

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CARLISLE

APPELLANT,

vs:

WALLACE R. CAMPBELL, ET AL.,

APPELLEES.

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CASE NO. 2010-0209

On Appeal from the Twelfth
Appellate District Warren County

Court of Appeals
Case No. CA2009-05053

APPELLEES' MEMORANDUM IN OPPOSITION OF JURISDICTION

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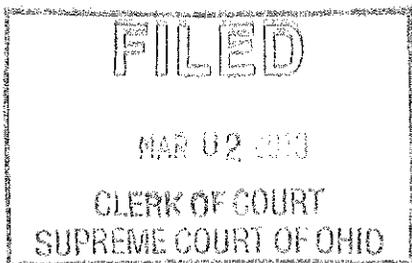


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STATEMENT OF WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This Court should deny jurisdiction because the case at hand is not of public or great general interest. The Ohio Constitution provides that the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, for the purposes of reviewing and affirming, modifying, or reversing the judgment of the appellate court in cases of public or great general interest. *Ohio Const. Art. IV § 2(B)2(d)*. The Supreme Court's jurisdiction is discretionary in such cases. *City of Akron v. Roth*, 103 N.E. 465 (1931). As such, if a party feels his or her cause is one of public or great general interest, he or she may seek leave of the Supreme Court to hear the cause by filing a motion to certify with the clerk of the court. *Williamson v. Rubich*, 168 N.E. 2d 876 (1960). The sole issue for determination at the hearing concerning the above, is whether the cause presents a question of public or great general interest as distinguished from questions of interest primarily to the parties. *Williamson v. Rubich*, 168 N.E. 2d 876 (1960).

Appellant's cause does not present a question of public or great general interest, but instead merely presents an interest concerning only the unrealizable and unobtainable economic interest of the Appellant and other Ohio municipalities who may find themselves in similar situations. To clearly address the above, Appellee must first address a municipalities ability to take private property by eminent domain as well as this Court's finding in *Norwood v. Horney*, and its direct implications on the case at hand.

Eminent Domain can be defined as, "The inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking," *Black's Law Dictionary, Seventh Addition*, p. 541. This Court has held that private property may be taken whenever the public safety, public health, public interest,

or public convenience requires such a taking, and that under Section 19 of article I of the Ohio Constitution, property taken for “the public welfare” is regarded as property “taken for public use”. *Lake Erie & W. R. Co. v. Commissioners of Hancock County*, 57 N.E. 1009 (1900); *State ex rel. Bruestle v. Rich*, 110 N.E. 2d 778 (1953).

In order to justify the exercise of the power of eminent domain, the purpose for which the property is taken must be primarily public and not primarily private with an incidental benefit to the public. *Wagar v. City of Lakewood*, 1914 WL 1225 (C.P. 1914). In *Norwood v. Horney*, this Court further held, that an economic or financial benefit alone is insufficient to satisfy the public-use requirement of Section 19, Article I of the Ohio Constitution, that any taking based solely on financial gain is void as a matter of law, and that the courts owe no deference to a finding that the proposed taking will provide financial benefit to the community. 853 N.E.2d 1115 (Ohio S. Ct. 2005). It should be noted that although, the U.S. Supreme Court determined that the Federal Constitution did not prohibit takings for economic development in *Kelo v. New London*, the Court also acknowledged that property owners might find redress in the states’ courts and legislatures, which remain free to restrict such takings pursuant to state laws and constitutions. 545 U.S. 469, 489 (2005). This Court has restricted such takings with the *Norwood* holding.

As this Court is aware, Appellee filed a motion with the Trial Court to have her property detached from the Appellant/the City of Carlisle. Appellant was opposed to such a detachment because Appellant wanted the possibility of developing Appellee’s property for economic purposes. Specifically, the City Manager, Sherry Callihan, testified to the Trial Court that the City eventually wanted the Appellee’s property for industrial expansion purposes. *Transcript* p 15 lines 2-17. She further testified that the purpose for expansion of the industrial parks currently within the city limits was financial or economic gain for the city. *Id.* She offered no

testimony which would infer that the Appellee's land would be used for a public use purpose. Appellee has no intention of ever selling the property to Appellant. As such, the only means Appellant has for obtaining said property is by eminent domain. The law is clear that Appellant cannot take Appellee's property for its current stated purpose. However, it should be noted that the above mentioned *Norwood* holding has no impact, whatsoever, on a municipalities ability to take private property by eminent domain for a legitimate public use regardless if said property is within or adjacent to said municipality's boarders. Given the above mentioned facts, it becomes readily apparent that the holding of the Twelfth District Court of Appeals poses no threat to the future of Ohio's municipalities as it has no direct impact nor in anyway curtails a municipality's current ability to take property by eminent domain. Since the municipality is in no way affected, then the public is in no way affected by the Twelfth District's holding. As such, jurisdiction should be denied because the case at hand is not of public or great general interest.

APPELLEE'S POSITION REGARDING APPELLANT'S PROPOSITION OF LAW

When considering a petition for detachment of farm land, a court shall consider the amount in which the property is taxed, not the amount actually paid after receiving tax savings from a CAUV application.

ARGUMENT

The Twelfth District Court of Appeals was correct in determining that a court must consider a property's non-CAUV tax valuation, when reviewing a petition for detachment of farm land. Opposition to the above becomes meritless when considering the legislative timeline of the statutes at issue, the meaning of the word *taxed* at the time of the enactment of the detachment statutes, and the fact that the Ohio legislature has done nothing to change the

application of the detachment statutes since the enactment of the CAUV/Agricultural Land valuation statutes.

The detachment statutes at issue in this matter are *O.R.C. 709.41* and *O.R.C. 709.42*. Specifically, what is at issue is the interpretation of the word *taxed* in *O.R.C. 709.42*. *O.R.C. 709.42* provides in part the following: “If upon hearing a cause of action as provided by section 709.41 of the Revised Code, the court of common pleas finds that... that by reason of the farm lands being or remaining with the municipal corporation, *the owner thereon is taxed* and will continue to be taxed thereon for municipal purposes in... excess of the benefits conferred by reason of such lands being within the municipal corporation.”

Certain rules have been provided to Ohio courts when a question arises as to the interpretation of a statute. To start, “The primary purpose of the judiciary in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will.” *State ex rel. Stokes v. Probate Court of Cuyahoga County*, 246 N.E. 2d 607, 614 (Ohio App. 8th Dist. 1969). Furthermore, “It is not function of a court to set forth what it thinks a statute should provide, or to give a statute an operation which the Legislature does not intend, or to read into or out of a statute anything which is not within manifest intention of the Legislature or gathered from the act itself...” *Wadsworth v. Dambach*, 133 N.E.2d 158, 161 (Ohio App. 6th Dist. 1954). “Generally, words of a statute in common use will be construed in their ordinary acceptance and significance and with meaning commonly attributed to them, but the meaning of a term is not necessarily what that term means in general use, but what it means in the particular statute in which it is found.” *Id.* Lastly, it is the duty of the legislature to enact all legislation necessary to carry into effect its expressed will.

Henderson v. City of Cincinnati, 89 N.E. 1072, 1073 (Ohio 1909). As such amendments by implication are not favored and will only result when necessary to give effect to later legislation.

Id.

The detachment statutes, *O.R.C. 709.41* and *O.R.C. 709.42*, were enacted on October 1, 1953. The other statutes at issue in this manner are the CAUV/ Agricultural Land valuation statutes, (from herein forward the CAUV valuation statutes) which encompass *O.R.C. 5713.30* through *O.R.C. 5713.38*. These statutes were not enacted until 1974. Given the twenty one years between the times of the enactment of the various statutes, it becomes apparent that the 1953 legislatures would have only considered a non-CAUV valuation when drafting the detachment statutes. As such, if a court would have considered a petition for detachment of farm land post the enactment of the detachment statutes but prior to the enactment of the CAUV valuation statutes, there would have only been one amount of tax to consider, that being the amount of tax which would have resulted from the “true value of the property” as is established in *O.R.C. 5713.01* and *OH Const. Art. XII, § 2*. The tax which results from the true value of the property is the only interpretation of the word “taxed” which encompasses the intention and the will of the legislature at the time of the enactment of the statutes.

Moreover, the detachment statutes have not once been amended since the date they were enacted. *O.R.C. 709.41*; *O.R.C. 709.42*. All of the CAUV valuation statutes, with the exception of three, have been amended at least once, if not several times, since the date of the original enactment. *O.R.C. 5713.30 through O.R.C. 5713.38*. A close review of all applicable amendments and the original CAUV valuation statutes reveals that not one, in anyway, incorporates nor references the detachment statutes. *Id.* If it was the will or intent of the legislature, for a CAUV valuation to be utilized for purposes of the word *taxed* in *O.R.C. 709.42*,

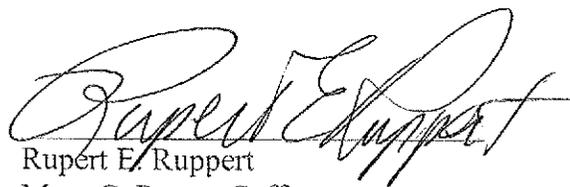
then it would have been the legislature's duty to incorporate or reference such intent in the original CAUV valuation statutes or various amendments, or to amend *O.R.C. 709.42* itself, but they did not. As a consequence, the only appropriate interpretation of the word "*taxed*" for purposes of *O.R.C. 709.42* is the non-CAUV tax valuation determined by the Twelfth District Court of Appeals.

Lastly, an amendment by implication would not be appropriate in this matter as an amendment to *O.R.C. 709.42* would not be necessary to give effect to the CAUV valuation statutes. In other words, *O.R.C. 709.42*, as written, has no impact on the how the CAUV valuation statutes are currently applied. Such a truth further exemplifies the fact that if the legislature had intended that the CAUV tax valuation be used for purposes of a petition for detachment, then they would have taken the steps required to insure such an intent.

CONCLUSION

The foregoing has established that a question of public or great general interest has not been raised in this matter, as it has clearly been depicted that neither the decision of Twelfth District nor the decision of this Court will have any impact on the Appellant's or other municipality's ability to take private property for a public use. Such an ability is the core issue at the heart of this matter. Moreover, as is explained above, the legislative timeline of the statutes at issue, the meaning of the word *taxed* at the time of the enactment of the detachment statutes, and the fact that the Ohio legislature has done nothing to change the application of the detachment statutes since the enactment of the CAUV/Agricultural Land valuation statutes, directly indicates that the Twelfth District was correct in its determination. Accordingly, the Appellee respectfully requests this Court to deny discretionary jurisdiction of this appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular U.S. Mail, postage prepaid, on the 2nd day of March, 2010, upon the following:

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