

# **The Construction Conversation**

## **Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter**

April, 2020

A Service of Luther L. Liggett, **Graff & McGovern, LPA**  
www.GraffMcGovern.com

### **Legislative: General Assembly Slow Open**

Effective May 4<sup>th</sup>, the Ohio House will begin a staggered work schedule, along with committee hearings with social distancing. (Cont'd page 2.)

### **Administrative: Re-Opening Debate**

Conservative Republican House members released their own version of a plan to re-open businesses, while the Governor and Democrats released more gradual recommendations. (Cont'd page 2.)

### **Administrative: OFCC Bidding New Projects**

The Ohio Facilities Construction Commission is bidding new work, while updating its construction site protocol to include mandatory distancing and facemasks on construction sites. (Cont'd p. 2.)

### **Legislative: Capital Appropriations**

Given that the House Speaker suggested that construction funding appropriations will lapse, four construction industry groups joined to urge the General Assembly to fund construction for the next biennium. (Cont'd p. 2.)

### **Judicial: Surety Not Liable for Defective Mechanics Lien**

A Court of Appeals affirmed a trial court dismissal of a surety whose bond was

substituted for a mechanics lien, based on the underlying lien being filed late and therefore invalid. (Cont'd p. 3.)

### **Judicial: Arbitration Means Complete Determination**

A Court of Appeals reversed a trial court which stayed the trial schedule for a temporary time, only, rather than staying the schedule until arbitration was complete. (Cont'd p. 3.)

### **Judicial: Improvement Is Not Replacement**

A Court of Appeals held that a municipal lessee of a bridge as "tenant" which is responsible for maintenance is not responsible to replace the capital asset, which is the owner's responsibility and cost. (Cont'd p. 3.)

# The Construction Conversation

April, 2020

Page 2

## Legislative: General Assembly Slow Open (Cont'd)

House Committee members (State Representatives) will attend in the Committee Hearing Rooms with staff, while the public and press will occupy overflow rooms nearby.

All Hearings can be seen live on the Ohio Channel.

## Administrative: Re-Opening Debate (Cont'd)

The Governor's Stay-at-Home Order expires on Friday, May 1, 2020. The Governor's Plan to re-open businesses requires protocols including maximum occupancy at half of the Building Code rating.

The Ohio Mayors Alliance, the Municipal League, and the County Commissioners Association all praised the plan. The Ohio Restaurant Association asked for a May 15<sup>th</sup> opening of restaurants.

A majority of House Republicans proposed re-opening all businesses on or before May 1<sup>st</sup>. The Speaker was not a signatory.

Democratic House leadership urged more caution, concerned of a relapse which might force re-closure. They labeled the current levels of testing "woefully inadequate."

## Administrative: OFCC Bidding New Projects (Cont'd)

Three new horizontal project bids for May include:

<u>Bid</u>	<u>Project</u>
5/22/20	New FSMF Dept Transportation Trumbull County \$ 8,860,000
5/5/20	Pike Lake State Park Wastewater System Dept Natural Resources Pike County \$ 1,462,000
5/4/20	Molecular Lab Renov Dept Agriculture Licking County \$ 634,304

The Ohio Department of Transportation has posted on its website a status of when each major project will re-start. For further information, see:

<https://www.transportation.ohio.gov/wps/portal/gov/odot/about-us/news#page=1&alpha=>

## Legislative: Capital Appropriations (Cont'd)

The American Council of Engineering Companies (ACEC), AIA-Ohio (Architects), the Mechanical Contractors Association of Ohio (MCAO), and the National Electrical Contractors Association of Ohio-Michigan (NECA) sent an endorsement for new funding to Governor DeWine, Speaker Householder, and Senate President Obhof.

“[I]nfrastructure investment is a powerful tool to stimulate the economy and provide reassurance to Ohioans that the coming days will be better,” they wrote.

# The Construction Conversation

April, 2020

Page 3

Ohio's Constitution requires that the General Assembly pass a two-year construction budget by June 30, 2020. But, with state revenues down, it is unlikely to be considered until after the November election.

## **Judicial: Surety Not Liable for Defective Mechanics Lien (Cont'd)**

A roofing material supplier filed a mechanics' lien 76 days after delivering the last material. The law requires a private-project lien to be filed within 75 days.

The general contractor substituted a bond so that the owner would pay. Ohio law allows third parties to substitute financial security to lift a mechanics' lien off of encumbering real estate. R.C. Chapter 1311.

The supplier filing the mechanics lien still must sue and prove the underlying claim. The lien merely provides security in the event the contractor is successful.

When the lien is replaced with a bond, the lien defects are not extinguished. Because the lien was invalid, then the bond was released.

*SRS Distrib. Inc. v. Axis Alliance, LLC*, 2d Dist. Montgomery, 2020-Ohio-1529.

## **Judicial: Arbitration Means Complete Determination (Cont'd)**

A homeowner sued a construction contractor in a local municipal court for failure to complete a home construction. The construction contract included an arbitration clause.

The homebuilder requested that the court stay the hearing until the arbitration was complete. The municipal court

postponed the court schedule for only two months.

R.C. 2711.02 requires enforcement of an arbitration clause, allowing the case to be transferred out of court "until the arbitration has been had."

*Paul v. WH Midwest, LLC*, 6<sup>th</sup> Dist. Ottawa, 2020-Ohio-1417.

## **Judicial: Improvement Is Not Replacement: (Cont'd)**

The Village of Dalton entered into a lease with the City of Massillon for real estate upon which is located a bridge previously used as a railroad crossing.

The railroad being abandoned, the Village intended to use the property as a park, and leased the land for 99 years, the effective equivalent of a purchase. Nevertheless, the City remained owner on the real estate deed.

Any improvements and maintenance generally to the park were at the Village's cost. The Village sued the City, demanding that the bridge be replaced. The City responded that, while the bridge needs replaced, all "improvements" were at the Village's cost.

The Court of Appeals held that "improvement" is an addition to property; likewise, "maintenance" relates only to existing property; neither includes "replacement." As a lease is a contract, without a requirement that a tenant "replace" an asset, the City is stuck with any replacement cost.

*Dalton v. Massillon*, 9<sup>th</sup> Dist. Wayne, 2020-Ohio-1174.

# **The Construction Conversation**

April, 2020  
Page 4

-- 30 --

Join us in

## **The Construction Conversation**

### **Call-In**

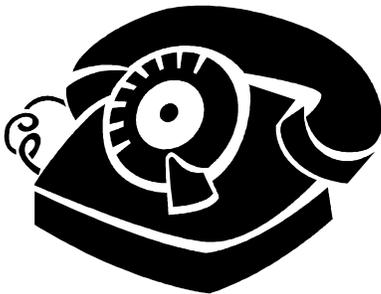
on

**Thursday, May 14, 2020**

3:30 p.m.

Call in and Participate

Dial In: 805-309-0010  
Access Code 754-477-909 #



**The Construction Conversation**

April, 2020

Page 5