

RESOLUTION CR-63-07

**A RESOLUTION TO AUTHORIZE A SETTLEMENT AGREEMENT IN
A MATTER RELATED TO THE IMPROVEMENT OF STATE ROUTE 665**

WHEREAS, this City Council of Grove City, Ohio ("Council") has previously declared it necessary to make a public improvement to be paid, in part, from special assessments for the purposes of widening, reconstructing and improving State Route 665 between North Meadows Drive and Hoover Road (the "Project"); and

WHEREAS, Jack Strader, Ruth Strader, and Mouth of Wilson, LLC (collectively, the "Straders") own two parcels in the area of the City of Grove City (the "City") to be assessed for the Project; and

WHEREAS, the Straders commenced an action against the City to appeal the assessments levied against their property, as is more fully described in the Full and Final Settlement Agreement and Release attached hereto as Exhibit "A" and made a part hereof (the "Settlement Agreement"); and

WHEREAS, this Council now finds it advisable to enter into the Settlement Agreement with the Straders to settle and release their action against the City.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

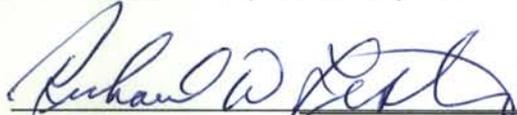
SECTION 1. This Council authorizes the City Administrator, on behalf of the City, to enter into the Settlement Agreement and take any other action or execute any other document necessary to execute the Settlement Agreement.

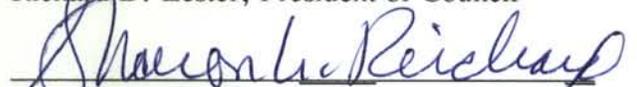
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Revised Code Section 121.22.

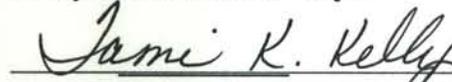
SECTION 3. This resolution shall take effect at the earliest opportunity allowed by law.

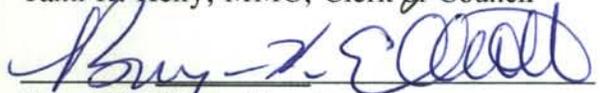
Passed: 12-03-07
Effective: 12-03-07

Attest:


Richard D. Lester, President of Council


Cheryl L. Grossman, Mayor


Tami K. Kelly, MMC, Clerk of Council


Bryan K. Elliott, Director of Law

I Certify that this resolution is correct as to form.

CR-63-07

FULL AND FINAL
SETTLEMENT AGREEMENT AND RELEASE

This FULL AND FINAL SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement"), entered into this 3rd day of December, 2007, between **Appellants Jack Strader, Ruth Strader and Mouth of Wilson, LLC** (hereinafter referred to collectively as "Straders") and **Appellee City of Grove City**,

WITNESSETH THAT:

WHEREAS, the City Council of Grove City, Ohio passed Resolution No. CR-80-06 on November 20, 2006, declaring it necessary to make a public improvement to be paid, in part, from special assessments for the purposes of widening, reconstructing and improving State Route 665 between North Meadows Drive and Hoover Road;

and

WHEREAS, Straders own two parcels of property in the area to be assessed, parcel #040-008058 and parcel #040-008045;

and

WHEREAS, Straders were notified in writing on November 29, 2006 that the estimated assessments for their parcels were \$47,050.32 and \$146,210.59, respectively, and that objections to the assessments needed to be filed with the Clerk of Council within two weeks of completion of the notice, and Straders filed an objection to the assessment on both parcels by letter dated November 9, 2006;

and

WHEREAS, an Assessment Equalization Board was convened to consider all objections that were filed, including those filed by the Straders, a hearing of the Board was held on February 26, 2007, and the Board recommended making no changes to the assessments;

and

WHEREAS, City Council for Grove City, Ohio passed Resolution No. CR-15-07 on March 19, 2007, accepting and approving the report of the Assessment Equalization Board;

and

WHEREAS, Straders commenced an action against the City of Grove City (hereinafter referred to as "Grove City") in the Common Pleas Court of Franklin County, Ohio, Case No. 07-CVF 04-5253, captioned *Jack Strader, et al. v. City Council City Grove City, Ohio*, to appeal the assessments as approved and adopted by the Assessment Equalization Board and City Council for Grove City (hereinafter referred to as the "Appeal");

and

WHEREAS, Straders have negotiated with Grove City a settlement of any and all claims that were or could have been brought in the Appeal;

and

WHEREAS, this Agreement is intended to resolve any and all claims that Straders have or may claim to have against Grove City, including any employees, agents and representatives of the City, arising out of or in any way related to the subject matter of the Appeal, regardless of whether they are now known;

NOW, THEREFORE, the Straders and Grove City hereby agree as follows:

Section 1. Release in Full of All Claims

In consideration of the accommodations set forth in Section 2 of this Agreement, the Straders do hereby dismiss their Appeal, with prejudice, and agree to withdraw and forever abandon and forego any objection to the assessments levied against their properties by Grove City as part of the State Route 665 widening project;

Section 2. Accommodations

Subsection a. Curb Cut

Grove City will allow the Straders to maintain their current full curb cut from the parcel containing the Garden Center onto State Route 665 through and after the completion of the widening project;

Subsection b. Portion of the Sewer Tap Fee Waived

Grove City will waive its portion of the one time sewer tap fee.

Subsection c. Sanitary Sewer

Grove City will complete the engineering, bidding and installation of an eighteen (18) inch sanitary sewer line (Sewer Line) originating from the current terminus near the northeast corner of the Strader property on the 4 PDL property, using existing easements and easements to be provided by the Straders as reflected in Section 3 below, and continuing South for a distance of approximately four hundred (400) feet. This work will also include the installation of a six (6) inch sanitary sewer lateral extending from the 18 inch Sewer Line to a point five feet outside of the Garden Center building. These Sewer Lines will be installed consistent with **Exhibit A**.

Grove City will pay for all costs associated with the installation of both the 400 feet of eighteen (18) inch Sewer Line and the six (6) inch lateral referenced in the previous paragraph.

Section 3. Easements

The Straders will provide, at no cost to Grove City, permanent and temporary (construction) sanitary sewer easements that will be recorded prior to the commencement of the bidding and construction of such improvement.

Section 4. Indemnification

This Release, on the part of the Straders, shall be a fully binding and complete settlement between and among the Straders, Grove City, and their respective heirs, administrators, executors, successors, assigns, agents, employees, trustees, directors, and attorneys.

Section 5. Assumption of Risk

The Straders acknowledge and agree that the Agreement set forth above is a general release. The Straders expressly waive and assume the risk of any and all claims which exist as of this date, but of which Straders do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Straders' decision to enter into this Agreement. The Straders further agrees that they have accepted the accommodations specified herein as a complete compromise of matters involving disputed issues. The Straders assume the risk that the facts or law may be otherwise than they believe.

Section 6. Liability

The Straders understand that the accommodations set forth above and the execution of this Agreement are the result of a compromise of disputed claims and shall never for any purpose be considered an admission for any purpose by Grove City, which expressly denies any negligence, fault, wrongdoing or liability of any kind. It is also understood and agreed that this Agreement is contractual in nature and not a mere recital.

Section 7. Representations

The Straders represent and warrant that they are duly authorized to execute this Agreement and this Agreement is a valid and binding Agreement which is enforceable against them, and each of their heirs, administrators, executors, successors and assigns, in accordance with its terms.

Section 8. Attorneys' Fees

Each party agrees to bear all attorney's fees and costs arising from the actions of their own counsel in connection with the Complaint, this Settlement Agreement, the filing of a Dismissal of the Appeal and all related matters.

Section 9. Delivery of Dismissal With Prejudice

Concurrently with the execution of this Agreement, counsel for the Straders shall deliver to counsel for Grove City an executed Entry of Dismissal with Prejudice of the Appeal. It is understood and agreed that this Agreement and dismissal of the Appeal will bar and prohibit any future objection to the assessment issued by Grove City. The Straders hereby authorize counsel for Grove City to file said Dismissal with the Court and enter it as a matter of record. Such Entry shall be in the form attached hereto as **Exhibit B**.

Section 10. Representation of Comprehension of Agreement

In entering into this Agreement, the Straders represent that they have relied upon the advice of their attorney, who is the attorney of their own choice, concerning the legal and tax consequences of this Agreement; that the terms of this Agreement have been completely read and explained to the Straders by their attorney; and that the terms of this Agreement are fully understood and voluntarily accepted by the Straders.

In executing this Full and Final Release And Settlement Agreement, the Straders rely wholly on their own judgment, belief and knowledge of their claim and have not been influenced to any extent in making this Agreement by any representations or statements regarding such claims made by Grove City or its attorneys.

Section 11. Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

Section 12. Additional Documents

The Straders agree to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

Section 13. Effectiveness

This Agreement shall become effective immediately following execution by all parties.

Section 14. Contingency

Because the City will be unable to satisfy the accommodations set forth in Section 2, subsection c above, unless and until an easement is obtained and recorded on the 4 PDL property, and also because the accommodations set forth in Section 2, subsection c are necessary to the Agreement reached, this Agreement is fully contingent upon the procurement of that easement by the City. The parties agree that this entire Agreement will be automatically rendered null and void if the City is unable to obtain this easement.

Until such time as an easement on the 4 PDL property sufficient to permit the City to satisfy the accommodations set forth in Section 2, subsection c is obtained and recorded, the City will hold the executed Dismissal Entry set forth in Section 9 without filing it with the Court. Once the easement is recorded, this contingency will no longer apply and the City is authorized to proceed with the filing of the Dismissal Entry.

Signed and effective as of the day first above written.

IN WITNESS WHEREOF, Jack Strader, has read and signed this Agreement in the presence of a notary public in Franklin County, Ohio on the day and year first above mentioned.

APPELLANT:

Jack Strader
Jack Strader

WITNESSES:

Ruth Strader
DW

STATE OF OHIO

COUNTY OF Franklin

On this 3rd day of Dec., 2007 before me personally appeared Jack Strader, to me known to be the person designated herein, and who executed the foregoing instrument and acknowledged that he voluntarily executed same.



David Watkins
Attorney At Law
Notary Public - State of Ohio
My commission Has no Expiration Date
Ohio Revised Code Section 147.03

DW
Notary Public

APPELLANT:

Ruth Strader
Ruth Strader

WITNESSES:

Jack Strader
DW

STATE OF OHIO

COUNTY OF Franklin

On this 3rd day of Dec., 2007 before me personally appeared Ruth Strader, to me known to be the person designated herein, and who executed the foregoing instrument and acknowledged that she voluntarily executed same.



David Watkins
Attorney At Law
Notary Public - State of Ohio
My commission Has no Expiration Date
Ohio Revised Code Section 147.03

DW
Notary Public

APPELLEE:

WITNESSES:

City of Grove City, by
Sharon Reichard
Administrator, City of Grove City

STATE OF OHIO

COUNTY OF _____

On this _____ day of _____, 2007 before me personally appeared Sharon Reichard, Administrator, City of Grove City, to me known to be the person designated herein, and who executed the foregoing instrument and acknowledged that she voluntarily executed same.

Notary Public



Evans, Mechwart, Hambleton & Tilton, Inc.
Engineers • Surveyors • Planners • Scientists
5500 New Albany Road, Columbus, OH 43054
Phone: 614.775.4500 Fax: 614.775.4800

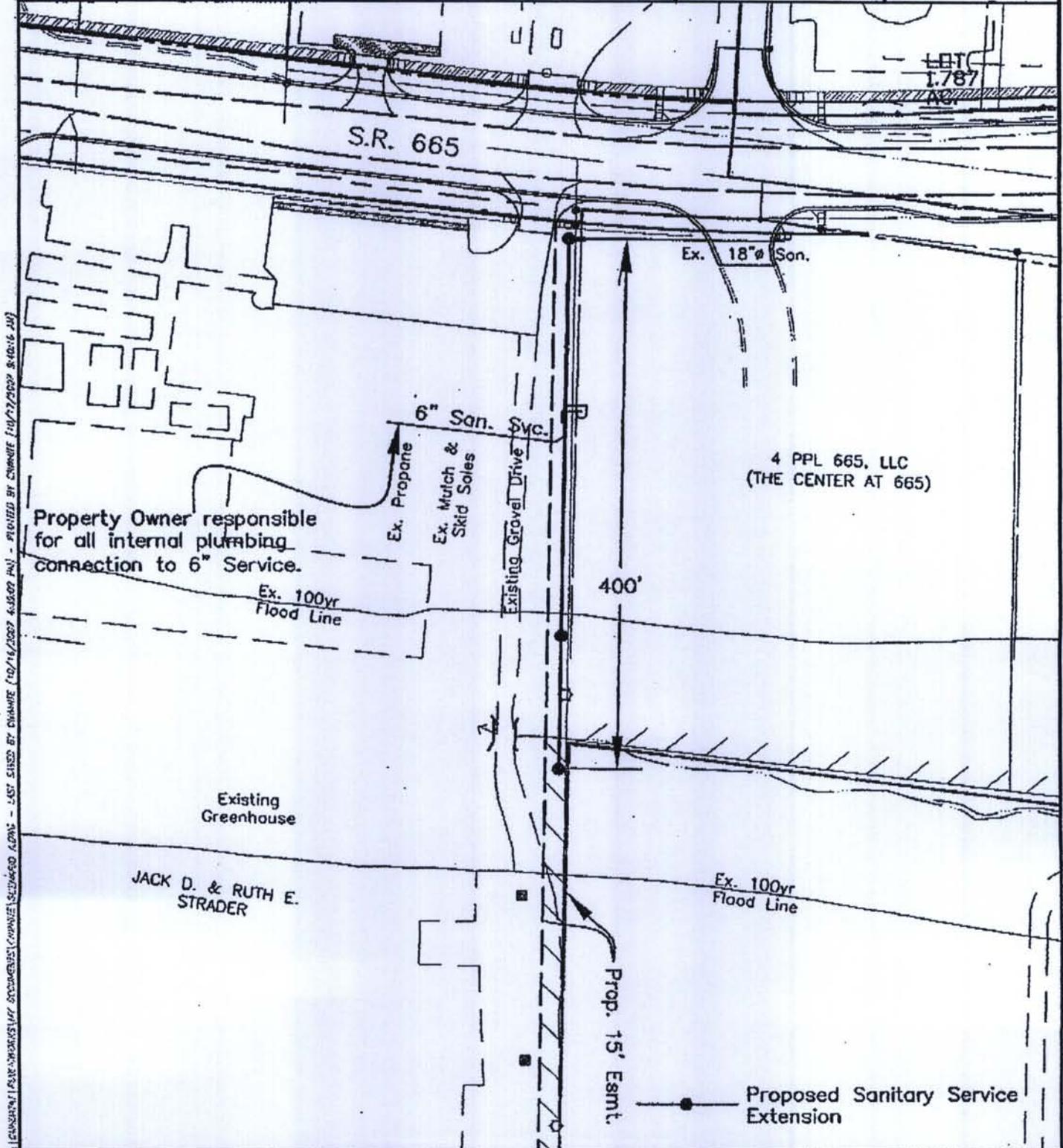
GROVE CITY, OHIO
EXHIBIT A
STRADER'S GARDEN CENTER
S.R. 665
SCENARIO A

M C M X X V I

Date: Oct. 17, 2007

Job No. 0000-0000

Scale: 1" = 100'



11/15/2007 10:14/2007 4:35:07 PM] - PLOTTED BY CHANWIE [10/17/2007 8:46:16 AM] - LAST SAVED BY CHANWIE [10/14/2007 4:35:07 PM] - LAST SAVED BY CHANWIE [10/14/2007 4:35:07 PM]

EXHIBIT A

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

JACK STRADER, et al.,	:	
	:	
APPELLANTS,	:	CASE NO. CVF-04-5253
	:	
V.	:	JUDGE J. LYNCH
	:	
CITY COUNCIL CITY	:	MAGISTRATE T. MCCARTHY
GROVE CITY OHIO,	:	
	:	
APPELLEE.	:	

NOTICE OF DISMISSAL

Now come Appellants Jack Strader, Ruth Strader and Mouth of Wilson, LLC, by and through counsel, and hereby dismisses the above styled matter in its entirety, with prejudice. Costs to be born by Appellants.

Respectfully Submitted,

David Watkins (0059242)
Plank & Brahm
145 East Rich Street
Columbus, OH 43215
drwatkins@tdhlaw.com
Telephone: (614) 228-4546
Facsimile: (614) 228-1472
Attorney for Appellants

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

JACK STRADER, et al.,

APPELLANTS,

V.

CITY COUNCIL CITY
GROVE CITY OHIO,

APPELLEE.

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CASE NO. CVF-04-5253

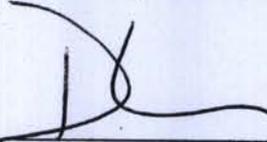
JUDGE J. LYNCH

MAGISTRATE T. MCCARTHY

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Now come Appellants Jack Strader, Ruth Strader and Mouth of Wilson, LLC, by and through counsel, and hereby dismisses the above styled matter in its entirety, with prejudice. Costs to be born by Appellants.

Respectfully Submitted,



David Watkins (0059242)
Plank & Brahm
145 East Rich Street
Columbus, OH 43215
drwatkins@tdhlaw.com
Telephone: (614) 228-4546
Facsimile: (614) 228-1472
Attorney for Appellants

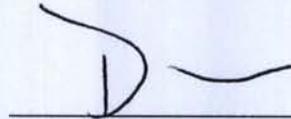
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true a copy of the foregoing *Notice of*

Dismissal was served upon:

Bobbie S. Sprader, Esq. (0064015)
Bricker & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215
Counsel for Appellee

hand deliver
via ~~regular U.S. Mail, postage prepaid,~~ this 3rd day of Dec., 2007.



David Watkins