



CITY COUNCIL
Regular Meeting – November 14, 2016 6:00 p.m.
Council Chambers

PRESENTATIONS

- ◆ Donation Presentations by the Popcorn Festival Committee

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Council Member Whilding
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
 - A. October 17, 2016 Work Session
 - B. October 24, 2016 Regular Meeting
 - C. October 26, 2016 Special Meeting
- VI. ORDINANCES, RESOLUTIONS AND PUDS
 - A. Ordinance 16-22 Repealing Current Section 132.13 “Panhandling” and Adopting New Section 132.13 “Panhandling” (Third Reading)
 - B. Ordinance 16-23 Repealing Current Chapter 112 “Peddling, and Soliciting, and Distribution” and Adopting New Chapter 112 “Peddling, Soliciting, and Distribution” (Third Reading)
 - C. Ordinance 16-24 Adopting New Section 76.17 “Parking of Large and Oversize Vehicles on Streets (Second Reading)
 - D. Ordinance 16-25 Repealing Current Section 70.01 “Definitions” and Adopting New Section 70.01 “Definitions” (Second Reading)
 - E. Ordinance 16-26 Repealing Current Section 76.99 “Penalty” and Adopting New Section 76.99 “Penalty” (Second Reading)
 - F. Resolution 16-27 Approval of Petitions for Ohio Energy Special Improvement District (Tabled)
 - G. Resolution 16-28 Declaring the Necessity of Certain Public Improvements (Tabled)
 - H. Ordinance 16-27 Determining to Proceed with Acquisition, Construction and Improvement of Certain Public Improvements (Second Reading)
 - I. Ordinance 16-28 Levying Special Assessments for the Purpose of Acquiring, Constructing and Improving Certain Public Improvements. (Second Reading)
 - J. Ordinance 16-29 Authorize City’s Participation in Financing Special Energy Improvement Projects (Second Reading)
 - K. Resolution 16-30 Necessity and Intent to Appropriate Property (Daniel O’Brian Properties, LLC) for the Dayton-Xenia Road Widening Project
 - L. Ordinance 16-31 Appropriate the Right-of-Way (Daniel O’Brian Properties, LLC) for the Dayton-Xenia Road Widening Project (Emergency)
 - M. Resolution 16-31 Necessity and Intent to Appropriate Property (3455 Dayton-Xenia, LLC) for the Dayton-Xenia Road Widening Project
 - N. Ordinance 16-32 Appropriate the Right-of-Way ((3455 Dayton-Xenia, LLC) for the Dayton-Xenia Road Widening Project (Emergency)
 - O. Resolution 16-32 Necessity and Intent to Appropriate Property (John L. Deal, Trustee) for the Dayton-Xenia Road Widening Project
 - P. Ordinance 16-33 Appropriate the Right-of-Way (John L. Deal, Trustee) for the Dayton-Xenia Road Widening Project (Emergency)
- VII. DECISION ITEMS
 - A. Appointment to Board of Zoning Appeals
- VIII. CITY MANAGER’S REPORT
- IX. MAYOR’S REPORT
- X. COUNCIL TIME
- XI. CITIZEN COMMENTS
- XII. EXECUTIVE SESSION
- XIII. ORDINANCE, RESOLUTIONS AND PUDS
 - A. Resolution 16-29 Hiring of City Manager
- XIV. ADJOURNMENT

BEAVERCREEK CITY COUNCIL
WORK SESSION, October 17, 2016, 5:00 p.m.

CALL TO ORDER

Mayor Stone called the meeting to order followed by roll call.

PRESENT: Council Member Jarvis, Council Member Litteral, Council Member Upton, Vice Mayor Vann, Mayor Stone

ABSENT: Council Member Whilding

TARDY: None

Council Member Litteral MOVED to excuse Council Member Whilding, seconded by Council Member Jarvis. Motion PASSED by majority voice vote.

ALSO IN ATTENDANCE: Michael Cornell, City Manager; Bill Kucera, Financial Administrative Services Director; Dianne Lampton, Clerk of Council; Jeff McGrath, Planning and Zoning Director; Steve McHugh, Legal Counsel; Mike Thonnerieux, Public Service Administrative Director

APPROVAL OF AGENDA

Council Member Litteral MOVED to approve the agenda, seconded by Council Member Wallace. Motion PASSED by majority voice vote.

DISCUSSION ITEMS

Keary McCarthy, Ohio Mayors Alliance

Mr. McCarthy reviewed the new organization which is a coalition of mayors of Ohio's 30 largest cities. He explained the goals of the organization and how it would be funded. Council would need to decide if they would like to participate in the organization.

PACE Financing – Mall at Fairfield Commons

Mr. McHugh explained this was for financing energy improvements for the mall. He introduced David Rogers of Frost, Brown and Todd who was legal counsel for the Mall at Fairfield Commons. Mr. Rogers explained the PACE (Property Assessed Clean Energy) process. The City would be a conduit for the process and would not be responsible for any financing or costs involved. There would need to be five pieces of legislation passed to setup the energy efficient improvement district and the board

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associated with the district. This would be a special assessment that would be levied on the property which would be financed over 15 years.

Medical Marijuana

Mr. McHugh explained the State was still working on regulations and recommended extending the moratorium. This would allow time for staff to review the regulations once the State has agreed.

COUNCIL COMMITTEE/EVENT UPDATES

Council discussed events they had attended and anything they scheduled in the near future.

ADJOURNMENT

Council Member Upton MOVED to adjourn at 6:15 p.m., seconded by Council Member Jarvis. Motion PASSED by majority voice vote.

Bob Stone, Mayor

ATTEST:

Dianne Lampton
Clerk of Council

BEAVERCREEK CITY COUNCIL
REGULAR MEETING October 24, 2016 6:00 p.m.

PROCLAMATIONS

- ◆ Retirement of DJ, K-9 Unit Beaver Creek Police Department

CALL TO ORDER

Mayor Stone called the meeting to order followed by roll call.

PRESENT: Council Member Jarvis, Council Member Litteral, Council Member Upton, Council Member Wallace, Council Member Whilding, Vice Mayor Vann, Mayor Stone

ABSENT: None

TARDY: None

ALSO IN ATTENDANCE: Jill Bissinger, Human Resources; Randy Burkett, City Planner; Michael Cornell, City Manager; Dennis Evers, Chief of Police; Bill Kucera, Financial Administrative Services Director; Dianne Lampton, Clerk of Council; Jeff McGrath, Planning & Zoning Director; Steve McHugh, Legal Counsel; Nick Smith, Assistant City Engineer; Mike Thonnerieux, public Administrative Services Director

PLEDGE

Council Member Wallace led the pledge and a moment of silence

APPROVAL OF AGENDA

Council Member Whilding MOVED to approve the agenda as amended, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote.

APPROVAL OF MINUTES

Council Member Jarvis MOVED to approve the minutes of the October 10, 2016 Regular Meeting, seconded by Council Member Upton. Motion PASSED by majority voice vote.

PRE-SCHEDULED PRESENTER

Issue 22 – Rick Dodds, President, Greene Memorial Hospital and Soin Medical Center

Mr. Dodds gave an update on the hospitals. He said overall, the staff, and the community are alive, well, and needed based on the numbers. He said they do not often share statistics but wanted to share a picture of how things were. He said they serve a number of patients from the Beaver Creek community at Soin Medical Center but also many Beaver Creek residents are served at Greene Memorial Hospital as well. He said the two hospitals complement each other by

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sharing 1,200 employees. He said Soin has grown over 20% this year and they continue to focus on quality first. He said they have a hernia center of excellence, the only one in the region. He said they opened 30 more beds on the fifth floor of Soin. He said even with that Greene Memorial Hospital continues to serve an important need. He said it is a Medicare threshold that allows them to serve a rural health community clinic in the outlying areas. He said it continues to be an important impact in eastern Greene County. The future of health care and the Affordable Care Act means keeping people out of the hospital as much as possible and Greene Memorial Hospital is setup very well for this future. He said they have had more than 90,000 outpatient visits at Greene Memorial Hospital and Soin continues to grow in the outpatient business. Mr. Dodds complimented the Beaver Creek Fire Department and what they bring to the hospital team in the emergency departments. He said the two facilities offer two trauma centers in Greene County and Soin is the second busiest emergency room in the area seeing an average 135 patients each day. Greene Memorial serves an average of 65 patients each day. He said Soin is now a stroke center and offer interventional cardiac services with the exception of open heart surgery. Greene Memorial offers Greene County's only 3D mammography equipment which allows for a higher level of quality. He said this same technology will be coming to Soin next year. He said they upgraded to a \$1 million MRI suite and offers a Joslin Diabetes Center. He said Issue 22 is a county-wide renewal levy and is not an increase and has been renewed by residents for almost 70 years. Greene Memorial served over 102,000 patients in 2015 and this levy insures the continuance of keeping the needed services and quality doctors. He said they will see over 20,000 patients in the emergency department this year and the hospital plays a vital role in the County's healthcare services. The levy is solely for Greene Memorial Hospital. He said the levy costs property owners about \$15 annually per \$100,000 of property value.

PUBLIC HEARING PUD 16-1 SSP #1 Cottages of Beaver Creek (tabled from the October 10, 2016 Regular Meeting)

Clerk Lampton read an application filed by Charles Simms Development, 2785 Orchard Run Road, Dayton, Ohio 45449. The application requests specific site plan approval to allow for the construction of 14 single-story condominium buildings totaling 84 units to be constructed on 20.03 acres. The property is located on the east side of County Line Road approximately 700 feet south of the intersection of County Line Road and Weber Drive. The property is further described as Book 3, Page 3, Parcel 72 on the Greene County Property Tax Atlas.

Mr. Cornell excused himself from the meeting.

Council Member Upton MOVED to untable PUD 16-1 SSP#1, seconded by Council Member Whilding. Motion PASSED by majority voice vote.

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Council Input

Council Member Whilding summarized a couple of points that was addressed at the last meeting. He said Mr. Moorman had addressed the cost structure of taking care of the street which would be about \$1,000 per year. He said another concern was the buffer which would be tight with the properties but was possible. He said they did not get examples of a public street running through a private development. Mr. Moorman said they had looked into this and there were no examples of a private street to public street back to a private street. He said if Council wished to go this direction it would be prudent to make the entire street from County Line Road to Quill public and from there back keep as private. Council Member Whilding asked if all the roads within the Cottages were being built to public standards. Mr. Moorman said the plan currently showed they were being built to private standards which is narrower than required with a public street. Mayor Stone said this could create setback issues if they make it a public street. He explained this was tabled so Council could receive information as to whether or not Quill Road should be connected and if the road should be public or private if they do make the connection. He asked if Council wished to change the current recommendation of staff to keep the access to emergency vehicles only to a full access road.

Council Member Wallace said she had asked a few questions as well which she stated they had been answered. She said she would not be happy to have a public and private access on the same road. She also explained staff, Mr. Simms and the neighborhood had come to an agreement to keep Quill Road as an emergency access only. She wished to keep the plans as presented and move onto the next step.

Mayor Stone asked if any member of Council wished to make a motion to change the access.

Council Member Whilding MOVED to make Quill Road North a full public access road and make Cottage Park Drive a public road from County Line Road to North Quill Road, SECONDED by Council Member Jarvis. Motion was DENIED. (Against – Litteral, Upton, Wallace, Vann, Stone)

Motion

Council Member Upton MOVED for the purpose of taking administrative action, approval of a PUD Specific Site Plan for the Cottages of Beaver Creek, PUD 16-1, SSP #1, on the basis that City Council finds the facts submitted with the application and accompanying materials and modifications, amendments and supplementary conditions satisfy the standards and criteria for a PUD Specific Site Plan approval

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as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this council meeting.

1. The approved site plan and architectural elevations shall be the plans dated "Received August 31, 2016" except as modified herein.
2. A PUD Agreement must be signed by the owner and a bond or letter of credit for the site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
3. The final landscape plan shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the building.
4. Prior to any grading on site, the applicant shall install a temporary grading limit fence, as shown on the approved site plan. If any landscaping/grading is disturbed outside of the grading limit, the applicant shall submit and received approval of an amended landscape plan showing mitigation for the disturbed areas, prior to the release or reduction of any landscaping bonds.
5. Any portion of the site disturbed by grading, and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover free of noxious weeds and construction debris and shall be properly maintained.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally installed, within three months weather permitting.
7. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including the storm drainage facilities. The City reserves the right to require more frequent collection as necessary.

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8. Aeration and water circulation devices and/or fountains are required for the retention pond(s) and shall be maintained by the owner of the development in perpetuity.
9. Prior to the issuance of a zoning permit, final cut sheet details, showing the design of wall pack or sconce lighting, and photometric plans for lighting of the buildings and site shall be reviewed and approved by the Planning Department.
10. Final topography and grading plans shall be submitted for review and approval by the City Engineer prior to submission of application for final subdivision and must be approved prior to the issuance of a site-grading permit.
11. A final subdivision shall be approved by Planning Commission and recorded with the Greene County Auditor's Office prior to the release of any zoning permits for this project.
12. Final drainage calculations shall be approved by the City Engineer prior to the release of the record plan for recording.
13. Prior to the release of the record plan for recording, the applicant shall sign a Subdivider's Contract and submit a bond or letter of credit for the public improvements if required by the City Engineer.
14. The construction hours shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
15. All residential style trash totes shall be stored within or immediately adjacent to a primary structure, and shall be out of ordinary public view on days when trash collection is not occurring (except the night before scheduled pick-up is to occur).
16. Prior to the release of the record plan, park fees shall be paid in-lieu of dedication of parkland as determined at the subdivision stage.
17. There shall be a minimum of 8 handicap designated parking spaces on the site.

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18. The approval of this request is contingent upon the associated PUD Rezoning PUD 16-1 being approved and becoming effective. Should R-PUD 16-1 be disapproved, this site plan shall be null and void.
19. The developer shall pay all costs associated with the installation of a street light at the intersection of Quill Road and Straight Arrow Road.
20. The developer shall pay all costs associated with the design and construction of necessary modifications to the existing traffic signal at the intersection of Straight Arrow Road and County Line Road.
21. The south side of Quill Road, connecting to Straight Arrow Road, shall be constructed to City standards for public roadways.
22. The emergency access at Terrance Drive and Quill Road shall be restricted by collapsible bollards or a gate.
23. The row of evergreen trees along the northern property line shall be continued up to the existing woods.
24. The side drive access to Unit 4 from Quill Road shall be reviewed and moved to a front entry garage if feasible.
25. There shall be a 20-foot setback from the back of the sidewalk to the front of the garage to allow vehicle parking and to maintain a free and clear access on the sidewalks.

Seconded by Council Member Wallace. Motion PASSED by majority voice vote.
(Against – Whilding)

Mr. Cornell returned to the meeting.

PUBLIC HEARING PUD 91-2 MOD 9/16 BSM Development

Clerk Lampton read an application filed by BSM Development, LLC, 3100 Armory Drive, Suite 120, Nashville, TN 37204. The applicant requests a major modification for 0.526 acres of land to allow for the construction of a 4,800 square foot retail building located on the southeast corner of the intersection of North Fairfield Road and Commons Boulevard. The property is further described as Book 4, Page 6, Parcel 113 on the Greene County Property Tax Atlas.

Applicant Presentation

Nathan Harrington, 2800 Corporate Exchange Drive, Columbus, Ohio

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Mr. Harrington said they were looking to modify the PUD to allow for a small retail development.

Staff Presentation

Mr. McGrath summarized the staff report dated October 20, 2016, which stated the applicant is requesting approval to modify the existing site plan in order to allow for the construction of a 4,800 square foot retail building within the Shoppes at Fairfield Commons. He explained the original plan from 1996 was to allow for 40,000 square feet of outlot building space. He explained should this be approved the total square footage would be less, 26,709 square feet, but with more buildings than originally anticipated. Mr. McGrath discussed the location of the lot, the architectural elevations, access points, parking, the landscaping plan, lighting and signage. Staff and Planning Commission recommended approval of the applicants request with 15 conditions.

Public Input

There being no public input, the public hearing was closed.

Council Input

Council Member Litteral questioned if the building would be similar to the Ihop building. She expressed concern of not being able to drive around the building because the parking at the Ihop was confusing. She saw it as a future problem and was thankful Hobby Lobby allowed Ihop patrons to utilize their parking lot. Mr. McGrath understood her concerns and said Hobby Lobby does have requirements to allow for cross parking. He explained there was a complete cross access parking for the entire plat.

Council Member Upton thanked the applicant for the reinvestment into the community and shared the concerns of Council Member Litteral.

Council Member Wallace said she would like to add condition 16 to double the handicapped parking to a total of two parking spaces. She suggested a sign in the Ihop parking lot to warn patrons. She asked if sidewalks would be added to that corner and questioned if all of the owners would be assessed to maintain the assess street. Mr. McGrath said the sidewalks would be extended. He said BSM is currently the owner of the Ihop parcel and they had all of the paperwork regarding future road maintenance.

Council Member Jarvis asked if Ihop patrons would be allowed to park in the adjacent lot. Mr. McGrath said they would.

Mayor Stone expressed concern of the small lot. He said he had concerns of the

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layout and did not have a suggestion of what should go there.

Council Member Wallace MOVED to add condition 16 to add two handicapped parking spaces, seconded by Council Member Jarvis. Motion PASSED by majority voice vote. (Against – Stone)

Motion

Council Member Wallace MOVED for the purpose of taking administrative action, approval of a PUD Major Modification for BSM Development, PUD 91-2, MOD 9/16, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for a PUD Major Modification approval as per §158.070 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this Council meeting.

1. All conditions contained within PUD 91-2, SSP #1 and all subsequent modifications to PUD 91-2 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.
2. The approved site plan, architectural elevations and landscape plan shall be those plans dated "Received September 28, 2016" except as modified herein.
3. All roof top units are to be screened from all directions with architectural features (roof forms or parapet walls) on each building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
4. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
5. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.
6. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to

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construct the building. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department.

7. Temporary signs shall not be permitted within this development with the exception of a construction sign that will be allowed during construction of the project.

8. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.

9. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.

10. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.

11. The proposed light fixtures must match, in height and design, those of the IHOP development. No light poles may be located outside of any landscape area.

12. This outlot shall be allowed one ground sign that can be up to 4 feet tall with 32 square feet per sign face. The design of the ground sign shall include a masonry base and sides that shall be constructed of similar material to those on the proposed building.

13. This outlot shall be allowed two square feet of wall signage for each linear foot of building frontage not to exceed 250 square feet with a maximum letter height of 48". Wall signs shall only be permitted on the North, West, and East elevations.

14. The westernmost parking space shall be removed and replaced with a landscape island containing additional landscaping consistent with the rest of the development.

15. A replat of Lot 9A of the Shoppes at Fairfield Commons shall be recorded with all water and sewer easements accepted by the County prior to the issuance of a zoning permit.

16. The applicant shall work with staff to add an additional handicap parking space on the site.

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Seconded by Council Member Litteral. Motion PASSED by majority voice vote.
(Against – Whilding, Stone)

ORDINANCES, RESOLUTIONS AND PUDS

Ordinance 16-22 Repealing Current Section 132.13 “Panhandling” and adopting New Section 132.13 “Panhandling” (Second Reading)

Clerk Lampton read an Ordinance repealing current Section 132.13 “Panhandling” of the City of Beavercreek Code of Ordinances, and adopting new Section 132.13 “Panhandling” of the City of Beavercreek Code of Ordinances.

Mr. McHugh said there were two Ordinances which cover the same topic and there had been no further changes since the first reading.

There being no input, the public hearing was closed.

This Ordinance will move automatically to the Third Reading.

Ordinance 16-23 Repealing Current Chapter 112 “Peddling, and Soliciting, and Distribution” and Adopting new Chapter 112 “Peddling, and Soliciting, and Distribution” (Second Reading)

Clerk Lampton read an Ordinance repealing current Chapter 112 “Peddling and Soliciting” of the City of Beavercreek Code of Ordinances and adopting new Chapter 112 “Peddling, Soliciting, and Distribution” of the City of Beavercreek Code of Ordinances.

Mr. McHugh said this was the companion Ordinance.

There being no input, the public hearing was closed.

This Ordinance will move automatically to the Third Reading.

Ordinance 16-24 Adopting New Section 76.17 “Parking of Large and Oversize Vehicles on Streets” (First Reading)

Clerk Lampton read an Ordinance adopting new section 76.17 “Parking of Large and Oversize Vehicles on Streets” of the City of Beavercreek Code of Ordinances.

Mr. McHugh explained the next three Ordinances cover large, oversized, commercial vehicles and large recreational vehicles parking on streets. He said there were exceptions provided for within the Ordinance. He said there was an issue during the work session regarding penalties and that they needed to be the

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same. He said this was updated. He said this will address the parking and storage of large vehicles on public streets.

Council Member Upton MOVED to approve Ordinance 16-24 and move to the second and third readings, seconded by Council Member Litteral. Motion PASSED by majority voice vote.

Ordinance 16-25 Repealing Current Section 70.01 "Parking of Large and Oversize Vehicles on Streets" (First Reading)

Clerk Lampton read an Ordinance repealing current Section 70.01 "Definitions" of the City of Beavercreek Code of Ordinances, and adopting new Section 70.01 "Definitions" of the City of Beavercreek Code of Ordinances.

Mr. McHugh said this is companion legislation which defines oversize commercial vehicles and large recreational vehicles.

Vice Mayor Vann confirmed if a friend was traveling across the country in a huge RV they would not be able to park on her street. Mr. McHugh said they could park for 24 hours in a seven day period.

Council Member Jarvis MOVED to approve Ordinance 16-25 and move to the second and third readings, seconded by Council Member Litteral. Motion PASSED by majority voice vote.

Ordinance 16-26 Repealing Current Section 76.99 "Penalty" and Adopting New Section 76.99 "Penalty" (First Reading)

Clerk Lampton read an Ordinance repealing current Section 76.99 "Penalty" of the City of Beavercreek Code of Ordinances, and adopting new Section 76.99 "Penalty" of the City of Beavercreek Code of Ordinances.

Mr. McHugh said this legislation addresses the fines that needed to be brought up to date.

Council Member Litteral MOVED to approve Ordinance 16-26 and move to the second and third readings, seconded by Council Member Upton. Motion PASSED by majority voice vote.

Ordinance 16-30 Additional Appropriations (Single reading)

Clerk Lampton read an Ordinance to approve supplemental appropriations for the fiscal year beginning January 1, 2016 and ending December 31, 2016 and to amend Ordinances 15-31, 16-03, 16-08, 16-10 and 16-16.

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Mr. Kucera explained the additional appropriation was for two items. The first was for the cost of legal fees based on the approved Resolution 16-22 authorizing the appointment of special legal counsel to represent the police officers in the Department of Justice investigation. The second was for the repairs to the Alpha Mill roof. Both of the expenditures will be funded through the fund balance which will remain above the 15% fund balance policy.

Council Member Litteral MOVED to approve Ordinance 16-30, seconded by Council Member Whilding. Motion PASSED by a roll call vote of 7-0

Resolution 16-26 Authorize Submittal of Funding Applications for PDAC (Dayton Region Priority Development and Advocacy Committee) Funding

Clerk Lampton read a Resolution to authorize the submittal of the Col. Glenn Highway Enhancement Project and the Grange Hall Road at I-675 Interchange Project for prioritization through the Dayton Regional Priority Development and Advocacy Committee (PDAC).

Mr. Smith explained they were looking to submit two projects to PDAC. The first project was the Grange Hall Road at I-675 Interchange to upgrade from a half interchange to a full interchange. They would be asking for an estimated \$500,000 to complete a Conceptual Alternatives Study and an Interchange Modification Study. The second project was the Colonel Glenn Highway Corridor Enhancement Project which would include sidewalks, lighting, signage, landscaping, hardscaping and site furnishings. This project is in partnership with the City of Fairborn and Wright State University with a request of an estimated \$7,316,276 to complete the project.

Council Member Upton asked there would be a need to acquire land for the I-675 project. Mr. Smith explained there were two preliminary layouts put forth years ago. He said there would be a little bit needed but the land needed may already be owned by ODOT.

Council Member Wallace MOVED to approve Resolution 16-26, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote.

Resolution 16-27 Approval of Petitions for Ohio Energy Special Improvement District

Clerk Lampton read a Resolution approving a petition, articles of incorporation and initial plan for the City of Beavercreek (Greene County), Ohio Energy Special Improvement District.

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Mr. McHugh explained the next five agenda items were related to the PACE financing. He said the bond council that attended the work session was present this evening to address questions. He said this legislation does not provide any liability to the City with respect to general obligation, put a lien on the city or impact the City's borrowing capacity. He said the payment would be the special assessments and payment would be transferred to the owners. He said the signed petition was received today which Council had before them.

David Rogers, Frost, Brown, Todd Law Firm

Mr. Rogers explained they were acting as special counsel for the owner of the Mall at Fairfield Commons. He said this was regarding a project at the Mall at Fairfield Commons to install 400,000 square feet of replacement roofing including additional insulation to increase the R-value and approximately 21 new roof top HVAC units with a total of 427 tons capacity. Mr. Rogers explained the two Resolutions and three Ordinances was the documentation required under the Ohio Revised Code, Chapter 1710 allowing a property owner requested special assessment that can be levied against a project. He explained this case would be for 15 years and the special assessment would payoff of the financing for the facilities that was just discussed. He said the financing would come from a bond issued by the Greene County Port Authority. The bond will be purchased by a single purchaser who is comfortable with making a loan just over \$3 million in order to finance these facilities over 15 years with the security being the special assessment on the Mall at Fairfield Commons. He said there was discussion at the work session regarding multiple parcels and he advised this would be only one parcel which is the Mall at Fairfield Commons minus Macys. He explained Macys owns their own store and would not be assessed.

Vice Mayor Vann asked if they would get a new roof. Mr. Rogers replied yes but would not be assessed.

Council Member Jarvis verified the amount of the loan. Mr. Rogers explained the principle amounts of the bonds was \$3 million but with the interest it would be \$4 million. Mr. McHugh added there were additional costs involved including the cost of the City receiving and handling the money and legal counsel. Council Member Jarvis referred to page seven of the petition which referred to the parcel number for the mall itself. He questioned if there was any need to mention that Macys was owned separately. Mr. Rogers replied no according to the statute.

Council Member Whilding was concerned with the Special Assessment District which is only for the levying of the assessment portion. He said they were actually building a district that would normally function as a mechanism for people to find ways to achieve financing for improvements. He said they were not creating a

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board that is in a district where people in the district can petition and provide plans meeting certain energy efficient requirements to be approved by a board. He said they were creating this board for the sole purpose of one private enterprise. He said this board would be chaired by three people from the corporation and two people from the City. He said the presentation is we created a board to give power to the corporation to control this board. He said the board has nothing that says this function is limited only to this one project and the duration finishes with this project. It's open ended that the district goes on after the project is over. The board can change the parameters of the district which means three voters from the corporation can change the parameters of the district because they have the majority. He said he disagrees with this. Council Member Whilding understood what they were trying to accomplish; the Port Authority is helping a business in the community. He said it is taxpayer money and how they get it is their business and what they do with it is their business. It is helping the mall to improve their facility even though it's not the best energy efficiency improvements. He said they need to nail this down to say it is for this one project and purpose and it closes when it is done. He said this is a risk.

Mr. Rogers explained the statute does not allow for the district to be closed for just this one site. He said Chapter 1710 states energy special improvement districts can be expanded upon the request of the additional property owners that want to be included in the district. He said there was a question at the work session for this to be an option and it is an option by the Ohio Revised Code and also an option in the plan. He said Better Buildings Northwest Ohio was run by the Toledo Lucas County Port Authority which he had worked with for 30 years. He said he was in a conversation with them about creating an energy improvement district citywide for a city in Ohio a week ago. He said the question was could they really create a citywide district to start or does it have to be just the property from the petitioner. He said the answer is it has the spirit of being a citywide district but it's just the property of the petitioner. He said the legislation for that one looks a lot like the legislation for this one because the statute is parcel by parcel. He said this is the way the statute was designed because assessments are sometimes levied against people who don't vote for assessments and don't petition for assessments. He said this is designed for only the people who get assessed are the property owners. He said today 100% of property owners are here today which is the mall but the district has to be expandable by state law. He said in addition if the City would like to work with this district or work with another district to put together a program that looks like Better Buildings Northwest Ohio or C-PACE it is possible to create a plan where you promote these kind of energy special improvements as well as alternative energy facilities which are allowed under the statute. He gave the example of solar panels and other items. He said it would be possible to be done working with special energy improvement district or creating another one that

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would be available to everyone else. He explained the way it is working is capitalism at its most normal which is the property owner wants to pay and they are not asking anybody else to pay which it is why it is only one property owner creating only one special energy improvement district.

Council Member Whilding said he understood and they were doing what it asked. He said the Port Authority was asking the City to create this district but we give you all the power in that district because the board maintains your majority. He said another concern is DP&L is nowhere in the discussion. He understood it as you establish this board and those in the area can present the plans for improvement.

Council Member Wallace agreed with Council Member Whilding and questioned why the format of the board couldn't be changed so that it was not dominated by the petitioner.

Vice Mayor Vann said the mall, which is an asset to the community, was creative enough to seek outside expertise to solve the problem of replacing a 20 year old roof. She said because of past grants that have been put together to provide energy assistance through the Port Authority, they can tap into this and solve their problem for the roof. She said for Council to jeopardize whether or not they can use this financing tool is crazy. She said if Beaver Creek wants to have an economic development program and we want to assign staff to put together a PACE program to allow all businesses in Beaver Creek to use this reduced interest money for energy improvements, they could establish that project. She said that is not the project before them today. She said today the Mall at Fairfield Commons has a problem and have resourcefully figured out how to solve it by doing it this way. Vice Mayor Vann felt they needed to move forward and do it.

Mayor Stone asked Mr. Rogers if the board could be modified. Mr. Rogers replied yes and explained the statute required there be a minimum of five members in which the mayor and another member appointed by the city be members. He explained in prior financing what happens is there is a set of minutes they prepare at the initial meeting required by the statute as the board has to approve the energy improvement district and is then required to meet once per year. He said you can change the board but there will be literally nothing do discuss with the single asset in the future. He said if this is done for just this project you can change the board but there will be nothing that will happen in the meetings that is of substance.

Mayor Stone asked how long the board would be in existence. Mr. Rogers replied it would be in existence for the term of the assessment. He explained the money in question was not the Port Authority's and are not requesting the creation of the

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ESID (Energy Special Improvement District); the property owners are requesting the creation of the ESID. He said you can do a PACE deal without a Port Authority. He said the Port is being an accommodating party participating because they know that is a common way to get it done. He said PACE loans can come directly from a bank. He said the Port Authority is not in control and not appointing anybody to the board.

Mayor Stone questioned what the board would do. Mr. Rogers replied the board meets when the financing closes and then will meet once per year and file a several sentence report with the State of Ohio saying they are in existence and the energy efficiency improvements are still on the roof. Mayor Stone asked if the board decided what improvements were to be done. Mr. Rogers said the board would not decide unless Council modified the Articles of Incorporation of the board.

Council Member Whilding confirmed the board would have to approve the plan as written with three-quarters of the board members of the corporation.

Mayor Stone said the board can be modified but did not want to go above five members. He said they could have somebody from the County as one of three and two from the developer. He said that would address this issue.

Council Member Wallace was concerned if the mall had talked with DP&L or any new age energy people to see what's out there. Mr. Rogers said this was a real estate investment trust called Washington Prime which is a combination of a west coast real estate investment trust, Simon Properties and Glimcher Real Estate Investment and have looked at this facility and decided this was the best approach.

Council Member Litteral said this is a collaboration and the mall is extremely important to our city and it is a destination. She appreciated the energy efforts and keeping the mall current and in good condition. She like all the aspects of this but thought it would be good to have different people on the board.

Council Member Upton asked when the term of the 15 year loan was completed if the district would be dissolved. Mr. Rogers said the district would not automatically dissolve but normally there would be no reason for it to continue to exist at the end of the term.

Council Member Wallace asked to have a member of the board be from the Greene County Port Authority. Mr. McHugh clarified the Mayor would be one member and the Council would appoint two members which would most likely be a staff member and possibly a member of the Port Authority and two members from the petitioners.

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Council Member Whilding asked for clarification of the process. Mr. Rogers explained a property owners asks the city to levy an assessment, create an energy special improvement district and adopt the five pieces of legislation. After all that has been adopted the special assessment would be in place along with approval of a cooperative agreement which includes the Port's representative (the bond trustee) and the Port Authority. He explained if it was a different lender it would part of the contract that is approved in Ordinance 16-29. He said this time it's the Port Authority and they are officially the lender because they are issuing bonds which are being bought by a Connecticut investment firm.

Mr. McHugh explained there were some blanks in the Ordinance to appoint a staff member to the board plus appoint another. Mr. Rogers suggested to approve the Resolutions at the second readings of the Ordinances. Mr. McHugh suggested Council motion to table the two Resolutions to the next meeting. He explained this would allow revisions to section two regarding the members of the board.

Vice Mayor Vann MOVED to table Resolution 16-27 to the next Regular Council Meeting, seconded by Council Member Jarvis. Motion PASSED by majority voice vote.

Resolution 16-28 Declaring the Necessity of Certain Public Improvements

Clerk Lampton read a Resolution declaring the necessity of acquiring and constructing certain public improvements in cooperation with the City of Beavercreek (Greene County), Ohio Energy Special Improvement District and the Greene County Port Authority.

Vice Mayor Vann MOVED to table Resolution 16-27 to the next Regular Council Meeting, seconded by Council Member Litteral. Motion PASSED by majority voice vote.

Ordinance 16-27 Determining to Proceed with Acquisition, Construction and Improvement of Certain Public Improvements (First Reading)

Clerk Lampton read an Ordinance determining to proceed with the acquisition, construction and improvement of certain public improvements in cooperation with the City of Beavercreek (Greene County), Ohio Energy Special Improvement District and the Greene County Port Authority and declaring an emergency.

Mr. McHugh explained this would not be adopted tonight as an emergency. He said it would have the first, second and third readings with the legislation being adopted on the third reading as an emergency.

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Council Member Jarvis questioned the amount of \$2.7 million. Mr. Rogers said that was the hard cost of the improvement which was listed as items one, two and three on the last page of exhibit D of the petition.

Council Member Whilding questioned the need for the emergency on the third reading. Mr. Rogers explained the property owner and the lender would like to close the loan this year and start the project as quickly as possible. He said if this what not done as an emergency it was unlikely the loan will close between Christmas and New Year's. Council Member Whilding asked upon what approval of what legislation was the board established. Mr. Rogers said the Resolution appointing the board members. Council Member Whilding was concerned of the community filing a referendum before the board was approved.

Vice Mayor Vann MOVED to approve Ordinance 16-27 and move to the second and third readings, seconded by Council Member Wallace. Motion PASSED by majority voice vote. (Against – Whilding)

Ordinance 16-28 Levying Special Assessments for the Purpose of Acquiring, Constructing and Improving Certain Public Improvements (First Reading)

Clerk Lampton read an Ordinance levying special assessments for the purpose of acquiring, constructing and improving certain public improvements in cooperation with the City of Beavercreek, (Greene County), Ohio Energy Special Improvement District and the Greene County Port Authority and declaring an emergency.

Council Member Wallace MOVED to approve Ordinance 16-28 and move to the second and third readings, seconded by Council Member Jarvis. Motion PASSED by majority voice vote.

Ordinance 16-29 Authorize City's Participation in Financing Special Energy Improvement Projects (First Reading)

Clerk Lampton read an Ordinance authorizing the City's participation in financing special energy improvement projects in cooperation with the Port Authority; authorizing the execution of documents to effectuate such financing; and declaring an emergency.

Council Member Litteral MOVED to approve Ordinance 16-29 and move to the second and third readings, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote.

CITY MANAGER'S REPORT

Mr. Cornell reviewed the promotions of two police officers. Beggars' night would be Monday, October 31st from 6:00 – 8:00 p.m. The sixth annual Snow Day would

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be held November 10th at the Municipal Maintenance Facility from 10:00 a.m. – 12:00 p.m. The Veterans Day Ceremony would be Friday, November 11th at the Veteran's Memorial at 2:00 p.m. The Budget Work Sessions will be held on November 16th and November 21st at 5:00 p.m.

MAYOR'S REPORT

Mayor Stone said there was a book collection to benefit the schools in New Orleans due to the flooding. He said the Chamber of Commerce is a drop off point. Information is posted on the website regarding the collection.

COUNCIL TIME

Council Member Litteral congratulated the police promotions. She hoped they would meet the new canine at some point.

Council Member Upton said there would be a candidates and issues forum on Tuesday at the Senior Center at 4:00 p.m. which was being hosted by the Beavercreek Youth Council. He said this would be the last public forum before the election. He said he would speaking about Issue 1 which create a direct election of mayor.

Council Member Wallace said she would speak at the forum on the opposition of Issue 1. She said there would be a community meet and greet on Tuesday from 7:00 – 8:30 p.m. in the Council Chamber to interview the four final candidates for city manager.

Vice Mayor Vann said she and the Mayor attended the Human 2.0 Wellness Festival held in Beavercreek.

Council Member Whilding asked to watch for the children on Halloween. He read an article from the paper regarding Council Member Litteral and her staff being recognized by the American Correctional Association for the successful completion of the reaccreditation process. He congratulated her and her staff.

CITIZEN COMMENTS

James Gaw, 721 Woodspring Court, Beavercreek, Ohio

Mr. Gaw questioned the process of snow removal on cul-de-sacs. He said the plows pile the snow up in his yard in one spot. He said he would like an answer. Mr. Cornell invited Mr. Gaw to the snow day to talk with staff. Mr. Gaw asked what the procedure was. Mr. Cornell said it is contracted out but there were exceptions to this depending on the levels of snow and the size of the storms.

Citizen comments was closed.

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EXECUTIVE SESSION

Council Member Jarvis MOVED to enter into Executive Session at 8:00 p.m. pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of the appointment or employment of a public employee or official and conference with city attorney concerning disputes involving the City that are subject to pending or imminent court action, seconded by Council Member Wallace . Motion PASSED by a roll call vote of 7-0.

Council Member Wallace MOVED to adjourn executive session at 9:15 p.m., seconded by Council Member Whilding . Motion was PASSED by roll call vote of 7-0.

Council Member Whilding MOVED to reconvene the meeting, seconded by Council Member Upton . Motion PASSED by majority voice vote.

ADJOURNMENT

Council Member Upton MOVED to adjourn the meeting at 9:16 p.m., seconded by Council Member Wallace. Motion PASSED by majority voice vote.

Bob Stone, Mayor

ATTEST:

Dianne Lampton
Clerk of Council
Cmin102416

BEAVERCREEK CITY COUNCIL
SPECIAL MEETING, October 26, 2016, 8:50 a.m.

CALL TO ORDER

Mayor Stone called the meeting to order followed by roll call.

PRESENT: Council Member Jarvis, Council Member Litteral, Council Member Upton,
Council Member Whilding, Vice Mayor Vann

ABSENT: None,

TARDY: Council Member Jarvis, Vice Mayor Vann

APPROVAL OF AGENDA

Council Member Upton MOVED to approve the agenda, seconded by Council Member Wallace. Motion PASSED by majority voice vote.

Council Member Jarvis arrived at 8:51 a.m.

Vice Mayor Vann arrived at 8:55 a.m.

EXECUTIVE SESSION

Vice Mayor Vann MOVED to enter into Executive Session at 9:00 a.m. pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of the appointment or employment of a public employee or official, seconded by Council Member Jarvis . Motion PASSED by a roll call vote of 7-0.

Council Member Whilding MOVED to adjourn executive session at 7:00 p.m., seconded by Council Member Upton . Motion was PASSED by roll call vote of 7-0.

Council Member Whilding MOVED to reconvene the meeting, seconded by Council Member Wallace . Motion PASSED by majority voice vote.

ADJOURNMENT

Council Member Upton MOVED to adjourn at 7:01 p.m., seconded by Council Member Whilding. Motion PASSED by majority voice vote.

Bob Stone, Mayor

ATTEST:

Dianne Lampton
Clerk of Council

ORDINANCE NO. 16-22
CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER JARVIS ON THE 10TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT SECTION 132.13
“PANHANDLING” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES, AND ADOPTING NEW SECTION 132.13
“PANHANDLING” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES.**

WHEREAS, Section 132.13 of the City of Beavercreek Code of Ordinances sets forth the regulations regarding panhandling within the City of Beavercreek; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 132.13 of the City of Beavercreek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current Section 132.13 “PANHANDLING” of the City of Beavercreek Code of Ordinances is hereby repealed, and new section 132.13 “PANHANDLING” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 132.13 "PANHANDLING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 132.13 "PANHANDLING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

EXHIBIT A

§ 132.13 PANHANDLING.

(A) *Definitions.* Whenever the following words are used in this section, they shall have the following meanings, unless otherwise provided:

AGGRESSIVE MANNER. Shall mean as follows:

(1) Before, during, or after attempting to engage in panhandling, any behavior that would cause a reasonable person to feel alarmed, intimidated, threatened, restrained, menaced, harassed, or coerced including but not limited to the use of any verbal threats, threatening gestures, abusive language, obscene gestures or obscene language, or screaming and other unreasonable noises;

(2) Before, during, or after attempting to engage in panhandling, blocking the passage of any person or vehicle that impedes the entrance into, or the exit out, of any vehicle, building, business, or establishment, or impedes the person's activities in the vehicle, building, business, or establishment;

(3) Any further attempt to ~~solicit for panhandling~~ **panhandle** after a person has given a negative response, verbally or physically, ~~to a solicitation for panhandling~~ that such **panhandling solicitation** should stop, or that it is unwelcome or offensive;

(4) Before, during, or after attempting to engage in panhandling, having any physical contact with the person that is being ~~solicited~~ **panhandled** by the person panhandling and/or touching or having physical contact with the clothing, purse, or other personal property of the person being ~~solicited~~ **panhandled** by the person panhandling without a statement or other communication that the person ~~being solicited~~ consents to the physical contact and/or touching of the person and/or the person's clothing, purse, or other personal property;

(5) Before, during, or after attempting to engage in panhandling, following behind, ahead, or alongside the person that is being **panhandled** ~~solicited~~;

(6) Any further attempt to ~~solicit for panhandling~~ **panhandle** after the owner or occupant of private property requests that the person cease all ~~solicitation for~~ panhandling, or upon the request of the owner or occupant of the private property for the person panhandling to leave the property;

(7) Any type of panhandling which interferes or disrupts any activity or event occurring on public property, as defined in this section;

(8) By coming within three feet of the person ~~solicited~~ **being panhandled** after that person has indicated that he or she does not wish to make a donation;

(9) By following a person who walks or drives away from the ~~panhandler~~ **panhandler**;

(10) By making unreasonable noise or offensively coarse utterance, gesture, or display or communicating unwarranted or grossly abusive language, either during the ~~solicitation~~ **panhandling** or following a refusal; or

(11) By panhandling in a group of two or more persons.

AUTOMATED-TELLER MACHINE. A bank or other financial institution's machine that is able to carry out financial transactions, including, but not limited to cash withdrawals, deposits, transfers, and other financial transactions or inquiries.

FALSE OR MISLEADING REPRESENTATIONS. Shall mean as follows:

(1) Making statements or representing, either verbally or in writing, that the person panhandling suffers from a medical condition, mental or physical disability, or deformity when the person does not suffer from a medical condition, mental or physical disability, or deformity;

(2) Making statements or representing, either verbally or in writing, that the person panhandling has a minor child or other family member they are supporting who suffers from a medical condition, mental or physical disability, or deformity, when in fact that child or other family member does not suffer from a medical condition, mental or physical disability, or deformity and/or the person panhandling does not support that minor child or other family member;

(3) Making statements or representing, either verbally or in writing, that the person panhandling is a military veteran or active duty military member, when the person is not a military veteran or active duty military member;

(4) Making statements or representing, either verbally or in writing, that the person panhandling needs a donation to meet a specific need, when the person panhandling does not have the specific need and/or that person already has sufficient funds to meet that need and does not disclose that the person already has sufficient funds;

(5) Making statements or representing, either verbally or in writing, that the person panhandling is unemployed when the person panhandling is not unemployed; or

(6) Making statements or representing, either verbally or in writing, that the person panhandling is homeless and/or is stranded when in fact the person is not homeless or stranded.

PANHANDLING. To request verbally, in writing, or by gesture or other actions, money, items of value, a donation, or other ~~personal~~ financial assistance **for the requestor's personal use**. ~~Further, panhandling shall include any request for a person to purchase an item for an amount that a reasonable person would consider to be in excess of its value.~~

PUBLIC PROPERTY. All property owned, controlled, or operated by any governmental entity, including but not limited to governmental offices or facilities, public streets, publicly owned parking lots, schools, libraries, post offices, transit facilities, and other public lands, parks, buildings, or grounds.

RIGHT-OF-WAY. Shall have the same meaning as in R.C. § 4511.01 (UU).

(B) *Panhandling restrictions and prohibitions.* No person shall ~~solicit for panhandling~~ **panhandle** in any of the following manners:

(1) In any type of aggressive manner as defined in division (A) of this section.

(2) On any private property in which there is any type of written notice prohibiting solicitation and/or panhandling;

(3) On any other private property, unless the person panhandling has obtained prior permission from the owner or occupant;

(4) From any operator or occupant of a motor vehicle or from any person entering or exiting a motor vehicle;

(5) Within 20 feet of any pedestrians waiting in line for service or waiting in line for an event;

(6) Within 20 feet of any pedestrians waiting in line to obtain access to a building;

(7) Within 20 feet of any entrance or exit of the building for any check cashing business, bank, credit union, or savings and loan during the hours of operation of any of these businesses;

(8) Within 20 feet of any automated-teller machine, as defined in division (A) of this section during its hours of operation;

(9) At any bus stops or bus shelters;

(10) In any vehicle within the right-of-way as defined in division (A) of this section;

(11) In any public transportation vehicle or any public transportation facility;

(12) Within 20 feet of the area of the sidewalk;

(13) Within 20 feet of the entrance or exit of any public facility;

(14) On public property within 20 feet of an entrance to a building;

(15) On public property within 20 feet of an entrance to a parking lot; or

(16) On a public street, by intentionally or recklessly blocking the safe or free passage of a person or vehicle.

(17) In any manner which involves the use of false or misleading representations as defined in division (A) of this section.

(C) *Panhandling by minors.* No parent, guardian, or other custodian of a minor child shall allow or cause, or direct a minor to engage in panhandling. Further, no other adult shall cause a minor to panhandle:

~~(D) *Exclusion.* Panhandling shall not include solicitations made for money or a donation by a charitable or civic organization which does so with the prior permission of the owner or occupant of the premise.~~

~~(DE) *Penalty.* Whoever violates this section is guilty of panhandling, a misdemeanor of the fourth degree. Whoever violates this section three times or more within one year is guilty of a third degree misdemeanor.~~

ORDINANCE NO. 16-23

CITY OF BEAVERCREEK

SPONSORED BY VICE MAYOR VANN ON THE 10TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT CHAPTER 112
“PEDDLING AND SOLICITING” OF THE CITY OF BEAVERCREEK
CODE OF ORDINANCES, AND ADOPTING NEW CHAPTER 112
“PEDDLING, SOLICITING, AND DISTRIBUTION” OF THE CITY
OF BEAVERCREEK CODE OF ORDINANCES.**

WHEREAS, Chapter 112 of the City of Beaver creek Code of Ordinances sets forth the regulations regarding peddling, soliciting, and distribution within the City of Beaver creek; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Chapter 112 of the City of Beaver creek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current Chapter 112 “PEDDLING AND SOLICITING” of the City of Beaver creek Code of Ordinances is hereby repealed, and new Chapter 112 “PEDDLING, SOLICITING, AND DISTRIBUTION” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT CHAPTER 112 "PEDDLING AND SOLICITING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW CHAPTER 112 "PEDDLING, SOLICITING, AND DISTRIBUTION" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

Exhibit A

CHAPTER 112: PEDDLING, ~~AND~~ SOLICITING, AND DISTRIBUTION

§ 112.01 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

~~HAWKER, OR PEDDLER OR SOLICITOR.~~ Any person who travels from house to house or place to place, or who on the streets or open places, or on public grounds or places, sells or offers for sale, or exposes for sale, any goods, wares or merchandise to any person not a dealer therein, or who takes orders for the purchase of any such items by sample, lists catalogue, or subscription. All ~~two~~ ~~three~~ terms shall be referred to herein as **PEDDLERSOLICITOR.**

§ 112.02 LICENSE REQUIRED.

~~Soliciting~~ **Peddling** within the city shall be permitted if the **peddler** ~~solicitor~~ obtains a license from the city in the manner hereinafter directed.

§ 112.03 EXEMPTIONS.

This chapter shall not apply:

- (A) Where items are agricultural produce sold by the individual from his/her own farm;
- (B) To selling of newspapers;
- (C) To ~~solicitation~~ **peddling** activities of or sponsored by the city or educational institutions (i.e. Boy Scouts, Girl Scouts, band associations, PTA groups, youth sporting groups, etc.);
- (D) Where the items sold or presented are the result of an invitation by the individual home owner.

Statutory reference:

Local license power, exceptions, see R.C. § 715.63

§ 112.04 APPLICATION.

Any person desirous of obtaining a license as a **peddlersolicitor** or as a helper or assistant thereto, shall apply to the city upon proper blanks to be furnished by the city and sworn to before a notary public or other officer authorized by law to take oaths, and signed by such applicant, stating in what manner he/**she** intends to travel and trade or to conduct business, his/**her** address, and, if employed, the name and address of his/**her** employer, the applicant's physical description, the name and class of the license desired, a statement as to previous convictions for violations of the law, and two true photographs of the applicant. Such applicant shall pay to the city the amount hereinafter set forth.

§ 112.05 FEES.

Licenses issued for peddlers, ~~and hawkers and solicitors~~ shall be charged and paid for according to the following rates:

(A) If a person intends to travel on foot, \$5 per day for the first day, \$3 for each succeeding day, or \$15 for one year. An annual \$5 renewal fee is required if the license is extended by the same licensee for more than one year.

(B) If the person intends to use a hand or push car, \$5 per day for the first day, \$3 for each succeeding day, or \$15 for one year. An annual \$5 renewal fee is required if the license is extended by the same licensee for more than one year.

(C) If the person intends to use a vehicle drawn by animals or a mechanically propelled vehicle, \$20 per year, or any part thereof, per vehicle. Use of private vehicle exempted from this division if not used to sell products from within vehicle. (In this instance division (B) above applies only.)

(D) For helpers or assistants to those who use vehicles, \$5 per year.

(E) Persons selling or taking subscriptions for papers, books, magazines pertaining to religion or politics purposes are excluded from a license fee, but shall register pursuant to the conditions of this chapter.

§ 112.06 ISSUANCE OF LICENSES.

The city is required to issue licenses to those who have complied with the provisions of this chapter, and the license granted hereunder shall be in such form as to contain a true photograph of the licensee, his/**her** name, address, physical description and the name of the class of his/**her** license as designated in § 112.05. All licensees shall carry the license described above with them at all times while peddling. No licensee shall change, remove or obliterate any entry made on such license.

§ 112.07 HOURS, DAYS FOR SOLICITATION PEDDLING.

No licensee shall commence ~~soliciting~~ **peddling** before 9:00 a.m. and shall cease ~~soliciting~~ **peddling** no later than 9:00 p.m., Monday through Saturday, except in the case where a prearranged appointment has been made in agreement with the party being ~~peddled~~ **solicited**. No ~~solicitations~~ **peddling** shall be made occur on Sunday.

§ 112.08 RECORDS OF LICENSES.

A full, complete record of each license issued hereunder, including renewals, suspensions or revocations thereof, and serious complaints and charges against the licensee together with his/**her** photograph, shall be kept on file by the city.

§ 112.09 USE OF PEDDLER'S VEHICLE.

The vehicles used by licensed ~~solicitors~~ **peddlers**, when engaged in their licensed business on the streets or public places of the city, must be kept in motion, except when making sales, and their movements must be timed and executed so as to cause minimum interference with traffic.

Such vehicle shall not occupy any street or any public park or place in the city as a temporary or permanent vendor's stand. No more than two persons shall sell or operate on or in connection with any ~~seller~~**peddler's** wagon or truck. The owner or person in charge of such vehicle shall have a ~~seller~~**peddler's** license, as provided in this chapter.

§ 112.10 SELLER OF FOODSTUFFS.

(A) No license, under this chapter, shall be issued to anyone who sells or expects to sell foodstuffs, unless he/**she** shall have a permit from the Health Officer, and all meats shall be government inspected and refrigerated and properly labeled. Before issuing such permit, the Health Officer may require under oath, if desired, such information regarding the moral and physical fitness and the identification of the applicant, the kind, condition, ownership and place of storage of the vehicle used in peddling, the nature and scope of his/**her** business and such other similar information as he/**she** may deem necessary to protect the general welfare and health of the public. If, in securing such information, the knowledge of certain facts obtained shall make it seem that the applicant for a license under this chapter should not be granted such license, then a full report on the case shall be made to council for its consideration and disposition before a license is issued.

(B) All vehicles used in the sale of foodstuffs must be kept clean and in a sanitary condition at all times, and when containing loads or parts of loads of food products, they must be kept only in places which, in the opinion of the Health Officer, are sanitary and wholesome.

(C) The Health Officer shall have the authority to order, through notices mailed or delivered to the licensees or by publication, that food products which are not cooked or washed before eating, or which are not protected by a natural covering which is removed before eating, shall be covered or carried in a closed receptacle of approved kind so as to protect them from exposure to dust and insects, and it shall be the duty of all licensees, when so ordered, to comply with the provisions of this section.

§ 112.11 SUSPENSION OR REVOCATION OF LICENSE.

The City Manager shall have the power to suspend any license issued hereunder for violation of a city ordinance or any condition or regulation under which a license was granted, or for undesirable business practices. Such suspension may be accomplished summarily upon a sworn affidavit filed with the City Manager setting forth grounds for such suspension. The City Manager shall report all suspensions to Council, which may, for cause shown, revoke or reinstate the license after giving the licensee reasonable notice and an opportunity to be heard. No person whose license has been revoked shall receive another license for a period of one year thereafter. In the event of revocation, the license fee shall not be refunded.

§ 112.12 EXPIRATION DATES OF LICENSES.

All licenses issued for ~~seller~~**peddlers** shall expire on December 31, unless a prior date is fixed therein.

§ 112.13 NOISE PROHIBITIONS.

Any person who travels from house to house, or from place to place, whether doing so on foot or otherwise, or who on the streets, or public grounds or places, sells, or offers, or exposes for

sale, any goods, wares, merchandise, foodstuffs, confections or refreshments to any person not a dealer therein, shall not make, or cause, permit or allow to be made, any noise of any kind by personal outcry from any person or by the use of horns, bells or any other mechanical or electrical contrivance or device for the purpose of advertising such goods, for attracting attention to such person and his/**her** wares and to notify his/**her** presence in the vicinity as a seller of wares, when within 200 feet of any public, parochial or private school during the regular hours of operation thereof and when any of such schools are in operation with children or pupils in attendance. When in other areas of the city, no such person shall make, cause, permit or allow to be made, any loud, unusual or unnecessary noise in any manner or way so as to be annoying and disturbing to the inhabitants of the city, and in no event after 9:00 p.m.

§ 112.14 DEFINITIONS FOR SOLICITING.

(A) The terms “solicit” or “soliciting” mean “the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or any other item of value.”

(B) The term “distribution” means “an exchange or an attempt to exchange a physical item between two or more individuals.”

§ 112.15 PLACE OF SOLICITING.

No person shall solicit another person in any of the following places:

- (1) In any public transportation vehicle or facility;**
- (2) In or at any sports stadium owned or operated by a political subdivision;**
- (3) In or at any hall or theater owned or operated by a political subdivision;**
- (4) On private property, after an owner, lessee, resident, or agent thereof has given notice to the solicitor that he or she is not permitted to solicit on that property.**

§ 112.16 FALSE OR MISLEADING DISTRIBUTION

(A) No person who is engaging in or attempting to engage in distribution shall knowingly make a false or misleading statement or representation with the purpose to defraud or knowing that the person is facilitating a fraud.

(B) Words or phrases used in this section that are not otherwise defined in this Chapter shall have the same meanings as defined in Chapter 2913 of the Ohio Revised Code.

§ 112.17 DISTRIBUTION IN A RIGHT-OF-WAY.

(A) No person shall engage in distribution with the occupant of a vehicle in a right-of-way unless such vehicle is lawfully stopped, standing, or parked in compliance with Chapter 4511 of the Ohio Revised Code and Title VII of the Code of Ordinances.

(B) No person who is within a right-of-way shall engage in distribution with the occupant of a vehicle stopped in a right-of-way in obedience to a traffic control signal. However, a person may engage in distribution with the occupant of a vehicle in the right-of-way so long as he or she remains on the surrounding sidewalks or unpaved shoulders and not in or on the right-of-way itself, including any medians or traffic islands within the right-of-way.

(C) For the purpose of this section, the terms “stop,” “stand,” and “park” shall have the same meanings as defined in section 70.01 of the Code of Ordinances.

(D) All other words or phrases used in this section that are not otherwise defined in this Chapter shall have the same meanings as defined in Section 4511.01 of the Ohio Revised Code.

§ 112.18 AGGRESSIVE DISTRIBUTION.

No person shall engage or attempt to engage in distribution in the following manners:

- (1) By knowingly touching or grabbing another person without that person’s consent.**
- (2) By knowingly following another person or continuing to engage or attempt to engage in distribution with that person after that person has made an affirmative communication that he or she is unwilling or unable to engage in distribution.**
- (3) By knowingly approaching within three feet of another person and continuing to engage or attempt to engage in distribution with that person after he or she has made an affirmative communication that her or she is unwilling or unable to engage in distribution.**

§ 112.19 ATM PRIVACY.

No person shall knowingly approach within three feet of any person who is actively using an automated teller machine without that person’s consent.

§ 112.99 PENALTY.

Whoever violates any provision of this chapter shall be deemed guilty of a fourth degree misdemeanor and shall be fined not more than \$250 and imprisoned not more than 30 days or both. Each additional violation within 12 months shall constitute a third degree misdemeanor subject to a fine not to exceed \$500 and imprisoned not more than 60 days, or both. Each day's continued violation shall constitute a separate offense.

ORDINANCE NO. 16-24

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER UPTON ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE ADOPTING NEW SECTION 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES.

WHEREAS, the City Council has determined that it would be in the best interest of the City to adopt a new Section 76.17 in Chapter 76 "Parking Regulations" of the City of Beaver Creek Code of Ordinances.

NOW, THEREFORE, THE CITY OF BEAVERCREEK, COUNTY OF GREENE, OHIO, HEREBY ORDAINS:

SECTION I.

New Section 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREET" is hereby enacted as follows.

§ 76.17 PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS.

(a) It shall be unlawful for the driver, owner or operator of an oversized commercial vehicle to park or permit to be parked, stand or remain motionless:

(1) On a public street, including right-of-way, in any area zoned residential under the comprehensive zoning ordinance or used for residential purposes unless the vehicle is being actively loaded or unloaded; or

(2) For more than two hours on a public street, including right-of-way, in any area not zoned residential under the comprehensive zoning ordinance or not used for residential purposes.

(b) It shall be unlawful for the driver, owner or operator of a large recreational vehicle to park or permit to be parked, stand or remain motionless:

(1) On a public street, including right-of-way, in any area zoned residential under the comprehensive zoning ordinance or used for residential purposes; or

(2) On a public street, including right-of-way, in any area not zoned residential under the comprehensive zoning ordinance or not used for residential purposes.

(c) It is an exception to subsection (a) that the oversized commercial vehicle is being parked or allowed to be parked for use at an active construction site for no more than 15 hours in any 24-hour period.

(d) It is an exception to subsection (b)(1) above that the large recreational vehicle is being parked or allowed to be parked, stand or remain motionless for loading, unloading, maintenance, or any combination thereof, for no more than 24 hours in any seven-day period. Relocation of the large recreational vehicle to a location on private property, as long as compliant with the Zoning Code, stops the running of the 24-hour period. Relocation of the large recreational vehicle to an adjoining public street does not stop the running of the 24-hour period.

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE ADOPTS NEW SECTION 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

ORDINANCE NO. 16-25

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER JARVIS ON THE 24TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT SECTION 70.01
“DEFINITIONS” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES, AND ADOPTING NEW SECTION 70.01
“DEFINITIONS” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES.**

WHEREAS, Section 70.01 of the City of Beavercreek Code of Ordinances sets forth the definitions for Title VII, Traffic Code of the City of Beavercreek Code of Ordinances; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 70.01 of the City of Beavercreek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current section 70.01 “DEFINITIONS” of the City of Beavercreek Code of Ordinances is hereby repealed, and new section 70.01 “DEFINITIONS” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold**.

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 70.01 "DEFINITIONS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 70.01 "DEFINITIONS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

EXHIBIT A

§ 70.01 DEFINITIONS.

(A) Except as otherwise provided, the definitions set forth in R.C. § 4501.01 shall apply to this Title, Chapter 90, and the penal laws of the municipality.

(B) For the purpose of this Title and Chapter 90, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL TRACTOR. Every self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

ALLEY. A street or highway intended to provide access to the rear or side of lots or buildings in urban districts, and not intended for the purpose of through vehicular traffic, and any street or highway that has been declared an **ALLEY** by the Legislative Authority of the municipality in which the street or highway is located.

ARTERIAL STREET. Any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

BEACON. A highway traffic signal with one or more signal sections that operate in a flashing mode.

BICYCLE. Every device, other than a device that is designed solely for use as a play vehicle by a child, that is propelled solely by human power upon which a person may ride, and that has two or more wheels, any of which is more than 14 inches in diameter.

BUS. Every motor vehicle designed for carrying more than nine passengers, and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

BUSINESS DISTRICT. The territory fronting upon a street or highway, including the street or highway, between successive intersections within the municipality, where 50% or more of the frontage between successive intersections is occupied by buildings in use for business, or within or outside the municipality where 50% or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of the territory is indicated by official traffic-control devices.

CHAUFFEURED LIMOUSINE. A motor vehicle that is designed to carry nine or fewer passengers and is operated for hire pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine. **CHAUFFEURED LIMOUSINE** does not include any vehicle that is used exclusively in the business of funeral directing. (R.C. § 4501.01(LL))

CHILD DAY-CARE CENTER and **TYPE A FAMILY DAY-CARE HOME**. These terms shall have the same meanings as set forth in R.C. § 5104.01.

COMMERCIAL VEHICLE.

(1) A vehicle designed or used primarily to transport property. The term includes a passenger car reconstructed and used primarily for delivery purposes; or

(2) A vehicle displaying the registrant's name, business name, business logo or other contact information affixed on the vehicle.

COMMERCIAL TRACTOR. Every motor vehicle having motive power designed or used for drawing other vehicles, and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of the other vehicles, or the load thereon, or both.

CONTROLLED-ACCESS HIGHWAY. Every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at certain points only and in a manner as may be determined by the public authority having jurisdiction over the street or highway.

CROSSWALK.

(a) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(c) Notwithstanding the foregoing provisions of this definition, there shall not be a crosswalk where the Legislative Authority has placed signs indicating no crossing.

DRIVER or **OPERATOR.** Any person who drives or is in actual physical control of a vehicle.

EMERGENCY VEHICLE. Emergency vehicles of municipal, township or county departments or public utility corporations, when identified as such as required by law, the Director of Public Safety, or local authorities, and motor vehicles when commandeered by a police officer.

EXPLOSIVES. Any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases, such that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in limited quantities of such nature or in such packing that it is impossible to procure a simultaneous or a destructive explosion of the units, to the injury of life, limb, or property by fire, friction,

concussion, percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

EXPRESSWAY. A divided arterial highway for through traffic with full or partial control of access with an excess of 50% of all crossroads separated in grade.

FLAMMABLE LIQUID. Any liquid which has a flash point of 70°F or less, as determined by a tagliabue or equivalent closed cup test device.

FREEWAY. A divided multi-lane highway for through traffic with crossroads separated in grade and with full control of access.

FUNERAL ESCORT VEHICLE. Any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

GROSS WEIGHT. The weight of a vehicle plus the weight of any load thereon.

HIGHWAY MAINTENANCE VEHICLE. A vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities.

HIGHWAY TRAFFIC SIGNAL. A power-operated traffic control device by which traffic is warned or directed to take some specific action. The term does not include a power-operated sign, steadily illuminated pavement marker, warning light, or steady burning electric lamp.

HYBRID BEACON. A type of beacon that is intentionally placed in a dark mode between periods of operation where no indications are displayed and, when in operation, displays both steady and flashing traffic control signal indications.

INTERSECTION.

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come into conflict. The junction of an alley or driveway with a roadway or highway does not constitute an intersection unless the roadway or highway at the junction is controlled by a traffic control device.

(b) If a highway includes two roadways that are 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway constitutes a separate intersection. If both intersecting highways include two roadways 30 feet or more apart, then every crossing of any two roadways of such highways constitutes a separate intersection.

(c) At a location controlled by a traffic control signal, regardless of the distance between the separate intersections as described in division (b) of this definition:

1. If a stop line, yield line, or crosswalk has not been designated on the roadway within the median between the separate intersections, the two intersections and the roadway and median constitute one intersection.

2. Where a stop line, yield line, or crosswalk line is designated on the roadway on the intersection approach, the area within the crosswalk and any area beyond the designated stop line or yield line constitute part of the intersection.

3. Where a crosswalk is designated on a roadway on the departure from the intersection, the intersection includes the area that extends to the far side of the crosswalk.

LANED HIGHWAY. A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

LARGE RECREATIONAL VEHICLE.

- (1) **A recreational vehicle which exceeds 20 feet in length;**
- (2) **A boat trailer or other trailer which exceeds 20 feet in length; or**
- (3) **A converted or partially converted bus which exceeds 20 feet in length.**

LOCAL AUTHORITIES. Every county, municipal, and other local board or body having authority to adopt police regulations under the Constitution and laws of this state.

MEDIAN. The area between two roadways of a divided highway, measured from edge of traveled way to edge of traveled way, but excluding turn lanes. The width of a median may be different between intersections, between interchanges, and at opposite approaches of the same intersection.

MOTOR VEHICLE. Every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes and other equipment used in construction work, and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

MOTORCYCLE. Every motor vehicle, other than a tractor, having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," "cab-enclosed motorcycle", or "motorcycle" without regard to weight or brake horsepower.

MOTORIZED BICYCLE or MOPED. Any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that may be pedaled, and that is equipped with a helper motor of not more than 50 cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of not greater than 20 miles per hour on a level surface.

MOTORIZED WHEELCHAIR. Any self-propelled vehicle designed for, and used by, a person with a disability and that is incapable of a speed in excess of eight miles per hour.

MULTI-WHEEL AGRICULTURAL TRACTOR. A type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

OPERATE. To cause or have caused movement of a vehicle.

OVERSIZE COMMERCIAL VEHICLE.

(1) Any vehicle designed for the transport of more than 15 passengers, inclusive of the driver;

(2) Trailers which are more than 14 feet in length from end to end, more than seven feet in width at their widest point, or more than seven feet in height at their highest point; or

(3) Any motor vehicle with a gross weight, registered weight or gross weight rating, as those terms are defined in state law, of more than 15,000 pounds, including but not limited to the following:

- a. Dump truck;
- b. Truck-tractor;
- c. Concrete-mixing truck;
- d. Stake-bed truck;
- e. Flat-bed tow truck; or
- f. Panel truck.

PARKING or **PARKED.** The standing of a vehicle upon a street, road, alley, highway or public ground, whether accompanied or unaccompanied by a driver, but does not include the temporary standing of a vehicle for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

PEDESTRIAN. Any natural person afoot.

PERSON. Every natural person, firm, partnership, association or corporation.

POLE TRAILER. Every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

POLICE OFFICER. Every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE. Any of the following:

(a) A violation of R.C. §§ 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.214, 4511.22, 4511.23, 4511.25, 4511.26,

4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84;

(b) A violation of R.C. §§ 4511.17(A)(2), 4511.51(A) to (D), or 4511.74(A);

(c) A violation of any provision of R.C. §§ 4511.01 to 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

(c) A violation of a municipal ordinance that is substantially equivalent to any section or provision set forth or described in division (a), (b), or (c) of this definition.

PRIVATE ROAD OPEN TO PUBLIC TRAVEL. A private toll road or road, including any adjacent sidewalks that generally run parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that is privately owned but where the public is allowed to travel without access restrictions. The term includes a gated toll road but does not include a road within a private gated property where access is restricted at all times, a parking area, a driving aisle within a parking area, or a private grade crossing.

PRIVATE ROAD OR DRIVEWAY. Every way or place in private ownership used for vehicular travel by the owner, and those having express or implied permission from the owner, but not by other persons.

PUBLIC SAFETY VEHICLE. Any of the following:

(a) Ambulances, including private ambulance companies under contract to a municipality, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under R.C. § 4503.49;

(b) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(c) Any motor vehicle when properly identified as required by the Director of Public Safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The State Fire Marshal shall be designated by the Director of Public Safety as the certifying agency for all public safety vehicles described herein;

(d) Vehicles used by fire departments, including motor vehicles when used by volunteer firefighters responding to emergency calls in the fire department service when identified as required by the Director of Public Safety;

(e) Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a **PUBLIC SAFETY VEHICLE**, shall be considered such a vehicle when transporting an ill or injured person to a hospital, regardless of whether such vehicle has already passed a hospital;

(f) Vehicles used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in R.C. § 5503.34.

RAILROAD. A carrier of persons or property operating upon rails placed principally on a private right-of-way.

RAILROAD SIGN OR SIGNAL. Any sign, signal, or device erected by authority of a public body or official or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

RAILROAD TRAIN. A steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

RECREATIONAL VEHICLE. Any vehicle used for recreational purposes. The term includes a travel trailer, camping trailer, truck camper, motor home, snowmobile, all-terrain vehicle, boat, personal watercraft and any trailer used to haul such vehicle.

RESIDENCE DISTRICT. The territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of 300 feet or more, the frontage is improved with residences or residences and buildings in use for business.

RIDESHARING ARRANGEMENT. Includes the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver, and includes **RIDESHARING ARRANGEMENTS** known as carpools, vanpools, and buspools.

RIGHT-OF-WAY. Either of the following, as the context requires:

(a) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it, he or she is moving, in preference to another vehicle or pedestrian approaching from a different direction into its, his or her path;

(b) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, **RIGHT-OF-WAY** includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

ROAD SERVICE VEHICLE. Means wreckers, utility repair vehicles, and state, county, and municipal service vehicles equipped with visual signals by means of flashing, rotating, or oscillating lights.

ROADWAY. That portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways, the term **ROADWAY** means any roadway separately, but not all the roadways collectively.

RURAL MAIL DELIVERY VEHICLE. Every vehicle used to deliver United States mail on a rural mail delivery route.

SAFETY ZONE. The area or space officially set apart within a roadway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be plainly visible at all times.

SCHOOL BUS. Every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning, and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided **SCHOOL BUS** does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipality, or within such limits and the territorial limits of municipalities immediately contiguous to the municipality, nor a common passenger carrier certified by the Public Utilities Commission unless the bus is devoted exclusively to the transportation of children to and from a school session or a school function, and **SCHOOL BUS** does not include a van or bus used by a licensed child day-care center or Type A Family Day-Care Home to transport children from the child day-care center or Type A Family Day-Care Home to a school if the van or bus does not have more than 15 children in the van or bus at any time.

SEMITRAILER. Every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

SHARED-USE PATH. A bikeway outside the traveled way and physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent alignment. A shared-use path also may be used by pedestrians, including skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non- motorized users.

SIDEWALK. That portion of a street between the curb lines, or the lateral line of a roadway, and the adjacent property lines, intended for the use of pedestrians.

STATE HIGHWAY. A highway under the jurisdiction of the Department of Transportation, outside the limits of municipalities, provided that the authority conferred upon the Director of Transportation in R.C. § 5511.01 to erect state highway route markers and signs directing traffic shall not be modified by R.C. §§ 4511.01 through 4511.79 and 4511.99.

STATE ROUTE. Every highway which is designated with an official state route number and so marked.

STOP. When required, means a complete cessation of movement.

STOP INTERSECTION. Any intersection at one or more entrances of which stop signs are erected.

STOPPING or STANDING. When prohibited, means any halting of a vehicle, even momentarily, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

STREET or HIGHWAY. The entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

THROUGH HIGHWAY. Every street or highway as provided in R.C. § 4511.65, or a substantially equivalent municipal ordinance.

THRUWAY. A through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

TRAFFIC. Pedestrians, ridden or herded animals, vehicles, streetcars, and other devices, either singly or together, while using for purposes of travel any highway or private road open to public travel.

TRAFFIC-CONTROL DEVICE. A flagger, sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.

TRAFFIC-CONTROL SIGNAL. Any highway traffic signal by which traffic is alternately directed to stop and permitted to proceed.

TRAILER. Every vehicle designed or used for carrying persons or property wholly on its own structure, and for being drawn by a motor vehicle, including any vehicle when formed by or operated as a combination of a semitrailer and a vehicle of the dolly type, such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than 25 miles per hour and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than 25 miles per hour.

TRUCK. Every motor vehicle, except trailers and semitrailers, designed and used to carry property.

URBAN DISTRICT. The territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-quarter of a mile or more, and the character of the territory is indicated by official traffic-control devices.

VEHICLE. Every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that **VEHICLE** does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

ORDINANCE NO. 16-26

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER LITTERAL ON THE 24TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT SECTION 76.99
“PENALTY” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES, AND ADOPTING NEW SECTION 76.99 “PENALTY”
OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES.**

WHEREAS, Section 76.99 of the City of Beavercreek Code of Ordinances sets forth the penalties for Chapter 76, Parking Regulations of the City of Beavercreek Code of Ordinances; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 76.99 of the City of Beavercreek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current section 76.99 “PENALTY” of the City of Beavercreek Code of Ordinances is hereby repealed, and new section 76.99 “PENALTY” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 76.99 "PENALTY" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 76.99 "PENALTY" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

Exhibit A

§ 76.99 PENALTY.

Violation of this chapter shall constitute a minor misdemeanor, and the fines for such violations shall be set forth below:

(A) The fine shall be ~~\$4~~ **\$50** for violating §§ 76.01, 76.04 through 76.12, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket was issued. Otherwise the fine shall be increased to the amount of ~~\$8~~ **\$75**, also to be paid at the Police Department.

(B) The fine for any overtime parking in the business district under § 76.04~~(N)~~ shall be ~~\$2~~ **\$50**, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket issued. Otherwise the fine shall be increased to the amount of ~~\$4~~ **\$75**, also to be paid at the Police Department.

~~(C) The fine for parking in handicapped zones in violation of §§ 76.05(E) or (F) shall be \$50.~~

(C) The fine for parking in violation of § 76.13 shall be ~~\$10~~ **\$50**, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket was issued. Otherwise the fine shall be increased to the amount of ~~\$20~~ **\$75**, also to be paid at the Police Department.

(D) Violation of § 76.17 shall constitute a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of § 76.17, whoever violates § 76.17 is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more violations of § 76.17, whoever violates § 76.17 is guilty of a misdemeanor of the third degree.

~~(E)~~ The violation of any provision of this chapter for which no penalty is provided shall constitute a minor misdemeanor.

~~(F)~~ Any person receiving a citation for a violation of this chapter may request, after the parking ticket is issued, at the Beavercreek Police Department a uniform traffic citation for violation of Ohio Revised Code Chapter 4511 giving a court date to appear in a court of competent jurisdiction to contest the violation.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-27**

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY OF
NOVEMBER, 2016.

**A RESOLUTION APPROVING A PETITION, ARTICLES OF
INCORPORATION, AND INITIAL PLAN FOR THE CITY OF
BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL
IMPROVEMENT DISTRICT.**

WHEREAS, Ohio law was amended by Ohio House Bill 1 of the 128th General Assembly, effective October 15, 2009 and Ohio Senate Bill 232 of the 128th General Assembly effective June 17, 2010, to authorize the creation of Special Improvement Districts (the "District") under Chapter 1710 of the Ohio Revised Code (collectively, the "Act") to allow property owners to petition for special assessments to be levied to pay costs of developing and implementing plans for public improvements and public services that benefit the District, including as provided for in the Act, special energy improvement projects which are defined in Ohio Senate Bill 232 to mean "any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project, a solar thermal energy project, a geothermal energy project, a customer-generated energy project, or an energy efficiency improvement, whether such real or personal property is publicly or privately owned"; and

WHEREAS, specifically, the Act provides that a District may be created by petition of the owners of real property within the proposed District. No District may include any property of federal or state government or a county, City or municipal corporation, unless the county, City or municipal corporation specifically requests in writing that the property be included in the District. The Act further provides that any District created may contain non-contiguous parcels of real property if all parcels of real property included in the District contain at least one special energy improvement project and 100% of the owners of the parcels of real property in the District sign a petition requesting inclusion in the District. District boundaries can include parcels of real property located in multiple municipal corporations or townships, so long as each of the municipal corporations or townships is contiguous to one another; and

WHEREAS, MFC Beaver creek, LLC, the owner of real property in the City of Beaver creek, Greene County, Ohio known as the The Mall at Fairfield Commons has executed and delivered a petition attached hereto and addressed to the City Council of the City of Beaver creek, Greene County, Ohio and has submitted with the petition, articles of incorporation and an initial plan for the establishment of a special improvement district under the Act; and

WHEREAS, adoption of this legislation represents the first legislative step in the process of creating the City of Beavercreek (Greene County), Ohio Energy Special Improvement District ("ESID"). The Articles of Incorporation for the ESID provide that the initial participating political subdivision of the ESID will be the City of Beavercreek, Greene County, Ohio; and

WHEREAS, the Act requires that the City Council of the City of Beavercreek, Greene County, Ohio act on the petition within 60 days of the submission. This resolution therefore approves the Petition, the Articles of Incorporation, and the initial plan of the ESID, which approvals will permit the initial special energy improvement project petitioned for by MFC Beavercreek, LLC to be developed in the ESID.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

The City Council of the City of Beavercreek, Greene County, Ohio (the "City") hereby approves the Petition that has been submitted to the City on October __, 2016 and executed and delivered by MFC Beavercreek, LLC, the owner of real property in the City known as the The Mall at Fairfield Commons as the initial parcels of real property to be included in the ESID. The Petition includes a listing of the parcels of real property owned by MFC Beavercreek, LLC to be included in the ESID. The name of the non-profit corporation that will govern the ESID approved hereunder and shown on the articles of incorporation submitted with the petition is "City of Beavercreek (Greene County), Ohio Energy Special Improvement District, Inc."

SECTION II.

The City also hereby approves the Articles of Incorporation of the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, Inc. submitted to the City on October 24, 2016, and included with said Petition. The City hereby appoints _____ to the Board of Directors of the ESID. The City authorizes the City Council to submit the Articles of Incorporation, the Petition, and this Resolution to the Ohio Secretary of State pursuant to Ohio Revised Code Section 1710.02.

SECTION III.

The City also hereby approves the Initial Plan for the ESID submitted to the City on October 24, 2016, included with said Petition (the "Initial Plan") and finds that the public improvements of said Initial Plan will benefit the ESID and will promote the welfare of the people of the City by providing energy efficiency improvements and promoting energy efficiency.

SECTION IV.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION V.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 24th day of October, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-28**

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY OF NOVEMBER, 2016.

A RESOLUTION DECLARING THE NECESSITY OF ACQUIRING AND CONSTRUCTING CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, MFC Beavercreek, LLC (the "Owner") petitioned for the creation of the City of Beavercreek (Greene County), Ohio Energy Special Improvement District (the "ESID") pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of its project, which consists of acquiring, constructing, equipping, improving, and installing energy efficiency improvements on its real property, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project"); and

WHEREAS, the City Council (the "Council") of the City of Beavercreek (the "City") has, by Resolution No. 16-27, adopted on November __, 2016, approved the initial petition (the "Petition"), the articles of incorporation, and the initial plan (the "Plan") for, and approved the creation of, the ESID; and

WHEREAS, the Petition, which is attached hereto as Exhibit A and made a part hereof, has been signed by the Owner, who owns one hundred percent (100%) of the real property affected by the Petition (as further described in Exhibit B to the Petition, the "Assessed Properties"), which Petition proposes the necessity of acquiring, constructing, and improving the Project and financing the Project through revenue bonds to be issued by the Greene County Port Authority (the "Authority"); and

WHEREAS, in the Petition the Owner requests that the Project be paid for by special assessments assessed upon the Assessed Properties (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,719,200, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and the Authority in accordance with a Cooperative Agreement, expected to be dated as of December 1, 2016, by and among the City, the Authority, the ESID, the Owner and The Huntington National Bank, as trustee, (the "Cooperative Agreement"); and

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

It is hereby declared necessary, and a vital and essential public purpose of the City, to improve the Assessed Properties, which are located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431, by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition, and providing for the payment of principal and interest on bonds issued by the Authority to pay the costs of the Project and other related interest, financing, credit enhancement, and issuance expenses and trustee fees and Authority ongoing administrative fees and expenses, all as more fully described in the Petition, the Cooperative Agreement, and the Plan, profiles, specifications, and estimates of cost of the Project, all of which are on file with the Clerk of Council and open to the inspection of all persons interested.

SECTION II.

It is hereby determined that the elements of the Project are so situated in relation to each other that in order to complete the acquisition and improvement thereof in the most practical and economical manner they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that elements of the Project shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09 and said improvements shall be treated as a joint improvement to be undertaken cooperatively by the City, the Authority, and the ESID pursuant to Ohio Revised Code Sections 4582.43 and 4582.431.

SECTION III.

The City has previously determined and hereby ratifies and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project as defined in Ohio Revised Code Section 1710.01(1); that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the ESID and the Authority, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition, the Plan and the Cooperative Agreement. It is hereby determined and declared that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants thereof.

SECTION IV.

The plans, specifications, profiles and estimate of cost of the Project are hereby approved subject to changes as provided for in the Cooperative Agreement and as permitted by Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710.

SECTION V.

Pursuant to and subject to the provisions of a valid Petition signed by one hundred percent (100%) of the property owners of the Assessed Properties, which Petition is hereby accepted, the entire cost of the Project shall be paid by the Special Assessments levied against the Assessed Properties, which are the benefited properties. The provisions of the Petition are

hereby ratified, adopted, approved and incorporated into this Resolution as if set forth in full herein.

This Council hereby accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and any applicable laws, resolutions, or rules of the City, and consents to the immediate imposition of the Special Assessments upon the Assessed Properties. This waiver encompasses but is not limited to waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Council under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing ordinance under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors or omissions in the Special Assessment process.

SECTION VI.

The method of levying the Special Assessments shall be in proportion to the benefits received, equally on a gross per acre basis of the Assessed Properties, as set forth in the Petition.

SECTION VII.

The lots or parcels of land to be assessed for the Project shall be the Assessed Properties, described in Exhibit B to the Petition, all of which lots and lands are hereby determined to be specially benefited by the Project.

SECTION VIII.

The cost of the Project to be paid for directly or indirectly, in whole or in part, by funds derived from the Special Assessments may include, but are not limited to: (a) the cost of creating and operating the ESID, including creating and operating a nonprofit organization, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment; (b) the cost of planning, designing, and implementing the Project, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses; (c) the cost of printing, serving, and publishing notices, resolutions, and ordinances; (d) the cost of all Special Assessment proceedings; (e) the cost of labor and material, whether furnished by contract or otherwise, in connection with the Project; (f) interest on bonds or notes issued in anticipation of the levy and collection of the Special Assessments; (g) Debt Service Charges and Administrative Expenses, each as defined in the Cooperative Agreement; (h) the total amount of damages and interest thereon, resulting from the Project and assessed in favor of any owner of lands affected by the Project, and any court costs incurred by the district in implementing the Project; (i) the cost incurred in connection with the preparation, levy, and collection of the Special Assessments, including legal expenses incurred by reason of the Project; (j) the costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the Project; and (k) incidental costs directly connected with the Project.

SECTION IX.

The Special Assessments shall be levied and paid in twenty-eight (28) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, with interest on the deferred payments at the same rate and for the same period as the bonds or notes to be issued by the Authority to pay the costs of the Project as provided in the Petition; provided that the owner of any property assessed may, at its option, pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

The capital cost of the Project is estimated to be \$2,719,200. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on the Authority's revenue bonds and the scheduled amounts payable as the Authority administrative fee, and the trustee fee. In addition to the Special Assessments, the County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor of Greene County, Ohio.

SECTION X.

Bonds of the Authority, pursuant to the Cooperative Agreement, shall be issued and served by the levy and collection of the Special Assessments by installments and in an amount equal thereto.

SECTION XI.

The Financial Services Administrative Director is hereby authorized and directed to cause to be prepared and filed in the office of the Clerk of Council the estimated Special

Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION XII.

Upon the filing of the estimated Special Assessments with the Financial Services Administrator Director, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Properties, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

SECTION XIII.

The City Council and the Fiscal Officer are each authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

SECTION XIV.

The Special Assessments will be used by the City to meet its obligations under the Cooperative Agreement and are hereby appropriated for such purposes.

SECTION XV.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION XVI.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-27

SPONSORED BY VICE MAYOR VANN ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT, OF CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY AND DECLARING AN EMERGENCY.

WHEREAS, this City Council (the "Council") of the City of Beavercreek, Ohio (the "City") duly adopted Resolution No. 16-28 on October 24th, 2016 (the "Resolution of Necessity") (i) declaring the necessity of acquiring, constructing, and improving energy efficiency improvements, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project", us more fully described in the Petition referenced below) located on real property owned by MFC Beavercreek, LLC (the "Owner") and located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431 (the "Assessed Properties", as further described in Exhibit B to the Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition (as that term is defined in the Resolution of Necessity), and the Cooperative Agreement, expected to be dated as of December 1, 2016, by and among the City, the Authority, the ESID, the Owner and The Huntington National Bank, as trustee (the "Cooperative Agreement"), including by levying and collecting special assessments to be assessed upon the Assessed Properties (the "Special Assessments") in an amount sufficient to pay the capital costs of the Project, which is estimated to be \$2,719,200, plus other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses; (iii) accepting the Petition; and (iv) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City, the ESID, and the Authority; and

WHEREAS, claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

It is hereby declared to be the intention of this Council to proceed with the acquisition, construction, and improvement of the Project, as such are described in the Petition and the Resolution of Necessity.

SECTION II.

The Project shall proceed in accordance with the provisions of the Resolution of Necessity, and in accordance with the plans, specifications, profiles and estimate of cost of the Project set forth in the Petition now on file in the office of the Clerk of Council and approved pursuant to the Resolution of Necessity.

SECTION III.

The Special Assessments, in an amount sufficient to pay the capital costs of the Project, which is estimated to be \$2,719,200, plus other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, shall be assessed on the Assessed Properties in the manner and in the number of semi-annual installments as provided in the Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on the Authority's revenue bonds and the scheduled amounts payable as the Authority administrative fee, and the trustee fee. In addition to the Special Assessments, the County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the Auditor of Greene County, Ohio.

SECTION IV.

The estimated Special Assessments, heretofore prepared and filed in the office of the Clerk of Council, in accordance with the Resolution of Necessity, are hereby adopted.

SECTION V.

In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor of Greene County, Ohio within fifteen (15) days after the date of adoption hereof.

SECTION VI.

All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Cooperative Agreement, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

SECTION VII.

It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-28

SPONSORED BY COUNCIL MEMBER WALLACE ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY AND DECLARING AN EMERGENCY.

WHEREAS, this City Council (the "Council") of the City of Beavercreek, Greene County, Ohio (the "City") duly adopted Resolution No. 16-28 on October 24, 2016 (the "Resolution of Necessity") and declared the necessity of acquiring, constructing, and improving certain public improvements consisting of energy efficiency improvements, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project") as described in the Resolution of Necessity and accepted the Petition, as that term is defined in the Resolution of Necessity, by the owners as of the date of this Ordinance of real property designated as Greene County Auditor Parcel Number _____ and being located at the commonly used mailing address 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431 (as further described in Exhibit B to the Petition, the "Assessed Properties") requesting the Project; and

WHEREAS, the Council duly adopted Ordinance No. 16-27 on November __, 2016 (the "Ordinance to Proceed") and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of Council pursuant to the Resolution of Necessity;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

The list of Special Assessments to be levied and assessed on the Assessed Properties in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,719,200, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file in the office of the Clerk of Council, is hereby adopted and confirmed, and that there are hereby levied and assessed the Special Assessments on the Assessed Properties. The list of Special Assessments to be levied and

assessed against the Assessed Properties and the schedule of the Special Assessments are attached to this Ordinance as Exhibit A.

SECTION II.

This Council hereby finds and determines that the Special Assessments are in proportion to the benefits received by the Assessed Properties as set forth in the Petition.

SECTION III.

The Owner (as defined in the Resolution of Necessity) has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments thereof shall be certified by the Clerk of Council or the Financial Services Administrative Director to the County Auditor of Greene County, Ohio as provided by law to be placed by him on the tax duplicate and collected when other property taxes are collected and as set forth in the Petition. The Special Assessments shall be used by the City to meet its obligations under the Cooperative Agreement (as defined in the Resolution of Necessity) and are hereby appropriated for such purposes.

SECTION IV.

This Council hereby establishes a special fund for the collection of the Special Assessments, denominated the "Fairfield Commons Special Assessment Fund," as a separate fund maintained on the books and records of the City and to be held in the custody of a bank with which the City maintains a depository relationship. All Special Assessments and all monies related to the Special Assessments paid to the City shall be deposited into the Fairfield Commons Special Assessment Fund and pursuant to the Cooperative Agreement and the appropriation of the Special Assessments by this Council in Section 3 of this Ordinance, the City shall pay the Special Assessments deposited into the Fairfield Commons Special Assessment Fund to The Huntington National Bank, as trustee (the "Trustee") under the Trust Agreement, dated as of December 1, 2016, between the Greene County Port Authority (the "Authority") and the Trustee.

To the extent permitted by law, to secure the City's obligations under the Cooperative Agreement, so long as any bonds shall be outstanding under the Trust Agreement and amounts shall be due and owing under the Trust Agreement, the City assigns to the Authority all of its right, title and interest in and to, and grants to the Authority a security interest in, the Special Assessments received by the City and in the Fairfield Commons Special Assessment Fund, and acknowledges that, pursuant to the Trust Agreement, the Authority grants to the Trustee all right, title and interest of the Authority in and to the Special Assessments, the Fairfield Commons Special Assessment Fund, and in any other property received or to be received from the City under the Cooperative Agreement.

SECTION V.

In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor of Greene County, Ohio within twenty (20) days after its passage.

SECTION VI.

It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

EXHIBIT A

LIST OF SPECIAL ASSESSMENTS AND SCHEDULE OF SPECIAL ASSESSMENTS

LIST OF SPECIAL ASSESSMENTS

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessment</u>
MFC Beaver creek, LLC	Greene County Parcel Number: B42000400030000400	100%	\$4,386,705.00

SCHEDULE OF SPECIAL ASSESSMENTS
FOR GREENE COUNTY PARCEL NO. B42000400030000400

The following schedule of Special Assessment charges shall be certified for collection in thirty (30) semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2017 through 2031:

<u>Parcel Number**</u>	<u>Semi-Annual Payment*</u>
<u>B42000400030000400</u>	\$156,668.00

* The County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the County Auditor of Greene County, Ohio to each semi-annual Special Assessment payment.

** As identified in the records of the County Auditor of Greene County, Ohio as of October __, 2016.

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-29

SPONSORED BY COUNCIL MEMBER LITTERAL ON THE 24TH DAY OF OCTOBER, 2016.

AUTHORIZING THE CITY'S PARTICIPATION IN FINANCING SPECIAL ENERGY IMPROVEMENT PROJECTS IN COOPERATION WITH THE PORT AUTHORITY; AUTHORIZING THE EXECUTION OF DOCUMENTS TO EFFECTUATE SUCH FINANCING; AND DECLARING AN EMERGENCY.

WHEREAS, MFC Beaver creek, LLC (the "Owner") intends to construct special energy improvement projects, as that term is used in Ohio Revised Code Chapter 1710, on certain real **property** located within The City of Beaver creek, Greene County, Ohio (the "City"), including an energy-efficiency grade roof, energy efficient HVAC systems and related improvements (the "Project"); and

WHEREAS, this City Council (the "Council") of the City, the Greene County Port Authority (the "Port Authority"), and the City of Beaver creek (Greene County), Ohio Energy Special Improvement District (the "ESID") each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of the Project is through the Cooperative Agreement expected to be dated as of November 1, 2016, to be entered into by and among the Port Authority, the City, the ESID, the Owner, and The Huntington National Bank, as trustee for the Port Authority's bonds issued to finance the Project (the "Cooperative Agreement"); and

WHEREAS, the City has determined, as requested in the Owner's petition, to undertake the Project in cooperation with the Port Authority and the Owner pursuant to the Cooperative Agreement, and the City has undertaken to adopt or pass all legislation required by Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710 in order to levy special assessments on the Owner's property; and

WHEREAS, the Port Authority has determined to undertake the authorization and issuance of port authority revenue bonds payable from special assessments to finance the costs of the Project and otherwise assist in, acquiring, constructing, and improving the Project, which bonds shall be payable from Port Authority revenues, limited to the Special Assessments (as defined in the Cooperative Agreement) transferred by the City.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Beavercreek, Ohio, that:

SECTION I.

The City Council of the City of Beavercreek, Greene County, Ohio, hereby approves the Petition that has been submitted to the City on October __, 2016 and executed and delivered by the Owner of 100% of the real property included in the ESID.

SECTION II.

The City Council of the City of Beavercreek, Greene County, Ohio hereby designates the ESID as its agent that may automatically convey the Project materials to the Owner without additional consideration. The Council of the City determines that the Project is not required to be owned by the City or its agent and that the Project will promote the welfare of the people of the City by providing energy efficiency improvements and promoting energy efficiency.

SECTION III.

The financing documents necessary to effectuate the City's participation in the Project, including the Cooperative Agreement, Tax Lien Agreement, and any other documents deemed necessary by the City Manager each in substantially the form presently on file with the Clerk of Council, with such changes as are requested by the City Manager or the Law Director and with only such other changes as are approved by the City Manager and the Law Director, are hereby approved and the City Manager, the Mayor and the Financial Administrative Services Director are hereby authorized to enter into and execute said financing documents and all necessary closing certificates and to take whatever other action is necessary to complete and perform this transaction as determined by the City Manager.

SECTION IV.

Upon the terms contained in the Cooperative Agreement, the City hereby assigns the Special Assessments to the Port Authority, such assignment to take effect upon execution of the Cooperative Agreement.

SECTION V.

The obligations of the City under this Ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of Council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Cooperative Agreement.

SECTION VI.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council

and that, except as otherwise provided by Section 121.22 of the Ohio Revised Code, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Me 11/10/16

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; R/W Acquisition; R&P Middletown Properties, LLC Property
Agenda Reference No.: <u>VI. K.</u>	Resolution No. <u>16-30</u>

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from R&P Middletown Properties, LLC have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Resolution and the accompanying Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

Therefore, it is recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-30**

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY
OF NOVEMBER, 2016.

**A RESOLUTION TO DECLARE THE NECESSITY AND INTENT
TO ACQUIRE CERTAIN PARCELS OR REAL ESTATE AND
OTHER PROPERTY INTERESTS OWNED BY R&P
MIDDLETOWN PROPERTIES, LLC, WITH INTEREST BY
OTHERS, FOR THE DAYTON-XENIA ROAD WIDENING
PROJECT, IN THE CITY OF BEAVERCREEK, OHIO.**

WHEREAS, the City of Beavercreek is engaged in the acquisition of right-of-way for the Dayton-Xenia Road Widening Project in the City of Beavercreek, Ohio; and

WHEREAS, the acquisition of the parcels of real estate and other property interests hereinafter described is necessary for the public purpose of roadway construction in connection with said project; and

WHEREAS, this Council has determined that the lands hereinafter described are necessary for roadway construction in connection with such project;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

Council hereby declares the necessity and intention to appropriate certain permanent and temporary right-of-way and easements in accordance with Chapter 163 of the Ohio Revised Code.

SECTION II.

Council considers it necessary and declares its intention to appropriate certain permanent and temporary right-of-way in real estate described in Exhibit 'A', and Exhibit 'B' attached hereto and incorporated herein; the owners, persons or entities in possession and persons or entities having an interest of record and others which may have an interest include R&P Middletown Properties, LLC, and any other lien holders, persons or entities declaring a lawful interest in said same real estate.

SECTION III.

The City Manager or his designee is hereby authorized to cause written notice of the adoption of this Resolution to be given to the owners, person in possession of, or having an interest of record or other interest in the above-described premises, and said notice shall be served according to law by a person to be designated for that purpose by said City Manager or his designee and to make return of said service of notice in the manner provided by law.

SECTION IV.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION V.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

EXHIBIT A

LPA RX 851 WD

Page 1 of 3

Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 27-WD
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 2, Town 2, Range 7, M.Rs and being part of a tract of land conveyed to Daniel O'Brien Properties, LLC as recorded in Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton-Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 3/4 inch crimped iron pipe found, said crimped iron pipe found being the northwest corner of Lot 11 of Research Park, Section 3 plat as recorded in Plat Cabinet 33 Page 846B-847A of the plat records of Greene County, Ohio, said crimped iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said crimped iron pipe found being 39.04 feet right of proposed centerline of construction of Dayton-Xenia Road station 105+20.52;

Thence northeasterly on the west line of said Research Park, Section 3 plat, also being the east property line of the Beaver Valley Temple Association, Inc. 1.51 acre tract as recorded in Deed Book 369, Page 185 of the Deed Records of Greene County, Ohio, North 30 degrees 28 minutes 42 seconds East, 35.16 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.03 feet right of station 105+17.29;

EXHIBIT A

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LPA RX 851 WD

Rev. 06/09

Thence southeasterly on the existing centerline of right of way of Dayton-Xenia Road, South 54 degrees 03 minutes 52 seconds East, 32.76 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 4.13 feet right of station 105+50.04 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly on the grantor's west property line, also being the east line of the Rest Haven Plat Section 1 as recorded in Plat Cabinet 33 Page 86A of the plat records of Greene County, Ohio, North 35 degrees 56 minutes 08 seconds East, 47.13 feet, passing a capped "J&J" iron pin found 31.19 feet left of station 105+50.25, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+50.19;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 43.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 24.69 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+74.87;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 35 degrees 45 minutes 42 seconds West, 10.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 105+74.87;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 33.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 122.13 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 106+97.00;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 35 degrees 45 minutes 42 seconds East, 9.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 42.00 feet left of station 106+97.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 48 degrees 50 minutes 57 seconds East, 27.79 feet, to an iron pin to be set on the grantor's east property line, said point being 39.39 feet left of station 107+24.66;

EXHIBIT A

LPA RX 851 WD

Thence southerly on the grantor's east property line, also being the west property line of the Peace Evangelical Lutheran Church 8.268 acre tract as recorded in Official Record 608, Page 140 of the Deed Records of Greene County, Ohio, South 05 degrees 13 minutes 08 seconds West, 51.24 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.74 feet right of station 107+50.70;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 54 degrees 03 minutes 52 seconds West for a distance of 200.66 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1736 acres, of which 0.1321 acres is PRO (Present Road Occupied), leaving a net take of 0.0415 acres, more or less, subject to legal highways, an existing DP&L electric easement as recorded in Deed Book 493, Page 367 of the Deed Records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000200140002500.

Prior Instrument Reference as of the date this survey was prepared: Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Joshua R. Mihelcic
Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



EXHIBIT B

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LPA RX 887 T

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 27-T
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVEDRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek Section 2, Town 2, Range 7, M.Rs and being part of a tract of land conveyed to Daniel O'Brien Properties, LLC as recorded in Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton-Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 3/4 inch crimped iron pipe found, said crimped iron pipe found being the northwest corner of Lot 11 of Research Park, Section 3 plat as recorded in Plat Cabinet 33 Page 846B-847A of the plat records of Greene County, Ohio, said crimped iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said crimped iron pipe found being 39.04 feet right of proposed centerline of construction of Dayton-Xenia Road station 105+20.52;

Thence northeasterly on the west line of said Research Park, Section 3 plat, also being the east property line of the Beaver Valley Temple Association, Inc. 1.51 acre tract as recorded in Deed Book 369, Page 185 of the Deed Records of Greene County, Ohio, North 30 degrees 28 minutes 42 seconds East, 35.16 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.03 feet right of station 105+17.29;

Thence southeasterly on the existing centerline of right of way of Dayton-Xenia Road, South 54 degrees 03 minutes 52 seconds East, 32.76 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 4.13 feet right of station 105+50.04;

EXHIBIT B

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Thence northeasterly on the grantor's west property line, also being the east line of the Rest Haven Plat Section 1 as recorded in Plat Cabinet 33 Page 86A of the plat records of Greene County, Ohio, North 35 degrees 56 minutes 08 seconds East, 47.13 feet, passing a capped "J&J" iron pin found 31.19 feet left of station 105+50.25, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+50.19 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly continuing on the grantor's west property line, North 35 degrees 56 minutes 08 seconds East, 24.00 feet, to a point on the proposed temporary easement line, said point being 67.00 feet left of station 105+50.26;

Thence southeasterly on the proposed temporary easement line, South 43 degrees 58 minutes 56 seconds East, 50.55 feet, to a point on the proposed temporary easement line, said point being 58.00 feet left of station 106+00.00;

Thence southeasterly continuing on the proposed temporary easement line, South 60 degrees 30 minutes 07 seconds East, 82.49 feet, to a point on the proposed temporary easement line, said point being 67.00 feet left of station 106+82.00;

Thence southwesterly continuing on the proposed temporary easement line, South 35 degrees 45 minutes 42 seconds West, 17.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 106+82.00;

Thence southeasterly continuing on the proposed temporary easement line, South 54 degrees 14 minutes 18 seconds East, 36.40 feet, to a point on the grantor's east property line, said point being 50.00 feet left of station 107+18.40;

Thence southerly on the grantor's east property line, South 05 degrees 13 minutes 08 seconds West, 12.32 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point 39.39 feet left of station 107+24.66;

Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, North 48 degrees 50 minutes 57 seconds West, 27.79 feet, to an iron pin to be set proposed north right of way line of Dayton-Xenia Road, said point being 42.00 feet left of station 106+97.00;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 35 degrees 45 minutes 42 seconds West, 9.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 106+97.00;

EXHIBIT B

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Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 33.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 122.13 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 105+74.87;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 35 degrees 45 minutes 42 seconds East, 10.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+74.87;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 43.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 24.69 feet, to the **TRUE POINT OF BEGINNING** and containing 0.0946 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.0946 acres, more or less, subject to legal highways and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000200140002500.

Prior Instrument Reference as of the date this survey was prepared: Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

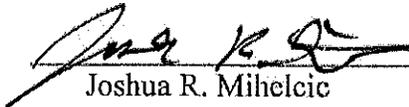
Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

EXHIBIT B

LPA RX 887 T

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

 - 01-6-2016
Joshua R. Mihelcic Date

Registered Surveyor of Ohio: No. S-008453

STATE OF OHIO
§ * JOSHUA *
R.
MIHELICIC
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**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

MAC 11/10/16

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; R/W Acquisition; R&P Middletown Properties LLC Property
Agenda Reference No.: <u>VI. L.</u>	Ordinance No. <u>16-31</u>

ACTION REQUESTED		
<input checked="" type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from R&P Middletown Properties LLC have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

In order for the City to meet ODOT's deadline for the completion of the right-of-way acquisition work, it is recommended that City Council approve the attached Ordinance as an emergency.

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-31

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY OF NOVEMBER, 2016.

TO APPROPRIATE CERTAIN REAL PROPERTY INTERESTS OWNED BY R&P MIDDLETOWN PROPERTIES, LLC, FOR THE DAYTON-XENIA ROAD WIDENING PROJECT, IN THE CITY OF BEAVERCREEK, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, this Council, by Resolution Number 16-30, declared its intention and the necessity of appropriating certain real property, parcel of land, or real property interests described in said Resolution; and

WHEREAS, it is necessary to appropriate the said certain property, parcel of land or real property interests for the purpose of the roadway construction and improvement in connection with the Dayton-Xenia Road Widening Project and for the preservation of the public peace, health, safety, and welfare;

NOW, THEREFORE, THE CITY OF BEAVERCREEK, OHIO HEREBY ORDAINS THAT:

SECTION I.

The real property, parcels of land or real property interests described in Exhibit 'A', and Exhibit 'B' attached hereto and incorporated herein, for public right-of-way and street and highway purposes for the Dayton-Xenia Road Widening Project shall be and the same are hereby appropriated for the construction of said project.

SECTION II.

The names of those either having, claiming, or that may have any estate, title or interest in the above-described real property, parcels of land or real property interest to be appropriated by this Ordinance are: R&P Middletown Properties, LLC, and any other lien holders, persons or entities declaring an interest pursuant to law, the Treasurer of Greene County, Ohio and the Auditor of Greene County, Ohio.

SECTION III.

The above-described real property, parcels, land, and/or real property interests have a fair market value of \$7,594.00, as determined by an independent, certified appraiser.

SECTION IV.

This Council finds that the appropriation is necessary for the stated public purposes and that the City intends to obtain immediate possession of the real property, parcel of land or real property interests described in Exhibit 'A', and Exhibit 'B', which immediate possession is necessary for the stated public purposes.

SECTION V.

The City Attorney is hereby authorized and directed to deposit the aforesaid valued amount with the Clerk of Court of Greene County, Ohio, or other depository, take possession of the afore described real property, parcel of land or real property interest, file, as necessary, a petition for appropriation, apply to a court of competent jurisdiction to make inquiry into and assess the compensation to be paid for the real property, parcel of land or real property interests to be appropriated, and to do all things necessary or proper in connection therewith.

SECTION VI.

All actions taken by or in behalf of the City of Beavercreek in connection with the appropriation of the afore described real property, parcel of land or real property interests and prior to the time of adoption of this Ordinance are hereby ratified.

SECTION VII.

That is it found and determined that all of this Council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberation of this Council and of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City; and further for the reason that the immediate construction of the improvements to Dayton-Xenia Road are necessary to improve the traffic safety and to reduce traffic congestion of certain streets, alleys, roadways, and right-of-way; therefore, this Ordinance shall be in full force and effective from and immediately after its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

SUMMARY

This Ordinance appropriates certain real property, parcels of land, or real property interests owned by R&P Middletown Properties, LLC, with interest by others, for the Dayton-Xenia Road Widening Project in the City of Beavercreek, Ohio, and declares an emergency.

EXHIBIT A

LPA RX 851 WD

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Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 27-WD
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 2, Town 2, Range 7, M.Rs and being part of a tract of land conveyed to Daniel O'Brien Properties, LLC as recorded in Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton-Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 3/4 inch crimped iron pipe found, said crimped iron pipe found being the northwest corner of Lot 11 of Research Park, Section 3 plat as recorded in Plat Cabinet 33 Page 846B-847A of the plat records of Greene County, Ohio, said crimped iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said crimped iron pipe found being 39.04 feet right of proposed centerline of construction of Dayton-Xenia Road station 105+20.52;

Thence northeasterly on the west line of said Research Park, Section 3 plat, also being the east property line of the Beaver Valley Temple Association, Inc. 1.51 acre tract as recorded in Deed Book 369, Page 185 of the Deed Records of Greene County, Ohio, North 30 degrees 28 minutes 42 seconds East, 35.16 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.03 feet right of station 105+17.29;

EXHIBIT A

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Rev. 06/09

Thence southeasterly on the existing centerline of right of way of Dayton-Xenia Road, South 54 degrees 03 minutes 52 seconds East, 32.76 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 4.13 feet right of station 105+50.04 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly on the grantor's west property line, also being the east line of the Rest Haven Plat Section 1 as recorded in Plat Cabinet 33 Page 86A of the plat records of Greene County, Ohio, North 35 degrees 56 minutes 08 seconds East, 47.13 feet, passing a capped "J&J" iron pin found 31.19 feet left of station 105+50.25, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+50.19;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 43.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 24.69 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+74.87;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 35 degrees 45 minutes 42 seconds West, 10.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 105+74.87;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 33.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 122.13 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 106+97.00;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 35 degrees 45 minutes 42 seconds East, 9.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 42.00 feet left of station 106+97.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 48 degrees 50 minutes 57 seconds East, 27.79 feet, to an iron pin to be set on the grantor's east property line, said point being 39.39 feet left of station 107+24.66;

EXHIBIT A

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Thence southerly on the grantor's east property line, also being the west property line of the Peace Evangelical Lutheran Church 8.268 acre tract as recorded in Official Record 608, Page 140 of the Deed Records of Greene County, Ohio, South 05 degrees 13 minutes 08 seconds West, 51.24 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.74 feet right of station 107+50.70;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 54 degrees 03 minutes 52 seconds West for a distance of 200.66 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1736 acres, of which 0.1321 acres is PRO (Present Road Occupied), leaving a net take of 0.0415 acres, more or less, subject to legal highways, an existing DP&L electric easement as recorded in Deed Book 493, Page 367 of the Deed Records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000200140002500.

Prior Instrument Reference as of the date this survey was prepared: Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



EXHIBIT B

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LPA RX 887 T

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 27-T
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek Section 2, Town 2, Range 7, M.Rs and being part of a tract of land conveyed to Daniel O'Brien Properties, LLC as recorded in Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton-Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 3/4 inch crimped iron pipe found, said crimped iron pipe found being the northwest corner of Lot 11 of Research Park, Section 3 plat as recorded in Plat Cabinet 33 Page 846B-847A of the plat records of Greene County, Ohio, said crimped iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said crimped iron pipe found being 39.04 feet right of proposed centerline of construction of Dayton-Xenia Road station 105+20.52;

Thence northeasterly on the west line of said Research Park, Section 3 plat, also being the east property line of the Beaver Valley Temple Association, Inc. 1.51 acre tract as recorded in Deed Book 369, Page 185 of the Deed Records of Greene County, Ohio, North 30 degrees 28 minutes 42 seconds East, 35.16 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 4.03 feet right of station 105+17.29;

Thence southeasterly on the existing centerline of right of way of Dayton-Xenia Road, South 54 degrees 03 minutes 52 seconds East, 32.76 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 4.13 feet right of station 105+50.04;

EXHIBIT B

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Thence northeasterly on the grantor's west property line, also being the east line of the Rest Haven Plat Section 1 as recorded in Plat Cabinet 33 Page 86A of the plat records of Greene County, Ohio, North 35 degrees 56 minutes 08 seconds East, 47.13 feet, passing a capped "J&J" iron pin found 31.19 feet left of station 105+50.25, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+50.19 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly continuing on the grantor's west property line, North 35 degrees 56 minutes 08 seconds East, 24.00 feet, to a point on the proposed temporary easement line, said point being 67.00 feet left of station 105+50.26;

Thence southeasterly on the proposed temporary easement line, South 43 degrees 58 minutes 56 seconds East, 50.55 feet, to a point on the proposed temporary easement line, said point being 58.00 feet left of station 106+00.00;

Thence southeasterly continuing on the proposed temporary easement line, South 60 degrees 30 minutes 07 seconds East, 82.49 feet, to a point on the proposed temporary easement line, said point being 67.00 feet left of station 106+82.00;

Thence southwesterly continuing on the proposed temporary easement line, South 35 degrees 45 minutes 42 seconds West, 17.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 106+82.00;

Thence southeasterly continuing on the proposed temporary easement line, South 54 degrees 14 minutes 18 seconds East, 36.40 feet, to a point on the grantor's east property line, said point being 50.00 feet left of station 107+18.40;

Thence southerly on the grantor's east property line, South 05 degrees 13 minutes 08 seconds West, 12.32 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point 39.39 feet left of station 107+24.66;

Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, North 48 degrees 50 minutes 57 seconds West, 27.79 feet, to an iron pin to be set proposed north right of way line of Dayton-Xenia Road, said point being 42.00 feet left of station 106+97.00;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 35 degrees 45 minutes 42 seconds West, 9.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 106+97.00;

EXHIBIT B

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Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 33.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 122.13 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 33.00 feet left of station 105+74.87;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 35 degrees 45 minutes 42 seconds East, 10.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 43.00 feet left of station 105+74.87;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 43.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 24.69 feet, to the **TRUE POINT OF BEGINNING** and containing 0.0946 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.0946 acres, more or less, subject to legal highways and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000200140002500.

Prior Instrument Reference as of the date this survey was prepared: Official Record 2097, Page 238 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

MAC 11/10/16

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; R/W Acquisition; 3455 Dayton-Xenia, LLC Property
Agenda Reference No.: <u>VI. M.</u>	Resolution No. <u>16-31</u>

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from 3455 Dayton-Xenia, LLC have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Resolution and the accompanying Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

Therefore, it is recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-31**

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY
OF NOVEMBER, 2016.

**A RESOLUTION TO DECLARE THE NECESSITY AND INTENT
TO ACQUIRE CERTAIN PARCELS OR REAL ESTATE AND
OTHER PROPERTY INTERESTS OWNED BY 3455 DAYTON-
XENIA, LLC, WITH INTEREST BY OTHERS, FOR THE DAYTON-
XENIA ROAD WIDENING PROJECT, IN THE CITY OF
BEAVERCREEK, OHIO.**

WHEREAS, the City of Beavercreek is engaged in the acquisition of right-of-way for the Dayton-Xenia Road Widening Project in the City of Beavercreek, Ohio; and

WHEREAS, the acquisition of the parcels of real estate and other property interests hereinafter described is necessary for the public purpose of roadway construction in connection with said project; and

WHEREAS, this Council has determined that the lands hereinafter described are necessary for roadway construction in connection with such project;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

Council hereby declares the necessity and intention to appropriate certain permanent and temporary right-of-way and easements in accordance with Chapter 163 of the Ohio Revised Code.

SECTION II.

Council considers it necessary and declares its intention to appropriate certain permanent and temporary right-of-way in real estate described in Exhibit 'A', and Exhibit 'B' attached hereto and incorporated herein; the owners, persons or entities in possession and persons or entities having an interest of record and others which may have an interest include 3455 Dayton-Xenia, LLC, and any other lien holders, persons or entities declaring a lawful interest in said same real estate.

SECTION III.

The City Manager or his designee is hereby authorized to cause written notice of the adoption of this Resolution to be given to the owners, person in possession of, or having an interest of record or other interest in the above-described premises, and said notice shall be served according to law by a person to be designated for that purpose by said City Manager or his designee and to make return of said service of notice in the manner provided by law.

SECTION IV.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION V.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

EXHIBIT A

Page 1 of 3

LPA RX 851 WD

Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 37-WD
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of Lot 6 of the Shady Brook plat as recorded in Plat Cabinet 32 Page 45A of the plat records of Greene County, Ohio and conveyed to 3455 Dayton-Xenia LLC as recorded in Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the right side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence southeasterly on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, South 53 degrees 35 minutes 12 seconds East, 171.37 feet, to an iron pin to be set on the existing south right of way line of Dayton-Xenia Road, said point being 34.97 feet right of station 118+90.00 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

EXHIBIT A

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Thence southeasterly continuing on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, also being the north lot line of said Lot 6, South 53 degrees 35 minutes 12 seconds East, 28.63 feet, to a point on the east lot line of said Lot 6, said point being the northeast corner of said Lot 6, said point being 34.57 feet right of station 119+18.63;

Thence southwesterly on the east lot line of said Lot 6, also being the west lot line of Lot 7 of said Shady Brook plat, South 37 degrees 43 minutes 48 seconds West, 40.43 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 119+18.26;

Thence northwesterly on the proposed south right of way line of Dayton-Xenia Road, being a right of way line 75.00 feet southerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 21.26 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 118+97.00;

Thence northeasterly continuing on the proposed south right of way line of Dayton-Xenia Road, North 27 degrees 17 minutes 13 seconds East, 40.64 feet, to the **TRUE POINT OF BEGINNING** and containing 0.0231 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.0231 acres, more or less, subject to legal and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050000600.

Prior Instrument Reference as of the date this survey was prepared: Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

EXHIBIT A

LPA RX 851 WD

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Joshua R. Mihelcic
Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



Description: 1000
City of Columbus, Ohio's Tax Map Dept
✓ Property sufficient as described
Property sufficient with connections noted
Property sufficient, New Survey for, find
By: DMB Date: 1-6-16
1000

EXHIBIT B

Page 1 of 3

LPA RX 887 T

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 37-T
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of Lot 6 of the Shady Brook plat as recorded in Plat Cabinet 32 Page 45A of the plat records of Greene County, Ohio and conveyed to 3455 Dayton-Xenia LLC as recorded in Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the right side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence southeasterly on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, South 53 degrees 35 minutes 12 seconds East, 100.00 feet, to a point on the existing south right of way line of Dayton-Xenia Road, said point being the northwest corner of said Lot 6, said point being 35.95 feet right of station 118+18.63 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

Thence southeasterly continuing on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, also being the north lot line of said Lot 6, South 53 degrees 35 minutes 12 seconds East, 71.37 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 34.97 feet right of station 118+90.00;

EXHIBIT B

Page 2 of 3

LPA RX 887 T

Rev. 07/09

Thence southwesterly on the proposed south right of way line of Dayton-Xenia Road, South 27 degrees 17 minutes 13 seconds West, 40.64 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 118+97.00;

Thence southeasterly continuing on the proposed south right of way line of Dayton-Xenia Road, being a right of way line 75.00 feet southerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 21.26 feet, to an iron pin to be set on the east lot line of said Lot 6, said point being 75.00 feet right of station 119+18.26;

Thence southwesterly on the east lot line of said Lot 6, South 37 degrees 43 minutes 48 seconds West, 15.00 feet, to a point on the proposed temporary easement line, said point being 90.00 feet right of station 119+18.12;

Thence northwesterly on the proposed temporary easement line, North 52 degrees 47 minutes 41 seconds West, 18.12 feet, to a point on the proposed temporary easement line, said point being 90.00 feet right of station 119+00.00;

Thence northerly continuing on the proposed temporary easement line, North 12 degrees 25 minutes 49 seconds West, 26.25 feet, to a point on the proposed temporary easement line, said point being 73.00 feet right of station 118+80.00;

Thence northwesterly continuing on the proposed temporary easement line, North 52 degrees 47 minutes 41 seconds West, 60.85 feet, to a point on west lot line of said Lot 6, said point being 73.00 feet right of station 118+19.15;

Thence northeasterly on the west lot line of said Lot 6, North 36 degrees 24 minutes 48 seconds East, 37.05 feet, to the **TRUE POINT OF BEGINNING** and containing 0.0742 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.0742 acres, more or less, subject to legal and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050000600.

Prior Instrument Reference as of the date this survey was prepared: Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

EXHIBIT B

LPA RX 887 T

Rev. 07/09

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

/J()ShU;R. Mihelcic

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Date

Registered Surveyor of Ohio: No. S-008453

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**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

ME 11/10/16

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; R/W Acquisition; 3455 Dayton-Xenia LLC Property
Agenda Reference No.: <u>VI. N.</u>	Ordinance No. <u>16-32</u>

ACTION REQUESTED		
<input checked="" type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from 3455 Dayton-Xenia, LLC have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

In order for the City to meet ODOT's deadline for the completion of the right-of-way acquisition work, it is recommended that City Council approve the attached Ordinance as an emergency.

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-32

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY OF NOVEMBER, 2016.

TO APPROPRIATE CERTAIN REAL PROPERTY INTERESTS OWNED BY 3455 DAYTON-XENIA, LLC, FOR THE DAYTON-XENIA ROAD WIDENING PROJECT, IN THE CITY OF BEAVERCREEK, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, this Council, by Resolution Number 16-31, declared its intention and the necessity of appropriating certain real property, parcel of land, or real property interests described in said Resolution; and

WHEREAS, it is necessary to appropriate the said certain property, parcel of land or real property interests for the purpose of the roadway construction and improvement in connection with the Dayton-Xenia Road Widening Project and for the preservation of the public peace, health, safety, and welfare;

NOW, THEREFORE, THE CITY OF BEAVERCREEK, OHIO HEREBY ORDAINS THAT:

SECTION I.

The real property, parcels of land or real property interests described in Exhibit 'A', and Exhibit 'B' attached hereto and incorporated herein, for public right-of-way and street and highway purposes for the Dayton-Xenia Road Widening Project shall be and the same are hereby appropriated for the construction of said project.

SECTION II.

The names of those either having, claiming, or that may have any estate, title or interest in the above-described real property, parcels of land or real property interest to be appropriated by this Ordinance are: 3455 Dayton-Xenia. LLC, and any other lien holders, persons or entities declaring an interest pursuant to law, the Treasurer of Greene County, Ohio and the Auditor of Greene County, Ohio.

SECTION III.

The above-described real property, parcels, land, and/or real property interests have a fair market value of \$3,092.00, as determined by an independent, certified appraiser.

SECTION IV.

This Council finds that the appropriation is necessary for the stated public purposes and that the City intends to obtain immediate possession of the real property, parcel of land or real property interests described in Exhibit 'A', and Exhibit 'B', which immediate possession is necessary for the stated public purposes.

SECTION V.

The City Attorney is hereby authorized and directed to deposit the aforesaid valued amount with the Clerk of Court of Greene County, Ohio, or other depository, take possession of the afore described real property, parcel of land or real property interest, file, as necessary, a petition for appropriation, apply to a court of competent jurisdiction to make inquiry into and assess the compensation to be paid for the real property, parcel of land or real property interests to be appropriated, and to do all things necessary or proper in connection therewith.

SECTION VI.

All actions taken by or in behalf of the City of Beavercreek in connection with the appropriation of the afore described real property, parcel of land or real property interests and prior to the time of adoption of this Ordinance are hereby ratified.

SECTION VII.

That is it found and determined that all of this Council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberation of this Council and of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City; and further for the reason that the immediate construction of the improvements to Dayton-Xenia Road are necessary to improve the traffic safety and to reduce traffic congestion of certain streets, alleys, roadways, and right-of-way; therefore, this Ordinance shall be in full force and effective from and immediately after its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

SUMMARY

This Ordinance appropriates certain real property, parcels of land, or real property interests owned by 3455 Dayton-Xenia, LLC, with interest by others, for the Dayton-Xenia Road Widening Project in the City of Beavercreek, Ohio, and declares an emergency.

EXHIBIT A

Page 1 of 3

LPA RX 851 WD

Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 37-WD
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of Lot 6 of the Shady Brook plat as recorded in Plat Cabinet 32 Page 45A of the plat records of Greene County, Ohio and conveyed to 3455 Dayton-Xenia LLC as recorded in Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the right side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence southeasterly on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, South 53 degrees 35 minutes 12 seconds East, 171.37 feet, to an iron pin to be set on the existing south right of way line of Dayton-Xenia Road, said point being 34.97 feet right of station 118+90.00 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

EXHIBIT A

Page 2 of 3

LPA RX 851 WD

Rev. 06/09

Thence southeasterly continuing on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, also being the north lot line of said Lot 6, South 53 degrees 35 minutes 12 seconds East, 28.63 feet, to a point on the east lot line of said Lot 6, said point being the northeast corner of said Lot 6, said point being 34.57 feet right of station 119+18.63;

Thence southwesterly on the east lot line of said Lot 6, also being the west lot line of Lot 7 of said Shady Brook plat, South 37 degrees 43 minutes 48 seconds West, 40.43 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 119+18.26;

Thence northwesterly on the proposed south right of way line of Dayton-Xenia Road, being a right of way line 75.00 feet southerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 21.26 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 118+97.00;

Thence northeasterly continuing on the proposed south right of way line of Dayton-Xenia Road, North 27 degrees 17 minutes 13 seconds East, 40.64 feet, to the **TRUE POINT OF BEGINNING** and containing 0.0231 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.0231 acres, more or less, subject to legal and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050000600.

Prior Instrument Reference as of the date this survey was prepared: Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

EXHIBIT A

LPA RX 851 WD

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Joshua R. Mihelcic
Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



Description: 1-6-16
Compared to Engineer's Tax Map Dept
 Legally Sufficient As Described
 Legally Sufficient With Corrections Filed
 Legally Insufficient, New Survey Required
By: DMB Date: 1-6-16

EXHIBIT B

LPA RX 887 T

Page 1 of 3

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 37-T
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

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Thence southeasterly on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, South 53 degrees 35 minutes 12 seconds East, 100.00 feet, to a point on the existing south right of way line of Dayton-Xenia Road, said point being the northwest corner of said Lot 6, said point being 35.95 feet right of station 118+18.63 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

Thence southeasterly continuing on the existing south right of way line of Dayton-Xenia Road, being a right of way line 30.00 feet southerly of, as measured perpendicular to and parallel with, the existing centerline of right of way of Dayton-Xenia Road, also being the north lot line of said Lot 6, South 53 degrees 35 minutes 12 seconds East, 71.37 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 34.97 feet right of station 118+90.00;

EXHIBIT B

Page 2 of 3

LPA RX 887 T

Rev. 07/09

Thence southwesterly on the proposed south right of way line of Dayton-Xenia Road, South 27 degrees 17 minutes 13 seconds West, 40.64 feet, to an iron pin to be set on the proposed south right of way line of Dayton-Xenia Road, said point being 75.00 feet right of station 118+97.00;

Thence southeasterly continuing on the proposed south right of way line of Dayton-Xenia Road, being a right of way line 75.00 feet southerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 21.26 feet, to an iron pin to be set on the east lot line of said Lot 6, said point being 75.00 feet right of station 119+18.26;

Thence southwesterly on the east lot line of said Lot 6, South 37 degrees 43 minutes 48 seconds West, 15.00 feet, to a point on the proposed temporary easement line, said point being 90.00 feet right of station 119+18.12;

Thence northwesterly on the proposed temporary easement line, North 52 degrees 47 minutes 41 seconds West, 18.12 feet, to a point on the proposed temporary easement line, said point being 90.00 feet right of station 119+00.00;

Thence northerly continuing on the proposed temporary easement line, North 12 degrees 25 minutes 49 seconds West, 26.25 feet, to a point on the proposed temporary easement line, said point being 73.00 feet right of station 118+80.00;

Thence northwesterly continuing on the proposed temporary easement line, North 52 degrees 47 minutes 41 seconds West, 60.85 feet, to a point on west lot line of said Lot 6, said point being 73.00 feet right of station 118+19.15;

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The above described area is contained within Greene County Auditor's permanent parcel number B42000500050000600.

Prior Instrument Reference as of the date this survey was prepared: Official Record 3602, Page 379 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Miheleic, Registered Surveyor 8453 of the State of Ohio.

EXHIBIT B

LPA RX 887 T

Rev. 07/09

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

/J()ShU;R. Mihelcic

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Date

Registered Surveyor of Ohio: No. S-008453

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**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

MC 11/016

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; RW Acquisition; John L. Deal, Trustee Property
Agenda Reference No.: <u>VI. O.</u>	Resolution No. <u>16-32</u>

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from John L. Deal, Trustee have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Resolution and the accompanying Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

Therefore, it is recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-32**

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY
OF NOVEMBER, 2016.

**A RESOLUTION TO DECLARE THE NECESSITY AND INTENT
TO ACQUIRE CERTAIN PARCELS OR REAL ESTATE AND
OTHER PROPERTY INTERESTS OWNED BY JOHN L. DEAL,
TRUSTEE, WITH INTEREST BY OTHERS, FOR THE DAYTON-
XENIA ROAD WIDENING PROJECT, IN THE CITY OF
BEAVERCREEK, OHIO.**

WHEREAS, the City of Beavercreek is engaged in the acquisition of right-of-way for the Dayton-Xenia Road Widening Project in the City of Beavercreek, Ohio; and

WHEREAS, the acquisition of the parcels of real estate and other property interests hereinafter described is necessary for the public purpose of roadway construction in connection with said project; and

WHEREAS, this Council has determined that the lands hereinafter described are necessary for roadway construction in connection with such project;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

Council hereby declares the necessity and intention to appropriate certain permanent and temporary right-of-way and easements in accordance with Chapter 163 of the Ohio Revised Code.

SECTION II.

Council considers it necessary and declares its intention to appropriate certain permanent and temporary right-of-way in real estate described in Exhibit 'A', Exhibit 'B', Exhibit 'C', and Exhibit 'D' attached hereto and incorporated herein; the owners, persons or entities in possession and persons or entities having an interest of record and others which may have an interest include John L. Deal, Trustee, and any other lien holders, persons or entities declaring a lawful interest in said same real estate.

SECTION III.

The City Manager or his designee is hereby authorized to cause written notice of the adoption of this Resolution to be given to the owners, person in possession of, or having an interest of record or other interest in the above-described premises, and said notice shall be served according to law by a person to be designated for that purpose by said City Manager or his designee and to make return of said service of notice in the manner provided by law.

SECTION IV.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION V.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

EXHIBIT A

LPA RX 851 WD

Page 1 of 3

Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 32-WD1
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 7.34 feet right of station 117+18.23;

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Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, said point being 8.46 feet right of station 116+31.38 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 150.32 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 7.88 feet right of station 114+80.89;

Thence northerly on the grantor's west property line, also being the east property line of the Robert W. Lowry & Sharon A. Lowry 1.070 acre tract as recorded in Official Record 2639, Page 559 of the Deed Records of Greene County, Ohio, North 05 degrees 02 minutes 16 seconds East, 53.37 feet, passing a 7/8 inch iron pin found 26.23 feet left of station 114+60.62, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 114+53.62;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 63.70 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 115+17.32;

Thence continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, in a southeasterly direction on a curve to the right with a central angle of 00 degrees 49 minutes 37 seconds and a radius of 5767.58 feet, an arc distance of 83.23 feet, the chord of which bears South 53 degrees 49 minutes 30 seconds East for a distance of 83.23 feet, to a Mag Nail to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 116+00.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 50 degrees 20 minutes 09 seconds East, 26.40 feet, to an iron pin to be set on the grantor's east property line, said point being 36.64 feet left of station 116+26.20;

EXHIBIT A

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Thence southeasterly on the grantor's east property line, also being the west property line of the John L. Deal, Trustee 5.652 acre tract as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio, South 30 degrees 18 minutes 15 seconds West, 45.40 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1719 acres, of which 0.1087 acres is PRO (Present Road Occupied), leaving a net take of 0.0632 acres, more or less, subject to legal highways and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050017600.

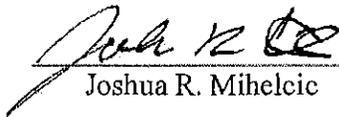
Prior Instrument Reference as of the date this survey was prepared: Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



City of Beaver Creek, Ohio
 Legally Sufficient As Per
 Legally Sufficient With C...
 Legally Insufficient Under
By: **DMB** Date: **1-6-16**

EXHIBIT B

LPA RX 851 WD

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Rev. 06/09

Ver. Date 01/06/16

PID 93858

PARCEL 32-WD2
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, said point being 7.34 feet right of station 117+18.23 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

EXHIBIT B

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 8.46 feet right of station 116+31.38;

Thence northeasterly on the grantor's west property line, also being the east property line of the John L. Deal, Trustee 1.706 acre tract as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, South 50 degrees 20 minutes 09 seconds East, 35.73 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 116+61.67;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 35.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 228.33 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 118+90.00;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 37 degrees 12 minutes 19 seconds East, 35.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 118+90.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 70.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 51.30 feet, to an iron pin to be set on the grantor's east property line, said point being 70.00 feet left of station 119+41.30;

Thence southerly on the grantor's east property line, also being the west lot line of Lot 3B of the Replat of Lot 3A & 3B of the Replat of Lot 3 of Locust Grove Plat as recorded in Plat Cabinet 35 Page 173A of plat records of Greene County, Ohio, South 04 degrees 54 minutes 31 seconds West, 77.93 feet, passing a capped "JTB 6487" iron pin found 26.96 feet left of station 119+69.49, to a point on the grantor's east property line, also being on the west lot line of Lot 4 of the Locust Grove Plat as recorded in Plat Cabinet 33 Page 733A-B of plat records of Greene County, Ohio, 4.13 feet left of station 119+82.94;

EXHIBIT B

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Thence southerly continuing on the grantor's east property line, also being the west lot line of said Lot 4, South 04 degrees 54 minutes 31 seconds West, 9.93 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, 4.26 feet right of station 119+88.24;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 52 degrees 03 minutes 49 seconds West, 24.72 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 3.95 feet right of station 119+63.52;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 245.31 feet, to the **TRUE POINT OF BEGINNING** and containing 0.3788 acres, of which 0.2404 acres is PRO (Present Road Occupied), leaving a net take of 0.1384 acres, more or less, subject to legal highways, an existing 60 foot easement as recorded in Survey Record No. 24 Page 175 of the survey records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050021900.

Prior Instrument Reference as of the date this survey was prepared: Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

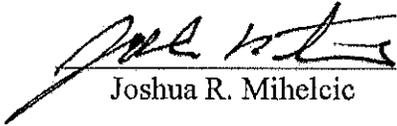
Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

EXHIBIT B

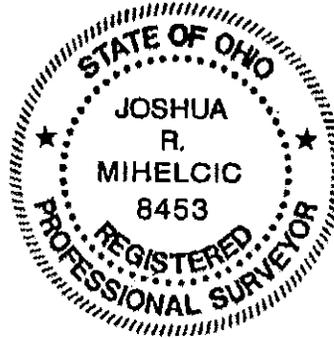
LPA RX 851 WD

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

Q/..6-2016
Date

Registered Surveyor of Ohio: No. S-008453



I have read this description and find it correct and true.
By _____
Surveyor

OtriB

1-fu-110

EXHIBIT C

LPA RX 887 T

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Ver. Date 01/06/16

PID 93858

PARCEL 32-T1
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 7.34 feet right of station 117+18.23;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, said point being 8.46 feet right of station 116+31.38;

Thence northeasterly on the grantor's east property line, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

EXHIBIT C

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Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, North 50 degrees 20 minutes 09 seconds West, 26.40 feet, to a Mag Nail to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 116+00.00;

Thence continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, in a northwesterly direction on a curve to the left with a central angle of 00 degrees 49 minutes 37 seconds and a radius of 5767.58 feet, an arc distance of 83.23 feet, the chord of which bears North 53 degrees 49 minutes 30 seconds West for a distance of 83.23 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 115+17.32;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 63.70 feet, to an iron pin to be set on the grantor's west property line, said point being 38.00 feet left of station 114+53.62;

Thence northerly on the grantor's west property line, North 05 degrees 02 minutes 16 seconds East, 8.14 feet, to a point on the proposed temporary easement line, said point being 45.00 feet left of station 114+49.46;

Thence southeasterly on the proposed temporary easement line, South 57 degrees 01 minutes 27 seconds East, 100.94 feet, to a point on the proposed temporary easement line, said point being 50.00 feet right of station 115+17.32;

Thence northeasterly continuing on the proposed temporary easement line, North 59 degrees 37 minutes 27 seconds East, 67.56 feet, to a point on the proposed temporary easement line, said point being 112.00 feet right of station 115+76.46;

Thence southeasterly on the proposed temporary easement line, South 23 degrees 21 minutes 49 seconds East, 51.90 feet, to a point on the grantor's east property line, said point being 86.00 feet right of station 116+20.62;

Thence southwesterly on the grantor's east property line, South 30 degrees 18 minutes 15 seconds West, 49.68 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1138 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.1138 acres, more or less, subject to legal highways and other easements of record.

EXHIBIT C

LPA RX 887 T

Rev. 07/09

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050017600.

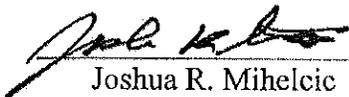
Prior Instrument Reference as of the date this survey was prepared: Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAO (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



EXHIBIT D

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LPA RX 887 T

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 32-T2
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVEDRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, said point being 7.34 feet right of station 117+18.23;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 8.46 feet right of station 116+31.38;

EXHIBIT D

LPA RX 887 T

Rev. 07/09

Thence northeasterly on the grantor's west property line, also being the east property line of the John L. Deal, Trustee 1.706 acre tract as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly continuing on the grantor's west property line, North 30 degrees 18 minutes 15 seconds East, 49.68 feet, to a point on the proposed temporary easement line, said point being 86.00 feet left of station 116+20.62;

Thence southerly on the proposed temporary easement line, South 04 degrees 13 minutes 55 seconds East, 45.17 feet, to a point on the proposed temporary easement line, said point being 52.00 feet left of station 116+50.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 48 minutes 14 seconds East, 76.11 feet, to a point on the proposed temporary easement line, said point being 52.00 feet left of station 117+26.00;

Thence northeasterly continuing on the proposed temporary easement line, North 46 degrees 17 minutes 44 seconds East, 25.32 feet, to a point on the proposed temporary easement line, said point being 77.00 feet left of station 117+30.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 87.00 feet, to a point on the proposed temporary easement line, said point being 77.00 feet left of station 118+17.00;

Thence southwesterly continuing on the proposed temporary easement line, South 37 degrees 12 minutes 19 seconds West, 27.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 118+17.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 37.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 118+54.00;

Thence easterly continuing on the proposed temporary easement line, North 84 degrees 06 minutes 52 seconds East, 42.45 feet, to a point on the proposed temporary easement line, said point being 79.00 feet left of station 118+85.00;

EXHIBIT D

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Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 50.61 feet, to a point on the grantor's east property line, said point being 79.00 feet left of station 119+35.61;

Thence southerly on the grantor's east property line, South 04 degrees 54 minutes 31 seconds West, 10.64 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 119+41.30;

Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 70.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 51.30 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 118+90.00;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 37 degrees 12 minutes 19 seconds West, 35.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 118+90.00;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 35.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 228.33 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 116+61.67;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 50 degrees 20 minutes 09 seconds West, 35.73 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1841 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.1841 acres, more or less, subject to legal highways, an existing 60 foot easement as recorded in Survey Record No. 24 Page 175 of the survey records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050021900.

Prior Instrument Reference as of the date this survey was prepared: Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio.

EXHIBIT D

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Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


/JOSHUA R. Mihelcic

ot- & to tr.

Date

Registered Surveyor of Ohio: No. S-008453



**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

MAC 11/01/6

Meeting Date: <u>November 14, 2016</u>	Reference Topic: Dayton-Xenia Road Widening Project; R/W Acquisition; John L. Deal, Trustee Property
Agenda Reference No.: <u>VI. P.</u>	Ordinance No. <u>16-33</u>

ACTION REQUESTED		
<input checked="" type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

The Dayton-Xenia Road Widening Project generally consists of the widening of Dayton-Xenia Road between Woods Drive and east of Wallaby Drive to a three (3) lane pavement section with curb, gutters, storm sewer, and a sidepath along the north and south sides of the roadway.

Over the past several months, this office has been actively pursuing the purchase of the additional right-of-way and easements needed to build the improvement. In order to construct this widening project it was necessary to purchase additional property rights from 50 individual property owners, where these efforts have resulted in agreements with 46 of these owners to date.

Unfortunately, our efforts to purchase the additional property rights needed to construct this improvement from John L. Deal, Trustee have been unsuccessful. The City's right-of-way acquisition consultant and the Engineering Division has had an ongoing dialog with the property owner, but we have been unable to agree upon the purchase of the necessary property rights. The passage of this Ordinance will allow for this project to proceed on schedule if the City and the property owner are unable to agree upon the terms for the sale of this land.

As always, this office will continue to work with the property owner as the project schedule will permit in order to try to avoid using the appropriations process to acquire the necessary property rights.

STAFF RECOMMENDATION:

In order for the City to meet ODOT's deadline for the completion of the right-of-way acquisition work, it is recommended that City Council approve the attached Ordinance as an emergency.

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-33

SPONSORED BY COUNCIL MEMBER _____ ON THE 14TH DAY OF NOVEMBER, 2016.

TO APPROPRIATE CERTAIN REAL PROPERTY INTERESTS OWNED BY JOHN L. DEAL, TRUSTEE, FOR THE DAYTON-XENIA ROAD WIDENING PROJECT, IN THE CITY OF BEAVERCREEK, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, this Council, by Resolution Number 16-32, declared its intention and the necessity of appropriating certain real property, parcel of land, or real property interests described in said Resolution; and

WHEREAS, it is necessary to appropriate the said certain property, parcel of land or real property interests for the purpose of the roadway construction and improvement in connection with the Dayton-Xenia Road Widening Project and for the preservation of the public peace, health, safety, and welfare;

NOW, THEREFORE, THE CITY OF BEAVERCREEK, OHIO HEREBY ORDAINS THAT:

SECTION I.

The real property, parcels of land or real property interests described in Exhibit 'A', Exhibit 'B', Exhibit 'C', and Exhibit 'D' attached hereto and incorporated herein, for public right-of-way and street and highway purposes for the Dayton-Xenia Road Widening Project shall be and the same are hereby appropriated for the construction of said project.

SECTION II.

The names of those either having, claiming, or that may have any estate, title or interest in the above-described real property, parcels of land or real property interest to be appropriated by this Ordinance are: John L. Deal, Trustee, and any other lien holders, persons or entities declaring an interest pursuant to law, the Treasurer of Greene County, Ohio and the Auditor of Greene County, Ohio.

SECTION III.

The above-described real property, parcels, land, and/or real property interests have a fair market value of \$67,886.00, as determined by an independent, certified appraiser.

SECTION IV.

This Council finds that the appropriation is necessary for the stated public purposes and that the City intends to obtain immediate possession of the real property, parcel of land or real property interests described in Exhibit 'A', Exhibit 'B', Exhibit 'C', and Exhibit 'D', which immediate possession is necessary for the stated public purposes.

SECTION V.

The City Attorney is hereby authorized and directed to deposit the aforesaid valued amount with the Clerk of Court of Greene County, Ohio, or other depository, take possession of the afore described real property, parcel of land or real property interest, file, as necessary, a petition for appropriation, apply to a court of competent jurisdiction to make inquiry into and assess the compensation to be paid for the real property, parcel of land or real property interests to be appropriated, and to do all things necessary or proper in connection therewith.

SECTION VI.

All actions taken by or in behalf of the City of Beavercreek in connection with the appropriation of the afore described real property, parcel of land or real property interests and prior to the time of adoption of this Ordinance are hereby ratified.

SECTION VII.

That is it found and determined that all of this Council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberation of this Council and of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City; and further for the reason that the immediate construction of the improvements to Dayton-Xenia Road are necessary to improve the traffic safety and to reduce traffic congestion of certain streets, alleys, roadways, and right-of-way; therefore, this Ordinance shall be in full force and effective from and immediately after its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

SUMMARY

This Ordinance appropriates certain real property, parcels of land, or real property interests owned by John L. Deal, Trustee, with interest by others, for the Dayton-Xenia Road Widening Project in the City of Beaver Creek, Ohio, and declares an emergency.

EXHIBIT A

LPA RX 851 WD

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Rev. 06/09

Ver. Date 01/06/16

PID 93858

**PARCEL 32-WD1
GRE-I42-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 7.34 feet right of station 117+18.23;

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Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, said point being 8.46 feet right of station 116+31.38 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 150.32 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 7.88 feet right of station 114+80.89;

Thence northerly on the grantor's west property line, also being the east property line of the Robert W. Lowry & Sharon A. Lowry 1.070 acre tract as recorded in Official Record 2639, Page 559 of the Deed Records of Greene County, Ohio, North 05 degrees 02 minutes 16 seconds East, 53.37 feet, passing a 7/8 inch iron pin found 26.23 feet left of station 114+60.62, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 114+53.62;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 54 degrees 14 minutes 18 seconds East, 63.70 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 115+17.32;

Thence continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, in a southeasterly direction on a curve to the right with a central angle of 00 degrees 49 minutes 37 seconds and a radius of 5767.58 feet, an arc distance of 83.23 feet, the chord of which bears South 53 degrees 49 minutes 30 seconds East for a distance of 83.23 feet, to a Mag Nail to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 116+00.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 50 degrees 20 minutes 09 seconds East, 26.40 feet, to an iron pin to be set on the grantor's east property line, said point being 36.64 feet left of station 116+26.20;

EXHIBIT A

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Thence southeasterly on the grantor's east property line, also being the west property line of the John L. Deal, Trustee 5.652 acre tract as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio, South 30 degrees 18 minutes 15 seconds West, 45.40 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1719 acres, of which 0.1087 acres is PRO (Present Road Occupied), leaving a net take of 0.0632 acres, more or less, subject to legal highways and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050017600.

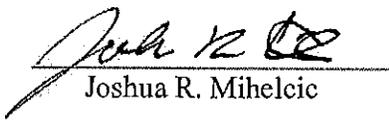
Prior Instrument Reference as of the date this survey was prepared: Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



Original Copy of this Survey
 Legally Sufficient As Described
 Legally Sufficient With Certain Reservations
 Legally Insufficient, Show How and Where
By OMB Date 1-6-16

EXHIBIT B

Page 1 of 4

LPA RX 851 WD

Rev. 06/09

Ver. Date 01/06/16

PID 93858

PARCEL 32-WD2
GRE-142-1.78
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, said point being 7.34 feet right of station 117+18.23 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

EXHIBIT B

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Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 8.46 feet right of station 116+31.38;

Thence northeasterly on the grantor's west property line, also being the east property line of the John L. Deal, Trustee 1.706 acre tract as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20;

Thence southeasterly on the proposed north right of way line of Dayton-Xenia Road, South 50 degrees 20 minutes 09 seconds East, 35.73 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 116+61.67;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 35.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 228.33 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 118+90.00;

Thence northeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 37 degrees 12 minutes 19 seconds East, 35.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 118+90.00;

Thence southeasterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 70.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, South 52 degrees 47 minutes 41 seconds East, 51.30 feet, to an iron pin to be set on the grantor's east property line, said point being 70.00 feet left of station 119+41.30;

Thence southerly on the grantor's east property line, also being the west lot line of Lot 3B of the Replat of Lot 3A & 3B of the Replat of Lot 3 of Locust Grove Plat as recorded in Plat Cabinet 35 Page 173A of plat records of Greene County, Ohio, South 04 degrees 54 minutes 31 seconds West, 77.93 feet, passing a capped "JTB 6487" iron pin found 26.96 feet left of station 119+69.49, to a point on the grantor's east property line, also being on the west lot line of Lot 4 of the Locust Grove Plat as recorded in Plat Cabinet 33 Page 733A-B of plat records of Greene County, Ohio, 4.13 feet left of station 119+82.94;

EXHIBIT B

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Thence southerly continuing on the grantor's east property line, also being the west lot line of said Lot 4, South 04 degrees 54 minutes 31 seconds West, 9.93 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, 4.26 feet right of station 119+88.24;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 52 degrees 03 minutes 49 seconds West, 24.72 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 3.95 feet right of station 119+63.52;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 245.31 feet, to the **TRUE POINT OF BEGINNING** and containing 0.3788 acres, of which 0.2404 acres is PRO (Present Road Occupied), leaving a net take of 0.1384 acres, more or less, subject to legal highways, an existing 60 foot easement as recorded in Survey Record No. 24 Page 175 of the survey records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050021900.

Prior Instrument Reference as of the date this survey was prepared: Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

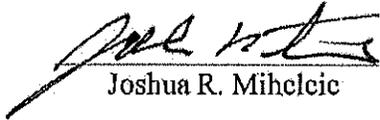
Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

EXHIBIT B

LPA RX 851 WD

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-06-2016
Date

Registered Surveyor of Ohio: No. S-008453



I have read this description and find it correct.

Date

OtriB

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EXHIBIT C

LPA RX 887 T

Page 1 of 3

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 32-TI
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point being 7.34 feet right of station 117+18.23;

Thence northwesterly continuing on the existing centerline of right of way of Dayton-Xenia Road, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southeast corner, said point being 8.46 feet right of station 116+31.38;

Thence northeasterly on the grantor's east property line, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20 and also being the TRUE POINT OF BEGINNING for the parcel of land herein described;

EXHIBIT C

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Rev. 07/09

Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, North 50 degrees 20 minutes 09 seconds West, 26.40 feet, to a Mag Nail to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 116+00.00;

Thence continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, in a northwesterly direction on a curve to the left with a central angle of 00 degrees 49 minutes 37 seconds and a radius of 5767.58 feet, an arc distance of 83.23 feet, the chord of which bears North 53 degrees 49 minutes 30 seconds West for a distance of 83.23 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 38.00 feet left of station 115+17.32;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 38.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 54 degrees 14 minutes 18 seconds West, 63.70 feet, to an iron pin to be set on the grantor's west property line, said point being 38.00 feet left of station 114+53.62;

Thence northerly on the grantor's west property line, North 05 degrees 02 minutes 16 seconds East, 8.14 feet, to a point on the proposed temporary easement line, said point being 45.00 feet left of station 114+49.46;

Thence southeasterly on the proposed temporary easement line, South 57 degrees 01 minutes 27 seconds East, 100.94 feet, to a point on the proposed temporary easement line, said point being 50.00 feet right of station 115+17.32;

Thence northeasterly continuing on the proposed temporary easement line, North 59 degrees 37 minutes 27 seconds East, 67.56 feet, to a point on the proposed temporary easement line, said point being 112.00 feet right of station 115+76.46;

Thence southeasterly on the proposed temporary easement line, South 23 degrees 21 minutes 49 seconds East, 51.90 feet, to a point on the grantor's east property line, said point being 86.00 feet right of station 116+20.62;

Thence southwesterly on the grantor's east property line, South 30 degrees 18 minutes 15 seconds West, 49.68 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1138 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.1138 acres, more or less, subject to legal highways and other easements of record.

EXHIBIT C

LPA RX 887 T

Rev. 07/09

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050017600.

Prior Instrument Reference as of the date this survey was prepared: Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio.

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAO (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-1/2 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


Joshua R. Mihelcic

01-6-2016
Date

Registered Surveyor of Ohio: No. S-008453



EXHIBIT D

Page 1 of 4

LPA RX 887 T

Rev. 07/09

Ver. Date 01/06/16

PID 93858

PARCEL 32-T2
GRE-142-1.78
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
IMPROVE DRIVEWAY AND GRADING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
CITY OF BEAVERCREEK, GREENE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Greene, City of Beavercreek, Section 32, Town 3, Range 7, M.Rs. and being part of a tract of land conveyed to John L. Deal, Trustee as recorded in Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio and being more particularly described as follows:

Being a parcel lying on the left side of the existing centerline of right of way of Dayton Xenia Road as part of the GRE-142-1.78 Centerline Plat made by Northwest Consultants, Inc. for the City of Beavercreek as recorded in Plat Cabinet 38 Page 93B-96A of the plat records of Greene County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 7/8 inch iron pipe found, said iron pipe found being the northeast corner of Lot 4 of the said Shady Brook plat, said iron pipe found being on the existing south right of way line of Dayton-Xenia Road, said iron pipe found being 37.34 feet right of proposed centerline of construction of Dayton-Xenia Road station 117+18.64;

Thence northeasterly on a line perpendicular to the existing centerline of right of way of Dayton-Xenia Road, North 36 degrees 24 minutes 48 seconds East, 30.00 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, said point being 7.34 feet right of station 117+18.23;

Thence northwesterly on the existing centerline of right of way of Dayton-Xenia Road, also being the grantor's south property line, North 53 degrees 35 minutes 12 seconds West, 86.81 feet, to a point on the existing centerline of right of way of Dayton-Xenia Road, said point also described as the grantor's southwest corner, said point being 8.46 feet right of station 116+31.38;

EXHIBIT D

Thence northeasterly on the grantor's west property line, also being the east property line of the John L. Deal, Trustee 1.706 acre tract as recorded in Official Record 1810, Page 579 of the Deed Records of Greene County, Ohio, North 30 degrees 18 minutes 15 seconds East, 45.40 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 36.64 feet left of station 116+26.20 and also being the **TRUE POINT OF BEGINNING** for the parcel of land herein described;

Thence northeasterly continuing on the grantor's west property line, North 30 degrees 18 minutes 15 seconds East, 49.68 feet, to a point on the proposed temporary easement line, said point being 86.00 feet left of station 116+20.62;

Thence southerly on the proposed temporary easement line, South 04 degrees 13 minutes 55 seconds East, 45.17 feet, to a point on the proposed temporary easement line, said point being 52.00 feet left of station 116+50.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 48 minutes 14 seconds East, 76.11 feet, to a point on the proposed temporary easement line, said point being 52.00 feet left of station 117+26.00;

Thence northeasterly continuing on the proposed temporary easement line, North 46 degrees 17 minutes 44 seconds East, 25.32 feet, to a point on the proposed temporary easement line, said point being 77.00 feet left of station 117+30.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 87.00 feet, to a point on the proposed temporary easement line, said point being 77.00 feet left of station 118+17.00;

Thence southwesterly continuing on the proposed temporary easement line, South 37 degrees 12 minutes 19 seconds West, 27.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 118+17.00;

Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 37.00 feet, to a point on the proposed temporary easement line, said point being 50.00 feet left of station 118+54.00;

Thence easterly continuing on the proposed temporary easement line, North 84 degrees 06 minutes 52 seconds East, 42.45 feet, to a point on the proposed temporary easement line, said point being 79.00 feet left of station 118+85.00;

EXHIBIT D

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Thence southeasterly continuing on the proposed temporary easement line, South 52 degrees 47 minutes 41 seconds East, 50.61 feet, to a point on the grantor's east property line, said point being 79.00 feet left of station 119+35.61;

Thence southerly on the grantor's east property line, South 04 degrees 54 minutes 31 seconds West, 10.64 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 119+41.30;

Thence northwesterly on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 70.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 51.30 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 70.00 feet left of station 118+90.00;

Thence southwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, South 37 degrees 12 minutes 19 seconds West, 35.00 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 118+90.00;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, being a right of way line 35.00 feet northerly of, as measured perpendicular to and parallel with, the proposed centerline of construction of Dayton-Xenia Road, North 52 degrees 47 minutes 41 seconds West, 228.33 feet, to an iron pin to be set on the proposed north right of way line of Dayton-Xenia Road, said point being 35.00 feet left of station 116+61.67;

Thence northwesterly continuing on the proposed north right of way line of Dayton-Xenia Road, North 50 degrees 20 minutes 09 seconds West, 35.73 feet, to the **TRUE POINT OF BEGINNING** and containing 0.1841 acres, of which 0.0000 acres is PRO (Present Road Occupied), leaving a net take of 0.1841 acres, more or less, subject to legal highways, an existing 60 foot easement as recorded in Survey Record No. 24 Page 175 of the survey records of Greene County, Ohio and other easements of record.

The above described area is contained within Greene County Auditor's permanent parcel number B42000500050021900.

Prior Instrument Reference as of the date this survey was prepared: Official Record 1683, Page 410 of the Deed Records of Greene County, Ohio.

EXHIBIT D

LPA RX 887 T

Description based on a field survey conducted by Northwest Consultants, Inc. between the months of May 2014 through June 2014 under the direction and supervision of Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.

Bearings used herein are based on Ohio State Plane Coordinates, South Zone, referenced to NAD (83) (2011) and are for this project use only.

All iron pins to be set referenced herein are 3/4 inch diameter x 30 inch long iron bars with 2-112 inch aluminum cap stamped "CITY OF BEAVERCREEK R/W, P.S. 8453, NORTHWEST CONSULTANTS, INC." and will be set after construction.

This description was prepared on January 6, 2016 by Joshua R. Mihelcic, Registered Surveyor 8453 of the State of Ohio.


/JOSHUA R. Mihelcic

ot- & to tr.

Date

Registered Surveyor of Ohio: No. S-008453



interoffice
MEMORANDUM

To: Beavercreek City Council
From: Dianne Lampton, Clerk of Council 
Subject: Appointment to Board of Zoning Appeals
Date: November 10, 2016

A member of the Board of Zoning Appeals has recently resigned because of a change of residency outside the Beavercreek city limits. To fill open vacancies, it is procedure to review board applications received within the last year of those who were not appointed to a board or commission. The Board of Zoning Appeals was not an interest of those available applicants.

Mr. Hight, who currently resides on the Personnel Board, contacted the Clerk's office expressing his interest to be on a board that has more involvement. The Personnel Board has not had a meeting in more than six years. I forwarded his application to the Planning Department staff who reviewed his information and interviewed Mr. Hight for the Board of Zoning Appeals vacancy.

Staff is recommending Mr. Hight be appointed to the Board of Zoning Appeals for the open term ending February 28, 2019.

Thank you

Print

Application for City Board or Commission - Submission #506

Date Submitted: 1/28/2016

First Name

Alex

Last Name

Hight

Home Phone

Cell Phone

9375325377

Work Phone

Email Address

alexhight66@gmail.com

Address1

2765 Stauffer Dr.

Address2

City

Beavercreek

State

Ohio

Zip

45434

Are you currently registered to vote in the City of Beavercreek?

Yes

No

Length of time your have lived in the City of Beavercreek:

7.5 years

Employer

Dept. of Defense - U.S. Air Force

Occupation

Procurement Contracting Officer

Address1

2775 D Street

Address2

Bldg 14

City

WPAFB

State

OH

Zip

45433

High School

Wurzburg American High School

Year Graduated

1999

College or Training

Missouri State

Year Graduated

2006

Other

Wright State University

Year Graduated

2009

Have you ever been a member of any city board or commission?

Yes

No

If yes, please list the board(s) / commission(s), including number of terms:

I would like to be considered for the appointment to one of the following boards / commissions (please number in order of preference to those boards you are interested in):

Bikeway & Non-Motorized Transportation Advisory Committee

Personnel Board

1

Board of Zoning Appeals

Planning Commission

3

Environmental Advisory Committee

Tax Incentive Review Council

Impact Fee Appeals Board

Youth Development Committee

2

Investment Committee

Greene County Board of Health

Parks, Recreation & Culture Board

**Greene Metropolitan
Housing Authority Board**

Please describe your background. Include any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to the board or commission for which you have applied. (If possible, please attach a copy of your resume):

- Previous work experience in local, national, and international politics/government
- Trusted agent of the federal government in analysis, negotiation, & commitment of federal funds for the short and long-term viability of the U.S. Air Force
- Directly responsible for the career development of 700+ local AF Contracting personnel and over 1500 Contracting personnel nationwide
- Intimately involved in personnel decisions and the correction/mediation of personnel issues
- Long-term relationships with local colleges and universities via recruitment efforts
- Mix of business, government, and military education/experience that provides a unique perspective on proposed growth and impacts to local economy and environment

Resume

A. Hight Resume.docx

Please explain why you want to be a board/commission member

As my personal and professional life has reached a consistent tempo, I am finally able to increase my participation in my local community. I have always had a sense of civic duty and look forward to using my particular skill sets to make a difference for my neighbors, friends, and family. While I am most qualified for a seat on the Personnel Board, I believe my background provides experience in a vast array of positions that can be applied to the Planning Commission and the Youth Development Council. I have an appreciation for Beavercreek's history, its businesses, and most important, its residents. I look forward to the opportunity to serve.

Please list present membership in any community service or civic organization, of any.

Sandtrap Foundation - Non-Profit Charitable Foundation

Alex A. Hight
2765 Stauffer Dr.
Beavercreek, OH 45434
Mobile: (937) 532-5377
Email: alexhight66@gmail.com

EDUCATION

Cameron University <i>Bachelor of Arts - Political Science</i>	Lawton, OK Summer 2004
Missouri State University <i>Masters of Science – Military/Defense Studies</i>	Springfield, MO Spring 2006
Wright State University <i>Masters of Business Administration – Project Management</i>	Dayton, OH Fall 2009

CERTIFICATIONS/LICENSES

- Unlimited Procurement Contracting Officer (PCO) Warrant
- Contracting APDP Level I, II, and III
- Program Management APDP Level I

WORK EXPERIENCE

United States Air Force Resource Management Group <i>Chief – Workforce Development; AFLCMC/PKXA</i>	12/14 – Present WPAFB, OH
-----------------------------------------------------------------------------------------------------------	------------------------------

- Branch Chief responsible for career development and rotations of 700+ contracting employees at WPAFB
- Recruit, interview, and hire trainees and journeymen under numerous federal hiring authorities
- Direct intervention, mediation, and support regarding personnel issues of bargaining and non-bargaining employees
- Provide mentoring and coaching opportunities to enrich and grow contracting professionals at all levels of experience
- Direct supervision of nine (9) Contracting recruiters, educators, and workforce management specialists

United States Air Force Enterprise Acquisition Division – IT Contracting Branch <i>Chief – Corporate IT Support Section; AFLCMC/PZITA</i>	04/12 – 12/14 WPAFB, OH
-------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------

- Section Chief responsible for supervision of fourteen (14) PZITA employees
- Working PCO for contract actions of various complexities and dollar values
- Duties include PZITA workload dissemination, leave approval, annual appraisals, contract review, training, etc.
- Developed classroom and boarding process for Contract Negotiators seeking limited PCO warrant (process has been adopted as standard practice for limited warrants AFLCMC-wide)

United States Air Force
Enterprise Acquisition Division - ASC/PKE
Contracting Officer – Front Office Group; PCO and Trainer

09/11 – 04/12
WPAFB, OH

- Contracting Officer responsible for oversight of seven Contract Negotiators
- Develop Streamlined contracting procedures for new employees/trainees to gain efficiencies and utilize technological resources
- Other duties include contract review, training, customer support

United States Air Force
Air Force Research Labs/B-2 Bomber/ASC Pricing Office
Buyer, Contracting Officer, and Price/Cost Analyst

03/07- 09/11
WPAFB, OH

- Performed funding and administrative modifications on FAR based contracts, SBIR Phase I, II, and III Purchase Orders, and DoDGARs based assistance agreements
- Responsible for obligation of funds, review, and Pricing support for strategic Air Force programs
- Prepared functional/multi-level pricing models for development of cost objectives and negotiations
- Negotiated a range of diverse contracts and administrative modifications on FAR based contracts

Department of Defense
Pentagon – Europe/NATO Policy Office
Policy Intern – UK, Canada, Australia

05/05- 05/06
Washington DC

- Analyzed and consolidated data for use in the construction and implementation of policy in regard to U.S. strategic relationships with the United Kingdom, Canada, and Australia
- Compiled and prepared documents for leadership, thru the Secretary of Defense level, for use during summits with foreign counterparts
- Planned and participated in conferences with foreign liaisons to strengthen NATO partnerships

United States Congress
Oklahoma 4th District
Congressional Aide – Congressman Tom Cole

05/03- 06/04
Lawton, OK

- Operated in conjunction with Capitol Hill staffers to research, compile, and propose congressional bills
- Built and maintained relationships with local officials, business owners, and constituents
- Planned and executed local Town Hall style meetings

RESOLUTION NO. 16-29

CITY OF BEAVERCREEK

**SPONSORED BY COUNCIL MEMBER _____ ON THE
14TH DAY OF NOVEMBER, 2016.**

**A RESOLUTION BY THE BEAVERCREEK CITY COUNCIL
TO ENTER INTO AN EMPLOYMENT AGREEMENT WITH
_____ TO SERVE AS CITY MANAGER FOR A
THREE YEAR TERM.**

WHEREAS, City Council desires to employ and appoint _____ to
serve as City Manager for the City of Beavercreek for a three year term.

**NOW, THEREFORE, CITY COUNCIL FOR THE CITY OF
BEAVERCREEK, OHIO, HEREBY RESOLVES:**

SECTION I. City Council hereby employs _____ effective December
1, 2016 and further appoints _____ to serve as City
Manager effective January 1, 2017 for a three year term and
approves the Employment Agreement attached hereto and
incorporated herein as Exhibit "A."

SECTION II. This Resolution shall take effect immediately upon passage.

PASSED this 14th day of November, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

**THIS RESOLUTION BY THE BEAVERCREEK CITY
COUNCIL APPOINTS _____ AS CITY MANAGER
FOR A THREE YEAR TERM.**

**EMPLOYMENT AGREEMENT BY AND BETWEEN
CITY OF BEAVERCREEK, OHIO
AND _____**

This EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of November, 2016, by and between the City of Beavercreek, Ohio, a municipal corporation, (the “City”, or the “Employer”) and _____, (the “Employee”) (collectively, Employer and Employee, the “Parties”).

WITNESSETH:

WHEREAS, the City desires to employ the Employee as City Manager of the City of Beavercreek, Ohio as provided by the City Charter; and

WHEREAS, it is the desire of the Beavercreek City Council (the “Council”) to provide certain benefits, establish certain conditions of employment, and set working conditions of the Employee; and

WHEREAS, it is the desire of Council to: (1) retain the services of Employee; (2) make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, particularly in light of possible personnel and policy changes; and (3) provide a just means for terminating Employee's services at such time as he may be unable to fully discharge his duties or when Employer may otherwise desire to terminate his employment; and

WHEREAS, Employee desires to be employed as City Manager of the City.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, it is hereby agreed by and between the City and Employee that the City does hereby enter into this Agreement with Employee as City Manager for the City pursuant to the following terms:

1. **DUTIES AND HOURS OF WORK**

Employee shall be the City Manager for the City. Employee agrees that he faithfully and diligently will fulfill all duties and obligations incumbent upon him as the executive head of the City. Employee shall perform the duties set forth in Section 6.02 of the City's Charter, the applicable Ordinances of the City, and other legally permissible and proper duties and functions as the Council shall from time to time assign. It is further recognized by the Parties that to effectively serve, Employee must devote a great deal of time outside normal business hours to the business of the Employer.

2. **TERM**

- a. This Agreement is for three years and one month of employment commencing December 1, 2016 through December 31, 2019, subject, however, to the provisions of Paragraph 9, 10, and 22 herein.
- b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to remove the Employee. However, such removal shall be subject to provisions set forth in Paragraph 9 of this Agreement.
- c. Nothing in this Agreement is intended to prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with the City, subject only to the provisions set forth in Paragraph 10 of this Agreement.

3. **COMPENSATION-SALARY**

Employer agrees to pay Employee a salary of \$127,000.00 per year subject to the terms of this Agreement. Commencing on July 1, 2017, Employee will be reviewed based on his performance and thereafter every six (6) months through July 1, 2018. If Employee meets or exceeds expectations on July 1, 2017 he will be entitled to a 2% increase in salary. If Employee meets or exceeds expectations on January 1, 2018 and July 1, 2018,

and Employee has moved into the City of Beavercreek, Employee will receive a 2% increase in salary respectively.

Except as set forth herein, further progression in base pay will thereafter occur starting on January 1, 2019 pursuant to the Employee Manual of the City and consistent with Cost of Living Adjustments and other pay increases payable to Non-Union employees. In addition to Employee's salary and benefits as set forth herein and as established by the Employer from time to time, Employee shall be further entitled to receive such incentive bonuses provided to other Non-Union employees.

4. **WORK YEAR AND HOURS OF WORK**

It is recognized that Employee must devote time outside the office and normal office hours on business for the City, and to that end, Employee shall be allowed to establish an appropriate work schedule. Employee shall not receive additional compensation based solely on hours worked.

Employee shall accrue vacation at the rate of three (3) weeks of vacation per year for six (6) to ten (10) years of service and four weeks of vacation for eleven (11) to nineteen (19) years of service pursuant to the Employee Manual. Prior state government service is included for accrual purposes, up to a maximum of ten (10) years, provided there is no employment gap of more than six (6) months.

Additionally, Employee will be credited with thirty-two (32) hours of personal time annually for Employee's use per the Employee Manual. Employee acknowledges and agrees that any transferred sick leave, up to 30 days, will be used for illness purposes only. All sick leave accrued thereafter shall be subject to the current rules now existing for the use of sick leave as set forth in the Employee Manual which defines

how sick leave is regulated and controlled by Employer. It is expressly understood that the transferred sick leave, is not to be included in any separation package and shall not be paid out on retirement, except as provided in the Employee Manual. Accrual rates will not be reduced during the term of this Agreement.

5. **BENEFITS**

Employee shall receive during the term of this Contract, the health care benefits, insurance, and all other fringe benefits, which are provided to employees classified as Non-Union employees. Except as provided herein, the costs of these benefits will be incurred by the Employer at the same percentage paid to or on behalf of all Non-Union Employees. Further, all provisions of the City's Charter and Employee Manual relating to employee benefits, including, but not limited to vacation and sick leave, retirement and pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, shall apply to Employee as such benefits shall apply to other Non-Union employees of Employer. Such benefits shall be in addition to benefits enumerated specifically for the benefit of Employee as herein provided.

6. **INSURANCE**

In addition to health, dental, life, or other insurance benefits provided by Employer to Non-Union employees, Employer agrees to procure and maintain a term life insurance policy in an amount equal to the base contract salary provided under Section 3 (as adjusted) above for Employee and \$20,000.00 for Employee's spouse. Such benefits shall be payable to the beneficiary(ies) elected by Employee and Employee's spouse.

7. **PERS**

Employer agrees to pay directly to the Public Employee's Retirement System the City's standard contribution.

8. **AUTOMOBILE ALLOWANCE AND CELL PHONE**

Employee is required to be on call for twenty-four (24) hour service, so therefore, must have access to a vehicle for City business. In lieu of a City vehicle, Employer grants to Employee an automobile allowance of Five Thousand Dollars (\$5,000.00) annually, payable in equal monthly installments. Employee shall be responsible for the purchase, maintenance, insurance, taxes, and all related miscellaneous expenses, for said vehicle. Employer will reimburse Employee for mileage for travel associated with City business, at the same rate as other City employees are reimbursed for that portion of the travel that is in excess of a fifty (50) mile radius from the City boundaries. No mileage will be paid to Employee for travel within this fifty (50) mile area. The Employee shall provide an appropriate automobile that will be maintained in an appropriate manner and replaced frequently enough to maintain suitable appearance for the City. Employee is expected to use his vehicle unless circumstances dictate otherwise.

Employer will provide Employee with a cell phone for business use.

9. **TERMINATION AND SEVERANCE PAY**

The Parties agree that Employee shall be subject to discharge under the terms and conditions set forth in the Beavercreek City Charter.

The Parties agree that termination and severance pay is appropriate to ensure stability and security in performing the duties delegated to the Executive head of the City, and

to ensure that Employee is not removed for reasons related to changes in administrative policy rightfully delegated to Employee, or for transitions in composition of Council. Further, the Parties agree that such severance pay is appropriate to encourage Employee from pursuing more lucrative positions, which may be offered to Employee from time to time. For the purpose of this Agreement, termination shall occur when:

- (1) A four (4) member majority of Council votes to change Employee's job status with or without cause at a duly authorized public meeting; or
- (2) If the Employee resigns following an offer to accept his resignation, whether a formal or informal offer, made by a representative of Council representing the four (4) member majority of the governing body, such offer and acceptance of the offer shall be declared a termination as of the date of the offer.

In the event Employee's job is changed such that he is no longer City Manager by Council at any time during the term of this Agreement, the City agrees Employee will remain an employee to perform consulting services and the City agrees to pay Employee severance pay equal to six (6) months base salary (excluding accrued benefits), in consecutive bi-weekly installments or, upon termination, the City may elect, in its sole discretion, to make a lump sum payment to Employee of the money owed to Employee, subject to all other terms of this Agreement. Employee shall also be compensated for all benefits accrued in accordance with the Employee Manual of the City of Beavercreek, Ohio in effect at the time of exercising this provision.

Employee will sign a full release, releasing City, Council, its Employees, Agents and Representatives, granting full release from past, present and future causes of actions, complaints or claims as a condition of receiving severance pay as provided in this section.

In the event Employee is terminated for cause as set forth in the Employee Manual; the Ohio Revised Code; or conviction, the City shall have no obligation to pay the severance pay designated in this paragraph. However, Employee shall be entitled to all other earned and accrued benefits, excluding sick leave payout, and the severance pay set forth hereunder.

10. RESIGNATION

In the event Employee voluntarily resigns his position with the City, then Employee shall give the City, ninety (90) days advance notice, unless the Parties agree otherwise. In such event, Employee shall be entitled to compensation for all other earned and accrued benefits in accordance with this Agreement and the Employee Manual of the City of Beavercreek, Ohio, in effect at the time of the execution of this Agreement. The payment of earned and accrued sick leave shall be subject to Section 4 of the Agreement.

11. PERFORMANCE EVALUATION

Upon execution of this Agreement, Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City and in the attainment of the legislative body's policy objectives. Said goals and objectives shall then be reduced to writing with specific criteria to allow the future determination of whether the goal has been obtained. The Parties recognize that the nature of certain goals, particularly those relating to capital improvements and those intended to secure necessary budgetary funds, may or may not be of a nature generally attainable within one year. To the extent that certain goals and priorities may not be generally obtainable during the subject review period, the goals and

objectives shall be reduced to writing with provision for specific actions expected to be undertaken within the subsequent review period.

12. DUES, SUBSCRIPTIONS AND MEMBERSHIPS

Employer agrees to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations, and such other organizations necessary and desirable for his continued professional participation growth, and advancement, and for the good of the Employer.

13. PROFESSIONAL DEVELOPMENT

A. Employer hereby agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer including, national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.

The activities set forth at Section (A) herein shall be subject to the discretion of the Employee. However, such expense shall be within the constraints of the approved budget, which the City agrees shall be established within the sole discretion of the City at an amount deemed appropriate by the City.

14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

Council, in consultation with the Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the

performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

15. NO REDUCTION OF BENEFITS

The City may, at the discretion of Council, increase the benefits stated herein. However, Employer shall not at any time during the term of this Agreement reduce the salary, compensation, or other financial benefits of Employee, except to the degree of such a reduction across the board for all Non-Union employees of the Employer.

16. OUTSIDE ACTIVITIES

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and community, the Employee may, with Council approval, accept limited teaching or consulting opportunities with the understanding that such arrangements shall not constitute interference with, nor a conflict of interest with the responsibilities under this Agreement.

17. CITY RESIDENCY

If Employee establishes his legal residency within the territorial limits of the City of Beavercreek, Employer will pay for the actual cost of Employee's move up to \$7500.00. The payment for relocation will be on a reimbursable bases, based upon actual costs incurred for packing, moving, storage and associated expenses related to the relocation of the Employee's household to a location within the municipal boundaries of the City. Employee acknowledged that to qualify for this payment he must thereafter remain a resident of the City throughout his tenure as City Manager.

18. **INDEMNIFICATION**

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of Employee's duties as City Manager. Employer, or its insurance carrier, shall, without personal cost to Employee, compromise and settle any such claim or suit and pay the amount of any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

21. **NOTICES**

Notices pursuant to this Agreement shall be given by regular United States Mail, postage prepaid, addressed as follows:

Employer: Mayor, City of Beavercreek
1368 Research Park Drive
Beavercreek, Ohio 45432

AND

Stephen M. McHugh, Esq.
Coolidge Wall, L.P.A.
33 West First Street, Suite 600
Dayton, OH 45402

Employee: _____
City of Beavercreek
1368 Research Park Drive
Beavercreek, Ohio 45432

22. **EFFECTIVE DATE**

This Agreement shall become effective commencing the 1st day of December, 2016.

23. **SEVERABILITY AND SAVINGS CLAUSE**

If any provision, or any portion thereof, contained in this Agreement is deemed unconstitutional, invalid or unenforceable, by a Court of law, that provision(s) or portion thereof, shall be deemed severable, and the remainder of the Agreement shall remain in full force and effect.

24. **MORALS CLAUSE**

If Employee commits or is arrested for any crime or become involved in any situation or occurrence tending to bring Employee into public disrepute, contempt, scandal, or ridicule, fails to maintain membership in good standing with the International City/County Management Association, or tending to shock, insult, or offend the public or any protected class or group thereof, then Employer shall have the right to immediately terminate this Agreement.

25. **FIRST MONTH OF EMPLOYMENT**

During the first thirty (31) days of Employee's employment, from December 1, 2016 to December 31, 2016, Employee will work with the current City Manager, Michael Cornell, to learn the duties of being the City Manager for the City of Beavercreek.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its Mayor, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

Witnesses:

CITY OF BEAVERCREEK, OHIO

Mayor Robert Stone

CITY MANAGER

_____, Employee



**AGENDA
CITY COUNCIL
Budget Work Session – November 16, 2016, 5:00 p.m.
Council Chambers**

1368 Research Park Dr
Beavercreek, Ohio

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. DISCUSSION ITEMS
 - A. 2017 Budget Item – Police Fund
 - B. 2017 Budget Item – Parks and Recreation Fund
 - C. 2017 Budget Item – Golf Fund
 - D. Park Consolidation
- V. ADJOURNMENT

DRAFT



**AGENDA
CITY COUNCIL
Budget Work Session – November 21, 2016, 5:00 p.m.
Council Chambers**

1368 Research Park Dr
Beavercreek, Ohio

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. DISCUSSION ITEMS
 - A. 2017 Budget Item – Street Fund
 - B. 2017 Budget Item – Five Year Capital
 - C. 2017 Budget Item – General Fund
- V. INFORMATIONAL ITEMS
 - A. Third Quarter 2016 Financial Summary
- VI. ADJOURNMENT

DRAFT

PLANNING DEPARTMENT STATUS REPORT

November 10, 2016

CITY COUNCIL

November 14, 2016

-
-

November 28, 2016

- PUD 06-3 Amendment 9/16, First & Main, public hearing, first reading
-

December 12, 2016

- PUD 06-3 Amendment 9/16, First & Main, public hearing, second reading
-

January 9, 2017

- PUD 06-3 Amendment 9/16, First & Main, third reading
-

Tabled / Delayed / Pending

-

PLANNING COMMISSION

December 8, 2016 (THURSDAY)

- PC 16-5, ASRA and CU, HarborChase of Beavercreek, public hearing
- PC 16-6, ASRA, Raising Canes, public hearing
- S-16-6, Cottages of Beavercreek

Currently Tabled / Delayed

-

Commercial Permits Submitted and Under Review

-
-

BOARD OF ZONING APPEALS

December 14, 2016

- BZA 16-1 Appeal
- V-16-5, 1820 Maple Lane

Currently Tabled or Delayed

-
-