

RESOLUTION NO. 151-2021 (PD), *Second Reading*

By Council Member Ungar

A Resolution to concur in the proposal of the Northeast Ohio Regional Sewer District (NEORSD), as a part of its regional stormwater management program, and at its cost, to remove Horseshoe Lake Dam and return the lake bed to its naturalized state, including streams, plantings, trees, and other amenities, following a public planning process undertaken in concert with the cities of Cleveland Heights and Shaker Heights; and meet Ohio Department of Natural Resources (ODNR) standards for a Class I dam; and declaring an emergency.

WHEREAS, Lower Shaker Lake Dam was constructed in 1826, and Upper Shaker (Horseshoe) Lake Dam was constructed in 1852, to create the two man-made lakes, which are now part of the Shaker Parklands that are owned by the City of Cleveland and leased by the cities of Cleveland Heights and Shaker Heights; and

WHEREAS, the Shaker Parklands constitute a tranquil, aesthetically pleasing amenity which many residents prize for its role as a bird sanctuary and its historical significance; and

WHEREAS, both Lower Shaker Lake Dam and Horseshoe Lake Dam are classified by the Ohio Department of Natural Resources (ODNR) as Class I dams, meaning that in addition to property damage there is the potential for loss of life in the event of a dam failure, and due to their age and condition, do not meet current ODNR standards for protecting public safety and property, and exhibit critical signs of deterioration; and

WHEREAS, ODNR has required that Horseshoe Lake be drained because of the severe deterioration of the dam structure, and the Horseshoe Lake Dam must now either be removed permanently or removed and a new dam built; and

WHEREAS, ODNR and the Northeast Ohio Regional Sewer District (NEORSD) have found that Horseshoe Lake Dam and the spillway structure are in active failure which could result in loss of life and property and as a result, the City of Shaker Heights has plans for certain emergency mitigation repairs that will include a controlled breach of the dam ("Emergency Repairs") to temporarily reduce the possibility of failure; and

WHEREAS, NEORSD has advised that the full scope of the deterioration of Horseshoe Lake Dam is unknown, and even after construction of the Emergency Repairs, the risk to life and property will remain until a long-term solution is implemented; and

WHEREAS, the NEORSD has determined that Horseshoe Lake does not provide sufficient benefit for flood control and stormwater management to enable the District to use its stormwater management funds to build a new dam and restore Horseshoe Lake, and that restoring Doan Brook

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through the current lake bed is a superior method of flood control and stormwater management, but Lower Shaker Lake does provide significant stormwater control and mitigation of downstream flooding, such that the District is willing to reconstruct the Lower Shaker Lake Dam at its cost; and

WHEREAS, the NEORSD has advised the City that the most natural state of the area where Horseshoe Lake is located is the flowing of the two branches of Doan Brook through it, and the removal of the dam and restoration of that area will return the space to something much closer to its natural state than the current dam, and will improve habitat and water quality; and

WHEREAS, for all of the reasons stated above, NEORSD has proposed, as a part of its regional stormwater management program, and at its cost, to remove Horseshoe Lake Dam and return the lake bed to its naturalized state, including streams, non-invasive vegetation, plantings, trees, and other amenities (Lake Bed Improvements), to inspect and maintain the stream and associated riparian area, including managing invasive species, in perpetuity and at its cost, and to rebuild the Lower Shaker Lake Dam so that it meets Ohio Department of Natural Resources (ODNR) criteria for a Class I dam; and

WHEREAS, NEORSD has determined that the cost it would incur to remove Horseshoe Lake Dam, make the Lake Bed Improvements, and rebuild Lower Lake Dam is about \$28.3 million, while the cost to the cities of Cleveland Heights and Shaker Heights to remove Horseshoe Lake Dam, build a new dam, and restore Horseshoe Lake, at their sole cost, is about \$20.7 million plus ongoing maintenance and repair costs; and

WHEREAS, if Horseshoe Lake Dam were replaced, it would continue to be classified as a Class 1 dam, requiring significant ongoing regulatory compliance and maintenance costs, including an operations and management plan, structural inspections and ongoing repairs, sediment control and dredging, all without any material flood control or stormwater management benefit; and

WHEREAS, considering the significant and unknown financial costs that would be incurred by the cities of Cleveland Heights and Shaker Heights to remove Horseshoe Lake Dam, build a new dam, and restore Horseshoe Lake and to maintain these structures on an ongoing basis, the Administration recommended that Council express its concurrence for the proposal of the NEORSD to, at its cost, remove Horseshoe Lake Dam, make the Lake Bed Improvements, and rebuild the Lower Shaker Lake Dam; and

WHEREAS, on September 27, 2021, Council for the City of Shaker Heights passed a Resolution concurring in NEORSD's proposal concerning the same; and

WHEREAS, in order to ensure that Cleveland Heights had thoroughly and objectively reviewed the issues and the analysis and recommendations of the NEORSD before committing to a decision on the NEORSD's proposal for Horseshoe Lake Dam, the City of Cleveland Heights

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engaged an outside engineering firm, Gannett Fleming, to undertake a peer review of NEORSD's work and to report its impressions to this Council; and

WHEREAS, Gannett Fleming presented and discussed its findings with this Council twice, and responded to additional questions received from Council members and the public after the initial findings presentation, which questions and responses are posted on the City's website; and

WHEREAS, following an exhaustive review of hundreds of pages of analysis and consultation with NEORSD and its engineers, Gannett Fleming found that NEORSD's hydraulic and hydrology studies were robust and high quality and that, based upon professional standards accepted in the industry, NEORSD's evaluation methodologies and conclusions were reasonable; and

WHEREAS, planning, public bidding and construction for a permanent resolution of the failure of Horseshoe Lake Dam, and the deterioration of Lower Lake Dam, as proposed by the NEORSD, is expected to take several years, the NEORSD must begin the process of such planning as soon as possible, and this Council must act expeditiously to express its concurrence with the recommendations of NEORSD and the City's Administration, in order to avoid further delay and to remove the ongoing threats to life and property as soon as possible.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, as follows:

SECTION 1. Based upon the best current information, this Council concurs with the proposal of the Northeast Ohio Regional Sewer District (NEORSD), as a part of its regional stormwater management plan, and at its sole cost, to remove Horseshoe Lake Dam and to return the lake bed to its naturalized state, including streams, non-invasive vegetation, plantings, trees, and other amenities (Lake Bed Improvements) following a thorough and open public planning process undertaken in consultation with the cities of Cleveland Heights and Shaker Heights and to rebuild the Lower Shaker Lake Dam so that it meets ODNR criteria for a Class I dam.

SECTION 2. Many residents of the City of Cleveland Heights cherish Horseshoe Lake for its historic significance, tranquil aesthetic, bird sanctuary, and overall as an important amenity for the community and the region. Prior to and during the design and planning phases, the City encourages the Northeast Ohio Regional Sewer District to be open to other ideas from the community that preserve Horseshoe Lake and protect public safety, while effectively managing storm water, and not placing any financial burden on the City.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

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SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for additional time to determine the terms of a development agreement and proceed with due diligence. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.



JASON S. STEIN
President of the Council



AMY HIMMELEIN
Clerk of Council

PASSED: November 22, 2021