

RESOLUTION NO. 46-1995

Offered by BESHARA

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH NELLIE MOTZ, ET AL. IN SUMMIT COUNTY COMMON PLEAS COURT CASE NO. CV 94 04 1378

WHEREAS, this Council believes it is in the best interests of the Village to enter into a Settlement Agreement with Nellie Motz, et al. in Summit County Common Pleas Court Case No. CV 94 04 1378.

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

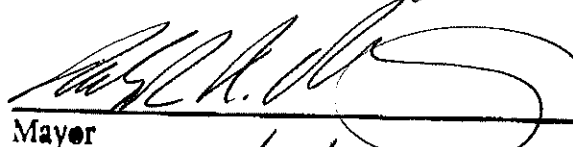
SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into a Settlement Agreement with Nellie Motz in Summit County Common Pleas Case No. CV 94 04 1378, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: July 5, 1995



President of Council



Mayor

Dated: 7/6/95

ATTEST:



Clerk of Council

Dis 7/15
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RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (hereinafter referred to as the "AGREEMENT") is entered into this 7th day of August, 1995, by and between NELLIE G. MOTZ and NELLIE G. MOTZ d/b/a 5M ASSOCIATES (hereinafter collectively referred to as "MOTZ") and the VILLAGE OF RICHFIELD (hereinafter referred to as "RICHFIELD") and the SUMMIT COUNTY TREASURER (hereinafter referred to as "TREASURER") and the SUMMIT COUNTY AUDITOR (hereinafter referred to as "AUDITOR") (hereinafter collectively referred to as "PARTIES").

WHEREAS, on or about April 28, 1994, MOTZ commenced litigation against RICHFIELD, the AUDITOR and the TREASURER in the Court of Common Pleas for Summit County, Ohio, entitled Nellie G. Motz, et al., Plaintiffs v. Summit County Auditor, et al., Defendants, Case No. CV 94 04 1378, where it is now pending (the "ACTION");

WHEREAS, the parties hereto wish mutually to compromise, resolve and settle their disputes and claims raised by the ACTION to effect a dismissal with prejudice of MOTZ's Complaint, without the necessity of incurring the extensive costs of trial, and to do so without making any admission as to the truth, or lack thereof, of any allegation of any party in the ACTION and without making any admission whatsoever of liability on the part of RICHFIELD, which liability is expressly denied by RICHFIELD;

WHEREAS, the parties hereto also wish to compromise, resolve and settle all other disputes and claims they may have against one another, both asserted and unasserted, as set forth in Case No. CV 94 04 1378:

WHEREAS, the basis of the ACTION by MOTZ against RICHFIELD is the special assessment levied against Permanent Parcel Nos. 50-00897, 50-01281 and 50-01519 in the total amount of Seventy-Four Thousand, Nine Hundred Fifty-Six Dollars (\$74,956.00), said assessment being levied pursuant to the Council for the Village of Richfield's adoption of Ordinance No. 85-1990. MOTZ and RICHFIELD, based on expert opinion and other evidence, have agreed to compromise and adjust the acreage and land value regarding 50-00897 and the value of the existing system regarding 50-01281; so that it is now agreed that MOTZ's total assessment should have been Forty-Five Thousand Dollars (\$45,000.00);

WHEREAS, MOTZ avers and declares that she is the sole title owner of Permanent Parcel Nos. 50-00897, 50-01281 and 50-01519 and has authority on behalf of herself and all successors and assigns in title to enter into this AGREEMENT;

WHEREAS, MOTZ and RICHFIELD further agree that the terms and factors leading to this settlement and compromise are unique to the MOTZ property and have no application to any other properties in the assessment district.

NOW, THEREFORE, in consideration of the following terms, covenants and conditions, the parties agree as follows:

Section 1. Assessment to Permanent Parcel Nos. 50-00897, 50-01281 and 50-01519.

Upon the delivery to RICHFIELD's Council of this AGREEMENT signed by MOTZ and upon the agreement of the Council of RICHFIELD, RICHFIELD shall make the necessary arrangements with the TREASURER and the AUDITOR, so that the total assessment to be paid on Permanent Parcel Nos. 50-00897, 50-01281 and 50-01519 shall be Forty-Five Thousand Dollars (\$45,000.00). The assessment on each parcel shall be as follows: 50-00897 shall be Ten Thousand, Six Hundred Eight Dollars (\$10,608.00); 50-01281 shall be Sixteen Thousand, Nine Hundred Eighty-one Dollars (\$16,981.00); and 50-01519 shall remain Seventeen Thousand, Four

Hundred Eleven Dollars (\$17,411.00). MOTZ and RICHFIELD agree that MOTZ has paid to date \$32,974.11 which were the first nine (9) payments on the originally assessed \$74,956.00 assessment. MOTZ and RICHFIELD agree that MOTZ, her successors and assigns, shall receive credit for the overpayments which are calculated as follows:

1. The assessment was issued on September 24, 1990 and provided that MOTZ had thirty (30) days to pay the entire assessment in cash.
2. MOTZ elected not to pay the entire assessment in cash.
3. Thereafter, the assessment was placed upon the tax duplicate to be paid for Permanent Parcel Nos. 50-00897, 50-01281 and 50-01519 in fifty (50) equal semi-annual installments bearing an interest rate at the same rate that the Village is paying to the Ohio Water Development Authority which is 8.04%.
4. MOTZ has paid, to date, nine (9) equal payments of \$3663.79 for a total payment of \$32,974.11.
5. Accordingly, the parties agree that MOTZ is entitled to received a check in the amount of \$10,000.00 for overpayments. The check shall be granted by RICHFIELD as a lump sum upon final execution of this AGREEMENT.
6. Thereafter with the payment due on or about July 1, 1995, MOTZ shall pay the remaining 41 semi-annual payments of \$2199.59. The amount due on each parcel will be as follows:

50-00897	\$518.51
50-01281	\$830.03
50-01519	<u>\$851.05</u>
	\$2199.59

7. As of the date of this AGREEMENT, the modified assessment could not be placed on the tax duplicate for July, 1995; therefore, RICHFIELD has agreed to pay \$1,464.20 toward MOTZ's July tax bill and MOTZ will pay \$2,199.59, the amount of the modified tax bill.

MOTZ and RICHFIELD agree that MOTZ, her successors and assigns, shall not in any manner contest the amount or validity of the assessment in the future.

Section 2. Dismissal of ACTION. Upon receipt by the parties' counsel of this AGREEMENT signed by all parties, the parties shall forthwith cause to have entered a dismissal, with prejudice, of the Complaint in the ACTION, each party to bear its own costs, and attorneys' fees.

Section 3. General Release of Claims. MOTZ on behalf of herself, her heirs, representatives and assigns, and each of them, hereby releases and forever discharges RICHFIELD and its past, present and future officers, elected officials, employees, agents, representatives, acting in their capacity as representatives of the Village of Richfield, and any other person, firm or corporation with whom any of them is now or may hereafter be affiliated, and each of them, from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees, liabilities, and indemnities of any nature whatsoever, whether based on contract, tort, or other legal or equitable theory of recovery, whether known or unknown, mature or to mature in the future arising out of the subject matter of Case No. CV 94 04 1378, which, as of the date of this AGREEMENT, MOTZ had, now has, or claims to have against RICHFIELD.

The general release set forth above specifically includes any and all claims, demands, obligations, and/or causes of action for compensatory damages and/or injunctive and/or declaratory relief relating to or in any way connected with the subject matter of the ACTION,

terms and conditions of the assessment levied on MOTZ's property, whether or not specifically or particularly described herein. MOTZ expressly waives any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight, or error, been omitted from the terms of this AGREEMENT. It is the express intent of MOTZ hereto to waive any and all claims she may have against RICHFIELD based upon assessments levied for the construction of Sewer District No. 3 of the Village of Richfield, including any which are presently unknown, unsuspected, unanticipated or undisclosed.

Section 4. Binding Effect. This AGREEMENT shall be binding on, and inure to the benefit of, the successors and assigns of the parties hereto. Nothing in this AGREEMENT, express or implied, is intended to confer upon any person other than the parties hereto, or their respective successors and assigns, any rights or benefits under or by reason of this AGREEMENT. This AGREEMENT shall not be assignable to any party hereto without the written prior consent of the other parties.

Section 5. Non-Admission and Confidentiality. The parties acknowledge and agree that the lowering of the assessment levied on MOTZ's property and the acceptance thereof as set forth in Section 1, together with the execution of this AGREEMENT, are the result of compromise and are entered into in good faith and shall never for any purpose be considered an admission of liability or of responsibility concerning any of the claims referred to in the ACTION, and no past or present wrongdoing on the part of any of the parties shall be implied. The parties agree that if this AGREEMENT does not become effective for any reason, this AGREEMENT shall be deemed negotiation for settlement only and will not be admissible in evidence or usable for any purpose whatsoever in connection with or at any trial or appeal in connection with the ACTION.

Section 6. Integration Clause. This AGREEMENT represents and contains the entire agreement and understanding between the parties hereto with respect to the subject matter of this AGREEMENT, and supersedes any and all prior oral and/or written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This AGREEMENT may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

Section 7. Fees and Expenses. Each of the parties hereto shall pay its own expenses, including legal fees, incurred in the prosecution and defense of the ACTION, or incurred in the negotiation, preparation and execution of this AGREEMENT.

Section 8. Construction. Each party and counsel for each party have reviewed this AGREEMENT and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this AGREEMENT. In entering into the AGREEMENT, the parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice. The parties further represent that the terms of this AGREEMENT have been completely read and explained to them by their attorneys and that these terms are fully understood and voluntarily accepted by them.

Section 9. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

Section 10. Effective Agreement. This AGREEMENT may be pleaded as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit or

other proceeding which may be instituted, prosecuted or attempted in breach of this AGREEMENT, except for an action based upon a breach of this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first written above.

WITNESSED:

Nellie G. Motz

NELLIE G. MOTZ

WITNESSED:

NELLIE G. MOTZ d/b/a 5M ASSOCIATES

By: *Richard G. Motz*

Title: *Partner*

WITNESSED:

Joyce Remeu

John M. Austin

VILLAGE OF RICHFIELD
By: *Ralph R. Waszak, Sr.*

Title: *Mayor*

By: *Eleanor Lukowicz*

Title: *Finance Director*

WITNESSED:

Austin B. Barnes, III

Marilyn A. McCarthy

SUMMIT COUNTY TREASURER

By: *Jerry Sloan*

Title: *General Counsel*

WITNESSED:

Mary P. Blazynski

[Signature]

SUMMIT COUNTY AUDITOR

By: *Jan Blazynski*

Title: *Summit County Auditor*
