

ORDINANCE NO. 15-22

AN ORDINANCE RATIFYING THE COMMUNITY REINVESTMENT AREA AGREEMENT WITH BUCKEYE COMMUNITY SEVENTY SIX, LP AND AUTHORIZING AND DIRECTING THE DIRECTOR OF SAFETY AND SERVICE TO EXECUTE THE COMMUNITY REINVESTMENT AREA AGREEMENT SUBSTANTIALLY IN THE FORM ATTACHED TO THIS ORDINANCE AND DECLARING AN EMERGENCY

WHEREAS, the City of Port Clinton established a Community Reinvestment Area by the passage of Ordinance No. 25-16, As Amended, on April 20, 2017; and

WHEREAS, an individual contacted the City Auditor about a possible tax abatement in the newly established Community Reinvestment Area and advised the Auditor that a letter confirming the abatement was needed for his grant application; and

WHEREAS, the City Auditor prepared a letter on January 26, 2017, confirming a 50% abatement for a period of 15 years on a proposed property called Shepard Crossing, as requested, and attached Ordinance No. 25-16, As Amended, which defined the boundaries of the newly established Community Reinvestment Area and explained the tax abatement application process; and

WHEREAS, Buckeye Community Seventy Six, LP ("Buckeye"), constructed a 10 building low income housing tax credit property, called Shepard Crossing, consisting of 50 apartment units on the property located at 1310 Jefferson Street, Port Clinton, Ohio, with a total investment of \$7,733,456.00; and

WHEREAS, the project began on March 1, 2018, and all acquisition, construction and installation was completed in July through August of 2019; and

WHEREAS, Buckeye contacted the Ottawa County Auditor in 2020 in reference to their tax abatement for Shepard Crossing and the Ottawa County Auditor discovered that she did not have a CRA Agreement on file for Shepard Crossing; and

WHEREAS, the Ottawa County Auditor contacted the City of Port Clinton and it was discovered by both offices that Buckeye did not apply for a tax abatement with the City for Shepard Crossing prior to construction beginning on the property in 2018; and

WHEREAS, the Ottawa County Auditor immediately removed the tax abatement for Shepard Crossing and Buckeye paid the full amount of real estate taxes for the second half of 2019 in 2020 when the real estate taxes became due; and

WHEREAS, the City received an application for a tax abatement within the CRA on August 24, 2021, for the newly constructed 10-building low income housing tax credit property called Shepard Crossing, on property owned by Buckeye Community Seventy Six, LP, an Ohio limited partnership company; and

WHEREAS, on December 6, 2021, the City's Tax Incentive Negotiating Committee met to consider the proposed application and the unique circumstances under which the application was filed and the Committee unanimously resolved to recommend approval of the proposed 50% tax abatement for a period of 15 years; and

WHEREAS, the Vanguard Joint Vocational School District and its Board of Education were notified in accordance with Section 5709.83 of the Ohio Revised Code and given a copy of the Application; and

WHEREAS, the Port Clinton City School District and its Board of Education were notified in accordance with Section 5709.83 of the Ohio Revised Code and given a copy of the Application; and

WHEREAS, approval of a CRA Agreement by the board of education is not required under Section 3735.671 of the Ohio Revised Code if, for each tax year the real property is exempted from taxation, the sum of the following quantities, as estimated at or prior to the time the agreement is formally approved by the legislative authority, equals or exceeds fifty per cent of the amount of taxes, as estimated at or prior to that time, that would have been charged and payable that year upon the real property had that property not been exempted from taxation; and

WHEREAS, the Port Clinton City School District filed a written objection on December 23, 2021 and the City removed the legislation from its Agenda for the December 28, 2021 Council Meeting, despite not needing the school's approval, pending further discussion with the Port Clinton City School District; and

WHEREAS, Buckeye submitted to the City the grant application it filed in 2017 showing the City Auditor's letter was crucial in securing the financing for the project as Shepard Crossing was one of a number of applicants to the Ohio Housing Finance Agency ("OHFA") for housing tax credits in the 2017 9% tax credit round; and

WHEREAS, OHFA reviewed and scored the local financial support for Shepard Crossing and awarded Buckeye five points for City Auditor's letter confirming the tax abatement and without those five points, Buckeye would not have earned enough points to receive the tax credit award and the project would have not been funded; and

WHEREAS, Buckeye additionally submitted to the City a Supreme Court of Ohio case, State ex rel. City of Lorain v. Stewart, 119 Ohio St.3d 222 (2008), where the Supreme Court held that an auditor must record and implement community reinvestment area related tax credits upon instruction from the Housing Officer designated under a local statute establishing a Community Reinvestment Area even if the auditor alleges the award of tax credits was improper; and

WHEREAS, the facts in Stewart are similar to Shepard Crossing because in both instances the tax abatement applications were filed years after construction was completed on the properties and Shepard Crossing's situation is direr than Stewart; and

WHEREAS, on March 10, 2022, Shepard Crossing's lender informed it that it was out of compliance with the covenant on its debt service coverage ratio and implementing the tax abatement would bring the property back into compliance; and

WHEREAS, the unexpectedly high tax bills have negatively impacted Shepard Crossing and placed it in cash flow covenant default with its lender, which threatens the viability of Shepard Crossing and places it at risk of foreclosure; and

WHEREAS, this Council finds and determines that based on all of the information provided to Council and under the unique circumstances in which the application for tax abatement was filed, it is in the City's best interest to approve the CRA Agreement pursuant to the terms and conditions set forth therein to remedy this situation.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Port Clinton, County of Ottawa and State of Ohio:

Section 1. This Council hereby approves the CRA Agreement pursuant to the terms and conditions set forth therein, together with such revisions or additions to the Agreement as are necessary to benefit the City and being consistent with the objectives of this Ordinance.

Section 2. The Director of Safety and Service is hereby authorized and directed to enter into a CRA Agreement with Buckeye Community Seventy Six, LP, consistent with the form of the agreement attached hereto, together with such revisions or additions as are necessary to benefit the City and being consistent with the objectives of this Ordinance.

Section 3. This council further authorizes the Director of Safety and Service and other city officials to prepare and execute such other documents and agreements and to do all other things as are necessary for and incidental to carrying out the requirements of this Ordinance and the terms of the attached Agreement together with said revisions or additions thereto.

Section 4. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council, and any of its committees, that resulted in those actions were in meetings open to the public, in compliance with the law.

Section 5. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective as

Buckeye Community Seventy Six, LP desires to begin the tax abatement time period of 50% for 15 years on their newly constructed 10-building low income housing tax credit property; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2022

President of Council

Attest: _____
Clerk of Council

Approved _____, 2022

Mayor