

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION COUNTY CIRCUIT COURT  
49C01-1906-PL-023150  
CAUSE NO. 0000006448

This hearing will take place via Zoom.

IN THE MATTER OF THE )  
 )  
BEN DAVIS CONSERVANCY DISTRICT )

Meeting ID: 886 413 7479

Passcode: 461970

You can appear via Zoom.com or by  
calling Zoom at 312-626-6799.

**ORDER SETTING PUBLIC HEARING**

Comes now the Ben Davis Conservancy District, by its chairman, and files a Petition to Increase Funding Amount to Purchase Land for Sewer Treatment Facility and Increase Bond Solicitation Amount.

The Court being advised now orders that a public hearing be held in the Marion County Circuit Court, via remote video hearing, on the 26th day of March, 2021, at 1:30 o'clock,    p.m. via Zoom.

Remote video hearing instructions will be sent to counsel of record. Remote video hearing login information can be found at <https://mycase.in.gov> by entering Case Number 49C01-1906-PL-023150. The login information will be posted in the Case Chronology as the event titled "Video Hearing Information." If you have questions regarding use of remote video hearing, please contact the Marion County Circuit Court at [MC01-Civil@indy.gov](mailto:MC01-Civil@indy.gov) (at least two business days prior to the hearing) or call (317) 327-4012.

The Court further orders that publication be made in accordance with law and orders the Clerk to sign the Notice to Freeholders provided to the Court advising all freeholders of the public hearing.

All of which is ordered February 17, 2021.

*Amber Collins-Gebrehiwet*

Amber Collins-Gebrehiwet, Magistrate  
Marion Circuit Court

DISTRIBUTION:

Jennifer M. Hess  
[Jen.Hess@HHDLegal.com](mailto:Jen.Hess@HHDLegal.com)

STATE OF INDIANA            )  
                                      ) SS:  
COUNTY OF MARION        )  
  
IN THE MATTER OF THE                                )  
  )  
BEN DAVIS CONSERVANCY DISTRICT                )

IN THE MARION COUNTY CIRCUIT COURT  
CAUSE NO. 49C01-1906-PL-023150

**PETITION TO INCREASE FUNDING AMOUNT TO PURCHASE LAND FOR SEWER  
TREATMENT FACILITY AND INCREASE BOND SOLICITATION AMOUNT**

Comes now the Ben Davis Conservancy District ("BDCD"), by its Chairman of the Board of Directors, and petitions the Court to Increase Funding Amount to Purchase Land for Sewer Treatment Facility and Increase Bond Solicitation Amount, and would show the Court as follows:

1. That on or about January 4, 2019, the Ben Davis Conservancy District, by its Chairman of the Board of Directors, Fred Buckingham, filed a Second Amended Petition For Authority to Take Preliminary Steps to Secure Funding for A Proposed Sewage Treatment Facility at Market Rates.
2. That a public hearing was held before this Court on March 15, 2019 and notice was given pursuant to statute and published in the Indianapolis Star.
3. That on March 15, 2019, this Court issued an Order Approving and Authorizing the Ben Davis Conservancy District to Take Preliminary Steps to Secure Funding for A Proposed Sewage Treatment Facility At Market Rates and ordered, in part, that the Conservancy Board as authorized to proceed with Bond Solicitations in a sum not to exceed \$15,000,000 and to "Commit to purchase land at other available locations and to purchase said land in fee simple absolute for a sum not to exceed \$1,000,000."
4. That the Ben Davis Conservancy District was not able to obtain an appropriate parcel of property for the Sewer Treatment Facility under the sum of \$1,000,000 despite an exhaustive search.
5. That the Ben Davis Conservancy District has found a parcel of property that is suitable for use as a sewage treatment facility and, after several years of searching for an appropriate parcel of property and after consultation with Triad Associates (the Engineering Firm who advises the Ben Davis Conservancy District), is thought to be the best available land option for the building and operation of a sewage treatment facility.
6. The property is located at 900 S. Tibbs Avenue, in Marion County, Indiana.
7. The Ben Davis Conservancy District executed at Option To Purchase Real Estate in which the Ben Davis Conservancy District has the option to purchase this property at \$200,000 per acre for 7.25+/- Acres for a total purchase price of \$1,450,000.00 plus real estate commission of 4% of the Gross Purchase Price owed to Lee & Associates of Indianapolis, Indiana for their services as the Agent for the Ben Davis Conservancy District. In addition, the Ben Davis Conservancy District may have the ability to purchase an abutting parcel of property consisting of approximately 2.7 acres which is

believed to be owned by CSX Railroad which would permit expansion of the facility in the future.

8. That the Ben Davis Conservancy District is a "special taxing district" pursuant to I.C. 36-1-2-18.
9. By definition, special taxing districts are considered a "political subdivision" pursuant to I.C. 36-1-2-13.
10. That political subdivisions are bound by I.C. 36-1-10.5 *et al* with respect to the purchase of land.
11. That the Ben Davis Conservancy District, through its Board of Directors has complied with the procedure mandated by I.C. 36-1-10.5-5 and passed the appropriate resolutions and engaged two appraisers, to wit Roger P. Miller, ASA of RPM Asset Valuation Services, Inc. and Stephen A. Traynor, Indiana Certified General Appraiser of Traynor & Associates, Inc.
12. That Mr. Miller appraised the property at \$1,600,00.00.
13. That Mr. Traynor appraised the property at \$1,350,000.00.
14. Said appraisals are on file with the Ben Davis Conservancy District pursuant to I.C. 36-1-10.5-5(3) and will be maintained on file for a minimum of five (5) years).
15. That the average of the two appraisals is \$1,475,000, which is below the Option Price of \$1,450,000 and as such is in compliance with I.C. 36-1-10.5-6 which prohibits purchase of land for greater than the average of two appraisals received under I.C. 36-1-10.5-5.
16. That the Ben Davis Conservancy District would request permission to purchase land for the price contemplated in the Option, to wit, \$1,450,000.00 plus 4% Commission to Lee & Associates as Buyer's Agent (\$58,000.00) and permission to purchase a second parcel that is contiguous to the Option Parcel (from CSX Railroad) in the event the CSX property is for sale.
17. Given the foregoing, the Ben Davis Conservancy District would request permission to commit to purchase land in fee simple absolute for a sum not to exceed two million dollars (\$2,000,000). While it is not anticipated that the total cost of both parcels will equate to \$2,000,000, the Ben Davis Conservancy District would request permission to purchase land in an amount not to exceed \$2,000,000 to ensure that the BDCD has the ability and authority to negotiate in the best interest of BDCD freeholders without multiple requests to the Court.
18. That the Ben Davis Conservancy District believes that financing the sum of \$15,000,000 is no longer sufficient for the project and would request authorization to proceed with Bond Solicitations in a sum not to exceed twenty million dollars (\$20,000,000).
19. That before the Board proceeds with any further action with respect to executing a purchase agreement or financing agreements, it is felt that leave of the Court should first be obtained after a public hearing.

WHEREFORE, the Board prays that the Court:

1. Set this matter down for a public hearing (**2 hours requested at least thirty (30) days in the future to allow the Ben Davis Conservancy District to Effectuate Publication**) and allow all participants to appear electronically in compliance with Governor Holcomb's Executive Orders 20-04- and 20-09 in response to the coronavirus pandemic.
2. Approve the Board's seeking market rate funding for financing of a sewage treatment facility in the amount of approximately twenty million dollars (\$20,000,000).
3. Approve a purchase in fee simple of available land for a sum not to exceed two millions dollars (\$2,000,000).
4. Grant all other proper relief.

I affirm under the penalties of perjury that the foregoing is true to the best of my knowledge and belief.

BEN DAVIS CONSERVANCY DISTRICT

Dated: 12-30-2020

By: 

Fred F. Buckingham, Chairman of the  
Board of Directors of the Ben Davis  
Conservancy District

Jennifer M. Hess (24227-49)  
Hess Hess & Donnelson LLP  
2000 East 116<sup>th</sup> St., Ste. 106  
Carmel, IN 46032  
317-844-1377  
317-844-1408 (FAX)  
Jen.Hess@HHDLegal.com (EMAIL)