

## MEMORANDUM

To: Yellow Springs School District Board (“School Board”)

Fr: Citizens to Preserve Mills Lawn Greenspace

Date: March 4, 2024

RE: Permanent Preservation of Mills Lawn – Resolution to Proceed

Dear President Hempfling, Vice President Potter, and Members Bouquet, Magnus and Bailey:

Thank you for the opportunity to present this proposal to permanently preserve the Mills Lawn greenspace.

Background: The greenspace at Mills Lawn is a treasured educational and open space asset to the community. However, its permanent preservation has not yet been achieved. Information about the history of the former property of Judge Mills and Antioch College and its donation to the Miami Township School Board is attached.

This memo concerns *how* to preserve the greenspace.

There are two ways to permanently preserve greenspace in Ohio:

- 1) by placing a **conservation easement** on real property; and
- 2) by a fee simple purchase and sale to an eligible third-party with **deed restrictions**.

By either method, the preserved property would be restricted to use as public greenspace– including for exclusive school use during school hours. The most practical method for the School Board to preserve this greenspace is a **conservation easement**.

Conservation easements are authorized by O.R.C. §§5301.67-.70. The statutory requirements are strict. For this reason there is no “market” for conservation easements as for fee simple purchases of land. They cannot be bought and sold in a public sale.

Conservation Easements come in three sub-types based on how acquired:

- 1) A completely donated Easement;
- 2) A part donation, part sale of an Easement (a/k/a bargain sale); or
- 3) A full fair market value (“FMV”) sale of an Easement.

In all three cases, if the School Board placed a conservation easement on the Mills Lawn greenspace, the School Board would retain fee simple ownership.

The quickest way to permanently preserve the greenspace is by a completely donated Easement. This is because no funds are raised or change hands. The other two methods involve grant writing and/or fundraising. **Exhibit A** sets out answers to typical questions about a conservation easement on Mills Lawn, and the differences between part-donation, part-sale sale (“bargain sale”) and a full fair market sale of a conservation easement. Other than the match, there are no differences.

Who would hold the Easement? Per the statute, only certain types of organizations are authorized to hold a conservation easement, including certain government entities (§5301.68) and conservation-oriented non-profit/501(c)(3) tax exempt organizations (§5301.69(B)). Land trusts are eligible holders. No matter the purchase price, a statutory conservation easement would restrict the use of the land to open space, passive recreation, and natural vegetation.

Is there public funding for greenspace preservation? Yes. The primary public source of funding for greenspace preservation is the Clean Ohio Conservation Fund (“Greenspace Fund” or “Greenspace Program”) administered by the Ohio Public Works Commission (“OPWC”). The OPWC administers the Greenspace Fund through 19 multi-county districts called Natural Resources Advisory Councils (“NRACs”). Greene County is in NRAC District 11. The NRAC District 11 Greenspace Fund grant application deadline for this year is July 26, 2024.

Is Mills Lawn greenspace an eligible Clean Ohio project? The Citizens to Preserve Mills Lawn Greenspace (“CPMLG”) have confirmed the eligibility of this project for Clean Ohio Greenspace funding. On January 19, 2024, CPMLG member Laura Curliss spoke to Louis Agresta, NRAC District 11 Liaison, about using Clean Ohio funds to preserve Mills Lawn greenspace. Mr. Agresta confirmed the eligibility of the project and informed CPMLG that for 2024, District 11 has \$2.3 million to disburse for eligible projects.

**IMPORTANT TO KNOW:** The Clean Ohio Greenspace Program requires as **25% local match**. For example, if the fair market value of the Easement is \$500,000, then the School Board could provide \$125,000 as a donation of land value (not cash) to provide the match, resulting in a net payment for the easement of \$375,000 at closing. Match can be in other forms, such as in-kind donations or local cash match. Obviously, a cash match would require fundraising. The most typical way that match is provided is landowner donation of easement value to provide the 25% match. There are other project costs (e.g., title, closing costs, survey, appraisal) and those are eligible for 75% funding.

What are the differences between a bargain sale and a FMV sale of a conservation easement? A donated easement is self-explanatory. For the bargain sale of an

easement, the 25% match is provided through easement value (not cash). For a full FMV sale of the easement, the match must be raised from the public.

What are the next steps if the School Board wants to preserve Mills Lawn?

**RESOLUTION TO PROCEED.** What is needed now is a resolution from the School Board to proceed with authorizing the CPMLG to put together a plan for its preservation including a Project Agreement with the School Board and an identified holder. The CPMLG Committee would gather information for a Clean Ohio grant. An appraisal would be ordered, one that meets Clean Ohio criteria. The details of the preservation plan and grant application would (hopefully) be ready for presentation in May. The CPMLG would ask for a School Board liaison to work with them to shape the proposal. The CPMLG requests that the School Board pass a Resolution to Proceed at its March 14, 2024 meeting.

A schedule of pre-grant and grant deadlines and activities is also set forth in **Exhibit B** below.

\* \* \* \* \*

In conclusion, we are pleased to present the YSSD Board with this opportunity to permanently preserve this valuable community greenspace and to fulfill the vision of Judge Mills and Antioch College. In 1949, when the (then) 10+ acres of land formerly owned by Judge Mills was donated to the Miami Township School Board, the College did so expecting the land to be used

“...in such a way that it will be of value to the whole community and not the pupils of the school system alone. The letters [between Dr. McGregor, Antioch College, and Eugene Birch, Miami Township] agree that *as much as possible of the natural park area shall be preserved.*”

*Emphasis added.* Quoting letter of December 22, 1948 by Dr. Douglas McGregor, as reported in the Yellow Springs News, 4.22.1949 – “Officials Transfer Mills Lawn Deed.” Article available at [millslawngreenspace.org](http://millslawngreenspace.org), click on “Historic Artifacts.”

During his lifetime, Judge Mills created a central park around his home for the Yellow Springs community to enjoy. Indeed, the public walked, picnicked, and enjoyed the gardens around Judge Mills’ house. We hope to secure the future of this important greenspace in the heart of Yellow Springs for the future education and enjoyment of school children, citizens, and visitors and, at the same time, to provide some needed funds to the school district.

We ask for your favorable consideration of this request. Thank you for all of your hard work and dedication to our community and the education of its children.

Sincerely yours,

The Citizens to Preserve Mills Lawn Greenspace Committee – *on behalf of over 535 persons who have signed a Petition to Preserve Mills Lawn Greenspace.*

Mary Eby  
Bernadine Parks  
Terry Smith  
Michael Slaughter  
Cessili Slaughter  
Parker Buckley  
Carol Young  
Laura Curliss  
Liz Porter  
Neil Allen  
Anna Bellisari  
Phil King

Attachments:

Exhibit A – Chart comparing Bargain Sale and FMV Sale of a Conservation Easement  
Exhibit B – Pre-grant and grant activities schedule  
Resolution to Proceed to Develop a Plan to Preserve Mills Lawn Greenspace

**EXHIBIT A**  
**DIFFERENCES BETWEEN PRESERVATION BY**  
**CONSERVATION EASEMENT BY BARGAIN SALE OR FMV SALE**

DIFFERENCES	Bargain Sale	FMV Sale
Who owns what?	School Board continues to own the <b>fee simple</b> . A qualified holder holds the easement. Public access same as now, controlled by SB	<i>Same</i>
Can existing uses remain?	Yes – passive and active recreational uses as now + temp uses	Yes – same
Can the northeast playground be preserved for active recreation?	Yes	Yes
Would the 133 memorial trees stay? Including the old growth “3 sisters” white oaks?	Yes – the 133 Memorial trees in the greenspace area are one reason for preservation	Yes - same
How many acres to preserve as open space?	TBD – Suggest 4.5 acres west of parking area + NE playground .5 ac.	Same
Public access?	Same as now – off school hrs	Same as now – off school hrs
How protected?	The Easement has restrictive language and is monitored annually by Holder	Same
How is the purchase price determined?	OPWC requires an appraisal by a licensed appraiser on the <b>state-approved list</b>	Same
How is the 25% match obtained?	<b>75% funded</b> - 25% match provided by easement value donated as match	<b>100% funded</b> , <i>but</i> the 25% match must be raised from citizens, donors, public
The <b>McBride Study</b> (Apr. 2019) is the last appraisal of Mills Lawn. What was the fee simple worth at that time?	\$416,800 for 8.84 acres. This is \$47,149 per acre. At that price, the fee simple for 5 acres = \$235,745.	Same
On a percentage basis, how much would the conservation easement be worth per McBride?	Highly restrictive easements are worth 80-90% of the fee simple. At 80%, the Easement would be \$235,745 x .80 = \$188,596.	Same
What would be the 25% match?	\$188,596 x .25% = \$47,149. Donated value.	\$47,149 – provided by fundraising and in kind match

**EXHIBIT B  
TIMELINE**

2024-2025 SCHEDULE FOR CLEAN OHIO GREENSPACE GRANT

**PRE-GRANT ACTIVITY SCHEDULE:**

March 14, 2024 (6 p.m.) School Board Meeting – Resolution to Proceed to put together a Project Agreement and an application for Clean Ohio funds to preserve the greenspace by Conservation Easement. Tasks and responsibilities, timeline, results would be in a Project Agreement brought back to the School Board.

By April 30 – Complete Project Agreement

By April 30 – Appraiser opinion letter of value or restricted use appraisal for a Conservation Easement. Full appraisal by state-approved appraiser *after* grant awarded, paid for with grant funds.

May or June, 2024 - School Board meeting – public presentation of Resolution to Approve a Clean Ohio Grant application for greenspace funds, determine match, approve Project Agreement.

By July 12, 2024 – Finalize the Clean Ohio Grant Application with all exhibits ready, submit early if possible.

**GRANT DEADLINES FOR NRAC 11:**

**July 26, 2024** – Deadline for submission of grant documents via the OPWC portal

July 26-Oct. 1 – review by Louis Agresta, distribution to the NRAC 11 members

Oct-November – Site visit. District 11 meeting set for scoring; applicant presents to NRAC.

November 2024 – Decisions made by NRAC 11.

Dec-Feb. 2025 – Grant agreements sent out for signature, approval.

March 1, 2025 – Funds available for disbursement. Request funds.

March-April 2025– Close on the Clean Ohio preservation transaction. Funds to YSSD.

**YELLOW SPRINGS EXEMPTED SCHOOL DISTRICT**

**RESOLUTION 2024-\_\_\_\_\_**

**TO DEVELOP A PLAN TO  
PRESERVE THE MILLS LAWN GREENSPACE**

Whereas, the Board owns property at 200 S. Walnut Street, Yellow Springs, Ohio, otherwise known as the “Mills Lawn” property that contains open and forested areas (the “greenspace”); and

Whereas, the Board is aware of the history of the gift of the Mills Lawn property from Antioch College to the (then) Miami Township Board of Trustees for school and natural park land purposes, for the use of the entire community; and

Whereas, the greenspace contains over 37 Memorial Trees and three white oak trees over 300 years old; and

Whereas, pursuant to O.R.C. §§ 5301.67-70, the Board could place a conservation easement on the greenspace acreage at Mills Lawn in cooperation with a qualified charitable conservation organization.

NOW, THEREFORE, be it resolved that:

Section 1. Proceeding to Develop a Plan to Preserve Mills Lawn Greenspace. That the Citizens to Preserve Mills Lawn Greenspace should proceed with developing a plan, including funding, to permanently preserve the greenspace. The CPMLG should consider all viable options, including preservation with a statutory conservation easement.

Section 2. Developing a Project Agreement. That the CPMLG should develop a Project Agreement for School Board review to include a Clean Ohio Conservation Fund Grant application to fund the purchase of a conservation easement for the Mills Lawn greenspace.

So resolved this 14<sup>th</sup> day of March 2024, at a regular meeting of the Board by the affirmative vote of a majority of a quorum of those present.

ATTEST:

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Secretary



## Frequently Asked Questions

### **Who are the Citizens to Preserve Mills Lawn Greenspace?**

We are a citizens group which represents over 500 villagers who have signed a petition in support of preserving the greenspace that surrounds Mills Lawn School. Since October of 2020 we have actively sought to educate the community about the value and history of the greenspace and the potential threats to ongoing preservation. We have actively explored and evaluated legal options to secure preservation and have concluded that a conservation easement best works to protect this invaluable property from development while providing significant benefit to the schools.

### **What are the origins of the Mills Lawn property?**

The largely undeveloped greenspace that is known as Mills Lawn has been a central feature of our village since its inception. The Mills property was created almost 20 years before the Civil War. It was developed soon after Elisa Mills deeded the property to his son William Mills in 1842. As part of the original plat design for Yellow Springs, William Mills located his home in the center of approximately 20 acres which was originally bounded by Davis, Walnut, Elm and Phillips Streets. Contemporaneous reports indicate that the grounds were open to the public for their enjoyment. The property was purchased in 1866 by the wealthy industrialist William Means and held by the Means family until 1921 when by Arthur Morgan purchased it for or Antioch College. At that point Antioch subdivided property at what is now Limestone Street and housing on the Limestone/Davis block was developed for Antioch College Faculty. The Mills Mansion and the surrounding property was utilized by Antioch and the grounds remained open for the community's enjoyment. Please see the **History** page on our website for more details.

### **How is it that the School Board came to own the Mills Lawn Property?**

The end of WWII precipitated a housing crisis nationally as returning GI's flooded the housing market. Yellow Springs was not unaffected by the post war housing shortage. Having previously subdivided the property to build faculty housing, Antioch leadership was well aware of the commercial value of the Mills Lawn property for housing development and could have easily sold it as a solution to the village housing shortage. However, the trustees specifically decided against that option, citing that the forest tract situated in the center of the village was of unique and unusual value. They made a conscious decision to donate it to a local official or unofficial body which would **preserve** the property indefinitely.

Mills Lawn property was deeded by Antioch College to the Miami Township School Board in 1949. A letter from Antioch College states: "The Mills Lawn, because of its location and nature, is today an ideal location for a Yellow Springs Community Center. We at the College are interested in having it utilized for any non-commercial purposes which will promote the welfare of the community generally." They likewise asked that as much as possible the park-like nature of the property be preserved. We are asking the School Board to honor the intent of the donor. See the 1949 news article on our website.



### **Why is the history of the transfer important?**

In addition to promises made to the donors at the time of the transfer, the 37 Tribute Trees which grace the Mills Lawn property imply an expectation that those trees will safely stand as lasting memorials to the individuals honored. The community response to concerns that critical elements of the 2023 draft school plan might be eliminated surely indicated the high value this community places on honoring promises made. This is a community that takes commitments seriously. Those responsible for educating our youth should recognize that modeling integrity by honoring commitments is as important a part of education as assuring academic success.

### **Since ownership passed to the School Board, the property has remained undeveloped for over 70 years. Why should action be taken to preserve the Mills Lawn Greenspace right now?**

In 2019 the School Board commissioned a land use assessment study by **McBride Dale Clarion**. The report stated: "The site at 200 S. Walnut Street has about 4.83 underutilized acres and is zoned "R-C High-Density Residential," which allows a mix of single-family, multi-family, and accessory dwellings." It also outlined a conceptual plan for how the Mills Lawn Greenspace could be developed. At the February 2, 2021 meeting of the Citizens Advisory Team, the Superintendent, Dr. Terri Holden, shared options to move forward with renovating or replacing our school facilities. Three of the options under consideration involved closing Mills Lawn Elementary School. For each of these options, "*divesting Walnut Street assets*" is listed as an advantage.

The passage the 2023 Bond Issue/Income Tax does not ensure that the elementary school will remain on Mills Lawn for the foreseeable future. During the February 8, 2024 School Board meeting, in response to a question related to the details of the state funding, Superintendent Holden stated that the Enon road site would transition to a K-12 "at some undetermined point in the future". This means the greenspace remains at risk.

### **What are the advantages of the conservation easement option?**

The advantages of the conservation easement proposal are as follows:

- The School Board retains ownership and use of the property as for a long as it is needed for an elementary school.
- Preservation would assure the continued availability of the greenspace for outdoor educational and recreational activities.
- The Conservation easement permanently protects the greenspace in accordance with the intent of the donors and promises made by the School Board at the time the property was transferred from the donor to the School Board.
- In the event that the Mills Lawn school were to close, the approximately 2.5 acres at the corner of Limestone and Walnut Streets would remain available for development.
- The Clean Ohio grant provides the School Board with a cash payment which can be used as the school board deems appropriate.
- The threat that development poses to the old growth and mature trees as well as the thirty-seven Tribute Trees that grace the property would be eliminated.
- Present and future generations would retain public access to a unique property which has been treasured and enjoyed by generations of villagers since its founding.

The Mills Lawn greenspace has been at the heart of the Village since its founding. Commitments, both verbal and implied, were made to the original donors to respect their wishes, as well as to the families and others whose Tribute Trees grace the property. Without a conservation easement to protect it, it remains at risk of disappearing forever.

### **What about the idea that the Property could be used for meet the need for affordable housing?**

While the need for affordable housing is a national as well as local challenge, the reality is that the property is not for sale and will not be for sale as long as the school remains sited at Mills Lawn. Just as the Antioch donors did not consider sale of the Mills Lawn property to be the answer to the post war housing crisis, Mills Lawn is not a viable alternative to today's needs.

## Q&A about the Preservation of the Mills Lawn Greenspace

Answers from Citizens to Preserve Mills Lawn Greenspace (and where applicable, based upon Clean Ohio Conservation Fund criteria).

1. Would a School Board member be derelict in their fiduciary duties by approving the placing of an O.R.C. 5301.67-70 conservation easement upon a piece of land owned and used by the school district?

ANSWER: No. See Ohio School Board Association flyer on “Disposal of Real Property.” The School Board can work with charities to sell or donate real property to them for a public purpose.

2. Same as above, but what if the School Board sells the piece of land after the Easement is placed?

ANSWER: After the placement of a conservation easement, the SB could sell the fee simple (the Deed) of the land and that transfer of ownership would include all “easements of record.” For the acreage under the conservation easement, a sale of that portion would most likely be to another government entity such as the Village or a Park District given that it would be restricted to greenspace purposes.

3. Can an Ohio School District sell land for less than fair market value?

ANSWER: Yes. See Ohio School Board Association flyer on “Disposal of Real Property.”

4. Can an Ohio School District sell a conservation easement for less than fair market value?

ANSWER: Yes. See Ohio School Board Association flyer on “Disposal of Real Property.”

5. Is the School District required to first offer an [O.R.C. §§5301.67-70] conservation easement for sale to the general public?

ANSWER: No. In fact, there is no legal way to do so.

O.R.C. §§5301.67-70 strictly limits the organizations who can hold (own) a conservation easement to certain government entities (e.g., a Soil & Water Conservation District) or to a qualified conservation organization that is 1) non-profit, 2) 501(c)(3) tax exempt and 3) a conservation organization (such as a land trust).

6. Can the School District apply the proceeds from the sale of a conservation easement to debt it owes to a lender?

ANSWER: This question is best answered by the School Treasurer.

7. Could applying the funds from the sale of a conservation easement to the bond debt lead to the expiration of a levy earlier than anticipated?

ANSWER: This question is best answered by the School Treasurer.

8. How would the fair market value of a conservation easement be determined?

ANSWER: By a state-qualified appraisal. The state qualified appraisal is a “*Before and After*” appraisal. First, the appraiser determines the fair market value of the fee simple unrestricted and then the fair market value of the land with the Conservation Easement restrictions. A Clean Ohio grant applicant must use a state-approved appraiser.

9. What would be the legal answer to “the piece of land already belongs to the taxpayers - the SB should preserve it for free or for significantly less than market value”?

ANSWER: Two responses. First, the fact that the public already “owns” the land is a reason to do a bargain sale of a conservation easement through the Clean Ohio program. It’s a “win-win.” The School Board receives funding for 75% of the conservation easement value and it would agree to provide the 25% match (in value) for the Clean Ohio grant. This way the public does not have to contribute additional funds in order to preserve land they *already own*. The School Board benefits by getting a cash payment for 75% of the value of the conservation easement.

The second response is to correct a misperception. The value of a conservation easement on this property would not be “significantly less than fair market value.” Why? Because the Clean Ohio restrictions essentially will remove 80-90% of the fee simple value through the restrictions on future development and subdivision. Thus, the appraisal will take that into consideration. If one acre is worth \$100,000, and the easement valued at 80% of that, then the Easement’s fair market value is \$80,000 per acre. So, in fact, the SB would be getting most of the value of the land (through Clean Ohio) and will still own the fee simple.

10. If a conservation easement was placed on a school property, what use would be limited for the school district?

ANSWER: See 12 below.

11. Would a conservation easement on the greenspace area of Mills Lawn allow for exclusive use by the School Board during school hours?

ANSWER: Yes.

12. Can we place a conservation easement on a school property and still get amenities?

GENERAL ANSWER: All temporary “structures” are permitted: Tents, stages, picnic tables, etc. The “rule” to remember is “no concrete”. If you pour concrete, it’s not a temporary structure.

NOTE: The area where the old tennis courts are can be “carved out” of the conservation easement as “building envelope.” This would allow for specific uses such as:

- a) ...outdoor stage/learning space? Yes. See above
- b) ...biking track? A dirt trail around the perimeter may be allowed.
- c) ...pickle ball court? Yes, in a building envelope like the tennis courts. See above.
- d) ...built on them after the easement is in place? Yes, given the guidelines above.

13. Can a conservation easement be time-limited (for example, for 10 years) and renewed in the future?

ANSWER: Theoretically, yes. Through the Clean Ohio Conservation Fund purchase program, no.

14. Are there other schools in Ohio that have placed conservation easements on their properties? If so, what limitations are included in their agreements?

ANSWER: Great question. We will look into that. There are multiple examples governments who have done so – community development corporations, municipalities, townships, municipalities. A leader in this area is Anderson Township in Cincinnati and their greenspace program. Many schools have “land labs” and some of these might be permanently preserved properties. The Clean Ohio Program is the most frequently used program for placing conservation easements on public property in Ohio.

15. Would property maintenance be the sole responsibility of the land owner or are any absorbed by the qualified government entity/donee? If of the land owner, what compensation would the land owner receive for maintaining the property?

ANSWER: The landowner (SB) retains the fee simple. Therefore, the maintenance responsibilities. If another government entity owned the fee simple, they would maintain it. The donee/Holder of the conservation easement could agree to take on the maintenance, most likely through a property management agreement. Typically, the more responsibilities a Holder takes on beyond the annual monitoring, a stewardship contribution to cover those costs would be requested. It is unusual for

a Holder of a conservation easement to agree to take on property maintenance responsibilities; however, there is no legal reason that they could not agree to do so.

16. The public does not have access to property protected by an easement unless granted in the original document. *[Answer: depends, you are referring to land held by private landowners]*. Assuming the public will have access, what rights will they have during school hours and who is responsible for enforcing those rules during school hours?

ANSWER: Public access is governed by the School Board. Historically the School Board has only excluded the public during school hours, which it can continue to do. To prevent the public from coming onto the property completely would, in our view, would 1) likely not be received well by the public and 2) would violate the original intention of the gift of Antioch College.

17. The most recent Preserve Mills Lawn Greenspace action plan is dated Feb 8, 2022. The community approved a facilities plan in November 2023 that maintains MLS in its current location. Are there any updates/changes to the action plan as of February 2024?

ANSWER: The action plan has not changed. Again, *permanent* preservation can only be achieved through a statutory conservation easement or through deed restrictions similar to those used in the Clean Ohio Conservation Fund program; however, deed restrictions are not an option unless the School Board wants to sell the property to an eligible buyer (eligible for Clean Ohio funds).

18. Does the Preserve Mills Lawn Greenspace organization have evidence that the current administration/school board has intentions of using the space at Mills Lawn for anything other than educational, community, or recreational purposes?

ANSWER: As stated above, the only permanent way to protect the greenspace is either with a statutory conservation easement or deed restrictions. We are grateful that this School Board is willing to discuss making this happen.

19. According to the first statement in the school district code of ethics, "A Board member's first and greatest concern must be the educational welfare of all students attending the public schools." How does limiting the potential for land use benefit the students attending our district?

ANSWER: The preservation of and access to green and open space, a space with mature trees and a lot of wildlife, particularly birds, is known to be of education benefit to students. There are numerous studies on this point. Beauty is also an essential human need and the elementary students at Mills Lawn have long enjoyed the benefits of having access to and recreation in a beautiful greenspace.

20. The school facilities levy that just passed only provides rehabilitation of the current Mills Lawn school building. The current building structure consists of 1950's single layer brick (not 1890's 2-3 layer brick). Since the building is being rehabilitated rather than replaced, a new building will likely be necessary in 25-30 years. Where would the district put classrooms during the construction of the new building?

ANSWER: This issue was addressed in the current planning for the current renovations. There are lots of other ways to address this than to build on valuable community greenspace, greenspace that would also be lost to the children forever if built upon and the current footprint of Mills Lawn turned into another use.

Thank you for the opportunity to answer these questions.

Citizens to Preserve Mills Lawn Greenspace

March 5, 2024



# District property disposal

Ohio School Boards  
Association  
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Columbus, Ohio  
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*This fact sheet is designed to address the most frequently asked questions about disposal of school district property. This information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.*

## What is the difference between “real property” and “personal property”?

Real property refers to land and things that are permanently attached to the land, such as school buildings or stadiums. Personal property generally refers to items that are movable and not a part of the land, including textbooks, desks and computers.

## Is the board required to offer the district’s real property to other entities prior to disposing of it?

Yes. [Ohio Revised Code Section \(RC\) 3313.413](#) requires a school district board of education to follow specific procedures when it decides to dispose of real property. The board of education first must offer the property for sale to the governing authorities of all startup community schools, boards of trustees of any college-preparatory boarding schools and the governing bodies of any science, technology, engineering and mathematics (STEM) or science, technology, engineering, arts and mathematics (STEAM) schools located within the district’s territory, giving priority to high-performing community schools. [RC 3313.411](#) requires school districts to offer school property to community schools, college-preparatory boarding schools and STEM and STEAM schools when that property becomes an “unused school facility.” [RC 3313.411](#) provides that when a school district has not used real property for “school operations including, but not limited to academic instruction or administration” for one year, the property becomes an “unused school facility.” Beginning July 1, 2022, the definition of an “unused school facility” will also include any school building that has been used for direct academic instruction but less than 60% of the building was used for that purpose in the preceding school year.

Districts must offer their unused school facilities for sale or lease to the governing authorities of all startup community schools, boards of trustees of any college-preparatory boarding schools and the governing bodies of any STEM or STEAM schools located within the district’s territory, giving priority to high-performing community schools.

## What is a high-performing community school?

A “high-performing” community school is either a newly established community school implementing a community school model that has a track record of high-quality academic performance as determined by the Ohio Department of Education (ODE); or one that meets the following conditions:

- the school has received either a grade of A, B or C for the performance index score or a performance rating of three stars or higher for achievement or has increased its performance index score in each of the three previous years of operation, and the school has received a grade of A or B on the value-added progress dimension or a performance rating of four stars or higher for progress on its most recent report card;
- the school serves only grades K-three and has received either a grade of A or B for making progress in improving literacy measure or a performance rating of four stars or higher for early literacy on its most recent report card;

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For more information on this subject, please contact OSBA’s Division of Legal Services

revised 9/21

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- the school primarily serves students enrolled in a dropout prevention and recovery program and has received a rating of “exceeds standards” on its most recent report card.

[RC 3313.413\(D\)](#) requires ODE to post a list of high-performing community schools annually by Oct. 1.

### **What happens if no high-performing community schools are interested in purchasing or leasing the property?**

If no high-performing community school notifies the treasurer of its intention to purchase the property within 60 days, the school district then must look to the governing authorities of any community schools, the boards of trustees of any college-preparatory boarding schools and the governing bodies of any STEM or STEAM schools located within the district who have notified the district treasurer of their intention to purchase or lease the property within 60 days, prior to disposing of the property pursuant to [RC 3313.411](#). The board of education also may, but is not required to, offer the property to the governing authorities of community schools with plans, as stipulated in their contracts, either to relocate to the district or add facilities to be located within the district. If no governing authority, board of trustees or governing body notifies the district treasurer of its intention to purchase the property, the district may offer the property for sale in the manner prescribed by [RC 3313.41](#).

### **What happens if an eligible party is interested in purchasing or leasing the property?**

If one eligible party notifies the district treasurer of its intention to purchase the property within 60 days, the district board must sell the property to that party at a price not greater than the appraised fair market value of the property. If more than one eligible party offers to purchase the property, the board shall conduct a public auction for those interested parties. Only those parties who initially notified the treasurer of their interest in the property are eligible to bid in the auction. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property, as determined in an appraisal of the property that is not more than one year old.

If one eligible party notifies the district treasurer of its intention to lease the property within 60 days, the district board must lease the property to that party at a price that is not greater than the fair market value for such a leasehold. If more than one party notifies the treasurer of its intention to lease the property, the district board must conduct a lottery to select the party to which the district board will lease the property. Again, the district board

must lease the property to the party at a price that is not greater than the fair market value for such a leasehold, as determined in an appraisal of the property that is not more than one year old.

If no eligible party accepts the offer within 60 days, the board may dispose of the property by auction or private sale, as may be required.

### **Public auction**

#### *When is the board required to hold a public auction?*

In most cases, if the value of the real or personal property exceeds \$10,000, a board of education is required to sell the property at a public auction. At least 30 days before the auction, the board must notice the auction either by publishing a notice in a newspaper of general circulation or by posting notices in five of the most public places in the school district.

Once the board has published or posted the initial notice, it has satisfied the statutory requirement. The Ohio attorney general has held that continuous publication up until the auction date is not required ([1974 Ohio Atty.Gen.Ops. No. 74-002](#)).

#### *How does the district determine if the value of the property exceeds \$10,000?*

Prior to the sale, the board may hire an appraiser to appraise the property or may make its own determination as to whether the aggregate value of the property exceeds \$10,000. In the absence of fraud or a gross abuse of discretion, the judgment of the board will not be disturbed by a court of law. The board also may have adopted board policy setting forth procedures for determining the value of the district property.

#### *Must a licensed auctioneer conduct the public auction?*

No. An auctioneer’s license is not required to conduct a district’s public auction, provided that the individuals involved in the auction are not compensated for their services.

#### *Is the board required to sell the property to the highest bidder at the public auction?*

No, if it finds the highest bid to be insufficient or unacceptable. A board has the discretion to reject any and all bids made on the property. However, the Ohio attorney general has held that if the board does not reject the bids and the property is sold at the public auction, it must be sold to the highest bidder ([1961 Ohio Atty.Gen.Ops. No. 61-2395](#)).



*Can the board meet the public auction requirement by soliciting written sealed bids from interested buyers?*

The language of the statute expressly requires the board of education to conduct a public auction. Public auctions are less secretive and typically more competitive than when sealed bids are used, which arguably provides a greater benefit to the board trying to sell property.

An argument can be made that due to the [RC 4707.01](#) definition of the term “auction,” sealed bids could be used. This provision, however, refers to auctions generally and not specifically to public auctions. Therefore, there is no definitive, affirmative statutory allowance for using sealed bids in a public auction setting. Districts choosing to do so should work with board counsel.

*What happens if the district fails to comply with the statute requiring a public auction?*

A court could stop a proposed sale or set aside a sale that has already been completed if the sale is or was improperly executed.

*How long is the district required to maintain records relating to the public auction?*

[RC 4707.21](#) requires districts to keep records relative to their sponsored auctions for up to two years after the auction date. These records may include settlement sheets, written contracts and copies of any advertising or notices that list the items for auction.

### **Private sale**

*When can the board sell district property at a private sale?*

A board of education may bypass the public auction requirement and sell its property at a private sale when one or more of the following exceptions are met:

- the value of the property does not exceed \$10,000;
- the property has been offered for sale at public auction at least once and has not been sold;
- the buyer of the property is a municipal corporation, county, township, school district or other public entity enumerated in [RC 3313.41](#);
- the property is being disposed of as part of a trade or exchange.

*What rules govern the private sale of district property?*

Surprisingly, there are few rules that govern how a school board may dispose of its property through a private sale. The sale may be made “upon such terms as are agreed upon” by the parties. The board can sell the property by any method it chooses, but should act to authorize the final sale during a board meeting. No form of public notice is required by statute, but OSBA recommends soliciting bids from more than one source to make sure the board is getting the best price for the property and to avoid claims of favoritism.

*May the board use eBay or Craigslist to host our private sale?*

Yes, provided that the property qualifies as property that can be sold at a private sale.

### **Trading property**

*May a board of education trade its personal property for personal property owned by another person or entity?*

Yes. A board of education may trade its personal property for other items of similar personal property. The items traded may constitute all or part of the purchase price of the new items. The board may trade the item upon such terms as are agreed upon by the parties to the trade. ([RC 3313.41\(D\)](#)) There is no requirement for the letting of bids or public notice.

*May a board of education trade its real property for real property owned by another person or entity?*

Yes. If the board has identified a parcel of real property that it determines is needed for school purposes, the board may acquire that property by exchanging the board’s property for the desired real property. Alternatively, the board may trade a parcel of real property which it owns as part of the price of another specific parcel. A trade of real property requires a majority vote of the full board and must be made by a conveyance executed by the president or treasurer of the board ([RC 3313.41\(F\)](#)).

### **Donations**

*May a board donate its unneeded property?*

In general, boards of education have no authority to donate or give school property to any private person, public corporation or agency. However, there is an exception for the disposal of surplus goods. Boards of education are permitted to donate unneeded property to certain civic and charitable organizations when the board determines that the fair market value of such property does not exceed \$2,500.

*How does a board donate its unneeded property?*

The board must first adopt a resolution that outlines its intent to make unneeded, obsolete or unfit-for-use property available to nonprofit organizations. The resolution should set forth any guidelines or procedures that the board determines are necessary to implement their donation program and must indicate if the board will be responsible for conducting the program or if it will hire a private contractor to run the program.

After adoption of the resolution, the board must publish, in a newspaper of general circulation within the school district, a notice of its intent to donate unneeded, obsolete or unfit-for-use school district property to eligible nonprofit organizations. The notice must include a summary of the information contained in the resolution and must be published twice, with the second notice published not less than 10 and not more than 20 days after the first notice. A similar notice is required to be posted continually both at the board's office and, if it maintains one, on the district's website.

*Which civic or charitable organizations are eligible to receive donations?*

To be eligible to receive donations, the organization must submit to the board of education written notice of its interest in being considered for such donations. The notice must include all of the following:

- evidence that the organization is a nonprofit organization located in Ohio;
- evidence that the organization is exempt from federal income tax pursuant to sections 501(a) and 501(c)(3) of the Internal Revenue Code;
- a description of the organization's primary purpose;
- a description of the type(s) of property the organization needs;
- the name, address and telephone number of the person designated by the organization to receive the donated property.

The board must maintain a list of all nonprofit organizations that notify the board of their desire to obtain donated property.

*How are donations to eligible civic or charitable organizations made?*

Donations are made to eligible organizations on a "first come, first served" basis unless the board has determined, by resolution, that an organization should be given priority with respect to the item in question. When a board determines an organization should be given priority, the board's reasons for giving priority must be included in the resolution.

*The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*

## Ohio Watershed Network

<https://ohiowatersheds.osu.edu>

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**Watershed  
Management**

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**Stream Systems**

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**Human Dimensions**

**Collaborative  
Watershed  
Management**

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**Social Indicators**

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**Mental Models**

**Basic Stream  
and Watershed  
Ecology Lesson  
Plans**

**Suburban**

**Rural  
Residential**

**Agricultural**

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**Four Keys to  
Effective  
Education and  
Outreach Plans**

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**A Case Study:**

## Conservation Easements

A conservation easement is a legal agreement between a landowner and public or private entity, such as a land trust, or a government agency. An easement places a limit on how the land can be used in the future. For example, it may require that landowners eliminate all management on a given piece of land in favor of natural succession. Conservation easements typically emphasize conservation and environmental outcomes on the land.

An agricultural easement is a specific type of conservation easement. It is a legal agreement between a landowner and a public or private entity, but rather than focusing on conservation outcomes, it likely encourages continued agricultural use of the land. An agricultural easement typically will prevent conversion of land into another use, such as a housing subdivision, while allowing the farmer to continue using the land for agriculture.

For additional discussion see OSU Extension Fact Sheet CDFS-1261-98: <http://ohioline.osu.edu/cd-fact/1261.html>





Photo credit: <http://clean.ohio.gov/images/home-farmland.jpg>

## Advantages

From the perspective of a landowner, conservation or agricultural easements provide payments for protection of the land. The specific details of each easement will differ. In the case of an agricultural easement, landowners can continue farming for as long as their agreement allows them (likely in perpetuity). In the case of a conservation easement, landowners can often continue using the land however they used it in the past, although there may be some limitations on how they can manage the land. For example, they may be prevented from mowing the grass or cutting timber. Most easements prevent landowners from converting the use or management of the land to something else.

The typical conservation easement prevents the conversion of farmland, forestland, wetland, or other natural land to developed uses. Conservation or agricultural easements can also be written to guarantee specific uses of the land, such as in specific types of farming or specific levels of intensity in forest management.

From the perspective of a land trust or a conservation organization, easements provide conservation at a lower cost than if they had to purchase the land outright. In many cases, landowners may be unwilling to sell land outright, but willing to protect it or provide environmental amenities. In cases like this, easements provide an opportunity to protect land which otherwise may not be protected.



Photo: <http://www.ducks.org/media/Conservation>

## Costs

For a landowner, easements provide benefits and costs. The benefits typically involve cash payments, either upfront, or amortized over a specific time period. Because easements limit the future use of the land, they reduce the value of the land (because future owners are prevented from using the land in specific ways). The payments compensate the landowners for placing the easement on their land.

The value of the payments will be negotiated between the landowner and the organization that is paying for the easement. Typically the payment will be set at the difference between the value of land in a developed use and the value of the land in the current use. For instance, suppose the current use is farming, and the value of the land in farming is \$3500 per acre. If developers are paying \$6000 per acre for similar land nearby, then the value of the easement would be \$2500 per acre, or  $\$6000 - \$3500$ . In this case, the conservation organization should pay at minimum \$2500 per acre to place the easement on the deed.

Landowners who donate a conservation easement can obtain a tax deduction. In the example above, the tax deduction would be equal to \$2500 per acre, which is the value the landowner has lost by placing a permanent easement on the land.

The cost of a conservation or agricultural easement is the lost future opportunity to use the land for something else. Because most easements are permanent, they will reduce the value of land in a future sale. In urbanizing areas, where land values are high and potentially growing, this can be a significant cost. Easements are placed on land and thus are transferred from one owner to another. They typically cannot be removed without the consent of the organization that purchased the easement.

Landowners need to hire a lawyer to be sure their interests are served when the easement, or restriction, is placed on the deed. They can request that the conservation organization pay their legal bills, but they need to be sure to hire their own lawyer, who looks out for their interests. Landowners should also be sure to obtain at least one independent estimate of the value of their land from a certified appraiser.



Photo credit: Katie Waller

## Next Steps

Interested landowners should contact their local soil and water conservation district as a first step. There are also some excellent resources available on the internet. The Coalition of Ohio Land Trusts provides resources on their website ([www.ohiolandtrusts.org](http://www.ohiolandtrusts.org)), as well as lists of land trust organizations throughout the state.

There are some federal and state programs available for certain types of easements. The Ohio Department of Agriculture manages

the Clean Ohio Fund, which provides funds for agricultural easements on working agricultural land. The US Department of Agriculture also has an agricultural easement program called the Farm and Ranch Lands Protection Program (FRPP). The Farm and Ranch Lands Protection Program in Ohio is managed through the Ohio Department of Agriculture's Clean Ohio Fund. Information on both programs can be found at the following website: [http://www.agri.ohio.gov/divs/farmland/farm\\_aepp.aspx](http://www.agri.ohio.gov/divs/farmland/farm_aepp.aspx)

The Ohio Department of Natural Resources Division of Forestry manages the Ohio Forest Legacy program, which uses federal funding to place conservation easements on working forestlands. Information on the Forest Legacy Program can be found at: <http://ohiodnr.com/tabid/5293/Default.aspx>

Search



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## OHIO WATERSHED NETWORK

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