annexation petition, the Planning Director is hereby directed to change the zoning map for the Subject Property to R-PUD, Residential Planned Unit Development.

SECTION 4. The applicant shall submit a Final Planned Unit Development Plan acceptable to the City in order to obtain final approval for the applicant's project. This Final Planned Unit Development Plan must include and comply with all formal requirements of both the Preliminary and Final Planned Unit Development Plan Application processes, as well as all other requirements set forth in Chapter 1278 of the Codified Ordinances and all other applicable provisions of the City's Codified Ordinances.

Passed this _____ day of _____, 2022.

Mike Lowrey, MAYOR

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2nd: _____

Eggleston	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:	_____	_____
	Pass	Fail

ORDINANCE 2022-43

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH CAP 5 DEVELOPMENT, LLC AND THE CURRENT PROPERTY OWNERS

WHEREAS, Cap 5 Development, LLC (“Developer”) has a contract to acquire fee simple title to approximately 115.3 acres of undeveloped land located at 8805 E. New Carlisle Road, Bethel Township, Miami County, Ohio, Parcel ID No. A01-029200, which is more particularly described on Exhibit A attached to the Pre-Annexation Agreement (“Property”); and

WHEREAS, Developer and DDC Management, LLC are related entities, with Developer being the development entity and DDC being the management entity; and

WHEREAS, the current owners of the Property are Jimmie M. Scott, Trustee and Phyllis E. Pencil (collectively, “Owners”); and

WHEREAS, Developer has indicated its desire to petition the Miami County Commissioners for the annexation of the Property into the City of New Carlisle; and

WHEREAS, Developer wishes to annex the Property into the City in order to avail the Property of all City services available to other parts of the City, including fire and police protection, emergency medical, waste collection, water, sanitary sewer, zoning, and City street maintenance services, which services will be provided to the extent and in the same manner as provided to other parts of the City; and

WHEREAS, the proposed Pre-Annexation Agreement between the City, Developer and Owners is attached; and

WHEREAS, Council has deemed it to be in the best interest of the City and its residents to enter into the aforesaid Pre-Annexation Agreement.

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS, that:

SECTION 1. The City Manager is hereby authorized to enter into a Pre-Annexation Agreement, in a form substantially similar to the Pre-Annexation Agreement attached hereto and incorporated herein by reference, with Developer and Owners on behalf of the City of New Carlisle.

SIGNATURE PAGE TO FOLLOW

Passed this _____ day of _____, 2022.

Mike Lowrey, MAYOR

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2nd: _____

Eggleston	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:

Pass

Fail

Intro: 9/19/2022
Action: 9/28/2022
Effective: 10/13/2022

PRE-ANNEXATION AGREEMENT

This PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into by and between the City of New Carlisle, Ohio, an Ohio municipal corporation (the "City"), and Cap 5 Development, LLC, an Ohio limited liability company ("Developer") under the following circumstances:

- A. Developer has a contract to acquire fee simple title to approximately 115.3 acres of undeveloped land located at 8805 E. New Carlisle Road, Bethel Township, Miami County, Ohio, Parcel ID No. A01-029200. **[A portion of]** This undeveloped land **[(that land not subject to the public road right-of-way)]** is proposed to be annexed into the City; specifically, the land more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof (the "Property"); and
- B. Developer with the consent of the owner of the Property (the "Owner") as provided herein, desires to annex the Property into the City in order to obtain the City's services; and
- C. The Developer, the Owner and the City can benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Owner hereby agree as follows:

1. Annexation.

(a) The Developer will, at its own expense, prepare and file the necessary annexation petition executed by the Owner, with accompanying map or plat with the Miami County Board of County Commissioners ("Commissioners") within thirty (30) days after the execution of this Agreement. The Owner will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition or petitions during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation.

(b) The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code.

(c) The City acknowledges its intent to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the Commissioners. Under the service resolution, the City will make available to the Property all City services available to other parts of the City, including fire and police protection, emergency medical, waste collection, water, sanitary sewer, zoning, and City street maintenance services, which services will be provided to the extent and in the same manner as provided to other parts of the City. The service resolution will establish the approximate

date when those services will be available to the Property, once annexed. Additionally, the City further agrees if a street or highway will be divided or segmented by the boundary line between the municipality and township as to create a road maintenance problem, due to the proposed annexation, the City, as a condition of annexation, will assume maintenance of that street or highway or otherwise correct the problem. The service resolution shall provide a statement of incompatible land uses and zoning buffer as required by Section 709.023(C) of the Ohio Revised Code.

(d) The Developer, the Owner, and the City agree to cooperate and provide information necessary for the Commissioners for any review of the annexation as required by Section 709.023 of the Ohio Revised Code. If, at the conclusion of the review process the Commissioners deny the annexation petition, the Developer and Owner may at their sole cost and expense file in the appropriate court a request for a writ of mandamus to compel the Commissioners to approve the annexation as set out in Section 709.023 of the Ohio Revised Code.

(e) Should the annexation petition be granted by the Commissioners, the Owner, the Developer, and the City agree to further process the annexation as provided by law, subject to the terms of this Agreement.

2. Zoning.

(a) The Property sought to be annexed is currently zoned A-2. The City agrees that once an annexation petition has been approved by the Commissioners, the City will accept a zoning application for rezoning the Property to an R-PUD District which will, among other things, permit the Developer/Owner's intended use as a single-family housing community as generally depicted on Exhibit C (Preliminary Site Plan).

(b) The City recognizes that if the Commissioners grant the annexation petition, once the annexation proceedings are placed before City Council by the City Clerk, the City has one hundred twenty days (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property through the requisite planning and zoning process to the R-PUD classification, in a form that is substantially similar to Exhibit C. If the re-zoning cannot be accomplished and/or the re-zoning is referred to the voters or defeated for any reason, or the other conditions of this Agreement cannot be met as acceptable to the Developer and the Owner, the City agrees that, upon written request of the Owner and Developer, it will not annex the Property. The City agrees, to the extent possible, to adopt the requisite ordinance(s) and/or resolution(s) necessary to accept the annexation and approval of the re-zoning contemporaneously, with the goal of deciding both issues at the same meeting.

(c) Notwithstanding Section 2(b) or any other contrary provision of this Agreement, if the City annexes the Property and the rezoning is thereafter referred to the voters or defeated for any reason, the City shall, upon the Developer's written request, (i) reconsider the ordinance or resolution accepting the annexation and rescind, repeal and reject such acceptance, and/or (ii) cooperate fully with the Developer and the Owner to

detach or de-annex the Property from the City under applicable Ohio Revised Code procedures and consent to, wholly and fully support and not oppose any petition by the Owner to detach or de-annex the Property from the City and take any other action provided or required by law to detach or de-annex the Property. Developer reserves the right to seek specific performance of the City's obligations under this Section 2(c).

(d) The City will consider proposed tax increment financing for any public streets and/or other public improvements in the proposed residential development of the Property, provided that the City reserves the right to approve the financial aspects and all other terms and conditions of the proposed tax increment financing.

3. Platting. Once the annexation to the City has been completed and the re-zoning approved, the Owner may submit, if desired by Owner, a preliminary and final plat. If filed, the City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations, including but not limited to standards and regulations relating to streets, street/road improvements, and traffic; and the regular fees for such review will be applied.

4. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

5. Execution. This Agreement shall not be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder shall not constitute a waiver of this requirement. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

6. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

8. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create

the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

9. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the City, the Developer and the Owner and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

10. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder. In the event any deadline falls on a weekend or holiday the deadline shall be extended to the next business day, being Monday through Friday.

11. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, pandemic, epidemic, governmental order, rule or regulations, riot, and conditions that could not have been reasonably foreseen by the claiming party.

12. Assignment of Agreement. Developer shall not assign this Agreement, or any part thereof, or any duty, obligation, privilege or right granted under this Agreement to any other developer, person, or entity without the express written consent of the City, which shall not be unreasonably withheld.

13. Binding Effect. This Agreement and all of the provisions herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

14. Entire Agreement/Merger/Modification. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written. No modification, amendment, alteration, or addition shall be made to this Agreement except in writing duly executed by the City and the Developer (with written consent thereto by the Owner).

15. Joinder of Owner. The Owner joins in the execution of this Agreement to consent to the terms hereof and to acknowledge Owner's agreement to sign the annexation petition and perform the other actions of Owner contemplated by this Agreement.

16. Effective Date. This Agreement shall be effective when duly signed by the Developer, the City, and the Owner.

[Remainder of Page Intentionally Left Blank]

The foregoing instrument was executed this ____ day of _____, 2022.

DEVELOPER:

CAP 5 DEVELOPMENT, LLC,
an Ohio limited liability company

By: _____
Name:
Title:

STATE OF OHIO)
) SS.
COUNTY OF MONTGOMERY)

BEFORE ME, a Notary Public in and for such County and State, personally appeared _____, the _____ of Cap 5 Development, LLC, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument for and on behalf of such company, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such Company. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to this notarial act.

IN TESTIMONY, I set my hand and official seal this ____ day of _____, 2022.

Notary Public (Seal)

CONSENT AND AGREEMENT OF OWNER:

OWNER:

Jimmie M. Scott, Trustee

Phyllis E. Pencil

STATE OF OHIO)
) SS.
COUNTY OF _____)

BEFORE ME, a Notary Public in and for such County and State, personally appeared Jimmie M. Scott, Trustee, and Phyllis E. Pencil, who acknowledge that they did sign the foregoing instrument, and that the same is their free act and deed personally and in trust capacity. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to this notarial act.

IN TESTIMONY, I set my hand and official seal this _____ day of _____, 2022.

Notary Public (Seal)

CITY:

CITY OF NEW CARLISLE, an Ohio municipal
corporation

By: _____

Name:

Title:

Approved as to Form:

City Attorney

Exhibit A

[Legal Description of Property to be Annexed]

Situate in the State of Ohio, County of Miami and Township of Bethel, and being a part of the northeast quarter of Section Five (5); Town Two (2); Range Nine (9); more particularly described as follows: Beginning at an iron pin in a monument box which marks the northeast corner of the northeast quarter of Section 5, thence south 4° 24' west, with the centerline of Scarff Road, the east line of Section 5, and the line between Miami and Clark County, 1533.51 feet to an iron pin in a monument box in the centerline of New Carlisle Road; thence south 4° 51' 30" west, continuing with the east line of Scarff Road, and the east line of Section 5, and the line between Miami and Clark County, 1103.83 feet to an iron pin in a monument box which marks the southeast corner of the northeast quarter of Section 5; thence north 85° 42' west, with the half section line and the north right of way line of Scarff Road, 403.36 feet to an iron pin; thence north 5° 16' 20" east, 428.05 feet to an iron pin; thence north 5° 19' 30" east 602.0 feet to a railroad spike in the centerline of New Carlisle Road, witness an iron pin 30.63 feet distant on line last described; thence South 86° 31' west, with the centerline of New Carlisle Road, 392.45 feet to a spike; thence south 86° 42' west, continuing with the centerline of New Carlisle Road, 542.6 feet to an iron pin; thence south 88° 38' west, continuing with the centerline of New Carlisle Road, 897.5 feet to a railroad spike, witness an iron pin 30.27 feet distant on line next described; thence south 5° 14' west, 816.3 feet to a stone on the half section line; thence north 85° 47' 30" west, with the half section line, 439.0 feet to a stone which marks the center of Section 5, witness a stone 240.05 feet distant on line next described; thence north 4° 51' east, with the half section line, 797.3 feet to a railroad spike in the centerline of New Carlisle Road, witness an iron pin 30.04 feet distant on line last described; thence south 82° 09' east, with the centerline of New Carlisle Road, 182.07 feet to an iron pin; thence north 87° 36' east, continuing with the centerline of New Carlisle Road, 26.0 feet to a railroad spike, witness an iron pin 30.13 feet distant on line next described; thence north 2° 57' east, with the east line of a tract containing 0.238 acres, 800.1 feet to a stone; thence north 4° 52' 30" east, 1072.1 feet to a stone on the north line of Section 5; thence south 85° 10' 30" east, with the north line of Section 5, 2464.2 feet to the place of beginning, witness an iron pin 30.0 feet distant on line last described, said tract containing a total of 115.295 acres, subject to all legal highways and easements of record.

Description prepared by Richard W. Klockner, Professional Surveyor, in accordance with a survey filed in the Miami County Engineer's Record of Land Surveys volume 25, Page 181.

Prior Deed reference - Volume 255, Page 29, Volume 255, Page 28, and Volume 256, Page 311 of the Miami County Deed Records and Book 505, Page 626.

Exhibit B

[Annexation Plat/Map]

[To Be Provided]

Exhibit C

[Preliminary Site Plan]



ORDINANCE 2022-44

AN ORDINANCE REGARDING THE ARRANGEMENT FOR PROVISION OF IMPROVEMENTS FOR AN R-PUD PLANNED UNIT DEVELOPMENT DISTRICT

WHEREAS, Jimmie M. Scott, Trustee and Phyllis E. Pencil (collectively, “Owners”), are the owners of approximately 115.3 acres located at 8805 E. New Carlisle Rd., Bethel Township, Miami County, Ohio (the “Subject Property”); and

WHEREAS, DDC Land Management, LLC (“Applicant”), as the agent for the Owners, submitted a zoning change application and Preliminary Planned Unit Development Plan to the City of New Carlisle in regard to the Subject Property; and

WHEREAS, Cap 5 Development, LLC (“Developer”) and Applicant are related entities; and

WHEREAS, Developer has entered into a contract to acquire the Subject Property from the Owners; and

WHEREAS, pursuant to Section 1278.11(a) of the Codified Ordinances, City Council’s approval of a Preliminary Planned Unit Development Plan constitutes the creation of a separate R-PUD Planned Unit Development District; and

WHEREAS, pursuant to Section 1278.12 of the Codified Ordinances, at the time of the creation of an R-PUD Planned Unit Development District, Council shall make appropriate arrangements in writing, to be guaranteed by a bond to be furnished by the applicant, to ensure the accomplishment of the necessary public improvements as shown on the approved Preliminary Planned Unit Development Plan.

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS, that:

SECTION 1. Promptly upon the approval of the Applicant’s Preliminary Planned Unit Development Plan, Council shall make appropriate arrangements in writing, to be guaranteed by a bond to be furnished by the Applicant and/or Developer, to ensure the accomplishment of the necessary public improvements as shown on the approved Preliminary Planned Unit Development Plan.

Passed this _____ day of _____, 2022.

Mike Lowrey, MAYOR

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2nd: _____

Eggleston	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:

Pass

Fail

Intro: 9/19/2022
Action: 9/28/2022
Effective: 10/13/2022