

**RESOLUTION NO. R-15-23**

**A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY LESTER L. & MARILYN F. DEMALINE & GINGKO LEAF PROPERTIES, LLC TO HAVE CERTAIN LAND OWNED BY THEM LOCATED ON LONG ROAD, PERMANENT PARCEL NOS. 10-04-00-012-101-078 & 10-04-00-012-101-082, (RESPECTIVELY), 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 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 municipal, township and county zoning from restricting agricultural production, 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 929.02(A) allows any person who owns agricultural land to file an application with the County Auditor to place the land in an Agricultural District for five (5) years if, during the three (3) calendar years prior to the year in which that person files the application, the land has been devoted exclusively to agricultural production, the land is composed of tracts, lots or parcels that total not less than ten (10) acres and the land produced an average yearly gross income of at least Twenty-Five Hundred Dollars (\$2,500.00) during that three (3) year period or the owner has evidence of an anticipated gross income of that amount from those activities; and

**WHEREAS**, if the land owned by the person qualifying under Section 929.02(A) is located in a municipality, Section 929.02(B) of the Revised Code provides that the legislative authority of a municipal corporation may approve, 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, like all other cities within the State of Ohio, is constantly concerned about increased costs of municipal operation and reduced sources of funding those operations thereby making it difficult at times to provide certain types of municipal services to its residents and protect their public health, safety and welfare; and

**WHEREAS**, City Council in dealing with applications for inclusion of property into an Agricultural District deems it in the best interests of the health, safety and welfare of the community as a whole to approve said applications with appropriate modifications; and

**WHEREAS**, Lester L. & Marilyn F. Demaline, & Gingko Leaf Properties, LLC, have filed such a renewal application for Parcel No. 10-04-00-012-101-078 consisting of 0.0868 acres and Parcel No.10-04-00-012-101-082 consisting of 54.546 acres (respectively), which is attached hereto as [Exhibit A](#) and incorporated herein as though fully rewritten; and

**WHEREAS**, pursuant to Ohio Revised Code '929.02(B), notice of a Public Hearing was duly publicized and held on March 13, 2023 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 application for inclusion into the agricultural district 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 funds from other sources to cover the cost of constructing said public improvement.

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 funds to cover the cost of the public improvements, 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 deems that sources of outside funding are not available, 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 funding from such other source(s).

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 renewal application for inclusion of certain land into an agricultural district subject to conditions/modifications set forth herein; therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

Resolution No. R-15-23 (Con't)

PASSED: \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_

By: \_\_\_\_\_  
Brian Fischer, 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: \_\_\_\_\_  
Electronically and at City Hall  
As Provided by Council

Prepared By:

John A. Gasior, Esq.  
Law Director