

RESOLUTION NO: \_\_\_\_\_

AUTHORIZING APPROVAL OF SETTLEMENT AGREEMENT

WHEREAS, there is currently pending a lawsuit captioned *Dennis A. Owens v. Pike County Board of Zoning Appeals and Fred Ruzich, Pike County Zoning Administrator*, Case No. 2018 MR 122, pending in the Circuit Court for the Eighth Judicial Circuit, Pike County, Illinois challenging the enforcement of the Pike County Zoning Ordinance set-back requirements as to a shed/pole-type structure with a concrete foundation on a parcel of property owned by Dennis A. Owens, Parcel #56-022-05, commonly known as 495 N. Main Street, New Canton, Illinois.

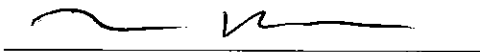
WHEREAS, the County Board has determined that it is in the best interests of the County to resolve the aforementioned lawsuit pursuant to terms that have been memorialized in a Settlement Agreement and Release of All Claims.

BE IT RESOLVED by the County Board of the County of Pike, Illinois as follows:

1. That the Settlement Agreement and Release of All Claims is approved.
2. That the Chairperson of the County Board is hereby authorized to execute the Settlement Agreement and Release of All Claims on behalf of the County of Pike, Illinois.



Chairman of the Board



County Clerk

4-22-19

Dated

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the "Agreement") is made by Dennis A. Owens ("Owens") and Pike County ("the County") this 26 day of ~~February~~, 2019 as set forth below.  
*February D.A.O.*

### WITNESSETH:

WHEREAS, there is currently pending an action in the Circuit Court of the Eighth Judicial Circuit of Pike County, Illinois (the "Court") styled *Dennis A. Owens, Plaintiff, vs. Pike County Board of Zoning Appeals and Fred Ruzich, Pike County Zoning Administrator, Defendants*, No. 18 MR 122 (the "Action"); and

WHEREAS, Defendants have defended the Action; and

WHEREAS, without any admission as to fault, liability, or wrongdoing or as to the validity of the other parties' positions, and to avoid further litigation expense and the uncertainty inherent in a trial of the Action, Owens and the County (hereinafter "the Parties") desire to forever resolve and compromise all of the claims asserted or which could have been asserted by Plaintiff in the Action.

NOW, THEREFORE, in exchange for the consideration set forth this Agreement, the Parties agree as follows:

1. **Payment.** Upon: (1) Execution of this Agreement by all Parties; and (2) Approval by the County of a resolution or ordinance, as more fully described below, approving a variation of the set-back requirement with respect to the shed/pole-type structure that is the subject of the Action (the "Structure"), plaintiff shall pay, within Seven (7) days thereafter, a fine to the County in the amount of Two Thousand, Six Hundred and Eighty and no/100 Dollars (U.S. Currency) (\$2,680.00). Failure of Owens to pay the fine shall render this Agreement null and void and shall render any set-back variation null and void.

2. **County Action.** Upon execution of this Agreement by Owens, the County shall issue notice of its intent to grant the variation to the set-back requirement for the Structure to all adjoining landowners by certified mail, no fewer than Fifteen (15) days before consideration of the variation by the County Board. If any adjoining landowner objects to the proposed variation, the matter must be considered by the Zoning Board of Appeals, in accordance with the Counties Code. If there is no objection to the proposed variation, the County Board will consider this Agreement and the variation no sooner than Fifteen (15) days after issuance of notice to adjoining landowners. If the variation is not granted by the County Board or by the Zoning Board of Appeals (in the case of an adjoining landowner's objection), this Agreement shall be null and void. If approved, the variation shall excuse the Structure from the set-back requirements in the Pike County Zoning Ordinance so long as the Structure stands in its current form (as set forth more fully below), regardless of who owns the structure, and the County Zoning Administrator shall be directed to issue a building permit to Owens indicating approval of the set-back variation. If approved, the variation shall be in effect only so long as the Structure has not been damaged by any cause to the extent of seventy-five percent (75%) or more of its fair market value. If the Structure is damaged by less than seventy-five percent (75%) of its fair market value, it may be repaired or reconstructed to its specifications before the time of damage and used as before the time of damage, provided that such repairs or construction are substantially completed within twelve (12) months of the date of the damage. If such construction is not substantially completed within

twelve (12) months, the set-back variation shall automatically terminate. The Structure's specifications, including, but not limited to, its footprint and dimensions may not be altered while the set-back variation referred to in this Paragraph is in effect. Any change to the Structure's specifications requires additional pre-approval in accordance with the Pike County Zoning Ordinance.

3. **Dismissal and Payment.** In consideration for the issuance of the variation described in Paragraph 2, Owens shall, within seven (7) days of the issuance of the variation, pay the fine described in Paragraph 1 and take all required action, including, but not limited to, executing and filing all necessary papers to have the Action dismissed with prejudice.

4. **Attorneys' Fees & Costs.** The actions of the Parties set forth above, are made to effectuate a full settlement, satisfaction and release of all claims raised or which could have been raised by Owens in the Action. Plaintiff expressly releases any and all claims for attorney's fees and costs. Plaintiff acknowledges and agrees that: (i) no attorney, agent or representative of Plaintiff has any claim of any type against the Defendants or the County in connection with the Action or this Agreement, and (ii) each party shall bear his or its own costs, expert's fees and attorney's fees in connection with the Action, the negotiation and execution of this Agreement, the claims released herein, and any matters occurring prior to the date of this Agreement.

5. **General Release by Owens.** Owens hereby releases, relinquishes and gives up and agrees not to directly or indirectly file, retain any recovery for, or pursue any and all claims, suits, actions and causes of action relating to any matter whatsoever, whether known or unknown, which he now may have or hold against (a) Defendants, the County, its agents, employees, and past or present elected officials in their individual and official capacities and (b) Defendants' insurers, including but not limited to all claims (i) which were or could have been alleged in the Action or (ii) relating to any conduct occurring during the course of defending or in connection with the Action, or the negotiation and execution of this Agreement.

Owens represents and warrants that he is the sole owner of all claims that he has released in this Agreement and that he has not assigned or transferred any such claim (or any interest in any such claim) to any other person or entity, and he will indemnify, defend and hold Defendants and the County harmless for any damages, costs or expenses which it or they may incur if these representations and warranties are incorrect in any respect.

If Owens violates this Agreement, he shall pay all costs, expenses and attorney's fees incurred by Defendants, or the County and indemnify and hold Defendants and the County harmless from liability, costs or expenses related to the violation. This is in addition to, and not in lieu of, any other rights or remedies which Defendants or the County may have with regard to such violation.

Owens understands and expressly agrees that Defendants, the County and the Defendants' and the County's employees, agents and past and present elected officials in their individual and official capacities are intended beneficiaries of this Agreement.

6. **Confidentiality.** Owens agrees that he shall keep the settlement of the Action and the terms of the Agreement confidential, and he shall not disclose the settlement of the Action or terms of this Agreement to any person, group or entity. Owens agrees not to publicize the settlement of the Action or the terms of the Agreement in any manner, either personally or through his agents.

7. **Non-Admission.** The Parties understand and agree that the settlement of the Action is made for the purpose of settlement and compromise only, to avoid the cost and expense and uncertainty associated with further litigation and without admission by the Defendants or the County as to fault, liability, or wrongdoing, all of which are expressly denied.

This Agreement is not and shall not be construed as evidence of or an admission by the Defendants or the County that any claim or fact alleged by Owens in the Action is true or correct. Neither this Agreement nor any of its terms shall be offered or received in evidence in any other action or proceeding or utilized in any manner whatsoever by Owens, or any third party as an admission or concession of liability or wrongdoing of any nature on the part of the Defendants or the County.

8. **Governing Law.** This Agreement shall be governed by and construed and interpreted according to the laws of the State of Illinois.

9. **Entire Agreement.** This Agreement contains the entire agreement between the Parties concerning the subject matter and supersedes all prior oral or written communications or agreements between the Parties concerning such subject matter. Neither this Agreement, nor any of its terms, may be changed, waived, or added to except in writing signed by all Parties. This Agreement is binding upon and inures to the benefit of the Parties and their administrators, personal representatives, legatees, heirs, next of kin, successors, and assigns of the parties.

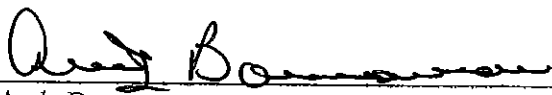
10. **Representations.** The Parties represent that they: (i) have read this entire Agreement and understand its terms; (ii) have been advised in writing to consult an attorney before signing it; (iii) have been given a reasonable and adequate period of time to consider the Agreement before signing it; (iv) fully understand the terms and effect of this Agreement; (v) fully understand their right to discuss all aspects of this Agreement with an attorney of their choice; (vi) are voluntarily executing this Agreement of their own free act and deed for the purposes of inducing the payment and benefits referred to in this Agreement; and (vii) no payment or consideration has been promised to them for entering into and signing this Agreement which is not specified in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

Dated: 2-26-2019

  
\_\_\_\_\_  
Dennis A. Owens

Dated: 4-22-19

  
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Andy Borrowman  
County Board Chairperson