RESOLUTION NO. R-11-17

A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY THOMAS L. AND BARBARA J. DEMALINE, TRUSTEES, TO HAVE CERTAIN LAND OWNED BY THEM LOCATED ON CENTER ROAD, PERMANENT PARCEL NOS. 10-04-00-013-000-149, 10-04-00-013-000-148, 10-04-00-013-000-038, AND 10-04-00-013-000-168 DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY

WHEREAS, the General Assembly of the State of Ohio has enacted Sections 929.01 to 929.05 and 6111.034 of the Revised Code to permit the establishment of Agricultural Districts to preserve agricultural land, to exempt land in those Districts from the collection of specified assessments, to provide other benefits for land in those districts, to forbid township and county zoning from restricting certain farm markets, and to provide a right to farm by exempting generally accepted agricultural practices from air pollution laws and certain nuisance statutes, rules, and ordinances; and

WHEREAS, Section 929.03(D) of the Revised Code provides that the legislative authority of a municipal corporation may apply to the Water and Sewer Commission, created by Division (C) of Section 1525.11 of the Revised Code, for an advance of monies from the Water and Sewer Account, created by Division (A) of Section 1515.11 of the Revised Code, in an amount equal to that portion of the costs of a water or sewer improvement authorized by law that is to be financed by assessments whose collection would be prohibited on real property that is within an Agricultural District; and

WHEREAS, Section 929.02(B) of the Revised Code provides that the legislative authority of a municipal corporation may reject or modify an application for inclusion in an Agricultural District filed pursuant to 929.02(A) of the Revised Code, if such rejection or modification is necessary to prevent a substantial adverse effect on, among other things, the provision of municipal services within the municipality or the public health, safety or welfare; and

WHEREAS, the City of Avon is presently experiencing increased costs of municipal operation and reduced sources of funding thereby placing a burden upon its ability to provide municipal services to its residents and protect the public health, safety and welfare now and in the foreseeable future; and

WHEREAS, the Commission, established by Division (C) of Section 1525.11 of the Revised Code, has enacted rules for a municipal legislative body to employ in submitting its application for an advance of monies to cover assessments not levied upon real estate in Agricultural Districts; and

WHEREAS, the Water and Sewer Account, established by Division (A) of Section 1525.11 of the Revised Code, has been funded; and

WHEREAS, the legislative authority of a municipal corporation is required to deal with each application for inclusion in Agricultural Districts made by an owner of real property which

is located within the municipal corporation by approving, rejecting or approving with modifications within a statutory time frame; and

WHEREAS, Thomas L. and Barbara J. Demaline, Trustees, have filed such a renewal application for Parcel Nos. 10-04-00-013-000-149, 10-04-00-013-000-148, 10-04-00-013-000-038, and 10-04-00-013-000-168, which is attached hereto and incorporated herein as though fully rewritten.

WHEREAS, pursuant to Ohio Revised Code §929.02(B), notice of a Public Hearing was duly publicized and held on March 13th, 2017 at 7:15 P.M.; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 - That the renewal application made by Thomas L. And Barbara J. Demaline, Trustees, for inclusion into the agricultural district of Permanent Parcel Nos. 10-04-00-013-000-149, 10-04-00-013-000-148, 10-04-00-013-000-038, and 10-04-00-013-000-168 pursuant to ORC Section 929.02(B) is hereby approved subject to the following conditions/modifications, the necessity of which having been demonstrated in the above recitals:

The real estate, which is the subject of the instant application, will not be deemed exempt from the collection of special assessments for water, sewer and/or electrical service until such time as the Council of the City of Avon deems itself assured of the receipt of sufficient advanced funds from the Water and Sewer Account established pursuant to Section 1525.11(A) of the Revised Code and maintained by the Water and Sewer Rotary Commission for the State of Ohio.

At such time in the future when Council shall resolve to enact a water or sanitary sewer improvement for which a special assessment must be levied upon real estate falling within the Agricultural District, the Clerk of Council will notify subject property owners, whose application for inclusion in the Agricultural District has been approved with the instant modification, by certified mail, return receipt requested.

At such time as Council deems itself assured of the receipt of sufficient advanced funds, it shall lift the instant modification and, thereby grant exemption to the subject property located within the Agricultural District, effective on the date of original application.

In the event that Council's application is rejected by the Commission due to lack of funds in its Water and Sewer Account, in the event that the response of the Commission is such that Council deems itself not assured that such funds will be forthcoming from the Commission or in the event that such funds are forthcoming but are in an amount insufficient to cover the costs of the special assessments then the instant modification will remain in effect and special assessment taxes will be levied upon property within the Agricultural District until such time as the situation changes and Council deems itself assured of receiving sufficient advance funds from the Water and Sewer Account.

Section 2 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Resolution were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3 - That this Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to provide for the approval of the application for inclusion of certain land into an agricultural district; therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Craig Witherspoon, Council President

DATE APPROVED BY THE MAYOR: _____

_____
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

_____
John A. Gasior, Law Director

ATTEST:

_____
Barbara Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director