

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: March 13, 2023

DATE SIGNED: March 13, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: March 14, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: March 15, 2023
Electronically and at City Hall
As Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Resolution No. R-15-23, passed by the Council of said City on March 13, 2023.

IN WITNESS WHEREOF, I have on this 14th day of March, 2023, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

**APPLICATION FOR PLACEMENT OF
FARMLAND IN AN AGRICULTURAL DISTRICT
(O.R.C. Section 929.02)**

New Application _____
Renewal Application

(See page 4 for General Information regarding this Application)

INSTRUCTIONS FOR COMPLETING APPLICATION

Print or type all entries.

- o List description of land as shown on the most recent tax statement or statements. Show total number of acres.
- o Describe location of property by roads, etc., and taxing district where located.
- o State whether any portion of land lies within a municipal corporation.
Note: See "Where to File" on page 4 to be sure that a copy of this Application is also filed with the Clerk of the municipal legislative body as well as the County Auditor.
- o A renewal application must be submitted after the first Monday in January and prior to the first Monday in March of the year in which the agricultural district terminates for the land to be continued in this program.
- o If the acreage totals 10 acres or more, do not complete Part D.
- o If the acreage totals less than 10 acres, complete either D (1) or (2).
- o Do not complete page 3. This space to be completed by the County Auditor and/or Clerk of the municipal legislative body.

A. **Owner's Name:** ~~Marilyn Demaline Trustees~~ Lester L. & Marilyn F. Demaline & Ginkgo Leaf Properties, LLC

Owner's Address: PO Box 299 Avon OH 44011

Owner's Email (optional):¹

Description of Land as Shown on Property Tax Statement:
Long Road

Location of Property:
Street or Road- Long Road AVON OH
County- LORAIN

TAX DISTRICT(S)	PARCEL NUMBER(S)	# of Acres
10	04-00-012-101-082	54.546
10	04-00-012-101-078	0.0868
Total Number of Acres		54.63

B. Does any of the land lie within a municipal corporation limit or subject to pending annexation?
Yes No

If YES, REMEMBER a copy of this application must be submitted to the Clerk of the municipal legislative body.

¹ Enter the "internet identifier record" typically know as an electronic mail address, or any other designation used for self-identification or routing in internet communication or posting, provided for the purpose of receiving communication.

C. Is the land presently being taxed at its current agricultural use valuation under Section 5713.31 of the Ohio Revised Code?
 Yes No

If NO, complete the following showing how the land was used the past three years:

	<u>ACRES</u>		
	LAST YEAR	TWO YEARS AGO	THREE YEARS AGO
Cropland			
Permanent Pasture used for animal husbandry			
Woodland devoted to commercial timber and nursery stock	54.63	54.63	54.63
Land Retirement or Conservation Program pursuant to an agreement with a federal agency			
Building areas devoted to agricultural production			
Roads, building areas, and all other areas not used for agricultural production			
Total Acres	54.63	54.63	54.63

D. Does the land for which the application is being made total 10 acres or more devoted exclusively to agricultural production or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government?
 Yes No

If NO, complete the following:

1. Attach evidence of the gross income for each of the past 3 years, if the average yearly income from agricultural production was at least twenty-five hundred (\$2,500.00) dollars or more, or
2. If the owner anticipates that the land will produce an annual gross income of twenty-five hundred (\$2,500.00) dollars or more, evidence must be attached showing the anticipated gross income.

Authorization and Declaration

By signing this application, I authorize the county auditor or his duly appointed agent to inspect the property described above to verify the accuracy of this application. I declare this application (including accompanying exhibits) has been examined by me and to the best of my knowledge and belief is a true, accurate and correct application. I understand that land removed from this program before the 5-year enrollment period is subject to penalty, in accordance with Section 929.02(D) of the Ohio Revised Code.

Signature of Owner:

Date:

Marilyn L. Desaulniers

2/24/23

CAUV Application No. _____

Action of County Auditor

Application Approved _____ Rejected _____*

Date Application Filed with County Auditor _____

Date Filed (if required) with Clerk of Municipal Corporation _____

County Auditor's Signature _____ Date _____

Date Decision Mailed and Emailed¹ to Applicant _____

Email Address¹ _____

OR

Date Decision Sent Certified Mail to Applicant _____

Certified Mail No. _____

Action of Legislative Body of Municipal Corporation

Application Approved _____ Approved with Modifications * Rejected _____*

Date Application Filed with Clerk 3/1/23

Date of Public Hearing 3/13/23

Date of Legislative Action 3/13/23

Clerk's Signature Barbara Brooks Date 3/15/23

Date Decision Mailed and Emailed¹ to Applicant 3/15/23

Email Address¹ lpetrus@wwninc.com

OR

Date Decision Sent Certified Mail to Applicant _____

Certified Mail No. _____

* IF MODIFIED OR REJECTED, ATTACH SPECIFIC REASONS FOR MODIFICATION OR REJECTION

¹ Enter the "internet identifier record" typically know as an electronic mail address, or any other designation used for self-identification or routing in internet communication or posting, provided for the purpose of receiving communication.

INFORMATION FOR PLACEMENT OF FARMLAND IN AN AGRICULTURAL DISTRICT

A. WHO MAY FILE?

Any owner of land used for agricultural production may file an application to have the land placed in an agricultural district.

B. WHERE TO FILE

The completed application must be filed with the auditor of the county where the land is located. The applicant will be notified of action taken by the county auditor within 30 days of the filing of the application if the land is not within a municipal corporation or an annexation petition has not been filed. If the land for which an application has been made lies within a municipal corporation limit or if an annexation petition that includes the land has been filed with the Board of County Commissioners under Section 709.02 of the Ohio Revised Code, a copy of the application must also be filed with the Clerk of the legislative body of the municipal corporation. The legislative body is required to conduct a public hearing on the application within 30 days after the application has been filed with the Clerk. Within 30 days of the hearing, the legislative body may approve the application, modify and approve the application as modified, or reject the application.

C. WHEN TO FILE AND RENEWAL

The original application may be filed at any time for placement of land in an agricultural district for a five-year period. If at the end of five years, the owner decides to keep some or all of his or her land in a district, he or she shall submit a renewal application and must meet the same land requirements and use the same application process as the original application. The renewal application may be filed at any time after the first Monday in January and prior to the first Monday in March of the year during which an agricultural district terminates, for a period of time ending on the first Monday in April of the fifth year following the renewal application.

D. WHAT IS "LAND USED FOR AGRICULTURAL PRODUCTION?"

In accordance with Section 929.01(A) of the Revised Code, land is devoted to "agricultural production" when it is used for commercial aquaculture, apiculture, animal husbandry, poultry husbandry; the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, ornamental trees; flowers or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

"Agricultural production" includes conservation practices provided that the tracts, lots, or parcels of the land or portions thereof that are used for conservation practices comprise not more than twenty-five percent of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed.

"Conservation practices" are practices used to abate soil erosion as required in the management of the farming operation, and include, but are not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops for that purpose.

E. WHAT DOES "TRACTS, LOTS, OR PARCELS OF LAND" MEAN?

Tracts, lots, or parcels mean distinct portions of pieces of land (not necessarily contiguous) where the title is held by one owner, as listed on the tax list and duplicate of the county, is in agricultural production and conforms with the requirements of either D1, D2, or D3 below.

F. ARE THERE ANY OTHER REQUIREMENTS?

1. The land for which the application is made must have been used exclusively for agricultural production or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with a federal agency for the three consecutive calendar years prior to the year in which application is made. Evidence must be shown on the application. If the land contains timber which is not being grown for commercial purposes the land on which the timber is growing must be contiguous to or part of a parcel under common ownership that is otherwise devoted exclusively to agricultural use.
2. If the total amount of land for which application is made is less than 10 acres, there is an additional requirement that the applicant submit evidence with his application that the activities conducted on the land have produced an average yearly gross income of at least twenty-five hundred dollars over the three years immediately preceding the year in which application is made or that the land will produce an anticipated annual gross income of that amount.
3. Evidence of annual gross income may be satisfied by attaching to the application form a short statement stating the number of animals by species and anticipated market value, number of acres of crops to be grown, their expected yield and price per bushel or similar specific information.

G. IS THERE A PENALTY FOR EARLY WITHDRAWAL?

Land removed from this program before the 5-year enrollment period is subject to penalty, per Section 929.02(D) of the Ohio Revised Code. See County Auditor's Office for details on how the amount of the withdrawal penalty is determined.

H. APPEAL OF APPLICATION

The applicant may appeal the denial of the application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice denying the application. When the land lies within a municipality the applicant may also appeal a decision to modify or reject an application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice of modification or rejection. In addition, the applicant may withdraw an application modified by a legislative body if he or she disapproves of the modifications.