

RESOLUTION NO. 71-16  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 19<sup>th</sup> DAY OF  
DECEMBER, 2016.

A RESOLUTION DECLARING IT NECESSARY TO CONSTRUCT AND INSTALL PUBLIC ROADWAYS, SIDEWALKS, CURBS AND SANITARY MAINS ALONG THE YANKEE TRACE WOODS, LLC PROPERTY, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AS PROVIDED HEREIN TO THE EXTENT OF AVAILABLE FUNDS.

WHEREAS, the owners of 100% of the lots and lands to be assessed for the Improvement (described in Section 2) have petitioned this Council (that Affidavit and Petition for Special Assessments is attached hereto as EXHIBIT A and incorporated herein by reference and is referred to herein as the "*Petition*") for the construction of the Improvement (as defined in Section 2), and further, that there be assessed against the real property described in the Petition certain costs of the Improvement; and

WHEREAS, this Council has heretofore directed that the plans, specifications, profiles and estimate of cost be prepared for the Improvement; and

WHEREAS, this Council has determined to adopt this Resolution to accept the Petition and approve the plans, specifications, profiles and estimate of cost of the Improvement, as prepared by Brumbaugh Engineering & Surveying, LLC, and to further provide for such other terms and provisions relating to the Improvement as are set forth in this Resolution; and

WHEREAS, this Resolution hereby amends Resolution No. 16-14, previously approved by the City on April 21, 2014; and

WHEREAS, the Project was delayed due to circumstances beyond the control of the City;

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That this Council hereby finds that the Petition has been signed by the owners of 100% of the lots and lands to be assessed for the Improvement.

SECTION 2. That it is declared necessary to provide for the following improvement:

The extension of a public road, sidewalks, curbs and sanitary mains starting from Yankee Trace Drive and extending approximately 1400 feet through the property known as the Yankee Trace Woods property to a point of intersection with Paragon Road, together with all necessary appurtenances thereto. Said improvements are located on property described in Exhibit "A" attached hereto and incorporated herein.

SECTION 3. That the plans, specifications, profiles and estimate of cost of the improvement, now on file in the office of the Clerk of Council, are approved. The improvement shall be made in accordance with, and the grade of the improvement and of the streets shall be the grade as shown on, the plans, specifications and profiles for the improvement, provided that, as authorized by the petition for the improvement, additions to, deductions from, or modifications of the improvement identified in Section 2 may be provided for at the time of letting contracts for the improvement or during the course of construction which are required in the reasonable judgment of the City Manager so that the annual principal amount of the special assessment and interest thereon will be as close as possible to and not exceed \$875.

SECTION 4. That this Council finds and determines that (i) the improvement is conducive to the public health, convenience and welfare of this City and the inhabitants thereof and (ii) the lots and lands to be assessed as described in Section 5 hereof are specially benefited by the improvement. This Council further finds and determines that the improvement has been petitioned for by the owners of 100% of the lots and lands to be assessed for the improvement.

SECTION 5. The whole cost of the improvement shall be assessed in proportion to the benefits that may result from the improvement upon the following lots and lands, to-wit: Tax Parcel Numbers O671-03814-0070 and O671-03814-0103.

SECTION 6. That the cost of the improvement shall include the cost of preliminary and other surveys, plans, specifications, profiles and estimates and of printing, serving and publishing notices, resolutions and ordinances, the amount of any damages resulting from the improvement and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing, appropriating, and otherwise acquiring any real estate or interests therein required for the improvement, expenses of legal services including obtaining approving legal opinions, cost of labor and material, and interest on securities issued in anticipation of the levy and collection of the special assessments, or, if securities in anticipation of the levy of the special assessments are not issued, interest per annum on moneys advanced by the City for the cost of that improvement in anticipation of the levy of the special assessments, together with all other necessary expenditures.

SECTION 7. That the Director of Finance is authorized and directed to prepare and file in the office of the Clerk of Council the estimated special assessments of the cost of the improvement described in this resolution. Those estimated special assessments shall be based upon the estimate of cost of the improvement now on file in the office of the Clerk of Council and shall be prepared

pursuant to the provisions of this resolution. When such estimated assessments have been so filed, the Clerk of this Council shall cause notice of the adoption of this Resolution and the filing of said estimated assessments to be given to owners of all lots and lands to be assessed as provided in Section 727.13 or 727.14 of the Revised Code, except to the extent any one or more waive such notice.

SECTION 8. That the special assessments to be levied shall be paid in thirty (30) annual installments of principal and interest, with interest on the unpaid principal amount of each special assessment at the same rate as shall be borne by securities issued in anticipation of the collection of the total of the unpaid special assessments, or, if such securities are not issued, at the rate or rates of interest determined by this Council when it passes the assessing ordinance levying those special assessments; provided that in accordance with the petition for the improvement there may be certified to and collected by the County up to two additional annual installments of interest only.

SECTION 9. That the City may issue securities in anticipation of the collection of the annual installments of the special assessments and in an amount equal to the total of the unpaid special assessments.

SECTION 10. That this Council authorizes the City Manager to enter into a Development Agreement with Yankee Trace Woods, LLC, to address remaining issues, including but not limited to the City's additional credit enhancement, results of the work coming in over budget and the timing and coordination of the assessment payments.

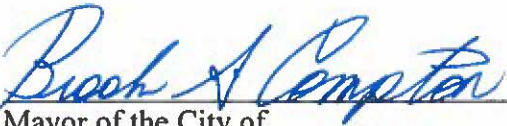
SECTION 11. That this Resolution amends Resolution No. 16-14, but any sections of Resolution 16-14 not in conflict shall continue as if in full force and effect.

SECTION 12. That this Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this


Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 13. That this resolution shall become effective upon its adoption, in accordance with Section 5.08 of the Charter of the City.

PASSED THIS 19<sup>th</sup> day of December, 2016.

  
\_\_\_\_\_  
Mayor of the City of  
Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 71-16, passed by the Council of the City of Centerville, Ohio on the 19<sup>th</sup> day of December, 2016.

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

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions  
Department of Law  
Scott A. Liberman  
Municipal Attorney

Exhibit "A"

**SPECIAL ASSESSMENT PETITION**

**AFFIDAVIT  
AND  
PETITION FOR SPECIAL ASSESSMENTS**

Date: 4/17/14

To the Council of the City of Centerville, Ohio:

WHEREAS, Yankee Trace Woods, LLC, an Ohio limited liability company (the "Property Owner") represents that it owns certain real property (which real property represents 100% of the real property described and depicted on Exhibit A and attached hereto and by reference made a part hereof and referred to herein as the "*Property*"), all of which Property is located within the City of Centerville, Ohio (the "*City*"); and

WHEREAS, the Property Owner, acting through Brian Barnard, as its Authorized Representative, upon being duly sworn, deposes and states that this Affidavit and Petition for Special Assessment (the "*Petition*") is, among other things, intended for the purpose of stating facts relating to conditions or events that may create an interest or estate in the Property; and

WHEREAS the Property Owner acknowledges that, in connection with the development of the Property, the Property will benefit from the construction and installation of public roadways, sidewalks, curbs, and sanitary mains (the "*Public Improvements*"), and that plans, specifications profiles of the proposed Public Improvements and estimates of the hard and soft costs of the Public Improvements have been placed on file in the office of the Clerk of Council of the City; and

WHEREAS, the Property Owner hereby petitions the City for the construction of the Public Improvements, requests that 100% of the cost of the Public Improvements be assessed against the Property, and acknowledges and agrees that such assessment may be re-allocated among the benefited parcels comprising the Property, all as may deemed necessary by the City; and

WHEREAS, the Property Owner acknowledges and agrees that the Property includes all of the real property to be assessed pursuant to this Petition, and that the Property will receive special benefits from the construction of the Public Improvements; and

WHEREAS, the Property Owner requests that the special assessments be collected in annual installments in each year to pay 100% of the costs of the Public Improvements (including the principal amount of any notes or bonds (the "*Securities*") issued in anticipation of the collection of the special assessments and any interest due in that year with respect to such Securities), all in accordance with and subject to, Section 3 of this Petition; and

WHEREAS, the Property Owner, speaking through its Authorized Representative, further deposes and states that this Petition and the actions provided for herein impose burdens and obligations upon the Property and provide for special assessments to be levied upon the Property in accordance with this Petition, and that the Petition shall be placed on file and made available for public inspection at the office of the Clerk of Council of the City;

NOW, THEREFORE, the Property Owner hereby petitions the Council of the City of Centerville, Ohio as follows:

1. ***Special Assessments.*** The Property Owner states that it is the sole owner of 100% of the Property as described in Exhibit A. Acting pursuant to Chapter 727, Ohio Revised Code, the Property Owner requests that the City shall cause the Public Improvements to be acquired and constructed, acknowledges and agrees that the Property will receive special benefits from the Public Improvements and that no other property will receive special benefits from the Public Improvements, and respectfully request that 100% of the actual cost of the Public Improvements shall be proportionally assessed against the Property, with further apportionment, as may be required or deemed necessary by the City at any time in the future, based on a per lot basis. The Property Owner acknowledges and consents that the City, acting in good faith, may equalize the assessments on the parcels comprising the Property as the Property may hereafter be subdivided, based on a per lot calculation; provided, however, that to the extent the Montgomery County Auditor requires an alternate method of apportioning the assessments, the City will act in good faith to apportion the assessments in a manner which approximates a per lot assessment as much as possible. To the extent the Property Owner, or its grantees or other successors with respect to the Property, does not pay the special assessments as levied in the time period provided for by Ohio law, the Property Owner acknowledges and agrees that the City may, in accordance with Ohio law, issue Securities in anticipation of the collection of those unpaid special assessments. The Property Owner further agrees that in accordance with Ohio law, the City may increase those unpaid special assessments by an amount necessary to reflect any financing costs, including but not limited to, interest and issuance expenses, and if the City elects not to issue Securities in anticipation of the collection of those unpaid special assessments, the City may increase those unpaid special assessments by an amount to reflect interest on such unpaid special assessments at an interest rate which shall be determined by the City to be substantially equivalent to the fair market rate that would have been borne by such Securities. The City may also increase the unpaid assessments by an amount equal to the actual costs charged by Montgomery County to administer and collect the special assessments.

2. ***Construction and Payment of Costs of the Public Improvements.*** The City shall construct the Public Improvements in a manner consistent with the plans and specifications for such Public Improvements which shall have been approved by the City. The Property Owner will provide at its cost all necessary land, easements, and right-of-ways required to construct the Public Improvements. The Property Owner will grant to the City and its contractors unrestricted access to the Property as necessary during construction of the Public Improvements and as may be reasonably required after completion of construction of the Public Improvements.

3. ***Duration of Special Assessments.*** The Property Owner further requests and agrees that the special assessments, including interest thereon, will be payable in thirty (30) annual

installments of principal and interest (each annual installment to be payable semi-annually at the time real estate taxes in Montgomery County, Ohio are payable), that the interest on the special assessments will be computed at the same interest rate as is applicable to the Securities, and that the annual amounts for principal and interest will be computed utilizing a methodology which produces the same amount, or approximately the same amount, each year. The Property Owner acknowledges and agrees that the City will levy and certify the special assessments and interest thereon to the Montgomery County Auditor for collection (as provided below) as soon as practicable after the completion of the Public Improvements. The Property Owner acknowledges and agrees that the interest payable with respect to any Securities issued in anticipation of the levy and collection of special assessments will be capitalized to the extent permitted by law and included in the cost of the Public Improvements and that payment of principal on such Securities will be delayed, to the extent permitted by law, to coincide with the receipt of special assessment payments. The Property Owner requests that the City delay the levy of the special assessments so that the first debt service payments for the Securities will be due and payable starting in property tax collection year 2016.

**4. *Payment of Special Assessments.*** In consideration of the Public Improvements, the Property Owner, for itself and its grantees or other successors with respect to the Property, agrees to pay promptly all special assessments levied against the lots and lands which collectively constitute the Property as they become due, and agrees that the determination by the Council of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon the Property Owner and the Property. In further consideration of the Public Improvements, the Property Owner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be specially assessed for the actual costs of the Public Improvements, in the deed to the transferee the existence of any outstanding special assessment for the Public Improvements and to require that transferee covenant to disclose that information in any subsequent deed to any transferee so long as such special assessments remain unpaid. As a condition to each subsequent transfer while such special assessments remain unpaid, the Property Owner further covenants and agrees to provide expressly in the deed to any transferee (a) for the acquisition by such transferee of the Property subject to any outstanding special assessment and such transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Property Owner has waived pursuant to this Petition and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee the conditions described in clause (a) so long as such special assessments remain unpaid.

**5. *Collection of Special Assessments.*** The levy and collection of the special assessments in any year is authorized hereunder to pay debt service as the same shall come due on an amount equal to 100% of the Securities. The Property Owner further requests that if any special assessments remain after the City has paid all costs of the Public Improvements, the City's Director of Finance shall certify to the Montgomery County Auditor that such special assessments are no longer due and payable and shall no longer constitute a lien against the Property.

**6. *Action by Council.*** The Property Owner, for itself and its successors and assigns, further consents and requests that all legislation required to be enacted to permit the Public Improvements to commence immediately shall be enacted at one Council meeting.



7. **Waivers.** The Property Owner consents and requests that the special assessments shall be levied and collected without limitation as to the value of the Property, and waives all of the following relating to the Public Improvements and the special assessments:

- a. any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision of the Revised Code restricting the special assessments to 33-1/3% of the actual improved value of the Property as enhanced by the Public Improvements to be made;
- b. any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision of the Revised Code limiting special assessments for re-improvement when a special assessment has been levied and paid previously;
- c. any and all damages or claims for damages of whatsoever kind, character or description resulting from the Public Improvements or the making of the Public Improvements, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;
- d. any and all resolutions, ordinances and notices required for the making of the Public Improvements, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over the estimated cost, the passage of the assessing ordinance, and the right to apply for deferment of the special assessments pursuant to Section 727.251 of the Revised Code, and including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;
- e. any limitation on the addition of interest to the special assessments specified by Section 727.301 of the Revised Code;
- f. any limitation or restriction on the levy and collection of special assessments against the Property for the Public Improvements as specified in Section 929.03 of the Revised Code; and
- g. any and all irregularities and defects in the proceedings.

8. **Consent of Property Owner.** The consent of the Property Owner to the levy and collection of the special assessments as contemplated herein is expressly contingent upon the City's compliance with the provisions of this Petition. Nothing herein shall be as construed as a waiver of the rights of the Property Owner to insist upon compliance of the City with the provisions of this Petition or any other right of the Property Owner with respect to the special assessments or their levy and collection except as expressly stated in Section 7.

IN WITNESS WHEREOF, the Authorized Representative has duly executed this Petition on behalf of the Property Owner as of the date hereinbefore written.

Yankee Trace Woods, LLC

By: [Signature]

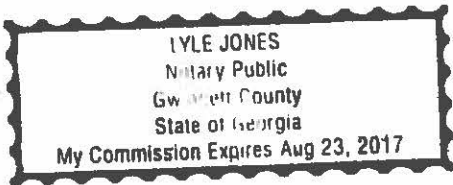
Printed: Brian Barnard

Title: Member

STATE OF GEORGIA )  
COUNTY OF Gwinnett ) SS:

On this 17 day of April, 2014, before me a Notary Public personally appeared Brian Barnard, the member of Yankee Trace Woods, LLC, an Ohio limited liability company, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Yankee Trace Woods, LLC

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.



[Signature]  
Notary Public

This instrument prepared by:

David L. Layman, Esq.  
3080 Ackerman Blvd., Ste. 320  
Kettering, Ohio 45429  
937-296-0365

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**BRUMBAUGH ENGINEERING & SURVEYING, LLC**  
**1105 South Miami St.**  
**West Milton, Ohio 45383**  
**937-698-3000**

January 22, 2012

**Description of 13.812 Acre Tract**

Situate in the State of Ohio, County of Montgomery, Township of Washington, and being in Section 35, Town 3, Range 5 MRS, and part of the 14.00 Acre Tract as acquired by Patricia A. Barnard and Brian C. Barnard in IR Deed # 07-095190 (all references to deed books, official records, microfiche numbers, instrument numbers, survey records and/or plats refer to the Montgomery County Records office, Montgomery County, Ohio), and being more specifically described as follows:

Commencing at a Stone found at the Northwest corner of the Southwest quarter of Section 35, Town 3, Range 5 MRS marking the **TRUE POINT OF BEGINNING**;

Thence with the South line of a 2.00 acre tract conveyed to Linda S. Gastineau, Trustee in IR Deed # 07-004940 S 89° 41' 28" E for a distance of 870.70 feet to a Iron Pin set (All iron pins set are 5/8" x 30" rebar capped Brumbaugh E & S) at the Northwest corner of a 3.910 acre tract conveyed to James C. Mayberry, Sr. and Carolyn Mayberry in I.R. deed # 02-128968;

Thence with the West Line of said 3.910 acre tract S 00° 20' 12" W for a distance of 398.76 feet to an Iron Pin found at the Southwest corner of said 3.910 acre tract;

Thence with the South line of said 3.910 acre tract S 89° 43' 15" E for a distance of 369.70 feet to an Iron Pin set on the west line of a 0.189 acre tract as conveyed to the Board of Trustees of the Township of Washington, County of Montgomery, Ohio in I.R. Deed 10-051094. Being the west right-of-way line of Paragon Road (82' ROW);

Thence with the west right-of-way line of said Paragon Road on a curve to the left with an arc distance of 4.88 feet whose radius = 410.65 feet, delta = 0° 40' 51", tangent = 2.44 feet, and whose long chord bears S 05° 23' 11" W for a distance of 4.88 feet to a 5/8" capped Iron Pin set;

Thence continuing with the west right-of-way line of said Paragon Road S 05° 03' 17" W for a distance of 194.96 feet to an Iron Pin set on the north line of a 5.006 acre tract conveyed to Susan J. Mauro, Trustee in IR Deed # 03-083491;

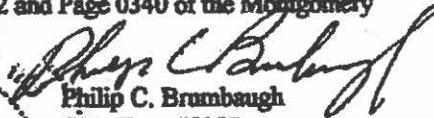
Thence with the North Line of said 5.006 acre tract N 89° 43' 22" W for a distance of 1070.46 feet to an Iron Pin found at the Northwest corner of said 5.006 acre tract and in the North line of Yankee Trace Section 17 recorded in Plat Book 174 page 42A;

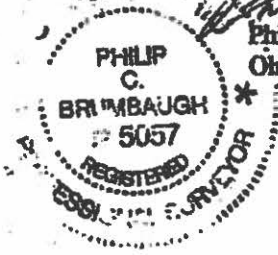
Thence with the North Line of said Yankee Trace Section 17 N 67° 49' 39" W for a distance of 219.90 feet to an Iron Post in concrete found in the west line of said section 35 and the east line of Yankee Trace Subdivision Section 16 as recorded in Plat Book 173 page 36A;

Thence with the West line of said section 35 and the east line of Yankee Trace Section 16 N 05° 56' 19" E for a distance of 518.93 feet to the TRUE POINT OF BEGINNING. The above described property contains a total of 13.812 acres more or less and being subject to all restrictions, easements, conditions, covenants and legal highways of record.

The basis of bearing of the foregoing description is the Ohio State Plane Coordinate system, south zone, NAD83 (cors), the South line of the 13.811 Acre Barnard Tract being N 89° 43' 22" W.

The foregoing description is according to the 12-12-12 survey of Philip C Brumbaugh, Registered Surveyor # 5057, as filed in Survey Volume 2012 and Page 0340 of the Montgomery County Engineers Office.

  
Philip C. Brumbaugh  
Ohio Reg. #5057



Parcel No. 067 03814 0070, 103

PAUL W. GRUNER, P.E., P.S.  
MONTGOMERY COUNTY ENGINEER  
APPROVED FOR POINT OF BEGINNING,  
ACREAGE AND CLOSURE ONLY  
DATE 1/21/2013 FILE NO. 2012-0340  
BY 