

IN THE SUPREME COURT OF OHIO

B.J. ALAN COMPANY, DBA
PHANTOM FIREWORKS, et al.,

Plaintiffs-Appellees,

v.

CONGRESS TOWNSHIP BOARD OF
ZONING APPEALS, et al.,

Defendants-Appellants.

SUPREME COURT OF OHIO
CASE NO.: 2008-0306

ON APPEAL FROM THE WAYNE
COUNTY COURT OF APPEALS,
NINTH APPELLATE DISTRICT

COURT OF APPEALS
C. A. NO. 07CA0051

**BRIEF OF *AMICI CURIAE* OHIO TOWNSHIP ASSOCIATION, OHIO FARM
BUREAU FEDERATION, INC. AND WAYNE COUNTY FARM BUREAU ON
BEHALF OF THE APPELLANT THE CONGRESS TOWNSHIP BOARD OF ZONING
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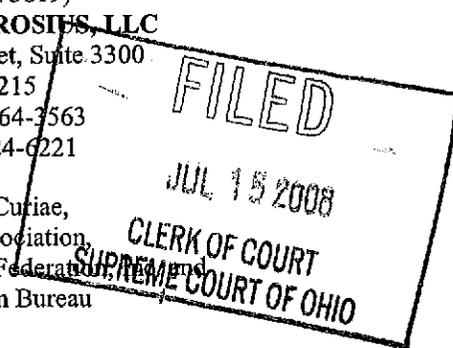


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I. STATEMENT OF AMICI INTEREST

Amici curiae Ohio Township Association (“OTA”), Ohio Farm Bureau Federation, Inc. (“Ohio Farm Bureau”) and the Wayne County Farm Bureau respectfully request this Court to reverse the decision of the Court of Appeals.

Amicus curiae 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 eighty-seven (87) counties and has over 5,200 active members comprised of elected township trustees and township fiscal officers (clerks) from Ohio’s 1,308 townships. OTA has an additional 3,000 associate members.

Amicus curiae Ohio Farm Bureau is the largest voluntary, non-profit, general farm organization in Ohio. Its purposes are to promote, protect, and represent the business, economic, social and educational interests of farmers across Ohio and to represent agricultural interests. With 228,303 member families and member county Farm Bureau organizations in all 88 counties in Ohio, its members produce virtually every kind of agricultural commodity found in this area of the country.

Amicus curiae Wayne County Farm Bureau is a member of the Ohio Farm Bureau. As such, the Wayne County Farm Bureau shares the purpose, objectives and mission of the Ohio Farm Bureau. The Wayne County Farm Bureau has 2,658 member families.

As the form of government closest to the citizens of Ohio, townships have significant statutory duties and responsibilities to their residents, which include providing adequate land use planning and zoning controls to their constituencies. Townships derive their zoning authority through a direct statutory enabling statute contained in O.R.C. Chapter 519. However, this authority to enact and enforce zoning regulations is not absolute, being restricted by various and certain statutory limitations and exceptions. The instant case calls for the interpretation and

application of language contained in O.R.C. 519.02 which allows townships to create zoning resolutions “in accordance with a comprehensive plan.”

The Court of Appeals decision in this case interprets the provisions of O.R.C. 519.02 and the phrase “in accordance with a comprehensive plan” and adopts a stringent test that many small rural agricultural Ohio townships will not be able to meet. This decision, if allowed to remain in tact, will effectively prevent many of Ohio’s rural townships from relying upon county or regional land use plans, with most of these plans providing for the preservation of farmland. Rural townships in Ohio, like Congress Township, have for many years relied upon county plans as the means to create zoning “in accordance with a comprehensive plan.” *Amici curiae* OTA, Ohio Farm Bureau and Wayne County Farm Bureau are strong advocates of private property rights and, therefore, have a vital interest in the outcome of this case. Several years ago in response to a growing concern about the loss of prime farmland in Ohio, the voting delegates at *Amicus curiae* Ohio Farm Bureau’s annual meeting proposed and adopted the following policy: “We encourage the development of countywide, comprehensive land-use plans as an integral part of farmland preservation.” This policy has continued to reflect Ohio Farm Bureau members’ opinion and has continued to be approved each year during the policy session at its annual meeting.

The reasons for such reliance on county or regional plans are obvious. Approximately 88% of townships in Ohio (including Congress Township) have fewer than 5,000 residents. These smaller, rural townships simply do not have the resources to conduct the extensive research necessary to create separate and distinct comprehensive plans, and doing so would severely strain the already limited human and financial resources of rural townships. Mandating such an independent effort would prevent small rural townships from regulating growth and land

use. Wayne County Farm Bureau members own land located in the area at issue in this case and farm the land for their livelihood. Comprehensive land use plans and local zoning are tools of farmland preservation and need to be preserved. The preservation of unencumbered prime farmland is elemental to the farmers in the area, if they are to continue to survive as producers of agricultural commodities. A county-wide or regional approach to preserving farmland and preventing urban sprawl is the preferred method of land use planning rather than an individual township-by-township based planning approach. Moreover, rural townships should not be prevented from relying upon the knowledge and resources provided by counties and regional planning commissions, both of which often have the employees and staff with planning expertise capable of providing a quality plan to townships. The Court of Appeals decision closes the door on this inter-governmental cooperation and will prevent rural townships from preserving agricultural lands. This is clearly not the intent of the requirement that township zoning be adopted "in accordance with a comprehensive plan."

The Court of Appeals decision also provides for a rigid, detailed and unrealistic definition of what actually constitutes a "comprehensive plan." This improper decision and definition of "comprehensive plan" will affect every township (and, quite possibly, many counties¹) in Ohio in a manner that was never intended by the State Legislature of Ohio, effectively impairing the statutorily granted power of townships to enact and enforce zoning regulations. Under the Court of Appeals decision, every township must now create an independent treatise (or incorporate such a treatise into their zoning resolution) in order to meet the Court's definition of a comprehensive plan.

¹ The statutory delegation of zoning powers to counties in Ohio is identical to that of townships, in that O.R.C. 303.02 provides that counties may only enact zoning "in accordance with a comprehensive plan."

Those townships that have not adopted a plan that meets the detailed definition provided by the Court of Appeals, or have relied on a county plan, now face the risk of having their zoning resolutions invalidated by every home builder, business or industry that does not receive their desired approval from a Board of Trustees, Zoning Commission or Board of Zoning Appeals. Many of these zoning resolutions which have been in existence for years will now face challenges at every turn, similar to the challenge brought by Appellant in this case, even if a township has a legitimate reason for denying a land use request.

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 which provide for the preservation of farmland.

II. STATEMENT OF THE CASE AND FACTS

For purposes of this brief, the OTA hereby adopts the Statement of the Case and Facts as set forth by the Appellant, Congress Township Board of Zoning Appeals, et al., and incorporates the same by reference as if fully rewritten herein.

III. ARGUMENT

Proposition of Law No. 1:

The requirement set forth in O.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 forth the land use and planning goals for the county in which the township is located.

In this case, the Court of Appeals examined the Wayne County Comprehensive Plan relied upon by Congress Township in creating zoning pursuant to O.R.C. Chapter 519 and determined that Congress Township had not adopted zoning “in accordance with a comprehensive plan” as required by O.R.C. 519.02. The Court of Appeals rationalized that since the county plan failed to provide goals and recommendations specific to Congress Township and

Congress Township had no independent comprehensive plan, the “zoning resolution does not regulate the use of unincorporated township land in accordance with a comprehensive plan, the resolution is invalid.” *B.J. Alan Company v. Congress Township Board of Zoning Appeals*, Wayne Co. App. No. 07CA0051, 2007-Ohio-7023 at ¶16.

The decision of the Court of Appeals threatens to invalidate every township zoning resolution that has used and relied upon county plans when drafting and implementing township zoning resolutions. Moreover, the rigid and overly detailed definition of what constitutes a comprehensive plan adopted by the Court of Appeals has set the bar so high for rural agricultural townships that many townships cannot and will not be able to meet such an unrealistic definition.

A. **A county comprehensive plan that lists regional and/or county land use goals and recommendations constitutes a “comprehensive plan” for the purposes of O.R.C. 519.02.**

Many of Ohio’s small, rural agricultural townships rely on county comprehensive plans as a guide in formulating their zoning resolutions. A recent 2006 survey found that approximately one-third (1/3) of the townships that responded to the survey based their zoning regulations on a county comprehensive plan.² The reasons are quite simple. Many of these townships simply do not have the financial resources or the expertise to create such comprehensive plans. More often than not, the creation of a comprehensive plan costs in the tens of thousands of dollars and may take months, or perhaps even years to formulate.

The Court of Appeals decision has a profound effect on townships’ ability to implement zoning based upon a county comprehensive plan. The lower court in this case found that Congress Township did not have a comprehensive plan when it created zoning in 1994. The

² Evans-Crowley, Jennifer “Land Use Planning and Zoning in Ohio Townships,” *Journal of Extension*, August 2006, Volume 44, No. 4.

Court of Appeals' decision is based, in large part, upon its view that the Wayne County Comprehensive Plan considered by Congress Township did not constitute a "comprehensive plan" pursuant to O.R.C. 519.02 because it failed to list goals and recommendations specific to Congress Township. Troubling to *Amici curiae* is not only the decision reached by the Court of Appeals but also the lengthy academic and unrealistic approach and definition of a "comprehensive plan" adopted by the lower court. The Court of Appeals relied upon an Ohio based zoning treatise and the Appellee's argument in defining the term "comprehensive plan" when determining whether or not the Wayne County Comprehensive Plan was sufficient for the purposes of O.R.C. 519.02. The Court stated:

To planners, the terms *** have a distinct, concrete meaning: they are the local government's textual statement of goals, objectives, and policies accompanied by maps to guide public and private development within its planning jurisdictions. The comprehensive plan is the chief policy instrument for: (1) the administration of zoning and subdivision regulations; (2) the location and classification of streets and thoroughfares; (3) the location and construction of public and semi-public buildings and related community facilities and infrastructure (water, storm and sanitary sewers, gas, etc.); (4) the acquisition and development of public and semi-public properties such as parks and open spaces; and (5) the initiation of new programs, such as those in the areas of housing, rehabilitation and economic development, to address pressing community needs. *** The essential characteristics of a plan are that it is comprehensive, general and long range. 'Comprehensive' means that the plan encompasses all geographical parts of the community and integrates all functional elements. 'General' means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. 'Long range' means that plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities then to twenty years into the future."

B.J. Alan Company v. Congress Township Board of Zoning Appeals, Wayne Co. App. No. 07CA0051, 2007-Ohio-7023 at ¶13 quoting Stuart Meck and Pearlman, *Ohio Planning and Zoning Law Section 4:31* (2007).

Based upon this definition, the lower court determined the Wayne County Comprehensive Plan was not a comprehensive plan for purposes of the Congress Township

Zoning Resolution because it failed to include goals and recommendations **specific** to Congress Township. As a result, the lower court found that the Congress Township zoning resolution was not created “in accordance with a comprehensive plan.” *Id.* at ¶14 and ¶16. This academic and planner’s definition of what constitutes a “comprehensive plan” adopted by the Court of Appeals far exceeds what Ohio courts have established as constituting a “comprehensive plan”. Numerous courts have held that O.R.C. 519.02 does not require that a comprehensive 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; *Reese v. Copley Twp. Bd. of Trustees* (1998), 129 Ohio App.3d 9.

The lower court’s definition is not only contrary to established case law but also has the practical effect of creating an unrealistic standard for many of Ohio’s small rural townships who simply cannot afford to undertake the endeavor of creating such a comprehensive plan. Due to the diverse socio-economic and geographical nature of Ohio townships, it is critical that the term “comprehensive plan” remain a flexible term. This concept of flexibility was discussed in *East Fairfield Coal Co. v. Miller Zoning Inspector* (1955), 71 Ohio L. Abs 490, where the court stated: “what might be comprehensive in an agricultural community in Mahoning County would not likely be comprehensive in the metropolitan area of Cleveland or Cuyahoga County.” *Id.* at 502. The rigid definition of what constitutes a comprehensive plan proffered by the lower court undoubtedly ignores this flexibility concept and will create a financial burden to small rural townships whose planning needs differ greatly from that of a large urban township consisting of 60,000 people.

Given this flexible standard and the case law in Ohio, the record before this Court clearly shows that the Wayne County Comprehensive Plan is sufficient for the purposes of O.R.C. 519.02. The Wayne County Comprehensive Plan used by Congress Township in drafting its zoning resolution provided for:

- Goals and recommendations for the preservation of agriculture, urban development, energy, and environmental and natural resources, under the title “Proposed Land Use and Development Goals for Wayne County Area.”³
- A model zoning text drafted by the regional planning commission, intended for the townships in Wayne County to use, which included recommended districts, lot dimensions and administration procedures.⁴
- Clear indication that the plan serves, “the entire area of Wayne County and all its communities,” as discussed in the entire chapter entitled “Regional Development Factors and Goals.”⁵
- A discussion of the effect of Interstate 71 on Congress Township.⁶
- Proposed regional land use and development goals for the entire County, which include the preservation of farmlands in the light of urban development; the conservation of energy, and the retention and improvement of environmental and natural resources.⁷
- A discussion of the types of land use districts that are envisioned for Wayne County.⁸

Not only did the Wayne County Comprehensive Plan, consisting of over 200 pages in length, provide for recommendations and goals, but Congress Township officials took part in the development of that Plan. The Wayne County Comprehensive Plan covers all the property located within the County, including 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

³ Wayne County Comprehensive Plan (Part 1) at 27-28.

⁴ *Id.* at 34, 41.

⁵ Wayne County Comprehensive Plan (Part III) at 1.

⁶ *Id.* at 8.

⁷ *Id.* at 10-26.

⁸ *Id.* at 27-36.

agriculture. One of the main reasons Congress Township relied upon the Wayne County Comprehensive in implementing their Zoning Resolution was because it wanted to “follow suit in their planning of an agricultural county for agricultural use.”⁹ The preservation of agriculture is consistent both with the Congress Township Zoning Resolution and with other zoning resolutions throughout the State. *Amici curiae* submit to this Court that should the Wayne County Comprehensive Plan not be considered sufficient for the purposes of O.R.C. 519.02, then hundreds of township zoning resolutions throughout Ohio are subject to invalidation.

The lower court’s determination that the Wayne County Comprehensive Plan was insufficient to constitute a “comprehensive plan” under O.R.C. 519.02 is plain error.

B. Nothing contained in O.R.C. 519.02 mandates that a township adopt and consider an independent township-specific comprehensive plan when implementing zoning.

The Court of Appeals decision that the Wayne County Comprehensive Plan failed to provide for goals and recommendations **specific** to Congress Township is not only wrong from a factual standpoint, but also creates a judicially expanded requirement not contained in O.R.C. 519.02, namely that comprehensive plans must be “township-specific”. See *B.J. Alan Company v. Congress Township Board of Zoning Appeals*, Wayne Co. App. No. 07CA0051, 2007-Ohio-7023 at ¶14. In other words, the Court of Appeals decision interprets O.R.C. 519.02 and the term “comprehensive plan” to require that every comprehensive plan adopted must contain factual goals and recommendations that apply specifically to a particular township and may not simply list broad regional land use policies applicable to an entire county or region. Simply stated, no such requirement exists in O.R.C. 519.02.

⁹ Tr. At 75, Testimony of Congress Township Trustee Bill Cletzer.

O.R.C. 519.02 provides that a board of trustees “may regulate by resolution, in accordance with a comprehensive plan ...the uses of buildings and other structures...and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township.” As noted by *Amicus curiae* Ohio Prosecuting Attorney Association, despite the fact that there is no adjective or qualifier that precedes the term “comprehensive plan” in O.R.C. 519.02, the Court of Appeals created such a qualifier by requiring comprehensive plans to be township-specific. The Court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged. *Wachendorf v. Shaver* (1948), 149 Ohio St. 231 See, also, *State, ex rel. Smith, v. Columbus* (1986), 28 Ohio St.3d 94, 95; *State, ex rel. McGraw, v. Gorman* (1985), 17 Ohio St.3d 147, 149. In *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, paragraph three of the syllabus, the court held, “In matters of construction, it is the duty of this court to give effect to the **words** used, *not to delete words used* or to *insert words not used*. * * * ” (emphasis added). A long line of precedent holds that courts must not insert words into statutes, which is exactly what the Court of Appeals did by requiring comprehensive plans to be township specific. O.R.C. 519.02 only requires that a comprehensive plan exists and does not specify exactly what must be made part of such plan or require that such a plan be township specific. This is further evidenced by the lack of a statutory comprehensive plan adoption and approval process in O.R.C. 519.02. The State Legislature of Ohio has had numerous opportunities to address the term “comprehensive plan” and could have amended the statute to provide for required contents in a comprehensive plan, to implement an adoption and approval process or even to specify who may prepare such plans, but has failed to do so.

By requiring comprehensive plans to be township specific, the Court of Appeals also ignores the statutory framework created by O.R.C. Chapter 519 and O.R.C. Chapter 711 which provides county and regional planning commissions with broad authority to assist townships with land use planning and platting issues. Townships in Ohio routinely rely on county or regional comprehensive plans as a guide when establishing their zoning resolutions. As a result of this decision, county and regional planning commissions may no longer be able to perform and create plans on a broad or regional basis for multiple townships because they are not “township specific”. This will stretch the already limited resources not only for townships but at the county level as well. Such a result was never intended by the State Legislature.

By analogy, the land use regulation of the adult entertainment industry has been the subject of numerous cases. It is now universally recognized that a local government may rely upon studies of the negative secondary effects of adult uses, where such studies have been prepared by other entities, as support for enacting their own regulations “as long as the studies are reasonably believed to be relevant to the problem the city addresses.” *Union Twp. Bd. of Trustees v. Old 74 Corp.* (2000), 137 Ohio App.3d 289 at 11. See also, *Renton v. Playtime Theaters, Inc.* (1986), 475 U.S. 41 at 51-52 and *Barnes v. Glen Theater, Inc.* (1991), 501 U.S. 560, 584. Based upon this universal principle, it is likewise recognized that a local government is not required to expend thousands of tax payer dollars conducting its own study. In this instance, these local governments may rely upon these studies prepared by other governmental entities in regulating this industry. Analogous to the adult entertainment industry, there is simply no sound legal or policy reason why townships cannot rely upon a county plan when implementing zoning, especially where the comprehensive plan includes the same geographical area of a township.

While a comprehensive plan may take several forms, whether it is a separate independent plan or, alternatively, a zoning resolution and accompanying map, the main rationale for such a requirement is that local governments must show that their underlying zoning is based upon a coherent land use policy derived from rational consideration of the needs of a community. See e.g., *Columbia Oldsmobile, Inc. v. Montgomery* (1990), 56 Ohio St. 3d 60, 67. It makes no sense from a statutory construction perspective, nor from a practical and common sense standpoint, that if a township relies upon a regional plan that sets forth a detailed regional land use policy encompassing the geographical area of the township, that such a plan would not constitute a comprehensive plan for the purposes of O.R.C. 519.02 solely because the regional plan was not “township-specific”. There is no sound legal or policy reason for concluding that a township may not consider and use a county or regional based plan that sets forth broad based land use recommendations and plans. As a result, the Court of Appeals erred when it invalidated Congress Township’s Zoning Resolution because of Congress Township’s failure to zone in accordance with a “township-specific” comprehensive plan. *Amici curiae* request this Court reject the Court of Appeals newly created township-specific requirement.

Proposition of Law No. 2:

The requirement set forth in O.R.C. 519.02 that a township zoning resolution be created “in accordance with a comprehensive plan,” is a flexible concept that must be evaluated by considering the nature of the land to be zoned.

In finding that Congress Township had not implemented zoning in accordance with a comprehensive plan, the Court of Appeals not only determined that the Wayne County Comprehensive Plan was not a valid “comprehensive plan” pursuant to O.R.C. 519.02, but also that the failure to depict all zoning districts contained in the Congress Township Zoning Resolution on the Zoning Map constituted a failure to zone in accordance with a comprehensive plan.

Appellee Phantom's sole assignment of error related to the identification of a "B" Business/Industry District listed in the Congress Township Zoning Resolution, but not shown on the accompanying zoning map. Appellee argues that even though Congress Township may have relied upon a county comprehensive plan in creating its zoning resolution, the mere fact that Congress Township failed to depict a district on the zoning map, when such district was stated in the zoning resolution, invalidates its entire zoning scheme because it did not "implement zoning in accordance with a comprehensive plan." Appellee Phantom argues and relies heavily on *Cassell v. Lexington Township Bd. of Zoning Appeals*, 163 Ohio St. 340 (1955); *Bd. of Twp. Trustees of Ridgefield Twp. v. Ott*, 1994 WL 17542 (Ohio App. 6 Dist. 1994) and *Clegg v. Bd. of Zoning Appeals of Newton Twp.*, 1987 WL 10755 (Ohio App. 11 Dist. 1987) in support of their proposition that a failure to specifically designate, in advance, any districts where such zoning classifications and use would apply violates the provisions of O.R.C. 519.02. In essence, Appellee is proposing a black and white rule whereby any time a district listed in a zoning resolution is not shown on a zoning map, it necessarily follows that the underlying zoning is "not in accordance with a comprehensive plan" and therefore invalid. Such a rule not only ignores the plain meaning of O.R.C. 519.02 and the rationale behind *Cassell*, *Clegg*, and *Ott*, but also the facts of this case.

The rationale behind the requirement of "zoning in accordance with a comprehensive plan" contained in O.R.C. 519.02 and the decisions in *Cassell*, *Clegg* and *Ott* is to prevent spot zoning and unreasonable and arbitrary decisions by local governments as it relates to land use decisions. Spot zoning refers to the rezoning of a small parcel of land to permit a use which fails to **comply with a comprehensive plan** or is inconsistent with the surrounding area, grants a discriminatory benefit to the parcel owner, and/or harms neighboring properties or the

community welfare (*emphasis added*). See Ziegler, Rathkopf's *The Law of Zoning and Planning* §41:2 (2008). Of particular importance in *Cassell* and *Clegg* is the fact that neither of the local governments had a separate independent comprehensive plan in formulating their zoning resolution. In fact, these Courts had no alternative but to look solely to the texts and maps of the zoning resolutions to try to find a rational behind the local governments' decision making authority and land-use policies. These courts determined that the decisions of the local entities were subject to being found as arbitrary and unreasonable due to a lack of any comprehensive plan. Simply put, because the Congress Township Zoning Resolution allows a business use through the rezoning process or the granting of a use variance does not mean that the practice uniformly and categorically amounts to spot zoning each and every time.

In this case, Congress Township, unlike the governmental entities in *Cassell*, *Ott* and *Clegg*, clearly relied and adopted their zoning resolution based upon an independent comprehensive plan that provided for a clear land use policy objective—preservation of agricultural land. The Court of Appeals decision and Appellee's attempt to formulate a black and white rule ignore the very nature of the flexibility of comprehensive plans, which are, in large part, based upon the nature of the areas to be zoned. In essence, the lower court's standard in deciding whether a zoning resolution was enacted "in accordance with a comprehensive plan" is unattainable for many rural townships seeking to preserve their agricultural heritage. As one Court has noted:

[W]e find that 'comprehensive plan' is a flexible term. Whether a particular resolution is comprehensive or not can be determined only by looking at the particular circumstances of the case, in particular and perhaps more important, the nature of the area which is to be zoned. Using this standard, we find that a comprehensive plan for an urban area is necessarily more detailed than one for a rural area that reflects current uses and allows for change as additional needs develop, and that bears a substantial relationship to the public health, safety or

welfare, is a comprehensive plan within the meaning of Ohio Rev. Code § 519.05[a similar provision to R.C. 519.02]. ***

Rumpke Waste, Inc. v. Henderson (S.D. Ohio 1984), 591 F. Supp. 521, 534.

Keeping this flexibility approach in mind, where a rural agricultural township has relied upon a county comprehensive plan that sets forth farmland preservation as the land use goal, and a township creates a zoning scheme based upon that policy, the requirements of O.R.C. 519.02 are met. 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.”¹⁰ 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, in which the Court opined, “A quiet place where yards are wide, people are few, and 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 The 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 adopted agricultural zoning and an additional 31% of townships that replied indicated that they have at least considered adopting an agriculture zone.

¹⁰ Article VIII, Section 8.02o(A).

The Appellee, through its attempt to create a hard and fast rule, is arguing form over substance. What happens if a township has a zoning resolution that creates fifteen (15) districts but the zoning map only depicts thirteen (13) districts? Does that mean the entire zoning resolution is invalid simply because it has failed to show a district on the zoning map, even if it was in conformance with a comprehensive plan that provided for such a district? *Amici curiae* argue that the proper question should be whether or not the local government, whether through an independent comprehensive plan or the zoning resolution and map itself, can justify the rationale behind its land use policies. That is the true nature of the comprehensive plan requirement contained in O.R.C. 519.02. A local government should not be penalized because it has made a conscious decision to protect agricultural lands in its community while, at the same time, providing for business in the future by retaining its ability to rezone property to a business district contained within its zoning resolution. In fact, as local elected officials who know the needs and desires of their constituencies better than anyone, legislative deference should be given to township trustees, such as those in Congress Township, when formulating its land use policies. This Supreme Court has noted that:

“The power of the court in such matters as this is extremely limited, and the court cannot usurp the legislative function by substituting its judgment for that of the council. Municipal governing bodies are better qualified, because of their knowledge of the situation, to act upon these matters than are the courts.” * * *

“ * * * The power of a municipality to establish zones, to classify property, to control traffic and to determine land-use policy is a legislative function which will not be interfered with by the courts unless such power is exercised in such an arbitrary, confiscatory or unreasonable manner as to be in violation of constitutional guaranties.”

Willott v. Beachwood (1964), 175 Ohio St. 557, at 559-560, 26 O.O.2d 249, at 251, 197 N.E.2d 201, at 203-204.

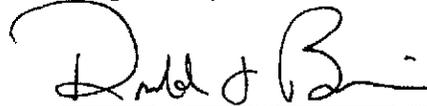
The Congress Township Zoning Resolution conforms to the recommendations of the Wayne County Comprehensive Plan, including the recommendation to preserve the area's agricultural land uses—a valid and constitutionally provided public purpose. Congress Township implemented its Zoning Resolution based upon this policy decision by zoning the entire township agricultural and providing for future commercial uses through a rezoning process and a use variance mechanism. Again, such a mechanism is not, in and of itself, spot zoning. Congress Township has reserved the ability to zone commercially at some future point, as circumstances dictate, and that decision should not invalidate its zoning resolution, particularly due to the fact that it is based upon a valid county comprehensive plan. Nothing has prevented Appellee from seeking a rezoning in this case to have its property rezoned from the agricultural district to the business district as listed in the Congress Township Zoning Resolution. Instead, Appellee made a calculated decision to first purchase land which it knew was not zoned for its intended use. Appellee then sought to apply for a use variance, knowing full well that it would be unable to overcome the stringent self-imposed hardship requirement for a use variance. Now, Appellee is using the back-door form over substance argument as an to attempt to circumvent an entire zoning scheme.

In sum, the Congress Township Zoning Resolution has been created and implemented in accordance with a comprehensive plan as required by O.R.C. 519.02. As such, the Court of Appeals erred in finding that the Congress Township Zoning Resolution was an invalid exercise of the township's zoning power.

IV. CONCLUSION

Amici curiae OTA, Ohio Farm Bureau and the Wayne County Farm Bureau respectfully request this Court 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 a county in which the township is located. Furthermore, where a township created and implemented a zoning resolution based upon a county comprehensive plan providing for the preservation of farmland, the failure to designate or provide for a district on a zoning map does not invalidate the entire zoning resolution.

Respectfully Submitted,



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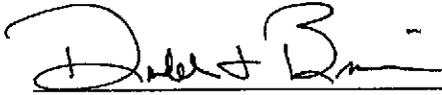
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Amici Curiae Ohio Township Association, Ohio Farm Bureau Federation, Inc. and Wayne County Farm Bureau is being mailed to all parties entitled to service under Rule 5 of the Ohio Rules of Civil Procedure on the 15th day of July, 2008.



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