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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO ex rel. BOSTON HILLS
PROPERTY INVESTMENT LLC
10474 Broadview Road
Broadview Heights, Ohio 44147

Relator,

and

BOSTON HILLS PROPERTY INVESTMENT LLC
10474 Broadview Road
Broadview Heights, Ohio 44147

Plaintiff,

v.

VILLAGE OF BOSTON HEIGHTS, OHIO
45 E. Boston Mills Road
Hudson, Ohio 44236

Respondent/Defendant.

Also serve:

MARC DANN
ATTORNEY GENERAL, STATE OF OHIO
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

CASE NO. 2007 07 4696

JUDGE ASSIGNED TO JUDGE COSGROVE

**COMPLAINT FOR
DECLARATORY JUDGMENT,
WRIT OF MANDAMUS, AND
OTHER RELIEF**

1. Relator/Plaintiff, Boston Hills Property Investment, LLC (“BHPI”) owns ± 65 acres of undeveloped real estate (the “Property”) bordering State Route 8 (“SR 8”) in the Village of Boston Heights, Ohio (the “Village”), County of Summit, State of Ohio, less than ½ mile north of the Ohio Turnpike. The Property, described in Exhibit “A” hereto, is in the northwest quadrant of the SR 8/E. Hines Hill Road intersection, is bounded by SR 8 to the east and E. Hines Hill Rd. to the south, lies east of Old Eight Rd. and south of Slanes Lane, and comprises the eastern portion of the former Boston Hills Country Club golf course. (See Figure 1 below.)

2. The Property is located in the Village’s RES Residential Zoning district under Chap. 1153 of the Village’s Planning & Zoning Code (“P&Z Code”), in which uses permitted as



Figure 1: Property approximately outlined in white.

of right include agriculture, single-family dwellings at a density of 1 unit per 1.5 acres, and governmental or quasi-governmental uses.

3. Traffic counts in the vicinity of SR 8 and the E. Hines Hill Road intersection compiled by ODOT in 2004 show approximately 50,000 vehicles traveling through this area every 24 hours, which includes commercial vehicular traffic (e.g., semi-trucks, etc.) in excess of 4,000 trips per day.

4. As part of a 2-phased ODOT improvement project for the SR 8 corridor in this area, a southbound ramp will be added exiting SR 8 on to, and just over 400 feet west of SR 8’s

for retail purposes.

8. Relator/Plaintiff proposed to use the Property for development in accordance with the uses permitted and conditionally permitted on the Property pursuant to the Freeway Retail Ordinances, generally in accordance with the Site Plan attached hereto as Exhibit "B."

9. Following the adoption of the Village's Freeway Retail Ordinances, referendum petitions were delivered to the Village Hall for the purpose of placing both of the Freeway Retail Ordinances on the November 6, 2007 general election ballot, the effect of which was to suspend the operation of the two Freeway Retail Ordinances and leave the Property's pre-existing RES Residential Zoning in effect.

10. Given the Property's proximity to a limited access highway (i.e., SR 8, which carries more than 50,000+ high-speed passenger and commercial vehicles past the site daily), the attendant noise and air pollution generated by SR 8, and the impending SR 8 southbound exit ramp to be installed over the eastern 1/3 of the Property as part of the SR 8/I-80 interchange improvements, the Village's RES Residential Zoning classification, as applied to this Property, is clearly arbitrary and unreasonable with no substantial relation to the public health, safety, morals or general welfare. Moreover, as currently zoned, the Property has no economically viable use under the uses permitted in the Village's RES Residential Zoning district regulations.

11. Given the Property's traffic exposure, ready access to SR 8, and given that every other quadrant of the intersection of SR 8 and E. Hines Hill Road is zoned by the Village under its RB Retail Business zoning regulations, the Property is ideally suited for development under the Village's RB Retail Business zoning district regulations.

COUNT ONE

**(Declaratory Relief, R.C. 2721.02 *et seq.*
Unconstitutional as Applied to the Property)**

12. Plaintiff realleges and incorporates by this reference the allegations set forth in Paragraphs 1 through 11 of the Complaint.

13. As applied to the Property, the Village's RES Residential Zoning classification is clearly arbitrary and unreasonable with no substantial relation to the public health, safety, morals or general welfare.

14. Plaintiff therefore is entitled to a declaratory judgment under R.C. Chapter 2721 that the Village's RES Residential Zoning classification is unconstitutional as applied to the Property.

COUNT TWO

**(Declaratory Relief, R.C. 2721.02 *et seq.*
Unconstitutional in Prohibiting Use Sizes)**

15. Plaintiff re-alleges and incorporates by this reference the allegations set forth in Paragraphs 1 through 14 of the Complaint.

16. The prohibition under P&Z Code § 1160.07(d) of retail structures in excess of 50,000 square feet, as applied to the Property, is clearly arbitrary and unreasonable with no substantial relation to the public health, safety, morals or general welfare.

17. Plaintiff therefore is entitled to a declaratory judgment under R.C. Chapter 2721 that the Village's RES Residential Zoning classification is unconstitutional as applied to the Property.

COUNT THREE

**(Declaratory Relief, R.C. 2721.02 *et seq.*
Unconstitutional in Prohibiting Uses)**

18. Plaintiff realleges and incorporates by this reference the allegations set forth in Paragraphs 1 through 17 of the Complaint.

19. The prohibition of RB Retail Business district uses, and of the limited enlarged retail building allowances adopted under Ordinance No. 12-2007 but suspended in effect by the filing of referendum petitions respecting the Freeway Retail Ordinances, as applied to the Property, is clearly arbitrary and unreasonable with no substantial relation to the public health, safety, morals or general welfare.

20. Plaintiff therefore is entitled to a declaratory judgment under R.C. Chapter 2721 that the Village's prohibition of RB Retail Business district uses, and of the limited enlarged retail building allowances adopted under Ordinance No. 12-2007 but suspended in effect by the filing of referendum petitions respecting Freeway Retail Ordinances, is unconstitutional as applied to the Property.

COUNT FOUR

**(Unconstitutional Taking of Property,
Article I, Section 19 of the Ohio Constitution)**

21. Relator realleges and incorporates by this reference the allegations set forth in Paragraphs 1 through 20 of the Complaint.

22. For the uses permitted under the Freeway Retail Ordinances, Relator's Property has a fair market value in excess of \$10 million.

23. The application to the Property of the Village's RES Residential Zoning classification precludes the economically viable use of the Property and operates to effectuate a taking of Relator's Property without just compensation

24. Moreover, the Village's unconstitutional application of the Village's RES Residential Zoning classification to the Property, and the prohibition of RB Retail Business district uses, and of the limited enlarged retail building allowances adopted under Ordinance No. 12-2007 but suspended in effect by the filing of referendum petitions respecting the Freeway

Retail Ordinances, effectuates a taking of Plaintiff's Property without just compensation.

25. Pursuant to Article I, Section 19 of the Ohio Constitution, Relator, BHPI, has a clear legal right to receive just compensation from the Village of Boston Heights in amount exceeding \$10 million as a consequence of the Village's taking, permanent or temporary as the case may be, of all or substantially all of the Property.

26. Relator has no plain and adequate remedy in the ordinary course of the law to require the Village to compensate it fairly for the losses it has incurred and will incur on account of the Village's taking of the Property.

27. The Village is under a clear legal duty to commence appropriation proceedings in the Probate Court of Summit County so that the amount of compensation for the taking of Relator's Property can be determined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Relator requests that this Court grant the following relief:

1. As to Count One, a declaratory judgment that, as applied to the Property, the Village's RES Residential Zoning classification is clearly arbitrary and unreasonable without substantial relation to the public health, safety, morals or general welfare, and is therefore unconstitutional as applied to the Property;

2. As to Count Two, a declaratory judgment that, as applied to the Property, the Village's prohibition of retail structures in excess of 50,000 square feet in the Village's RB Retail Business district zoning regulations is clearly arbitrary and unreasonable without substantial relation to the public health, safety, morals or general welfare, and is therefore unconstitutional as applied to the Property;

3. As to Count Three, a declaratory judgment that the Village's prohibition of RB Retail Business district uses, and of the limited enlarged retail building allowances adopted under Ordinance No. 12-2007 but suspended in effect by the filing of referendum petitions respecting Freeway Retail Ordinances, is clearly arbitrary and unreasonable without substantial relation to the public health, safety, morals or general welfare, and is therefore unconstitutional as applied to the Property;
4. As to Count Four, a writ of mandamus compelling the Village to immediately commence appropriation proceedings in the Probate Court of Summit County to determine the amount of just compensation due BHPI for the Village's taking of the Relator's Property; and
5. An award of costs, reasonable attorneys' fees, and any other relief the Court deems just and proper.

Respectfully submitted,



Sheldon Berns (0000140)

Gary F. Werner (0070591)

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COPY



DONALD G. BOHNING & ASSOCIATES, INC.

CIVIL ENGINEERING & SURVEYING

7979 HUB PARKWAY • VALLEY VIEW, OHIO 44125 • (216) 642-1130

FAX • (216) 642-1132

65 Acre Rezoning
 Boston Hills Property
 Investment LLC
 DGB No. 3760

December, 2006

LEGAL DESCRIPTION

Situated in the Village of Boston Heights, County of Summit, and State of Ohio and known as being part of Original Boston Township Lots 2 & 17 and bounded and described as follows:

Beginning in the centerline of Hines Hill Road (C.H. 115), 60 feet wide, at the southeasterly corner of Original Lot 17;

Thence South 89 degrees 11 minutes 18 seconds West along the centerline of Hines Hill Road, being also the southerly line of Original Lot 17, 1059.98 feet to a point;

Thence North 00 degrees 48 minutes 42 seconds West, 1950.00 feet to a point;

Thence North 89 degrees 11 minutes 18 seconds East, 187.30 feet to a point;

Thence North 59 degrees 11 minutes 18 seconds East, 112.58 feet to a point;

Thence North 29 degrees 11 minutes 18 seconds East, 155.64 feet to a point;

Thence North 66 degrees 41 minutes 18 seconds East, 142.80 feet to a point;

Thence South 75 degrees 48 minutes 42 second East, 364.05 feet to a point;

Thence North 89 degrees 11 minutes 18 seconds East, 440.19 feet to a point in the westerly Limited Access Right-of-Way Line of Relocated State Route 8 as recorded by the plat of centerline survey in Book 44, Page 178 of Summit County Records;



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65 Acre Rezoning
Boston Hills Property
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DGB No. 3760

Thence South 05 degrees 45 minutes 28 seconds East along the westerly line of Relocated State Route 8, 1002.92 feet to a point of curvature therein;

Thence southerly along the curved westerly line of Relocated State Route 8, being the arc of a curve deflecting to the right, 579.09 feet to a point, said arc having a radius of 6511.12 feet, a central angle of 5 degrees 05 minutes 45 seconds, and a chord which bears South 03 degrees 12 minutes 35 seconds East, 578.90 feet;

Thence continuing along the westerly line of Relocated State Route 8 the following:

South 16 degrees 26 minutes 38 seconds East, 107.32 feet;

South 00 degrees 34 minutes 02 seconds West, 98.47 feet;

South 00 degrees 02 minutes 14 seconds East, 122.31 feet;

South 09 degrees 51 minutes 29 seconds West, 61.93 feet;

South 00 degrees 01 minute 53 seconds West, 122.62 feet;

South 44 degrees 50 minutes 46 seconds West, 24.75 feet;

South 43 degrees 09 minutes 40 seconds West, 99.15 feet to its intersection with the northerly line of Hines Hill Road;

Thence South 20 degrees 56 minutes 07 seconds West, continuing along the westerly line of Relocated State Route 8, 30.00 feet to its intersection with the centerline of Hines Hill Road;

Thence North 69 degrees 03 minutes 53 seconds West along the centerline of Hines Hill Road, 270.31 feet to the place of beginning and containing 65.9562 acres of land of which 0.9202 acres lie within the right-of-way of Hines Hill Road, as described by Donald G. Bohning & Associates, Inc. in December, 2006.



DONALD G. BOHNING & ASSOCIATES, INC.

CIVIL ENGINEERING & SURVEYING

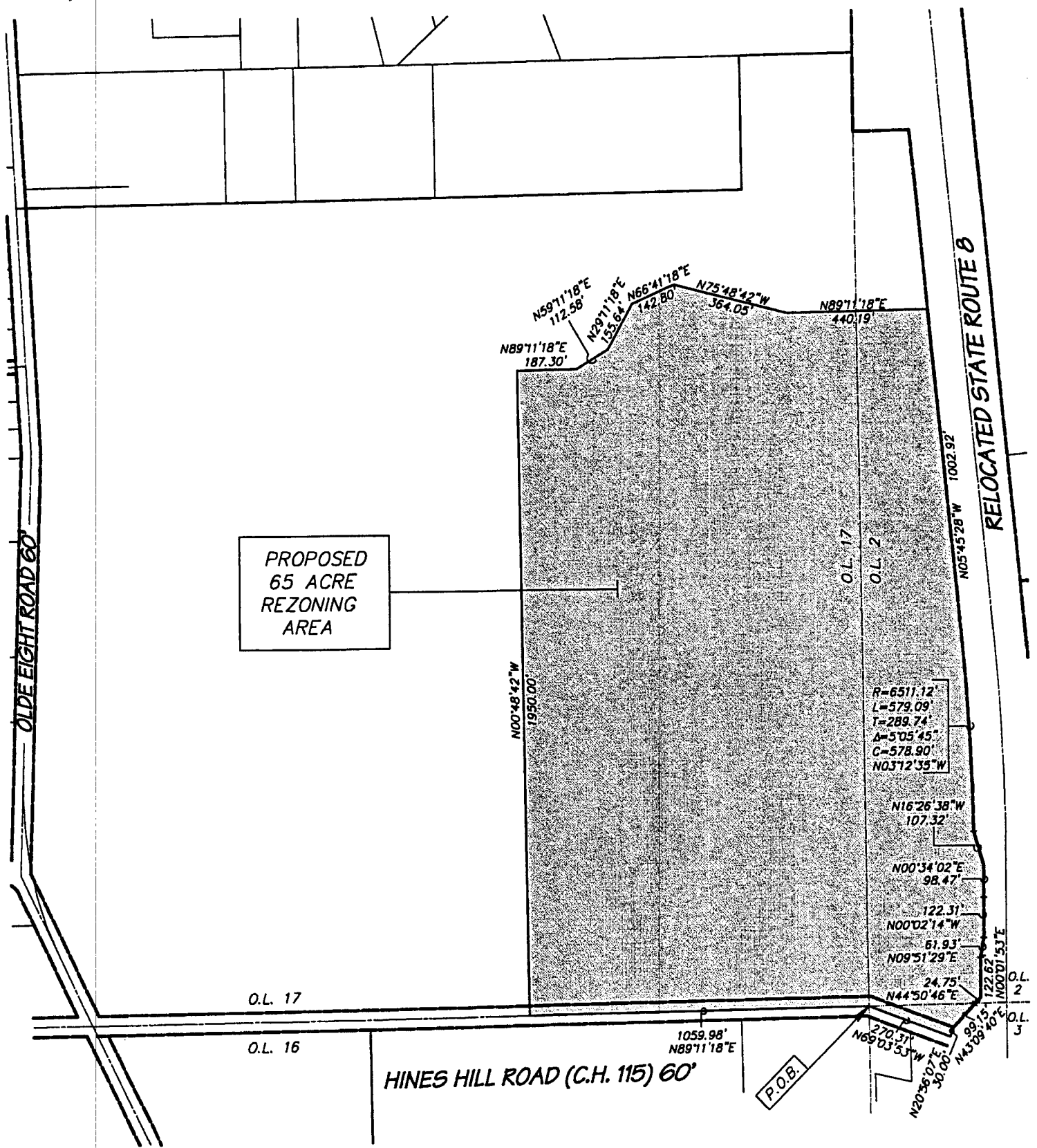
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65 Acre Rezoning
Boston Hills Property
Investment LLC
DGB No. 3760

The courses used in this description are referenced to a map of survey by John J. Knecht (Registered Surveyor No. 4548) dated October, 2006. Distances are given in feet and decimal parts thereof.

M:\adcadd\p\3760\Documents\Legal Descriptions\65 Acre Rezoning 12-12-06.doc



PROPOSED
65 ACRE
REZONING
AREA

R=6511.12'
L=579.09'
T=289.74'
A=505'45"
C=578.90'
NO3'12'35"W

N16'26'38"W
107.32'

N00'34'02"E
98.47'

122.31'
N00'D2'14"W

61.93'
N09'51'29"E

24.75'
N44'50'46"E

1059.98'
N89'11'18"E

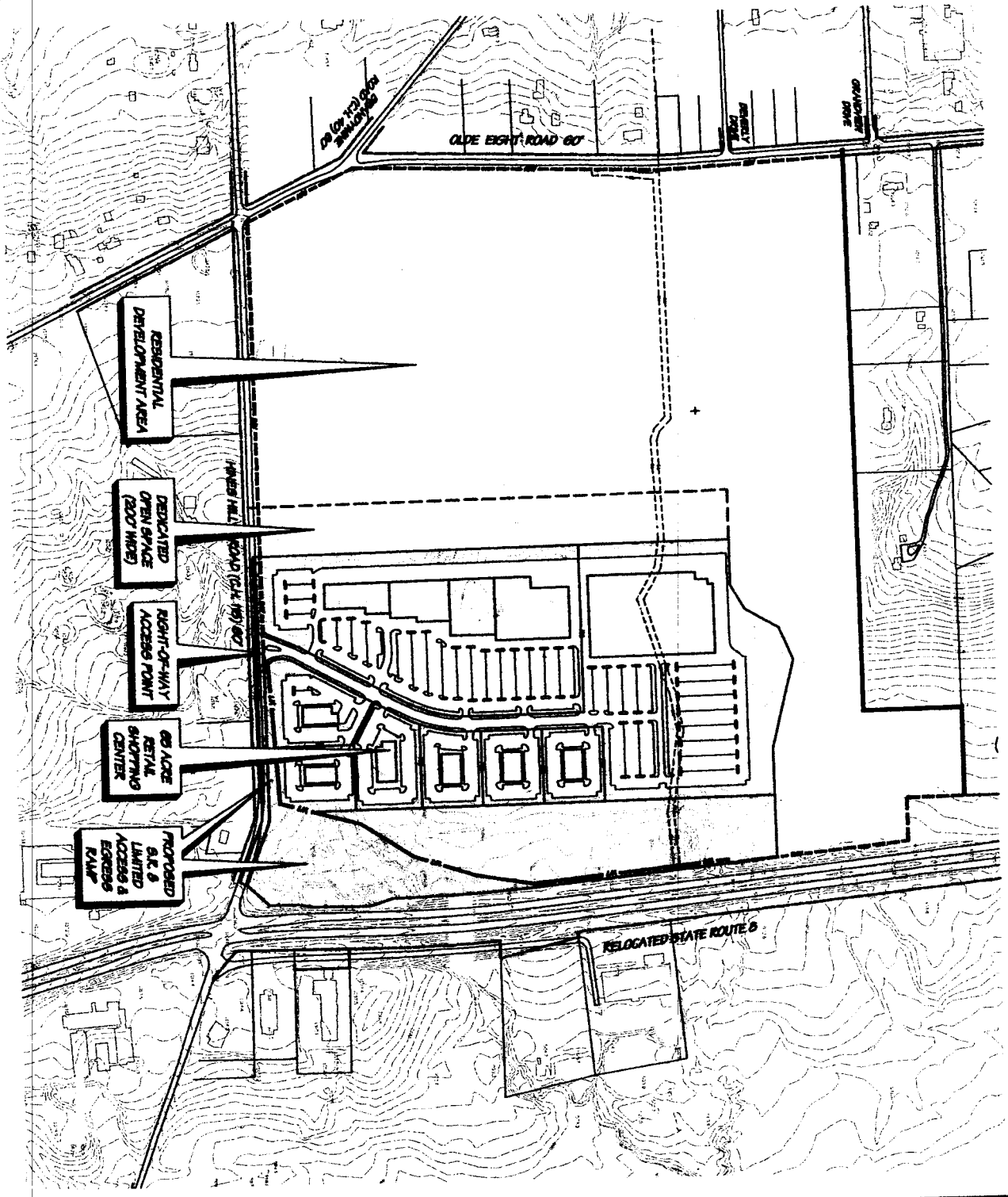
P.O.B.

270.57'
N69'03'53"W
300.00'
N43'09'40"E
99.15'
N00'D1'53"E



**EXHIBIT TO ACCOMPANY
LEGAL DESCRIPTION FOR
65 ACRE REZONING
VILLAGE OF BOSTON HEIGHTS
SUMMIT COUNTY, OHIO**

COPY



DEVELOPMENT PLAN
BOSTON HEIGHTS VILLAGE
SUMMIT COUNTY, OHIO

Developer:
 Boston Hills Property Investments LLC
 12474 Broadview Road
 Broadview Heights, Ohio 44147
 (440) 846-8000

Prepared by:
 DONALD G. BOHANNON & ASSOCIATES, INC.
 7878 HUB PARKWAY
 VALLEY VIEW, OHIO 44125
 (216) 846-1750

DATE: JUNE 28, 2007
 DRAWING NO.: 216-000-13800-Plan No. 1 6/27/07 9:45:53 AM C:\

NOTE:
 THE DIMENSIONS AND LOCATION OF BUILDINGS AND PARKING AREAS ARE ILLUSTRATIVE ONLY AND MAY BE CHANGED TO MEET THE REQUIREMENTS OF TENANTS.

GRAPHIC SCALE
 0 200' 400'

North Arrow