

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH FRONTIER TANK CENTER, INC. AND DECLARING AN EMERGENCY

WHEREAS, on April 12, 1991, Frontier Tank filed a Notice of Appeal to the Summit County Common Pleas Court from the decision of the Board of Zoning Appeals of Richfield denying a sideyard variance for two dust collectors, which appeal has been designated as Court of Common Pleas, Summit County, Ohio, Case No. CV 91-041274; and

WHEREAS, as encouraged by the Court, extensive settlement negotiations have been conducted between Richfield and Frontier Tank; and

WHEREAS, the parties wish to enter into a Settlement Agreement so as to resolve the pending litigation, the outcome of which is in doubt, and to relieve the noise and other operational problems of Frontier Tank which have created neighborhood problems.

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

- SECTION 1. That the Mayor and Finance Director be and they are hereby authorized and directed to enter into a Settlement Agreement with Frontier Tank Center, Inc., a copy of which Agreement is attached hereto as Exhibit A and incorporated herein fully as if by reference.
- SECTION 2. That the Law Director be and he is hereby authorized and directed to enter into an Order and Journal Entry approving the Settlement Agreement and causing the pending litigation between Frontier Tank Center, Inc. and the Board of Zoning Appeals of the Village of Richfield to be dismissed with prejudice at Frontier Tank's costs.
- 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 the actions to be taken by Frontier Tank to relieve the noise and operational problems which have bothered the neighborhood are necessary to be implemented as soon as possible; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect and be in force immediately upon its passage and execution by the Mayor. Otherwise, it

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

Passed October 7, 1991

[Signature]  
President of Council

[Signature]  
Mayor

Dated: 10/7/91

ATTEST:

[Signature]  
Clerk of Council

WALTER, HAVLRFIELD, BUESCHER & CHOCKLEY

Attorneys at Law

CLEVELAND ■ COLUMBUS ■ MIAMI

1215 Terminal Tower  
Cleveland, Ohio 44113-2253  
216/781-1212  
(FAX) 216/575-0911

*File  
Litigation*

August 2, 1991

**COMMUNICATION FROM COUNSEL:**  
**PRIVILEGED AND CONFIDENTIAL**

The Honorable Ralph R. Waszak  
and Members of Council  
Village of Richfield  
4410 West Streetsboro Road  
Richfield, Ohio 44286-0387

**BY FACSIMILE**

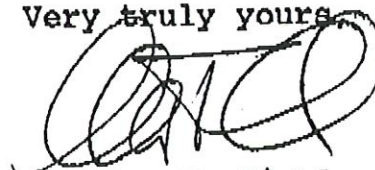
Re: Frontier Tank Center, Inc. vs. Board of  
Zoning Appeals, Village of Richfield

Dear Mayor Waszak and Members  
of Council:

Over the course of the past several weeks, I have entered into extended settlement negotiations with the attorney for Frontier Tank. These settlement negotiations have been encouraged by the Court.

The results of these negotiations are set forth in a proposed Settlement Agreement, a copy of which is attached to this letter. I would appreciate having the opportunity to discuss the proposed Settlement Agreement with you, in an executive session, at the August 6 Council meeting.

Very truly yours,



Charles T. Riehl

CTR:djj  
Enclosure

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## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT made by and between the BOARD OF ZONING APPEALS OF THE VILLAGE OF RICHFIELD and THE VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, Richfield, Ohio 44286-0387 (hereinafter collectively referred to as "Richfield") and FRONTIER TANK CENTER, INC., 3800 Congress Parkway, P. O. Box 460, Richfield, Ohio 44286 ("Frontier Tank").

WHEREAS, on April 12, 1991, Frontier Tank filed a Notice of Appeal to the Summit County Common Pleas Court from the decision of the Board of Zoning Appeals of Richfield denying a sideyard variance for two dust collectors, which appeal has been designated as Court of Common Pleas, Summit County, Ohio, Case No. CV-91-04-1274; and

WHEREAS, Richfield has filed a Transcript of Proceedings and Conclusions of Fact which have denied the allegation of Frontier Tank's appeal; and

WHEREAS, the subject matter of the appeal concerns the installation of two dust collectors for Frontier Tank's facility on Congress Parkway; and

WHEREAS, Richfield has received numerous complaints from neighbors and affected property owners concerning the noise and other operational problems generated from Frontier Tank's facility without the dust collectors; and

WHEREAS, Richfield has engaged an expert noise consultant, Dr. Edward J. Walter & Associates, who has prepared a report dated June 30, 1991 containing recommendations to reduce noise levels at the Frontier Tank facility on Congress Parkway (a copy of which report

is attached as Exhibit "A" and incorporated herein fully as if by reference); and

WHEREAS, Frontier Tank, on a trial basis, has conducted its operations with one of the two proposed dust collectors operating and it appears that the dust collector operation will significantly reduce the noise and other operational problems complained about by the neighbors; and

WHEREAS, Richfield believes that if the recommendations of Dr. Walter (with the exception of No. 7) are followed by Frontier Tank and other conditions contained in this agreement are additionally followed by Frontier Tank that these conditions would justify the granting of a sideyard variance to Frontier Tank because of the unique circumstances of the dust collectors, because of the character of the neighborhood where the proposed use will be situated, and because of an unnecessary hardship and practical difficulty that would be placed upon Frontier Tank by the literal interpretation of the zoning ordinance; and

WHEREAS, the parties hereto wish to enter into this Agreement so as to resolve the pending litigation, the outcome of which is in doubt, and to relieve the noise and other operational problems which has created neighborhood problems; and

WHEREAS, this Agreement has been approved by Council by Resolution 1991-\_\_\_\_\_, passed by the Council of the Village of Richfield on \_\_\_\_\_, 1991.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties:

SECTION 1. That Frontier Tank will immediately take the necessary steps to follow recommendations 1 through 6 and 8 in Dr. Edward J. Walter & Associates' recommendations listed as Exhibit "A" attached hereto as clarified by Exhibit "B" attached hereto. In addition, Frontier Tank shall immediately undertake the following actions:

- (1) On the dust collectors, all doors will have gaskets installed and permanent latches so that vibrations will not be given off by the doors.
- (2) Frontier Tank shall maintain the dust collectors and motors so as to provide a quiet operation.
- (3) All sand, silica and paint particulates generated by Frontier Tank's sandblasting operations will be stored and disposed of in accordance with all applicable State and Federal EPA regulations and standards.
- (4) Frontier Tank will provide a timetable for hard surface paving of its parking lot and, in the interim, will provide dust control.
- (5) Frontier Tank will provide a landscape and screening plan acceptable to the Village for the landscaping and screening of the earthen mound barrier along the southern portion of its property between its property and the residential properties to the south.

SECTION 2. In consideration of Frontier Tank's agreement to undertake and install the items required in Section 1, the Village of Richfield, through its Board of Zoning Appeals, will grant Frontier Tank a variance for two dust collectors as originally contained in Frontier Tank's application of \_\_\_\_\_, 1991.

SECTION 3. Frontier Tank shall cause to be filed a Journal Entry in Summit County Court of Common Pleas Case No. CV-91-04-1274

to be marked "Settled and dismissed with prejudice at Plaintiff's costs."

SECTION 4. In consideration of the commitments and agreements made herein, each party, each to the other, on behalf of itself and its respective officers, employees and agents, does hereby release and forever discharge each other from any and all actions, causes of action, claims of whatever kind or character which they may have against the other from the beginning of the world to the date of these presence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 1991, at Richfield, Ohio.

VILLAGE OF RICHFIELD

\_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_

And \_\_\_\_\_  
Its \_\_\_\_\_

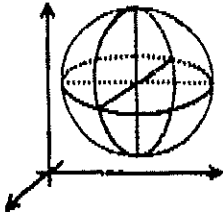
FRONTIER TANK CENTER, INC.

\_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_

And \_\_\_\_\_  
Its \_\_\_\_\_



*E. Edward J. Walter & Associates*  
*Vibration and Sound Consultants*

P.O. BOX 171 • CHESTERLAND, OHIO 44026 • (216) 729-7415

June 30, 1991

Village of Richfield  
Ralph R. Waszak, Sr., Mayor  
4410 W. Streetsboro Road  
P. O. Box 387  
Richfield, Ohio 44286-0387

Dear Mayor:

The following are our recommendations to reduce noise levels at the Frontier Trailer facility on Congress Parkway:

1. Seal door on South end of building closed, treat with acoustical foam.
2. Repair overhead doors in sandblast area, treat with acoustical foam, operate sandblaster only with doors closed.
3. Treat ceiling of sandblast area with acoustical foam.
4. Install an acoustical barrier between the platformed air compressor and overhead door. (See Figure 1)
5. Maintain overhead doors on South end of mechanical area in closed position except for equipment ingress and egress, treat with acoustical foam.
6. Maintain barrier wall of trailers along property line.
- deleted* 7. ~~In the event that trailer barrier wall proves unsatisfactory, install barrier walls per Figure 2.~~
- 7 8. In the event that noise produced by the dust collection system becomes a problem, acoustically treat the dust collector. In any event, paint the dust collector to match the rest of the building.

Ralph R. Waszak, Sr., Mayor

-2-

I hope these recommendations solve your problem. We have developed them to be as cost effective as possible. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Edward J. Walter, Jr." The signature is written in dark ink and is positioned above the typed name.

Edward J. Walter, Jr.

EJW:mac

Enclosures

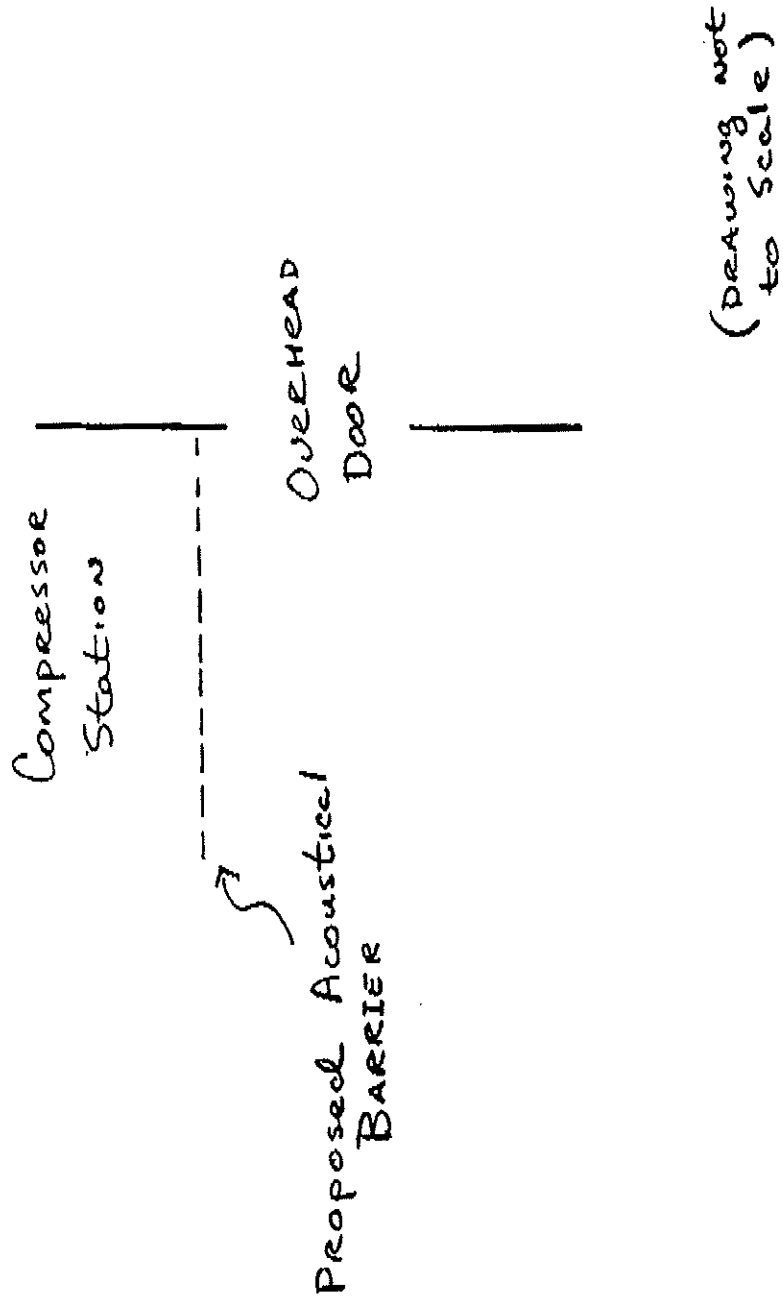


Figure 1.

Proposed Barrier Wall should extend at least 10 feet past any truck body to be worked on, and be at least the height of the building. (Drawing not to scale)

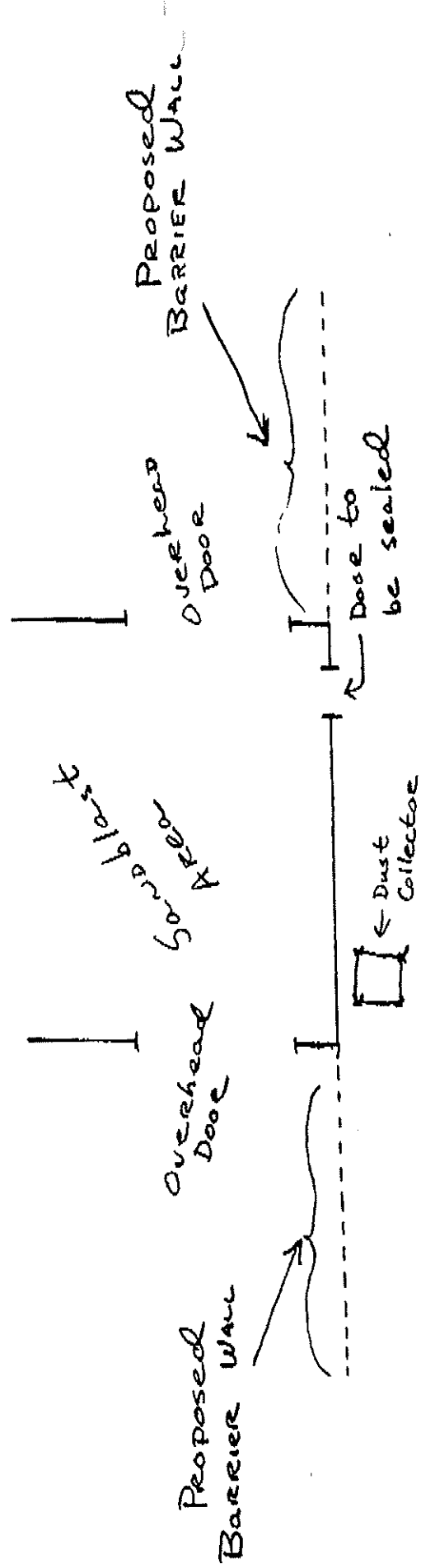
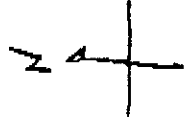


Figure 2.

**EXHIBIT "B"**

**CLARIFICATION AS TO RECOMMENDATIONS**

1. "Seal Door" does not require permanent closure of the door, but means to install reasonable seals on the door.

2. The parties recognize that due to the mechanical nature of the overhead doors in the sandblast area, it may be impractical to treat the doors with acoustical foam. Frontier may install interior wooden frames and canvas to serve as an additional sound barrier as to these overhead doors.

3. As to numbers (4) and (5) of the Settlement Agreement:

(4) Richfield recognizes that Frontier has already begun dust control with Coherex dust retardant, an EPA approved material applied by Seal Pro, Inc.; and

(5) The Village will not unreasonably withhold acceptance of a landscape or screening plan and specifically recognizes that the planting of small seedling trees will require time for their growth and that Frontier cannot be a guarantor of their growth.