

**CITY OF STRONGSVILLE, OHIO**

**ORDINANCE NO. 2008 - 038**

**By: Mayor Perciak and Mr. Haseley**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A RELEASE AND VACATION OF AN EASEMENT AND ACCEPT A NEW GRANT OF EASEMENT FOR THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, OPERATION AND REPAIR OF A STORM SEWER SYSTEM FROM COLABIANCHI CONSTRUCTION, INC. IN CONNECTION WITH AVERY WALDEN SUBDIVISION, PHASE 1, AND DECLARING AN EMERGENCY.**

WHEREAS, Colabianchi Construction, Inc. ("CCI") is the owner in fee simple of real estate known as Sublot 17 (PPN 398-25-020) in Avery Walden Reserve Subdivision, Phase 1 in the City of Strongsville, Ohio herein by reference (the "Property"); and

WHEREAS, by and through Ordinance No. 2005-178, Council authorized the recording of the plat and acceptance of a Grant of Easement from Webster Road, LLC for the construction, reconstruction, maintenance, operation and repair of a storm sewer drainage system and appurtenances on the Property, which Grant of Easement is on file with the Cuyahoga County Recorder and further described and identified on Exhibits A and B respectively of Exhibit 1, attached hereto and incorporated herein by reference, and which easement is proposed to be released, extinguished and vacated (hereinafter the "existing easement"); and

WHEREAS, CCI, the successor owner of said Property, has agreed to grant a new easement to the City of Strongsville for the purpose of constructing, reconstructing, maintaining, operating and repairing a storm sewer system and appurtenances on said Property in connection with the Avery Walden Reserve Subdivision, Phase 1 development project (hereinafter the "new easement"), as more fully described and identified in Exhibits A and B respectively of Exhibit 2, attached hereto and incorporated herein by reference; and

WHEREAS, the existing easement is no longer needed by the City of Strongsville and is proposed to be extinguished; and

WHEREAS, CCI is proposing to construct a storm sewer system and appurtenances on Sublot 17 to be dedicated to public use as an easement; and

WHEREAS, CCI wishes to grant and the City wishes to accept the new easement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

**Section 1.** That this Council finds and determines that the existing easement described and identified in Exhibits A and B, attached to Exhibit 1 and currently granted to the City of Strongsville is no longer needed for municipal purposes.

**Section 2.** That the Mayor be and is accordingly hereby authorized and directed to enter into a Release of Easement Agreement in the form attached hereto as Exhibit 1, in connection with the existing easement.

**Section 3.** That the Council hereby authorizes the Mayor to accept a new Grant of Easement from Colabianchi Construction, Inc. for the purposes of constructing, reconstructing, maintaining, operating and repairing a storm sewer system on property described and identified in Exhibits A and B, attached to Exhibit "2".

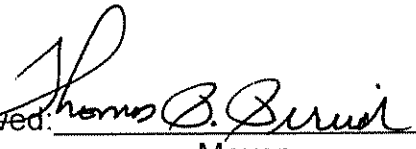
**Section 4.** That the Clerk of Council and/or City Engineer be and are hereby authorized and directed to cause such Release of Easement Agreement and Grant of Easement to be filed with the Cuyahoga County Recorder's Office after their respective execution.

**Section 5.** That the funds for the purposes of recording said documents have been appropriated and shall be paid from the General Fund.

**Section 6.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

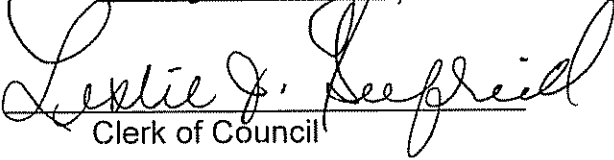
**Section 7.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare and for the further reason that the disposition of the aforesaid lands is necessary to promptly dispose of an easement no longer needed for municipal public purposes; to accept the grant of easement which is needed by the City for storm sewer system purposes in connection with Avery Walden Subdivision, Phase 1; and to conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

  
\_\_\_\_\_  
President of Council

Approved:   
\_\_\_\_\_  
Mayor

Date Passed: February 4, 2008

Date Approved: Feb. 11, 2008

Attest:   
\_\_\_\_\_  
Clerk of Council

ORD. No. 2008-038 Removed: \_\_\_\_\_  
1st Rdg. 2/4/08 Ref: \_\_\_\_\_  
2nd Rdg. Suspended Ref: \_\_\_\_\_  
3rd Rdg. Suspended Ref: \_\_\_\_\_  
\_\_\_\_\_  
Pub Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
Adopted: 2/4/08 Defeated: \_\_\_\_\_

## RELEASE OF EASEMENT AGREEMENT

This Release executed on the 29<sup>th</sup> day of January, 2008, by **CITY OF STRONGSVILLE**, 18688 Royalton Road, Strongsville, Ohio 44136 (hereinafter referred to as "City") in favor of **COLABIANCHI CONSTRUCTION, INC.** (as successor owner to Webster Road, LLC), a corporation organized and existing under the laws of the State of Ohio, located at 11005 Pearl Road, Suite 2, Strongsville, Ohio 44136 (hereinafter referred to as "CCI").

### RECITALS

WHEREAS, CCI is the successor owner in fee simple of real estate known as Sublot 17 in Avery Walden Reserve Subdivision, Phase 1 in the City of Strongsville, Ohio and further identified on Exhibits A and B, attached hereto and incorporated herein by reference (the Property); and

WHEREAS, by and through Ordinance No. 2005-178, Council authorized the recording of the plat by Webster Road, LLC and acceptance of a Grant of Easement for the construction, reconstruction, maintenance, operation and repair of a storm sewer drainage system and appurtenances on the Property, which Grant of Easement is on file with the Cuyahoga County Recorder and further described and identified on Exhibits A and B respectively, and which easement is proposed to be released, extinguished and vacated (hereinafter the "existing easement"); and

WHEREAS, CCI, the successor owner of said Property, has agreed to grant a new easement to the City of Strongsville for the purpose of constructing, reconstructing, maintaining, operating and repairing a storm sewer system and appurtenances on said Property in connection with the Avery Walden Reserve Subdivision, Phase 1 development project (hereinafter the "new easement");

NOW, THEREFORE, the parties agree as follows:

1. That CCI has requested that the City release, extinguish and vacate the existing easement;
2. That the Council of the City has found and determined that the existing easement is no longer needed for municipal purposes, the release, extinguishment and vacation of such existing easement will not be detrimental to the general interest, and there is good cause to vacate and extinguish the existing easement;
3. That CCI shall grant to the City and the City shall accept a new easement by and through a separate document;
4. That the City shall cause this Release of Easement and the grant of the new easement to be filed with the Cuyahoga County Recorder after all appropriate City approvals have been obtained; and

Exh. 1

5. That upon recordation with the Cuyahoga County Recorder of this Release of Easement, CCI shall be solely responsible and/or liable in regard to the maintenance and use of the storm drainage system located in the existing easement.

IN WITNESS WHEREOF, the parties have executed this Release of Easement on the day and year first above written.

Signed in the presence of:

**"CCI"**  
**COLABIANCHI CONSTRUCTION, INC.**

Sandra Schmock

By: Frank Colabianchi

Its: President

Donna M. Musick  
Bea A. [Signature]

**CITY OF STRONGSVILLE**  
By: Thomas P. Perciak

Thomas P. Perciak, Mayor  
Approved as to legal form only by the  
Law Department of the City of Strongsville.

By: K. M. A. Kraus  
Law Director

STATE OF OHIO            )  
  )ss  
COUNTY OF CUYAHOGA)

Date 2/7/08

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named **COLABIANCHI CONSTRUCTION, INC.**, by Frank Colabianchi, its President, who acknowledge that he/she did sign the foregoing instrument and that the same is his/her free and voluntary act and deed as such officer and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Strongsville, Ohio, this 29th day of January, 2008.

Donna Mindyas  
Notary Public

Donna Mindyas  
Notary Public, State of Ohio  
Cuyahoga County  
My Commission Expires, July 1st 2008

STATE OF OHIO                    )  
  )ss  
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named **CITY OF STRONGSVILLE**, by Thomas P. Perciak, its Mayor, who acknowledge that he did sign the foregoing instrument and that the same is his free and voluntary act and deed as such officer and the free and voluntary act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Strongsville, Ohio, this 11<sup>th</sup> day of February, 2008.

Donna M. Miscik  
Notary Public

DONNA M. MISCIK  
Notary Public, State of Ohio  
My Commission Expires Nov. 16, 2009

Legal Description: Avery Walden Subdivision Phase I  
Sublot No. 17, Public Drainage Easement Vacation

Situated in the City of Strongsville, County of Cuyahoga and State of Ohio and known as being a part of Original Strongsville Township Lot 14 and described as follows:

Beginning at a point marking the Northwest corner of Sublot No. 17 in the Avery Walden Subdivision Phase I as recorded in Cuyahoga County Maps Record Volume 349 at Pages 5 – 8 and in the Easterly Right-of-Way line of Bentley Lane (60' Right-of-Way);

Thence proceeding North 60 degrees 34 minutes 45 seconds East in the Northerly line of said Sublot No. 17 a distance of 119.61 feet to the point and place of beginning of the easement herein described to be vacated;


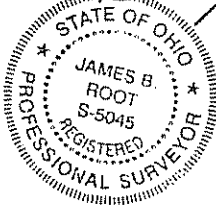
Thence continuing North 60 degrees 34 minutes 45 seconds East in the Northerly line of said Sublot No. 17 a distance of 20.00 feet to a point;

Thence proceeding South 29 degrees 25 minutes 15 seconds East a distance of 110.10 feet to a point in the Southerly line of said Sublot No. 17;

Thence proceeding South 54 degrees 31 minutes 46 seconds West in the Southerly line of said Sublot No. 17 a distance of 20.11 feet to a point;

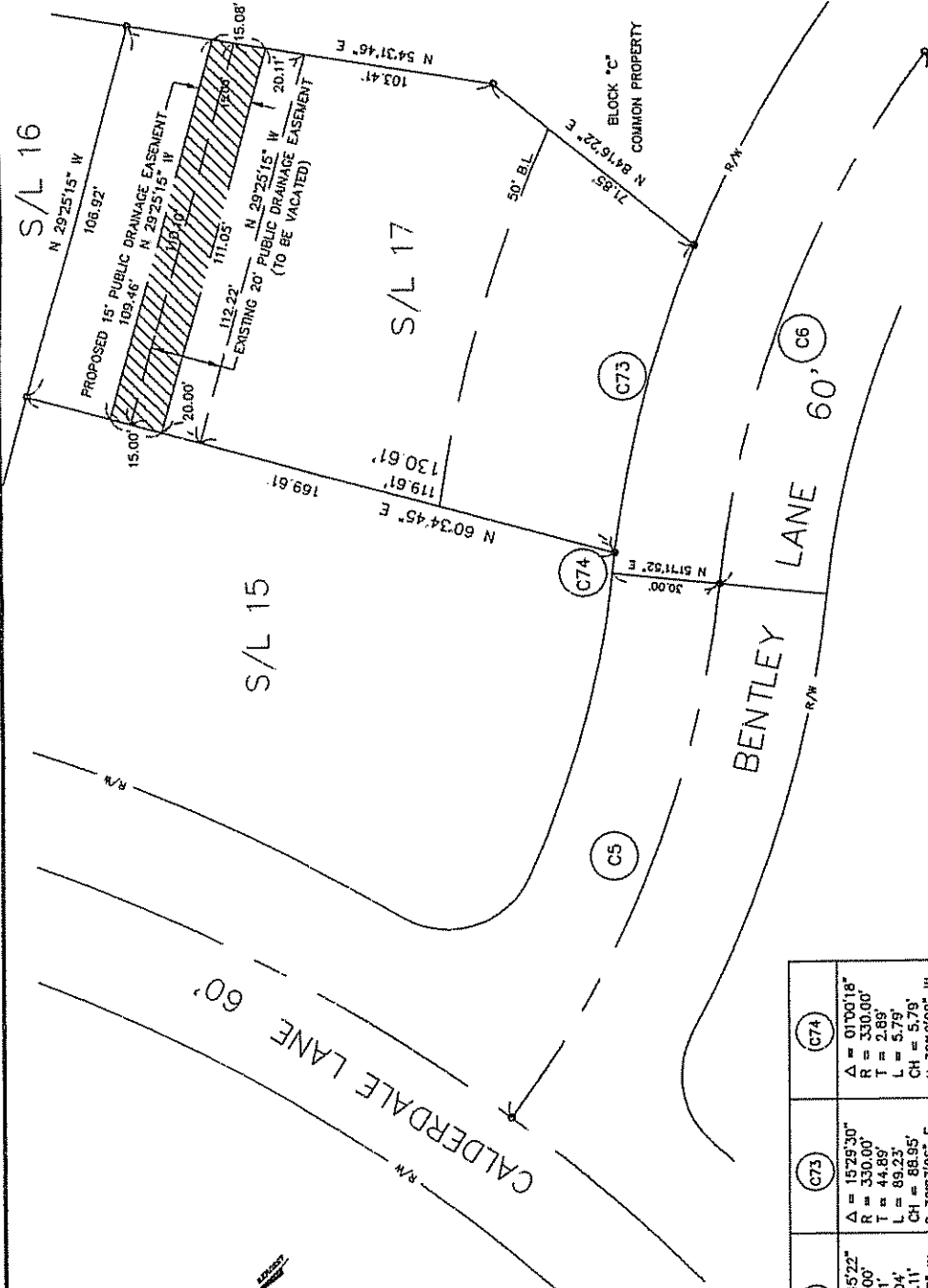
Thence proceeding North 29 degrees 25 minutes 15 seconds West a distance of 112.22 feet to the point and place of beginning. Said easement contains 0.0510 acres of land but is subject to all legal highways and easements of record.

The above legal description was prepared by James B. Root, Registered Surveyor #5045 and is based on the assumption that the Northerly line of said Sublot No. 17 bears North 60 degrees 34 minutes 45 seconds East.

*E.V.L.A.*

S/L 16



- LEGEND**
- ⊙ IRON PIN SET
  - IRON PIN FOUND
  - CLEAR OUT
  - MONUMENT BOX



	C5	C6	C73	C74
$\Delta$	30°52'48"	30°45'22"	15°29'30"	01°00'18"
R	300.00'	300.00'	330.00'	330.00'
T	82.86'	82.51'	44.89'	2.89'
L	161.69'	161.04'	89.23'	5.79'
CH	159.74'	159.11'	88.95'	5.79'
S	23°21'44" E	N 23°25'27" W	S 30°03'08" E	N 38°18'00" W

GRAPHIC SCALE



( IN FEET )  
 1 inch = 40 ft.

JAMES B. ROOT  
 REG. SURVEYOR NO. 5045  
 200 ELLEN DRIVE

BEREA, OHIO 44017 (440) 243-9843

SCALE: 1" = 40'  
 DATE: 1-13-08

*James B. Root*

EXL B

**GRANT OF EASEMENT  
FOR  
STORM SEWER SYSTEM PURPOSES**

This Easement Grant is made between **COLABIANCHI CONSTRUCTION, INC.**, a corporation organized and existing under the laws of the State of Ohio, located at 11005 Pearl Road, Strongsville, Ohio 44136 (hereinafter referred to as the "Grantor") and the **CITY OF STRONGSVILLE**, located at 18688 Royalton Road, Strongsville, Ohio 44136, an Ohio municipal corporation (hereinafter referred to as the "Grantee").

WHEREAS, the Grantor is the successor owner in fee simple of real estate known as Sublot 17 in Avery Walden Reserve Subdivision, Phase 1 in the City of Strongsville, Ohio and further described and identified on Exhibits A and B, respectively, attached hereto and incorporated herein by reference (the Property); and

WHEREAS, the Grantor wishes to grant and the Grantee wishes to accept an easement as more fully described in Exhibit "A" attached hereto and incorporated herein by reference (the "Premises") for the purposes of constructing, reconstructing, maintaining, operating and repairing a storm sewer line and appurtenances in, under, over, and across the Premises (the "Storm Sewer System");

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration the receipt of which is hereby acknowledged, the following grants, agreements, and covenants are made:

The Grantor hereby gives, grants, bargains and conveys to the Grantee, its successors and assigns a perpetual easement and right to enter upon the Premises described in Exhibit "A" attached hereto and incorporated herein as if fully rewritten and to remove and/or replace trees where necessary for the purposes of constructing, reconstructing, maintaining, altering, operating and repairing the Storm Sewer System. Any and all of the aforesaid purposes and work in furtherance thereof may be undertaken and accomplished by the Grantee in any manner or means that, in the opinion of the proper local authorities of the City of Strongsville, their successors or assigns, may be reasonably necessary or advisable in the judgment of such local authorities, their successors or assigns, in order to maintain or operate the Storm Sewer System in accordance with the ordinances, rules, regulations, policies and practices for the management and protection of the municipal storm sewer system of the City of Strongsville, now in force or that may hereafter be adopted or implemented.

The Grantor and Grantee further, in consideration of the acceptance of the easement by the City of Strongsville above mentioned, do hereby agree that Grantor shall initially construct and install said Storm Sewer System in accordance with the plans and specifications to be approved by the City Engineer and in accordance with the provisions, rules, regulations and requirements of the City of Strongsville; and further agree that Grantor shall pay the entire cost of said construction and installation

*Exh, 2*

of said Storm Sewer System. Said Storm Sewer System shall become the property of the City of Strongsville, its successors or assigns upon completion and approval by the City of Strongsville, its successors or assigns.

The Grantor hereby restricts the Premises within the limits of the above described Easement against the construction thereon of any temporary or permanent structures.

The Grantor agrees to keep the Premises free of materials, equipment, vehicles, trees, shrubbery, and any other obstructions which would interfere with Grantee's access to or maintenance of the Storm Sewer System. The Grantor further agrees to make no alterations to the Premises which would increase or reduce the depth of the Storm Sewer System.

If the Grantor desires to alter the Premises in any way other than is expressly permitted herein, it must obtain the prior written approval of the Grantee. Upon receipt of such approval, the Grantor shall, at its own expense, relocate or reconstruct all or any portions of the Storm Sewer System which are affected by such alteration and, where necessary, grant a new easement of not less than the width of this Easement under the same terms and conditions as herein provided. The relocated or reconstructed Storm Sewer System shall, upon completion and approval by the Grantee, become the property of the City of Strongsville.

If the Grantor violates any of the provisions of this Easement, the Grantee, its employees, agents and contractors, at the expense of the Grantor, may enter upon the Premises and make such alterations as are necessary to bring the Premises into compliance with the provisions of this Easement.

The Grantor hereby reserves the right to use the Premises for such use as is not expressly prohibited by or inconsistent with the terms of this Easement.

The Grantor covenants with the Grantee that it is well-seized of the Premises as a good and indefeasible estate in fee simple and has the right to grant and convey the Premises in the manner and form above written. The Grantor further covenants that it will warrant and defend the Premises with the appurtenances thereunto belonging to the City of Strongsville against all lawful claims and demands whatsoever for the purposes described herein.

This Easement shall inure to the benefit of any person, firm or corporation who the City of Strongsville, its successors and assigns, shall authorize to undertake the performance of work within the purpose of this Easement.

The parties hereto agree that this Grant of Easement embodies the complete understanding of the parties, and that no changes in this Agreement shall be made unless such changes are in writing, approved and subscribed by the parties hereto.

This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.

TO HAVE AND TO HOLD the above granted Easement for the purposes above mentioned, unto the City of Strongsville, forever.

IN WITNESS WHEREOF, this instrument is executed this 29th day of January, 2008.

Signed and acknowledged in the presence of:

GRANTOR  
COLABIANCHI CONSTRUCTION, INC.

Sandra Schmoek  
\_\_\_\_\_

By: Frank Colabianchi  
Its: President

GRANTEE  
CITY OF STRONGSVILLE

Donna M. Mischak  
\_\_\_\_\_

By: Thomas P. Perciak  
Thomas P. Perciak, Mayor  
Approved as to legal form only by the  
Law Department of the City of Strongsville.

STATE OF OHIO                    )  
  )ss  
COUNTY OF CUYAHOGA)

By: Robert E. Kruer  
Law Director

Date 2/7/08

Before me, a Notary Public in and for said County and State, personally appeared the above named **COLABIANCHI CONSTRUCTION, INC.**, by Frank Colabianchi its President, who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free and voluntary act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal at Strongsville, Ohio, this 29 day of January, 2008.

Donna Mindyas  
Notary Public

Donna Mindyas  
Notary Public, State of Ohio  
Cuyahoga County  
My Commission Expires, July 2008

STATE OF OHIO                    )  
  )ss  
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above named **CITY OF STRONGSVILLE**, by Thomas P. Perciak, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his free and voluntary act and deed and the free and voluntary act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal at Strongsville, Ohio, this 11<sup>th</sup> day of February, 2008.

Donna M. Miscik  
Notary Public

DONNA M. MISCIK  
Notary Public, State of Ohio  
My Commission Expires Nov. 16, 2009

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Legal Description: Avery Walden Subdivision Phase I  
Sublot No. 17, Public Drainage Easement

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Thence proceeding North 60 degrees 34 minutes 45 seconds East in the Northerly line of said Sublot No. 17 a distance of 130.61 feet to the point and place of beginning of the easement herein described;


Thence continuing North 60 degrees 34 minutes 45 seconds East in the Northerly line of said Sublot No. 17 a distance of 15.00 feet to a point;

Thence proceeding South 29 degrees 25 minutes 15 seconds East a distance of 109.46 feet to a point in the Southerly line of said Sublot No. 17;

Thence proceeding South 54 degrees 31 minutes 46 seconds West in the Southerly line of said Sublot No. 17 a distance of 15.08 feet to a point;

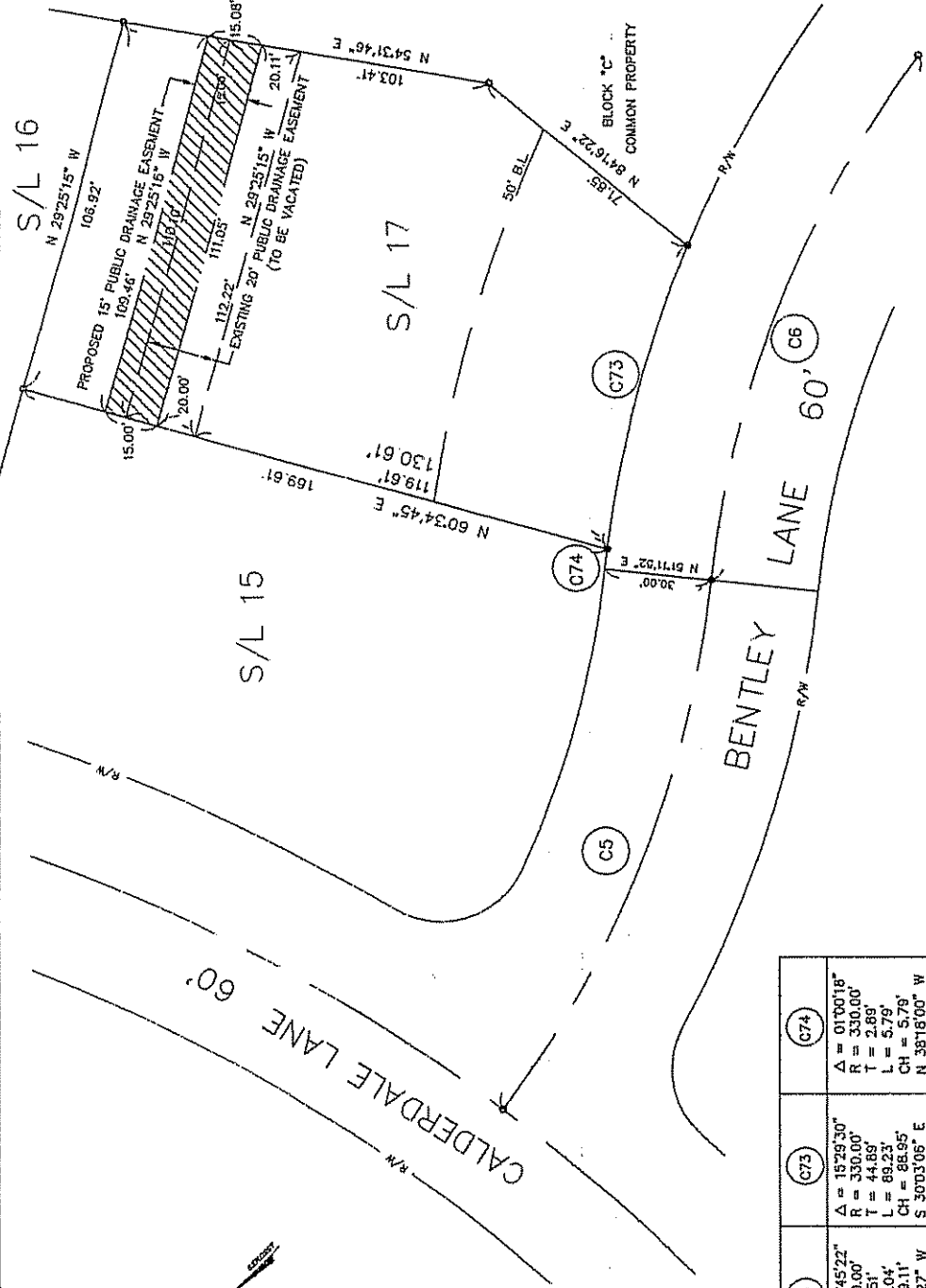
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The above legal description was prepared by James B. Root, Registered Surveyor #5045 and is based on the assumption that the Northerly line of said Sublot No. 17 bears North 60 degrees 34 minutes 45 seconds East.

*James B. Root*  


*Exh. A*

S/L 16



**LEGEND**

- IRON PIN SET
- IRON PIN FOUND
- CLEAR OUT
- MONUMENT BOX



JAMES B. ROOT REG. SURVEYOR NO. 5045  
 200 ELLEN DRIVE  
 BEREA, OHIO 44017 (440) 243-9843  
 SCALE: 1" = 40'  
 DATE: 1-13-08

*James B. Root*

**GRAPHIC SCALE**



( IN FEET )  
 1 inch = 40 ft

C5	C6	C73	C74
Δ = 3052'48" R = 300.00' T = 82.85' L = 161.69' CH = 159.74' S. 23°21'44" E	Δ = 3045'22" R = 300.00' T = 82.51' L = 161.04' CH = 159.11' N. 23°25'27" W	Δ = 1929'30" R = 330.00' T = 44.89' L = 89.23' CH = 88.95' S. 30°03'06" E	Δ = 01'00'18" R = 330.00' T = 2.89' L = 5.79' CH = 5.79' N. 38°18'00" W

*Exh B*