

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

SPONSOR: UTILITIES COMMITTEE

AN ORDINANCE APPROVING A PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS AND A PLAN FOR PUBLIC IMPROVEMENTS; APPROVING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE VILLAGE IN COOPERATION WITH THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT; DETERMINING TO PROCEED WITH SUCH PROJECT; AND DETERMINING TO LEVY SPECIAL ASSESSMENTS IN CONNECTION WITH SUCH PROJECT; AND DECLARING AN EMERGENCY.

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts (“ESIDs”) upon a petition to a municipal corporation or township; and

WHEREAS, ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and

WHEREAS, the Akron-Summit County Energy Special Improvement District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID, and was originally established pursuant to Resolution 390-2016, adopted by the City of Akron, Ohio on December 5, 2016 (the “Creation Resolution”); and

WHEREAS, by the Creation Resolution and under Ohio Revised Code Section 1710.02, articles of incorporation (the “Articles of Incorporation”) were approved and filed with the Ohio Secretary of State by the board of director which govern the District; and

WHEREAS, by the Creation Resolution and under Ohio Revised Code Section 1710.06, the District’s Akron Energy Special Improvement District Project Plan (as duly amended and supplemented from time to time, the “Plan”) was approved as a plan for public improvements and public services for the District; and

WHEREAS, as permitted under Ohio Revised Code Section 1710.02, the Plan and the Articles of Incorporation allow for the addition of real property within any “participating political subdivision” of the District or within any municipal corporation or township which is adjacent to any participating political subdivision of the District, to the territory of the District by the approval of the municipal corporation or township in which that real property is located; and

WHEREAS, the Village of Mogadore, Ohio (the “Owner”), as the owner of certain real property located within the Village, has identified certain real property located at 3857 Mogadore Road, Mogadore, Ohio 44260 (the “Project Site” or “Property”), as an appropriate property for special energy improvement projects pursuant to Ohio Revised Code Chapter 1710; and

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

WHEREAS, the Owner has submitted to this Council a Petition for Special Assessments for Special Energy Improvement Projects (the "Petition"), together with an Akron-Summit County Energy Special Improvement District Project Plan Supplement to Plan (the "Supplemental Plan"), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with this Council and the Director of Finance of the Village of Mogadore; and

WHEREAS, the Petition and the Supplemental Plan request that the Project Site be added to the District and that the Village of Mogadore levy special assessments on the Project Site to pay the costs of special energy improvement projects to be provided on the Project Site, all as described more particularly in the Petition and the Supplemental Plan (the "Project"); 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, this Council, as mandated by Ohio Revised Code Section 1710.02, must approve or disapprove the Petition within 60 days of the submission of the Petition; and

WHEREAS, this Council has determined to approve the Petition, together with the Supplemental Plan; 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 are estimated to be \$2,159.00, including other related costs of financing the Project, which 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 of Mogadore, the District, and such other parties as the Village of Mogadore may deem necessary or appropriate.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Mogadore, Counties of Portage and Summit, State of Ohio that:

Section 1: This Council approves the Petition and the Supplemental Plan now on file with this Council and the Director of Finance. Under the Creation Resolution, Plan, and the Articles of Incorporation, the Project Site is added to the territory of the District. The Mayor, or his designee, is hereby appointed to serve on the Board of Directors of the District as provided in Ohio Revised Code Section 1710.04(A).

Section 2: This Council approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize and effect such addition.

Section 3: Each capitalized term used in this Ordinance where the rules of grammar would otherwise not require and not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Petition.

Section 4: This Council declares necessary, and a vital and essential public purpose of the Village, to improve the Property 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 Project 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 provide a loan to the Owner or otherwise to pay costs of the Project 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 Director of Finance and open to the inspection of all persons interested.

Section 5: 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 6: The plans and specifications and total cost of the Project now on file in the office of the Director of Finance 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 7: This Council hereby determines and declares that the Project is an essential and vital public, governmental purpose of the Village 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 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.

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

Section 8: That this Council declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Petition and the Plan. The Project shall be made in accordance with the provisions of the Plan.

Section 9: Pursuant to, and subject to, the provisions of a 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 provisions of the Petition are ratified, adopted, approved and incorporated into this Ordinance as if set forth in full in this Ordinance. 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 10: 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 11: The Special Assessments shall be levied and paid in one annual installment 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 passage of this Ordinance. The period over which the services and improvements provided pursuant to the Plan are useful is determined to exceed one year.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$2,159.00. Each annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. 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 Summit County Fiscal Officer (the "County Fiscal Officer") may impose a special assessment collection fee with respect to each annual payment, which amount will be added to the Special Assessments by the County Fiscal Officer.

The Special Assessments are assessed against the Property commencing in tax year 2020 for collection in calendar year 2021. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to the maximum semi-annual amounts of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Project Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

Section 12: That the Director of Finance or any designee is 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.

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

Section 13: The Director of Finance or any designee is 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. Pursuant to the Petition, the Owner has waived notice of the adoption of this ordinance and the filing of the estimated Special Assessments, as provided in Ohio Revised Code Section 727.13, and the Village hereby accepts that waiver. The Owner has waived its right to pay the Special Assessments in cash within 30 days after the passage of this Ordinance, and all Special Assessments and installments of the Special Assessments shall be certified by the County Fiscal Officer as provided by the Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition. The Director of Finance shall keep the Special Assessments on file in the office of the Director of Finance.

Section 14: That this Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property as set forth in the Petition and are not in excess of any applicable statutory limitation.

Section 15: The Special Assessments will be used by the Village to provide the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the Village to the District or to another party the Village deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 16: 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 and 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:

The right to notice of the adoption of the resolution of necessity under Ohio Revised Code Sections 727.13 and 727.14;

The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;

The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;

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;

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;

RECORD OF ORDINANCES

Ordinance No. 2020-32Passed May 6, 2020

The right to notice that bids or quotations for the Project may exceed estimates by 15%;

The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;

The right to notice of the passage of the assessing ordinance under Ohio Revised Code Section 727.26; and

Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 17: That this Council hereby approves the Loan Agreement, a copy of which is on file in the office of the Clerk of Council. The Mayor shall sign and deliver, in the name and on behalf of the Village, the Loan Agreement, in substantially the form as is now on file with the Clerk of Council. The Loan Agreement is approved, together with any changes or amendments (including the addition or subtraction of any parties) that are not inconsistent with this Ordinance and not substantially adverse to the Village and that are approved by the Mayor on behalf of the Village, all of which shall be conclusively evidenced by the signing of the Loan Agreement or amendments thereto.

Section 18: That this Council hereby approves the Special Assessment Agreement, a copy of which is on file in the office of the Clerk of Council. The Mayor shall sign and deliver, in the name and on behalf of the Village, the Special Assessment Agreement, in substantially the form as is now on file with the Clerk of Council. The Special Assessment Agreement is approved, together with any changes or amendments (including the addition or subtraction of any parties) that are not inconsistent with this Ordinance and not substantially adverse to the Village and that are approved by the Mayor on behalf of the Village, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreement or amendments thereto.

Section 19: That in compliance with Ohio Revised Code Section 319.61, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Fiscal Officer within 20 days after its passage.

Section 20: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance 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 21: That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare in order to allow the Owner to begin work on the Project, and the District to take advantage of financing available to it for a limited time, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at the earliest time allowed by law.

RECORD OF ORDINANCES

Ordinance No. 2020-32

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Michael Paddish 5-06-20

President of Council

Date

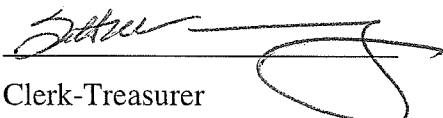
Rich N

5-7-20

Mayor

Date

Attest:


Clerk-Treasurer