IN THE SUPREME COURT OF OHIO

B.J. ALAN COMPANY, DBA PHANTOM FIREWORKS, et al.,	:	08-0306
Plaintiffs-Appellees,	:	**ON APPEAL FROM THE WAYNE COUNTY COURT OF APPEALS, NINTH APPELLATE DISTRICT**
v.	:	
CONGRESS TOWNSHIP BOARD OF ZONING APPEALS, et al.,	:	**COURT OF APPEALS C. A. NO. 07CA0051**
Defendants-Appellants.	:	

MEMORANDUM OF AMICUS CURIAE OF OHIO TOWNSHIP ASSOCIATION IN SUPPORT OF JURISDICTION ON BEHALF OF THE APPELLANT THE CONGRESS TOWNSHIP BOARD OF ZONING APPEALS

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I. INTRODUCTION: THIS CASE INVOLVES A MATTER OF GREAT GENERAL INTEREST.

The Ohio Township Association ("OTA"), amicus curiae on behalf of the Congress Township Board of Zoning Appeals, urges this Court to accept jurisdiction over this case in order to reverse the decision in *B.J. Alan Company v. Congress Township Board of Zoning Appeals,* Wayne Co. App. No. 07CA0051, 2007-Ohio-7023.

This case is of great public or general interest because it involves an issue that affects all 1,309 townships in Ohio. This case requires the interpretation and application of language contained in R.C. 519.02 that allows townships to create zoning resolutions "in accordance with a comprehensive plan."

The Court of Appeals' improper interpretation and application of R.C. 519.02 will adversely impact the ability of townships, particularly the smaller, more rural townships, in Ohio to regulate land use through zoning resolutions. The statute merely requires that zoning resolutions be done "in accordance with a comprehensive plan." Many townships throughout the State, just like Congress Township in this case, rely on comprehensive plans enacted by the county in which they sit.

The reason so many townships rely on county comprehensive plans is simply a matter of resources. Approximately 88% of townships in Ohio have fewer than 5,000 residents. Congress Township has approximately 4,400 residents. Requiring Ohio's smaller, rural townships to conduct extensive comprehensive plans severely strains limited human and financial resources. It is not necessary to so strain a township when a comprehensive plan covering the township is already in place through a county comprehensive plan. Further, the townships that have enacted zoning resolutions in accordance with a county comprehensive plan will be forced to re-establish

zoning resolutions or face the prospect of having their current zoning resolutions declared invalid.

This Court should reverse the erroneous decision of the Ninth District Court of Appeals and ensure that townships may enact zoning resolutions "in accordance with" county comprehensive plans.

II. STATEMENT OF AMICUS INTEREST

OTA is a state-wide professional organization dedicated to the promotion and preservation of township government in Ohio. OTA, founded in 1928, is organized in 87 Ohio counties. OTA has over 5,200 active members, comprised of elected township trustees and township fiscal officers from Ohio's 1,309 townships. OTA has an additional 3,000 associate members who are dedicated to supporting the causes of OTA.

III. STATEMENT OF THE CASE AND FACTS

OTA hereby adopts, in its entirety and incorporates by reference the statement of the case and facts contained within the Memorandum in Support of Jurisdiction of the Congress Township Board of Zoning Appeals.

IV. ARGUMENT

Proposition of Law No. 1:

The requirements set forth in R.C. 519.02 that a township zoning resolution be created "in accordance with the comprehensive plan," is met where the township's zoning resolution relies on a county plan that sets for the land use and planning goals for the county in which the township is located.

R.C. 519.02 establishes two preliminary requirements before a township can adopt a zoning resolution: (1) that a comprehensive plan exist; and (2) that the township enact the

zoning resolution in accordance with the existing comprehensive plan. Both requirements are met in this case.

The Court of Appeals overreached by sua sponte applying an academic definition of "comprehensive plan." Contrary to the lengthy, academic definition used by the Court of Appeals, courts in Ohio have simply defined a comprehensive plan as, "a specific plan which sets forth uniform standards in a given district or zone." *Howland Twp. Bd. of Trustees v. Dray,* (June 30, 2006) Trumbull App. No. 2004-T-0137, 2006-Ohio-3402, ¶52.

In this case, the aptly named Wayne County Comprehensive Plan clearly qualifies as a "comprehensive plan." Congress Township officials took part in the development of that Plan, among them Bill Cletzer, now a Congress Township Trustee. The Wayne County Comprehensive Plan covers all the property located within the County, including, of course, Congress Township. The Wayne County Comprehensive Plan sets forth standards to be used in the areas, districts and zones. In fact, part of the Wayne County Comprehensive Plan provides goals and recommendations for the preservation of agriculture. The preservation of agriculture is consistent both with the Congress Township Zoning Resolution and with zoning resolutions throughout the State.

The Ohio Constitution specifically states that the preservation of farmland and other lands devoted to agriculture "are proper public purposes of the state and local governmental entities and are necessary and appropriate means to improve the quality of life and the general economic well-being of the people of Ohio.[1] Zoning for agriculture is also consistent with the United States Supreme Court's decision in *Village of Belle Terre v. Borass* (1974), 416 U.S. 19, 94 S.Ct. 1536, 1541, which held that: "A quiet place where yards are wide, people are few, and

[1] Article VIII, Section 8.02o(A).

motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.... The police power is not confined to elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

In addition to Congress Township, townships throughout Ohio consistently zone for agricultural purposes. In a recent study conducted jointly by the OTA and Ohio State University, townships were asked whether or not they zoned for agricultural purposes. Twenty-six percent of the townships that responded indicated that they have already adopted agricultural zoning and an additional 31% of townships that replied indicated that they have at least considered adopting an agriculture zone.

Accordingly, the Wayne County Comprehensive Plan, which provides for, among other things, the preservation of farmland through agricultural zoning, is a comprehensive plan for purposes of R.C. 519.02.

The next inquiry is whether Congress Township adopted their Zoning Resolution "in accordance with" the Wayne County Comprehensive Plan. The facts introduced at trial clearly indicate that Congress Township studied and relied upon the Wayne County Comprehensive Plan. The Court of Appeals, however, held that because the Wayne County Comprehensive Plan does not set forth goals or recommendations specific to Congress Township, the Comprehensive Plan was invalid as it relates to the Township.

The Court of Appeals is putting the horse before the cart. The only evidence presented at trial indicated that the Township clearly "molded or formed" the Township Resolution based on the Wayne County Comprehensive Plan.[2] R.C. 519.02 does not require that a comprehensive

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[2] *B.J. Alan Company, supra,* at ¶14.

plan be independently adopted by a township in order to have a valid zoning resolution. See *Ketchel v. Bainbridge Township* (1992), 79 Ohio App.3d 174; *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals* (Dec. 21, 2001), Portage App. No. 98-P-0131, unreported; *Ryan v. Bd. of Twp. Trustees of Plain Twp.* (Dec. 11, 1990), Franklin App. No. 89AP-1441, unreported; *Reese v. Copley Twp. Bd. of Trustees* (1998), 129 Ohio App.3d 9.

According to the Court of Appeals, comprehensive plans must also be created in accordance with the zoning resolution. That is not what R.C. 519.02 requires. Rather, the zoning resolution must be created in accordance with the comprehensive plan. In other words, R.C. 519.02 permits a township to enact a zoning resolution in accordance with a comprehensive plan that already exists.

If the Court of Appeals' decision stands, townships will no longer be able to rely on county comprehensive plans. This will create an enormous burden on already strained townships as they struggle to undertake new, duplicative comprehensive plans. Additionally, those townships that have relied on a county comprehensive plan will be forced to re-establish their zoning resolutions. This will particularly strain Ohio's smaller, rural townships, like Congress Township, that have very limited resources.

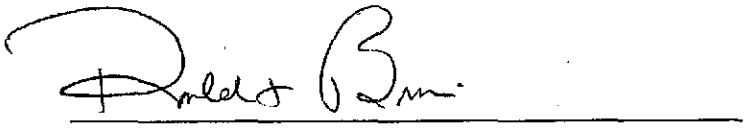
In short, no sound legal or policy reason supports the Court of Appeals' decision. The Court adopted a new standard not contained in Ohio law. Accordingly, this Court should reverse the Court of Appeals' decision.

V. CONCLUSION

Ohio Township Association respectfully requests this Court to accept jurisdiction over this case in order to reverse the decision of the Court of Appeals. O.R.C. §519.02 permits a

township to enact a zoning resolution "in accordance with" the comprehensive plan adopted by the County in which the township is located.

Respectfully Submitted,



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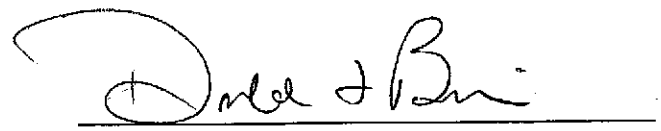
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of Amicus Curiae is being mailed to all parties entitled to service under Rule 5 of the Ohio Rules of Civil Procedure on the 11th day of February, 2008.



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