

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**KENNETH SMILEY, JR., dba  
KEN'S KARS**

\*

CASE NO. 3:14-cv-271

**Plaintiff.**

**Judge Walter H. Rice**

v.

\*

**CITY OF DAYTON, OHIO, et al.**

\*

**Defendant**

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**STIPULATED JUDGMENT ENTRY**

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On July 18, 2014, Kenneth Smiley, Jr. dba Ken's Kars, filed a complaint alleging civil rights violations against the City of Dayton, Ohio, in the Montgomery County Common Pleas Court, Case No. 2014CV4155. The City of Dayton removed the civil rights action to this Court on August 18, 2014.

On October 20, 2015, the City of Dayton, Ohio, filed a counterclaim for appropriation of property in this case, also naming the Montgomery County, Ohio, Treasurer as a party. The City of Dayton sought to appropriate Kenneth Smiley, Jr.'s interest in certain property in Montgomery County, Ohio, known as 735 North Main Street in Dayton Ohio, which consists of Parcels 414WLV (consisting of all or a portion of Treasurer's Parcel Identity R72 06405 0008), 414WDV (consisting of all or a portion of Treasurer's Parcel Identity R72 06405 0008 and R72 06405 0007), 414WL (consisting of all or a portion of Treasurer's Parcel Identity R72 06405 0007, R72 06405 0006 and R72 06405 0005) and 414 (consisting of all or a portion of

Treasurer's Parcel Identity R72 06405 0007, R72 06405 0006 and R72 06405 0005) (hereinafter "Property"), which is more particularly described in the attached Exhibit 1.

The parties have now reached a full and final settlement, and Kenneth Smiley, Jr. has agreed to accept Two Hundred Thousand Dollars (\$200,000.00) as full compensation for Kenneth Smiley, Jr.'s claims and the property appropriated. The other named defendant, the Montgomery County, Ohio, Treasurer, approves this settlement.

Based upon the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED that all right, title and interest, including limitation of access, in the property be vested in the City of Dayton, Ohio, in fee simple absolute. This Court finds that the Montgomery County, Ohio, Treasurer has filed an answer and has a valid lien for property taxes and assessments on this property. Further, this Court finds that there are no current taxes due and owing on the property as of the date of this entry.

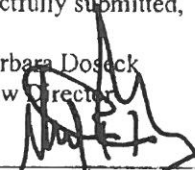
It is further ORDERED, ADJUDGED, AND DECREED that the interests granted to the City of Dayton, Ohio, are hereby duly vested in the City of Dayton, Ohio, free and clear of all claims of all parties, except all easements running with the land. Kenneth Smiley, Jr. is barred from asserting any prior claim or interest in the appropriated property.

It is further ORDERED, ADJUDGED, AND DECREED that a certified copy of this Stipulated Judgment Entry be immediately transmitted to the County Auditor for purposes of making the proper notations relative to title, if any, and changes of tax evaluation and liability therefore, if any; and that the County Auditor shall then transmit said entry to the County Recorder for recording in the deed records of this county. IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Walter H. Rice

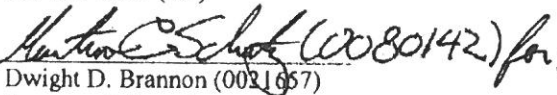
Respectfully submitted,

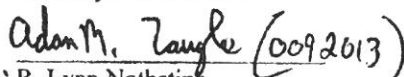
By Barbara Dosack  
Law Director

  
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*VIA EMAIL AUTHORITY*

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[nothstine@mcoho.org](mailto:nothstine@mcoho.org)  
Attorney for Montgomery County  
Treasurer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 6<sup>th</sup> day of June 2017, via the court's electronic mail system upon the following:

David C. Greer  
Bieser, Greer & Landis, LLP  
6 North Main Street, Ste 400  
Dayton, Ohio 45402

Dwight D. Brannon  
Matthew Schultz  
Brannon & Associates  
130 W. Second Street, Ste 900  
Dayton, Ohio 45402

R. Lynn Nothstine  
Montgomery County Prosecutor  
301 West Third Street  
4<sup>th</sup> Floor Civil Division  
Dayton, Ohio 45402

Neil F. Freund  
Neil F. Freund

# **EXHIBIT 1**

**DESCRIPTION OF PROPERTY**  
**PART OF CITY OF DAYTON LOTS**  
**14178, 14179, 14180 AND 14181 AND**  
**PART OF VACATED ALLEY (ORD. No. 21396)**  
**CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

September 3, 2014

Revised May 12, 2017

Situate in the City of Dayton, Section 27, Town 2, Range 6 E., in the County of Montgomery and the State of Ohio, and being part of Lot Nos. 14178, 14179, 14180 and 14181 and an alley vacated by ordinance #21396 dated 10/14/1964 of the revised and consecutive numbers of lots on the plat of the City of Dayton, and being part of that real estate conveyed to Kenneth W. Smiley by deed recorded in IR Deed 06-077192 of the Montgomery County Recorder's Office (all references to deeds, microfiche, plats, surveys, instrument of record, etc. refer to the records of the Montgomery County, Ohio Recorder's Office, unless noted otherwise) and being more particularly described as follows:

Being a parcel of land lying on the left side of the centerline of proposed Main Street of Project MOT -75-13.11, made by the Ohio Department of Transportation in Plat Book 206, Pages 1, 1A, 1B and 1C, of the records of Montgomery County, and being located within the following described points in the boundary thereof:

**BEGINNING** at a set 5/8" diameter iron pin with a yellow cap marked "Briggs 7366" at the northwest corner of Lot No. 14178, also being in the existing south right-of-way of Shaw Avenue (a 55' dedicated public street), said iron pin being 148.44 feet left of station 12+09.92:

thence along the north line of said Lot No. 14178 and the said existing south right-of-way line of Shaw Avenue, North 78°52'30" East for a distance of 21.82 feet to a set 5/8" iron pin with yellow cap marked "Briggs 7366" on the existing limited access line of Ramp D-2, as acquired by the State of Ohio by deed recorded in IR Deed 08-059012, said iron pin also being located 127.67 feet left of station 12+02.09;

thence leaving the north line of said Lot No. 14178 and the existing south right-of-way of Shaw Avenue, along the existing limited access line, South 33°38'18" West for a distance of 31.06 feet to a set 5/8" iron pin with yellow cap marked "Briggs 7366", said iron pin also being located 155.07 feet left of station 11+84.91;

thence continuing along the existing limited access line of Ramp D-2, South 59°45'06" West for a distance of 137.85 feet to a set 5/8" iron pin with yellow cap marked "Briggs 7366", being in the west line of existing Lot No. 14181 and the east line of property conveyed to the City of Dayton, Ohio by deed recorded in IR Deed SF/D-10-025900, also being located 292.76 feet left of station 11+76.22;

thence leaving the existing limited access line of Ramp D-2, along the west line of Lot No. 14181 and the east line of said City of Dayton, Ohio tract, North 10°59'08" West for a distance of 67.21 feet to a set 5/8" iron pin with yellow cap marked "Briggs 7366" being in the existing south right-of-way of Shaw Avenue, also being the northwest corner of Lot No. 14181, being located 270.92 feet left of station 12+66.44;

thence along north line of said Lot No. 14181 and the existing south right-of-way of Shaw Avenue, North 78°52'30" East for a distance of 130.13 feet to the **PLACE OF BEGINNING**.

The above described area is located within Montgomery County Auditor's Permanent Parcel Numbers R72-06405-0005 through 0008 and an alley vacated by ordinance #21396 dated 10/14/1964. The parcel contains 0.1389 acres, 6049 sq. ft square feet, more or less.

The area of this parcel contained in each of the Auditor's Parcels is listed below:

Auditor's Parcel	Area (sq. ft.)	Area (acres)
R72-64-5-5	2297	0.0528
R72-64-5-6	1799	0.0413
R72-64-5-7	1301	0.0299
R72-64-5-8	241	0.0055
Alley 21396	411	0.0094

The stations and offsets referred to in this description are measured from the centerline of construction of Main Street, and are as depicted in the MOT-75-13.11 construction plans, and corresponding Centerline Plat.

This description was prepared and based upon a field survey performed on August 28, 2014 under the direction of R. Douglas Briggs P.E., P.S. (7366)

Monuments referred to as set iron pins are 5/8 inch X 30 inch iron bars with yellow cap marked "Briggs 7366".

Grantor claims title by instrument of record, IR Deed 06-077192 of the Montgomery County, Ohio Recorder's Office.

The basis of bearings for this project is referenced to the bearing on Main Street established between monument boxes to be set on a tangent section at station 5+00, and 8+24.27 (N 11°33'29"W). The property as described in this document is tied to NAD 83 (95), NAVD 88, and the following NGS Control Monuments: MOT 1015, PID AH3429; MOT 1016, PID AH3436; MOT 1017, PID AH3422; MOT 1018, PID AH3409. The coordinate on the Point of beginning is a project adjusted ground coordinate. To establish the State Plane Coordinate for the starting point multiply project coordinate by the project adjustment factor (PAF). PAF = 0.99992858.

Recorded in the Montgomery County Engineer's Record of Land Surveys in Volume 2017, Page 0061.

BRIGGS CREATIVE SERVICES



By: R. D. Briggs  
R. Douglas Briggs  
Ohio Professional Surveyor No. 7366

5/12/2017  
Date

PAUL W. GRUNER, P.E., P.S.  
MONTGOMERY COUNTY ENGINEER  
APPROVED FOR POINT OF BEGINNING,  
ACREAGE AND CLOSURE ONLY  
DATE 5/12/17 FILE NO. 2017-0061  
BY Wayne B. W.