

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2021- **28**

Introduced. Mayor Matthew J. Castelli

**A RESOLUTION
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
FOR DEMOLITION AND LAND USE AFTER TRANSFER FOR THE
PROPERTY LOCATED AT 7705 EASTLAND ROAD**

WHEREAS, John G. Lindsey Jr. and Jennifer L. Lindsey are the owners of a single-family residence with an attached garage that includes a septic system located at 7705 Eastland Road in the City of Middleburg Heights, permanent parcel number 373-11-032; and

WHEREAS, the Cuyahoga County Board of Health and the City of Middleburg Heights have determined the structure and septic system to be in such a state of disrepair and deterioration that it is unsanitary, unsafe, and structurally defective; and

WHEREAS, the Cleveland Metropolitan Park District has entered into a purchase agreement with John and Jennifer Lindsey to purchase the property located at 7705 Eastland Road with the intention of adding it as park land to the Big Creek Reservation; and

WHEREAS, the Cuyahoga County Board of Health, the Cleveland Metropolitan Park District and the City of Middleburg Heights mutually desire the transfer of the Lindsey property from the seller to the Cleveland Metroparks, the removal of the structure and the removal and remediation of the septic system; and

WHEREAS, upon Cleveland Metroparks acquisition of the Lindsey property, the City of Middleburg Heights will demolish the structure and properly abandon the septic system.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into an agreement for demolition and land use after transfer, a copy of which is attached hereto and marked "Exhibit A", for the property located at 7705 Eastland Road.

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 this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: 4/13/21

David Bortolotto
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 4-20-2021

Presented to Mayor: 4/14/21

Matthew J. Casella
Mayor

	Yea	Nay
Bortolotto	X	
Ali	X	
Sage	X	
Meany	X	
McGregor	ABSENT	
Ference	X	
Grech	X	

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2021-28 adopted by the Council of the City of Middleburg Hts., on 4/13/21 was posted for a period of fifteen days, beginning 4/20/21 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
Clerk

CERTIFICATE

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2021-28 passed on the 13th day of April 2021 by said Council.

Mary Ann Meola
Clerk of Council

AGREEMENT FOR DEMOLITION AND LAND USE AFTER TRANSFER

THIS AGREEMENT FOR DEMOLITION AND LAND USE AFTER TRANSFER (this "Agreement") is made as of the ____ day of April, 2021, between the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("Cleveland Metroparks"), a political subdivision of the State of Ohio organized and operating pursuant to Chapter 1545 of the Ohio Revised Code and located at 4101 Fulton Parkway, Cleveland, Ohio 44144, the CITY OF MIDDLEBURG HEIGHTS (the "City"), a municipality of the State of Ohio with its City Hall at 15700 Bagley Road, Middleburg Heights, Ohio 44130, and the CUYAHOGA COUNTY BOARD OF HEALTH ("CCBOH"), a local board of health, located at 5550 Ventura Drive, Parma, Ohio 44130 ("Licensee") (collectively, the "Parties").

WITNESSETH THAT:

WHEREAS, on March 18, 2021, Cleveland Metroparks entered into a Purchase Agreement with John G. Lindsey, Jr. and Jennifer L. Lindsey, married (collectively, "Seller") by which Seller will transfer and Cleveland Metroparks will accept an approximately 1.4 acre parcel of land, known as Permanent Parcel No. 373-11-032 (the "Lindsey Property"), located at 7705 Eastland Road, adjacent to the Big Creek Reservation of the Cleveland Metropolitan Park District in the City of Middleburg Heights with the intention of adding it as park land to the Big Creek Reservation; and

WHEREAS, there is located on the Lindsey Property a single-family residence with an attached garage (collectively, the "Structure") that includes a septic system (the "Septic System"); and

WHEREAS, on October 13, 2017, CCBOH filed a Complaint against Seller based on Seller's failure to replace the failed Septic System on the Lindsey Property in compliance with O.R.C. 3718.10, Cuyahoga County Court of Common Pleas Case No. CV-17-887339 (the "Civil Action"); and

WHEREAS, on May 8, 2018, the Cuyahoga County Court of Common Pleas entered a default judgment against Seller and in favor of CCBOH in the Civil Action, mandating Seller to replace the failed Septic System and to conform to CCHOB regulations, and enjoining Seller from transferring the Lindsey Property to any party (the "Default Judgment" which is attached hereto as Exhibit A); and

WHEREAS, the Parties mutually desire the transfer of the Lindsey Property from Seller to Cleveland Metroparks, the removal of the Structure, and the removal and remediation of the Septic System.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements provided herein by the parties hereto, the Parties hereto mutually agree as follows:

1. Transfer of the Property. CCBOH hereby acknowledges that it approves the transfer of the Lindsey Property from Seller to Cleveland Metroparks. Within seven (7) days of receiving a copy of the executed Purchase Agreement between Cleveland Metroparks and Seller, CCBOH shall take any and all actions, including but not limited to filing any necessary motions, in the Civil Action to modify the Default Judgment in the following way (prior to taking such action, CCBOH will consult with and seek the reasonable approval, which shall not be unnecessarily delayed or denied, of Cleveland Metroparks and the City for such actions/motions):

(a) amending paragraph E of the Default Judgment to allow for the transfer of the Lindsey Property from Seller to Cleveland Metroparks and no other entity or person. A copy of the proposed amended Default Judgment is attached hereto as Exhibit B;

(b) adding as an alternative in the Default Judgment (mandating that Seller replace the Septic System) an option for the City to properly abandon/demolish the Septic System in compliance with all state and local requirements, including those of CCBOH; and

(c) after successful transfer of the Lindsey Property to Cleveland Metroparks and the demolition/proper removal of the Structure and Septic System, Cleveland Metroparks and the City shall notify CCBOH of such and CCBOH, after confirmation of the same, shall dismiss the Civil Action within a reasonable amount of time.

2. Removal of the Structure and Abandoning the Septic System. In the event that the City does not complete demolition of the Structure and demolition/abandonment of the Septic System (as outlined in Section 3 below), Cleveland Metroparks agrees to assume responsibility for demolition of the Structure and abandonment of the Septic System. In such instance, Cleveland Metroparks will complete demolition of the Structure and abandonment of the Septic System within 180 days from the transfer of the Lindsey Property to Cleveland Metroparks.

3. License for the City to Enter the Lindsey Property. Upon Cleveland Metroparks' acquisition of the Lindsey Property, Cleveland Metroparks hereby grants the City a license to enter the Lindsey Property to demolish the Structure and demolish/abandon the Septic System. Before entering the Lindsey Property, the City or its selected demotion contractor shall obtain a free permit from Cleveland Metroparks to access the Lindsey Property. Such free permit will provide Cleveland Metroparks with additional insured status and offer other standard protections to Cleveland Metroparks. Within sixty (60) days of transfer of the Lindsey Property to Cleveland Metroparks, the City agrees to:

(a) Demolish the Structure and remove all material associated with the Structure from the Lindsey Property consistent with state and local requirements; and

(b) Properly abandon/demolish the Septic System consistent with state and local requirements, including those of CCBOH.

(c) The City will use its own funds to demolish the Structure and properly abandon the Septic System.

In the event that the City does not complete demolition of the Structure and demolition/abandonment of the Septic System within sixty (60) days of the transfer of the Lindsey Property to Cleveland Metroparks, Cleveland Metroparks hereby agrees to make alternative arrangements, at its own expense, to demolish the Structure and demolish/abandon the Septic System within 180 days from the transfer of the Lindsey Property to Cleveland Metroparks.

4. Cleveland Metroparks Maintenance of the Lindsey Property. Following transfer of the Lindsey Property to Cleveland Metroparks, Cleveland Metroparks shall maintain the Lindsey Property as part of Big Creek Reservation consistent with its standard practices and procedures.

5. Notices. All notices, requests, reports and other communications in connection with this Agreement shall be made in writing and shall be deemed to have been given when hand delivered or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier, to the parties at the following addresses:

If to Cleveland Metroparks:
Cleveland Metroparks
4101 Fulton Parkway

Cleveland, Ohio 44144
Attention: Chief Executive Officer

With a copy to:

Chief Legal & Ethics Officer
Cleveland Metropolitan Park District
4101 Fulton Parkway
Cleveland, Ohio 44144

If to the City to:

Santo Incorvaia
Director of Law
15700 Bagley Road
Middleburg Hts., OH 44130

If to CCBOH to:

Cuyahoga County Board of Health
Health Commissioner
5550 Venture Dr
Parma, Ohio 44130

With a copy to:

Cuyahoga County Board of Health
General Counsel
5550 Venture Dr
Parma, Ohio 44130

6. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

7. Modification. No modification of this Agreement shall be binding upon Cleveland Metroparks, the City, or CCBOH unless set forth in writing and executed by Cleveland Metroparks, the City and CCBOH.

8. Severability. If any provision of this Agreement shall be or become invalid or unenforceable, then this Agreement shall be divisible as to such provision, and the remainder of this Agreement shall be and remain valid and binding as though such provision were not included herein.

9. Third-Party Rights. Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as herein set forth, any rights or remedies under, or by reason of, this Agreement.

10. Counterparts. This Agreement may be executed by both parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

11. Electronic Signatures. By entering into this Agreement, the Parties agree on behalf of themselves, their officers, employees, agents, successor or assigns, that this transaction may be conducted

by electronic means by agreeing that all documents requiring signatures by the Parties may be executed by electronic means, and that the electronic signatures affixed by the Parties to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The Parties also agree to be bound by the provisions of Chapter 1306 of the Ohio Revised Code as it pertains to electronic transactions.

12. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of Ohio, without regard to any otherwise applicable principles of conflicts of laws. All actions arising from or relating to this Agreement or a claim of breach of this Agreement shall be instituted and prosecuted exclusively in a federal or state court located in Cuyahoga County, Ohio, and the Parties consent to the exercise of personal jurisdiction by and exclusive venue in such courts.

13. Authority to Execute. Each Party has all necessary power and authority to enter into this Agreement, and the execution of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all requisite corporate action and constitutes the valid and binding obligation of each Party, respectively, enforceable against it in accordance with its terms.

14. Public Records. The Parties acknowledges that this Agreement and other records in the possession or control of Cleveland Metroparks, the City and CCBOH regarding the Agreement and the Lindsey Property may be public records under Ohio Revised Code Section 149.43 and may be open to public inspection unless a legal exemption applies.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

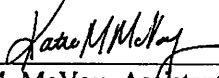
IN WITNESS WHEREOF, Cleveland Metroparks, the City and CCBOH have executed this Agreement as of the day and year first above written.

BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK
DISTRICT



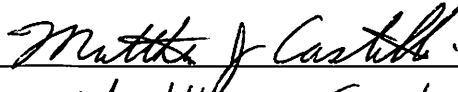
Brian M. Zimmerman
Chief Executive Officer

APPROVED AS TO LEGAL FORM BY
ROSALINA M. FINI, CHIEF LEGAL &
ETHICS OFFICER:



Katie M. McVoy, Assistant Legal Counsel

CITY OF MIDDLEBURG HEIGHTS



By: Matthew Castelli

Its: Mayor

CUYAHOGA COUNTY BOARD OF HEALTH

By: _____

Its: _____



103694760

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

BOARD OF HEALTH OF CUAHOGA CTY.,OH
Plaintiff

Case No: CV-17-887339

Judge: MICHAEL P SHAUGHNESSY

JOHN LINDSEY, JR ET AL
Defendant

JOURNAL ENTRY

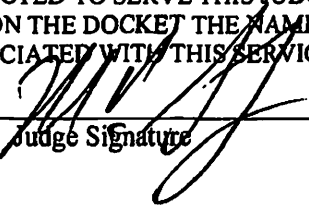
92 DEFAULT - FINAL

CASE CALLED FOR HEARING ON 03/16/2018 ON THE MOTION OF THE PLAINTIFF FOR DEFAULT JUDGMENT. THE COURT FINDS THAT THE DEFENDANTS WERE DULY SERVED WITH BOTH THE COMPLAINT AND NOTICE OF THE DEFAULT HEARING. THE COURT FURTHER FINDS THAT THE DEFENDANTS DID NOT ANSWER OR OTHERWISE RESPOND TO THE COMPLAINT WITHIN THE TIME LIMITS SET FORTH BY OHIO LAW. THE DEFENDANTS FAILED TO APPEAR AT THE HEARING. PLAINTIFF WAS PRESENT.

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT OF CUYAHOGA COUNTY BOARD OF HEALTH, FILED 02/21/2018, IS GRANTED. OSJ. FINAL.

COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.



Judge Signature

5-8-2018
Date

FILED
2018 MAY -9 P 1:25
CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO**

BOARD OF HEALTH OF
CUYAHOGA COUNTY, OHIO

Plaintiff,

v.

JOHN G. LINDSEY, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

CASE NO. CV-17-887339

JUDGE MICHAEL P. SHAUGHNESSY

DEFAULT JUDGMENT ENTRY

This cause came on for hearing the 16th day of March, 2018, upon the failure of Defendants, John G. Lindsey and Jennifer Lindsey, not to file an answer in response to the Complaint filed by Plaintiff, the Cuyahoga County Board of Health, which was filed on October 13, 2017.

1. The Court finds that all parties received timely notice of the scheduling of the default hearing.
2. The Plaintiff, through its designated representative, appeared for the hearing. The Defendants failed to appear.
3. The Court finds that Defendants were served with summons and complaint at 7705 Eastland Road, Middleburg Heights, Ohio, on October 19, 2017. The Court further finds that Defendants are in default of answer which was to be filed on or before November 16, 2017.
4. Based on the foregoing, the Court finds as follows:
 - A. A permanent injunction issue mandating Defendants to replace the failed household sewage treatment system with an acceptable, working septic system to service the home in compliance with R.C. 3718.10, within sixty (60) days of this Order; and
 - B. The Defendants be ordered forthwith to cause the property located at 7705 Eastland Road, Middleburg Heights, Ohio, to conform to the regulations of the Plaintiff; and

- C. The Defendants shall contact the City of Middleburg Heights and the Board of Health to apply for and obtain all permits required by the City and the Board to abandon and replace the septic system; and
- D. The Defendants shall present a fully-executed contract with a licensed installer to the Board of Health; and
- E. The Defendants are enjoined from transferring any right, title and/or interest in the property during the pendency of this action, and;
- F. This Court retains jurisdiction over the instant matter until compliance; and
- G. The Defendants shall pay the costs incurred in bringing this action.

In addition, the Defendants are enjoined from further use of the current septic system and are to vacate the above-listed premises in the event that they do not replace the existing septic system with an acceptable, working system within sixty (60) days of this Order.

IT IS SO ORDERED



MICHAEL P. SHAUGHNESSY, Judge

Date: 5-8-2018

EXHIBIT B - AMENDED DEFAULT JUDGMENT

IN THE COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

BOARD OF HEALTH OF CUYAHOGA COUNTY, OHIO	:	CASE NO:
	:	
Plaintiff	:	JUDGE:
	:	
V.	:	AMENDED
	:	DEFAULT JUDGMENT ENTRY
DEFENDANT	:	
	:	
Defendants.	:	

This cause came on for hearing the 16 day of March, 2018, upon the failure of Defendants, John G. Lindsey and Jennifer Lindsey, not to file an answer in response to the Complaint filed by Plaintiff, the Cuyahoga County Board of Health, which was filed on October 13, 2017.

1. The Court finds that all parties received timely notice of the scheduling of the default hearing.
2. The Plaintiff, through its designated representative, appeared for the hearing. The Defendants failed to appear.
3. The Court finds that Defendants were served with summons and complaint at 7705 Eastland Road, Middleburg Heights, Ohio, on October 19, 2017. The Court further finds that Defendants are in default of answer which was to be filed on or before November 16, 2017.
4. Based on the foregoing, the Court finds as follows:
 - A. A permanent injunction issue mandating Defendants to replace the failed household sewage treatment system with an acceptable, working septic system to service the home in compliance with R.C. 3718.10, within sixty (60) days of this Order unless Section F applies; and
 - B. The Defendants be ordered forthwith to cause the property located at 7705 Eastland Road, Middleburg Heights, Ohio, to conform to the regulations of the Plaintiff; and

- C. The Defendants shall contact the City of Middleburg Heights and the Board of Health to apply for and obtain all permits required by the City and the Board to abandon and replace the septic system; and
- D. The Defendants shall present a fully-executed contract with a licensed installer to the Board of Health; and
- E. The Defendants are enjoined from transferring any right, title and/or interest in the property during the pendency of this action, except that Defendants may transfer the property to the Board of Park Commissioners of the Cleveland Metropolitan Park District (the "Cleveland Metroparks"); and
- F. If the Cleveland Metroparks takes ownership of the property, Cleveland Metroparks must replace the failed household sewage system or abandon and demolish the household sewage treatment system in a manner that complies with all applicable state and local laws, including the requirements of the Cuyahoga County Board of Health, within 180 days of taking ownership; and
- G. This Court retains jurisdiction over the instant matter until compliance; and
- H. The Defendants shall pay the costs incurred in bringing this action.

In addition, the Defendants are enjoined from further use of the current septic system and are to vacate the above-listed premises in the event that they do not replace the existing septic system with an acceptable, working system within sixty (60) days of this Order.

IT IS SO ORDERED.

Judge

Date