

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT COMPROMISING AND SETTLING COMMON PLEAS COURT CASE NO. 2002-05-2600 AND DECLARING AN EMERGENCY

WHEREAS, Franchise Operations, Inc. has filed a timely appeal with the Summit County Common Pleas Court pursuant to Ohio Revised Code Section 2506.01 entitled *Franchise Operations, Inc., dba Burger King v. Village of Richfield, Board of Zoning Appeals*, Case No. 2002-05-2600; and

WHEREAS, Franchise Operations, Inc. has made the Village aware of several unique conditions that affect its property, including its setback and low elevation which restricts its visibility from Cleveland-Massillon Road; and

WHEREAS, this Council is further aware of the unique condition of the property which restricts visibility to the property from the south on Cleveland-Massillon Road; and

WHEREAS, this Council, upon the advice of the Law Director, finds that it is in the parties' mutual best interests to enter into a Compromise, Settlement and Mutual Release, a copy of which is attached hereto as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Compromise, Settlement and Mutual Release, a copy of which is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. That the Law Director be, and he hereby is, authorized and directed to enter into a Dismissal Entry dismissing Case No. 2002-05-2600.


SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to resolve this matter prior to

Resolution No. 27-2003 (Continued)

impending Court deadlines; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its execution and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: March 18, 2003


President of Council

ATTEST:

Clerk of Council


Mayor

Dated: 3/20/2003

DIANA ZALESKI

2003 APR 24 PM 3:15 IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Franchise Operations, Inc., dba Burger King)
Appellant)
vs.)
Village of Richfield, Board of Zoning Appeals)
Appellee)

CASE NO.: 2002-05-2600
JUDGE BURNHAM-UNRUH

DISMISSAL ENTRY

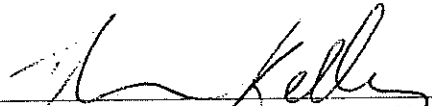
The parties hereby appear before the court and represent that they have settled and resolved their dispute and stipulate that the appeal filed by Appellant shall be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the appeal filed by Appellant shall hereby be dismissed with prejudice.

IT IS SO ORDERED.

approved:

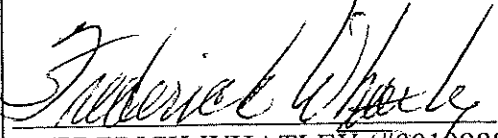
JUDGE BRENDA BURNHAM-UNRUH



THOMAS KELLEY (#0016820)
ATTORNEY FOR APPELLANT



CHARLES RIEHL (#0010971)
ATTORNEY FOR APPELLEE



FREDERICK WHATLEY (#0010988)
ATTORNEY FOR APPELLEE

COMPROMISE, SETTLEMENT AND MUTUAL RELEASE

This settlement and mutual release is between Franchise Operations, Inc., d.b.a. Burger King (hereinafter Burger King) and the Village of Richfield, Summit County, Ohio (hereinafter Village).

WHEREAS, Burger King operates a restaurant located at 4902 Brecksville Road, Richfield, Ohio 44286 and such restaurant is subject to the zoning ordinances of the Village.

WHEREAS, Burger King sought to utilize an internally lit red band around the roof (parapet) of the building.

WHEREAS, Section §1143.08(I) of the Village's Planning and Zoning Code states that buildings and/or building roofs shall not be outlined in lighting in any way.

WHEREAS, Burger King made application to the Planning and Zoning Commission of the Village requesting that it be permitted to utilize the internally lit red roof (parapet) banding, and such request was denied.

WHEREAS, Burger King filed an appeal to the Village Board of Zoning Appeals requesting a variance from Section §1143.08(I) of the Village's Zoning Code to permit the internally lit red roof (parapet) banding.

WHEREAS, the request for a variance was denied by the Board of Zoning Appeals and as a result thereof, Burger King timely appealed the denial of the variance to the Summit County Court of Common Pleas pursuant to ORC §2506.01. The caption of the appeal is Franchise Operations, Inc., dba Burger King vs. Village of Richfield, Board of Zoning Appeals, Case number 2002-05-2600.

WHEREAS, Burger King has made the Village aware of several unique conditions that affect its property, including setback and low elevation which restricts its visibility from Cleveland Massillon Road.

WHEREAS, the Village is further aware of the unique condition of the property which restricts visibility from the south on Cleveland-Massillon Road.

WHEREAS, the parties are desirous of settling their dispute and terminating the current litigation.

In consideration of their mutual covenants and in consideration of the agreement of the Village to permit Burger King to illuminate the red internally lit roof (parapet) banding on the southern and eastern portions of the building located at 4209 Brecksville Road, Richfield, Ohio 44286. and Burger King's agreement to continue to not internally light the red roof (parapet) banding on the northern and western portions of the building, and in consideration of a dismissal of the Notice of Appeal filed in the Court of Common Pleas, Summit County, Ohio, Case Number CV 2002-05-2600. by Burger King, the parties agree as follows:

1. Each of the parties, on behalf of itself, its agents, servants, stockholders, employees, representatives, successors and assigns, fully releases and discharges the other party and the other parties' agents, servants, stockholders, employees, representatives, successors and assigns, from all rights, claims and actions that each party and each party's above described successors now have against the other party, and the other party's above described successors, stemming from their differences arising from the dispute described herein.
2. This release is a part of the settlement of the parties disputed claim and shall not be treated as an admission of liability by either party for any purpose at any time.

3. This document shall serve as permission and authorization for Burger King to illuminate the red internally lit roof (parapet) banding on the southern and eastern portions of the building as specified above.

4. It is specifically understood and agreed that if, at any time in the future, the laws and regulations of the Village change so as to permit illumination of the red internally lit roof (parapet) banding that Burger King has agreed not to illuminate, than Burger King shall be permitted to illuminate such banding, as long as it takes all actions required by the laws and regulations of the Village.

Franchise Operations, Inc., d.b.a. Burger King

Village of Richfield

By: Michael Showalter
Michael Showalter

President

Title

Date

By: Ronald D. Larsen
Title: Mayor

By: Eleana Lukaric
Finance Director

Title

Date

April 09, 2003

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT COMPROMISING AND SETTLING COMMON PLEAS COURT CASE NO. 2002-05-2600 AND DECLARING AN EMERGENCY

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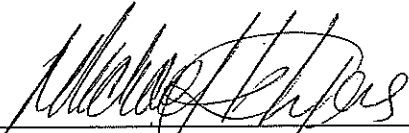
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Resolution No. 27-2003 (Continued)

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Mayor

Dated: 3/20/2003