

DELIVERED FEB 17 2022

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2022-17

Introduced By: Mayor Matthew Castelli

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH STEWART LAND USE FOR PROFESSIONAL PLANNING AND ZONING SERVICES

WHEREAS, as an extension of the City's planning department, Stewart Land Use will provide various planning and zoning support services to the City of Middleburg Heights which will include planning and zoning reviews in the Zoning Code, reviewing applications, attending meetings, and acting as department liaison.

NOW, THEREFORE, BE IT ORDAINED 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 with Stewart Land Use to provide professional planning and zoning support services to the City of Middleburg Heights, a copy of which is attached hereto and made a part hereof as though fully rewritten herein and marked "Exhibit A".

Section 2: That there is hereby appropriated an additional \$5,000.00 from the General Fund to implement this Ordinance.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance 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: 2-22-22

Attest: May Ann Meala
Clerk of Council

Presented to Mayor: 2-23-22

David Bortolotto
President of Council

Approved On: 2-23-22

Matthew Castelli
Mayor

	Yea	Nay
Bortolotto	X	_____
Ali	X	_____
Sage	X	_____
Meany	X	_____

	Yea	Nay
McGregor	X	_____
Ference	X	_____
Grech	X	_____

I, M Meola Clerk of
the Council of the City of Middleburg Hts., Ohio,
hereby certify that ORD 2022-17
adopted by the Council of the City of Middleburg
Hts., on 2-22-22 was posted for a period
of fifteen days, beginning 2-25-22
and remained so posted for fifteen days at the two
posting places as designated by Charter.

Mary Ann Meala
Clerk

CERTIFICATE

I, M Meola, Clerk of Council of the City of Middleburg Heights, Ohio, do
hereby certify that the foregoing is a true and accurate copy of ORD 2022-17
passed on the 22 day of February 2022 by said Council.

Mary Ann Meala
Clerk of Council

Professional Planning and Zoning Support Services Agreement

Terms and Conditions

Services Provided. Stewart Land Use, LLC, hereinafter referred to as the "Consultant", agrees to perform the professional services outlined in the attached Exhibit A "Scope of Work" for the City of Middleburg Heights, Ohio, hereinafter referred to as the "Client."

Compensation. Based upon the attached Scope of Responsibilities, Client agrees to pay Consultant Three Thousand Dollars (\$3,000.00) per month, not to exceed Thirty-Six Thousand Dollars (\$36,000.00) in any calendar year as referenced on City of Middleburg Heights Purchase Order # _____. The monthly compensation shall be paid within the first ten (10) days of each month, starting with the first month following the Effective Date of this Agreement.

Standard of Care. Consultant agrees to provide professional services to a standard of care that would be reasonably and professionally exercised by reputable planning and zoning professionals practicing in the same or similar locality and under similar circumstances. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

Additional Services. Any requested changes beyond the initial Scope of Work made by Client will be considered extra work. Consultant will notify Client in writing of any changes to the Scope of Work requiring additional fees and will provide Client with an estimate of those fees prior to proceeding with the work.

Termination of Contract. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination, pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days written notice. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Material changes in the conditions under which this Agreement was entered into or the Scope of Responsibilities and the failure of the parties to reach an agreement on the compensation and schedule adjustments necessitated by such changes;

Indemnification, Limitation of Liability and Immunity. The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client and its employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultants negligent performance of professional services under this Agreement and that of its sub-consultants or anyone for whom the Consultant is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs,

to the extent caused by the Client's negligent acts in connection with the professional services provided and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

In addition, the Client agrees that, to the fullest extent permitted by law, no shareholder, officer, director, principal or employee of the Consultant shall have personal liability under this Agreement, or for any matter in connection with the professional services provided. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

Both Parties agree not to waive any statutory immunity available to Consultant under Ohio law for work performed by Consultant under this Agreement.

Consequential Damages. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other nor shall they make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of revenue, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

Dispute Resolution. In an effort to resolve any conflicts that may arise during the life of this Agreement, the Client and the Consultant agree that all disputes between them arising out of or in relation to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. If a dispute is not resolved after mediation, the matter shall be processed through any court having jurisdiction thereof.

Ownership and Copyright of Documents. Reuse or modification of any Consultant produced document by Client shall be at Client's sole risk.

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

Severability. If any term or provision hereof is illegal or invalid for any reason whatever, such illegality of invalidity shall not affect the validity of the remaining terms of this Agreement.

Payment & Correspondence Contact Information. Compensation payments and related correspondence required under this Agreement shall be mailed to the following address:

Jay Stewart
Stewart Land Use, LLC
10307 Riverwalk Lane
Loveland, Ohio 45140

Assignment of Agreement. Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this agreement.

Signatures. The individual signing this Agreement represents that they are duly authorized to execute this Agreement on behalf of the City of Middleburg Heights, Ohio, for the payment of the amounts specified herein. The individual signing on behalf of Client represents he has full authority to sign on behalf of Client.

AUTHORIZATION TO PROCEED

Please proceed with the professional planning and zoning services outlined above in accordance with this proposal. Client agrees to the terms and conditions of this proposal.

CITY OF MIDDLEBURG HEIGHTS, OHIO

By: Matthew J. Casbolt

Date: 2-23-22

Its Mayor

Date: 2-23-22

STEWART LAND USE, LLC

By: _____

Its _____

Date: _____

EXHIBIT "A"

City of Middleburg Heights Professional Planning and Zoning Support Services Scope of Responsibilities

The following professional planning and zoning support services shall be provided by Consultant under this Agreement:

Planning and Zoning Support Services

- Consultant shall perform the planning and zoning reviews for the following items in the Zoning Code:
 - Development Plan Review (All Zoning Related Items including Landscaping)
 - Major and Minor Subdivision Application Review (Zoning Related Items)
 - Rezone Applications
 - Conditional Use Permit Review
 - Sign Permit Review
 - Accessory Use Permit Review
 - Variance Requests
 - Administrative Appeal Application Review
 - Any other review or determination as required under the Zoning Code
- Consultant will draft a staff review memo and staff recommendation for all zoning application items sent to City Council, the Planning Commission or the Board of Zoning Appeals for consideration.
- Attend (virtually) all Planning Commission and Board of Zoning Appeals meetings and serve as the Staff Liaison to both bodies.
- Complete and send Zoning Verification Letters as requested.
- Coordinate zoning enforcement action with local City Staff / Inspectors.
- Assists in creating the Planning Commission and Board of Zoning Appeals agendas as requested.
- Acts as Department liaison and point of contact to all internal / external plan reviewers within the zoning plan review and zoning permitting process.
- Sets up and attends all pre-application zoning meetings (virtually).
- Prepare general correspondence (as needed) on behalf of the Department.
- Serve as the internal project manager / point of contact for any Planning related studies performed by outside consultants.

- Assist in writing or creating zoning related ordinances for City Council.
- Draft future zoning code text edits, and new / modified zoning applications as needed.

Virtual Meetings and Telephone Consultation

- Consultant shall be available for incoming planning and zoning related phone calls from the public and from internal City contacts as needed.
- Consultant will be available for internal and external virtual meetings as needed.

In-Person Meetings

Requested in-person meetings shall be charged a fixed fee amount of \$500 per meeting. Depending on the time of the requested in-person meeting, Consultant can also be available at the City for other in-person meetings or general consultation that same day / evening to be included in the same fixed fee amount.

Add-On Services as Requested

The following services may be added as requested on either an hourly billable rate or on a fixed fee basis.

- Drafting Planning / Land Use Studies and Plans.
- Conducting a Subdivision Regulations Text Update
- Creating any required Planning or Zoning Related Graphics

Tasks not Covered Under this Scope of Responsibilities

- The issuance of certificate of occupancy permits.
- Other procedural and permit processing tasks that are currently being performed by City administrative staff and not listed on the Scope of Responsibilities.
- Collection of fees from zoning applicants
- On-Site code enforcement and inspection tasks.