

	Yes	No
Emergency		
First Reading	4	0
Second Reading	5	0
Third Reading	5	0

Effective: December 19, 2017

RESOLUTION 2017-23

A RESOLUTION ACCEPTING THE PETITION OF 435 EAST LINFOOT FOR SPECIAL ASSESSMENTS FOR VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS IN ACCORDANCE WITH CHAPTERS 1710 AND 727 OF THE OHIO REVISED CODE; DECLARING THE NECESSITY OF PROCEEDING WITH THE SPECIAL ENERGY IMPROVEMENT PROJECTS AND APPROVING THE PLANS AND SPECIFICATIONS THEREFOR; AND STATING THE METHOD OF MAKING THE SPECIAL ASSESSMENTS AGAINST THE BENEFITTED PROPERTIES AND THE AMOUNT OF SUCH SPECIAL ASSESSMENTS

WHEREAS, the City of Wauseon created an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Wauseon Ohio Advanced Energy Improvement Corporation (“Corporation”), to govern the District. Property owners within the District are permitted to make certain “energy efficiency improvements” to their properties, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments; and

Whereas, the City of Toledo and the Toledo-Lucas County Port Authority (“Port Authority”) have partnered to create an Energy Special Improvement District under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District (“NWOAIED”), to govern the District. The Northwest Ohio Advanced Energy Improvement District and Port Authority have provided technical and financial assistance to the District for this project; and

WHEREAS, Marshall Fitness 24/7, LLC (the “Petitioner”) is the owner of 100% of the property described on Exhibit A attached hereto (the “Property”). The Petitioner has executed an Energy Project Agreement (the “Agreement”) with the Northwest Ohio Advanced Energy Improvement District. A copy of the Energy Project Agreement is attached to the Petition as Exhibit C.; and

WHEREAS, pursuant to the Agreement, and upon Application to the Wauseon Ohio Advanced Energy Improvement Corporation for membership and financing of special energy improvement projects to the Property; the Port Authority, Corporation, and Marshall Fitness 24/7, LLC, have caused an energy audit to the property to be completed; and

WHEREAS, the energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which Marshall Fitness 24/7, LLC has determined to proceed with implementation, and to pay by way of special assessments; and

WHEREAS, Marshall Fitness 24/7, LLC has submitted to this Council a petition (“Petition”) seeking (i) the addition certain of its property to the District and (ii) approval of an amendment to the District’s comprehensive plan for special energy improvement projects to include the 435 East Linfoot Energy Improvement Project (the “Project” or the “435 East Linfoot Energy Improvement Project”) and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the Property of Marshall Fitness 24/7, LLC specially benefited thereby; and

WHEREAS, a complete list and description of the 435 East Linfoot Energy Improvement Project is on file with the Clerk of Wauseon City Council and is attached as Exhibit B to this Resolution. Exhibit B provides the following information for the 435 East Linfoot Energy Improvement Project:

1. Identification of the parcels numbers and name of the property/building to be improved;
2. A description of the nature of the special energy improvement projects for the particular parcel;
3. The estimated amount of the special assessment to be levied against the parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law); and

WHEREAS, the total dollar cost of the 435 East Linfoot Energy Improvement Project, capitalized interest on the Port Authority’s revenue bonds, reserve fund for the Port Authority’s bonds, the cost of issuance of the Port Authority’s revenue bonds, or the associated costs of issuance of the Northwest Ohio Advanced Energy Improvement District’s revolving loan fund (collectively, the “Project”), is estimated to be Fifty Nine Thousand Eight Hundred Seventy Three dollars and Forty Seven cents (\$59,873.47). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority’s revenue bonds and the scheduled amounts payable as the Port Authority administrative fee, the Port authority program administration fee, the trustee fee and the Fulton County, Ohio special assessment collection fee due with respect to each semi-annual payment; and

WHEREAS, the Port Authority, NWOAIED, and the District will fund the cost of the Project through either the issuance of bonds or the revolving loan fund. Ultimately, the loan will be repaid over time from the amounts Marshall Fitness 24/7, LLC pays as special assessments. Marshall Fitness 24/7, LLC, in turn, is expected to be able to pay the special assessments from the energy savings estimated to be achieved as a result of the Project; and

WHEREAS, the annual special assessments for the Project are to be paid in semi-annual payments over nine (9) years. The plans and specifications for the 435 East Linfoot Energy Improvement Project are on file with the Clerk of Council. The Marshall Fitness 24/7, LLC petition also waives all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Wauseon City Charter and the Wauseon Municipal Code. Marshall Fitness 24/7, LLC consents to the immediate imposition of the special

assessments upon the Property specially benefited by the Project; and

WHEREAS, this special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited properties. This resolution accepts and approves the petition from Marshall Fitness 24/7, LLC , to begin that special assessment process, and is accompanied by an ordinance to proceed with Marshall Fitness 24/7, LLC. When the 435 East Linfoot Energy Improvement Project is complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited Property will be presented to the Council;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Wauseon, Fulton County, Ohio, as follows:

Section 1.

That this Council accepts and approves the Petition of Marshall Fitness 24/7, LLC for the 435 East Linfoot Energy Improvement Project described herein and in Exhibit B to this Resolution, which is on file with the Clerk of Council. All of the findings and determinations contained in the preceding Summary and Background section are incorporated herein and adopted as substantive findings and determinations of this Council.

Section 2.

That this Council (i) accepts and confirms the inclusion of the Property listed in Exhibit A in the District, which, pursuant to Chapter 1710 of the Ohio Revised Code, is governed by the Corporation, and (ii) declares the necessity of the acquisition, installation and construction of the 435 East Linfoot Energy Improvement Project, which shall be constructed on the Property of Marshall Fitness 24/7, LLC identified in Exhibit A.

Section 3.

That this Council hereby confirms its approval of the plan for the District, including (and as supplemented and amended by and to include) the plans for the 435 East Linfoot Energy Improvement Project, and the Corporation is authorized and directed to cause the 435 East Linfoot Energy Improvement Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plan for the District, including (and as supplemented and amended by and to include) the plans for the 435 East Linfoot Energy Improvement Project.

Section 4.

That the plans, specifications, estimates of costs, and profiles of the proposed 435 East Linfoot Energy Improvement Project identified in Exhibit B on file with the Clerk of Council and open to inspection are hereby approved, and the 435 East Linfoot Energy Improvement Project shall be acquired, installed and constructed in accordance with those plans and specifications.

Section 5.

That this Council hereby finds and determines that (i) the 435 East Linfoot Energy Improvement Project is conducive to the public health, convenience and welfare of the City and its inhabitants and (ii) the Property of Marshall Fitness 24/7, LLC, identified in Exhibit A is specially benefited by the Project.

Section 6.

This Council hereby accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Wauseon City Charter and the Wauseon Municipal Code, and consents to the immediate imposition of the special assessments upon the Property as identified in Exhibit A. This waiver encompasses but is not limited to waivers of the following rights under the Revised Sections referred to below:

- The right to notice of the adoption of the Resolution of Necessity under Sections 727.13 and 727.14;
- The right to limit the amount of the special assessment under Sections 727.03 and 727.06;
- The right to file an objection to the special assessment under Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Sections 727.16 and 727.17;
- The right to file any claim for damages under Sections 727.18 through 727.22 and Section 727.43;
- The right to notice that bids or quotations for 435 East Linfoot Energy Improvement Project may exceed estimates by 15%;
- The right to seek a deferral of payments of special assessments under Section 727.251; and
- The right to notice of the passage of the assessing ordinance under Section 727.26.
- Any and all procedural defects, errors or omissions in the special assessment process.

Section 7.

That the total cost of the 435 East Linfoot Energy Improvement Project shall be assessed against the Property of Marshall Fitness 24/7, LLC identified in Exhibit A in proportion to the benefits resulting from the 435 East Linfoot Energy Improvement Project.

Section 8.

That the total cost of the 435 East Linfoot Energy Improvement Project shall include any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs, the amount of any damages resulting from the Project and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing and otherwise acquiring any real estate or interests therein, expenses of legal services, costs of labor and material, trustee fees and other financing costs incurred in connection with the issuance, sale and servicing of securities issued by the Port Authority to provide a loan to the Corporation to pay costs of the Project in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities issued by the Port Authority, the administrative fee, together with all other necessary expenditures.

Section 9.

That the estimated assessments heretofore prepared and now on file with the Clerk of Council and amounting in the aggregate to \$54,001.28 be and are hereby adopted. The special assessments to be levied shall be paid according to the following schedule: in nine (9) annual (eighteen [18] semi-annual) installments, with interest thereon at the same rate or rates as shall be borne by the securities to be issued by the Port Authority and loaned to the Corporation for the 435 East Linfoot Energy Improvement Project in anticipation of its receipt of the special assessments. Each semi-annual payment represents the payment of a portion of the principal of and interest on the Northwest Ohio Advanced Energy Improvement District's Revolving Loan Fund and the administrative fee, and the Fulton County, Ohio special assessment collection fee due with respect to each semi-annual payment.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Situated in the City of Wauseon, County of Fulton and State of Ohio:

Known as being in the Southeast 1/4 of Section 14, Town 7 North, Range 6 East, more particularly described as follows:

Beginning at a point on the South line of said Southeast 1/4, which is 440 feet North 89 degrees 16 minutes West of the Southeast corner of said Southeast 1/4;

Thence North 89 degrees 16 minutes West along the South line of said Southeast 1/4, a distance of 100 feet;

Thence North 1 degree 54 minutes East, a distance of 190 feet;

Thence South 89 degrees 16 minutes East, a distance of 100 feet;

Thence South 1 degree 54 minutes West, a distance of 190 feet to the point of beginning; containing 0.436 acre, more or less.

Parcel No. 06-015560-00.000

Property Address: 435 East Linfoot Street, Wauseon Ohio 43567

EXHIBIT B

Project Plan for 435 East Linfoot

The real property owned by Marshall Fitness 24/7, LLC at 435 East Linfoot Street, Wauseon Ohio 43567, the legal description of the property is set forth on the attached Exhibit A, will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. LED Lighting Upgrades
2. HVAC Replacement

Total project cost: \$38,700.00

Total cost including financing and other charges: \$44,649.55

Total loan payments to be collected: \$5,872.19

Total assessment payments to be collected: \$54,001.28

Estimated Annual assessment payment: \$6,000.14

Estimated semi-annual special assessments for 9 years*: *varies – see table below*

Number of semi-annual installments: 18

First annual assessment due: January 31, 2019

**Note: Fulton County will add 1% processing charge to the annual assessment amount.*

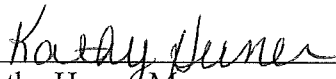
Year Payments Are Due	Loan Payment	Total Annual Assessment Parcel 06-015560-00.000	1st Half (Due 1/31)	2nd Half (Due 7/31)
2018	\$5,872.19			
<i>*Payments due in 2017/2018 will be made directly to NWOAIED</i>				
2019		\$6,000.14	\$3,000.07	\$3,000.07
2020		\$6,000.14	\$3,000.07	\$3,000.07
2021		\$6,000.14	\$3,000.07	\$3,000.07
2022		\$6,000.14	\$3,000.07	\$3,000.07
2023		\$6,000.14	\$3,000.07	\$3,000.07
2024		\$6,000.14	\$3,000.07	\$3,000.07
2025		\$6,000.14	\$3,000.07	\$3,000.07
2026		\$6,000.14	\$3,000.07	\$3,000.07
2027		\$6,000.16	\$3,000.08	\$3,000.08
Total Loan & Assessment		\$59,873.45		

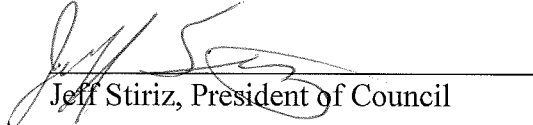
Section 10.

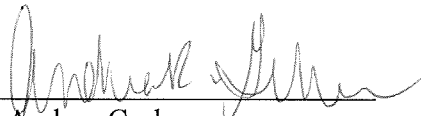
That the City does not intend to issue its own securities in anticipation of the levy or collection of the special assessments for the 435 East Linfoot Energy Improvement Project, which instead shall be paid for initially from proceeds of the securities issued by the Port Authority for that purpose, and repaid through the special assessment process described herein.

Section 11. That this Council finds and determines that all formal actions of this Council and any of its Committees concerning and relating to the adoption of this Resolution were taken, and all deliberations of this Council or any of its Committees that resulted in such formal actions were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Revised Code.

Passed: November 20, 2017


Kathy Huner, Mayor

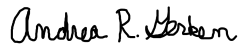

Jeff Stiriz, President of Council

Attest: 
Andrea Gerken
Clerk of Council

Approved as to Form:


Thomas A. McWatters III
City Law Director

I, Andrea R. Gerken, Clerk of Council for the City of Wauseon do hereby certify that this is a true and accurate copy of Resolution 2017-23 passed November 20, 2017.


Andrea R. Gerken, Clerk of Council