

ORDINANCE NO. O-34-2017

AN ORDINANCE ACCEPTING THE SETTLEMENT OFFER IN THE
CASE OF LAKE REGION DEVELOPMENT CO., LTD., ET AL. V.
VILLAGE OF BOLIVAR ET AL., NORTHERN DISTRICT OF OHIO
EASTERN DIVISION CASE NO. 5:14-CV-00133; ESTABLISHING AN
EMERGENCY

WHEREAS, the Village of Bolivar was the defendant in the case of Lake Region Development Co., Ltd. et al. v. Village of Bolivar et al., Northern District of Ohio Eastern Division Case Number 5:14-cv-00133; and

WHEREAS, pursuant to court-ordered mediation, the Village received a settlement offer from Lake Region Development Co., Ltd. and Massillon Materials, Inc., the Plaintiffs in the lawsuit, which would provide for a full settlement of all claims; and

WHEREAS, the settlement offer provided that, in exchange for allowing Massillon Materials, Inc. the ability to utilize the property for sand and gravel mining under certain conditions, the Plaintiffs dismissed all claims against the Village, sought no further damages against the Village, and paid all of their own attorney fees and costs; and

WHEREAS, Council learned from insurance counsel that some of the claims may not even be covered, and that the residents would be responsible for any judgment that could not be paid; and

WHEREAS, the Village Council has considered the limits of the Village's insurance policy, the lack of coverage for some of the claims in the lawsuit, the Village's chances of success in the lawsuit, the desires of the Village residents, the Village's financial position, and the effect of a large judgment on the welfare of the people;

WHEREAS, this settlement was previously approved on May 19, 2014 in Ordinance No. 94-2014, but the procedure of the passage was challenged as a violation of the Ohio Sunshine Laws in State of Ohio ex rel. Irvin W. Huth v. Village of Bolivar, Tuscarawas County Court of Common Pleas Case Number 2016 CV 05 0320;

WHEREAS, although the Village does not believe that there was a violation during the passage of this particular ordinance, repealing Ordinance No. 94-2014 and passing a new ordinance accepting the settlement agreement has been recommended by legal counsel for the Village to take the steps to cure any potential violation and to preserve the settlement agreement so as not to subject the Village to additional legal

threats or lawsuits and the potential liability that results from the prior case being re-opened.

WHEREAS, Ohio law provides the defect in prior passage can be cured by restarting the legislative process on the matter at issue and by compliance with all the necessary laws with respect to open meetings and the passage of legislation. Therefore, the Village is restarting the legislative process from the beginning and complying with all applicable laws in passage of the replacement ordinance.

NOW, THEREFORE, the Village of Bolivar ordains as follows:

Section 1: The settlement agreement with Lake Region Development Co., Ltd., and Massillon Materials, Inc. is hereby approved.

Section 2: This Ordinance is hereby declared to be an emergency, necessary for the preservation of the public health, safety and welfare of the Village and its residents. The reason for the emergency is for the purposes of protecting the Village's finances, enabling the Village to move forward with the resolution of the lawsuit, and to ensure the settlement agreement is preserved and the Village is protected from additional liability from the previously settled case, which contained substantial risk to the Village. Therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: October 2, 2017

REBECCA HUBBLE, MAYOR

ATTEST:

MARIA APP, FISCAL OFFICER