

RESOLUTION NO. 77-21
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 9th
DAY OF August, 2021.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO RESTRICTIVE COVENANT WITH AES FKA DAYTON POWER AND LIGHT COMPANY (AES) REGARDING PROPERTY LOCATED ALONG YANKEE ROAD ACROSS FROM YANKEE TRACE GOLF COURSE AND ADJACENT TO PROPERTY OWNED BY THE CITY.

WHEREAS, AES fka Dayton Power and Light Company (AES) owns approximately 51.4675 acres along Yankee Road on which it has electric facilities, including a substation, peaking units and a solar array; and

WHEREAS, to the north and east of AES' property, the City owns approximately 26.4 acres, which was transferred from AES to the City in 2001; and

WHEREAS, by way of a Limited Warranty Deed recorded June 15, 2001, AES transferred to the City the approximately twenty-six acres located on Yankee Street in Centerville, Ohio subject to the restriction that "the property is to be used for golf course purposes only, or for any other municipal purpose with the prior written consent of AES, its successors and assigns, except for the existing structure which can be used for any municipal purpose, and to revert to the AES when the land or structure ceases to be so used; and

WHEREAS, by way of an Amendment to Restrictive Covenants recorded November 2, 2015, AES modified the restrictive covenants so that in addition to being able to use the property for golf course purposes and any other municipal purpose with the prior written consent of AES, the City may also use the property for the following purposes: bank, corporate data center, office/business service use, natural preserve area, parks, open space, government offices, medical and dental offices, office park, office uses, research and development offices, satellite dishes (less than 1 meter in diameter) and telecommunications; and

WHEREAS, the Parties now wish to remove all restrictive covenants in their entirety.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed to execute the Second Amendment to Restrictive Covenant with AES to remove all

restrictions in accordance with the terms and conditions of said Amendment, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

Section 2. This Resolution is to take effect at the earliest date allowed by law.

PASSED THIS 9th day of August, 2021.



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. 77-21, passed by the Council of the City of Centerville, Ohio on the 9th day of August, 2021.



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"

SECOND AMENDMENT TO RESTRICTIVE COVENANT

This Second Amendment to Restrictive Covenant is entered into between the Dayton Power and Light Company, an Ohio corporation now doing business as AES Ohio, whose mailing address is 1065 Woodman Drive, Dayton, Ohio, the original Grantor ("Grantor") and the City of Centerville, whose mailing address is 100 West Spring Valley Road, Centerville, Ohio the original Grantee ("Grantee").

Whereas, by way of a Limited Warranty Deed recorded June 15, 2001 and given deed number 01-068197 by the Montgomery County Recorder's Office, Grantor transferred to Grantee approximately twenty-six acres located on Yankee Street in Centerville, Ohio subject to the restriction that "the property is to be used for golf course purposes only, or for any other municipal purpose with the prior written consent of Grantor, its successors and assigns, except for the existing structure which can be used for any municipal purpose, and to revert to the Grantor when the land or structure ceases to be so used; and

Whereas, by way of an Amendment to Restrictive Covenants recorded November 2, 2015 and given document number 2015-00061248 by the Montgomery County Recorder's Office, Grantor modified the restrictive covenants so that "In addition to being able to use the property for golf course purposes and any other municipal purpose with the prior written consent of Grantor, Grantee may also use the property for the following purposes: bank, corporate data center, office/business service use, natural preserve area, parks, open space, government offices, medical and dental offices, office park, office uses, research and development offices, satellite dishes (less than 1 meter in diameter) and telecommunications;" and

Whereas Parties now wish to remove all restrictive covenants in their entirety;

Grantor and Grantee have now agreed to amend the restrictive covenants as follows:

1. Grantee may use the property for any purpose, provided that, no development will occur within 175 feet of the west boundary of the property or within 75 feet of the driveway on the south side of the property.
2. In all other respects, prior agreements and deed terms shall remain in effect.

In witness whereof, the parties have agreed to the foregoing this ____ day of _____, 2021.

City of Centerville

Dayton Power & Light Co., dba AES Ohio

By: Wayne S. Davis
Its: City Manager

By: Kathryn N. Storm
Its: Vice President, US Smart Grid and
Ohio T&D Operations

Approved as to form:

Scott A. Liberman, Municipal Attorney

STATE OF OHIO)
COUNTY OF MONTGOMERY) SS:

The foregoing instrument was acknowledged before me this ____ day of July, 2021, by Wayne S. Davis, City Manager, on behalf of the City of Centerville.

Notary Public

STATE OF OHIO)
COUNTY OF MONTGOMERY) SS:

The foregoing instrument was acknowledged before this ____ day of June, 2021, by Kathryn N. Storm, it's Vice President, US Smart Grid and Ohio T&D Operations, authorized representative of The Dayton Power and Light Company.

Notary Public

Prepared by:
