



CITY OF PATASKALA

RESOLUTION 2020-048

Passed July 20, 2020

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A SETTLEMENT AGREEMENT WITH FANNIN LIMITED PARTNERSHIP AND JAMES L. DEAGLE

WHEREAS, Fannin Limited Partnership and James L. Deagle are the fee simple owners of contiguous parcels of certain real property consisting of 52.057 acres owned by Fannin (Licking County Parcel Nos. 255-069072-00.000 and 255-069066-00.005) and 75.73 acres owned by Deagle (Licking County Parcel No. 255-067746-00.000) (“the Property”), and,

WHEREAS, the City, Fannin, and Deagle entered into a Pre-Annexation Agreement on June 4, 2015, pursuant to the authorization of City Council Resolution 2015-035; and

WHEREAS, all three parcels were annexed to the City of Pataskala on October 5, 2015; and

WHEREAS, on May 29, 2018, Fannin and Deagle filed a complaint in Licking County Common Pleas Court, assigned case number 18 CV 551, against the City for breach of contract, equitable relief, and monetary damages arising from the City’s alleged failure to provide water and sewer service to the Property post-annexation; and

WHEREAS, the City denied all claims, causes of action, wrongdoing, and liability asserted in the lawsuit, and

WHEREAS, Fannin and Deagle claimed a right under the Pre-Annexation Agreement to connect the Property to City public water and sanitary sewer services and the City claimed that it was legally prohibited from providing the services because of pre-existing Water and Sewer contracts with the Southwest Licking Community Water and Sewer District as well as the February 26, 2016 Arbitration Award (that resolved various water and sewer disputes between the City and the District); and

WHEREAS, following the Court’s grant of Fannin and Deagle’s motion for summary judgment on their breach of contract claim, the City and the District negotiated new water and sewer contracts that gave the City control over water and sewer service to the Property, and the Parties subsequently agreed to mediate the remaining issues; and

WHEREAS, as a result of a May 19, 2020 mediation, the City, Fannin, and Deagle reached an agreement that permits the City to provide public water and sanitary sewer services to the Property, provides Fannin and Deagle certain promises subject to the approval of Council, and effectuates dismissal of the Lawsuit and a mutual release of all claims; and

WHEREAS, Council for the City of Pataskala now wants to authorize a settlement agreement and end the Fannin and Deagle litigation with certainty.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:

Section 1: Council for the City of Pataskala hereby authorizes and directs the City Administrator to execute a settlement agreement, in substantially the same form and content as the settlement agreement attached hereto as Exhibit A and incorporated herein by reference, with Fannin Limited Partnership and James L. Deagle.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision-making bodies of the City of Pataskala which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

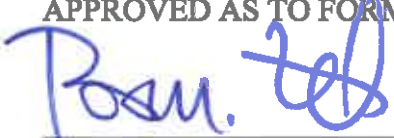
Section 3: This Resolution shall take effect at the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:


Kathy M. Hoskinson, Clerk of Council


Michael W. Compton, Mayor

APPROVED AS TO FORM:


Brian M. Zets, Law Director

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into as of the Effective Date, by and between Fannin Limited Partnership and James L. Deagle (“Fannin and Deagle”) on the Plaintiffs’ side and the City of Pataskala, Ohio (“City”) on the Defendant’s side. Fannin and Deagle and the City will be referred to collectively as the “Parties” and may be referred to individually as a “Party.”

WHEREAS, Fannin and Deagle are the fee simple owners of contiguous parcels of certain real property consisting of 52.057 acres owned by Fannin (Licking County Parcel Nos. 255-069072-00.000 and 255-069066-00.005) and 75.73 acres owned by Deagle (Licking County Parcel No. 255-067746-00.000) (“the Property”), and,

WHEREAS, the Parties entered into a pre-annexation Agreement (the “Contract”) on June 4, 2015, pursuant to the authorization of City Council Resolution 2015-035; and

WHEREAS, all three parcels were re-zoned to the R-15 District annexed to the City of Pataskala on October 5, 2015; and

WHEREAS, on May 29, 2018, Fannin and Deagle filed a Complaint in Licking County Common Pleas Court assigned case number 18 CV 551 (the “Lawsuit”) against the City for breach of contract, equitable relief, and monetary damages arising from the allegations set forth in the Complaint for the City’s failure to provide water and sewer service to the Property after annexation to the City; and

WHEREAS, the City denied all claims and causes of action asserted by Fannin and Deagle in the Lawsuit, and

WHEREAS, Fannin and Deagle claimed a right under the Contract to connect the Property to City public water and sanitary sewer services and the City claimed that it was legally prohibited from providing the services by pre-existing Water and Sewer contracts with the Southwest Licking Community Water and Sewer District (“District”) and a February 26, 2016 Arbitration Award that resolved various water and sewer disputes between the City and the District; and

WHEREAS, following the Court’s grant of Fannin and Deagle’s motion for summary judgment on their breach of contract claim, the City and the District negotiated new water and sewer contracts that gave the City control over water and sewer service to the Property, and the Parties subsequently agreed to mediate the remaining issues in the litigation; and

WHEREAS, as a result of mediation on May 19, 2020, the Parties reached an agreement that permits the City to provide public water and sanitary sewer services to the Property, that provides Fannin and Deagle certain promises subject to the approval of City of Pataskala City Council, and that effectuates dismissal of the Lawsuit; and

WHEREAS, the Parties now wish to compromise, settle, and fully resolve any and all claims, causes of action, demands, and disputes arising under the allegations set forth in the Lawsuit.

In consideration of the mutual agreements and covenants hereinafter set forth, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Terms of Settlement

A. Cash Payment

The City will pay Fannin and Deagle, jointly, the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) upon the execution of this Settlement Agreement and the approval of the Settlement Agreement and authorization to disburse funds by the City of Pataskala City Council. The City will make this payment by July 31, 2020.

B. Right to Connect to City Public Water and Sanitary Sewer Services

The City agrees to permit Fannin and Deagle, whenever they so request, to connect the Property to City public water and sanitary sewer services for purposes of developing the property subject to the Capacity Fees Schedule set forth below.

C. Exclusion from Moratorium

The City agrees the Property is excluded from the October 7, 2019 Moratorium (created by Resolution 2019-069).

D. Capacity Fees Schedule

The City agrees to the following fee schedule, which is freely assignable by Fannin and Deagle to any purchaser of all or any portion of the Property. The fees to connect a residential lot to City public water and sanitary sewer services ("Capacity Fees") shall be:

1. For the first 3 lots: \$0.00 per lot;
2. For lots 4 through 100: \$8,820.00 per lot;
3. For lots 101 through 200: \$10,000.00 per lot.
4. For lots 201 and beyond: Capacity Fees then in effect lot per lot.

This schedule shall be in effect for a period of seven (7) years from the Effective Date. Upon expiration of the seven-year period, Fannin and Deagle, or any assigned purchaser of all or any portion of the Property, will pay the Capacity Fees per lot then in effect.

The Parties agree that the Section I. D. 1., 2., 3., and 4 provisions of the Settlement Agreement do not guarantee Fannin and Deagle, or any assigned purchaser of the Property, a right to develop any specific number of lots. Instead, the fee schedule sets forth herein shall apply to whatever number of lots is approved and developed, which may be more or less than the

number of lots indicated. Fannin and Deagle understand and acknowledge this Settlement Agreement is not an approval of a Development Plan or granting of any zoning and/or building permits. Fannin and Deagle, or any assigned purchaser of all or any portion of the Property, still must apply for, and be granted, all necessary City and/or County permits and receive all necessary approvals in order to develop the Property.

E. Credit for Engineering Fees

The City will provide Fannin and Deagle with a credit of up to \$9,500.00 for fees associated with the City Engineer's plan review process for the Property. The City agrees the engineering review fee credit is freely assignable by Fannin and Deagle to any purchaser of all or any portion of the Property. Fannin and Deagle or any assigned purchaser of all or any portion of the Property is responsible for fees above the \$9,500.00 credit.

F. Dismissal of the Lawsuit

The Parties shall file an Agreed Order of Dismissal with Prejudice, in the form attached hereto as Exhibit A, within ten (10) days after the full execution of this Settlement Agreement and Fannin and Deagle's receipt of the \$50,000.00 payment as described in Section 1. A. of the Settlement Agreement. Each party will bear its/his own costs, including attorney fees, and no Party will file any claims against another Party for attorney fees or costs incurred in connection with the Lawsuit.

G. Council Approval Required

The Parties agree that the terms of this Settlement Agreement are subject to the approval of the Council for the City of Pataskala. If the Council rejects the terms of this Settlement Agreement, then there is no settlement, the Parties are not bound by the terms of this Settlement Agreement, and no Party may use the terms or existence of this Settlement Agreement or any communications related thereto in prosecuting or defending any claim or defense in the Lawsuit.

II. Action in Regard to Settlement Agreement

The Parties agree upon and consent to the continuing jurisdiction and venue of the Licking County Common Pleas Court and any assigned Judge in the Lawsuit for any disputes related to and/or alleged breach or enforcement of this Settlement Agreement. Should the Court or its Clerk decline to exercise such continuing jurisdiction, or place conditions upon its exercise, the Parties nonetheless consent and agree to the jurisdiction of and venue in the Licking County Common Pleas Court.

III. No Admission or Concession

In entering into this Settlement Agreement, the Parties make no admission or concession regarding the validity or strength of their claims or defenses or the correctness of any decision or judgment entered in the Lawsuit. The Parties enter into this Settlement Agreement to effectuate

a mutual desire to settle the Lawsuit, to avoid protracted litigation, and to avoid the uncertainty and cost associated with such litigation.

IV. Successors and Assigns

The Parties intend for the covenants contained in this Settlement Agreement to run with the land. All the terms and provisions of this Settlement Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the respective successors and/or assigns of the Parties, including but not limited to any future fee simple owner of all or any portion the Property.

V. Severability

If any portion or portions of this Settlement Agreement are held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining provisions of the Settlement Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

VI. Miscellaneous

The Parties further agree and acknowledge that the Section provisions of this Settlement Agreement are contractual and not mere recital. The Parties also agree the provisions of this Settlement Agreement shall not be amended or changed except in writing and signed by all Parties to this agreement.

VII. Waiver

The Parties agree that no provision of the Settlement Agreement may be waived, except by a written agreement signed by each Party who is a signatory to this agreement.

VIII. Choice of Law

This Settlement Agreement shall be governed solely by the substantive and procedural laws of the State of Ohio, without regard to the laws of Ohio governing conflicts of law.

IX. Further Assurances

The Parties agree to execute, serve, exchange, and file such further and additional documents, instruments, and writings as may be necessary, proper, or required for the purpose of fully effectuating the terms and provisions of this Settlement Agreement, and the City further agrees and covenants to incorporate the terms of this agreement in duly authorized legislation binding the City in a manner that assures the benefits granted to Fannin and Deagle by this Settlement Agreement are preserved and subject to assignment to any purchaser of all or any portion of the Property during the seven-year term.

X. Execution and Effective Date

This Settlement Agreement may be signed in counterparts; each signed counterpart shall be deemed an original. Each signed counterpart of this Settlement Agreement may be exchanged between the Parties hereto via facsimile or electronic .pdf and shall be deemed an original. The "Effective Date" of this Settlement Agreement is defined as the date on which the last signing Party signs.

XI. Drafting

All Parties have cooperated in the drafting and editing of this Settlement Agreement. It is the express intent of the Parties that no part of this Settlement Agreement be construed against any of the Parties hereto because of the identity of the drafter.

XII. Descriptive Headings

The Parties agree that the Section headings contained herein are for reference purposes only and shall not in any way inform or affect the meaning or interpretation of this Settlement Agreement.

XIII. Acknowledgment

The undersigned acknowledge that they have carefully read this Settlement Agreement, that they have had adequate time to review and consider this Settlement Agreement and to consult with their legal counsel with respect thereto, that they have entered into this Settlement Agreement voluntarily and of their own free will, and that they have authority to sign this Settlement Agreement and agree to all provisions contained herein. The undersigned acknowledge that they had adequate time to investigate the matters resolved by this Settlement Agreement and acknowledge that, in entering into this Settlement Agreement, they are not relying on any representation, factual matter, promise, or commitment except as expressly set forth in this Settlement Agreement.

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement and Mutual Release of All Claims on the date indicated below intending to be fully bound by its terms:

Plaintiffs:

Fannin Limited Partnership

By: _____
William Fannin, Jr.

Date

Its: _____

James L. Deagle

Date

Defendant:

City of Pataskala, Ohio

By: _____
Timothy O' Hickin

Date

Its: City Administrator

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

FANNIN LIMITED PARTNERSHIP, :
et al., :
 :
Plaintiffs, :
 :
CASE NO. 18 CV 0551 :
 :
JUDGE THOMAS M. MARCELAIN :
v. :
 :
CITY OF PATASKALA, :
 :
Defendant. :

STIPULATION OF DISMISSAL

NOW COME THE PARTIES, by and through the undersigned counsel, and hereby stipulate, pursuant to Civ. R. 41(A)(1)(b), that the above-captioned and numbered case is dismissed with prejudice.

David Watkins (0059242)
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614/228-1790 (Fax)

Attorney for Plaintiffs

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& TEETOR, LLC
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614/221-5692 (Fax)

City of Pataskala Law Director

