

# LAW OFFICE OF MARTINA M. DILLON, ESQ.

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September 11, 2020

Kara Landis, Clerk of Council  
3035 Olive Road  
Trotwood, Ohio 45426

**Via Hand Delivery and Email at: [klandis@trotwood.org](mailto:klandis@trotwood.org) and [sriege@trotwood.org](mailto:sriege@trotwood.org)**

Re: **Petition For Appeal** of Trotwood BZA Decision in Case #20-07

Dear Ms. Landis:

In accordance with City of Trotwood, Ohio Charter Section 7-2, on September 4, 2020, the City of Clayton delivered to the Trotwood BZA Chairperson a *Notice of Intent to Appeal* the *Decision* of the BZA in Case #20-07 approving the substitution of a non-conforming use for a semi-truck and trailer parking lot at 6464 Westbrook Road (Copy of *Notice of Intent to Appeal* attached as **Exhibit 1**).

Pursuant to Trotwood Charter Section 7-2, the City of Clayton now hereby files with you as Clerk of Council for the City of Trotwood, this *Petition for Appeal* of the Trotwood BZA *Decision* in Case #20-07.

Trotwood Charter Section 7-2 requires this *Petition* contain a summary of the *Decision* being appealed and the grounds for appeal. The summary and grounds for appeal follow.

**Summary Of The Decision Being Appealed**

A copy of the *Decision* which is being appealed is attached as **Exhibit 2**. More specifically, Joseph and Pamela Heintz submitted a *Variance Application* to the City of Trotwood BZA requesting the substitution of a non-conforming use (telephone maintenance building, warehouse) to a proposed new non-conforming use (semi-truck and trailer parking) at 6464 Westbrook Road (Parcel ID No. H33 00619 0002).

On July 30, 2020, the Trotwood BZA voted to approve the Heintz' application for the requested substitution of a non-conforming use such that the 6464 Westbrook Road location could be used as a semi-truck and trailer parking "drop lot" for at least 50 semi-trucks and trailers. (See copy of BZA Meeting Minutes attached as **Exhibit 3**.) See also **Exhibit 2**.

It is from this *Decision* which the City of Clayton, Ohio now appeals.

### **Grounds for Appeal**

The City of Clayton, Ohio is aggrieved and adversely affected <sup>1</sup> by the *Decision* of the Trotwood BZA approving the application for substitution of a non-conforming use to allow for a semi-trailer and tractor “drop lot” at 6464 Westbrook Road in this pre-dominantly residential area. (See attached Map, **Exhibit 4**)

#### **A. Westbrook Road Cannot Sustain The Increased Semi-Trucks/Trailer Traffic And Increased Traffic Will Cause Significant Damage to Westbrook Road**

Westbrook Road is an East - West residential street. The Westbound half of Westbrook Road is located within the jurisdiction of Clayton. The Eastbound half of Westbrook Road is located within the jurisdiction of Trotwood. (**Exhibit 4**)

In accordance with *Ohio Revised Code 723.01* <sup>2</sup>, Clayton is responsible for maintaining the Westbound half of Westbrook Road and Trotwood is responsible for maintaining the Eastbound half of Westbrook Road.

For several years, Clayton and Trotwood have worked together cooperatively to share the costs associated with re-paving Westbrook Road. For example:

- a. In 2006, Clayton and Trotwood agreed to share the costs of re-paving Westbrook Road. The total re-paving cost was **\$240,000.00**. (**Exhibit 5**)
- b. In 2011, Clayton and Trotwood entered into a Cooperative Agreement to share re-paving expenses for Westbrook Road (**Exhibit 6**). The total re-paving cost in 2011 was **\$86,884.00** which was split on a 50/50 basis (**Exhibit 6**).
- c. In 2012, Clayton and Trotwood entered into a Cooperative Agreement to share re-paving expenses for Westbrook Road (**Exhibit 7**). The total re-paving cost in 2012 was **\$84,000.00** which was split on a 50/50 basis (**Exhibit 7**).

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<sup>1</sup> See, *Caboom v. Anderson Township Board of Zoning Appeals, 2012-Ohio-6145*. (“Meanwhile, Newton [village] argues that the proposed mine will cause increased truck traffic, which will adversely impact the village’s ability to maintain safe roadways as required by statute. R.C. 723.01 and 2744.02(B)(3). ... But where increased traffic directly affects the ‘rights, duties, privileges, benefits or legal relationships’ of another person or entity, including the statutory duty of municipalities to maintain safe roadways, that person or entity has standing to challenge administrative decisions causing that increase under R.C. Chapter 2506. ...”)

<sup>2</sup> *O.R.C. 723.01* states, in relevant part, “Municipal corporations shall have special power to regulate the use of its streets. ... the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, ... within the municipal corporation. ...”

- d. In 2014, Clayton and Trotwood entered into a Cooperative Agreement to share re-paving expenses for Westbrook Road (**Exhibit 8**). The total re-paving cost in 2014 was \$154,993.00 which was split on a 50/50 basis (**Exhibit 8**).
- e. In 2016, Clayton and Trotwood agreed to share the cost of re-paving Westbrook Road with Clayton paying \$65,515.00 and Trotwood paying \$60,000.00 (**Exhibit 9**).
- f. In 2019 and 2020, Clayton and Trotwood worked cooperatively to obtain an STP grant from the MVRPC for re-paving of Westbrook Road and were awarded a grant in the amount of \$367,781.00 which represented 63% of the total estimated re-paving cost of \$583,779.00. Clayton and Trotwood entered into a Cooperative Agreement to share the remaining \$215,998.00 cost which equated to Clayton paying \$107,999.00 and Trotwood paying \$107,999.00 (**Exhibit 10**). In addition, Clayton agreed to pay 100% of the engineering costs associated with re-paving Westbrook Road in the amount of \$32,896.00. (**Exhibit 10**)

Further, as can be seen from **Exhibit 11**, the cost to repair 3 miles of Westbrook Road from Union Road to Diamond Mill Road in 2017 was almost \$500,000.00.<sup>3</sup>

All totaled, Clayton and Trotwood, over the course of the last 14 years, have paid over \$1,000,000.00<sup>4</sup> to maintain Westbrook Road.

According to the information Mr. and Mrs. Heintz submitted with their BZA application, they intend the drop lot to store at least 50 semi-trailers. (**Exhibit 12**)

The concern over the substantial increase in semi-trucks/trailers using Westbrook Road to access this drop lot and the adverse effects it would have on Westbrook Road was astutely raised by the Westbrook Meadows Homeowners Association in its letter opposing the drop lot:

*"What is the traffic pattern for semi-trucks? Can Westbrook Road support semi-trucks? The damage to the roadway would be costly to the city, leaving us wondering what is the benefit as little if any income tax would be generated? ...*

*It is clear to see that the increased traffic of semi trucks and trailers not only destroys the roadways in our community, but also introduces noise around the clock, ..." (Exhibit 13)*

Trotwood Planning and Development Director Jung-Hen Chen suggested to the BZA that consideration be given to these issues:

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<sup>3</sup> Based on an estimated expense of \$500,000.00, prior to any grant funding, to re-pave 3 miles of Westbrook Road, Randy Sanders, Clayton Public Service Director, estimates the cost to re-pave the entire Westbrook Road would be well over \$1 million.

<sup>4</sup> This figure includes the engineering costs paid by Clayton in 2020.

*“Given that there is very limited guidance from the Trotwood Zoning Code as to how to assist the Board in review this type of request, ... staff will outline some general questions for the Board to consider this review. The questions are as follows:*

- 1. Has the existing nonconforming use been discontinued for more than 12 (twelve months)?*
- 2. Will the new nonconforming use be more suitable for this site? Is the new nonconforming use less obtrusive to the neighborhood?*
- 3. Will the new nonconforming use be more intense than the existing (former) nonconforming use, in terms of land use, lot coverage, traffic?*
- 4. Will there be additional demands for public services, utility or roadway?*
- 5. Will the new nonconforming use more conforming to the underlying zoning?*
- 6. What has been the development pattern in this area?” (Emphasis Supplied) (Exhibit 14)*

Unfortunately, there was very little consideration of the effects of this increased traffic on Westbrook Road. According to the Meeting Minutes (**Exhibit 3**) this was the only exchange on that topic:

*“L. Riegel- Have we received professional input on Road Traffic?*

*J. Chen- We haven't received anything from Public Works*

*Motion to approve BZA Case #20-07 subject to providing a landscaping plan depicting buffer along Westbrook Road and provide buffer along the eastern side of the property line made by L. Riegel, seconded by A. Madewell. Motion passed (3-1)”*

As evidenced by the below information provided by Randy Sanders, City of Clayton Public Services Director, the proposed drop lot will be a more intense use than the former non-conforming use because it will result in a significant increase in semi-truck/trailer traffic on Westbrook Road resulting in increased damage to the Road. The increased damage will therefore result in increased costs to Clayton (and Trotwood) in repairs.

Mr. Sanders submits for consideration the fact that the average lane width for most of Westbrook Road is 10 ½ feet which results in trucks of this size slipping off the edge of the Road, causing edge line damage as can be seen in the photographs of Westbrook Road between Diamond Mill and Union attached as **Exhibit 15**.

As can be seen from the documentation attached, road repairs are not inexpensive. For example, Clayton performed edge line repairs earlier this year on various roads in the City. The total edge line repair cost for just 5,480 linear feet was \$81,542.40 (\$15.00 per linear foot) (**Exhibit 16**).

In sum, Westbrook Road is a narrow, residential road which is not capable of sustaining the proposed increased semi-truck and trailer traffic without significant damage resulting. This increased traffic will result in more damage to the Road necessitating expensive repairs thereby adversely affecting the ability of Clayton (and Trotwood) to maintain Westbrook Road as a safe roadway in accordance with O.R.C. 723.01.

**B. Trotwood Codified Ordinance Section 1131.02(e) Prohibits the Re-Establishment Of A Non-Conforming Use**

Trotwood Codified Ordinance (“TCO”) Section 1131.02(e) states:

*“(e) Whenever a nonconforming use of a structure, or structure and premises in combination, is discontinued for a period of twelve (12) consecutive months, such a use shall not thereafter be reestablished except in conformance with the regulations of the district in which it is located.”*

According to the staff report of Jung-Han Chen (**Exhibit 14**), the tornadoes in May of 2019, caused significant damage to the buildings at 6464 Westbrook Road; and because of that, the owner demolished the buildings and “...the site has not been fully utilized for some time prior to 2019.” (**Exhibit 14**)

Mr. Chen recommended the BZA consider whether the prior nonconforming use had been discontinued for over 12 months:

*“Given that there is very limited guidance from the Trotwood Zoning Code as to how to assist the Board in review this type of request, ... staff will outline some general questions for the Board to consider this review. The questions are as follows:*

- 1. Has the existing nonconforming use been discontinued for more than 12 (twelve months)? ...”* (**Exhibit 14**)

The BZA Meeting Minutes do not reflect a discussion about the discontinuance issue. (**Exhibit 3**).

Clayton submits TCO Section 1131.02(e) prohibits this non-conforming drop lot use because the prior non-conforming use had been discontinued for a period of at least 12 months. Therefore, per TCO Section 1131.02(e), a non-conforming use cannot be re-established. Section 1131.02(e) appears intended to promote the purpose of Chapter 1131 as stated in Section 1131.01:

*“The purpose of this chapter is to control, reduce and/or eliminate conflicts arising from the presence in any district of uses or structures which do not currently conform to applicable district regulations.”*

This appears consistent with Mr. Chen’s statement in his staff report that, “The intent of the nonconforming chapter is to encourage nonconforming use to become a conforming use in the long run eventually.” (**Exhibit 14**)

In sum, the drop lot is another non-conforming use which TCO Section 1131.02(e) prohibits and which does not advance the stated intent of Chapter 1131.

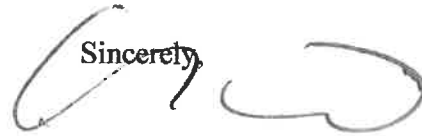
**C. Conclusion**

Trotwood Charter Section 7-2 states:

*"Council shall hold a public hearing on such appeal not later than thirty (30) days after such appeal petition has been filed and by majority vote shall affirm, reverse or modify the decision of the board or commission. ..."*

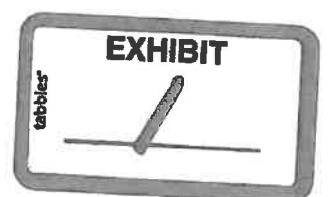
Clayton respectfully requests a public hearing be scheduled and further requests the Trotwood Council, at the conclusion of said public hearing, reverse the *Decision* of the BZA.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Martina M. Dillon', is written over the word 'Sincerely,'.

Martina M. Dillon, Esq.  
Law Director, City of Clayton, Ohio

cc: Amanda Zimmerlin, City Manager, City of Clayton, Ohio  
Jack Kuntz, Director of Development, City of Clayton, Ohio  
Randy Sanders, Public Services Director, City of Clayton, Ohio  
Sandy Fuller, City of Trotwood, Ohio Deputy Clerk of Council



01/10/2020

September 4, 2020

Mr. Steven Johnson  
Trotwood BZA Chairperson  
3035 Olive Road  
Trotwood, Ohio 45426

Via Hand Delivery and Email at:

*Re: Notice of Intent to Appeal Trotwood BZA Decision in Case #20-07*

Dear Mr. Johnson:

In accordance with City of Trotwood, Ohio Charter Section 7-2, I hereby submit this Notice of Intent to Appeal the decision of the BZA in Case #20-07 approving the substitution of a non-conforming use for a semi-truck and trailer parking lot at 6464 Westbrook Road (see attached).

Pursuant to Trotwood Charter Section 7-2, a petition of appeal will be forthcoming and filed with the Clerk of Council.

Sincerely,

Amanda Zimmerlin  
City Manager, City of Clayton, Ohio

cc: Martina M. Dillon, Esq.  
Jack Kuntz



Joseph and Pamela Heintz  
5260 Oakes Rd  
Clayton, OH 45315

July 30, 2020

**SUBJECT: BZA: Case #20-07: Substitution of a nonconforming use (telephone maintenance building, warehouse) to a proposed new nonconforming use (semi-truck and trailer parking) at 6464 Westbrook Rd, Parcel ID #H33 00619 0002, in a R-PUD district, Joseph and Pamela Heintz, Applicant**

Dear Mr. and Mrs. Heintz,

The Trotwood Board of Zoning Appeals reviewed the requested application for the above mentioned case at its July 30, 2020, meeting and approved the substitution of nonconforming to a semi-truck and trailer parking lot at 6464 Westbrook Road, Parcel ID #H33 00619 0002, subject to providing a landscaping plan depicting buffer along Westbrook Rd and maintain and or provide buffer along the eastern side of the property line.

Please feel free to contact me at (937) 854-7216, if you have any questions regarding this matter.

Sincerely,



Ming-Hi n Chen, AICP  
Planning and Development Director  
CC; Case File



Joseph and Pamela Heintz  
5260 Oakes Rd  
Clayton, OH 45315

July 30, 2020

**SUBJECT: BZA: Case #20-07: Substitution of a nonconforming use (telephone maintenance building, warehouse) to a proposed new nonconforming use (semi-truck and trailer parking) at 6464 Westbrook Rd, Parcel ID #H33 00619 0002, in a R-PUD district, Joseph and Pamela Heintz, Applicant**

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Please feel free to contact me at (937) 854-7216, if you have any questions regarding this matter.

Sincerely,



Jing-Lin Chen, AICP  
Planning and Development Director  
CC; Case File





**CITY OF TROTWOOD  
BOARD OF ZONING APPEALS  
MEETING SUMMARY  
THURSDAY, JULY 30, 2020**

The Trotwood Board of Zoning Appeals held a special meeting on Thursday, July 30, 2020, at 5:30 pm, at Trotwood Community & Cultural Arts Center in the Cultural Arts Suite, 4000 Lake Center Drive, Trotwood, OH 45426.

**BOARD OF ZONING APPEALS MEMBERS PRESENT:** Eric Walker-Mabry, Lowell Riegel, Andrew Madewell

**MEMBERS ABSENT:** Azia Phifer, Steven Johnson

**CITY COUNCIL LIAISON:** Councilmember Robert Kelley

**GUESTS:** Pamala Edwards  
Mr. Edwards  
Dwayne Young  
Stacia Taylor  
BJ Taylor  
Sandra DeWeaver  
James Harris  
Larry Champion

**STAFF PRESENT:** Jung-Han Chen, Director, Planning & Development Department  
Gwendolyn Fou, Administrative Assistant, Planning & Development

**TROTWOOD BOARD OF ZONING APPEALS**  
**MEETING SUMMARY**  
**THURSDAY, JULY 30, 2020**  
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**CALL TO ORDER:**

E. Walker-Mabry called the meeting to order at 5:38 pm, and the Board proceeded with the Pledge of Allegiance

**ROLL CALL:**

Roll call was taken. Three (3) members were present.

**ADDITIONS OR CORRECTIONS TO THE AGENDA:**

None

**APPROVAL OF MEETING MINUTES:**

Motion to approve May 28, 2020, meeting summary made by L. Riegel. Motion seconded by A. Madewell.  
Motion passed (3-0)

**PUBLIC HEARINGS:**

Motion to elect E. Walker-Mabry as chair pro tempore made by A. Madewell, seconded by L. Riegel.  
J. Chen swore all applicants/speakers

E. Walker-Mabry read **BZA Case #20-06: Conditional Use Permit to establish an auto repair at 11 S Broadway St, in an OT-B (Olde Town Business) District, Parcel #ID H33 00305 0001 and 0002, B.J. Taylor, Applicant.**

J. Chen – presented on the highlights of the staff report. The Applicant is seeking a Conditional Use permit approval to occupy an existing commercial building as an auto repair shop at 11 S. Broadway St. The vacant commercial building as an auto repair shop at 11 S. Broadway St. The Applicant is looking to establish an auto repair shop at this location. Currently, the Applicant is operating an auto repair shop at 521 E Main St, (correction, not 501 but 521). The conditional use permit approval applies only to the Applicant and property owner.

Guest S. Taylor - listed reasons why the building is good for their business. A place where they can grow. Goals are to hire more staff. The business owner wants to work with Trotwood. The new building or location has a lot of open spaces. Desire to pull cars into the store overnight. No work to be done outside. The building has enough space for ten vehicles to be stored inside. Have no desire to paint the outside of the building. Plan to be there long term. 68% of its customers are Trotwood Residents. Business owners received good/positives feedback from their customers.

Councilman R. Kelley- what will be your hours of operation?

Guest S. Taylor- 9:00 am to 5:30 pm, Saturdays will be appointments only.

Councilman R. Kelley – how many employees you have?

Guest S. Taylor – four

A.Madewell –what are the specifications you will offer?

Guest S. Taylor – We do brakes, oil change, not including exhaust work and tires.

A.Madewell – What is your contingency plan? What do you plan to do, something to put the neighbor's mind at ease.

**TROTWOOD BOARD OF ZONING APPEALS**  
**MEETING SUMMARY**  
**THURSDAY, JULY 30, 2020**  
**Page 3**

Guest S. Taylor – The building is perfect. It contains everything we need inside. We are trying to protect our business and customers. There are four bays/ overhead doors that will be used as an entrance into the building/repair area and two lifts. We currently have no plans to change the existing structure except cleaning, planting, landscaping.

L. Riegel – have you investigated the basement?

Guest S. Taylor – yes, floors are sufficient for lift

L. Riegel – Some of the neighbor's concern is that there are several workshops in the area

Guest S. Taylor – We try to work with all our customers. If they can't afford to pay, we would have the cars towed.

Guest P. Edwards – I do encourage businesses in Trotwood. I live right at the corner directly across. Grand Ave is not a very wide St. I am not against businesses. I am just emotionally upset. Having an auto shop at this location will devalue properties. The business on Main St, usually the parking lot have cars there. I am pleading with you to deny this application. I am afraid and fear that the location at S Broadway will look like the shop at Main st

Guest P. Edwards spouse – I just don't want to get up every morning and see cars. I'd rather it be empty than seeing cars there. It's going to be traffic, and there are kids around.

A.Madewell- However, what are things they can offer, what do you think are the criteria that will allow them to have their business there?

Guest P. Edwards – The color of their current shop is bright, signs can be distracting, and noise. There's no place to put lift because it's a one-story building. It's a safety hazard.

A.Madewell – We have specific signs of regulations. I understand your concern.

E. Walker-Mabry- The owner did mention that they will keep the outside the way it is, and there will be a contract between the new owner and the City. The contract has to be followed.

Guest J. Harris – I am the current owner of the building at S Broadway. They're saying they don't want to wake up and see cars. Cars come in and out to bring revenue. They're judging too early. I think they should give them a chance, give them a shot.

L. Riegel – Neighbors are important. They've been there longer. It's important to come up with some plans. Make everyone happy. Businesses are needed in our community.

Councilman R. Kelley- how much negotiation has went on?

Guest S. Taylor – I want to work with the neighbors. The building at Main St was already painted when we got there. For lifts, there's plenty of rooms for lift. We had it measured.

Guest B.J. Taylor - Our goal is to pull the majority of cars in, and this is mostly for security reasons.

Guest S. Taylor – I am a product of Trotwood. I grew up in Trotwood. I am willing to work with the neighbor. I plan to do landscaping outside.

Guest Larry Champion – I was BJ's first customer. He worked on my vehicles. When he told me about the new building, I was happy. I speak on behalf of B.J. Taylor, would it make a difference if cars are parked inside. We need some type of business to come back.

Guest P. Edwards Spouse – Not trying to slam your business. They said they would put ten cars in the building. What if they have more cars? Those cars are going to be parked outside.

L. Riegel- I would like to see a detailed plan from the Applicant on how to address the problem. Appease that. We need to have something we can present to the neighbors.

**TROTWOOD BOARD OF ZONING APPEALS**  
**MEETING SUMMARY**  
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**Page 4**

A. Madewell – We need an overview breakdown of how it will be laid out, small requests, appease the neighbor.

E. Walker-Mabry- There are three options, approve, deny or table

L. Riegel – Motioned to table for next meeting with a detailed plan

Guest S. Taylor – Conditional purchase, we can't wait until August.

L. Riegel – Motion to withdraw the first motion to table.

E. Walker-Mabry – read Board alternatives under BZA Case #20-06:

- a. The approval of this Conditional Use is only applicable to the Applicant and is not transferrable.
  - b. The Applicant shall obtain all necessary licenses, permits from all agencies within one year from the date of the approval from the Board of Zoning Appeals. Otherwise, a new Conditional Use application is required after one year from the date of the approval.
  - c. Prior to opening the business, a building permit must be obtained and inspected by Montgomery County Building Department.
  - d. The existing parking lot must be repaved, at minimum to be resealed.
  - e. No overnight outdoor parking underneath the canopy along the S. Broadway St. No overnight outdoor parking south of the building, extending to the alley. A privacy fence, if installed, shall be the same material and design as the one across Grand Ave, with bushes.
  - f. Clear, clean stripping must meet the off-street parking regulations for daytime on-site parking spaces
  - g. A clear delineation of property line on north and west side of the property must be painted with white thermal plastic paint, identical to those used by roadway lane painting.
  - h. Any dumpster, if used, must be placed on the northwest corner of the site, by the alley,
  - i. The landscaping area must be maintained to be consistent with neighbors across Grand Ave
- Motion to approve BZA Case #20-06 made by L. Riegel, seconded by A. Madewell. Motion Passed (3-0)

E. Walker-Mabry read **BZA Case #20-07: Substitution of a nonconforming use (telephone maintenance building, warehouse) to a proposed new nonconforming use (semi-truck and trailer parking) at 6464 Westbrook Rd, Parcel ID#H33 00619 0002, in a R-PUD district, Joseph and Pamela Heintz, Applicant**

J. Chen – Presented on the highlights of the staff report. The application is requesting to substitute of a nonconforming from the former telephone company office and warehouse to a semi-truck and trailer parking. The Trotwood Zoning code 1131.02(h) states that "no nonconforming use shall be changed to another nonconforming use without the written authorization of the Board, except that where a substitution is proposed, no structural alterations or improvements shall be permitted to be made". The nonconforming chapter intends to encourage nonconforming use to become a conforming use in the long run eventually.

Guest P. Heintz – Been involved in semi-truck for 20 years. Semi-truck parking is needed for the industry. The paved and graveled yard is great for semi-trailers of local truckers needing a safe and secure place to park. There will be a monthly access fee. Trotwood residents will be given priority for spaces and will receive a discount on the monthly fee. There will be security cameras.

E. Walker-Mabry – will there be any staff at the facility or remote

Guest P. Heintz- We haven't discussed security guards. It's possible to add later



**TROTWOOD BOARD OF ZONING APPEALS  
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A. Madewell – would it be feasible to have someone there

Guest P. Heintz- yes

L. Riegel – Location is zoned Residential. It sounds like you thought the process through. As long as you keep security. Concern, the drive coming off is pretty narrow

Guest P. Heintz- it's actually pretty big, 16ft wide

L. Riegel – could be an issue

Guest P. Heintz- substantially back away from the road

L. Riegel – another concern, starting up diesel engine, especially cold weather, have you given that any consideration?

Guest P. Heintz- Yes, most of the parking will be for trailers. Also thinking of adding electrical plugin.

A. Madewell read The Westbrook Meadows Subdivision (see attached) landscaping questions.

L. Riegel – Have we received professional input on Road Traffic?

J. Chen – We haven't received anything from Public Works

Motion to approve BZA Case #20-07 subject to providing a landscaping plan depicting buffer along Westbrook Road and provide buffer along the eastern side of the property line made by L. Riegel, seconded by A. Madewell. Motion passed (3-1).

E. Walker-Mabry read **BZA Case #20-08: Appeal of the Zoning Administrator's interpretation Section 1189.01(b)(1) and 1189.04(a) and 1189.04(b) concerning the installation of a privacy fence at 4432 Nevada Ave, Parcel ID#H333 00912 0003, Tyree Wright, Applicant.**

J. Chen – Presented on the highlights of the report. This is an appeal filed to challenge the interpretation made by staff to stop the installation of a privacy fence in the front yard of 4432 Nevada Ave. Mr. Wright has installed the privacy fence along the sidewalk of Nevada, and the fence is about 6 ft in height with no setback provided along Nevada Ave.

L. Riegel - at least 25 ft setback.

A motion was made by A. Madewell to affirm that staff interpretation that the privacy fence is in the required front yard and the privacy fence needs to provide at least 25 feet setback from the sidewalk on Nevada Ave, seconded by L. Riegel. Motion passed (3-0).

**New/Old Business:**

None

Motion to adjourn the meeting. All in favor (3-0)

Meeting adjourned at 7:33 pm

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Prepared by: Gwendolyn Fou

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Chairperson: Steven Johnson





Single Family  
Residential  
Zoning

Single Family  
Residential Zoning

1.19 miles



# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R - 05 -06 -44**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ACCEPT THE BID SUBMITTED BY JOHN R. JURGENSEN CO., FOR STREET RESURFACING OF WESTBROOK ROAD, BARNES ROAD, MOUNT ROYAL DRIVE, VALLEYBROOK DRIVE, PEBBLEBROOK DRIVE, HONEYBROOK AVENUE, ELRU DRIVE, SHADYWOOD DRIVE, STERLINGWOODS DRIVE, FALLGOLD DRIVE, SALEM STREET, THE PARKING AREAS AT THE ADMINISTRATION BUILDING AND THE JANICE WARD CENTER AND THE ROAD AND PARKING AREA AT HARDCRABBLE PARK**

**WHEREAS**, bids have been solicited and received for street resurfacing for Westbrook Road, Barnes Road, Mount Royal Drive, Valleybrook Drive, Pebblebrook Drive, Honeybrook Avenue, Elru Drive, Shadywood Drive, Sterlingwoods Drive, Fallgold Drive, Salem Street, the parking areas at the Administration Building and the Janice Ward Center and the road and parking area at Hardscrabble Park (the "Project"); and

**WHEREAS**, the Project shall include Westbrook Road from Cheri Lynn Drive to the top of the hill west of Salem Avenue, Barnes Road, Mount Royal Drive, Valleybrook Drive, Pebblebrook Drive, Honeybrook Avenue from Afton Drive to Taywood Road, Elru Drive, Shadywood Drive, Sterlingwoods Drive, Fallgold Drive, Salem Street from Kimmel Road to Diamond Mill Road and the parking areas at the Administration Building and the Janice Ward Center and the road and parking area at Hardscrabble Park; and

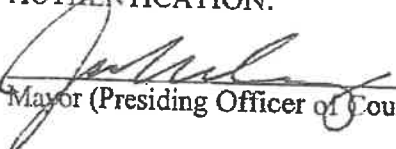
**WHEREAS**, after reviewing the bids, the City Manager determined that the bid received from John R. Jurgensen, Co., was the lowest and best bid submitted by a responsible bidder and therefore recommended accepting said bid.

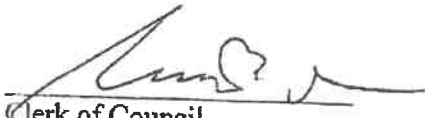
**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is authorized to accept the bid submitted by John R. Jurgensen, Co., and execute the contract for the project to resurface Westbrook Road from Cheri Lynn Drive to the top of the hill west of Salem Avenue, Barnes Road, Mount Royal Drive, Valleybrook Drive, Pebblebrook Drive, Honeybrook Avenue from Afton Drive to Taywood Road, Elru Drive, Shadywood Drive, Sterlingwoods Drive, Fallgold Drive, Salem Street from Kimmel Road to Diamond Mill Road and the parking areas at the Administration Building and the Janice Ward Center and the road and parking area at Hardscrabble Park for a total cost not to exceed \$509,764.29.

ADOPTED BY COUNCIL ON MAY 4, 2006.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Date of publication

Excellence  
INDEPENDENT

5/10/06

CLERK



## **STAFF REPORT**

TO: Mayor and Council

FROM: J. Percival, Director of Service and Economic Development

DATE: May 4, 2006

RE: **AWARD BID FOR THE 2006 STREET RESURFACING  
PROGRAM TO JOHN R. JURGENSEN COMPANY**

---

### **REQUEST**

Award the bid for the 2006 street resurfacing program to John R. Jurgensen Company and authorize the City Manager to execute the contract for these services.

### **DISCUSSION**

On Friday April 21, 2006 the City received bids for the 2006 street resurfacing program. The City received two bids for the project. The low bid was provided by John R. Jurgensen Company of Dayton, Ohio in the amount of \$509,764.29. The engineer's estimate for the project was \$500,000.

The 2006 street maintenance program includes: Barnes Road, Mount Royal Drive, Valleybrook Drive, Pebblebrook Drive, Honeybrook Avenue from Afton to Taywood, Elru Drive, Shadywood Drive, Sterling Woods Drive, Fallgold Drive, and Salem Street from Kimmel to Diamond Mill.

In addition, Westbrook Road will be completed from Cheri Lynne Drive to the top of the hill west of Salem Avenue. The City of Clayton will initially pay the entire cost of the improvement and the City of Trotwood will reimburse Clayton for their share of the project over a three year period.

Finally, the parking areas at the Administration Building and Janice Ward Center along with the road and parking area at Hardscrabble Park are included.

### **FUNDING/FISCAL IMPACT**

A total of \$500,000 was budgeted in the 2006 budget for the street maintenance program. Staff has requested that the Finance Director add an additional \$9,765 to the budget so that we may complete the entire 2006 program as proposed.

**RECOMMENDATION**

Award the bid to John R. Jurgensen Company of Dayton, Ohio in an amount not to exceed \$509,764.29 and authorize the City Manager to execute the contract.

**ATTACHMENT**

Bid Tabulation Sheets



CLAYTON-TROTWOOD WESTBROOK ROAD IMPROVEMENTS

Invoice Number 1

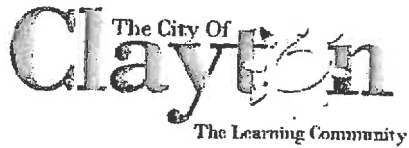
Total cost of the improvements = \$240,000

Trotwood portion  $\$240,000/2 = \$120,000$

Trotwood portion per year  $\$120,000/3 \text{ years} = \$40,000$

Trotwood portion less Trotwood costs for crack sealing and painting  $\$40,000 - \$3,745.54$ .

DUE FOR 2007 YEAR  $\$40,000 - \$3,745.54 = \$36,254.46$ .



Date: March 18, 2010  
Invoice #: 91007B  
Customer ID:

To: Ms. Patricia Shively  
City of Trotwood  
3035 Olive Road  
Trotwood, OH 45426-2600  
937-837-7771

0.5	Cost of Improvements - Westbrook Rd (Denlinger to St Rt 49)	\$	240,000.00	\$	120,000.00
1	Less: repayment over a 3 year period		(80,000.00)		(80,000.00)
1	Costs paid for crack sealing and painting (per Thomas Odenigbo)		(3,745.54)		(3,745.54)
	Total for 2007				<u>36,254.46</u>
	2008 Installment				40,000.00
	Less: Payment				(76,254.46)
	2009 Installment - FINAL - PAST DUE				40,000.00

Total \$ 40,000.00

to City



# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R - 07- 11 - 31**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CITY OF TROTWOOD TO SHARE COSTS FOR REPAVING OF WESTBROOK ROAD AND AT A TOTAL COST NOT TO EXCEED \$86,884.00**

**WHEREAS**, the Cities of Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, the City of Clayton has solicited and received competitive bids and has entered or will enter into an agreement with the lowest and best bidder [hereinafter, "Repaving Contractor"] for repaving of streets located entirely or partially within the City of Clayton; and

**WHEREAS**, the City of Clayton has proposed and the City of Trotwood has agreed to permit Clayton to repave all or a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor [hereinafter, "Westbrook Road Repaving Project"]; and

**WHEREAS**, the total cost for the Westbrook Road Repaving Project is estimated to be \$86,884.00; and

**WHEREAS**, the Cities of Clayton and Trotwood desire to enter into the Cooperative Agreement appended hereto and approved by Trotwood City Council on June 6, 2011 via passage of Resolution No. 11-38, to provide for said repaving work on Westbrook Road and to confirm that the Cities will split the costs of the Westbrook Road Repaving Project on a 50/50 basis.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

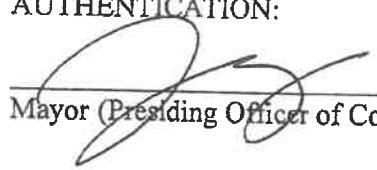
**SECTION I:** That the City Manager is hereby authorized to execute the attached Cooperative Agreement with the City of Trotwood for the Westbrook Road Repaving Project in order to accomplish the repaving of all or a mutually agreed to portion of Westbrook Road in a total amount not to exceed \$86,884.00, which amount will be split on a 50/50 basis between the City of Trotwood and the City of Clayton.

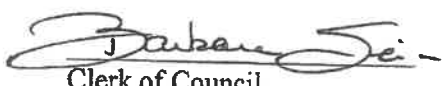
**SECTION II:** It is hereby determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION III:** That this Resolution shall be in full force and effect at the earliest date allowed by law.

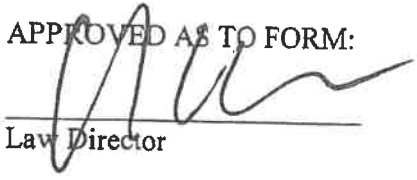
ADOPTED BY COUNCIL ON JULY 7, 2011.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

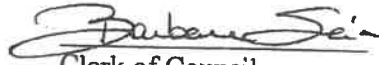
  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of R-07-11-31, duly adopted by the Council of the City of Clayton, Ohio on July 7, 2011, and that said enactment remains in full force and effect as of the date of this certification.



Clerk of Council  
City of Clayton, Ohio

Dated: July 12, 2011

# CERTIFICATION OF PUBLICATION

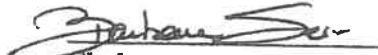
This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Date of publication

Englewood Independent

July 21, 2011

  
Clerk

CITY OF TROTWOOD  
3035 NORTH OLIVE ROAD  
TROTWOOD, OHIO 45426

RESOLUTION NO. 11-38 / REVISED 6-6-11

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE CITY OF CLAYTON FOR REPAVING OF WESTBROOK ROAD IN AN AMOUNT NOT TO EXCEED \$43,442.00.

WHEREAS, Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

WHEREAS, Trotwood has agreed to permit Clayton to repave all or a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid for the "Westbrook Road Repaving Project;" and

WHEREAS, the costs for the Westbrook Road Repaving Contract are estimated to be \$86,884.00, of which the City of Trotwood will pay fifty percent.

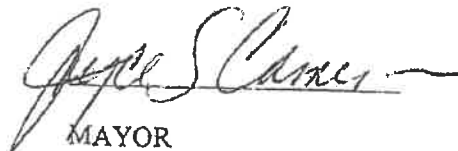
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO THAT:

**SECTION I:** The Council of the City of Trotwood authorizes the City Manager to enter into a cooperative agreement with the City of Clayton for repaving of all or a mutually agreed to portion of Westbrook Road in an amount not to exceed \$86,884.00, of which the City of Trotwood is responsible to pay fifty percent.

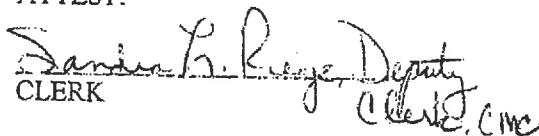
**SECTION II:** This Resolution shall take effect and be in force from and after the date of its passage.

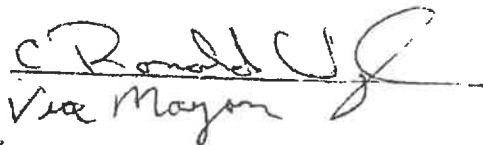
PASSED THIS 6<sup>th</sup> DAY OF June, 2011.

APPROVED:

  
MAYOR

ATTEST:

  
CLERK

  
Via Mayor



**CERTIFICATE OF RECORDING OFFICER**

I, Sandra L. Riege, Deputy Clerk of the City of Trotwood, Ohio, do hereby  
certify that the foregoing Resolution is a true and correct copy of Resolution No. 11-38 passed  
by the Trotwood City Council on the 6<sup>th</sup> day of June, 2011.

IN TESTIMONY WHEREOF, witness my hand and official seal this 8<sup>th</sup> day  
of June, 2011.

Sandra L. Riege, Deputy Clerk, Cmc  
CLERK

CLAYTON-TROTWOOD  
WESTBROOK ROAD  
COOPERATIVE AGREEMENT

THIS AGREEMENT, made this 6<sup>th</sup> day of June, 2011, by and between the CITY OF CLAYTON, OHIO (hereinafter referred to as "Clayton") and the CITY OF TROTWOOD, OHIO (hereinafter referred to as "Trotwood").

WITNESETH

**WHEREAS**, Clayton has solicited and received competitive bids and has entered (or will enter) into an agreement with the lowest and best bidder (hereinafter referred to as the "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

**WHEREAS**, Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, Clayton has proposed and Trotwood has agreed to permit Clayton to repave all or a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter referred to as the "Westbrook Road Repaving Project"); and

**WHEREAS**, the costs for the Westbrook Road Repaving Contract are estimated to be \$86,884.00; and

**WHEREAS**, Clayton and Trotwood desire to enter into this Agreement to provide for said repaving work on Westbrook Road and to confirm that the cities will split the costs of the Westbrook Road Repaving Project on a 50/50 basis; and

**WHEREAS**, Clayton agrees to be the lead agency for this Westbrook Road Repaving Project.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City of Clayton, Ohio, and the City of Trotwood, Ohio agree as follows:

1. Clayton agrees to be the lead agency for the Westbrook Road Repaving Project and agrees to initially pay all costs reasonably associated with the repaving work performed on Westbrook Road during 2011.
2. Trotwood consents to the performance of work by Clayton's Repaving Contractor on that portion of Westbrook Road that lies within the municipal boundaries of Trotwood.
3. Upon completion of the repaving work and after receipt and payment by Clayton of the costs associated therewith, Clayton will invoice Trotwood for 50% of the costs and Trotwood agrees to pay said amount to Clayton in four equal semi-annual installments payable as follows:
  - \$10,860.50 due January 1, 2012

- \$10,860.50 due July 1, 2012
  - \$10,860.50 due January 1, 2013
  - \$10,860.50 due July 1, 2013
4. The parties agree that if the total costs of the repaving are greater or less than \$86,884.00 the above repayment schedule will be appropriately adjusted to reflect the revised amount. Any increase in cost of more than 10% must be approved by Trotwood prior to payment by Clayton.
  5. No interest shall be due on the unpaid amounts, provided such payments are made when due. Any unpaid amounts that are past due shall accrue interest at the rate of 5% per annum.
  6. Clayton's City Manager at his option may, but is not required to, extend the repayment schedule at Trotwood's request and for valid financial reasons.
  7. All matters related to the implementation of this Agreement and the discharge of duties and responsibilities of each of the parties hereunto pursuant to its terms and conditions shall be effected and completed in full compliance with any and all applicable laws and regulations, State, Federal and local, including, but not limited to, prevailing wage standards.
  8. This Agreement and the terms and conditions set forth herein, without reference to any material, document, or information outside the boundary of the same, shall constitute the full and complete agreement in these regards by and among the parties hereto, and shall create by and among the same only the relationship, obligations, and commitments expressly set forth herein and imposed hereby.
  9. Each party agrees that it shall be liable for its actions or failure to act, but only as permitted under chapter 2744 of the Ohio Revised Code, as the same relates to work agreed to perform hereunder regardless of the territorial jurisdiction in which such work is to be performed.
  10. This Agreement may be amended, but only by written document signed by all parties hereto.
  11. Both Trotwood and Clayton agree that this Agreement contains the entire understanding and agreement of the parties, supercedes any previous understanding and/or agreement, and may not be modified except in writing by the mutual agreement of parties stated in Resolutions mutually adopted by each.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 7<sup>th</sup> day of July, 2011.

CITY OF CLAYTON, OHIO

BY: David W. Rowlands  
David W. Rowlands, City Manager

CITY OF TROTWOOD, OHIO

BY: Michael J. Lucking  
Michael Lucking, City Manager

APPROVED AS TO FORM:

Steven M. McHugh  
Trotwood Law Director

APPROVED AS TO FORM:

Robert E. Portune  
Clayton Law Director

#### CERTIFICATION OF FUND AVAILABILITY

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41

Patricia A. Shively  
Trotwood Finance Director



# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R - 05-12-26**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CITY OF TROTWOOD TO SHARE COSTS FOR REPAVING OF WESTBROOK ROAD AND AT A TOTAL COST NOT TO EXCEED \$84,000.00**

**WHEREAS**, the Cities of Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, the City of Clayton has solicited and received competitive bids and has entered or will enter into an agreement with the lowest and best bidder [hereinafter, "Repaving Contractor"] for repaving of streets located entirely or partially within the City of Clayton; and

**WHEREAS**, the City of Clayton has proposed and the City of Trotwood has agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor [hereinafter, "Westbrook Road Repaving Project"]; and

**WHEREAS**, the total cost for the Westbrook Road Repaving Project is estimated to be \$84,000.00; and

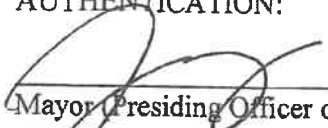
**WHEREAS**, the Cities of Clayton and Trotwood desire to enter into the Cooperative Agreement appended hereto and approved by Trotwood City Council on May 7, 2012 via passage of Resolution No. R-12-19, to provide for said repaving work on Westbrook Road and to confirm that the Cities will split the costs of the Westbrook Road Repaving Project on a 50/50 basis.

### **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to execute the attached Cooperative Agreement with the City of Trotwood for the Westbrook Road Repaving Project in order to accomplish the repaving of all or a mutually agreed to portion of Westbrook Road in a total amount not to exceed \$84,000.00, which amount will be split on a 50/50 basis between the City of Trotwood and the City of Clayton.
2. It is hereby determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.
3. That this Resolution shall be in full force and effect at the earliest date allowed by law.

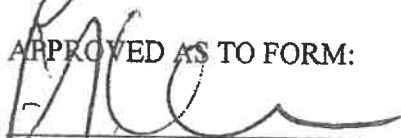
ADOPTED BY COUNCIL ON MAY 17, 2012.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

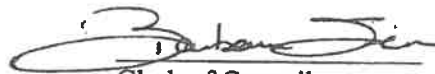
  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of R-05-12-26, duly adopted by the Council of the City of Clayton, Ohio on May 17, 2012, and that said enactment remains in full force and effect as of the date of this certification.

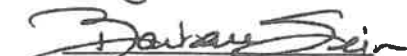
  
Clerk of Council  
City of Clayton, Ohio

Dated: May 24, 2012

CERTIFICATION OF PUBLICATION

This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper      Date of publication  
Englewood Independent      May 24, 2012

  
Clerk

TROTWOOD, OHIO 45426

3035 NORTH OLIVE ROAD

CITY OF TROTWOOD

**RESOLUTION NO. 12-19**

**A RESOLUTION BY THE COUNCIL OF THE CITY OF TROTWOOD, OHIO AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE CITY OF CLAYTON TO REPAVE A PORTION OF WESTBROOK ROAD.**

WHEREAS, the City of Trotwood and City of Clayton share jurisdiction over Westbrook Road; and

WHEREAS, the City of Clayton has solicited and received competitive bids to repave streets located entirely and partially within the City of Clayton; and

WHEREAS, the City of Clayton has entered (or will enter) into an agreement with the lowest and best bidder; and

WHEREAS, the City of Trotwood and the City of Clayton have agreed subject to Council approval to enter into a Cooperative Agreement to repave Westbrook Road with the City of Clayton acting as the lead agency for the Westbrook Road Repaving Project; and

WHEREAS, the City of Clayton will initially pay all costs reasonably associated with the Westbrook Road Repaving Project; and

WHEREAS, the City of Clayton and City of Trotwood will split the estimated \$84,000 in costs of the Westbrook Road Repaving Project on a 50/50 basis.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO THAT:

**SECTION I:** The City Manager is hereby authorized to enter into a Cooperative Agreement (attached and incorporated herein) with the City of Clayton to repave the portion of Westbrook Road located within the City of Trotwood for a cost of approximately \$84,000 to be split on a 50/50 basis between the City of Trotwood and the City of Clayton.

**SECTION II:** This Resolution shall take effect and be in force from and after the date of its passage.

PASSED THIS 7<sup>th</sup> DAY OF MAY, 2012.



ATTEST:

Lois M. Singleton  
CLERK OF COUNCIL

APPROVED:

Will S. Cameron  
MAYOR

Ray G. Hahn  
VICE MAYOR

**CERTIFICATE OF RECORDING OFFICER**

I, Lois M. Singleton Clerk of the City of Trotwood, Ohio, do hereby  
certify that the foregoing Resolution is a true and correct copy of Resolution No. 12-19 passed by  
the Trotwood City Council on the 7th day of May, 2012.

IN TESTIMONY WHEREOF, witness my hand and official seal this 8th day of  
May, 2012.

Lois M. Singleton MMC  
CLERK OF COUNCIL



CLAYTON-TROTWOOD  
WESTBROOK ROAD  
COOPERATIVE AGREEMENT

THIS AGREEMENT, made this 14 day of May, 2012, by and between the CITY OF CLAYTON, OHIO (hereinafter referred to as "Clayton") and the CITY OF TROTWOOD, OHIO (hereinafter referred to as "Trotwood").

WITNESETH

WHEREAS, Clayton has solicited and received competitive bids and has entered (or will enter) into an agreement with the lowest and best bidder (hereinafter referred to as the "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

WHEREAS, Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

WHEREAS, Clayton has proposed and Trotwood has agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter referred to as the "Westbrook Road Repaving Project"; and

WHEREAS, the costs for the Westbrook Road Repaving Contract are estimated to be \$84,000.00; and

WHEREAS, Clayton and Trotwood desire to enter into this Agreement to provide for said repaving work on Westbrook Road and to confirm that the cities will split the costs of the Westbrook Road Repaving Project on a 50/50 basis; and

WHEREAS, Clayton agrees to be the lead agency for this Westbrook Road Repaving Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City of Clayton, Ohio, and the City of Trotwood, Ohio agree as follows:

1. Clayton agrees to be the lead agency for the Westbrook Road Repaving Project and agrees to initially pay all costs reasonably associated with the repaving work performed on Westbrook Road during 2012.
2. Trotwood consents to the performance of work by Clayton's Repaving Contractor on that portion of Westbrook Road that lies within the municipal boundaries of Trotwood between Ashbrook and Cherri Lynne.
3. Upon completion of the repaving work and after receipt and payment by Clayton of the costs associated therewith, Clayton will invoice Trotwood for 50% of the costs and Trotwood agrees to pay said amount to Clayton within thirty (30) days thereafter.

4. The parties agree that if the total costs of the repaving are greater or less than \$84,000.00 the above repayment obligation will be appropriately adjusted to reflect the revised amount. Any increase in cost of more than 10% must be approved by Trotwood prior to payment by Clayton.
5. No interest shall be due on the unpaid amount, provided such payment is made when due. Any unpaid amounts that are past due shall accrue interest at the rate of 5% per annum.
6. Clayton's City Manager at his option may, but is not required to, extend the repayment schedule at Trotwood's request and for valid financial reasons.
7. All matters related to the implementation of this Agreement and the discharge of duties and responsibilities of each of the parties hereunto pursuant to its terms and conditions shall be effected and completed in full compliance with any and all applicable laws and regulations, State, Federal and local, including, but not limited to, prevailing wage standards.
8. This Agreement and the terms and conditions set forth herein, without reference to any material, document, or information outside the boundary of the same, shall constitute the full and complete agreement in these regards by and among the parties hereto, and shall create by and among the same only the relationship, obligations, and commitments expressly set forth herein and imposed hereby.
9. Each party agrees that it shall be liable for its actions or failure to act, but only as permitted under chapter 2744 of the Ohio Revised Code, as the same relates to work agreed to perform hereunder regardless of the territorial jurisdiction in which such work is to be performed.
10. This Agreement may be amended, but only by written document signed by all parties hereto.
11. Both Trotwood and Clayton agree that this Agreement contains the entire understanding and agreement of the parties, supersedes any previous understanding and/or agreement, and may not be modified except in writing by the mutual agreement of parties stated in Resolutions mutually adopted by each.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 10<sup>th</sup> day of May, 2012.

CITY OF CLAYTON, OHIO

BY: David W. Rowlands  
David W. Rowlands, City Manager

CITY OF TROTWOOD, OHIO

BY: Michael J. Lucking  
Michael Lucking, City Manager

APPROVED AS TO FORM:

Stephen M. McHugh  
Stephen M. McHugh  
Trotwood Law Director

APPROVED AS TO FORM:

Robert E. Portune  
Robert E. Portune  
Clayton Law Director

#### CERTIFICATION OF FUND AVAILABILITY

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41

Patricia A. Shively  
Patricia A. Shively  
Trotwood Finance Director

**CITY OF TROTWOOD CITY COUNCIL AGENDA SUBMISSION FOR MEETING ON**  
**May 7, 2012**  
**MONTH/DAY/YEAR**

To: City Manager/Clerk of Council  
Received: \_\_\_\_\_  
(Clerk & City Manager)

05/07/2012 Date

From: Public Works  
(Department)

Need Legislation (Circle One)  
Ordinance/Resolution: Resolution 12-19

**(CHECK ONE WHERE APPLICABLE)**

- ☐ Award of Contract
- ☐ Estimate of Cost
- ☐ Grant Application
- ☐ Lease/Purchase Agreement
- ☐ Payment of Voucher
- ☐ Purchase Order
- ☐ Price Agreement
- ☐ Professional Service Agreement
- ☐ Public Hearing matter
- ☒ Other Cooperative Agreement
- ☐ Reviewed by Law Director for Correctness and Approved on \_\_\_\_\_
- ☐ Fiscal Officer Certification attached \_\_\_\_\_

Amount: \$42,000  
Fund Source / City Share (Dollar Amount)  
Street Maintenance/ \$42,000  
(201.52136)

Supplier/Vendor/Company/Individual  
Address Only:  
City of Clayton

**JUSTIFICATION AND DESCRIPTION OF PURCHASE, CONTRACT OR PAYMENT**

Cooperative Agreement with City of Clayton for repairing of a section of Westbrook Road.  
From Sherri Lynne to Ashbrook.

See Attached Agreement.

Approved by City Council:

Meeting Date May 7, 2012

Clerk Lisa M. Singleton

Date May 8, 2012

Department Signature 

City Manager Signature \_\_\_\_\_



# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R - 07-14-51**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CITY OF TROTWOOD TO SHARE COSTS FOR REPAVING OF WESTBROOK ROAD FROM SALEM AVENUE TO UNION ROAD AND AT A TOTAL COST NOT TO EXCEED \$77,496.50**

**WHEREAS**, the Cities of Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, the City of Clayton has solicited and received competitive bids and has entered or will enter into an agreement with the lowest and best bidder (hereinafter, "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

**WHEREAS**, the City of Clayton and the City of Trotwood have agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter, "Westbrook Road Repaving Project"); and

**WHEREAS**, the total cost for the Westbrook Road Repaving Project is estimated to be \$154,993.00; and

**WHEREAS**, the Cities of Clayton and Trotwood desire to enter into the Cooperative Agreement appended hereto and approved by Trotwood City Council on July 7, 2014 via passage of Resolution No. 14-61, to provide for said repaving work on Westbrook Road and to confirm that the Cities will split the costs of the Westbrook Road Repaving Project on a 50/50 basis.

### **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to execute the attached Cooperative Agreement with the City of Trotwood for the Westbrook Road Repaving Project in order to accomplish the repaving of a mutually agreed to portion of Westbrook Road from Salem Avenue to Union Road in a total amount not to exceed \$154,993.00, which amount will be split on a 50/50 basis between the City of Trotwood and the City of Clayton.

2. It is hereby determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

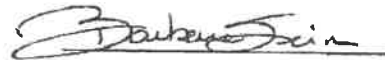


3. That this Resolution shall be in full force and effect at the earliest date allowed by law.

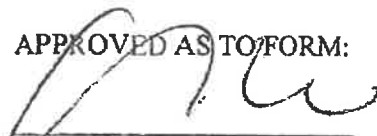
ADOPTED BY COUNCIL ON JULY 17, 2014.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

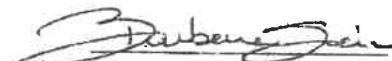
  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of R-07-14-51, duly adopted by the Council of the City of Clayton, Ohio on July 17, 2014, and that said enactment remains in full force and effect as of the date of this certification.

  
Clerk of Council  
City of Clayton, Ohio

Dated: July 21, 2014

# CERTIFICATION OF PUBLICATION

This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Date of publication

Englewood Independent

July 24, 2014

Paula Sue  
Clerk

TROTWOOD, OHIO 45428

3035 NORTH OLIVE ROAD

CITY OF TROTWOOD

# RESOLUTION NO. 14-61

A RESOLUTION BY THE COUNCIL OF THE CITY OF TROTWOOD, OHIO AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE CITY OF CLAYTON, OHIO TO REPAVE A PORTION OF WESTBROOK ROAD AT A COST NOT TO EXCEED \$77,496.50.

WHEREAS, the City of Trotwood and City of Clayton share jurisdiction over a portion of Westbrook Road; and

WHEREAS, the City of Clayton has solicited and received competitive bids to repave streets located entirely and partially within the City of Clayton; and

WHEREAS, the City of Clayton has entered into an agreement with the lowest and best bidder; and

WHEREAS, the City of Trotwood and the City of Clayton have agreed subject to Council approval to enter into a Cooperative Agreement to repave a portion of Westbrook Road with the City of Clayton acting as the lead agency for the Westbrook Road Repaving Project; and

WHEREAS, the City of Trotwood's portion will not exceed \$77,496.50 in costs for the Westbrook Road Repaving Project, payable to the City of Clayton.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO THAT:

## SECTION I:

The City Manager is hereby authorized to enter into a Cooperative Agreement (attached and incorporated herein) with the City of Clayton to repave a portion of Westbrook Road located within the City of Trotwood at a cost of not to exceed \$77,496.50 to be paid to the City of Clayton upon completion of the work.

## SECTION II:

This Resolution shall take effect and be in force from and after the date of its passage.

PASSED THIS 7<sup>th</sup> day of July, 2014.

ATTEST:

APPROVED:

Sandra L. Riege  
CLERK OF COUNCIL

Joseph S. Chamer  
MAYOR

Barbara J. Stegg  
VICE-MAYOR

CITY OF TROTWOOD 3035 NORTH OLIVE ROAD TROTWOOD, OHIO 45426

CERTIFICATE OF RECORDING OFFICER

I SANDRA L. RIEGE Clerk of the City of Trotwood, Ohio, do hereby certify that the foregoing Resolution is a true and correct copy of Resolution No. 14-61 passed by the Trotwood City Council on the 7<sup>th</sup> day of July 2014.

IN TESTIMONY WHEREOF, witness by hand and official seal this 8<sup>th</sup> day of July 2014



Sandra L. Riege, CMC  
Sandra L. Riege, CMC  
Clerk of Council

CLAYTON-TROTWOOD  
WESTBROOK ROAD  
COOPERATIVE AGREEMENT

THIS AGREEMENT, made this 7<sup>th</sup> day of July, 2014, by and between the CITY OF CLAYTON, OHIO (hereinafter referred to as "Clayton") and the CITY OF TROTWOOD, OHIO (hereinafter referred to as "Trotwood").

WITNESSETH

WHEREAS, Clayton has solicited and received competitive bids and has entered (or will enter) into an agreement with the lowest and best bidder (hereinafter referred to as the "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

WHEREAS, Clayton and Trotwood share jurisdiction over a portion of Westbrook Road which comprises a municipal boundary between the two cities; and

WHEREAS, Clayton has proposed and Trotwood has agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter referred to as the "Westbrook Road Repaving Project"; and

WHEREAS, Clayton and Trotwood desire to enter into this Agreement to provide for said repaving work on Westbrook Road and to confirm that the City of Trotwood will pay no more than \$77,496.50 towards the cost of this project; and

WHEREAS, Clayton agrees to be the lead agency for this Westbrook Road Repaving Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City of Clayton, Ohio, and the City of Trotwood, Ohio agree as follows:

1. Clayton agrees to be the lead agency for the Westbrook Road Repaving Project and agrees to initially pay all costs reasonably associated with the repaving work performed on Westbrook Road during 2014.
2. Trotwood consents to the performance of work by Clayton's Repaving Contractor on that portion of Westbrook Road that lies within the municipal boundaries of Trotwood between Salem Ave./State Route 49 and Union Road.
3. Upon completion of the repaving work and after receipt and payment by Clayton of the costs associated therewith, Clayton will invoice Trotwood for 50% of the costs and Trotwood agrees to pay said amount to Clayton within thirty (30) days thereafter at an amount not to exceed \$77,496.50.

4. No interest shall be due on the unpaid amount, provided such payment is made when due.
5. All matters related to the implementation of this Agreement and the discharge of duties and responsibilities of each of the parties hereunto pursuant to its terms and conditions shall be effected and completed in full compliance with any and all applicable laws and regulations, State, Federal and local, including, but not limited to, prevailing wage standards.
6. This Agreement and the terms and conditions set forth herein, without reference to any material, document, or information outside the boundary of the same, shall constitute the full and complete agreement in these regards by and among the parties hereto, and shall create by and among the same only the relationship, obligations, and commitments expressly set forth herein and imposed hereby.
7. Each party agrees that it shall be liable for its actions or failure to act, but only as permitted under chapter 2744 of the Ohio Revised Code, as the same relates to work agreed to perform hereunder regardless of the territorial jurisdiction in which such work is to be performed.
8. This Agreement may be amended, but only by written document signed by all parties hereto.
9. Both Trotwood and Clayton agree that this Agreement contains the entire understanding and agreement of the parties, supersedes any previous understanding and/or agreement, and may not be modified except in writing by the mutual agreement of parties stated in Resolutions mutually adopted by each.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 7<sup>th</sup> day of July 2014.

CITY OF CLAYTON, OHIO

BY: Richard C. Rose  
Richard Rose, City  
Manager

CITY OF TROTWOOD, OHIO

BY: Michael J. Lucking  
Michael J. Lucking, City  
Manager

APPROVED AS TO FORM:

Stephen M. Marston  
Stephen M. Marston  
Trotwood Law Director

APPROVED AS TO FORM:

Martina Dillon  
Martina Dillon  
Clayton Law Director

#### CERTIFICATION OF FUND AVAILABILITY

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C.

8705.41

Patricia Shively  
Patricia Shively  
Trotwood Finance Director

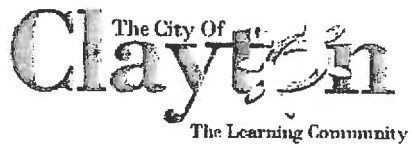


**CERTIFICATE OF FISCAL OFFICER**

As Finance Director for the City of Clayton, Montgomery County, Ohio, I hereby certify that the funds for the purpose of meeting the obligations of this contract have been lawfully appropriated and that they are in the treasury or in the process of collection free from any previous encumbrances.

Dated: 6-30-14

By:   
Kevin Schweitzer, Finance Director  
City of Clayton, Ohio



Date: December 10, 2014  
Invoice #: 20141125

To: Ms. Patricia Shively  
City of Trotwood  
3035 Olive Road  
Trotwood, OH 45426-2600  
937-837-7771

		Q1 2015	Q2 2015
1	Cost of Improvements - Westbrook Rd (St Rt 49 to Union Rd) - see attached invoice	\$ 59,884.51	\$ 59,884.51
1	Berming of Westbrook Road	3,000.00	3,000.00

Total \$ 62,884.51



# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R - 11 - 16 - 94

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE JOHN R. JURGENSEN COMPANY FOR MILL AND FILL PAVING OF A THREE MILE PORTION OF WESTBROOK ROAD FROM UNION ROAD TO DIAMOND MILL ROAD AND AT A TOTAL PROJECT COST NOT TO EXCEED \$382,292.00 AND AT A TOTAL COST TO THE CITY OF CLAYTON NOT TO EXCEED \$65,515.00**

**WHEREAS**, via enactment of Clayton Resolution No. R-10-15-69, on October 1, 2015, Council authorized the City Manager to submit a joint application with the City of Trotwood, Ohio to the MVRPC for possible funding assistance for an STP grant to be used to repave a specified three mile section of Westbrook Road for state fiscal year 2017; and

**WHEREAS**, the STP grant referenced above was awarded for the above identified project and the City of Clayton, via enactment of Clayton Resolution No. R-10-15-69 pledged \$83,000.00 for necessary matching grant funds for said project and the City of Trotwood, via enactment of Trotwood Resolution No. R15-86 on November 2, 2015 pledged \$60,000.00 for necessary matching grant funds for said project; and

**WHEREAS**, in accordance with the provisions of Charter Section 8.02, bids were solicited for the mill and fill paving of a specified three mile section of Westbrook Road from Union Road to Diamond Mill Road ( "Westbrook Road Resurfacing Project"); and

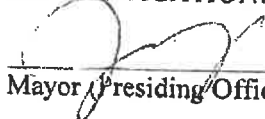
**WHEREAS**, said bids have been received and reviewed and the City Manager and City staff have recommended for acceptance the bid received from John R. Jurgensen Company as being the lowest and best bid submitted by a responsible bidder; and therefore City staff recommends accepting said bid in accordance with the terms of the request for bids.

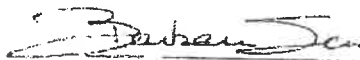
**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to enter into an agreement with John R. Jurgensen Company to complete the mill and fill paving of a specified three mile section of Westbrook Road from Union Road to Diamond Mill Road ( "Westbrook Road Resurfacing Project"), with the total cost of said repaving not to exceed \$382,292.00 and with a total cost to the City of Clayton for its portion of the paving project not to exceed \$65,515.00.

ADOPTED BY COUNCIL ON NOVEMBER 17, 2016.

AUTHENTICATION:

  
Mayor/Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

#### CERTIFICATION OF PUBLICATION

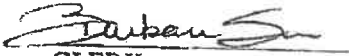
This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Englewood Independent

Date of publication

November 24, 2016

  
CLERK

TROTWOOD, OHIO 45426

3035 NORTH OLIVE ROAD

CITY OF TROTWOOD

**RESOLUTION NO. R15-86**

**A RESOLUTION BY THE COUNCIL OF THE CITY OF TROTWOOD, OHIO AMENDING RESOLUTION R15-76 REGARDING JOINT APPLICATION WITH THE CITY OF CLAYTON TO MVRPC FOR FUNDING TO REPAVE A PORTION OF WESTBROOK ROAD.**

**WHEREAS**, the City of Trotwood and City of Clayton share jurisdiction over Westbrook Road; and

**WHEREAS**, the City of Trotwood and the City of Clayton have agreed, subject to Council approval, to jointly apply to MVRPC for \$400,000.00 in funding to repave Westbrook Road; and

**WHEREAS**, in order to receive this funding, the City of Trotwood previously passed Resolution R15-76; and

**WHEREAS**, Resolution R15-76 has incorrect numbers listed for the contribution amounts by Clayton and Trotwood; and

**WHEREAS**, the City of Trotwood's costs for this project will not exceed \$60,000.00 to be paid with permissive tax funds and City of Clayton costs will be \$83,000.00.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO THAT:**

**SECTION I:** Resolution R15-76 is hereby amended to reflect the accurate costs contributed to this project being \$83,000.00 from the City of Clayton and \$60,000.00 from the City of Trotwood. The City of Trotwood's costs for this project shall not exceed \$60,000.00 and will be paid with permissive tax funds.

**SECTION II:** This Resolution shall take effect and be in force from and after the date of its passage.

Passed this  
2015.

2nd day of November

ATTEST:

  
SANDRA L. RIEGE, CMC  
CLERK OF COUNCIL

APPROVED:

  
JOYCE SUTTON CAMERON  
MAYOR

  
BARBARA J. STAGGS  
VICE-MAYOR

TROTWOOD, OHIO 45426

3035 NORTH OLIVE ROAD

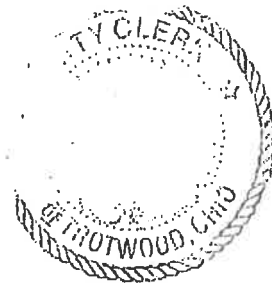
CITY OF TROTWOOD

CITY OF TROTWOOD  
3035 NORTH OLIVE ROAD  
TROTWOOD, OHIO 45426

# CERTIFICATE OF RECORDING OFFICER

I, SANDRA L. RIEGE, Clerk of the City of Trotwood,  
Ohio, do hereby certify that the foregoing Resolution is a true and correct copy of  
Resolution No. R15-86 passed by the Trotwood City Council on the 2nd  
day of November 2015.

IN TESTIMONY WHEREOF, witness by hand and official seal this 3rd  
day of November 2015.



Sandra L. Riege  
Sandra L. Riege, CMC  
Clerk of Council





## City of Trotwood

3035 Olive Road  
Trotwood, Ohio 45426  
937-837-7771  
[www.trotwood.org](http://www.trotwood.org)

### Agenda Submission

File Number: R15-86

Agenda Date: 11/2/2015

Version: 1

Status: Agenda Ready

In Control: City Council

File Type: Resolution

Agenda Number: B.

#### TITLE:

A RESOLUTION BY THE COUNCIL OF THE CITY OF TROTWOOD, OHIO  
AMENDING RESOLUTION R15-76 REGARDING JOINT APPLICATION WITH THE  
CITY OF CLAYTON TO MVRPC FOR FUNDING TO REPAVE A PORTION OF  
WESTBROOK ROAD.

**PURPOSE:** To repeal R15-76 resolution agreement with the City of Clayton and to  
submit an application for the MVRPC funding to pave Westbrook Road.

**DEPARTMENT:** Public Works Department

**CONTACT INFORMATION:** Eric G. Baxter, Operations Manager at  
[ebaxter@trotwood.org](mailto:ebaxter@trotwood.org) <<mailto:ebaxter@trotwood.org>>

**INFORMATION:** The MVRPC is currently soliciting from communities for STP grant  
funds for State fiscal year 2017. City of Trotwood and City of Clayton will be  
partnering to submit an application to MVRPC to pave three (3) miles of Westbrook  
Road. This resolution request will amend Resolution R15-76 previously approved by  
Trotwood City Council at the October 5, 2015 meeting. With this amended to R15-76  
it will reflect a change of cost contributed by the City of Clayton now pledging  
\$83,000.00. The City of Trotwood costs will remain at \$60,000.00 from the permissive  
tax fund for our portion of the matching grant.

**FISCAL & STAFF IMPACT:** \$60,000.00 from the City of Trotwood

**RECOMMENDATION:** Approval as submitted.



# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R – 05 – 20 – 24**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CITY OF TROTWOOD TO SHARE COSTS FOR RESURFACING OF WESTBROOK ROAD FROM SALEM AVENUE TO CHERI LYNNE DRIVE AND AT A TOTAL RESURFACING COST TO THE CITY OF CLAYTON NOT TO EXCEED \$107,999.00 PLUS COST OF PROJECT ENGINEERING TO BE PAID BY THE CITY OF CLAYTON IN AN AMOUNT NOT TO EXCEED \$32,896.00**

**WHEREAS**, the Cities of Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, the Cities of Clayton and Trotwood applied for and were awarded a Surface Transportation Program (STP) grant from the MVRPC for the mill and fill paving of Westbrook Road from Salem Avenue to Cheri Lynne Drive; and

**WHEREAS**, the STP grant awarded constitutes 63% (\$367,781.00) of the estimated total project cost of \$583,779.00 and Clayton and Trotwood will be responsible for sharing equally the remaining 37% cost (\$215,998.00), which is \$107,999.00 to be paid by Clayton and \$107,999.00 to be paid by Trotwood; and

**WHEREAS**, in addition to payment of the aforementioned \$107,999.00 for resurfacing costs, Clayton will also pay for the engineering of the project in an amount not to exceed \$32,896.00; and

**WHEREAS**, the Cities of Clayton and Trotwood desire to enter into a Cooperative Agreement to provide for said resurfacing work on Westbrook Road from Salem Avenue to Cheri Lynne Drive and to confirm the Cities will split the costs of the Westbrook Road Resurfacing Project on a 50/50 basis with Clayton additionally paying the costs of engineering for said Project.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to execute a Cooperative Agreement in substantially similar form as appended hereto as *Exhibit A* with the City of Trotwood for the Westbrook Road Repaving Project in order to accomplish the resurfacing of a mutually agreed to portion of Westbrook Road from Salem Avenue to Cheri Lynne Drive with Clayton paying \$107,999.00 of the cost of resurfacing and Trotwood paying \$107,999.00 of the cost of resurfacing and the remaining cost to be paid via the STP grant referenced herein and awarded by MVRPC.

2. That, in addition to paying \$107,999.00 of the resurfacing costs, Clayton will also pay the engineering costs for the Project in an amount not to exceed \$32,896.00.

3. It is hereby determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

3. That this Resolution shall be in full force and effect at the earliest date allowed by law.

ADOPTED BY COUNCIL ON MAY 7, 2020.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)


  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

### CERTIFICATE

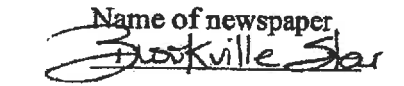
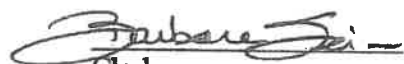
The undersigned Clerk hereby certifies that the foregoing is a true copy of R-05-20-24, duly adopted by the Council of the City of Clayton, Ohio on May 7, 2020, and that said enactment remains in full force and effect as of the date of this certification.

  
Clerk of Council  
City of Clayton, Ohio

Dated: May 7, 2020

### CERTIFICATION OF PUBLICATION

This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper	Date of publication
 Bookville Star	<u>May 13, 2020</u>
 Clerk	

**CLAYTON-TROTWOOD**  
**WESTBROOK ROAD**  
**COOPERATIVE AGREEMENT**

**THIS AGREEMENT**, is made this 7<sup>th</sup> day of May, 2020, by and between the **CITY OF CLAYTON, OHIO** (hereinafter referred to as "Clayton") and the **CITY OF TROTWOOD, OHIO** (hereinafter referred to as "Trotwood").

**WITNESETH**

**WHEREAS**, Clayton shall solicit competitive bids and has entered (or will enter) into an agreement with the lowest and best responsive bidder (hereinafter referred to as the "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

**WHEREAS**, Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, Clayton has proposed, and Trotwood has agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter referred to as the "Westbrook Road RFS2 Project"); and

**WHEREAS**, Clayton and Trotwood desire to enter into this Agreement to provide for said repaving work on Westbrook Road and to confirm that the cities will split the costs of the Westbrook Road RFS2 Project on a 50/50 basis; and

**WHEREAS**, Clayton agrees to be the lead agency for this Westbrook Road RFS2 Project; and

**WHEREAS**, the total estimated cost of the Westbrook Road RFS2 Project is \$583,779.00, with 63% (\$367,781.00) of said total estimated cost to be paid via a Surface Transportation Program (STP) grant from the MVRPC and the remaining 37% (\$215,998.00) of the total estimated cost will be shared equally between Clayton and Trotwood with Clayton paying \$107,999.00 and Trotwood paying \$107,999.00; and

**WHEREAS**, Clayton will be responsible for payment of the engineering costs of the Westbrook Road RFS2 Project which total engineering costs are estimated to be \$32,896.00.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City of Clayton, Ohio, and the City of Trotwood, Ohio agree as follows:

1. Clayton agrees to be the lead agency for the Westbrook Road RFS2 Project and agrees to initially pay all costs reasonably associated with the repaving work performed on Westbrook Road during 2025.
2. Trotwood consents to the performance of work by Clayton's Repaving Contractor on

that portion of Westbrook Road that lies within the municipal boundaries of Trotwood between Salem Avenue and Cheri Lynne Drive.

3. Upon completion of the repaving work and after receipt and payment by Clayton of the costs associated therewith, Clayton will invoice Trotwood for 50% of the costs and Trotwood agrees to pay said amount to Clayton within thirty (30) days thereafter.
4. The parties agree if the total costs of the repaving are greater or less than the above repayment obligation, the costs will be appropriately adjusted to reflect the revised amount. Any increase in cost of more than 10% must be approved by Trotwood prior to payment by Clayton.
5. No interest shall be due on the unpaid amount, provided such payment is made when due. Any unpaid amounts which are past due shall accrue interest at the rate of 5% per annum.
6. Clayton's City Manager, at her option may, but is not required to, extend the repayment schedule at Trotwood's request and for valid financial reasons.
7. Clayton will pay the engineering costs associated with the Westbrook Road RFS2 Project.
8. All matters related to the implementation of this Agreement and the discharge of duties and responsibilities of each of the parties hereunto pursuant to its terms and conditions shall be effected and completed in full compliance with any and all applicable laws and regulations, State, Federal and local, including, but not limited to, prevailing wage standards.
9. This Agreement and the terms and conditions set forth herein, without reference to any material, document, or information outside the boundary of the same, shall constitute the full and complete agreement in these regards by and among the parties hereto, and shall create by and among the same only the relationship, obligations, and commitments expressly set forth herein and imposed hereby.
10. Each party agrees that it shall be liable for its actions or failure to act, but only as permitted under Chapter 2744 of the Ohio Revised Code, as the same relates to work agreed to perform hereunder regardless of the territorial jurisdiction in which such work is to be performed.
11. This Agreement may be amended, but only by written document signed by all parties hereto.
12. Both Trotwood and Clayton agree this Agreement contains the entire understanding and agreement of the parties, supersedes any previous understanding and/or agreement, and may not be modified except in writing by the mutual agreement of parties stated in Resolutions mutually adopted by each.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 7<sup>th</sup> day of May, 2020.

CITY OF CLAYTON, OHIO

BY: 

Amanda Zimmerlin, City Manager

Approved Via Resolution No. R-05-20-24  
adopted on May 7, 2020

CITY OF TROTWOOD, OHIO

BY: \_\_\_\_\_

Quincy Pope, City Manager

Approved Via Resolution No. \_\_\_\_\_  
adopted on \_\_\_\_\_, 2020

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven M. McHugh  
Trotwood Law Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Martina M. Dillon  
Clayton Law Director

**CERTIFICATION OF FUND AVAILABILITY- TROTWOOD**

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41

\_\_\_\_\_  
Trotwood Finance Director

**CERTIFICATION OF FUND AVAILABILITY- CLAYTON**

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41

  
\_\_\_\_\_  
Clayton Finance Director



TROTWOOD, OHIO 45426

3035 OLIVE ROAD

CITY OF TROTWOOD

**RESOLUTION NO. R20-47**

**A RESOLUTION BY THE TROTWOOD CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
COOPERATIVE AGREEMENT WITH THE CITY OF CLAYTON  
TO SHARE IN THE COSTS OF THE RESURFACING OF  
WESTBROOK ROAD FROM SALEM AVENUE TO CHERI  
LYNNE DRIVE WITH THE TOTAL RESURFACING COST TO  
THE CITY OF TROTWOOD NOT TO EXCEED \$107,999.00.**

**WHEREAS**, the City of Trotwood and the City of Clayton share jurisdiction over Westbrook Road, which comprises a municipal boundary between the two cities; and

**WHEREAS**, the City of Trotwood and the City of Clayton applied for and were awarded a Surface Transportation Program ("STP") grant from the Miami Valley Regional Planning Commission ("MVRPC") for the mill and fill paving of Westbrook Road from Salem Avenue to Cheri Lynne Drive; and

**WHEREAS**, the STP grant awarded by the MVRPC constitutes sixty-three percent (63%) of the estimated total project cost of \$583,779.00; and

**WHEREAS**, the City of Trotwood and the City of Clayton will be equally responsible for sharing the remaining thirty-seven percent (37%) of the total project cost, which is \$215,998.00. Accordingly, the City of Trotwood's cost for this resurfacing project, which project is known as the "Westbrook Road RFS2 Project," shall not exceed \$107,999.00; and

**WHEREAS**, the City of Clayton has agreed to be the lead agency for the Westbrook Road RFS2 Project and has further agreed to pay for the engineering of same; and

**WHEREAS**, the City of Trotwood and the City of Clayton desire to enter into a Cooperative Agreement to provide for the resurfacing work to be completed on Westbrook Road from Salem Avenue to Cheri Lynne Drive, which Cooperative Agreement will confirm that each City will share equally in the costs of the thirty-seven percent (37%) of the Westbrook Road RFS2 Project that is not covered by grant funds, with the City of Clayton paying the additional costs for the engineering of the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE  
CITY OF TROTWOOD, STATE OF OHIO:**

**SECTION I.**

City Council hereby authorizes the City Manager to execute a Cooperative Agreement for the Westbrook Road RFS2 Project that is in substantially similar form as the document attached hereto as Exhibit A in order to

TROTWOOD, OHIO 45426

3035 OLIVE ROAD

CITY OF TROTWOOD

accomplish resurfacing of Westbrook Road from Salem Avenue to Cheri Lynne Drive.

**SECTION II.**

City Council hereby authorizes the expenditure of an amount not to exceed \$107,999.00 for the City of Trotwood's share of the Westbrook Road RFS2 Project. The City of Clayton will also pay its equal share (\$107,999.00) of the Westbrook Road RFS2 Project, as well as the related engineering costs. The remaining balance (\$367,781.00) of the projected total cost of \$583,779.00 shall be paid via the STP grant received by the Cities of Trotwood and Clayton.

**SECTION III.**

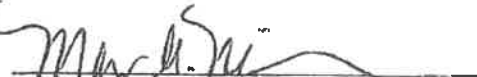
This Resolution shall take effect and be in force from and after the date of its passage.

Passed this 2nd day of June, 2020.

ATTEST:

  
SANDY RIEGE-FULDER  
DEPUTY CLERK OF COUNCIL

APPROVED

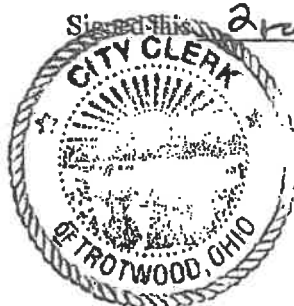
  
MARY A. MCDONALD  
MAYOR


  
TYNA R. BROWN  
VICE MAYOR

**CERTIFICATE OF RECORDING OFFICER**

I, the undersigned, hereby certify that the foregoing is a true and correct copy of Resolution No. R20-47 adopted by the Trotwood City Council at a regular scheduled meeting held on the 1st day of June, 2020, and that I am duly authorized to execute this certificate.

Signed this 2nd day of June, 2020.



  
SANDY RIEGE-FULDER  
DEPUTY CLERK OF COUNCIL



**CLAYTON-TROTWOOD**  
**WESTBROOK ROAD**  
**COOPERATIVE AGREEMENT**

THIS AGREEMENT, is made this 7<sup>th</sup> day of May, 2020, by and between the CITY OF CLAYTON, OHIO (hereinafter referred to as "Clayton") and the CITY OF TROTWOOD, OHIO (hereinafter referred to as "Trotwood").

**WITNESETH**

WHEREAS, Clayton shall solicit competitive bids and has entered (or will enter) into an agreement with the lowest and best responsive bidder (hereinafter referred to as the "Repaving Contractor") for repaving of streets located entirely or partially within the City of Clayton; and

WHEREAS, Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

WHEREAS, Clayton has proposed, and Trotwood has agreed to permit Clayton to repave a mutually agreed portion of Westbrook Road utilizing the unit costs contained within the accepted bid of the Repaving Contractor (hereinafter referred to as the "Westbrook Road RFS2 Project"); and

WHEREAS, Clayton and Trotwood desire to enter into this Agreement to provide for said repaving work on Westbrook Road and to confirm that the cities will split the costs of the Westbrook Road RFS2 Project on a 50/50 basis; and

WHEREAS, Clayton agrees to be the lead agency for this Westbrook Road RFS2 Project; and

WHEREAS, the total estimated cost of the Westbrook Road RFS2 Project is \$583,779.00, with 63% (\$367,781.00) of said total estimated cost to be paid via a Surface Transportation Program (STP) grant from the MVRPC and the remaining 37% (\$215,998.00) of the total estimated cost will be shared equally between Clayton and Trotwood with Clayton paying \$107,999.00 and Trotwood paying \$107,999.00; and

WHEREAS, Clayton will be responsible for payment of the engineering costs of the Westbrook Road RFS2 Project which total engineering costs are estimated to be \$32,896.00.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City of Clayton, Ohio, and the City of Trotwood, Ohio agree as follows:

1. Clayton agrees to be the lead agency for the Westbrook Road RFS2 Project and agrees to initially pay all costs reasonably associated with the repaving work performed on Westbrook Road during 2025.
2. Trotwood consents to the performance of work by Clayton's Repaving Contractor on

that portion of Westbrook Road that lies within the municipal boundaries of Trotwood between Salem Avenue and Cheri Lynne Drive.

3. Upon completion of the repaving work and after receipt and payment by Clayton of the costs associated therewith, Clayton will invoice Trotwood for 50% of the costs and Trotwood agrees to pay said amount to Clayton within thirty (30) days thereafter.
4. The parties agree if the total costs of the repaving are greater or less than the above repayment obligation, the costs will be appropriately adjusted to reflect the revised amount. Any increase in cost of more than 10% must be approved by Trotwood prior to payment by Clayton.
5. No interest shall be due on the unpaid amount, provided such payment is made when due. Any unpaid amounts which are past due shall accrue interest at the rate of 5% per annum.
6. Clayton's City Manager, at her option may, but is not required to, extend the repayment schedule at Trotwood's request and for valid financial reasons.
7. Clayton will pay the engineering costs associated with the Westbrook Road RFS2 Project.
8. All matters related to the implementation of this Agreement and the discharge of duties and responsibilities of each of the parties hereunto pursuant to its terms and conditions shall be effected and completed in full compliance with any and all applicable laws and regulations, State, Federal and local, including, but not limited to, prevailing wage standards.
9. This Agreement and the terms and conditions set forth herein, without reference to any material, document, or information outside the boundary of the same, shall constitute the full and complete agreement in these regards by and among the parties hereto, and shall create by and among the same only the relationship, obligations, and commitments expressly set forth herein and imposed hereby.
10. Each party agrees that it shall be liable for its actions or failure to act, but only as permitted under Chapter 2744 of the Ohio Revised Code, as the same relates to work agreed to perform hereunder regardless of the territorial jurisdiction in which such work is to be performed.
11. This Agreement may be amended, but only by written document signed by all parties hereto.
12. Both Trotwood and Clayton agree this Agreement contains the entire understanding and agreement of the parties, supersedes any previous understanding and/or agreement, and may not be modified except in writing by the mutual agreement of parties stated in Resolutions mutually adopted by each.

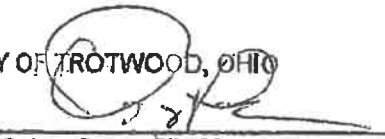
IN WITNESS WHEREOF, the parties have hereunto set their hands on this 7<sup>th</sup> day of May, 2020.

CITY OF CLAYTON, OHIO

BY:   
Amanda Zimmerlin, City Manager

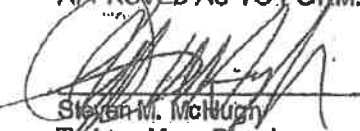
Approved Via Resolution No. R-05-20-24  
adopted on May 7, 2020.

CITY OF TROTWOOD, OHIO

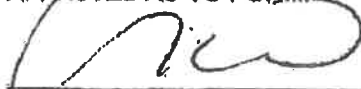
BY:   
Quincy Pope, City Manager

Approved Via Resolution No. R 20-47  
adopted on June 7, 2020

APPROVED AS TO FORM:

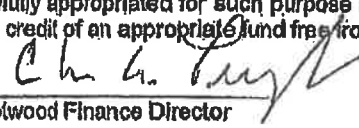
  
Steven M. McHugh  
Trotwood Law Director

APPROVED AS TO FORM:

  
Martina M. Dillon  
Clayton Law Director

**CERTIFICATION OF FUND AVAILABILITY- TROTWOOD**

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 6705.41

  
Trotwood Finance Director

**CERTIFICATION OF FUND AVAILABILITY- CLAYTON**

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41

  
\_\_\_\_\_  
Clayton Finance Director

# **CITY OF CLAYTON, OHIO**

## **RESOLUTION NO. R - 05 - 20 - 24**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CITY OF TROTWOOD TO SHARE COSTS FOR RESURFACING OF WESTBROOK ROAD FROM SALEM AVENUE TO CHERI LYNNE DRIVE AND AT A TOTAL RESURFACING COST TO THE CITY OF CLAYTON NOT TO EXCEED \$107,999.00 PLUS COST OF PROJECT ENGINEERING TO BE PAID BY THE CITY OF CLAYTON IN AN AMOUNT NOT TO EXCEED \$32,896.00**

**WHEREAS**, the Cities of Clayton and Trotwood share jurisdiction over Westbrook Road which comprises a municipal boundary between the two cities; and

**WHEREAS**, the Cities of Clayton and Trotwood applied for and were awarded a Surface Transportation Program (STP) grant from the MVRPC for the mill and fill paving of Westbrook Road from Salem Avenue to Cheri Lynne Drive; and

**WHEREAS**, the STP grant awarded constitutes 63% (\$367,781.00) of the estimated total project cost of \$583,779.00 and Clayton and Trotwood will be responsible for sharing equally the remaining 37% cost (\$215,998.00), which is \$107,999.00 to be paid by Clayton and \$107,999.00 to be paid by Trotwood; and

**WHEREAS**, in addition to payment of the aforementioned \$107,999.00 for resurfacing costs, Clayton will also pay for the engineering of the project in an amount not to exceed \$32,896.00; and

**WHEREAS**, the Cities of Clayton and Trotwood desire to enter into a Cooperative Agreement to provide for said resurfacing work on Westbrook Road from Salem Avenue to Cheri Lynne Drive and to confirm the Cities will split the costs of the Westbrook Road Resurfacing Project on a 50/50 basis with Clayton additionally paying the costs of engineering for said Project.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to execute a Cooperative Agreement in substantially similar form as appended hereto as *Exhibit A* with the City of Trotwood for the Westbrook Road Repaving Project in order to accomplish the resurfacing of a mutually agreed to portion of Westbrook Road from Salem Avenue to Cheri Lynne Drive with Clayton paying \$107,999.00 of the cost of resurfacing and Trotwood paying \$107,999.00 of the cost of resurfacing and the remaining cost to be paid via the STP grant referenced herein and awarded by MVRPC.

2. That, in addition to paying \$107,999.00 of the resurfacing costs, Clayton will also pay the engineering costs for the Project in an amount not to exceed \$32,896.00.

3. It is hereby determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

3. That this Resolution shall be in full force and effect at the earliest date allowed by law.

ADOPTED BY COUNCIL ON MAY 7, 2020.

**AUTHENTICATION:**

  
Mayor (Presiding Officer of Council)

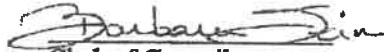
  
Clerk of Council

**APPROVED AS TO FORM:**

  
Law Director

**CERTIFICATE**

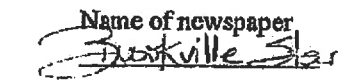
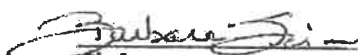
The undersigned Clerk hereby certifies that the foregoing is a true copy of R-05-20-24, duly adopted by the Council of the City of Clayton, Ohio on May 7, 2020, and that said enactment remains in full force and effect as of the date of this certification.

  
Clerk of Council  
City of Clayton, Ohio

Dated: May 7, 2020

**CERTIFICATION OF PUBLICATION**

This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper	Date of publication
 Dayton Star	<u>May 13, 2020</u>
 Clerk	





## City of Trotwood

3035 Olive Road  
Trotwood, Ohio 45426  
937.637.7771  
www.trotwood.org

### Agenda Submission

File Number: R20-47

Agenda Date: 6/1/2020

Version: 1

Status: Agenda Ready

In Control: City Council

File Type: Resolution

Agenda Number: A.

**TITLE:**

A RESOLUTION BY THE TROTWOOD CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE CITY OF CLAYTON TO SHARE IN THE COSTS OF THE RESURFACING OF WESTBROOK ROAD FROM SALEM AVENUE TO CHERI LYNNE DRIVE WITH THE TOTAL RESURFACING COST TO THE CITY OF TROTWOOD NOT TO EXCEED \$107,999.00.

**PURPOSE:** Authorization for City Manager to execute Cooperative Surface Transportation Program Grant Agreement with MVRPC.

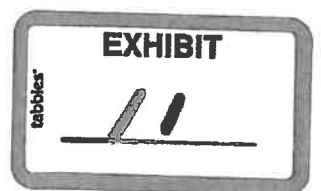
**DEPARTMENT:** City Manager and Public Works Department

**CONTACT INFORMATION:** Stephanie Kellum and Johnny McCluskey

**INFORMATION:** Joint project with the City of Clayton for the resurfacing of Westbrook Road from Salem Avenue to Cheri Lynne Drive.

**FISCAL & STAFF IMPACT:** Total project cost is \$583,779, of which MVRPC has awarded \$367,781 in STP funds. The City of Clayton will pay engineering/design costs. And the City of Trotwood will contribute and estimated \$107,999.

**RECOMMENDATION:** To move forward with this joint project.



# OHIO DEPARTMENT OF TRANSPORTATION

## MVRPC New Project Application Review

### S15-14 CITIES OF CLAYTON AND TROTWOOD- WESTBROOK ROAD RESURFACING

Project Description Mill and resurfacing. (LP1)

Funding  
Source

STP

Project Estimate **\$479,632**

Requested  
Year

FY2017

#### SUBJECT MATTER COMMENTS

##### Environmental

Provided no new right-of-way, no issues other than schedule is too aggressive.

Provided no new ROW, estimate less than 3 months for environmental. C1 or C2 Level.

[Note – Moss Creek Golf Course is privately held and not Section 4(f).]

##### Right of Way

— No issues.

##### Design / Estimating / Schedule

###### Estimating

- Missing quantity for full depth repairs
- Do not account for MOT or mobilization in estimate. Could be upwards of an additional \$30,000
- Estimate is very limited, with this being the case they should include a design risk of at least 10%.

###### Design

- Based on Google street view upgrade curb ramps at Westbrook Meadows / E. Westbrook.

COST OF 3  
MILES OF  
PAVING WB  
2017  
FROM UNION  
ROAD TO DIAMOND  
MILL.

#### NOTES/ACTIONS

Likely candidate although the estimate may be low by LPA.





City of Trotwood, Ohio  
3035 Olive Road, Trotwood, Ohio 45426-2600

Department of Planning & Development  
Phone: (937) 854-7227 Fax: (937) 854-0574

## VARIANCE APPLICATION

Date: July 2, 2020 FEE: \$200

VARIANCE PROPERTY Address: 6464 Westbrook Rd City CLAYTON State OH Zip 45315

APPLICANT: Name: Joseph & Pamela Heintz Phone#: 937-344-9957

Address: 5260 Cakes Rd City CLAYTON State OH Zip 45315

PROPERTY OWNER: Name: Frontier Communications Phone#: \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

ZONING DISTRICT: \_\_\_\_\_

PRESENT USE: Abandoned after Tornado

DESCRIPTION (LOCATION) OF PROPERTY IN VARIANCE REQUEST (Complete as Applicable):

Address: 6464 Westbrook Rd., CLAYTON, OH 45315

Subdivision Name: \_\_\_\_\_ Lot # \_\_\_\_\_

Book \_\_\_\_\_ Page \_\_\_\_\_ Parcel Number (s) \_\_\_\_\_

Statement identifying and describing Conditional Use requested:

In addition, copies of the site plan drawn to scale must accompany this application showing dimensions and shape of the lot, size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question. Number of copies will be indicated by the Zoning Administrator.

Applicant's Status: Owner ☐ Agent\* ☐

\*if Agent, submit Agent Form signed by Property Owner(s) agreeing to application.

Contact Person: Pamela S. Heintz Phone#: 937-344-9957

I certify that all information and attachments to this application are true and correct to the best of my knowledge.

Applicant's Signature Pamela S. Heintz

Case #: \_\_\_\_\_

Application is \_\_\_\_\_ approved \_\_\_\_\_ not approved. \_\_\_\_\_ / \_\_\_\_\_  
Planning & Zoning Administrator Date

### Justification For Variance

The property at 6464 Westbrook Road in Clayton, OH is a distressed commercial property that sustained damage in last May's tornado outbreak. This property currently is a non-conforming commercial property. The surrounding properties are zoned residential. The building had been used as a maintenance facility for Frontier Communications. It had an 8,000 square foot building that sustained substantial damage and a fenced lot that is slightly less than 5 acres, mostly paved and graveled. The current owner is presently removing the damaged building and cleaning up the yard. The paved and graveled yard will make an ideal drop lot for semi-trailers of local truckers needing a safe and secure place to park.

We would like to convert the property's large lot into a high security drop lot for semi-trailer parking and a safe and secure place for local trucking owner-operators and company drivers to park their rigs during their time at home. After cleanup and fence repair the lot will fit at least 50 semi-trailers. There will be a monthly access fee with assigned parking places. Trotwood residents will be given priority for spaces and will receive a discount on the monthly fee. Drivers will be assigned their own security pass code for the gate. There will be multiple security cameras with on and off site monitoring. Lighting for the parking lot will be primarily on motion sensors to reduce light pollution for adjoining properties.





# TROTWOOD

1916 T 500

Dear Resident,

The Trotwood Board of Zoning Appeals will be hearing a substitution of a nonconforming use (formerly a Frontier Communication office and maintenance) to another nonconforming use (semi-truck and trailer parking) at 6464 Westbrook Rd, Parcel ID #H33 00619 002, in R-PUD, at its regular meeting on Thursday, July 30, 2020, 5:30 pm in the Trotwood Community and Cultural Center. The applicant/owners are Joseph and Pamela Heintz.

This letter is being sent to you for your comment concerning this request since you are a property owner within 300 feet of this property. Please provide your comment in the area below and return it to the Trotwood Planning and Development Department to be forwarded to the Trotwood Planning Commission for their consideration by July 24, 2020.

COMMENTS:

PLEASE SEE ATTACHED

Thank you for your comments. Any questions, please contact the City of Trotwood Planning and Development, at 937-854-7216 for more details about the request.



The Westbrook Meadows subdivision, comprised of 82 homes in the development situated within 300 feet directly to the north of 6464 Westbrook Road Parcel ID#H33 00619 002, is **NOT** in favor of the nonconforming use of semi truck and trailer parking proposed for this property.

- This area is characterized as single family residential; many other locations in Trotwood would better support this type of development without negative impact to existing residential properties.
- Increased crime rates are a serious concern as trailer contents are targets for theft.
- This location is not in close proximity to a highway and the proposal states that space can be rented on a monthly basis for truck storage when the driver is home or in the area. This could result in drop off and pick up at all hours of the day.
- What is the traffic pattern for the semi-trucks? Can Westbrook Road support semi-trucks? The damage to the roadway would be costly to the city, leaving us wondering what is the benefit as little if any income tax would be generated?
- Will the semi parking be limited to the existing asphalt or will the owner be allowed to expand into the greenspace?
- Is there a landscaping plan? Will trees be required along Westbrook Road as a buffer?
- Ms. Heintz, the applicant, met and spoke with neighbors owning property adjacent to the parcel, misrepresenting her intentions for use of the space as PERSONAL parking and storage. The plan she submitted to the City of Trotwood clearly indicates COMMERCIAL use.

It is clear to see that the increased traffic of semi trucks and trailers not only destroys the roadways in our community, but also introduces noise around the clock, especially as stopping trucks employ jake brakes. In addition, increased crime rates are of serious concern as trailer contents are targets for theft. In considering these circumstances, it is obvious that this type of business is better suited in a nonresidential area.

Respectfully Submitted,

The Board of Directors of Westbrook Meadows Homeowners Association



# STAFF REPORT

July 20, 2020

**TO:** Steven Johnson, Chair and  
Members of the Trotwood Board of Zoning Appeals

**FROM:** Jung-Han Chen  
Planning and Development Director

**SUBJECT:** BZA Case #20-07: Substitution of a nonconforming use (telephone maintenance building, warehouse) to a proposed new nonconforming use (semi-truck and trailer parking) at 6464 Westbrook Rd, Parcel ID # H33 00619 0002, in a R-PUD district, Joseph and Pamela Heintz, applicant

---

## *Substitution of a nonconforming use*

---

**APPLICANT/ OWNER:** Joseph and Pamela Heintz

**PROPERTY LOCATION:** 6464 Westbrook Rd, Parcel ID # H33 00619 0002

**LAND USE REQUEST:**

The applicants request to substitute of nonconforming from the former telephone company office and warehouse to a semi-truck and trailer parking, per Trotwood Zoning Code 1131.02(h) which it states that “ No nonconforming use shall be changed to another nonconforming use without the written authorization of the Board of Zoning Appeals, except that where a substitution is proposed, no structural alterations or improvements shall be permitted to be made.”

**SITE DESCRIPTION:**

This site is located between Union Road and Moss Creek Blvd., on the southern side of Westbrook Rd. It is near the intersection of Meadowsweet Dr. and Westbrook Rd. The site is directly across from the County water tower.

**CURRENT ZONING:** R-PUD (Residential PUD) District

**CURRENT LAND USE:** Vacant site.

**SURROUNDING ZONING:** North -City of Englewood,  
South -R-PUD (Residential PUD) District  
West -R-PUD (Residential PUD) District  
East - R-PUD (Residential PUD) District

**SURROUNDING LAND USES:** North - Residential dwellings  
South - Moss Creek Golf course (unused)  
West - Moss Creek Golf course (unused)  
East - Moss Creek Golf course (unused)

## **APPLICABLE SECTIONS OF THE ZONING CODE:**

CHAPTER 1131  
Nonconforming use  
Appendix B, Schedule of  
Permitted uses and

### **DISCUSSION:**

The site is formerly known as Frontier Communication Office and warehouse site that was built in 1973, based on Montgomery County Auditor's website. There were several buildings on-site, including an office/warehouse building and utility sheds. These buildings were located far away from the roadway. Furthermore, the site is mainly consists of three areas: grass area, asphalt, and gravel. The asphalt area was used mainly for office employee parking, maintenance van parking. The gravel area was used for outdoor storage of poles, cable and various items. It would also appear that the area behind the office/warehouse building was fenced off from the public. In 2019 tornado caused significant damage to the buildings and the owner, subsequently, demolished these buildings. As of this report is being prepared, the buildings have been demolished with certain anchors left on the slab.

It would appear that the site has not been fully utilized for some time prior to 2019, and the owner, Frontier Communication, has been trying to dispose the site for at least a year or two, prior to the tornado caused significant damages to the buildings.

The intent of the nonconforming chapter is to encourage nonconforming use to become a conforming use in the long run eventually. Given this was considered as a nonconforming use, being a telephone company maintenance site when first constructed, then an internet connection provider, any subsequent use need to conform to the underlying zoning requirements, R-PUD. However, Trotwood Zoning Code does provide some latitude to allow substitution of nonconforming use, subject to the Board of Zoning Appeals' authorization. Section 1131.02(h) No nonconforming use shall be changed to another nonconforming use without the written authorization of the Board of Zoning Appeals, except that where a substitution is proposed, no structural alterations or improvements shall be permitted to be made.

The Applicants indicate in their narrative their plan to use the vacant site, particularly the asphalt and gravel areas for semi-truck and trailer parking. They estimate that there could be at least 50 semi-trailers parked on site. They plan to install a security fence, at the similar location where the old fence used to be, across the entire width of the lot and around the back half of the property. There will be a security gate for secured access for the users. There will be security cameras and lighting, on motion sensors, for security purposes as well.

Given that there is very limited guidance from the Trotwood Zoning Code as to how to assist the Board in review this type of request, except that no structural alteration or improvements, staff will outline some general questions for the Board to consider this review. The questions are as follows:

1. Has the existing nonconforming use been discontinued for more than 12 (twelve months)?
2. Will the new nonconforming use be more suitable for the site? Is the new nonconforming use less obtrusive to the neighborhood?
3. Will the new nonconforming use be more intense than the existing (former) nonconforming use, in terms of land use, lot coverage, traffic?
4. Will there be additional demands for public services, utility or roadway?

5. Will the new nonconforming use more conforming to the underlying zoning?
6. What has been the development pattern in this area?

Public notices of such request sent to adjoining property owners within 300 feet of the subject property, and a returned comment was attached with this report.

**STAFF RECOMMENDATION:**

Staff has conflicting thoughts on this proposal. On one end, it is encouraging to see local residents are investing in this property. On the other end, the concerns of semi traversing on a two-lane residential street and the expansive parking on a predominately rural area.

**BOARD ALTERNATIVES:**

The Board's alternatives under **BZA Case #20-07:**

1. Move to make the specified findings under Chapter 1131, and **APPROVE** the substitution of nonconforming to a semi-truck and trailer parking lot at 6464 Westbrook Road, parcel ID# H33 00619 0002
2. Move to **DENY** the substitution of a nonconforming use to a semi-truck and trailer parking at this location.
- 3.

Attachments: Applicable Sections of the Zoning Code  
Location Map  
Site Plan  
Aerial Photos















## Quote For Construction Services



### John R. Jurgensen Company

1780 Enon road

Springfield OH 45502

phone: 937-882-6233

fax: 937-882-6957

email: Pete.Flora@jrjnet.com

Quote To: Clayton  
Attention: Randy  
Fax Number:  
Revision Date: REV 1

Job Name: patchwork  
Location: various  
Date of Bid: 2/19/2020  
Jurgensen Contact:

Pricing Valid For 30 Calendar Days

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	FULL DEPTH REPAIRS 4' WIDE AND 4" DEEP	21,920.00	SF	3.72	81,542.40
20	FULL DEPTH REPAIR ON KIMMEL (1400'X22') 2" DEEP	30,800.00	SF	1.45	44,660.00
GRAND TOTAL					\$126,202.40

#### NOTES:

1. One mob for patching included.
2. One mob for Kimmel. I assumed Kimmel to 1400 linear feet by 22' wide. Let me know if you want something to differnt.
3. Our Bid Proposal is conditioned upon mutually agreed to terms and conditions within the Contract Agreement between parties.
4. John R. Jurgensen Company shall not be held to requirements of any type document not furnished prior to bid submittal.

- COST OF EDGE LINE REPAIR
- \$15.00 EACH LINEAR FOOT.
- THE ABOVE PRICE IS FOR 5480 FEET.
- EDGE LINE DAMAGE IS CAUSED BY LARGE TRUCKS ON NARROW ROADS.