

ORDINANCE NO. 20-032

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY WITH BEN B. BAILEY, TRUSTEE, MARY J. BAILEY, TRUSTEE, AND MARK A. BAILEY FOR A PORTION OF PARCEL NO. 60-00662.000, LOCATED AT 3811 VENICE ROAD, SANDUSKY, FOR THE WEST SIDE UTILITY AND CONNECTIVITY IMPROVEMENTS PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, as part of the West Side Utility & Connectivity Improvements Project on the north side of Venice Road, the City will be replacing an existing waterline, replacing existing storm sewers, and installing a new storm system and multi-use asphalt path; and

WHEREAS, the City Commission authorized an agreement for professional property & easement acquisition services with O.R. Colan Associates of Fairview Park, Ohio, for the West Side Utility & Connectivity Improvements Project by Ordinance No. 19-101, passed on May 28, 2019; and

WHEREAS, this City Commission approved the awarding of the contract to Speer Bros., Inc., of Sandusky, Ohio, for the West Side Utility & Connectivity Improvements Project by Ordinance No. 20-002, passed on January 13, 2020; and

WHEREAS, in order to install the new waterline for the West Side Utility & Connectivity Improvements Project, additional frontage property was necessary to allow the proper horizontal clearance between utilities as required by the Ohio Environmental Protection Agency; and

WHEREAS, Ben B. Bailey, Mary J. Bailey, and Mark A. Bailey are the owners of the property located at 3811 Venice Road, Parcel No. 60-00662.000, and have agreed to sell a portion of the property to the City at the purchase price of \$8,538.25, which will be paid with Water Funds; and

WHEREAS, this additional property will be dedicated as right-of-way at a later date along with granting an encroachment to the Bailey's for an existing fence and landscaping; and

WHEREAS, approval is being requested in companion legislation to approve a Contract for Sale and Purchase of Real Property with Toft Dairy, Inc. for additional property on Venice Road necessary for the West Side Utility and Connectivity Improvements Project; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the Contract for Sale and Purchase of Real Property and acquire the property which is necessary to complete the waterline work and multi-use path along the Bailey's property as part of the West Side Utility & Connectivity Improvements Project; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City

PAGE 2 - ORDINANCE NO. 20-032

of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is hereby authorized and directed to enter into a Contract for Sale and Purchase of Real Property with Ben B. Baily, Trustee, Mary J. Bailey, Trustee, and Mark A. Bailey for a portion of Parcel No. 60-00662.000, located at 3811 Venice Road, for the West Side Utility & Connectivity Improvements Project, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the City's public purpose as set forth in the preamble hereto, at an amount **not to exceed** Eight Thousand Five Hundred Thirty Eight and 25/100 Dollars (\$8,538.25).

Section 2. The City Manager, Finance Director and Law Director are authorized and directed to take such other actions and measures as are incident to and reasonably necessary to effect the purchase of a portion of Parcel No. 60-00662.000, located at 3811 Venice Road, Sandusky.


Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission 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 5. That for the reasons set forth in the preamble hereto, this

PAGE 3 - ORDINANCE NO. 20-032

Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD B. BRADY
PRESIDENT OF THE CITY COMMISSION

ATTEST: 

KELLY L. KRESSER
CLERK OF THE CITY COMMISSION

Passed: February 10, 2020

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)**

**PARCEL(S): 1-WD (60-00662.000 WD)
CITY OF SANDUSKY - WESTSIDE UTILITIES**

This Agreement is by and between the City of Sandusky ["Purchaser"] and Ben B. Bailey, Trustee, Mary J. Bailey, Trustee, and Mark A. Bailey, Married ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$8,538.25, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; (e) the Purchaser further agrees to keep the Sandusky Bay Pathway in good order, condition and repair, free from accumulation of snow and ice, making repairs and replacements when necessary at the Purchaser's sole cost and expense; (f) Purchaser agrees to have the contractor relocate the existing irrigation system following the approval of the contractor's proposed irrigation system relocation by the Sellers at no cost to the Seller.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.



2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to

tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

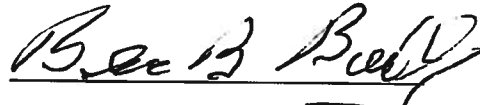
15. Entire Agreement

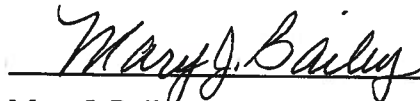
This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

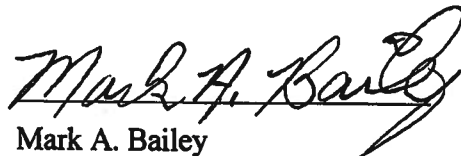
16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto, namely the City of Sandusky and Ben B. Bailey, Trustee, Mary J. Bailey, Trustee, and Mark A. Bailey have executed this Agreement on the date(s) indicated immediately below their respective signatures.


Ben B. Bailey, Trustee


Mary J. Bailey, Trustee


Mark A. Bailey

STATE OF OHIO, COUNTY OF ERIE ss:

Be It Remembered that on the 19th day of December, 2019, before me the subscriber, a Notary Public in and for said state and county, personally came the above-named Ben B. Bailey, Trustee, Mary J. Bailey, Trustee and Mark A. Bailey who acknowledged the foregoing instrument to be their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



JOSEPH E ALMADY
Notary Public
In and for the State of Ohio
My Commission Expires
August 22, 2023


NOTARY PUBLIC
My Commission expires: 8/22/23

City of Sandusky

Eric Wobser
City Manager

Date: _____

STATE OF OHIO, COUNTY OF ERIE SS:

BE IT REMEMBERED, that on the _____ day of _____, 2019, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Eric Wobser, the City Manager and duly authorized representative of City of Sandusky, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of the City of Sandusky.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC
My Commission expires: _____

EXHIBIT A

LPA RX 851 WD

Page 1 of 2

Rev. 06/09

Ver. Date 11/19/2019

PID #####

**PARCEL 1-WD
ERI-US6
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
"THE CITY OF SANDUSKY" ERIE COUNTY, OHIO**

Jen

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the City of Sandusky, County of Erie and State of Ohio, and being a 0.112 acre parcel out of a 5.207 acre tract known as Erie County Auditor's Parcel number 60-00662.000 conveyed to Ben B. Bailey, Trustee, Mary J. Bailey, Trustee and Mark A. Bailey (hereafter referred to as "Grantor") by the instruments filed as Official Record 348, Page 283, Official Record 348, Page 279 and Official Record 513, Page 205 (all document references are to the records of Erie County unless otherwise stated).

Being a parcel of land lying on the left side of the centerline of existing right-of-way of US Route 6 also known as Venice Road (60' R/W) more particularly described as follows:

BEGINNING at a one inch iron pin found in a monument box at the intersection of the centerline of Venice Road US 6 (60' R/W) with the centerline of Edgewater Avenue (66' R/W), said point being at Venice Road station 68+62.20. Thence along the centerline of Venice Road, North 82 degrees 48 minutes 45 seconds West for a distance of 690.42 feet to a point being at Venice Road station 61+71.79. Thence North 01 degrees 40 minutes 36 seconds West for a distance of 30.36 feet to a capped iron pin found at the southeasterly corner of said land of the Grantor, said corner being 30.00 feet left of the centerline of existing right-of-way of Venice Road station 61+67.11 and being the TRUE POINT OF BEGINNING of the parcel herein described.

Thence along the northerly right-of-way of Venice Road, North 82 degrees 48 minutes 45 seconds West for a distance of 325.00 feet to a ½" iron pin found at the southwesterly corner of said land of the Grantor, said corner being 30.00 feet left of the centerline of existing right-of-way of Venice Road station 58+42.11;

EXHIBIT A

LPA RX 851 WD

Page 2 of 2
Rev. 06/09

Thence along the westerly line of said Grantor's land being the easterly line of land owned by Ben B. Bailey, Trustee, Mary J. Bailey, Trustee and Mark A. Bailey, Trustee recorded in RN 200211966, North 01 degrees 40 minutes 36 seconds West for a distance of 15.18 feet to an iron pin set being 45.00 feet left of the centerline of existing right-of-way of Venice Road station 58+39.77;

Thence crossing through the lands of the Grantor, South 82 degrees 48 minutes 45 seconds East for a distance of 325.00 feet to an iron pin set being 45.00 feet left of the centerline of existing right-of-way of Venice Road station 61+64.77;

Thence along the easterly of said Grantor's land being the westerly line of land owned by Toft Dairy, Inc., An Ohio Corp. recorded in Deed Volume 517, Page 985, South 01 degrees 40 minutes 36 seconds East for a distance of 15.18 feet to the TRUE POINT OF BEGINNING, containing 0.112 acres, more or less, including 0.000 acres within the present road occupied, resulting in a net take of 0.112 acres out of Erie County Auditor's Parcel number 60-00662.000.

Prior instrument record as of this writing recorded in Official Record 348, Page 283, Official Record 348, Page 279 and Official Record 513, Page 205 in the records of Erie County.

This description was prepared by Michael J. Hudik, Ohio Registered Professional Surveyor number 6788, and is based on an actual field survey conducted by DLZ Ohio, Inc. in 2019 under his direct supervision.

All iron pins set are 5/8" rebar, 30" in length with yellow cap stamped "DLZ Ohio, Inc."

The bearings for this description are based on Ohio State Plane Coordinate system, South Zone, and the North American Datum of 1983 with the 2011 adjustment (NAD 83(2011)).

Michael J. Hudik P.S.
Michael J. Hudik, S-6788

11-19-19
Date

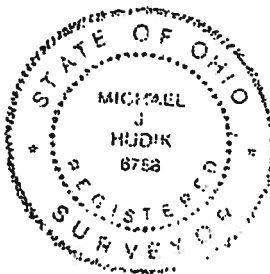


EXHIBIT A



6121 Huntley Road - Columbus, Ohio 43229-1003
Ph.: (614) 888-0040 Fax: (614) 848-6712

WEST SIDE UTILITIES
STATE OF OHIO, ERIE COUNTY,
CITY OF SANDUSKY
0.112 ACRE
1-WD BAILEY

