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IN THE SUPREME COURT OF OHIO

CITY OF CARLISLE)

CASE NO. 10-0209

Appellant,)

On Appeal from the Warren
County Court of Appeals
Twelfth Appellate District

vs.)

WALLACE R. CAMPBELL, ET AL.)

Appellees.)

MERIT BRIEF OF APPELLANT CITY OF CARLISLE

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STATEMENT OF THE FACTS

Helen and Wallace Campbell ("Campbell") own approximately 40 acres of farm land located in the City of Carlisle ("the City"). If the land was assessed at its true value in money, pursuant to *Ohio Rev. Code Ann. §5713.01, et seq.*, Campbell would pay property taxes in the amount of \$12,538.99 per annum. (Tr. 26.)

However, this land has qualified for tax evaluation under the current agricultural use valuation statute (CAUV), *Ohio Rev. Code Ann. §5713.30 et seq.*, which reduces the annual property taxes to \$172. (Tr. 25.)

Campbell sought to detach the property from the City under *Ohio Rev. Code Ann. §§709.41 and 709.42* in order to protect it as farmland. (Tr. 62, 75.)

The detachment proceeding was tried to the court on March 19, 2009.

A Decision and Entry denying the petition for detachment was filed April 29, 2009. The trial court found that Campbell was not taxed for municipal purposes in excess of the benefits received based upon the CAUV tax of \$172, much of which was distributed to the local school district. (Appx. 12)

Campbell filed his notice of appeal to the Warren County Court of Appeals on May 12, 2009.

On December 21, 2009, the Warren County Court of Appeals reversed the trial court and held that when reviewing a petition for detachment of farm land, a court must consider the property's non-CAUV tax valuation. (Appx. 8)

The City filed its notice of appeal to the Supreme Court of Ohio on February 2, 2010. (Appx. 1) On May 5, 2010, the Supreme Court granted jurisdiction to hear the case and allowed the appeal.

ARGUMENT

Proposition of Law No. 1: When considering a petition for detachment of farm land, a court shall consider the amount of taxes the landowner is actually required to pay.

Petitions for detachment of farm land are governed by statute, *Ohio Rev. Code Ann. 709.41 and 709.42*. In order to succeed, the petitioner must establish all of the following four facts:

- 1) the lands were not within the original limits of the municipal corporation;
- 2) the owner of the farm land is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred on the landowner;
- 3) detaching the farm lands will not adversely affect the best interests or good government of the municipal corporation; and
- 4) five years have elapsed from the time the farm land was originally annexed by the municipal corporation.

*Ohio Rev. Code Ann. 709.42; Griffith v. City of Huron (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714*2.*

This appeal concerns only the second fact — whether Campbell is taxed *for municipal purposes in substantial excess* of the benefits conferred upon them by being located within the City limits.

If the Campbell property was assessed at its true value in money, pursuant to *Ohio Rev. Code Ann. §5713.01 et seq.*, Campbell would pay total property taxes in the amount of \$12,538.99 per annum. The property, however, is taxed based upon its current agricultural use value, pursuant to *Ohio Rev. Code Ann. §5713.01 et seq.* Under CAUV valuation, the county auditor disregards the highest and best use of the property and values the property according to the current agricultural use, usually resulting in a lower valuation and a lower

property tax. *Renner et al v. Tuscarawas County Board of Revision et al* (1991), 59 Ohio St. 3d 742, 572 NE2d 56. In this case, CAUV valuation reduced the total tax on the Campbell property from \$12,538.99 per year to a mere \$172 per year.

The trial court denied the petition for detachment because the CAUV tax of \$172 per year, much of which went to entities other than the City, was not in substantial excess of the benefits conferred.

The Court of Appeals reversed the trial court and held that a court must consider the property's non-CAUV tax valuation when reviewing a petition for detachment of farm land.

The Court of Appeals erred. Its holding is inconsistent with the plain language of the detachment statute.

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *Featzka v. Millcraft Paper Co.* (1980), 62 Ohio St. 2d 245, 405 N.E.2d 264. To ascertain the legislative intent, courts rely upon ordinary principles of statutory construction. *Cline v. Ohio Bur. Of Motor Vehicles* (1991), 61 Ohio St. 3d 93, 573 N.E.2d 77. A court must first look at the language of the statute and if the statute conveys a meaning which is clear, unequivocal and definite, there is no need to apply rules of statutory interpretation. *Id.* A court should give effect to the words of the statute and should not modify an unambiguous statute by deleting words used or inserting words not used. *Kelly v. Accountancy Bd. of Ohio* (1993), 88 Ohio App. 3d 453, 459, 624 N.E.2d 292. In the absence of clear legislative intent to the contrary, words and phrases in a statute shall be read in context and construed according to their plain, ordinary meaning. *Kunkler v. Goodyear Tire and Rubber Co.* (1988), 36 Ohio St. 3d 135, 137, 522 N.E.3-2d 477.

The role of the court in construing a statute is as follows:

1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the lawmaking body which enacted it.

2. But the intent of the law-makers is to be sought first of all in the language employed, and if words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

Slingluft v. Weaver (1902), 66 Ohio St. 621, paragraphs one and two of the syllabus.

The detachment statute is very clear and unambiguous. Detachment may be had (assuming the other three requirements are satisfied) only if the land is *taxed* and will continue to be taxed *for municipal purposes* in substantial excess of the benefits conferred on the landowner. *Ohio Rev. Code Ann. 709.42* (emphasis added).

The phrase “is taxed” has a plain and ordinary meaning. Land “is taxed” only in the amount the taxpayer is legally obligated to pay. In this case, because the property was valued for current agricultural use, the Appellees had to pay tax of only \$172. This is the amount at which the property “is taxed.”¹

The Appellate Court’s analysis violated the rules of statutory construction. The Appellate Court failed to apply the plain meaning of the words “is taxed.” The Court of Appeals inserted into the detachment statute unnecessary words about how the tax is determined. It is not relevant whether the tax that is actually assessed is based upon CAUV or “true value in money.” The only relevant inquiry is the actual amount levied against the property. In the instant case the amount at which the property “is taxed” is the CAUV tax. Therefore, this is the tax that is relevant for purposes of a detachment proceeding.

¹ It is taxed at an even lower amount *for municipal purposes*, since this is the total annual tax. The record does not establish how much of this total tax was distributed to the City.

The Court of Appeals reasoned that the true value in money tax rate should be applied because the legislature it did not amend the detachment statute after enacting the CAUV statute, and the legislature's failure to amend the detachment statute implied an intention that the CAUV tax rate should not be applied in detachment proceedings.

In fact, quite the opposite is implied. By enacting the CAUV statute, the legislature changed the method by which farmland "is taxed." If the legislature intended the non-CAUV tax rate to be utilized in detachment proceedings after enacting the CAUV statute, it should have expressly stated so. It did not.

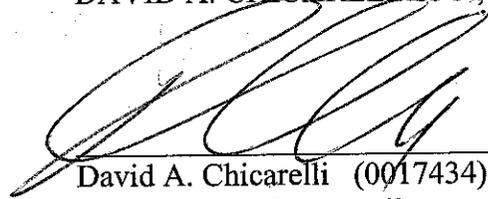
The CAUV tax rate is the rate that should be applied in this detachment proceeding because that is the method by which Campbell's farmland "is taxed" in accordance with the plain language of the detachment statute.

CONCLUSION

The decision of the Court of Appeals should be reversed and the Trial Court's decision should be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

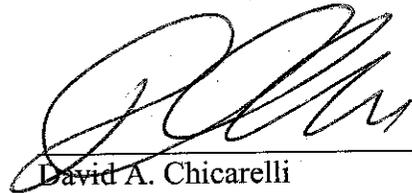
I hereby certify that a true copy of the foregoing was served on the following parties via ordinary U.S. Mail service on June 22, 2010:

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David A. Chicarelli

APPENDIX

IN THE SUPREME COURT OF OHIO

CITY OF CARLISLE)

Appellant,)

vs.)

WALLACE R. CAMPBELL, ET AL.)

Appellees.)

CASE NO. 10-0209

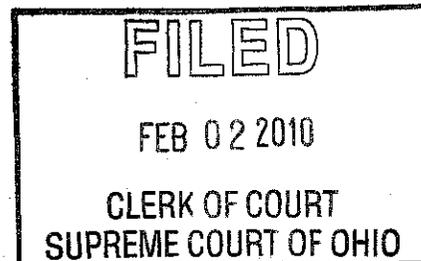
On Appeal from the Warren
County Court of Appeals
Twelfth Appellate District

Court of Appeals Case
No. CA2009-05-053

NOTICE OF APPEAL OF APPELLANT CITY OF CARLISLE

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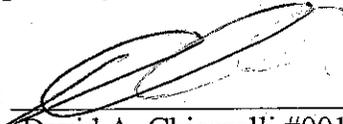


NOTICE OF APPEAL

Appellant City of Carlisle hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Warren County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA2009-05-053 on December 21, 2009.

This case is one of public or great general interest.

Respectfully submitted,

By: 

David A. Chicarelli #0017434
Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for Appellees, Rupert E. Ruppert, Attorney for Appellees, 1063 E. Second Street, P.O. Box 369, Franklin, Ohio 45005 on February 1st, 2010.

By: 

David A. Chicarelli #0017434

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

COURT OF APPEALS
WARREN COUNTY
FILED

DEC 21 2009

James L. Spaeth, Clerk
LEBANON OHIO

WALLACE R. CAMPBELL, et al.,

Plaintiffs-Appellants,

CASE NO. CA2009-05-053

JUDGMENT ENTRY

- vs -

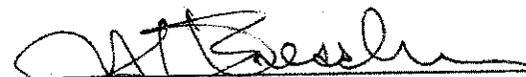
CITY OF CARLISLE,

Defendant-Appellee.

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part, reversed in part, and remanded to the trial court with instructions to determine under R.C. 709.42 whether, in the absence of the CAUV valuation, a tax assessment of \$12,538.99 on appellants' property for municipal purposes is in substantial excess of the benefits conferred upon appellants by reason of their land being with the city of Carlisle.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 50% to appellants and 50% to appellee.


H.J. Bressler, Presiding Judge


William W. Young, Judge


Robert P. Ringland, Judge



IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

COURT OF APPEALS
WARREN COUNTY
FILED

DEC 21 2009

James L. Spaeth, Clerk
LEBANON OHIO

WALLACE R. CAMPBELL, et al.,

Plaintiffs-Appellants,

- vs -

CITY OF CARLISLE,

Defendant-Appellee.

CASE NO. CA2009-05-053

OPINION
12/21/2009

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CV68153

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David A. Chicarelli, 614 E. Second Street, Franklin, Ohio 45005, for defendant-appellee

RINGLAND, J.

{¶1} Plaintiffs-appellants, Wallace and Helen Campbell, appeal a decision of the Warren County Court of Common Pleas denying a petition to detach their real estate from the city of Carlisle.

{¶2} Appellants are the owners of approximately 40 acres of farm land located in the city of Carlisle. Each year appellants file an application to value the property for agricultural use (a "CAUV application"). As a result of the CAUV valuation, appellants pay approximately \$172 in yearly property taxes. Without the CAUV valuation, appellants' yearly property taxes



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12/21/09 OPINION FILED

4

would amount to \$12,538.99.

{13} On March 27, 2007, appellants filed a Petition for Detachment, requesting to detach their property from the city of Carlisle. The city opposed the petition. Following a trial on the matter, the trial court denied the petition. Appellants timely appeal, raising two assignments of error.

{14} Assignment of Error No. 1:

{15} "THE TRIAL COURT ERRED WHEN IT RENDERED ITS JUDGMENT BASED ON THE AMOUNT OF TAXES THE CAMPBELLS PAID ON THEIR PROPERTY INSTEAD OF THE AMOUNT FOR WHICH THEIR PROPERTY WAS TAXED AS IS REQUIRED BY THE PLAIN MEANING OF THE STATUTE."

{16} Petitions for detachment of farm land are governed by R.C. 709.41 and R.C. 709.42. In order to detach land from a municipality, four factual conditions must be satisfied: 1) the lands are farm lands not within the original limits of the municipal corporation; 2) because the lands are in the municipal corporation, the owner of the farm land is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred on the landowner; 3) detaching the farm lands will not adversely affect the best interests or good government of the municipal corporation; and 4) five years have elapsed from the time the farm land was originally annexed by the municipal corporation and the time the petition for detachment of farm lands was filed. R.C. 709.42; *Griffith v. City of Huron* (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714, *2.

{17} The parties stipulated that the property was not within the original limits of the municipal corporation and at least five years have elapsed since the property was originally annexed into the municipal corporation. Further, the trial court also resolved the third issue in favor of appellants, finding that there is no evidence that detachment of the property will impact the best interests or good government of the city of Carlisle.

Warren CA2009-05-053

{¶18} However, the court concluded that appellants had not satisfied the second condition. The court reasoned that appellants were not and would not continue to be taxed for municipal purposes in excess of the benefits they receive because: 1) appellants pay only \$172 in yearly taxes on the property; 2) approximately 80 percent of the taxes go to the local school district; and 3) detachment of the property would not alter the status of the property as agricultural use.

{¶19} In their first assignment of error, appellants argue the trial court considered the wrong tax valuation. Appellants urge that the court should have considered the amount of taxes they would be required to pay without the CAUV application, \$12,538.99, instead of the amount of taxes levied yearly on the property pursuant to the CAUV.

{¶10} Our sole issue for determination is which tax valuation should have been considered by the trial court. Specifically, whether "taxed" as used in R.C. 709.42 refers to the amount of taxes levied against an agricultural property after the filing of a CAUV application or the amount that would be levied against the property if no CAUV had been filed by the property owners, i.e., a property's "true value in money." R.C. 5713.01(B). Interpretation of a statute is a matter of law and, thus, an appellate court must apply a de novo standard of review. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8.

{¶11} Although R.C. 709.41 and R.C. 709.42 have been in existence since 1953, petitions requesting the detachment of farm land from a municipality are quite uncommon and little precedent exists regarding detachment petitions. Even in the few farm land detachment cases, those courts do not engage in any interpretation relating to the proper tax valuation that must be considered. See *Griffith*, 1988 WL 39714; *Williams v. City of Wilmington* (1960), 85 Ohio Law Abs. 398; *Smetzer v. City of Elyria* (1912), 23 Ohio Dec. 179; *Incorporated Village of Fairview v. Giffey* (1905), 73 Ohio St. 183; *Village of Grover Hill v. McClure* (1905), 17 Ohio C.D. 376. Accordingly, we are left with an issue of first

impression.

{¶12} The statutory timeline is particularly illuminative of this question. As noted above, Ohio's current statutory procedures for detachment of agricultural land were enacted in 1953. The provisions of the Ohio Tax Code creating the separate CAUV valuations and procedures were first enacted in 1974.

{¶13} When the detachment provisions were enacted, CAUV tax valuations were never contemplated since the CAUV valuations were not in existence at the time. Accordingly, when evaluating a detachment petition before the enactment of the CAUV provisions, a court would have been required to consider the property's true valuation. When the CAUV provisions were enacted, the Ohio legislature neither incorporated nor referenced the detachment statute, nor did the legislature modify R.C. 709.42 to require the CAUV tax valuation to be the controlling tax amount in a detachment proceeding. See *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 1997-Ohio-395.

{¶14} By failing to reference or modify the detachment statute when enacting the CAUV provisions, the legislature by implication expressed an intent not to change the tax valuation that a court must consider in a detachment proceeding. *Henderson v. City of Cincinnati* (1909), 81 Ohio St. 27, syllabus (later act contained no provision that either expressly or by implication amended the former legislation).

{¶15} If the legislature wished for a property's CAUV valuation to be controlling in a detachment proceeding, that intent should have been reflected in the CAUV provisions or through modification of R.C. 709.42. As they were written, the CAUV provisions of the Ohio Tax Code have no effect or application to a detachment action.¹ See *Estate of Roberts v. Zaino* (Oct. 13, 2000), Miami App. No. 2000 CA 15, 2000 WL 1514084, *5; *Wade v. Savings &*

1. The detachment statute as written is additionally problematic due to the absence of guidelines for determining the value of various municipal benefits. Courts are given no guidance regarding which municipal benefits should be considered and how to determine the valuation for the specific benefits.

& Trust Co. (June 17, 1998), Wayne App. No. 97CA0063, 1998 WL 318465, *5. Accordingly, when reviewing a petition for detachment of farm land, a court must consider the property's non-CAUV tax valuation.

{¶16} Appellants' first assignment of error is sustained.

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT WRONGFULLY TOOK JUDICIAL NOTICE OF FACTS NOT PRESENTED AT TRIAL AND SUBJECT TO REASONABLE DISPUTE."

{¶19} In the second assignment of error, appellants argue that the trial court wrongfully took judicial notice that approximately 80 percent of the paid property tax goes to the local school system. Appellants argue that the trial court must inform the parties of the taking of judicial notice and provide the parties with an opportunity to be heard. Appellants argue the trial court failed to provide them prior notice or an opportunity to be heard.

{¶20} Judicial notice is governed by Evid.R. 201. "A court may take judicial notice, whether requested or not." Evid.R. 201(C). Further, "[j]udicial notice may be taken at any stage of the proceeding. Evid.R. 201(F).

{¶21} Once judicial notice of a fact is taken, a "party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." Evid.R. 201(E).

{¶22} As provided clearly in the rule, a court taking judicial notice has no obligation to provide prior notice to the parties of its intentions to take judicial notice due to the safeguard provided in the rule requiring the court to conduct a hearing if requested. See Fed.R.Evid. 201(e), Advisory Committee Notes.²

2. Fed.R.Evid. 201(e) mirrors Ohio's Evid.R. 201(E). The principles and purposes underlying the federal rule apply equally to its Ohio counterpart. *State v. Knox* (1983), 18 Ohio St.3d 36, 37.

{¶23} Under such circumstances, it is the adversely affected party's obligation to object and request a hearing. *Ohio St. Assn. of United Assn. of Journeymen and Apprentices v. Johnson Controls, Inc.* (1997), 123 Ohio App.3d 190, 196. The judicial notice in this case appeared in the trial court's final decision and entry. Appellants failed to object or request a hearing at the trial level. If appellants wished to challenge the trial court's finding, they could have filed a Civ.R. 60(B) motion, requesting a mandatory hearing. By failing to request a hearing, appellants waived or forfeited any challenge to the judicially-noticed facts. *Id.* See, also, *Guarino v. Farinacci*, Lake App. No. 2001-L-158, 2003-Ohio-5980, ¶49; *In re Estate of Hunter*, Mahoning App. No. 00 CA 107, 2003-Ohio-1435, ¶45; *Shaker Heights v. Coustillac* (2001), 141 Ohio App.3d 349, 352.

{¶24} Appellant's second assignment of error is overruled.

{¶25} Judgment affirmed in part and reversed in part. This matter is remanded to the trial court with instructions to determine under R.C. 709.42 whether, in the absence of the CAUV valuation, a tax assessment of \$12,538.99 on appellants' property for municipal purposes is in substantial excess of the benefits conferred upon appellants by reason of their land being with the city of Carlisle.

BRESSLER, P.J., and YOUNG, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

APR 30 2009

09 APR 29 AM 10:18

JOHN J. GAETH
CLERK OF COURTS

TO THE CLERK
SERVE NOTICE OF JUDGMENT
PURSUANT TO CIVIL RULE 58(B)

**IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
GENERAL DIVISION**

WALLACE CAMPBELL, et al. :

Plaintiffs, :

VS. :

CITY OF CARLISLE :

Defendant, :

CASE NO. 07CV68153

**DECISION AND ENTRY
DENYING PETITION FOR
DETACHMENT**

CT

Plaintiffs herein seek detachment of approximately forty (40) acres of real estate they own within the city of Carlisle. At the trial before Court held March 19, 2009 the parties submitted written stipulations as to some of the statutory requirements contained in §709.42 O.R.C. As required by the holding of *Griffith v. City of Huron*, 1988 W.L. 39714 (Ohio App. 6th Dist., 1988) the Court must make four distinct findings before ordering a detachment of land from a municipality. Here, the parties stipulated that the property was not within the original limits of the municipal corporation. Further, they stipulated that at least five years have elapsed from the time that the property was originally annexed into the municipal corporation. Therefore, the only two issues in dispute are whether the land is taxed and will continue to be taxed for municipal purposes in

excess of the benefits conferred on the landowner. Secondly, whether detaching the farm lands will not adversely affect the best interest of good government of the municipal corporation.

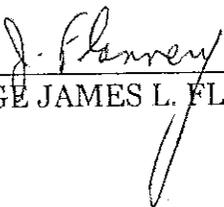
The last issue must be resolved against the City. The Court finds that there is no evidence that this detachment will impact good government of the City. Much of the testimony revolved around the zoning plan that this property be used for industrial purposes. As the Supreme Court made clear in City of Norwood v. Horney, 110 Ohio St.3d 353, 853 N.E.2d 1115, the City of Carlisle cannot take this property by eminent domain to develop for commercial purposes. Therefore, it must rely on the property owner to voluntarily choose to develop the property for industrial purposes. The plaintiffs here indicated they have no such interest and simply wish to have this property remain what it has always been, namely used for agricultural purposes. Thus, there has been a failure to show that defendant Carlisle will be impacted in any way by detachment of this property since it is not now planned for development, nor is it likely to be in the future. The cost of developing this particular acreage would be substantial because of the lack of easy access into and out of the property for industrial purposes and the fact that most of the land lies within a flood plain and would be extremely expensive to develop. An abundance of land more easily developed

with much better access to Interstate 75 already exists in the area. It is therefore not logical to conclude that this land is desirable as industrial property. Thus, while the City of Carlisle may hope that industry will locate here, such is not a sufficiently reasonable expectation as to meet the last provision of §709.42 O.R.C. This is not a situation where a large employer seeks to detach with potentially devastating impact on the tax revenues of the City.

The Court, however, is forced to deny the petition to detach because plaintiffs cannot meet the third requirement. The Court takes judicial notice that approximately 80% of all of the real estate taxes paid on this property go to the local school district. The school district will not change whether the land is within or without the City of Carlisle. The actual taxes on the property are only \$172.00 total because of the agricultural use valuation. Plaintiffs argue that a large sum of deferred taxes will have to be recouped in the event of a sale. That, however, contradicts their claim that they intend to hold onto the property and use it for agricultural purposes. Therefore, detaching the property will in no way alter their status for agricultural use purposes. The Court cannot find that the property is being taxed and will continue to be taxed for municipal purposes in excess of the benefits conferred on the landowner. The minimal taxes imposed

do not exceed the claimed minimal benefits conferred. While the Court sympathizes with the property owners desire to be free to choose the governmental body that will control the use of their land, such is not the status of the law at this time. The Legislature has imposed requirements to a detachment and plaintiffs have failed to meet all of those requirements. Therefore, the Court has no choice but to deny the request and dismiss the complaint at plaintiffs' costs.

IT IS SO ORDERED.



JUDGE JAMES L. FLANNERY

c: Rupert Ruppert, Esq.
David Chicarelli, Esq.

section: *Cleveland v. Cuyahoga Heights*, 37 Ohio Op. 1, 79 N.E.2d 576 (CP 1946), [affirmed, 81 Ohio App. 191.]

§ 709.41 Petition for detachment of farm land.

The owner of unplatted farm lands, annexed to any municipal corporation after the incorporation thereof, may file a petition in the court of common pleas of the county in which the lands are situated, in which such owner shall be named as plaintiff, and the municipal corporation shall be the defendant, setting forth the reasons why the land should be detached, and the relief prayed for. A summons shall issue on such petition as in other actions, and the case shall proceed as in other causes.

No such action shall be brought, or detachment ordered or decreed, within five years from the time that such lands were annexed by any such municipal corporation under sections 707.01 to 707.30, inclusive, and sections 709.01 to 709.42, inclusive, of the Revised Code.

HISTORY: RS Bates § 1536-60; 95 v 259; GC § 3578; 102 v 310; Bureau of Code Revision. Eff 10-1-53.

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Constitutionality

This section is constitutional: *Fairview v. Giffee*, 73 Ohio St. 183, 76 N.E. 865 (1905), [see also *Vermillion v. Martin*, 80 Ohio St. 752.]

Parties

—General good

The matter of the public boundaries of a municipality involves the public generally and a petition for detachment of claimed agricultural land affects the residents and citizens thereof and a motion by resident taxpayers that they, in the best interests of good government, be made parties to the action in order that the facts and issues involved in the proceedings be fully explored and the court be adequately informed, should be sustained: *Williams v. Wilmington*, 85 Ohio L. Ab. 398, 15 Ohio Op. 2d 106, 171 N.E.2d 757 (CP 1960).

§ 709.42 Hearing; decision.

If, upon the hearing of a cause of action as provided by section 709.41 of the Revised Code, the court of common pleas finds that the lands are farm lands, and are not within the original limits of the municipal corporation, that by reason of the same being or remaining within the municipal corporation the owner thereof is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred by reason of such lands being within the municipal corporation, and that said lands may be detached without materially affecting the best interests or good government of such municipal corporation or of the territory therein adjacent to that sought to be detached; then an order and decree may be made by the court, and entered on the record, that the lands be detached from the municipal corporation and be attached to the most convenient adjacent township in the same county. Thereafter the lands shall not be a part of the

municipal corporation but shall be a part of the township to which they have been so attached. The costs shall be taxed as may seem right to the court.

HISTORY: RS Bates § 1536-61; 95 v 260, § 2; GC § 3579; 102 v 449; Bureau of Code Revision. Eff 10-1-53.

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Constitutionality

This section is constitutional: *Fairview v. Giffee*, 73 Ohio St. 183, 76 N.E. 865 (1905), [see also *Vermillion v. Martin*, 80 Ohio St. 752.]

Agricultural purposes

In a proceeding to detach from a municipal corporation land which is used for agricultural purposes, the prospective use of such land, as well as its present actual use, must be considered: *Smetzer v. Elyria*, 14 Ohio N.P. (n.s.) 123, 23 Ohio Dec. 179 (1912).

In determining whether lands which are used for agricultural purposes should be detached from a municipal corporation, the interests of the municipal corporation, as well as those of the owners of the land, must be considered: *Smetzer v. Elyria*, 14 Ohio N.P. (n.s.) 123, 23 Ohio Dec. 179 (1912).

Excessive taxation

—Remedies

If land within the limits of a municipal corporation which is used for agricultural purposes is taxed beyond the benefits which are derived from any improvements which the municipal corporation has actually made, the remedy for such excessive taxation is not a proceeding under this section to detach such lands from such municipal corporation: *Smetzer v. Elyria*, 14 Ohio N.P. (n.s.) 123, 23 Ohio Dec. 179 (1912).

General good

A matter of the public boundaries of a municipality involves the public generally, and a petition for detachment of claimed agricultural land affects the residents and citizens of the city, particularly where a city may have a zoning ordinance regulating buildings, residences and businesses: *Williams v. Wilmington*, 15 Ohio Op. 2d 106, 172 N.E.2d 757 (CP 1960).

Right of appeal

A proceeding under GC §§ 3578 and 3579, (RC §§ 709.41 and 709.42) to detach unplatted farm lands from a municipal corporation is not a civil action; and, accordingly, the right of appeal under GC § 12224 (see now RC § 2505.01 et seq) does not exist in such proceeding: *Hicksville v. Bricker*, 76 Ohio St. 563, 81 N.E. 1197, 52 Weekly L. Bull. 101 (1907).

[MERGER]

§ 709.43 "Merger" defined.

As used in sections 709.43 to 709.48 of the Revised Code, "merger" means the annexation, one to another, of existing municipal corporations or of the unincorporated area of a township with one or more municipal corporations.

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71 Ohio L. Ab. 99, 128

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Board of Elections, 71
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