

RESOLUTION NO. 90-2018

**TITLE: 65 E. ROBINSON AVENUE & 75 E. ROBINSON AVENUE
PACE RESOLUTION OF NECESSITY**

A RESOLUTION APPROVING A PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS AND A PLAN FOR PUBLIC IMPROVEMENTS, APPROVING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF BARBERTON, OHIO IN COOPERATION WITH THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT, AND DECLARING AN EMERGENCY (65 E. ROBINSON AVE. AND 75 E. ROBINSON AVE.)

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts (“ESIDs”) upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and

WHEREAS, Polymer Developments, Ltd. (the “Owner”), as the owner of certain real property located within the City of Barberton, Ohio (the “City”), has identified certain real property located at 65 E. Robinson Avenue and 75 E. Robinson Avenue, Barberton, Ohio (the “Project Site”), as an appropriate property for special energy improvement projects pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Akron-Summit County Energy Special Improvement District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID and established pursuant to a resolution adopted by the City of Akron, Ohio (the “Creation Resolution”); and

WHEREAS, by the Creation Resolution and under Ohio Revised Code Section 1710.06, the District’s Akron Energy Special Improvement District Project Plan (as duly amended and supplemented from time to time, the “Plan”) was approved as a plan for public improvements and public services for the District; and

WHEREAS, as permitted under Ohio Revised Code Section 1710.02, the Plan allows for the addition of real property within any “participating political subdivision” of the District or within any municipal corporation or township which is adjacent to any participating political subdivision of the District to the territory of the District by the approval of the municipal corporation or township in which that real property is located; and

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, The Owner has determined to submit to the Council of the City (the “Council”) a Petition for Special Assessments for Special Energy Improvement Projects (the “Petition”), together with an Akron-Summit County Energy Special Improvement District Project Plan Supplement to Plan for 65 E. Robinson Avenue and 75 E. Robinson Avenue, Barberton, Ohio, Project (the “Supplemental Plan”), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Council; and

WHEREAS, the Petition and the Supplemental Plan request that the Project Site be added to the District and that the City levy special assessments on the Project Site to pay the costs of special energy improvement projects to be provided on the Project Site, all as described more particularly in the Petition and the Supplemental Plan (the “Project”); and

WHEREAS, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and

WHEREAS, this Council, as mandated by Ohio Revised Code Section 1710.02, must approve or disapprove the Petition within 60 days of the submission of the Petition; and

WHEREAS, this Council has determined to approve the Petition, together with the Supplemental Plan.

WHEREAS, The Petition, which is on file with the Council, has been signed by the Owner, as the owner of 100% of the Project Site, and proposes the necessity of acquiring, constructing, and improving the Project and financing the Project through the cooperation of the District; and

WHEREAS, In the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Project Site (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which shall not exceed \$4,639,432.00, including other related costs of financing the Project, which include, without limitation, the payment of principal of, and interest on, obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees, District administrative fees and expenses, and Summit County Fiscal Officer special assessment collection requirements and requests that the Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That this Council hereby approves the Petition and the Supplemental Plan now on file with the

SECTION 2. That each capitalized term used in this Resolution where the rules of grammar would otherwise not require and not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petition.

SECTION 3. That this Council declares necessary, and a vital and essential public purpose of the City, to improve the Project Site, which is located at 65 E. Robinson Avenue and 75 E. Robinson Avenue, within the City by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition, and providing for the payment of the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; 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 in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, District administrative fees and expenses, and Summit County Fiscal Officer special assessment requirements; together with all other necessary expenditures, all as more fully described in the Petition and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Director of Finance and open to the inspection of all persons interested.

SECTION 4. That this Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

SECTION 5. That the plans and specifications and total cost of the Project now on file in the office of the Director of Finance are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

SECTION 6. That this Council declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition. This Council determines and declares that the Project is conducive to the public peace, health, safety, and welfare of the City and the inhabitants of the City.

SECTION 7. That pursuant to, and subject to, the provisions of a valid Petition signed by the owners of 100% of the Project Site, the entire cost of the Project shall be paid by the Special Assessments levied against the Project Site, which is the benefited property. The provisions of the Petition are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy of the Special Assessments.

SECTION 8. That the method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Project Site as set forth in the Petition.

SECTION 9. That the lots or parcels of land to be assessed for the Project shall be the Project Site, described in Exhibit "A" to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

SECTION 10. That the Special Assessments shall be levied and paid in 28 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within 30 days after the passage of the assessing Resolution. The period over which the services and improvements provided pursuant to the Supplemental Plan are useful is determined to exceed 14 years.

The maximum aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$4,639,432.00. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the Summit County Fiscal Officer (the "County Fiscal Officer") may impose a special assessment collection fee with respect to each annual payment, which amount will be added to the Special Assessments by the County Fiscal Officer.

SECTION 11. That the Director of Finance or the Director of Finance's designee is authorized and directed to prepare and file in the office of the Council the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION 12. That pursuant to the Petition, the Owner has waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments, as provided in Ohio Revised Code Section 727.13, and The City hereby accepts that waiver.

SECTION 13. That the Director of Finance or the Director of Finance’s designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

SECTION 14. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION 15. That this Council 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, Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710 and consents to the immediate imposition of the Special Assessments upon the Project Site. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Council under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 16. That it is hereby found and 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 of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 17. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience, and welfare of the City of Barberton and the inhabitants thereof, for the reason that it is necessary to allow the Owner to begin work on the special energy improvement project on the Project Site and the District to take advantage of financing available to it for a limited time, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2018

Clerk of Council

President of Council

Approved _____ 2018

Mayor