

RESOLUTION NO. 30-85
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Charles Taylor ON THE 18th DAY
OF November, 1985.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER
TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF CENTERVILLE,
OHIO, AND CENTERVILLE BUILDERS SUPPLY COMPANY, TO PROVIDE
FOR CERTAIN LAND TRADES.

WHEREAS, Centerville Builders Supply Company is in the process of
negotiating for the purpose of railroad right of way land which is adjacent
to the adjoining properties of the City of Centerville and Centerville
Builders Supply Company; and

WHEREAS, the parties above mentioned desire to make certain land
trades and provide for the construction of a driveway to allow their mutual
access to Clyo Road.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is hereby authorized and directed
to enter an Agreement between the City of Centerville, Ohio and Centerville
Builders Supply Company, to make certain land trades and provide for the
construction of a driveway to allow mutual access to Clyo Road, a copy of
the Agreement being attached hereto, marked Exhibit "A" and made a part
hereof.

SECTION 2. This Resolution shall be in full force and effect at
the earliest date allowed by law.

PASSED this 18th day of November, 1985.

Shirley F. Deems
Mayor of the City of Centerville, Ohio

ATTEST:

Maile J. Saughlin
Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville,
Ohio, hereby certifies the foregoing to be a true and correct copy of
Resolution Number 30-85, passed by the Council of the City of Centerville,
Ohio, on the 18th day of November, 1985.

Maile J. Saughlin
Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter and constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

AGREEMENT

Agreement made this _____ day of _____, 1985 by and between the City of Centerville, Ohio, and Ohio municipal corporation (hereinafter City) and Centerville Builders Supply Co., and Ohio corporation (hereinafter CBS).

WITNESSETH

WHEREAS, CBS, is in the process of negotiating for the purchase of railroad right of way land which is adjacent to the adjoining properties of the City and CBS (all as set forth in Exhibit A, attached hereto and incorporated herein); and

WHEREAS, the parties hereto desire to make certain land trades and provide for the construction of a driveway to allow their mutual access to Clyo Road (essentially as shown on Exhibit A);

NOW, THEREFORE, in consideration of the above recitations and the benefits to them mutually accruing, the parties agree as follows:

1. The execution of the provisions of this Agreement shall be contingent upon CBS successfully concluding the purchase of the said railroad right of way (as set forth in Exhibit A) upon terms and conditions acceptable to CBS. If CBS shall not be successful in effecting said purchase, this Agreement shall be null and void.

2. In the event CBS successfully concludes the purchase of the aforesaid railroad right of way, the parties shall make the following conveyances:

A. The City shall convey to CBS that parcel designated as Parcel 1 on Exhibit A and is generally a 32.5 x 331.94 foot strip along the northern border of the City's land and along the southern border of the land of CBS.

B. CBS shall convey for roadway purposes to the City that parcel designated as Parcel 2 on Exhibit A and is generally a 60 x 60 foot triangular area located at the southwest corner of the intersection of Clyo Road and East Franklin Street. CBS shall also convey to the City of Centerville that parcel designated as Parcel 3; on Exhibit A which is generally that portion of the railroad right of way situated eastwardly of and adjacent to the east boundary of the Centerville land (after the conveyance of Parcel 1 as above provided).

3. At the closing, which shall be set by mutual agreement of the parties, each party shall convey to the other the parcels as above provided, by general warranty deed conveying marketable fee simple title free and clear of all liens and encumbrances and rights of lien subject only to all easements, conditions and restrictions of record, all legal highways and taxes and assessments becoming due and payable in December, 1985 and thereafter. All taxes and assessments shall be prorated at closing.

4. Following the closing, and within 30 days, CBS shall at its sole expense cause the fence presently constructed on the present border on the north boundary of the Centerville land and the southern boundary of the CBS land to be moved south to the new boundary between the said lands existing after the conveyance of said Parcel 1. CBS shall cause said work to be done in a workman like manner and, after said move, the fence shall be restored to the same condition as it was in immediately prior to said move.

5. Within 30 days after closing, the City at its sole expense shall undertake and diligently pursue the construction of a driveway, constructed to meet City standards, approximately 30 feet wide, generally located one half on each party's land and allowing vehicular access from each party's land to Clyo Road with full movement ingress/egress. The road shall be situated generally as shown on Exhibit A, but the precise location shall be mutually agreed upon by the parties. At the closing provided for in paragraph 3 hereof, the parties shall also execute a Joint Driveway Easement, a copy of which is attached hereto as Exhibit B and incorporated herein.

6. Each party shall allow the other all necessary access to their respective lands as shall be necessary to accomplish the construction projects provided for in paragraphs 4 and 5 hereof.

7. Each party shall indemnify and hold harmless the other from all liens or any liability for personal injury or property damage arising out of the construction work to be performed hereunder, with the party performing or causing the work to be done indemnifying and saving the other party harmless.

8. The terms of this Agreement shall be governed by the law of Ohio. This Agreement represents the entire understanding between the parties and no modification or amendment shall be effective unless in writing signed by both parties.

IN WITNESS WHEREOF, the parties acting through their duly authorized officers have executed this Agreement on the date first above written.

Witness:

CITY OF CENTERVILLE

By: _____
DARRYL K. KENNING
City Manager

Howell A. Heckendorn
Elizabeth A. Herbert

CENTERVILLE BUILDERS SUPPLY CO.

By: Samuel Roberts
President

By: Howell A. Heckendorn
Secretary

JOINT DRIVEWAY EASEMENT

City of Centerville, Ohio, an Ohio municipal corporation (hereinafter City) and Centerville Builders Supply, Co., an Ohio corporation, (CBS) are the respective owners in fee simple of adjacent lands fronting on Clyo Road in the City of Centerville, Ohio as follows:

The City of Centerville whose tax mailing address is 100 West Spring Valley Road, Centerville, Montgomery County, Ohio owns the land described in deeds recorded at Microfiche Nos. _____ and _____ of the Deed Records of Montgomery County, Ohio;

Centerville Builders Supply Co. whose tax mailing address is East Franklin Street and Clyo Roads, Centerville, Montgomery County, Ohio owns land described in Microfiche Nos. _____ and _____ of the Deed Records of Montgomery County, Ohio;

Complete legal descriptions of the said parcels referenced herein are attached hereto as Exhibit A and incorporated herein.

In consideration of the grant and agreements of CBS, the City grants to CBS an easement for driveway purposes over the northerly _____ feet of the properties described in Microfiche Nos. _____ and _____ for a distance of _____ feet.

In consideration of the grant and agreements of the City, CBS grants to the City an easement for driveway purposes over the southerly _____ feet of the property described in Microfiche Nos. _____ and _____ for a distance of _____ feet.

"Driveway purposes" means use by the grantor and grantee respectively of the roadway to be constructed by the City for ingress and egress to their respective properties by vehicles normally used by the respective parties in day to day operations.

It is mutually agreed that a pavement shall be constructed by the City _____ feet wide, one-half feet in width on the northerly part of the land of the City as described above and one-half feet in width on the southerly part of the land of CBS as described above. It is intended that the driveway shall permit full turning movement at Clyo Road. The parties shall not obstruct or authorize the obstruction of the driveway by any means, including, but not limited to, the parking of a vehicle. Each party shall pay one-half of the cost of maintenance to maintain driveway in first-class condition, once construction has been completed.

These grants of easements shall run with the land and be binding on and inure to the benefit of the parties, their successors and assigns.

The parties have assigned this instrument in duplicate on the _____ day of _____, 1985.

Signed and acknowledged in the presence of:

CITY OF CENTERVILLE, OHIO

By: _____
DARRYL K. KENNING, its
City Manager

CENTERVILLE BUILDERS SUPPLY CO.

Harold A. Herkenhine
Elizabeth A. Herbert

By: James L. Roberts
James L. Roberts, its President
By: Harold A. Herkenhine
Harold A. Herkenhine its Secretary

STATE OF OHIO
MONTGOMERY COUNTY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 1985 by Darryl K. Kenning, City Manager of the City of Centerville, an Ohio municipal corporation, on behalf of said municipal corporation.

Notary Public

STATE OF OHIO
MONTGOMERY COUNTY, OHIO, SS:

The foregoing instrument was acknowledged before me this 13 day of November, 1985 by James S. Roberts, President and Harold A. Herkenhine, Secretary of Centerville Builders Supply Co., an Ohio corporation, on behalf of the corporation.

formerly

ELIZABETH ANN WAITS, Notary Public

In and for the State of Ohio

My Commission Expires April 30, 1990 Notary Public

Elizabeth Ann Wait

This Instrument Prepared By:

Robert N. Farquhar
Attorney at Law



OCT. 7, 1938

EXHIBIT "A"

AS SHOWN SCALE
1" = 100'

