

North Canton City Council
Community & Economic Development Committee

Ordinance No. 66 - 2017

An ordinance authorizing the Mayor of the City of North Canton, Ohio, to enter into a settlement agreement between the City and the North Canton City District Board of Education regarding a disputed complaint involving a Community Reinvestment Area tax abatement for certain real property located at 1303-1305 North Main Street, North Ridge, and declaring the same to be an emergency.

WHEREAS, the City of North Canton, Ohio ("City") wishes to avoid the expense, animus, and uncertainty of protracted litigation with the North Canton City District Board of Education ("School District") regarding the School District's complaint challenging a Community Reinvestment Area (CRA) tax abatement for certain real property located at 1303-1305 North Main Street, ("North Ridge"); and

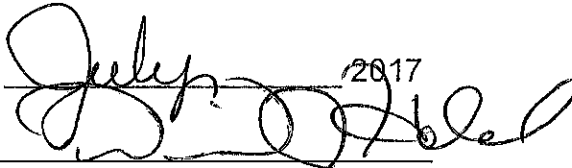
WHEREAS, the City has examined the facts and law relating to the complaint, and although the complaint remains disputed, the City believes the settlement agreement ("Agreement") is fair, reasonable, and in the best interest of all parties so that they may continue to work together on behalf of our residents and guests (a true and accurate copy of the Agreement is attached hereto and incorporated hereto); and

WHEREAS, the City desires to maintain the positive, unified, and collegial relationship between the parties, and therefore chooses to approve and accept the Agreement between itself and the School Board.

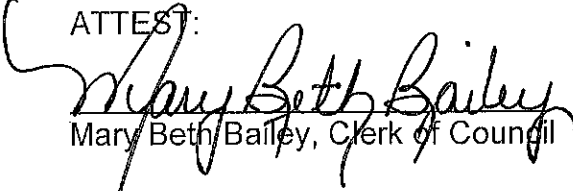
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That City Council hereby approves, accepts, and adopts all terms and provisions of the Agreement as a binding and enforceable agreement between the City and School Board.
- Section 2. That the Mayor hereby is authorized and directed to execute the Agreement on behalf of the City, and the Finance Director is hereby authorized and directed to take all actions necessary, desirable, and convenient or proper to carry out the intent of this ordinance, the matters herein authorized, and the City's duties under the Agreement.
- Section 3. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary to quickly provide the School Board funding for essential services; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 10th day of July, 2017

David Held, Mayor

Signed: 7/10, 2017

ATTEST:

Mary Beth Bailey, Clerk of Council

AGREEMENT

This Agreement (hereinafter referred to as "Agreement") is made and entered into this ____ day of _____, 2017, by and between the North Canton City District Board of Education (the "School District") and the City of North Canton, (the "City"), collectively, (the "Parties").

WHEREAS, North Ridge, LLC ("North Ridge") owns a fee simple interest in certain real property located at 1303-1305 North Main Street in the City, which is further identified by the Stark County Auditor ("Auditor") as permanent parcel number 10001392 (the "Subject Property").

WHEREAS, North Ridge applied to the City for and received a Community Reinvestment Act ("CRA") tax exemption of 100% on the then newly constructed dwellings, pursuant to Ohio Revised Code Section 3735.67 et seq., and the state certified and duly enacted CRA City ordinance for the Subject Property (the "Exemption"). The Auditor certified the CRA exemption for a period of 12 years, commencing in tax year 2014 and terminating in tax year 2025 (the "Exemption Period").

WHEREAS, pursuant to R.C. 3735.67(E), the School District filed a complaint with the City's Housing Officer challenging the continued North Ridge CRA property tax exemption (the "School District's Complaint").

WHEREAS, in the School District's Complaint, the School District also asserted that the City had failed to provide compensation to the School District as required on a commercial property pursuant to R.C. 3735.671, which requires that the School District receive compensation from sources in an amount of at least 50% of the amount of taxes that would have otherwise been received without the exemption, and that the School District is therefore entitled to reimbursement of at least 50% of the exempted taxes in the event that the CRA is not otherwise terminated as set forth in the School District's Complaint including misclassification of the property as residential, lack of notice under R.C. 5709.83 and 3735.67 and the failure to ensure compensation to the School District under R.C. 3735.671.

WHEREAS, in a letter dated October 14, 2016, the City Law Director provided notice to North Ridge that multiple appeals had been filed with the City' Housing Officer pursuant to Ohio Revised Code Section 3735.70. Specifically, Gary K. Fry, the City Housing Officer, filed an appeal dated October 7, 2016; Daryl Revoldt filed an appeal dated October 11, 2016; Melanie Roll filed an appeal dated October 12, 2016; Miriam Baughman filed an appeal dated October 12, 2016; and Chuck Osborne filed an appeal dated October 12, 2016. For purposes herein, the aforementioned Appeals shall collectively be referred to as the "Pending Appeals".

WHEREAS, North Ridge timely responded to the School District's Complaint, and the Pending Appeals.

WHEREAS, Gary Fry has withdrawn his Appeal.

WHEREAS, the School District and the City, and, by a separate and distinct agreement, North Ridge and the City, desire to resolve the School District's Complaint and create binding

agreements between the School District and the City, and between the North Ridge and the City, for the remainder of the Exemption Period.

NOW THEREFORE, for the valuable consideration set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. In consideration of North Ridge continuing to receive the full Exemption for the remainder of the Exemption Period, and in further consideration of the full and complete performance and occurrence of the terms and conditions set forth herein, North Ridge has agreed to pay to the City, on or before the date established for the payment of the first half real estate taxes due and owing for the prior year, the annual sum of FIFTY PERCENT (50%) of the School District's effective commercial tax rate for fixed-rate levies multiplied by the Assessed Building Value, as established by the Auditor, for the Exemption Period of tax year 2014 through tax year 2025 (the "Payments"). The Parties acknowledge this amount may be adjusted based upon the Auditor's Assessed Building Value for the Subject Property during the Exemption Period. North Ridge has also agreed to continue to pay real estate taxes on the land value, which is not, and has never been, part of the Exemption.

Example for clarification purposes:

The formula for real estate tax year 2016 is the Auditor's Assessed Building Value in the amount of \$882,650.00 multiplied by the School District's effective commercial tax rate for fixed rate levies for tax year 2016 of 45.500457 mills multiplied by 50% for a total of \$20,080.49, which amount would equal the Payment for 2017. The same formula shall be applied to tax years 2014 and 2015, which results in a payment for 2014 in the amount of \$19,860.56 and a payment for 2015 in the amount of \$20,196.85.

2. The initial Payment for tax years 2014 through 2016 shall be due and owing within 15 days of the execution of this Agreement, and shall be in the amount of \$60,137.90, as calculated above. This amount is non-refundable regardless of the outcome of any other challenges made by third parties to the legality of the CRA legislation.

3. The City shall timely forward to the School District the full amount of the Payments on a yearly basis during the Exemption Period under the terms of this Agreement.

4. In consideration for the above-described Payments, the School District shall dismiss its Complaint with prejudice, shall file with the City a Notice of Dismissal within three days of its receipt of the execution of this Agreement, and the initial Payment set forth in paragraph 2 and shall not file another complaint or otherwise challenge the validity of the Exemption Period for the Subject Property, and waives any and all claims against the City and North Ridge regarding the Exemption for the Subject Property

5. Nothing in this Agreement, however, waives North Ridge's obligation to properly maintain and repair the Subject Property, prevents the Housing Officer from complying with the requirements found in Ohio Revised Code Section 3735.68, or prevents the City from responding according to law to subsequent appeals under Ohio Revised Code Section 3735.70.

6. The City shall further seek the withdrawal of the Pending Appeals on or before the scheduled Hearing on the Pending Appeals, as the same may be further continued in furtherance of the efforts of resolution as set forth herein.
7. If the Pending Appeals, or one or more of the Pending Appeals are not ultimately withdrawn, and the Housing Council proceeds to hearing on the Pending Appeals, a determination in favor of the continuation of the Exemption for the entire Exemption Period shall be a condition precedent to any future Payment obligation of the City herein for the balance of the Exemption Period.
8. In any event, and for all purposes hereunder, the withdrawal or the denial of all of the Pending Appeals, together with the affirmance of a denial under any subsequent complaints and/or appeals under the further adjudication thereof (including appeals to the Court of Common Pleas, District County of Appeals and/or Ohio Supreme Court), shall be and shall remain a condition precedent to any future Payment obligation of the City herein.
9. In addition to the conditions precedent in Section 7 and Section 8 above, this Agreement is conditioned upon the approval as may be required, by North Ridge and the City, and shall only become effective upon said respective approvals.
10. In the event there is a successful appeal prosecuted against the Subject Property pursuant to Ohio Revised Code Section 3735.70, or otherwise, North Ridge's Payment obligations to the City shall terminate and as a result, the City's Payment obligations to the School Board shall likewise terminate. The obligation to make Payments shall not be stayed during the pendency of any determination of an appeal pursuant to Ohio Revised Code Section 3735.70, or otherwise.
11. In the event the School District successfully prosecutes a complaint against the Subject Property under Ohio Revised Code Section 3735.67(E), or otherwise, subsequent to its withdrawal of the current school District Complaint, resulting in the loss of the exemption to North Ridge, then the City's Payment obligations hereunder shall terminate. The obligation to make Payments shall not be stayed during the pendency of any determination of a complaint under Ohio Revised Code Section 3735.67(E), or otherwise.
12. The Parties further agree the Agreement does not bar North Ridge or the School District from filing a complaint on the Subject Property pursuant to Ohio Revised Code Section 5715.19, a complaint against valuation or assessment – determination of complaint – tender of tax – determination of common level assessment.
13. In addition to the Payment set forth in paragraphs 2 and 3 above, the School District shall also be entitled to a credit of \$4,553.00 on other billed services from the City to the School District relating to payment for services from the School District to the City, for crossing guards or other similar services. The credit shall be a one-time credit applied against future invoices issued to the School District from the City.
14. This Agreement is intended to represent an agreement for compensation to be due and owing to the School District as it relates to the exemption for North Ridge.

In the event the City intends to grant any other abatements pursuant to the CRA, then the City shall be required to provide the School District any and all statutory notice to which it is entitled and the City shall ensure that no exemption is granted pursuant to the CRA legislation that would deprive the School District of its revenues to which it is otherwise entitled under R.C. 3735.671. The provisions of R.C. 3735.671 are specifically incorporated herein.

The City furthermore agrees that under the existing CRA any exemption shall be limited to a term of 12 years for remodeling of dwellings containing more than two units, and upon the cost of remodeling is at least \$50,000, as described in R.C. 3735.67(D)(2). The City shall not grant any exemption on commercial, industrial, or new housing construction.

15. The Parties agree this Agreement shall not be construed as an admission by any Party nor used as evidence of the fair market value of the Property for any given tax year. Rather, this Agreement should be construed solely as a global compromise and settlement of a dispute between the Parties arising from the School District's Complaint and under the Pending Appeals.

16. Failure of a Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed a waiver by said Party of any of its rights there under.

17. This Agreement shall be binding upon the Parties hereto, their successors and assigns, to the extent permitted by law. Each Party shall execute and deliver to the requesting Party all instruments, certificates and other documents reasonably requested by a Party with respect thereto.

18. All the individuals signatory hereto represent and warrant their authority to execute and deliver this instrument.

19. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and same instrument.

20. In the event any provision or term of this Agreement is found to be void or unenforceable to any extent and for any reason, it is the agreed upon intent of the Parties hereto that all remaining provisions or terms of this Agreement shall remain in full force and effect to the maximum extent permitted and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

21. Relative to the School District's Complaint and the Pending Appeals, this Agreement sets forth the entire Agreement between the Parties and fully supersedes any and all other prior agreements or understandings between the Parties pertaining to the subject matter hereof. No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification or discharge is agreed to in writing and signed by the Parties. No agreements, or representations, oral or otherwise, express or implied, with respect to the subject matter hereof, have been made by either Party that are not set forth expressly in this Agreement.

22. The Parties agree they have read this Agreement, understand its terms and voluntarily accept the consideration recited above for the purpose of making a full and complete compromise, adjustment and settlement of any and all claims.
23. This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio and the Parties consent to the jurisdiction of a court of competent jurisdiction in the event this Agreement is breached.

WHEREFORE, the Parties now voluntarily and knowingly execute this Agreement, consisting of five pages.

City of North Canton

**North Canton City District Board
of Education**

David J. Held, Mayor

Todd Tolson, Treasurer

Date: _____

Date: _____

Approved as to form and content.

Timothy L. Fox, Director of Law