

COMMISSIONERS JOURNAL NO. 79 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JULY 10, 2023

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
Jeff Benton, President
Barb Lewis, Commissioner

Absent:
Gary Merrell, Vice President

1
RESOLUTION NO. 23-590

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JULY 6, 2023:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on July 6, 2023; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Absent Mr. Benton Aye

2
PUBLIC COMMENT
 -None.

3
RESOLUTION NO. 23-591

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0707 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0707:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0707, memo transfers in batch numbers MTAPR0707 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2302675 (JCA FORENSICS)	Job and Family Services	22511607-5348	\$10,500.00
P2303042 (CONVERGE)	Job and Family Services	22511607-5348	\$10,500.00
P2300612 (PNC BANK)	Services Line	10011102-5300	\$ 8,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2303626	LIT FIBER LLC	BROADBAND CONSULTING SERVICES	22211330 - 5437	\$47,987.50
R2303844	MYERS ROOFING & SIDING	SALT STORAGE SHED ST. RT. 42 - ROOF REPLACEMENT	60111901 - 5370	\$38,729.36

Vote on Motion Mr. Merrell Absent Mrs. Lewis Aye Mr. Benton Aye

4
RESOLUTION NO. 23-592

IN THE MATTER OF ACCEPTING THE SHERIFF'S OFFICE BUDGET ESTIMATING THE COST OF OPERATING THE JAIL AND FEEDING ITS INMATES FOR 2024:

It was moved by Mrs. Lewis, seconded by Mr. Benton to accept the Sheriff's Office Budget estimating the cost of operating the jail and feeding its inmates for 2024.

(Copy available for review at the Commissioners' Office until no longer of administrative value.)

Vote on Motion Mr. Merrell Absent Mr. Benton Aye Mrs. Lewis Aye

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**SHERIFF BALZER
PRESENTATION/UPDATE BUILDING IMPROVEMENTS AND THE JAIL**

6

RESOLUTION NO. 23-593

IN THE MATTER OF AUTHORIZING THE AMENDMENT OF A PROCUREMENT CARD FOR THE EMERGENCY MANAGEMENT AGENCY:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, pursuant to section 301.29 of the Revised Code, the Board of Commissioners of Delaware County, by Resolution No. 04-1193, dated September 30, 2004, adopted a policy for the use of County Procurement Cards; and

WHEREAS, the Board of Commissioners of Delaware County, by Resolution No. 11-1040, dated October 3, 2011, adopted amendments to the Policies and Procedures for the county procurement card program; and

WHEREAS, the Board of Commissioners has adopted the procurement card policy for the use of the cards to pay for specific classes of work related expenses, without submitting a monthly estimate of the expenses, pursuant to section 301.29(F)(2) of the Revised Code;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, authorizes the use of the following procurement cards to the limits indicated and for specific work related expenses designated in the Procurement Card Policy without submitting a monthly estimate of expenses:

Appointing Authority:	Emergency Management Agency					
Office/Department:	EMA					
Daily spending per card:	\$2,500					
Monthly spending per card:	\$4,000					
Single transaction limit:	\$2,500					
Daily number of transactions per card:	10					
Monthly number of transactions per card:	50					
Name on Card:	Scott Stewart					
Department Coordinator:	Alex McCarthy					
Vote on Motion	Mr. Benton	Aye	Mr. Merrell	Absent	Mrs. Lewis	Aye

7

RESOLUTION NO. 23-594

IN THE MATTER OF APPROVING AMENDMENTS TO THE DEEDS OF AGRICULTURAL EASEMENTS FOR THE OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM DUE TO IRS SAFE HARBOR LANGUAGE:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, there is an Ohio Agricultural Easement Purchase Program Agricultural Easement by and between STB3, LLC, an Ohio Limited Liability Company; the Director, Ohio Department of Agriculture; and Delaware County and the owner wishes to amend the Deed of Agricultural Easement due to the IRS Safe Harbor language; and

WHEREAS, there is an Ohio Agricultural Easement Purchase Program Agricultural Easement by and between Gary L. Newhouse and Yvonne G. Newhouse; the Director, Ohio Department of Agriculture; and Delaware County and the owner wishes to amend the Deed of Agricultural Easement due to the IRS Safe Harbor language;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, Ohio as follows:

Section 1. The Board approves the Amendment to the Deed of Agricultural Easement by and between STB3, LLC, an Ohio Limited Liability Company; the Director, Ohio Department of Agriculture; and Delaware County.

Section 2. The Board approves the Amendment to the Deed of Agricultural Easement by and between Gary L. Newhouse and Yvonne G. Newhouse; the Director, Ohio Department of Agriculture; and Delaware County.

Section 3. The Board authorizes the President of the Board to execute the following Amendments to Deed of

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Agricultural Easements for STB3, LLC, an Ohio Limited Liability Company and Gary L. Newhouse and Yvonne G. Newhouse.

STB3, LLC, an Ohio Limited Liability Company

**OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM
Amendment to Deed of Agricultural Easement**

THIS AMENDMENT TO DEED OF AGRICULTURAL EASEMENT (this "Amendment") dated July 10TH, 2023, by and between **STB3, LLC, an Ohio Limited Liability Company**, 4780 Carters Corner Road, Sunbury, Ohio ("Grantor"), the **Director, Ohio Department Of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio, 43068 ("State Grantee"), and **Delaware County Commissioners**, 91 North Sandusky Street, Delaware, Ohio 43015 ("Local Grantee"), jointly referred to as the "Parties." The State Grantee and Local Grantee listed above are hereinafter collectively referred to as the "Grantees," except when otherwise specified as the State Grantee or the Local Grantee.

WITNESSETH:

WHEREAS, by that certain Agricultural Easement dated June 23, 2022, filed on June 25, 2022, at Book 1974, Pages 2487-2517 of the official public records of Delaware County, Ohio, STB3, LLC entered into an agricultural easement with the Director, Ohio Department of Agriculture and Delaware County Commissioners (the "Easement"). The Easement encumbered Tax Parcel Number(s) 517-200-01-022-000 and 517-200-01-024-002 in Delaware County, Ohio Auditor's Office, containing approximately 91.67 acres, also known as the Protected Property (as defined in the Easement).

WHEREAS, the Parties desire to hereby amend said Easement in accordance with the terms set forth hereinbelow.

NOW WITNESSTH, that for good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, Grantor grants with the mutual promises, conditions, restrictions and obligations contained herein pursuant to the laws of the State of Ohio, the Parties agree as follows:

1. Section 7 of the Easement entitled "Extinguishment or Termination of Easement" shall be modified to include the following:

Pursuant to Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution.

2. Section 7 of the Easement entitled "Extinguishment or Termination of Easement" shall also be modified to include the following:

Determination of Proceeds. Grantor and Grantee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

3. Section 8 of the Easement entitled "Amendment or Modification of Easement" shall be modified to include the following:

Pursuant to Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the real property subject to the easement may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location.

4. Except as otherwise expressly stated herein, the terms and conditions of the Easement shall remain in full force and effect as originally set forth. The Parties do hereby adopt, ratify and confirm all of the terms and provisions of the Easement as modified by this Amendment.

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5. The provisions hereof shall extend to and be binding upon the heirs, legal representatives, successors and assigns of the Parties, subject to and in accordance with all of the terms of and provisions of the Easement and Amendment.
6. This instrument may be executed in counterparts, each having the same validity, and all of which shall constitute but one and the same instrument.

Gary L. Newhouse and Yvonne G. Newhouse

AMENDMENT OF AGRICULTURAL EASEMENT

THIS AMENDMENT is made by and between **Gary L. Newhouse and Yvonne G. Newhouse, Trustees of The Gary L. and Yvonne G. Newhouse Living Trust dated February 18, 2011**, having a mailing address of 2303 Wynbend Blvd., Powell, Ohio 43065 (hereinafter collectively referred to as "Grantor"), the **Ohio Department of Agriculture**, a subdivision of the State of Ohio, having a mailing address of 8995 E. Main Street, Reynoldsburg, OH 43068 (hereinafter sometimes referred to as "State Grantee"), and the **Delaware County Commissioners**, having a mailing address of 91 North Sandusky Street, Delaware, Ohio 43015 (hereinafter sometimes referred to as "Local Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel(s) of real property comprising 70.01 +/- acres in Delaware County, Ohio, identified as Delaware County Auditor Parcel #200-300-01-041-000(the "Protected Property"); and

WHEREAS, the real property is protected by a Deed of Agricultural Easement to the Ohio Department of Agriculture recorded in the Official Records of Delaware County, Ohio as Doc ID # 014451890027 recorded in BK 1961 Pages 2495-2521 on 4.27.2022 (the "Agricultural Easement"); and

WHEREAS, this Amendment to the Agricultural Easement ("Amendment") is created pursuant to said IRS Notice 2023-30, and is intended to amend and restate the original Agricultural Easement to meet the requirements of a "qualified conservation contribution" in compliance with the provisions of the Internal Revenue Code and Regulations, as amended, at Title 26, U.S.C.A., Section 170(h)(1)-(6), and Sections 2031(c), 2055 and 2522, and is subject to applicable regulations promulgated thereunder; and

WHEREAS, pursuant to Section 605(d)(1) of the SECURE 2.0 Act of 2022 [Public Law 117-328, 136 Stat. 4459 (December 29, 2022)], this amendment is intended to a) reform the deed retroactive to the date of recording, b) does not provide a private benefit to the landowner, c) will not result in an additional "qualified conservation contribution" under 26 U.S.C. 170(h); and

WHEREAS, Grantee has determined, in its reasonable discretion, that this Amendment meets state law requirements and that in fact this Amendment does not in any way impair or detract from the conservation values intended for protection; nor limit the term or result in termination of the Agricultural Easement; nor adversely affect the qualification of this Agricultural Easement or the status of the Grantee under applicable laws.

NOW, THEREFORE, for and in consideration of the facts above recited and of the provisions herein contained, the parties hereto agree to amend said Agricultural Easement, as follows:

Section 1. This Amendment shall be known as "Amendment #1" to the Agricultural Easement. This amendment shall be retroactive to the date of recording, does not provide a private benefit to the landowner, and does not result in an additional "qualified conservation contribution" under 26 U.S.C. 170(h).

Section 2. Para. 7. Extinguishment or Termination of Easement. The Agricultural Easement is hereby amended as follows, with deleted language ~~struck through~~ and IRS Notice 2023-30 language added and/or relocated language in bold typeface:

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“7. Extinguishment or Termination of Easement

~~This Easement constitutes a real property interest immediately vested in the Grantees. Grantor, upon receipt of notification of any pending condemnation action brought by any government entity or utility affecting and/or relating to the Protected Property, shall notify the Grantees in writing, within fifteen (15) days of receipt of said notification. [Added back in below].~~

~~Grantor agrees that the grant of the Easement gives rise to a property right, immediately vested in the State Grantee, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of the gift, bears to the fair market value of the Protected Property as a whole, at the time of the gift (the "Proportionate Value"). For purposes of the clarity, the Proportionate Value shall be a fraction, the numerator of which is fair market value of the Easement at the time of the gift and the denominator of which is the fair market value of the Protected Property as a whole at the time of the gift. For purposes of this paragraph, the Proportionate Value of the State Grantee's property rights shall remain constant. For purposes of determining the Proportionate Value, the fair market values at the time of the gift shall be those values as set forth in an appraisal prepared on behalf Grantor, a copy of which Grantor shall deliver to the Grantees and to be retained thereafter in Grantees' files.~~

Pursuant to IRS Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the Protected Property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (see below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution.

Determination of Proceeds. Grantor and Grantee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

On a subsequent sale, exchange, or involuntary conversion of the Protected Property (the, "Extinguishment Event"), the State Grantee shall be entitled to the Proportionate Value of the proceeds from such event and Grantor shall remit such amount to the State Grantee as soon as commercially reasonable following receipt of the proceeds from the Extinguishment Event. For purposes of clarity, the State Grantee shall be allocated one hundred percent (100%) of the Proportionate Value of the proceeds from the Extinguishment Event. Until such time as the State Grantee receives the Proportionate Value of the proceeds from the Extinguishment Event from the Grantor or the Grantor's successor or assigns, the State Grantee shall have a lien against the Protected Property for the amount.

All proceeds received by the Director shall be credited to the Agricultural Easement Purchase Fund. Notwithstanding the foregoing, all of the proceeds received by the State Grantee from a subsequent sale, exchange, or involuntary conversion of the Protected Property, must be used by the State Grantee in a manner consistent with the conservation purposes of the original grant of the Protected Property under this Easement.

Grantor, upon receipt of notification of any pending condemnation action brought by any government entity or utility affecting and or relating to the Protected Property, shall notify the Grantees, in writing, within fifteen (15) days of receipt of said notification.”

Section 3. Para. 8, the **Amendment or Modification of Easement**. The Agricultural Easement is hereby amended as follows, with deleted language struck through IRS Notice 2023- 30 language or relocated language added in bold typeface:

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“8. Amendment or Modification of Easement. Grantees and Grantor may amend this Easement to enhance the Protected Property’s conservation values or add real property subject to the restrictions set forth in this deed to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement’s perpetual duration, (ii) permit development, improvements, or uses prohibited by this Easement on its Effective Date, (iii) conflict with or be contrary to or inconsistent with the Purpose of this Easement, (iv) reduce the protection of the conservation values, (v) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land," (vi) affect the status of Grantees as a "qualified organization" or "eligible donee," or (vii) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantees and Grantor and recorded in the Recorder's Office of the County of Delaware, Ohio.

Pursuant to IRS Notice 2023-30, Grantor and Grantees agree that boundary line adjustments to the real property subject to the easement may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line’s location.”

Section 4. In all other respects, the parties hereto hereby ratify and confirm the Agricultural Easement(s) as aforesaid. This Amendment shall be retroactive to the date of recording and the Agricultural Easement, as amended, is reformed, corrected and restated. In the event of a conflict between the terms of this Amendment and the Original Easement, the terms of this Amendment will control.

Section 5. That the parties represent that they have full authority to execute this amendment and bind themselves, any co-grantee, heirs, successors, or assigns.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Absent Mr. Benton Aye

Other business:

RESOLUTION NO. 23-595

IN THE MATTER OF APPROVING AN ADVANCE OF FUNDS FOR THE PROSECUTOR’S OFFICE:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

Advance of Funds		
10011102-8500	30512307-8400	\$17,500.00
Commissioners General/Advance Out	2020 COVID Emergency Funding/Advance In	

Vote on Motion Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Absent

8 ADMINISTRATOR REPORTS

Tracie Davies, County Administrator
-No reports.

Dawn Huston, Deputy Administrator
-No reports.

Aric Hochstettler, Deputy Administrator
-No reports.

9 COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis
-Attended the LAEPC meeting last week.

Commissioner Benton
-The Land Bank met last Thursday. The state budget includes another round of Brownfield and Remediation grants. Once details have been confirmed there will be a letter sent to all of local township, cities and villages to make them aware of the additional funds.
-The British Open starts next week.

There being no further business, the meeting adjourned.

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Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners