

Ordinance No.: 2023-30

Passed: May 8, 2023

**AN EMERGENCY ORDINANCE TO ACCEPT THE TERMS OF SETTLEMENT OF
CASE NO.: 22CI0290 CAPTIONED AS THE VILLAGE OF WEST LAFAYETTE VS. SHURTZ
FAMILY FARMS LIMITED PARTNERSHIP, PURSUANT TO THE “SETTLEMENT OF CLAIMS”
AND CONSISTENT WITH THE TERMS OF THE AGREED SETTLEMENT.**

AN EMERGENCY ORDINANCE AUTHORIZING the Village Solicitor to execute the “Settlement of Claims” resolving all claims, counterclaims, motions, issues, objections and other litigation matters existing between the Village of West Lafayette, Ohio and the Shurtz Family Farms, LLC.

WHEREAS, the Village of West Lafayette, Ohio (herein “Village”) is a village formed and organized pursuant to the Constitution and laws of the State of Ohio; and

WHEREAS, the Village of West Lafayette (the “Village”) seeks to construct, modify, and improve an existing sewer drainage pipe (the “Project”); and

WHEREAS, the Village has contracted with the Thrasher Group to facilitate this Project; and

WHEREAS, the Village is responsible for the acquisition of property necessary for the Project; and

WHEREAS, the Project will require an additional supplemental 10’ wide permanent easement (the “Supplemental Easement”) running parallel to the Village’s existing 15’ foot wide utility easement (the “Existing Easement”), as well as, a supplemental 20’ temporary construction easement (“Construction Easement”), running parallel to the Permanent easement; and

WHEREAS, the property subject to the Supplemental Easement and Construction Easement is owned by the Shurtz Family Farms Limited Partnership, and said interest is located in-part the Township of Lafayette County of Coshocton, State of Ohio, and in-part the Village of West Lafayette, County of Coshocton, State of Ohio, and more fully described in the attached Exhibit A

WHEREAS, the Village initiated an appropriation action to acquire said easement in the Coshocton County Court of Common Pleas; and

WHEREAS, the said case is styled: “Village of West Lafayette v. Shurtz Family Farms Limited Partnership” and assigned Case No.: 22CI0290 by the Coshocton County Court of Common Pleas; and

WHEREAS, the Village and Shurtz Family Farms have reached a settlement in this matter; and

WHEREAS, the Council of the Village of West Lafayette, Ohio wishes to agree to the material terms of the proposed Settlement of Claims, more fully described in the attached Exhibit B:

Record of Ordinances

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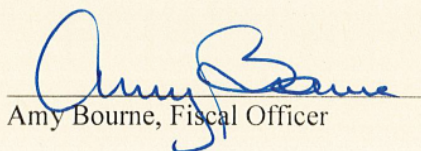
NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF WEST LAFAYETTE, OHIO.

- Section 1.** That the Village Solicitor hereby is authorized to accept the Settlement of Claims on behalf of the Village of West Lafayette,
- Section 2.** That the Village Fiscal Officer shall issue payment to the Shurtz Family Farms Limited Partnership in the amount of \$2,020.00 as partial payment of the agreed settlement,
- Section 3.** That the Village Solicitor shall cause the Coshocton County Clerk of Courts to release the previously deposited sum of \$6,480.00 to the Shurtz Family Farms Limited Partnership, file a Statement of Settlement with Coshocton County Court of Common Pleas, and request a final statement of fees be provided to the Village in that matter,
- Section 4.** That the Village Solicitor shall cause an Easement/Right of Way, Exhibit A, to be filed with Coshocton County Recorder's Office, and request a final statement of fees be provided to the Village in that matter,
- Section 5.** The Fiscal Officer shall pay the final statement of fees from the Coshocton County Court of Common Pleas and the Coshocton County Record's Officer
- Section 6.** That it is found and determined that all formal actions of the Council relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.
- Section 7.** This Ordinance is hereby declared to be an emergency measure, necessary for the preservation of the public peace, health, welfare and safety of the Village of West Lafayette, Ohio. The reason for the emergency is to ensure prompt settlement of this matter and limit the accrual of further costs.

PASSED IN COUNCIL THIS 8 day of May, 2023.


Stephen R. Bordenkircher, Mayor

ATTEST:


Amy Bourne, Fiscal Officer

SETTLEMENT OF CLAIMS

This "Settlement of Claims" (the "Agreement") states the terms and conditions that govern the contractual agreement between VILLAGE OF WEST LAFAYETTE (the "Plaintiff"), and SHURTZ FAMILY FARMS LIMITED PARTNERSHIP (the "Defendant") who agree and acknowledge that this Agreement shall constitute the full and final settlement of all claims or potential claims between them at law or in equity, for damages or attorneys' fees in connection with or arising from the Plaintiff's Verified Petition for Appropriation of Easement Interests, filed in the Coshocton County, Ohio Court of Common Pleas, case no.: 22CI0290 (the "Easement"), said real estate interests being more fully described in the attached Exhibit A, (attached and incorporated herein by reference) from the beginning of time to the date of this Agreement.

Provided that nothing herein shall constitute a waiver or release of any claims or causes of action arising out of or in connection with:

- (i) any breach of this Agreement, or
- (ii) (ii) circumstances or events occurring after the effective date of this Agreement.

Each party further agrees that it shall pay its own attorneys' fees incurred in connection with negotiating and drafting this Agreement.

WHEREAS, on September 26, 2022, Plaintiff passed Resolution No.: 2022-54 to acquire an easement by necessity for the construction, improvement, maintenance, and upkeep of a sewer collection and conveyance of material for the provision of sewer services to the public, and;

WHEREAS, Plaintiff submitted a good faith offer, ultimately rejected by the Defendants, and filed the appropriation action with the Common Pleas Court, with a quick-taking provision placing a deposit of \$6,480.00 with the court, and;

WHEREAS on November 4, 2022, the Court granted Plaintiff immediate possession of the Easement with the matters of necessity and value to be determined at a later hearing. (the "Incident"); and

WHEREAS, the Plaintiff and the Defendant agree to settle the matter and avoid any further litigation.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, the Plaintiff and the Defendant (individually, each a "Party" and collectively, the "Parties") covenant and agree as follows:

1. DISMISSAL OF PENDING LITIGATION. Within 30-days from the date of this Agreement, the Plaintiff and Defendant agree to dismiss or effect dismissal of any claims existing or pending in any jurisdiction relating to the Incident, including the claim filed on November 1, 2022 in Coshocton County (the "Pending Litigation").
2. RELEASE OF FUTURE CLAIMS.
 1. The Plaintiff hereby irrevocably releases and forever discharges the Defendant from any future claims arising from the Incident.
 2. The Plaintiff hereby irrevocably and forever waives all rights it may have arising under the law with respect to the Pending Litigation and the above release.
 3. The Parties agree and acknowledge that A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MAY HAVE MATERIALLY AFFECTED HIS DECISION TO SETTLE.
3. SETTLEMENT AMOUNT. In consideration for this settlement and release, the Plaintiff agrees to pay Defendant the amount of EIGHT THOUSAND AND FIVE HUNDRED Dollars (\$8,500.00) as full payment, subject to the terms and conditions of this Agreement.
4. Defendant agrees to execute certain easements to Plaintiff, attached and incorporated herein as Exhibit A. Plaintiff shall bear the cost of transferring and recording said easement.
5. In addition, Plaintiff agrees to make all reasonable efforts to restore any topsoil removed during the construction phase to its original condition, and/or direct its employees, agents, and contractor to do the same.
6. TIME IS OF THE ESSENCE. The Parties agree and acknowledge that time is of the essence with regard to the Settlement Payments.
7. NO MODIFICATION UNLESS IN WRITING. No modification of this Agreement shall be valid unless in writing and agreed upon by both Parties.
8. FULL INTEGRATION. This Settlement Agreement supersedes any prior agreements, understandings, or negotiations, whether written or oral.
9. FURTHER ASSURANCES. The Parties shall make any further assurances as may be necessary to implement and carry out the intent of this Agreement.
10. VENUE. This Settlement Agreement and the interpretation of the terms herein shall be governed by and construed in accordance with the laws of the State of Ohio. The Parties irrevocably submit to the exclusive jurisdiction of the federal and state courts located in Coshocton County, Ohio.

11. IN WITNESS WHEREOF, each of the Parties has executed this Settlement Agreement, both Parties by its duly authorized officer, as of the day and year set forth below.

Village of West Lafayette, Ohio

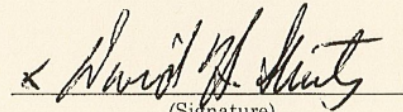


(Signature)

By: Joel Blue

Title: Solicitor
Duly Authorized

Shurtz Family Farms
Limited Partnership



(Signature)

By: David H. Shurtz

Title: Owner
Duly Authorized

RIGHT OF WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to Shurtz Family Farms, an Ohio limited Partnership, hereinafter referred to as GRANTOR, by the Village of West Lafayette, Coshocton County, Ohio, an Ohio Municipal Corporation hereinafter referred to as GRANTEE, the receipt of which is hereby acknowledged;

the GRANTOR does hereby grant, bargain, sell, transfer, and convey unto the GRANTEE, its successor and assigns, a perpetual easement with the right to erect, construct, install and lay, and thereafter also, operate, inspect, repair, maintain, replace and remove pipelines and ancillary equipment, pumping stations paraphernalia, and other equipment under, over, across, and through the land of the GRANTOR described as follows;

Situated in the Township of Lafayette, County of Coshocton, State of Ohio, being part of the First Quarter of Township five (5), Range five (5), U.S.M. lands and being part of a 79.519 acre tract of land now or formerly conveyed to Shurtz Family Farms Limited Partnership, an Ohio limited partnership by a deed recorded in Deed Volume 769, Page 5145, Instrument Number 201800004181 of the records of Coshocton County, and as shown on the right side of the baseline of a proposed sanitary sewer on plans designated West Lafayette Waste Water Treatment Plant and Storm Sewer Outfall Improvements, on file with the Village of Lafayette and on the plat as recorded in Coshocton County Recorder's Office in Volume ___ Page ___. and more fully described as follows:

Commencing at a point at the intersection of existing easterly sewer easement line and the proposed southerly property line of the Grantor, and being the northerly property line of lands now or formerly conveyed to the Village of West Lafayette by a deed recorded in Deed Volume 286, Page 183, being 17.51 feet right of the baseline of proposed sanitary sewer Station 500+32.42, witnessed by an iron pipe found South 88°50'22" East a distance of 15.15 feet, also being 7.64 feet left of the baseline of proposed sanitary sewer Station 500+ 32.43, and being the **TRUE PLACE OF BEGINNING** of the parcel herein described;

Thence North 01°08'57" East through lands of the Grantor, along the existing easterly sewer easement line, a distance of 4277.58 feet to a point on the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, being 7.42 feet right of the baseline of proposed sanitary sewer Station 543+09.96;

Thence South 69°45'10" East along the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, a distance of 10.58 feet to a point on the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, being 17.40 feet right of the baseline of proposed sanitary sewer Station 543+06.45;

Thence South 01°08'57" West through lands of the Grantor, a distance of 4274.12 feet to a point on the existing southerly property line of the Grantor, being 1.51 feet right of the baseline of proposed sanitary sewer Station 500+32.42;

Thence North 88°50'22" West along the existing southerly property line of the Grantor, being the northerly property line of lands now or formerly conveyed to the Village of West Lafayette, a distance of 10.00 feet to the TRUE PLACE OF BEGINNING and containing 0.982 acres (42,759 square feet) of land, of which 0.000 acres are in present road occupied.

The above-described area is contained within the Coshocton County Auditor's Permanent Parcel Number 0180000040900 and is a 10.00 feet wide sewer easement, extending east off an existing 15.00 feet wide sewer easement.

The basis of bearing in this description is based on the Ohio State Plane Coordinates, North Zone (3401), NAD 83 (2007).

The description was prepared in September 2022 by Craig M. Klein, P.E. No. 69280, and reviewed by Zoran R. Milojkovic, PS. 8202, of the Thrasher Group.

The description is based on a field survey performed by the Thrasher Group in October of 2021 under the direct supervision of Zoran R. Milojkovic, PS. 8202, of the Thrasher Group.

Situated in the Township of Lafayette, County of Coshocton, State of Ohio, being part of the First Quarter of Township five (5), Range five (5), U.S.M. lands and being part of a 79.519 acre tract of land now or formerly conveyed to Shurtz Family Farms Limited Partnership, an Ohio limited partnership by a deed recorded in Deed Volume 769, Page 5145, Instrument Number 201800004181 of the records of Coshocton County. and as shown on the right side of the baseline of a proposed sanitary sewer on plans designated West Lafayette Waste Water Treatment Plant and Storm Sewer Outfall Improvements, on file with the Village of Lafayette and on the plat as recorded in Coshocton County Recorder's Office in Volume___ Page___, and more fully described as follows:

Commencing at a point at the intersection of proposed easterly 10 feet wide sewer easement line and the proposed southerly property line of the Grantor, and being the northerly property line of lands now or formerly conveyed to the Village of West Lafayette by a deed recorded in Deed Volume 286, Page 183, being 17.51 feet right of the baseline of proposed sanitary sewer Station 500+32.42, witnessed by an iron pipe found South 88°50'22" East a distance of 25.15 feet, also being 7.64 feet left of the baseline of proposed sanitary sewer Station 500+32.43, and being the **TRUE PLACE OF BEGINNING** of the parcel herein described;

Thence North 01°08'57" East through lands of the Grantor, along the existing easterly sewer easement line, a distance of 4274.12 feet to a point on the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, being 17.40 feet right of the baseline of proposed sanitary sewer Station 543+06.45;

Thence South 69°45'10" East along the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, a distance of 21.16 feet to a point on the existing northerly property line of the Grantor, being the low water mark of the Tuscarawas River, being 37.36 feet right of the baseline of proposed sanitary sewer Station 542+99.41;

Thence South 01°08'57" West through lands of the Grantor, a distance of 4267.20 feet to a point on the existing southerly property line of the Grantor, being 37.51 feet right of the baseline of proposed sanitary sewer Station 500+32.40;

Thence North 88°50'22" West along the existing southerly property line of the Grantor, being the northerly property line of lands now or formerly conveyed to the Village of West Lafayette, a distance of 20.00 feet to the TRUE PLACE OF BEGINNING and containing 1.96 acres (85,413 square feet) of land, of which 0.000 acres are in present road occupied.

The above-described area is contained within the Coshocton County Auditor's Permanent Parcel Number 0180000040900 and is a 20.00 feet wide temporary easement for the construction of storm sewers, extending east off a proposed 10.00 feet wide sewer easement.

The basis of bearing in this description is based on the Ohio State Plane Coordinates, North Zone (3401), NAD 83 (2007).

The description was prepared in September 2022 by Craig M. Klein, P.E. No. 69280, and reviewed by Zoran R. Milojkovic, PS. 8202, of the Thrasher Group.

The description is based on a field survey performed by the Thrasher Group in October of 2021 under the direct supervision of Zoran R. Milojkovic, PS. 8202, of the Thrasher Group.

Together with the right of Ingress and egress over the adjacent lands of the GRANTOR, his successors and assigns, for the purpose of this easement.

The consideration hereinabove recited shall constitute payment in full for any damages to the land of the GRANTOR, its successors and assigns, by reason of the Installation, operation, and maintenance of the structures or improvements referred to herein. The GRANTEE covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the GRANTOR, his successors, and assigns.

The grant and provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the GRANTORS have executed this instrument this 28th day of April, 2023.

Signed, Sealed, and Acknowledged
in the Presence of:

Shurtz Family Farms
Limited Partnership

[Signature]
Renee L. Miller
(Witness)

[Signature]
(Signature)
By: Jack M. Shurtz
Title: Owner
Duly Authorized

STATE OF OHIO
COUNTY OF COSHOCTON

Before me, a Notary Public, in and for said County, personally appeared the above named

Jack M. Shurtz co-owner of the Shurtz Family Farm Limited Partnership, duly authorized, who acknowledged that he did sign the foregoing instrument, and that the same is their free act and deed.

In testimony whereof, I have hereunto subscribed my name at Coshocton, Ohio, this 28th day of April 2023.

(seal)



[Signature]
ROBERT W. PUBLIC
Attorney
Notary Public, State of Ohio
My Commission Expires
Expiration Date:
Section 147.03 R.C.

My commission expires:

This instrument was prepared by Joel Blue, Solicitor for the Village of West Lafayette, Ohio and all-around great person.