

RECORD OF ORDINANCES

Ordinance No. 08-10

Passed, June 22, 2010

AN ORDINANCE APPROVING AND ADOPTING THE SETTLEMENT AGREEMENT ATTACHED AND INCORPORATED HEREIN AND DECLARING AN EMERGENCY.

Whereas, Council desires to resolve the outstanding issues with the owner of real property in the Stoney Bluff subdivision; and

Whereas, the Mayor has negotiated an agreement that resolves these outstanding issues; and

Whereas, it is the best interests of both parties and the residents of the Village of Lithopolis to enter into a written agreement that clearly delineates the roles and responsibilities of the parties involved; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LITHOPOLIS, FAIRFIELD COUNTY, STATE OF OHIO;

Section 1. Council approves the Settlement Agreement (Attachment A, attached and incorporated herein by reference).

Section 2. Council authorizes the Mayor to enter into the Settlement Agreement (Attachment A, attached and incorporated herein) and to execute any paperwork or documents necessary to advance said Agreement.

Section 3. This Ordinance is hereby declared an emergency measure in that the public peace, safety, health and welfare of the residents of the Village are involved and specifically in that the Village desires that the subdivision moves forward and those vacant lots be made available to perspective residents.

Date Passed:

Attest: [Signature]
Fiscal Officer

Signed: [Signature]
Mayor

Date: 6/22/10

Date: 6/22/10

Approved as to Form:

[Signature]
Jon M. Browning
Village Solicitor

SETTLEMENT AGREEMENT

This Agreement (the "*Agreement*"), made and entered into as of June 22 2010, by and between the Village of Lithopolis, Ohio (the "*Village*"), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio, and The Strait and Lamp Company, Inc., an Ohio Corporation, and the entity owning a majority of the unoccupied lots in Section 1 of the Stoney Bluff Subdivision, (hereafter referred to as the "*Owner*"). Additionally, Strait Holding, Ltd., an Ohio limited liability company, and the entity owning approximately 21.850 acres, which real estate may become, in the future, Sections 2, 3 and 4 of the Stoney Bluff Subdivision (hereinafter referred to as "*Holding*"), is executing this Agreement for the specific purposes set forth herein.

WITNESSETH:

WHEREAS, the developer of record, Joshua Investment Company ("*Joshua*"), has effectively abandoned the Stoney Bluff Subdivision (the "*Subdivision*") leaving outstanding debt and obligations owed to the Village; and

WHEREAS, the Owner became the legal owner of a majority of remaining unoccupied lots in Section 1 of the Subdivision, as further described in attached Exhibit A (the "*Lots*") and Holding became the owner of the undeveloped acreage that was to become a part of the Subdivision, as further described in attached Exhibit B (the "*Undeveloped Land*") after Joshua's abandonment of the Subdivision; and

WHEREAS, while the Owner acquired the Lots and Holding acquired the Undeveloped Land, they did not become the successor to Joshua under any development agreement, nor is Owner or Holding now the developer of the Subdivision; and

WHEREAS, Joshua has failed to present the public improvements, as described in more detail in Exhibit C (the "Public Improvements"), for acceptance by the Village; and

WHEREAS, the Village has made multiple attempts to resolve the outstanding debt and obligations with Joshua; and

WHEREAS, as a result of Joshua failure to respond to these attempts, certain disagreements have arisen between the Village and the Owner that both parties now wish to settle amicably and without further time and expense; and

WHEREAS, the Village and Owner mutually agree to move forward with housing sales and home construction within the subdivision and resolve all outstanding issues on the best possible terms for both parties;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree to the foregoing as follows:

Section 1 – Water Capacity Charges.

- A. The Village recognizes that the Owner is the legally recognized owner of the prepaid Water Capacity Charges (WCC) that were paid previously for each of the Lots to gain initial water and sewer service.

The Village officially states that, while the WCCs have been increased by subsequent ordinance, it will accept the previously paid pre-paid amount of \$3,000 per lot as payment in full for the WCC for all the Lots, as such charges were paid for by Joshua on October 20, 2003 as evidenced by Exhibit D attached to this Settlement Agreement, which is a receipt of payment from Joshua to the Village of \$120,000.00.

Section 2 – Public Improvements.

- A. The Village recognizes that neither the Owner nor Holding has any responsibility for completion of any of the Public Improvements.
- B. The Village shall promptly accept the dedication of the Public Improvements, in such manner as the Village deems legally appropriate.

Section 3 – NOT USED

Section 4 – Zoning.

- A. The Village appreciates that the value of the Undeveloped Land is conditioned upon its zoning and to encourage appropriate development surrounding the completed portion of the subdivision, the Village declares and assures that any future Zoning Amendments, initiated by Council, that changes or modifies the zoning classification of the un-platted parcel, shall substantially maintain the current base zoning parameters, particularly lot size and setbacks.
- B. Holding may, at any time, request rezoning of the undeveloped property.

Section 5 – Outstanding Debts and Punch-List Items.

- A. In order to settle any and all potential claims between The Village and the Owner related in to the Stoney Bluff Subdivision, Owner agrees to reimburse the Village the sum of \$7,000.00 toward outstanding expenses including construction observation costs, nuisance mitigation of the front retention pond and completion of punch-list items.

Section 6 – Stoney Bluff Homeowners Association.

The Village and the Owner recognize the benefits of a functional Home Owners Association and the Owner, as the owner of the Lots agrees to take reasonable measures necessary to formally organize the Stoney Bluff Homeowners Association.

Section 7 - Notices.

All notices or other correspondence relating to this Agreement must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed deliver, if requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Agreement on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this section, all communications in writing must be given to the parties at the following addresses:

- (i) the Village at: 33 North Market Street, Lithopolis Ohio 43136
- (ii) the Owner at: John R. Perkins, Jr., 1472 Manning Parkway, Powell, Ohio 43065

Section 8 - Successors; Assignment; Amendments, Changes and Modifications.

This Agreement shall be binding upon the parties and their successors and assigns. The parties may only assign this Agreement with the consent of all parties hereto. This Agreement may only be amended by written instrument executed by all parties to this Agreement.

Section 9 - Extent of Covenants; No Personal Liability.

All covenants, stipulations, obligations and agreements of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. The obligations of the Village may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity. No such covenant, stipulation, obligation or agreement will be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties hereto in their individual capacity.

Section 10 - Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

Section 11 - Separate Counterparts.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument.

Section 12 - Entire Agreement.

This Settlement Agreement constitutes the entire agreement between the signatory parties with respect to the matters covered herein.

Section 13 - Governing Law and Choice of Forum.

This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Village, its employees, contractors, subcontractors and agents, and the Owner, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the State of Ohio.

(Remainder of page intentionally left blank – signatures begin on following page)

IN WITNESS WHEREOF, the Village and the Owner have caused this Settlement Agreement to be executed in their respective names by their duly authorized officers, and the Village Council has taken appropriate steps under its Charter and/or Ordinances to approve this Agreement as of the execution date.

VILLAGE OF LITHOPOLIS, OHIO

By: 

Name: ERIC P. SANDINE

Title: (MAYOR)

The Strait and Lamp Company, Inc.

By: W. C. Strait

Name: WILBUR C. STRAIT

Title: PRESIDENT

Strait Holding, Ltd.

By: W. C. Strait

Name: WILBUR C. STRAIT

Title: PRESIDENT

EXHIBIT A

[LOTS OWNED BY STRAIT & LAMP]

[Print](#) | [Back](#)**Fairfield County Search**

Parcel	Owner	PropertyAddress	LandUse	Acres	MailingAddress
0100242600	STRAIT & LAMP LUMBER COMPANY THE	108 STONEY BLUFF WAY	500	0	PO BOX 718 HEBRON OH 43025
0100242900	STRAIT & LAMP LUMBER COMPANY THE	64 STONEY BLUFF WAY	500	0	PO BOX 718 HEBRON OH 43025
0100243400	STRAIT & LAMP LUMBER COMPANY THE	314 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100243500	STRAIT & LAMP LUMBER COMPANY THE	326 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100243600	STRAIT & LAMP LUMBER COMPANY THE	338 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100243700	STRAIT & LAMP LUMBER COMPANY THE	350 MARKET	500	0	PO BOX 718 HEBRON OH 43025
0100243800	STRAIT & LAMP LUMBER COMPANY THE	362 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100243900	STRAIT & LAMP LUMBER COMPANY THE	374 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100244000	STRAIT & LAMP LUMBER COMPANY THE	384 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100244300	STRAIT & LAMP LUMBER COMPANY THE	426 MARKET ST	500	0	PO BOX 718 HEBRON OH 43025
0100244900	STRAIT & LAMP LUMBER COMPANY THE	25 TWIN MAPLE AV	500	0	PO BOX 718 HEBRON OH 43025
0100245200	STRAIT & LAMP LUMBER COMPANY THE	61 TWIN MAPLE AV	500	0	PO BOX 718 HEBRON OH 43025
0100245400	STRAIT & LAMP LUMBER COMPANY THE	387 TWIN MAPLE AV	500	0	PO BOX 718 HEBRON OH 43025
0100245500	STRAIT & LAMP LUMBER COMPANY THE	375 TWIN MAPLE AV	500	0	PO BOX 718 HEBRON OH 43025
0100245700	STRAIT & LAMP LUMBER COMPANY	351 TWIN MAPLE AV	500	0	PO BOX 718 HEBRON OH 43025

0100245900	THE STRAIT & LAMP LUMBER COMPANY THE	37 STONEY BLUFF WAY	500	0	PO BOX 718 HEBRON OH 43025
0100246000	THE STRAIT & LAMP LUMBER COMPANY THE	25 STONEY BLUFF WAY	500	0	PO BOX 718 HEBRON OH 43025
0100246600	THE STRAIT & LAMP LUMBER COMPANY THE	0 SMITH RD	500	0	PO BOX 718 HEBRON OH 43025
0100246700	THE STRAIT & LAMP LUMBER COMPANY THE	0 STONEY BLUFF WAY	500	0	PO BOX 718 HEBRON OH 43025

Notes

EXHIBIT B

[UNDEVELOPED LAND OWNED BY STRAIT HOLDING]

[Print](#) | [Back](#)

Fairfield County Search

Parcel	Owner	PropertyAddress	LandUse	Acres	MailingAddress
0100242310	STRAIT HOLDING LTD	0 SMITH	500	21.85	2573 SWISHER CREEK DR BLACKLICK OH 43004

Notes

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS

1. Water distribution system
2. Sanitary sewer collection system
3. Stormwater collection system
4. Streets, signs and lights

EXHIBIT D

RECEIPT OF PAYMENT FOR WATER CAPACITY FEES (TAP FEES) FOR \$120,000.00
10-20-2003

[Attach Village Receipt of Payment]

JOSHUA HOMES

0.00	C		
40.00	x	lots	
3,000.00	=		
120,000.00	*		\$ 120,000.00
0.00	*		

Water tap fees for Stoney Bluff Sec-1

40 Lots @ \$3,000 per lot = \$120,000

*Stoney Bluff
Deposited
8/8/03*

TOTAL PAYMENT \$ 120,000.00

OUR REF. NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
76218	stoneyblu	07/09/10	7000.00	7000.00	0.00	7000.00
Check Number 189785 07/09/10 7000.00 7000.00 0.00 7000.00						

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

STRAIT & LAMP LUMBER COMPANY, INC.

JPMorgan Chase Bank, N.A. 25-3/440
Columbus, OH

P.O. Box 718
Hebron, OHIO 43025

CHECK DATE

CONTROL NUMBER

CHECK AMOUNT

PAY: ***7000 Dollars and 00 Cents

07/09/10

189785

\$****7000.00

STRAIT & LAMP LUMBER COMPANY, INC.

TO THE ORDER OF

VILLAGE OF LITHOPOLIS
33 N. MARKET ST
P.O. BOX 278
LITHOPOLIS, OH 43136

W.C. Strait

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

⑈ 189785⑈ ⑆044000037⑆

611761354⑈