

## RECORD OF ORDINANCES

BARRETT BROTHERS - DAYTON, OHIO

Form 6220S

Ordinance No. 2018-25

Passed \_\_\_\_\_, \_\_\_\_\_

ORDINANCE ACCEPTING THE ANNEXATION OF CERTAIN  
TERRITORY LOCATED NORTH OF THE CITY OF MARION  
CONTAINING 224.257 ACRES AND DECLARING AN EMERGENCY

WHEREAS, a petition for annexation of certain territory in Grand Prairie Township was duly filed by Brian P. Barger, Attorney and Agent ("Petitioner") for the property owner The National Lime & Stone Company ("National"), which owns one hundred percent of the territory proposed for annexation ("Property");

WHEREAS, the petition was duly filed with the Board of Marion County Commissioners ("Commissioners") on April 10, 2014;

WHEREAS, on April 28, 2014, the City of Marion ("City") pursuant to Ohio Revised Code Section 709.023(C) adopted Resolution No. 2014-12 whereby the City agreed to provide the Property with "fire protection, zoning, police protection, street maintenance, emergency services, engineering services, sewer, sanitation, and all other ordinary and necessary city services provided within the boundaries of the City of Marion";

WHEREAS, Resolution No. 2014-12 further provides, "that the territory to be annexed becomes subject to the zoning of the City of Marion, Ohio and that Marion City Zoning Code does permit the intended use. Specifically, the City of Marion shall zone the territory proposed to be annexed as I-3 Mineral Extraction for use as a limestone surface mine and associated processing activity under the City of Marion zoning code.";

WHEREAS, Resolution No. 2014-12 further provides, "that the City of Marion hereby consents to the proposed annexation filed by Brian P. Barger for the territory described above and further depicted in attached Exhibit A.";

WHEREAS, on May 1, 2014 the Board of Township Trustees of Grand Prairie Township met in special session and passed a resolution objecting to the proposed annexation;

WHEREAS, on May 12, 2014, the Commissioners conducted a special meeting to deliberate on the annexation petition;

WHEREAS, on May 15, 2014, the Commissioners unanimously passed Resolution #2014-0317 denying the proposed annexation on two grounds: (i) that Petitioner had failed to obtain the signature of Norfolk Southern Railway Company ("Norfolk") whose railroad tracks pass through the Property; and (ii) the Property did not have the statutory minimum contiguous border with the City;

WHEREAS, Petitioner sought a writ of mandamus from the Court of Appeals for the Third Appellate District to compel the Commissioners to approve the annexation petition;

WHEREAS, the Court of Appeals dismissed Petitioner's complaint for a writ of mandamus;

WHEREAS, the Supreme Court of Ohio reversed the judgment of the Court of Appeals finding that Norfolk's property interest in the Property was a railroad right-of-way held in fee and that Norfolk fell within the exception to the definition of "owner" set forth in R.C. 709.02(E);

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WHEREAS, the Supreme Court of Ohio found that Petitioner had satisfied each of the statutory conditions for annexation and that the Commissioners had no discretion to deny the annexation petition;

WHEREAS, the Supreme Court of Ohio further found that the City has identified and agreed to provide ordinary city services to the Property and agreed to zone the Property for mineral extraction, while also providing for a buffer zone between the mineral-extraction activity and adjacent township land that is zoned for residential use;

WHEREAS, the Supreme Court of Ohio issued a writ of mandamus compelling the Commissioners to approve the annexation petition;

WHEREAS, on December 14, 2017, the Commissioners unanimously passed Resolution #2017-0812 granting the petition for annexation of the Property to the City and instructed its Clerk to enter the action upon the journal and forward to the City a certified copy of the entire record of the annexation processing;

WHEREAS, on January 18, 2018, the Clerk of the Commissioners delivered a certified copy of the entire annexation record to the Clerk of Council of the City; and

WHEREAS, sixty days from the date of delivery of the entire annexation have now elapsed in accordance with Ohio Revised Code Section 709.04.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Marion, Marion County, Ohio:

Section 1. That the proposed annexation as applied for in the petition of Petitioner for National, which owns one hundred percent of the Property, as filed with the Commissioners on April 10, 2014 that prayed for annexation of the Property to the City and that was approved for annexation to the City by the Commissioners on December 14, 2017 be and is hereby accepted. The Property is legally described as follows:

Situated in the Township of Grand Prairie, County of Marion, State of Ohio, and being a part of the SE1/4 of Section 34 and part of the SW1/4 and SE1/4 of Section 35, T4S, R15E, a tract of land bounded and described as follows:

BEGINNING at an iron pin set marking the intersection of the west line of the SW1/4 of Section 35 and the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), described as lying, S00°53'03"W, a distance of 30.00 feet from a railroad spike found marking the northwest corner of said SW1/4;

thence along the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), S88°53'50"E, a distance of 695.09 feet to an iron pin set;

thence along the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), S84°19'06"E, a distance of 651.91 feet to an iron pin set;

thence along the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), S72°47'05"E, a distance of 156.04 feet to an iron pin set;

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thence along the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), S88°46'50"E, a distance of 130.23 feet to an iron pin set on the westerly limited access right-of-way line of U.S. Route No. 23;

thence along said westerly limited access right-of-way line and in a southeasterly direction on a curve segment to the left having a radius of 5854.58 feet, a central angle of 00°35'39" and a length of curve of 60.71 feet, the chord of said curve segment bearing S29°47'01"E, a distance of 60.71 feet to an iron pin found;

thence continuing along said westerly limited access right-of-way line, S30°05'00"E, a distance of 506.91 feet to an iron pin found;

thence continuing along said westerly limited access right-of-way line, S26°48'45"E, a distance of 1073.38 feet to an iron pin set on the northwesterly right-of-way line of the Norfolk Southern Railroad;

thence, S49°08'06"E, a distance of 80.37 feet to an iron pin set on the southeasterly right-of-way of the Norfolk Southern Railroad;

thence continuing along said westerly limited access right-of-way line, S32°07'01"E, a distance of 986.14 feet to an iron pin set;

thence continuing along said westerly limited access right-of-way line, S29°05'40"E, a distance of 234.03 feet to an iron pin set on the south line of Section 35;

thence along the south line of Section 35, also being along a portion of the existing corporation of the City of Marion, N89°01'22"W, a distance of 3132.19 feet to the southeast corner of the SE1/4 of Section 34;

thence along the south line of said SE1/4, N89°18'03"W, a distance of 1765.45 feet to an iron pin set on the right of way of Township Road No. 66 (Kenton- Galion Road);

thence along an east right of way line of Township Road No. 66 (Kenton- Galion Road), N00°41'57"E, a distance of 30.00 feet to an iron pin set;

thence along the north right of way line of Township Road No. 66 (Kenton- Galion Road), N89°18'03"W, a distance of 336.41 feet to an iron pin set on the east line of a 0.229 acre tract of land as described in Deed Volume 409, Page 554 of the Marion County Deed Records;

thence along the east line of said 0.229 acre tract, N26°04'42"E, a distance of 66.80 feet to an iron pin set marking the northeast corner of said tract;

thence along the north line of said 0.229 acre tract, N89°18'03"W, a distance of 100.00 feet to an iron pin set on the east line of a 2.029 acre tract of land as described in OR 473, Page 926 of the Marion County Official Records;

thence along the east line of said 2.029 acre tract and along the east line of a 3.777 acre tract of land as described in OR 352, Page 633 of the Marion County Official Records and along the east line of Sonnanstine's 3<sup>rd</sup> Addition as platted in Plat Book 5, Page 15 of the Marion County Plat Records, N26°04'42"E, a distance of 1192.22 feet to an iron pin set;

thence along a south line of said Sonnanstine's 3<sup>rd</sup> Addition, S89°02'36"E, a distance of 306.86 feet to an iron pin found marking a southeast corner of said Addition;

thence along the east line of said Sonnanstine's 3<sup>rd</sup> Addition, along the east line of Sonnanstine's 1<sup>st</sup> Addition as platted in Plat Book 4, Page 120 of the Marion County Plat Records and along the east line of the Woodlawn Tracts as shown in Book 5, Page 177 of the County Engineers Survey Records, N26°21'31"E, a distance of 1607.35 feet to a an iron pin set on the southerly right of way line of County Road No. 195 (Linn-Hipsher Road);

thence along the southerly right of way line of County Road No. 195 (Linn-Hipsher Road), S89°20'05"E, a distance of 668.98 feet to the Point of 2010-5

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Beginning, containing 224.257 acres, more or less, of which 85.280 acres lie in the SE1/4 of Section 34, 134.764 acres lie in the SW1/4 of Section 35 and 4.213 acres lie in the SE1/4 of Section 35, subject however to all legal highways and prior easements of record.

NOTE: The bearings in this legal description are based upon an assumed meridian and are used only for the purpose of describing angular measurements.  
I.P. Set = 1" Rebar with Aluminum Cap Set

Section 2. That the Property shall be zoned I-3 Mineral Extraction for use as a limestone surface mine and associated processing activity under the City zoning code.

Section 3. That the City agrees to provide fire protection, zoning, police protection, street maintenance, emergency services, engineering services, sewer, sanitation, and all other ordinary and necessary municipal services provided within the boundaries of the City on the earliest date allowed by law.

Section 4. The Clerk of Council is hereby authorized and directed to make three copies of this ordinance containing the petition, the map or plat accompanying the petition, a transcript of the proceedings of the Commissioners, and resolutions and ordinances in relation to the annexation, with a certificate as to the correctness thereof. The Clerk of Council shall then forthwith deliver one copy to the County Auditor, one copy to the County Recorder and one copy of the Secretary of State and shall file notice of this annexation with the Board of Elections within thirty days after it becomes effective, and the Clerk shall do all other things required by law.

Section 5. That this ordinance is hereby declared to be an emergency measure necessary for the welfare of the City of Marion and the inhabitants thereof and for the further reason that it is necessary for the daily operation of the City; and for further reason that the Ohio Revised Code mandates that the City of Marion shall act within the allotted time limit; and as such shall take effect and be in force immediately upon its passage and approval by the Mayor, provided it receives the affirmative vote of three-fourths of all members elected to Council; otherwise, this ordinance shall become effective from and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK

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Ordinance No. 2018-27

Passed \_\_\_\_\_, \_\_\_\_\_

ORDINANCE MAKING AN ADDITIONAL APPROPRIATIONS TO THE SENIOR CENTER FROM THE SENIOR CENTER ASSOCIATION FUND AND THE SENIOR CENTER TRANSPORTATION FUND FOR THE YEAR ENDING DECEMBER 31, 2018.

Whereas, the Council has been advised there is an immediate need to appropriate monies from the Senior Center Association Fund to cover the cost of flushing the mains of the sprinkler system and repair of deficiencies found during inspection and the replacement of broken floor tile in craft area.

Whereas, the Council has been advised there is an immediate need to appropriate monies from the Senior Center Transportation Fund for GPS-enabled transmitting devices which will enable driver tracking and diagnostics for six vehicles in the transportation fleet.

BE IT ORDAINED by the Council of the City of Marion, Marion County, Ohio:

Section 1. That there be an appropriation made in the Senior Center Association Fund in the amount of \$15,000 and the Senior Center Transportation Fund in the amount of \$2,500 as follows

SENIOR CENTER ASSOCIATION FUND

Professional Services	201.2005.5403	\$15,000
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SENIOR CENTER TRANSPORTATION FUND

Professional Services	201.2000.5403	\$ 2,500
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Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

APPROVED:

\_\_\_\_\_  
Mayor Scott Schertzer

ATTEST:

\_\_\_\_\_  
Tarina Rose  
Clerk of Council

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Passed \_\_\_\_\_, \_\_\_\_\_

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Ordinance No. 2018-28

Passed \_\_\_\_\_, \_\_\_\_\_

ORDINANCE MAKING ADDITIONAL APPROPRIATIONS IN THE  
LAW ENFORCEMENT TRUST FUND FOR TRUST EXPENSES  
FOR THE YEAR ENDING DECEMBER 31, 2018.

Whereas, the police department is requesting money be  
appropriated in the Law Enforcement Trust Fund for trust expenses.

BE IT ORDAINED by the Council of the City of Marion, Marion  
County, Ohio:

Section 1. That there be additional appropriations as follows:

**Law Enforcement Trust Fund**

Law Enforcement Trust	246.703.5450	15,000
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Section 2. This ordinance shall take effect and be in force from  
and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

Approved:

\_\_\_\_\_  
Mayor Scott Schertzer

Attest;

\_\_\_\_\_  
Clerk of Council

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Ordinance No. 2018-29

Passed \_\_\_\_\_, \_\_\_\_\_

ORDINANCE MAKING ADDITIONAL APPROPRIATIONS IN THE  
LAW ENFORCEMENT TRUST FUND FOR TRUST EXPENSES  
FOR THE YEAR ENDING DECEMBER 31, 2018.

Whereas, the police department is requesting money be  
appropriated in the Law Enforcement Trust Fund for trust expenses.

BE IT ORDAINED by the Council of the City of Marion, Marion  
County, Ohio:

Section 1. That there be additional appropriations as follows:

**Law Enforcement Trust Fund**

MPACT Trust Expense	246.2066.5502	5,000
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Section 2. This ordinance shall take effect and be in force from  
and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

Approved:

\_\_\_\_\_  
Mayor Scott Schertzer

Attest;

\_\_\_\_\_  
Clerk of Council

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BARRETT BROTHERS - DAYTON, OHIO

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Passed \_\_\_\_\_, \_\_\_\_\_

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Ordinance No. 2018-30

Passed \_\_\_\_\_, \_\_\_\_\_

PID Number 105532  
MAR-4-13.00

ORDINANCE ENACTED BY THE CITY OF MARION, MARION COUNTY, OHIO, HEREINAFTER REFERRED TO AS THE LOCAL PUBLIC AGENCY (LPA), IN THE MATTER OF RESURFACING SR 4 WITHIN THE CITY OF MARION, IN THE VICINITY OF MARION WILLIAMSPORT RD, AS DESCRIBED BELOW AND DELCARING AN EMERGENCY

**SECTION I – Project Description**

WHEREAS, the STATE has identified the need for the described project:

Resurface SR4 within the City of Marion, in the vicinity of Marion-Williamsport Rd.

**NOW THEREFORE**, be it ordained by the City of Marion, Ohio.

**SECTION II - Consent Statement**

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

**SECTION III - Cooperation Statement**

The LPA shall cooperate with the Director of Transportation in the above described project as follows:

The City hereby agrees to cooperate with the Director of Transportation of the State of Ohio in the planning, design and construction of the identified highway improvement project and grants consent to the Ohio Department of Transportation for its development and construction of the project in accordance with plans, specifications and estimates as approved by the Director;

ODOT agrees to assume and bear the costs of preliminary engineering, right-of-way, and construction by administering Federal and State funds for this project.

The City agrees to assume and bear one hundred percent (100%) of the total cost of those features requested by the City which are not necessary for the improvement as determined by the State and Federal Highway Administration.

**SECTION IV - Utilities and Right-of-Way Statement**

The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. Right-of-way costs include eligible utility costs. ODOT agrees to be responsible for all utility accommodation, relocation and reimbursement and agrees that all such accommodations, relocations, and reimbursements shall comply

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with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

**SECTION V - Maintenance**

Upon completion of the project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the project in accordance with all applicable state and federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial resources, as necessary, for the maintenance of the project; (3) maintain the right-of-way, keeping it free of obstructions, and (4) hold said right-of-way inviolate for public highway purposes.

**SECTION VI - Authority to Sign**

The Mayor of said City is hereby empowered on behalf of the City of Marion to enter into contracts with the Director of Transportation necessary to complete the above described project.

**SECTION VII – Emergency**

This Ordinance is hereby declared to be an emergency measure to expedite the highway project(s) and to promote highway safety. Following appropriate legislative action, it shall take effect and bin force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

Approved:

\_\_\_\_\_  
Mayor Scott Schertzer

Attest;

\_\_\_\_\_  
Clerk of Council

## RECORD OF ORDINANCES

BARRETT BROTHERS - DAYTON, OHIO

Form 6220S

Ordinance No. 2018-31

Passed \_\_\_\_\_, \_\_\_\_\_

ORDINANCE AMENDING THE YARGER REPORT, AS AMENDED, TO PROVIDE FOR DUTIES OF THE CLERK OF COUNCIL PRO TEMPORE AND RE-ESTABLISHING THE POSITION AND DUTIES AND DECLARING AN EMERGENCY

WHEREAS, Council finds it necessary to re-state the duties of the Clerk Pro Tempore of Council given the recent changes implemented by the Council, and

WHEREAS, there is a need to clarify and enable the Clerk Pro Tempore to act, when necessary in the place of the elected Clerk of Council for the City of Marion, Ohio,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARION, COUNTY OF MARION, STATE OF OHIO:

Section 1. The Yarger Report shall be amended, if necessary, to provide for the following in order to enable the Clerk Pro Tempore to act in the event of an absence of the elected Clerk of Council. When the President of the Council finds the elected Clerk of Council is unavailable to perform the duties of the Clerk of Council for the City of Marion, Ohio said President shall, at his/her discretion, notify the elected Clerk Pro Tempore of the need and the Clerk Pro Tempore shall complete all those duties and activities the Clerk normally provides. In the event the President of Council is not within the City and is unavailable, the President Pro Tempore of Council shall be empowered to act in his absence as to notify the Clerk Pro Tempore of the need.

As a underlying basis, the Clerk Pro Tempore shall perform all those duties which are contained within the Adopted Clerk of Council Job Description. The Clerk Pro Tempore shall be compensated at the Pay Grade 20, Step A. (currently 16.79 per hour) Given the unique nature of the position of Clerk Pro Tempore and the expectation that the need of the Clerk Pro Tempore to act in place of the elected Clerk of Council the position shall remain at step A and shall not proceed to Step B or C.

The Position shall be as an as needed (determined by the Council President) and as an hourly employee. The position shall not accrue any benefits, nor shall the position be entitled to health / dental benefits.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare and safety of the City of Marion and the inhabitants thereof and for the further reason that time is of the essence in regard to enabling the Clerk Pro Tempore to act in the event there is a need and as such upon its passage and approval by the Mayor, provided it receives the affirmative vote of two-thirds of all members elected to Council; it shall become effective from and after the earliest period allowed by law.

\_\_\_\_\_  
Todd Schneider  
President of Council

Approved:

\_\_\_\_\_  
Mayor Scott Schertzer

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Passed \_\_\_\_\_, \_\_\_\_\_

Attest;

\_\_\_\_\_  
Clerk of Council