

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS

No. SD 69411
Cases No. 886,594 and
No. 892,711 consolidated

Honorable George J. McMonagle

Establishment of
Cleveland Regional
Sewer District

JUDGMENT

This matter came on to be heard by the Court upon the Petition To Amend The Petition And Plan Of Operation Of The Cleveland Regional Sewer District filed by the Cleveland Regional Sewer District (the "District") on November 29, 1974. Hearings on this matter were held on January 22, 1975, April 8, 1975, May 12, 1975, June 4, 1975, June 11, 1975, and July 28, 1975, after publication of notice thereof in accordance with §6119.051 Revised Code. The only persons or political subdivisions residing or lying within the area affected by the operation of the District who filed an objection to the granting of the District's Petition were the Village of Cuyahoga Heights ("Cuyahoga Heights") and the Village of Newburgh Heights ("Newburgh Heights").

Upon due consideration of the evidence adduced at said hearings, the pleadings, and the briefs and arguments of counsel, and based upon the agreement between the District and Cuyahoga Heights concluded before the Court's decision herein, the agreement between the District and Newburgh Heights concluded after said decision, and the separate findings of fact and conclusions of law entered by the Court contemporaneously herewith, the Court finds that the request of the Petition is conducive to the public health, safety, and welfare and would, if not granted, adversely affect the continued operation of the District, and therefore the Agreement between the City of Cleveland and the Village of

Newburgh Heights, dated August 11, 1916, should be terminated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Agreement between the City of Cleveland and the Village of Newburgh Heights, dated August 11, 1916 (the "Agreement"), a copy of which is attached hereto, is hereby terminated and declared null and void, effective upon entry of this Judgment.

2. The District shall have the perpetual right to use, maintain, construct, enlarge and reconstruct the present interceptor sewers referred to in said Agreement, without the approval of or interference by any person or political subdivision.

3. Cuyahoga Heights and Newburgh Heights shall have the same rights as other municipalities in the District to use said interceptor sewers and other disposal facilities of the District.

4. The District shall phase into its user charge system all users of the District's disposal facilities (including domestic and industrial users) located in Cuyahoga Heights and Newburgh Heights on the following basis:

(a) Twenty percent of the applicable rates set by the District for Subdistrict No. 2 users will be paid by each user in Cuyahoga Heights and Newburgh Heights for the year 1976.

(b) Forty percent of the applicable rates set by the District for Subdistrict No. 2 users will be paid by each user in Cuyahoga Heights and Newburgh Heights for the year 1977.

(c) Sixty percent of the applicable rates set by the District for Subdistrict No. 2 users

will be paid by each user in Cuyahoga Heights and Newburgh Heights for the year 1978.

(d) Eighty percent of the applicable rates set by the District for Subdistrict No. 2 users will be paid by each user in Cuyahoga Heights and Newburgh Heights for the year 1979.

(e) In 1980 and thereafter, all users in Cuyahoga Heights and Newburgh Heights will pay 100% of all applicable rates established from time to time by the District.

5. Effective upon the entry of this Judgment, the District shall apply its industrial cost recovery system to all users in Cuyahoga Heights and Newburgh Heights in the same manner as it is applied to other users in the District.

6. The Judgment Entry of June 15, 1972 and Exhibits thereto entered in Special Docket No. 69411 and the Supplemental Judgment Entry of June 15, 1972 and Exhibits thereto entered in Cases No. 892,711 and No. 886,594, consolidated, are hereby modified and amended to the extent required to cause them to be consistent with this Judgment and the termination of the Agreement.

7. The District shall pay to Cuyahoga Heights, as agreed between the District and Cuyahoga Heights, the aggregate sum of \$250,000 in five installments without interest as follows:

\$50,000 on or before January 31, 1976

\$50,000 on or before January 31, 1977

\$50,000 on or before January 31, 1978

\$50,000 on or before January 31, 1979

\$50,000 on or before January 31, 1980

8. The District shall pay to Newburgh Heights, as agreed between the District and Newburgh Heights, the aggregate sum of \$235,000 in five installments without interest as follows:

\$50,000 on or before January 31, 1976

\$50,000 on or before January 31, 1977

\$50,000 on or before January 31, 1978

\$50,000 on or before January 31, 1979

\$35,000 on or before January 31, 1980

[Handwritten Signature]

JUDGE

Dated: 7/31/75

The following parties approve and consent to the foregoing Judgment and waive all right of appeal therefrom:

VILLAGE OF CUYAHOGA HEIGHTS

By *[Handwritten Signature]*
Clerk

VILLAGE OF NEWBURGH HEIGHTS

By *[Handwritten Signature]*
Solicitor

CLEVELAND REGIONAL SEWER DISTRICT

By *[Handwritten Signature]*
General Counsel

STATE OF OHIO

By *[Handwritten Signature]*
Assistant Atty General

CITY OF CLEVELAND

By *[Handwritten Signature]*
Director of Law

AGREEMENT

THIS AGREEMENT, made and entered into this 11th
day of August A.D. 1916, by and between the City of
Cleveland, by its Director of Public Service, in that behalf
duly authorized by resolution of the City of Cleveland, adopted
on the 13th day of December A.D. 1915, party of the
first part, and the Village of Newburgh Heights, by its Mayor
and Clerk, in that behalf duly authorized by resolution of the
Council of the Village of Newburgh Heights, adopted on the
18th day of April A.D. 1916, party of the second
part:

WITNESSETH:

That it is hereby mutually agreed by and between
the parties hereto in consideration of the mutual covenants,
promises and agreements herein contained as follows:

FIRST: That the Village of Newburgh Heights
hereby grants to the City of Cleveland
full permission and authority to construct an intercepting sewer
and to convey sewage therein upon and along one of the following
routes, as said City of Cleveland may determine, to wit:

ROUTE "A". Across East 49th street about
seventeen hundred (1700) feet north
of Harvard avenue. Across Harvard avenue about four hundred
(400) feet east of East 49th street. Across Grant avenue about
eleven hundred and fifty (1150) feet east of East 49th street.
Across Independence road (said road extending along the northerly
side of the Ohio Canal from East 49th street to East 71st) about
fifteen hundred (1500) feet east of East 49th street.

ROUTE "B". Along East 49th street from a
point about seventeen hundred
(1700) feet north of Harvard avenue to a point about five
hundred (500) feet north of the center line of the Cleveland
Short Line Railroad. Across Independence road (said road
extending along the northerly side of the Ohio Canal from
East 49th street to East 71st street) about fifteen hundred
(1500) feet east of East 49th street.

SECOND: Said permission and authority is granted subject to the following terms, conditions and limitations.

"A" Said sewer shall be located so as not to interfere with any existing improvements in the streets of said village, and the City of Cleveland shall replace and restore any property disturbed or injured in the construction of said sewer, to a condition as good as it was in before such disturbance or injury.

"B" Openings in said sewer shall be provided at points to be mutually determined by the engineering representatives of said city and said village, substantially as shown upon map hereto attached, of such size as to properly provide for the area to be drained to any such opening. Drip manholes shall be constructed by the City of Cleveland, extending from the sewer to the surface of the ground at Harvard Avenue and at Grant Avenue, and provided with suitable openings, of proper size, determined as hereinbefore mentioned, so as to provide for the sanitary sewage of any area which might be drained to said manholes. Said openings in said manholes shall be maintained in good order by the City of Cleveland.

"C" The Village of Newburgh Heights is hereby given the right to connect, at its sole cost and expense, any and all of its present or future sanitary sewers with said intercepting sewer, or with any portion of the city's intercepting sewer now constructed, by means of said manholes and said openings, as shown on the said map hereto attached, and to discharge all of its present and future sanitary sewage into said intercepting sewer, subject only to the limitations herein-after set forth, and said sewage shall be disposed of by said City of Cleveland in like manner as other sewage conveyed through said intercepting sewer, without cost or expense to the Village of Newburgh Heights.

"D" In the event that the sewage conveyed through said intercepting sewer should be disposed of at any future time by the City of Cleveland, at any point within the Village of Newburgh Heights, in a manner objectionable to the public authorities of said village, and the disposal of said sewage within said village should be permanently prevented by said village by court proceedings or otherwise, then the future right of the village to discharge any sewage into said intercepting sewer now built or to be built, as provided in sub-paragraph "C" herein, shall thereupon cease and determine.

IN WITNESS WHEREOF, the party of the first part, by its Director of Public Service, and the party of the second part, by its Mayor and Clerk, have hereto set their signatures the day and year first above written.

THE CITY OF CLEVELAND, OHIO,

By *M. W. ...*
Director of Public Service

THE VILLAGE OF NEWBURGH HEIGHTS, OHIO,

By *W. E. ...*
Mayor

J. A. ...
Clerk

The legal form of the within instrument is hereby approved.

M. S. ...
DIRECTOR OF LAW
W. A. ...
RECEIVED
Aug 28 1916

APPROVED
BY THE COUNCIL

R. J. ...
AUG 28 1916
Clerk of Council