

1 RESOLUTION NO. 2015-477

First Reading Passage Requested

(M. Evans)

2 SPONSOR Mr. Pry

3 DATE NOVEMBER 9, 2015

COMMITTEE Rules

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7 **A Resolution authorizing the County Executive to execute a settlement agreement to settle**
8 **all claims arising out of or concerning issues raised in a lawsuit, *County of Summit v. Wayne***
9 ***Breitenstine, et al.*, Case No. CV 2014-08-4011, before Judge Mary Margaret Rowlands in**
10 **the County of Summit Court of Common Pleas, for the Executive, the Prosecutor and the**
11 **Engineer, and declaring an emergency.**

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13 WHEREAS, the County of Summit filed a lawsuit against Wayne Breitenstine,
14 individually and as Trustee, and Wayne Breitenstine Builders Inc. (the "Defendants"), *County of*
15 *Summit v. Wayne Breitenstine, et al.*, Case No. CV 2014-08-4011, before Judge Mary Margaret
16 Rowlands in the County of Summit Court of Common Pleas, related to the non-conformity to
17 plans of the emergency overflow, drainage pathway and drainage outlet of Retention Pond #1 of
18 the Chenoweth Country Club Estates, Phase 2 development located in Springfield Township, in
19 Council District 8; and

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21 WHEREAS, in consultation with the County Prosecutor, the County Executive and the
22 County Engineer have reached terms of settlement with the Defendants through their legal
23 counsel to settle the case through the construction of an emergency overflow, drainage pathway
24 and drainage outlet from Retention Pond #1 in conformity with plans approved by the Engineer;
25 and

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27 WHEREAS, the parties to the settlement desire to have the construction of the emergency
28 overflow, drainage pathway and drainage outlet from Retention Pond #1 constitute a ditch
29 improvement pursuant to Ohio Revised Code Section 6131.63 and to have the settlement
30 agreement constitute the agreement required to be filed with County Council pursuant to Ohio
31 Revised Code Section 6131.63; and

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33 WHEREAS, the County Engineer has reviewed and approved the construction plans and
34 schedule of assessments as provided in Ohio Revised Code Section 6131.63; and

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36 WHEREAS, one of the Defendants is the sole property owner to be assessed for
37 maintenance as provided in Ohio Revised Code Section 6131.63; and

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39 WHEREAS, the Defendants agree to the schedule of assessments and have waived the
40 hearing on the proposed maintenance assessments as provided in Ohio Revised Code Section
41 6131.63; and

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43 WHEREAS, this Council finds and determines, after reviewing all pertinent information,
44 that it is necessary and in the best interest of the County of Summit to settle the lawsuit filed by
45 County against Defendants and to approve the agreement for construction of the proposed ditch
46 improvement.

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48 NOW, THEREFORE, BE IT RESOLVED by the Council of the County of Summit, State
49 of Ohio, that:
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4 SECTION 1

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6 The County Executive is hereby authorized to execute a settlement agreement to settle all
7 claims arising out of or concerning issues raised in a lawsuit, *County of Summit v. Wayne*
8 *Breitenstine, et al.*, Case No. CV 2014-08-4011, before Judge Mary Margaret Rowlands in the
9 County of Summit Court of Common Pleas, related to the non-conformity to plans of the
10 emergency overflow, drainage pathway and drainage outlet of Retention Pond #1 of the
11 Chenoweth Country Club Estates, Phase 2 development located in Springfield Township, in
12 Council District 8

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14 SECTION 2

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16 Said settlement agreement shall constitute an agreement for the construction of a ditch
17 improvement pursuant to Ohio Revised Code Section 6131.63.

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19 SECTION 3

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21 Said agreement for construction of the ditch improvement and the related assessments
22 authorized by Ohio Revised Code Section 6131.63 are hereby approved. The ditch improvement
23 will be subject to assessments and maintenance in accordance with Chapter 6137 of the Revised
24 Code and as specified in the settlement agreement. The clerk shall record the agreement, plan,
25 and schedules in the drainage records of the county, and the agreement shall locate and establish
26 the improvement as a public watercourse.

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28 SECTION 4

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30 This Resolution is hereby declared an emergency in the interest of the health, safety and
31 welfare of the citizens of the County of Summit and for the for the further purpose of
32 immediately sparing county taxpayers further expense related to the County's lawsuit against
33 Wayne Breitenstine, individually and as Trustee, and Wayne Breitenstine Builders Inc.

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35 SECTION 5

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37 Provided this Resolution receives the affirmative vote of eight members, it shall take
38 effect immediately upon its adoption and approval by the Executive; otherwise, it shall take
39 effect and be in force at the earliest time provided by law.

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41 SECTION 6

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43 It is found and determined that all formal actions of this Council concerning and relating
44 to the adoption of this Resolution were adopted in an open meeting of this Council, and that all
45 deliberations of this Council and of any of its committees that resulted in such formal action,
46 were in meetings open to the public, in compliance with all legal requirements, including Section
47 121.22 of the Ohio Revised Code.

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INTRODUCED November 9, 2015

ADOPTED NOVEMBER 9, 2015



CLERK OF COUNCIL



PRESIDENT OF COUNCIL

APPROVED NOVEMBER 10, 2015



EXECUTIVE

ENACTED EFFECTIVE NOVEMBER 10, 2015

Voice Vote: 11-0 YES: Comunale, Crawford, Donofrio, Feeman, Kostandaras, Kurt, Lee, Prentice, Rodgers, Schmidt, Shapiro