

RESOLUTION NO. 2021 - 10

A Resolution Approving the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit and Approving the Necessity of Acquiring, Constructing, Equipping, Improving, and Installing Certain Public Improvements in the Village of Lewisburg, Ohio in Cooperation with the Lewisburg Energy Special Improvement District.

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 an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) or 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, Pursuant to the *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the "Petition"), including the supplemental plan entitled *Lewisburg Energy Special Improvement District Program Plan - Supplement to Plan for 0 Western Ave., Lewisburg, Ohio Project* (the "Supplemental Plan"), Big Belly Building, LLC (the "Owner"), as the owner of 100% of the real property subject to the Petition (as further described in Exhibit A to the Petition, the "Property") has requested to add the Property to the territory of the Lewisburg Energy Special Improvement District (the "District") pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of a special energy improvement project to be acquired, constructed, equipped, improved, and installed on the property, which special energy improvement project consists of acquiring, constructing, equipping, improving, and installing energy efficiency improvements on its real property, including, without limitation, LED lighting, HVAC systems, process heating boilers/CHP, and related improvements (the "Project"); and

WHEREAS, The Petition, which is on file with this Council and the Village Manager, has been signed by the Owner, as the owner of 100% of the Property, and proposes the necessity of acquiring, constructing, equipping, improving, and installing the Project and financing the Project through the cooperation of the District; and

WHEREAS, The Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and

WHEREAS, In the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Property (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be \$1,420,915.00, including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and

expenses, and requests that the Project be undertaken cooperatively by the Village, the Owner, the District, and such other parties as the Village may deem necessary or appropriate; and

WHEREAS, This Council, as mandated by Ohio Revised Code Chapter 1710, must approve or disapprove the Petition within 60 days of the submission of the Petition.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the Village of Lewisburg, Ohio that:

Section 1. Definitions. Each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petition.

Section 2. Approval of Petition and Supplemental Plan. This Council hereby approves the Petition and the Supplemental Plan now on file with the Council and the Village Manager.

Section 3. Public Necessity of Special Assessments. This Council declares necessary, and a vital and essential public purpose of the Village, to improve the Property, which is located within the Village with Preble County Auditor parcel identification Number D13001202800012003, 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 the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Petition and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Council and open to the inspection of all persons interested.

Section 4. One Project. This Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project's elements 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 the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the Village and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 5. Approval of Plans. The plans and specifications and total cost of the Project now on file with the Council as part of the Petition and the Supplemental Plan are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

Section 6. Public Necessity of Project. This Council hereby determines that the Project is a necessary and essential and vital public, governmental purpose of the Village, to improve the Property through the acquisition, construction, equipping, improvement, and installation of the Project as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the Village, it is necessary and proper to provide, in cooperation with the Owner and the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition. This Council determines and declares that the Project is conducive to the public peace, health, safety and welfare of the Village and the inhabitants of the Village.

Section 7. Allocation of Costs of Project. Pursuant to and subject to the provisions of the valid Petition signed by the owners of 100% of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The Village does not intend to issue securities in anticipation of the either levy of the Special Assessments or the collection of the Special Assessments.

Section 8. Assessment Method. The method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Property as set forth in the Petition.

Section 9. Property. The lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

Section 10. Assessment Schedule. The Special Assessments shall be levied and paid in 38 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within 30 days after the first publication of the notice of the assessing Resolution.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$1,420,915.00. Each semi-annual Special Assessment payment represents payment of a portion of any principal repayment, interest, and administrative fees payable with respect to the Project. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the Village. In addition to the Special Assessments, the County Auditor of Preble 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 Preble County, Ohio.

Section 11. Village Fiscal Officer to File Estimate of Special Assessments. The Village Fiscal Officer or the Village Fiscal Officer's designee, is authorized and directed to prepare and file in the office of the Council Clerk the estimated Special Assessments for the costs 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. This Council finds and determines that the Village Fiscal Officer has completed the foregoing by confirming that the

estimated Special Assessments for the costs of the Project included in the Petition are on file with the Council Clerk.

Section 12. Notice to Property Owner. In the Petition the Owner has waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments as provided in Ohio Revised Code Section 727.13.

Section 13. Collection of Special Assessments. The Council Clerk and the Village Fiscal Officer, or their designee, are 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 14. Acceptance of Waiver of Process. This Council 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 consents to the immediate imposition of the Special Assessments upon the Property. 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, including the right to consider the Special Assessments authorized by the Petition within the limitations contained in Ohio Revised Code Section;
- (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 Board 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 Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 15. Compliance with Open Meetings Requirements. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this legislative Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 16. Effective Date. As provided under Section 4.07 of the Village Charter, this Resolution is a resolution for improvements petitioned for by the owners of a majority of the front footage or of the area of the property benefited and to be assessed and shall therefore take effect immediately upon its passage.

Dated: 06-17-2021

Marsha Jones
Mayor

Attest: Elizabeth A. Wagoner
Clerk of Council

CERTIFICATION OF CLERK OF COUNCIL

I, Elizabeth A. Wagoner, am the duly appointed Clerk of Council of the Village of Lewisburg, Preble County, Ohio, and I hereby certify that the above Resolution, including any "Exhibits" or other attachments are a true and accurate copy or duplicate original of the original record filed in my office this 17th day of June, 2021.



Elizabeth A. Wagoner
Elizabeth A. Wagoner, Clerk of Council
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