ORIGINAL

IN THE SUPREME COURT OF OHIO

Sugarcreek Township	:	Supreme Court Case No. 11-0926
Plaintiff-Appellee,	:	
v.	:	On Appeal from the Greene County Court of Appeals Second Appellate District
City of Centerville	:	
Defendant-Appellant	:	Court of Appeals Case No. 2010-CA-52

BRIEF OF AMICI CURIAE OHIO HOME BUILDERS ASSOCIATION, BUILDING INDUSTRY ASSOCIATION OF CENTRAL OHIO, OHIO ASSOCIATION OF REALTORS, AND CENTRAL OHIO NAIOP IN SUPPORT OF APPELLANT, CITY OF CENTERVILLE

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STATEMENTS OF INTEREST OF AMICI CURIAE

I. Statement Of Interest Of Amici Curiae Ohio Home Builders Association And Building Industry Association Of Central Ohio.

Amicus Curiae Ohio Home Builders Association ("OHBA") is a statewide association of home builders and developers. An affiliate of the National Association of Home Builders ("NAHB"), OHBA monitors and promotes state issues and legislation affecting the residential construction industry and its customers. OHBA is the voice of the building industry at the state level and publishes legislative reviews to its members regarding relevant changes in Ohio law.

Amicus Curiae Building Industry Association of Central Ohio ("BIA"), founded in 1943, is an association of home builders, developers, remodelers, subcontractors, and related businesses in the nine-county central Ohio region. An affiliate of OHBA and NAHB, BIA represents its members' interests before legislative, judicial, and regulatory bodies, promotes industry best practices, and sponsors home shows, educational opportunities, and other services.

Collectively, OHBA/BIA represent over 9,000 Ohio businesses that foster economic growth by developing property, establishing new neighborhoods, growing existing neighborhoods, and building quality homes. In recent years, though, OHBA/BIA's members and their customers have been among the most adversely impacted by the recession. For economic recovery to happen, a full complement of tools must be available to promote new development. One key tool facilitating public/private partnerships between municipalities and the building and development industry has been tax increment financing ("TIF") authorized by the General Assembly under R.C. 5709.40. Through TIF financing ordinances, municipalities can finance the needed infrastructure associated with new development, without asking their residents to shoulder tax increases. A municipality can exempt all or part of the increase in taxable value

associated with a development (the "increment") from real property taxation for a period of time, temporarily redirecting those tax payments to a special fund that services the infrastructure debt.

The Second District Court of Appeals' decision, though, based on an erroneous interpretation of R.C. 709.023(H), removes or renders TIFs useless in the development of a significant amount of Ohio land. The court of appeals held that property annexed into a city via commonly used "Type 2" annexation proceedings – where annexation is desired by all owners of the property being annexed, and thus occurs on an expedited basis – cannot be subject to a TIF in order to finance the improvements necessary for development. This decision not only eliminates TIFs as development tools in such circumstances, but also results in the disparate tax treatment of annexed property, with that different treatment based solely on the particular method by which the property was annexed. Under the court of appeals' decision, TIFs remain available for property annexed to municipalities under other statutory procedures, but not in "Type 2" annexations that are desired by all owners of the property being annexed. The General Assembly simply never intended for this disparate treatment to exist. And the General Assembly certainly never intended for courts to engraft new judge-made exceptions to the TIF statutes it enacted to encourage precisely the sort of TIF financing plan rejected here by the court of appeals.

II. Statement Of Interest Of Amicus Curiae Ohio Association Of REALTORS®.

Amicus Curiae Ohio Association of REALTORS® ("OAR"), formed in 1910 and headquartered in downtown Columbus, is one of the State's largest professional trade associations. OAR currently has some 27,000 members across the State, most of which are licensed real estate brokers, salespersons, and appraisers whose professional activities are governed by the Ohio Revised Code. OAR's members are also members of the National Association of REALTORS® and have agreed to abide by that organization's stringent Code of

Ethics. OAR offers an array of services to its members and the general public, including advocating the real estate industry's interests before legislative and administrative bodies, conducting research, and offering continuing education courses in appraisal and real estate subjects. A champion of private property rights in Ohio, OAR has participated as a "friend of the court" in major cases implicating the rights and interests of its membership, Ohio property owners, and potential home buyers. This is just such a case.

The decision of the court of appeals, by eliminating tax increment financing as an available development incentive for property that is annexed to cities through the consent of 100% of its owners, will surely impair new development in the State unless corrected by this Court. By stripping away this crucial financing tool in expedited Type 2 annexations, the court of appeals has left cities and developers without a key method to finance the infrastructure that is needed to serve new neighborhoods and homes in newly annexed land. The court of appeals' decision is particularly distressing in these challenging economic times, when OAR's membership and the general public would benefit from the continued availability of all the financing tools that were created by the General Assembly to encourage – not frustrate – new economic development projects on newly annexed property. As such, OAR joins OHBA and BIA in respectfully asking the Court to reverse the court of appeals' decision and reaffirm the availability of TIF financing in expedited Type 2 annexations.

III. Statement Of Interest Of Amicus Curiae Central Ohio NAIOP.

NAIOP, the Commercial Real Estate Development Association, is the leading organization for developers, owners, and related professionals in office, industrial and mixed-use real estate. NAIOP is comprised of more than 15,000 members in North America and advocates responsible commercial real estate development and effective public policy. NAIOP is a leading

commercial real estate industry provider of networking opportunities, educational programs, research on trends and innovations and strong legislative representation. NAIOP's sister organization, the NAIOP Research Foundation, is one of the industry's leading think tanks dedicated to conducting research assessing the trends, economic viability, and needs of the built environment. The Central Ohio Chapter of NAIOP, headquartered in Westerville, Ohio, helps its members and their businesses achieve and retain the highest level of excellence through legislative awareness and involvement, professional education and development, and the sharing of best practices.

Central Ohio NAIOP (hereinafter "NAIOP") agrees with the concerns expressed above by OHBA, BIA, and OAR regarding the court of appeals' decision. NAIOP's members, like the members of these other respected organizations, share a compelling interest in ensuring that all of the incentives that the General Assembly intended to be available to develop property – including tax increment financing – remain available when land is annexed into municipalities via the commonly used Type 2 process, and that those incentives are not unduly restricted by an erroneous interpretation of Ohio's annexation statutes.

For the reasons described more fully below, therefore, amici curiae OHBA/BIA/OAR/NAIOP respectfully and jointly ask the Court to confirm the availability of TIFs to promote new development in Ohio, including on property that is annexed to municipalities through expedited Type 2 proceedings. By judicially inserting a new exception into Ohio's TIF statutes – one never intended by the General Assembly – the court of appeals has removed a critical development tool from the toolbox that cities and developers use to encourage and finance job-creating infrastructure and development projects across the State. OHBA/BIA/OAR/NAIOP thus join Appellant City of Centerville, amicus curiae Ohio Municipal

League, and amici curiae the Cities of Delaware, Middletown, Dayton, New Albany, Westerville, Hilliard, Miamisburg, Zanesville, Troy, and Kent in respectfully urging this Court to reverse the court of appeals' decision.

STATEMENT OF THE CASE AND FACTS

OHBA/BIA/OAR/NAIOP hereby incorporate Appellant City of Centerville's Statement of the Case and Facts by reference. OHBA/BIA/OAR/NAIOP also wish to briefly focus the Court's attention on some misleading assertions that Appellee Sugarcreek Township ("Sugarcreek") made in its unsuccessful effort to dissuade the Court from accepting this appeal of great general interest, in the event that Sugarcreek elects to continue making similar assertions in its Merit Brief.

First, in its Memorandum in Opposition to Jurisdiction, Sugarcreek on multiple occasions overstates the amount of property tax dollars that would have been diverted from the Township, pursuant to the TIF arrangement that Centerville planned to implement, before the court of appeals effectively quashed those plans. In the opening paragraph of its Memorandum, for example, Sugarcreek complains that "Centerville wants to have its cake and eat it too – it wants to exploit the benefits of the expedited Type 2 annexation procedure while grabbing *all* the real property tax revenues from Appellee Sugarcreek Township." (Sugarcreek Memorandum at p. 1; emphasis added.) Later, Sugarcreek asserts:

> Centerville entered a pre-annexation agreement that required the municipal corporation to implement a tax increment financing plan in which *all* of the real property taxes on the annexed territory would be diverted for 30 years to pay for improvements elected by Centerville. Under Centerville's scheme and theory of the case, Sugarcreek would not receive *any* real property taxes from the annexed territory for 30 years. Far from the cooperation between local governments envisioned by the General Assembly, Centerville has adopted a theory of *exploitation* of townships by municipal corporations.

(Id. at p. 7; emphasis in original.) Elsewhere, Sugarcreek posits that "Centerville is trying to grab *all* of the real property tax revenue from the annexed territory. And that it may not do." (Id. at p. 8; emphasis in original.) And twice on the last page of its Memorandum, Sugarcreek again accuses Centerville of attempting to divert "all" of the real property taxes from the annexed territory. (Id. at p. 10.)

These assertions by Sugarcreek are clearly made to elicit sympathy from the Court, and to paint Centerville as a greedy thief bent on "exploiting" the Township and stealing the Township's *entire* share of *all* property tax revenues associated with the property to be annexed. These assertions overstate the case. Under the terms of the Pre-Annexation Agreement that was before the court of appeals, Centerville would not have diverted "all" of the Township's property tax revenues on the annexed property "for 30 years." For the Court's convenience, a copy of the Pre-Annexation Agreement is included in the Appendix hereto. (Appx. at pp. A1-10.) Pursuant to the express terms of that Agreement, the City was to have been presented with legislation "to create Tax Increment Financing *** to enable the City to collect *up to the maximum amount of payments in lieu of taxes which may be generated from the new development without approval from a school district.*" (Pre-Annexation Agreement, ¶ 5; Appx. A-4) (Emphasis added). By statute, that maximum amount is limited to *75%* of the *increase* in real property taxes after the TIF becomes effective, for a period of *10* years – not 30 years. R.C. 5709.40(C)(4) ("Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the incentive district is or will be located, and subject to division (E) of this section, the life of an incentive district *shall not exceed ten years*, and the percentage of *improvements* to be exempted shall not exceed *seventy-five per cent.*") (Emphasis added)

As Centerville explained in its Jurisdictional Memorandum, this limitation on the diversion of property tax revenues ensures that townships like Sugarcreek continue to receive a share of property tax revenues after the TIF is in place, including: (1) the full amount of real property tax revenues that Sugarcreek received before the increase in taxable value resulting from annexation and development; plus (2) its share of 25% of the real property tax revenues resulting from any increase in the value of the annexed property from improvements; plus (3) its share of all real property tax revenues from the annexed property when the temporary TIF expires. *See* Appellant's Memorandum in Support of Jurisdiction at 10 (noting that it is "undisputed that with a municipal TIF the township would continue to receive some taxes from the annexed territory."). Indeed, because improvements on the annexed parcel (the kinds of improvements that enhance the taxable value of property, such as new residential or commercial developments) typically follow development incentives such as TIF financing, the property tax revenues that a township will receive in steps (2) and (3) above are likely greater than the tax revenues that the township would have received if the land were never annexed and developed subject to a TIF. Given these facts, Sugarcreek's depiction of Centerville as bent on "exploitation" and out "to grab *all* of the real property tax revenue" from the Township is profoundly misleading and should not affect the Court's resolution of this appeal. TIFs of the type at issue here are intended to temporarily divert some – not all – of the increased property tax revenue arising from annexed property in order to finance valuable improvements associated with the economic development of the annexed land. In the long run, that temporary diversion – made to finance new development on the annexed parcel – inures to the benefit of all taxing authorities (townships included) by increasing the value of the property tax base.

Second, Sugarcreek claims that the issue presented by this appeal – whether a municipal corporation can implement a TIF plan to divert real property taxes from territory annexed under an expedited Type 2 annexation – is "unlikely to recur." (Sugarcreek Memorandum at p. 1.) Noting that expedited Type 2 annexations have only existed since 2002, Sugarcreek contends that Centerville's (and its amici's) concerns about the far-reaching effects of the court of appeals' decision amount to a "silly parade of horribles" since "annexation is not a prerequisite for economic development, let alone a particular method of annexation." (Id. at p. 2.) But the Township's attempts to minimize the significance of Type 2 annexations in this State (and thereby minimize the impact of the erroneous decision below) are unavailing. It is well known that expedited Type 2 annexations are the most common type of annexations to be undertaken since the General Assembly enacted comprehensive annexation reform in 2002. *See, e.g.,* City of Columbus Annexation Outline, *Process Outline for Expedited Type 2 Annexations* (February 2011), at 1 (describing the Type 2 expedited process as "the most commonly used process for annexation.")[1] *See, also,* Franklin County Board of Commissioners, Economic Development & Planning Department, *Annexations* (2004-2011) ("The most popular type is Expedited Type 2.")[2]

In Franklin County alone, the website of the county's Economic Development & Planning Department provides a helpful window through which the Court may take notice of the popularity and importance of expedited Type 2 annexations. The Department's published list of recently approved annexations from 2008-2011 includes a total of 59 approved annexations of

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[1] (Appx. A-11.) *Available at:* http://development.columbus.gov/uploadedFiles/Development/Planning_Division/Annexations/Annexation%20Process%20Outline%20(2011).pdf.

[2] (Appx. A-15.) *Available at:* http://www.franklincountyohio.gov/commissioners/edp/annexations/annexations.cfm.

township land to municipalities in Franklin County, involving over 2030 acres of land.[3] Of that Franklin County total, 51 of the 59 approved annexations were expedited Type 2 annexations of the type at issue here, involving over 1,860 acres (or 91% of the total acreage).[4] Given that these statistics come from a single county over a period of just four years, Sugarcreek's attempts to downplay the significance and popularity of the Type 2 annexation method, as a means of minimizing the import of the court of appeals' decision, should be disregarded. OHBA/BIA/OAR/NAIOP would not have joined the Ohio Municipal League and eight large Ohio cities as friends of the Court in this appeal if they were not profoundly concerned about the court of appeals' decision taking hold in other appellate districts across the State[5] and undercutting the TIF development incentives that are frequently paired with this most popular annexation method in order to finance infrastructure development on the newly annexed land.

ARGUMENT

PROPOSITION OF LAW I:

R.C. 709.023(H) DOES NOT PRECLUDE OR LIMIT A MUNICIPALITY FROM ADOPTING A TAX INCREMENT FINANCING ORDINANCE UNDER R.C. 5709.40 THAT TEMPORARILY DIVERTS SOME TAX PAYMENTS OTHERWISE AVAILABLE TO A TOWNSHIP TO FINANCE PUBLIC INFRASTRUCTURE TO SUPPORT NEW PRIVATE DEVELOPMENT AND INVESTMENT.

The court of appeals' decision rests upon an erroneous interpretation and application of the last clause appearing in R.C. 709.023(H). In the decision below, the court of appeals decided

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[3] (Appx. A-16.) *Available at:* http://www.franklincountyohio.gov/commissioners/edp/annexations/approvedannexations/index.cfm

[4] *Id.*

[5] As further evidence that the Court of Appeals' decision is likely to take hold elsewhere unless corrected by this Court, it is worth noting that the decision in *Sugarcreek I* is one of the relatively few cases nationwide to be cited in the current version of a popular research treatise, 64 American Jurisprudence 2d, Public Securities and Obligations, Section 317 (2011).

that, because this language provides that land annexed into a municipality via an expedited Type 2 process remains "subject to" the township's real property taxes, "the plain language of R.C. 709.023(H) precludes Centerville from enacting a TIF plan that would prevent Sugarcreek from collecting the property taxes, whether in the form of inside millage or outside millage, to which it is entitled." *Sugarcreek Twp. v. City of Centerville*, 193 Ohio App.3d 408, 2010-Ohio-1830, ¶21. But contrary to the court of appeals' decision, this language in R.C. 709.023(H) does not preclude or limit a municipality from adopting a TIF ordinance that temporarily diverts some tax payments that a co-terminous township would otherwise receive in order to finance new private development and investment. As described more fully below, land annexed to municipalities via the expedited Type 2 process remains "subject to" real property taxation by the township, as this language of R.C. 709.23(H) requires, even when a TIF ordinance temporarily diverts a portion of those taxes pursuant to the tax increment financing statutes set forth in Title 57 of the Revised Code. Township taxes are not elevated above the general provisions of Ohio law that encourage infrastructure and property development through TIFs. The court of appeals' erroneous determination to the contrary, unless corrected by this Court, will prevent municipalities from utilizing the General Assembly's TIF statutes to encourage and finance new developments on property that is annexed via this popular statutory method.

A. R.C. 709.023(H)'S PROVISION THAT LAND ANNEXED IN A TYPE 2 EXPEDITED PROCEDURE REMAINS "SUBJECT TO" THE TOWNSHIP'S REAL PROPERTY TAXES IS NOT CONTRAVENED BY TEMPORARILY DIVERTING SOME TAX REVENUES THROUGH TAX INCREMENT FINANCING AUTHORIZED BY R.C. 5709.40, ET SEQ.

Ohio property remains "subject to" property tax even when that tax is partially and temporarily abated through one of the numerous special property tax provisions of Ohio law. Ohio Revised Code Section 709.023(H), regarding expedited Type 2 annexations, provides:

> Notwithstanding anything to the contrary in section 503.07 of the Revised Code, unless otherwise provided in an annexation agreement entered into pursuant to section 709.192 of the Revised Code or in a cooperative economic development agreement entered into pursuant to section 701.07 of the Revised Code, territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township under section 503.07 of the Revised Code and, thus, *remains subject to the township's real property taxes.*

(Emphasis added.)

The last clause of R.C. 709.023(H) merely states the obvious – that property remaining within a township (which occurs in an expedited Type 2 annexation) is "subject to" taxation by the township, whatever assessment that may be under Ohio law. R.C. 709.023(H) does not state that, after a Type 2 annexation, the township must receive *all* township taxes that otherwise would have been payable had any later adopted TIF or other statutorily-authorized incentive not been put into place. Properly interpreted and applied, R.C. 709.023(H) simply provides that while property annexed to a municipality in a Type 2 annexation remains "subject to" township taxation in general, it is "subject to" taxation as determined under the whole host of special provisions otherwise applicable to property taxation in Ohio.[6] The court of appeals distorted the language to mean, instead, that taxes on property covered by a Type 2 annexation must remain fully payable to the local taxing authority (the township), despite any TIF, other exemption, or other special provision of Ohio law that would otherwise apply to the annexed property. The statute simply does not provide that result, and the court of appeals' decision amounts to judicial legislation rather than statutory interpretation.

The General Assembly did adopt a statute specifically requiring payments by a municipality to a township in situations where the property is removed from the boundaries of

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[6] Except as otherwise explicitly provided in the Revised Code, namely R.C. 5709.40(F), discussed below.

the township (which does not occur in an expedited Type 2 annexation) and a TIF is put into place covering industrial or commercial improvements. As noted by the court of appeals in *Sugarcreek I*, in such a case R.C. 709.19(C)(2) mandates that a municipality implementing a TIF must make payments to the township of all taxes that the township would have imposed if the TIF had not been put into place. *Sugarcreek Twp. v. City of Centerville*, 184 Ohio App.3d 480, 2009-Ohio-4794, 921 N.E.2d 655, ¶ 114. Ohio Revised Code Section 709.19(C)(2) states, in relevant part:

> If there has been an exemption by the municipal corporation of commercial and industrial real * * * property taxes pursuant to section * * * 5709.41 [TIFs] * * * there shall be *no reduction* in the payments owed to the township due to that exemption. The municipal corporation shall make payments to the township under division (C)(1) of this section, *calculated as if the exemption had not occurred.*

(Emphasis added.) R.C. 709.023(H), in contrast, contains no such provision. The effect of the decision below, however, is to judicially insert that language into the statute. The court of appeals' addition of a broad restriction on the applicability of TIF arrangements in this case unnecessarily limits an important development incentive provided by the General Assembly.

The phrase "subject to" in R.C. 709.023(H) does not mean that township taxes can be assessed without application of any otherwise available exemption. In the case of a TIF, the property remains <u>fully</u> taxed by the township based on the value of the land at the time of the annexation, <u>partially</u> taxed by the township based on the value of the improvements (assuming a 75% TIF), and, eventually, <u>fully</u> taxed by the township again after the temporary TIF expires. For reasons that are not entirely clear, the court of appeals did not think that this level of taxation benefitting the township was sufficient, and thus the court legislated from the bench to increase it – contravening the intent of the General Assembly to enable municipalities to encourage development on annexed property via the TIF statutes in Title 57 of the Revised Code.

For public policy reasons, Ohio law provides myriad special provisions that reduce the property taxes that a property owner pays, either through reduced valuations of the taxable property or through reduced tax rates. Nevertheless, the property clearly remains "subject to" taxation in those situations, albeit taxation based on reduced valuations or collected at reduced rates. Put another way, the General Assembly's proviso in R.C. 709.023(H) that Type 2 annexed land shall remain "subject to" taxation by the township does not prevent the incremental increase in those taxes resulting from development from being diverted temporarily pursuant to other valid tax laws in the Revised Code, such as the TIF statute that Centerville and the developer here tried to invoke pursuant to their Pre-Annexation Agreement.

It would be impossible to argue, for example, that agricultural land authorized under the State's CAUV program[7] is not "subject to" taxation by the township in which such land is located. While the CAUV program reduces the amount of taxes collected by the township on the farmed land, the landowner still pays property taxes to the township and is still "subject to" taxation by the township. Similarly, the homestead of an elderly citizen is "subject to" taxation even though the property taxes on the homestead are reduced under another special provision of Ohio law. Likewise, if Centerville grants a TIF under R.C. 5709.40 to property annexed into that city in an expedited Type 2 annexation process, the property remains "subject to" taxation by the township because the property is still in the township, and the township continues to collect the full amount of real property tax revenues that it received before the increase in value resulting from annexation and development. But because of the TIF, expressly authorized by Title 57 of the Revised Code, the "property tax" component of an owner's tax bill is temporarily reduced

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[7] See R.C. 5713.30 *et seq.* for a description of Ohio's "current agricultural use valuation" program.

while the remainder of the assessment is paid as a PILOT (payment-in-lieu of taxes) that is diverted to finance infrastructure improvements, as the General Assembly expressly intended.

In sum, the property covered by Centerville's proposed TIF would remain "subject to" taxation by the Township both in theory and in reality. Thus, contrary to the court of appeals' decisions in *Sugarcreek I* and *II*, Centerville's proposed TIF does not run afoul of R.C. 709.023(H). The court of appeals' overbroad interpretation of the concluding clause in R.C. 709.023(H) forgets that property "subject to" taxation by any taxing authority, be it a township or otherwise, is always also "subject to" other special provisions in the Revised Code that may divert a portion of those revenues for the compelling public policy reasons selected by the General Assembly, such as the desire to encourage new infrastructure development on newly annexed land.

B. IF THE GENERAL ASSEMBLY HAD INTENDED R.C. 709.023(H) TO PRECLUDE OR LIMIT AN ANNEXING MUNICIPALITY'S AUTHORITY TO IMPLEMENT TAX INCREMENT FINANCING, IT WOULD HAVE SPECIFICALLY INCLUDED SUCH PROHIBITION OR LIMITATION IN THE LISTED EXCEPTIONS TO TAX INCREMENT FINANCING IN R.C. 5709.40(F). "DEEMED" INCLUSION OF TAX INCREMENT FINANCING ON THIS LIST IS CONTRARY TO STATUTORY LANGUAGE, IS INCONSISTENT WITH THE TREATMENT OF ITEMS ACTUALLY INCLUDED ON THE LIST, AND CONTRAVENES CANONS OF INTERPRETATION.

1. Township taxes are not included in the list of taxes that are collected despite the existence of TIFs.

An Ohio property owner's overall property tax payment is sliced and diced in many ways, with portions of those payments designated for school districts, county government, park districts, welfare programs, municipalities, townships, and other governmental entities. Because TIFs clearly do divert a portion of property taxes that are collected, it was necessary for the General Assembly to consider whether TIFs divert <u>all</u> components of the property tax to

infrastructure improvements, or only some components. The General Assembly determined that some, but not all, governmental functions paid for through "outside millage" tax levies cannot be undercut by TIFs. Ohio Revised Code Section 5709.40(F)(1)—(12) specifically lists the twelve local tax levies that may be imposed despite the presence of a TIF. Exceptions are provided for:

> (1) Community mental retardation and developmental disabilities programs;
> (2) Senior citizen services and facilities;
> (3) County hospitals;
> (4) Alcohol, drug addiction, and mental health services and facilities;
> (5) Libraries;
> (6) Child protective services;
> (7) Zoos;
> (8) Township *parks*;
> (9) Joint recreation district parks;
> (10) "Park district" parks;
> (11) Certain welfare programs; and
> (12) General health districts.

(Emphasis added.) Crucially, township taxes—one of the few large "outside millage" components of a property owner's tax bill—are <u>not</u> included in among the twelve exceptions. That is, until the court of appeals judicially inserted township taxes into this exhaustive list.

2. *The list of taxes not affected by TIFs is exhaustive.*

An ancient canon of statutory interpretation called *expressio unius est exclusio alterius* provides that the expression of one thing (or in this situation, twelve things) generally suggests the exclusion of others. In brushing this canon aside, the court of appeals stated that it "was not necessary to include an exception for expedited type-2 annexations" for township taxes because of the provision in R.C. 709.023(H) that land "remains subject to the township's real property taxes."[8] But the list in R.C. 5709.40(F) is <u>exhaustive</u>, not merely illustrative. The statute does not state that the list of tax levies preserved despite a TIF merely "includes" the items in the list.

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[8] As discussed above, OHBA/BIA/OAR/NAIOP do not dispute that the property remains "subject to" township taxation. The property remains "subject to" township taxation, as modified by other applicable provisions of Ohio tax law (such as the statutes providing for TIFs).

Rather, R.C. 5709.40(F) lists all of those "renewal and replacement [levies] that would have been payable to [the applicable] taxing authority * * * were it not for the [TIF] exemption * * * *." Therefore, this canon of interpretation, continuously and routinely applied by this Court, applies and is not undermined in this situation. See, *e.g.*, *State ex rel. LetOhioVote.org et al. v. Brunner* (2009), 123 Ohio St.3d 322, 916 N.E.2d 462, 2009-Ohio-4900; *Craftsman Type, Inc. v. Lindley* (1983), 6 Ohio St.3d 82, 451 N.E.2d 768.

3. The "savings clause" of R.C. 709.023(H) does not obviate the need to include a levy in R.C. 5709.40(F) if such levy is not affected by a TIF.

The court of appeals suggests, in effect, that it was not necessary for the General Assembly to include township taxes in the exhaustive list of items in R.C. 5709.40(F) because another provisions of the Revised Code, R.C. 709.023(H), organically (and by itself) provides that a TIF cannot supersede any township taxes levied through "outside millage." If that were the situation, however, then the list in R.C. 5709.40(F) includes an item, in subsection (F)(8) and relating to *township* parks, that should also not be included in the list. After all, R.C. 511.27(A), by itself, provides that "[t]he levy [for township parks] shall be over and above all other taxes and limitations on such property authorized by law." Yet the General Assembly explicitly did include township park levies in R.C. 5709.40(F) as not being undercut by TIFs, despite language in R.C. 511.27(A) arguably saying the same thing. The General Assembly thus clearly believed R.C. 5709.40(F) to be the exclusive and exhaustive list of those tax levies that are fully collected regardless of a TIF being in place.

Moreover, the General Assembly did contemplate townships and their various taxes, by including township *park* taxes, when generating the list of levies in R.C. 5709.40(F). Therefore, contrary to the court of appeals' determination, the General Assembly intended R.C. 5709.40(F) to provide a stand-alone, exhaustive list of taxes that are not undercut by TIFs. The General

Assembly affirmatively decided not to include general township taxes on that list. The court of appeals, though, judicially inserted general township taxes into that exclusive list.

4. The court of appeals should not be permitted to create new exceptions to statutes.

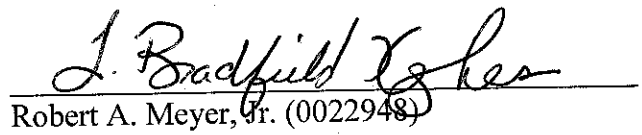
The court of appeals' decision to judicially insert an additional levy into the General Assembly's exhaustive list of levies not to be impacted by TIFs conflicts directly with this Court's consistent admonishment that judge-made exceptions to statutes are not appropriate. See, *e.g.*, *Olympic Holding Co., L.L.C. v. ACE Ltd.*, 122 Ohio St.3d 89, 2009-Ohio-2057, paragraph 36 (rejecting a judge-made "promissory estoppel" exception to Ohio's Statute of Frauds); see, also, *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, paragraph 3 of the syllabus (refusing to insert a "judicially created good sense" exception to the Public Records Act); *State ex rel. Stoll v. Logan County Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-333, ¶ 39 (holding that it would be inappropriate for the Court to add an exemption to a statutory referendum procedure); *United Tel. Credit Union, Inc. v. Roberts*, 115 Ohio St.3d 464, 2007-Ohio-5247, ¶¶ 7-9 (refusing to engraft a judge-made exception onto the procedures for challenging the appointment of a conservator over a credit union, saying "We will not read into a statute any further exceptions to the general rule not expressly provided for by the General Assembly.") Based on this precedent, OHBA/BIA/OAR/NAIOP respectfully ask this Court to reject the court of appeals' insertion of a new judge-made exception into R.C. 5709.40(F) that will be devastating to municipal TIF incentives for new development.

CONCLUSION

For the reasons set forth above, amici curiae Ohio Home Builders Association, Building Industry Association of Central Ohio, Ohio Association of REALTORS®, and Central Ohio NAIOP join Appellant, the City of Centerville, and Centerville's other amici curiae in

respectfully urging this Honorable Court to reverse the decision of the Second District Court of Appeals and to adopt the Proposition of Law set forth above.

Respectfully submitted,



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IN SUPPORT OF APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Amici Curiae Ohio Home Builders Association, Building Industry Association of Central Ohio, Ohio Association of REALTORS®, and Central Ohio NAIOP In Support of Appellant was sent by first class mail, postage prepaid, this 20th day of December, 2011 to the following:

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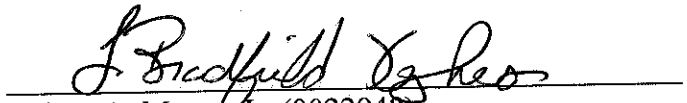

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IN SUPPORT OF APPELLANT

IN THE SUPREME COURT OF OHIO

Sugarcreek Township	:	Supreme Court Case No. 11-0926
Plaintiff-Appellee,	:	
v.	:	On Appeal from the Greene County Court of Appeals Second Appellate District
City of Centerville	:	
Defendant-Appellant	:	Court of Appeals Case No. 2010-CA-52

APPENDIX TO MERIT BRIEF OF AMICI CURIAE OHIO HOME BUILDERS ASSOCIATION, BUILDING INDUSTRY ASSOCIATION OF CENTRAL OHIO, OHIO ASSOCIATION OF REALTORS, AND CENTRAL OHIO NAIOP

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IN SUPPORT OF APPELLANT

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 5th day of April, 2006 by, between and among the City of Centerville, an Ohio municipal corporation (the "City"), Dille Laboratories Corp., (the "Owner", or "Owners" should more than one property owner execute this Agreement as a party) and Bear Creek Capital, LLC, an Ohio limited liability company (the "Developer") under the following circumstances:

A. Dille Laboratories Corp. currently holds fee simple title to approximately 157.6 acres of land located in Sugarcreek Township, Greene County, Ohio and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

B. Bear Creek Capital, LLC, or an affiliate, intends to purchase the Property from the Owner, pursuant to a contract of purchase, in order to develop a multi-use development project, including retail, office and residential components (the "Project");

C. The City has reviewed a development plan for the Project, attached hereto as Exhibit "B" (the "Development Plan") and has determined that the Development Plan is in accord with the City's comprehensive land use plan;

D. The Owner and Developer desire to annex the Property, as more particularly described on Exhibit "A" and as generally depicted on Exhibit "C", into the City in order to obtain the City's services and assistance in the development of the Property; and

E. The Owner, Developer, and the City can mutually benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City, Owner, and Developer hereby agree as follows:

1. Annexation.

(a) The Developer agrees that it will obtain the signature of the Owner and will, at its own expense, prepare and file the necessary annexation petition or petitions with accompanying map or plat with the appropriate board of county commissioners. The Owner agrees that it will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation. The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. The Property sought to be annexed may be the subject of one or more annexation petitions and in a configuration as agreed by the Owner, Developer, and the City and may include other property not owned by Owner. If the Property is annexed in several parts using separate petitions, the terms

of this Agreement will apply to each separate petition. The Owner agrees that it will execute one or more annexation petitions, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law, and will not request the agent for petitioners to withdraw the annexation petition as long as this Agreement is in full force and effect. The petition will designate an agent for petitioners as agreed to by the City and Developer. The City agrees to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the appropriate board of county commissioners. A service resolution will set out those services that will be provided by the City upon annexation and will establish the approximate date when those services will be available.

(b) The Owner, Developer, and the City agree to cooperate and provide information necessary for the county commissioners to make their "review" of the annexation as required by Section 709.023 of the Ohio Revised Code. If, at the conclusion of the review process the county commissioners deny the annexation petition, the Owner agrees to file in the appropriate court a request for a writ of mandamus to compel the county commissioners to approve the annexation as set out in Section 709.023 of the Ohio Revised Code. The City agrees to seek standing to support any mandamus action filed by the Owner in its attempt to annex the Property into the City. The Owner, Developer, and the City agree to pursue the annexation and to exhaust all appeals.

(c) Should the annexation be approved, the Owner, Developer, and the City agree to process the annexation as provided by law subject to the terms of this Agreement.

(d) The Owner and Developer, at their expense, agree to file or arrange to be filed an annexation petition, map, and plat that comply with Section 709.023 of the Ohio Revised Code within twenty (20) days after the execution of this Agreement.

(e) If the purchase contract between Owner and Developer shall terminate and/or not be renewed pursuant to the terms thereof prior to the completion of the annexation of the Property, but the annexation process continues and some or all of the Property is ultimately annexed into the City, the Developer shall indemnify and hold the Owner harmless from any City income tax burdens (including any future City income taxes) resulting to it from the Property's inclusion in the City, for the period from the date of expiration or earlier termination of the purchase contract until the earlier to occur of the sale of the Property to another purchaser or August 3, 2010 (which is the first anniversary of the date of termination of the Charles Dille Trust).

2. Zoning.

(a) The Property sought to be annexed is currently shown on the zoning map of Sugarcreek Township as a planned unit development of mixed uses, including commercial, office, single and multi-family residential zoning and other possible mixed zoning uses. The City recognizes that the uses shown on the Development Plan attached

hereto and made a part hereof are generally in line with the spirit of the comprehensive plan for the City if extended to the annexation area and the uses shown on the Development Plan are appropriate uses to be considered for the Property. The parties understand that the zoning will take place utilizing the regular process for processing an application for zoning in the City and there is no guarantee that any particular zoning will be granted. The City agrees that once an annexation petition has been approved by the appropriate board of county commissioners, the City will accept a zoning application for the Property covered by the annexation petition and will begin the administrative processing of such application, including any necessary hearings and other preliminary matters. The City understands that the Developer is desirous of obtaining B-PD, Business Planned Development and also, in part, as R-PD, Residential Planned Development, as described in the Development Plan as the ultimate end uses of the Property in the City.

(b) The City recognizes that once the annexation is placed before City Council by the City Clerk, the City has one hundred twenty (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property in accordance with the Development Plan approved through the planning and zoning process to a zoning that is acceptable to the Owner and Developer. At any time during the one hundred twenty (120) day acceptance period for the annexation, at the request of the Owner and/or Developer, the City itself may delay its acceptance of the annexation until the zoning and other matters are settled to the satisfaction of the Owner, Developer, and the City. If, for some reason, the zoning cannot be accomplished and/or the zoning is referred to the voters or defeated for any reason or other conditions of this Agreement cannot be met acceptable to the Owner and Developer, the City agrees that it will not annex the Property. If, however, the zoning is approved in accordance with the Development Plan developed through the Planning Commission and approved by City Council, the Owner and Developer are obligated to complete the annexation process. If the annexation vote occurs approving the annexation to the City and at the time of the annexation acceptable zoning has not been adopted as approved through the Planning Commission, then the City agrees that if acceptable zoning does not pass within thirty (30) days of such vote approving the annexation, it will reconsider such vote and reject the annexation. The City agrees, to the extent possible, to process the ordinance necessary to approve the annexation and zoning contemporaneously with the goal of deciding both issues at the same meeting.

(c) The Development Plan shall show the needed access to the Property from public streets and roadways, as well as establish a plan to erect adequate signage to identify the commercial and residential portions of the Property as permitted by the City's development code. The Owner, Developer, and the City acknowledge that the access to the Property is determined and controlled by the City and the Ohio Department of Transportation. No exact access can be guaranteed by the City, but the City agrees to cooperate with Developer in the submission of any and all necessary permits for access to the Property or for the establishment of any utilities that may be necessary to be placed in the road right-of-ways. The parties also acknowledge and agree that certain of these road improvements are within "Public Improvements" which will be governed by Tax Increment Financing.

3. Water, Sewer, and Public Utilities. The Owner, Developer, and the City understand that water and sewer to the site will be provided by Greene County. The Developer has satisfied itself as to the adequacy, size, cost, timing and extension of such utilities to the development in question. The location and alignment of the water and sewer lines, as well as any other utilities to be provided to the site, must be approved by the City's engineer upon annexation and be based upon sound engineering principles. The City agrees that if there is a choice of locations, it will cooperate in the location and placement of the water and sewer lines and other utilities over which it may have control in a way that is most economically feasible and beneficial to the Developer. The City will cooperate with the Owner and Developer in obtaining any necessary utility easements and will extend to the Owner and Developer the right to place utilities in the public road right-of-ways, when such road right-of-ways are solely controlled by the City and that such grant will be without cost to the Owner or Developer for such access. The extent of the City's commitments with regard to utilities will be established and limited to those rights, privileges, and other items as set out in the City's service resolution.

4. Platting. Once the annexation to the City has been completed and the Development Plan approved as to zoning, a preliminary and final plat will be filed by the Owner/Developer. The City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations and the regular fees for such review will be applied.

5. Financing Improvements. The parties recognize that significant improvements may be needed to service the proposed development of the Property in the City, and, accordingly, the parties agree to undertake or participate in the following financing arrangements or mechanisms:

(a) Coincident with the City's approving the final plans for development of any portion of the Property that has been annexed to the City, the City shall as soon as practical take steps to present to the City Council legislation to create Tax Increment Financing (the "TIF Ordinance") to enable the City to collect up to the maximum amount of payments in lieu of taxes which may be generated from the new development without approval from a school district. The payments made in lieu of taxes will be applied by the City to recoup and apply to the costs associated with the construction of the necessary public improvements. Pursuant to the TIF Ordinance, the City and Developer shall enter into a public infrastructure agreement (the "Infrastructure Agreement"), pursuant to which the City and Developer agree to erect, construct and maintain Public Improvements on the Property or which, in the opinion of the City, benefit or serve the Property or which have been deemed reasonably necessary by the City and the Developer. The TIF Ordinance shall also specify the use of service payments as provided in ORC Section 5709.42.

(b) The Developer and the City shall enter into a service payment agreement reasonably acceptable to Developer and the City (the "Service Agreement") setting forth

the duties and obligations of a Tax Increment Financing District that does not involve the deprivation of any school district moneys.

(c) Upon request of the Developer, the City agrees that it will take such action as is necessary to issue Tax Increment Financing Bonds (the "Bonds") in order to pay the costs of the Public Improvements to be constructed on the Property and that the debt service on the Bonds will be paid solely from Service Payments (which means the Statutory Service Payments and any supplemental payments (the "Minimum Service Payments") as may be required by a Service Agreement. The Public Improvements to be covered by Tax Increment Financing shall include, but not be limited to, the installation of roads, utility lines, sidewalks, and other public infrastructure improvements deemed reasonably necessary by the Developer and the City.

6. Representations and Warranties of the City. The City hereby represents and warrants to Developer that:

(a) The City is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to its charter, and to perform its obligations hereunder;

(b) The City, acting by and through its agents, has taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and

(c) This Agreement is the valid and binding act of the City, enforceable against the City in accordance with its terms.

7. Representations and Warranties of the Owner/Developer. The Owner/Developer hereby represents and warrants to the City that:

(a) The Owner is the duly authorized owner of the Property to be included in the annexation petition;

(b) The Developer represents that it has an option or contract to purchase the Property and that the parties who have signed this Agreement have whatever authority is necessary to authorize their signatures;

(c) The Developer and Owner, acting by and through their agents, have taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same and the performance of the obligations of the City hereunder; and

(d) The Developer has satisfied itself that utilities which are outside the control of the City will be available in sufficient amounts, quantities, and timing so that the Developer can, in fact, complete the development as anticipated by this Agreement.

8. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

9. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

10. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

12. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

13. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, the Owner and the Developer, any lender providing financing to the Developer and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

14. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

15. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

16. Approvals. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

17. Binding Effect. This Agreement and all of the provisions herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

18. Entire Agreement/Merger. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written.

19. Survival. The representations, warranties and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

20. Notice. All notices, requests, consents, approvals, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by telegram, cable, e-mail or facsimile telephone transmission, if given below, or later provided, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Owner: Dille Laboratories Corp.
4095 Timberly Drive
Dayton, OH 45442
Telephone: _____
Facsimile: _____

with a copy to:	John M. Cloud, Esq. Rogers & Greenberg LLP 2160 Kettering Tower Dayton, OH 45423 Telephone: (937) 223-8171 Facsimile: (937) 223-1649
Developer:	Bear Creek Capital, LLC 9549 Montgomery Road, 3rd Floor Cincinnati, OH 45242 Telephone: 513-233-7030 Facsimile: (513) 793-5820 Attention: Mr. Greg Scheper
with a copy to:	Joseph L. Trauth, Jr., Esq. Keating, Muething & Klekamp, PLL One East Fourth Street Suite 1400 Cincinnati, OH 45202 Telephone: (513) 579-6515 Facsimile: (513) 579-6457
City:	City of Centerville 100 W. Spring Valley Rd. Centerville, OH 45458 Attention: City Manager Telephone: (937) 433-7151 Facsimile: (937) 435-8720
with a copy to:	City of Centerville 100 W. Spring Valley Rd. Centerville, OH 45458 Attention: City Attorney Telephone: (937) _____ Facsimile: (937) _____

[Signatures Appear on the Following Page]

The foregoing instrument was executed this ___ day of April, 2006.

DEVELOPER:

BEAR CREEK CAPITAL, LLC,
an Ohio limited liability company

By: _____
Name: Matthew C. Daniels
Title: Member

OWNER:

DILLE LABORATORIES CORP.

By: _____
Name: ROGER PFISTER
Title: PRESIDENT

CITY:

CITY OF CENTERVILLE, an Ohio municipal corporation

By: _____
Name: GREGORY A. HORN
Title: CITY MANAGER

STATE OF OHIO)
) SS.
COUNTY OF GREENE)

BEFORE ME, a Notary Public in and for such County and State, personally appeared Roger Pfister, the duly authorized representative of Dille Laboratories Corp., who acknowledged that he signed the foregoing instrument on behalf of the corporation, and that the same is the free act and deed of him personally and as such corporation.

IN TESTIMONY, I set my hand and official seal this 31st day of ~~April~~ March, 2006.

Karen L. Lamb
Notary Public (Seal)

Karen L. Lamb, Notary Public
In and for the State of Ohio
My Commission Expires June 3, 2007

STATE OF OHIO)
) SS.
COUNTY OF ~~GREENE~~ Montgomery)

BEFORE ME, a Notary Public in and for such County and State, personally appeared Gregory B. Horn, the City Manager of the City of Centerville, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such City of Centerville, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such City of Centerville.

IN TESTIMONY, I set my hand and official seal this 5th day of April, 2006.

Debra A. James
Notary Public (Seal)

DEBRA A. JAMES, Notary Public
In and for the State of Ohio
My Commission Expires April 13, 201

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

BEFORE ME, a Notary Public in and for such County and State, personally appeared Matthew C. Daniels, the Member (authorized) of Bear Creek Capital, LLC, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such company, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such Company.

IN TESTIMONY, I set my hand and official seal this 5rd day of April, 2006.

NOTARIAL SEAL STATE OF OHIO

HEATHER L. PIAZZA
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
January 23, 2007

Heather Piazza
Notary Public (Seal)

City of Columbus

Process Outline for Expedited Type 2 Annexations

This document outlines the steps involved in annexing territory to the City of Columbus using the type 2 expedited process outlined in the Ohio Revised Code (ORC) chapter 709. While this is the most commonly used process for annexation, other alternatives are outlined in the ORC. The steps included in this outline are focused on the requirements of the city itself. Additional steps are required by the county of jurisdiction in accordance with the ORC 709. ***Applicants must contact the appropriate county for information regarding additional process requirements and alternative annexation types.***

Phase One –Pre Filing

While annexations are filed with the county of jurisdiction, a number of steps are necessary prior to formal filing in order to adhere to timeframes set in the Ohio Revised Code and to allow adequate consideration by the city.

1. Applicant contacts City Annexation Coordinator:

   Lori Baudro, AICP, Project Coordinator
   Planning Division
   Development Department
   109 North Front Street
   Columbus, OH 43215
   (614) 645-6986
   lsbaudro@columbus.gov

2. Important Things to consider (list is not intended to be exhaustive):

   - Contiguity – at least 5% of perimeter must be contiguous to city.
   - Utility service – are utilities available?
     - Doug Wilson, Water Division (645-2645)
     - Chad Holtzapel, Sewerage and Drainage (645-6315)
   - School district status – this changes in many cases. Columbus Public Schools Contact: Frank Habeker – 365-5664
   - Property Tax implications –vary depending upon the type of annexation sought. Contact Vince Janlin of the Franklin County Auditor for property tax information (462-6637)
   - City Income Tax – Contact the Columbus Income Tax Division (645-7370) for information about local income taxes.

- Development policy issues – City plans and initiatives. City Annexation Coordinator can provide information regarding these issues.

- Is the site within a Pay-As-We-Grow (PAWG) or other special policy area? This may trigger other requirements. These areas are generally outside I-270. Contact PAWG coordinator David Hull at 645-6330.

- Zoning Status – All territory annexed to the City is placed in the Rural zoning classification. Columbus allows for one rezoning application at no cost, to a district determined by the city to be comparable with the current township/county zoning. The application must be filed within 30 days of the effective date of the City's acceptance of the annexation. Call Building Services Division at 645-8637 to obtain more information.

3. Applicant contacts the Transportation Division's Annexation Coordinator. This division reviews and approves the legal description and annexation plat map. This may require the applicant to obtain professional services. Transportation Division Annexation Coordinator:

   Adugna Woldemariam
   Transportation Division
   Public Service Department
   109 North Front Street
   Columbus, OH 43215
   (614) 645-2498
   awoldemariam@columbus.gov

4. The Transportation Division works with Franklin County Engineer's office to resolve any necessary right-of-way questions associated with the proposed annexation.

5. After approval of the parcel map and legal description by the Transportation Division, the applicant provides the City Annexation Coordinator with:

   - Completed City Annexation Application (will be provided by coordinator)
   - Principle Parties list in Word format – this includes the name of the applicant, attorney/agent, and developer if applicable.
   - Plat map in TIFF or JPEG format
   - Legal Description in Word

   ***NOTE:* An application is not considered complete and will not be processed (assigned a case number & circulated for review) until all of the bulleted items listed above have been received in the formats requested.**

6. City Annexation Coordinator assigns a case number and distributes the information provided in step 5 to city divisions for a service response – typically within a three week period.

7. City Annexation Coordinator sends applicant a form for use by the Fire Division. Applicants should contact Lt. Jeffrey Geitter of the Fire Division for assistance with this form. Lt. Geitter can be reached at jjgeitter@columbus.gov or (614) 645-8308.

8. After responses are gathered, City Annexation Coordinator prepares a Service Ordinance

   Note: Service Ordinance is not submitted until applicant has filed with Franklin County.

PHASE TWO – FILING

9. The City Annexation Coordinator provides the applicant with a tentative timetable for City Council consideration. *(Note: This step is important because the ORC requires that the county where an annexation application is filed receive a service statement from the applicable municipality within 20 days of the filing. For this reason all city Service Ordinances are filed as emergency legislation, waiving a second reading and the 30-day clause.)*

10. The applicant files an annexation application with the applicable county. A hearing date is set before the County Commissioners. To file an annexation with Franklin County, contact:

    Lee Brown, Planning Administrator
    Franklin County Planning and Economic Development Department
    150 S. Front Street
    FSL Suite 10
    Columbus, OH 43215
    (614) 525-5629

11. City Annexation Coordinator (or other staff member) submits the Service Ordinance along with the Legal Description, Map and Principle Parties documents as attachments.

12. The Development Director approves the legislation and it is submitted to the City Clerk for scheduling.

13. City Council approves Service Ordinance. **Passage of the service ordinance does not obligate the city to later accept the annexation**.

14. Applicant obtains and provides a certified copy of the legislation to the county (typically available from the City Clerk by the Thursday after Council meets). This is then provided – by the applicant – to the county in response to the ORC requirement for provision of a service statement within 21 days of the annexation application filing. City Council staff contact for annexations:

    Monique Goins
    City Clerk's Office
    90 West Broad Street, 2nd Floor
    Columbus, OH 43215
    (614) 645-0845

    Or send an email to: CityClerkRequests@columbus.gov

15. County Commissioners consider the annexation at a public hearing.

16. A record of the commissioner's action is sent to the City Clerk.

17. The ORC requires that the City wait a minimum of 60 days, but no more than 180 days to accept an annexation approved by the County.

18. City Annexation Coordinator (or other staff member) submits the Acceptance Ordinance along the Service Statement (one page summary of service ordinance), Map and Principle Parties documents as attachments.

19. The Development Director approves the legislation and it is then submitted to the City Attorney for review and approval and City Clerk for scheduling.

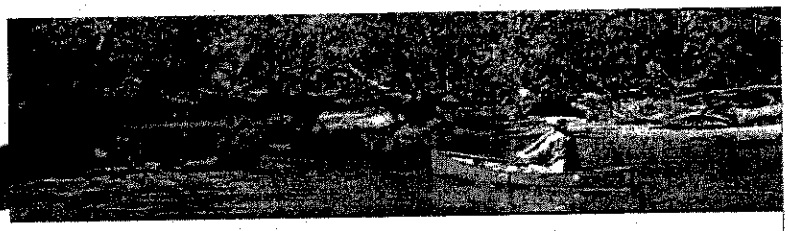
20. City Council approves Acceptance Ordinance as 30 day legislation. This may be accompanied by a pre-annexation agreement in the case of Pay As We Grow or Big Darby policy areas.

21. Annexation is recorded by the City Clerk's office with the County Auditor and Board of Elections. See step 14 for contact information.

22. Annexation site is recorded by Transportation Division as a part of the City corporate limits.

o

Franklin County
Economic Development & Planning



Commissioner Agencies
Animal Care & Control
Child Support Enforcement
Economic Development & Planning
Fleet Management
Human Resources
Job & Family Services
Homeland Security & Justice Programs
Office of Management & Budget
Office on Aging
Public Facilities Management
Purchasing Department
Sanitary Engineering

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Annexations

About annexation
Generally speaking, annexations add property to a municipality.

Types of annexation
There are five types of annexations. Each type has specific conditions that must be met before, during and after filing. The most popular type is Expedited Type 2.

Annexation forms
Each type of annexation requires a specific form. Please visit the Applications and Forms section of our website.

Expedited Type 2 annexations
This is the most common type of annexation. To annex using this procedure, your application has to meet certain requirements. We prepared this document to help you
How to annex under the Expedited Type 2 procedure (PDF)

Help with annexation
Annexation law requires numerous filings, deadlines and specific criteria. All legal requirements can be found in the Ohio Revised Code, Section 709. Most annexation applications are filed by attorneys.

Annexations require applicants to meet specific technical requirements and tight deadlines. While our office can provide general information on annexations, the best way to preserve your investment in your property is to contact an attorney.

Recently approved annexations
Approved annexation petitions are now available on our website. The petitions include the resolution adopted by the Board of Commissioners.
Recently approved annexations

News

NSP & Rental Housing Dashboards

The latest NSP Dashboard update and the Rental Housing Dashboard are now posted on the Community Development webpage.

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Franklin County
Economic Development & Planning

Commissioner Agencies
Animal Care & Control
Child Support Enforcement
Economic Development & Planning
Fleet Management
Human Resources
Job & Family Services
Homeland Security & Justice Programs
Office of Management & Budget
Office on Aging
Public Facilities Management
Purchasing Department
Sanitary Engineering

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Annexations

Recently approved annexations
The links below include the following:
- Resolution by the Board of Commissioners
- Application form
- Map
- Legal description
- Statement of municipal services

2011	To Municipality	From Township	Acreage
ANX-EXP2-09-11	Withdrawn		
ANX-EXP2-08-11	Columbus	Prairie	0.717
ANX-EXP2-07-11	Columbus	Sharon	0.93
ANX-EXP2-06-11	Withdrawn		
ANX-EXP2-05-11	Columbus	Mifflin	3.81
ANX-EXP2-04-11	Columbus	Clinton	2.390
ANX-EXP2-03-11	Columbus	Norwich	1.073
ANX-EXP2-02-11	Columbus	Jackson	0.755
ANX-MUNI-01-11	Grove City	Jackson	44.3

2010	To Municipality	From Township	Acreage
ANX-EXP2-14-10	Brown	Hilliard	21.43
ANX-EXP2-13-10	Lithopolis	Madison	91.23
ANX-EXP2-12-10	Columbus	Clinton	1.33
ANX-EXP2-11-10	Columbus	Washington	3.3
ANX-EXP2-10-10	Columbus	Truro	0.57
ANX-EXP2-09-10	Columbus	Prairie	0.93
BC-08-10	Boundary Change	Montgomery	12.0
ANX-EXP2-07-10	Columbus	Jefferson	7.0
ANX-EXP2-06-10	Gahanna	Jefferson	0.120
ANX-EXP2-05-10	Worthington	Sharon	0.6
ANX-EXP2-04-10	Columbus	Clinton	1.893
ANX-EXP2-03-10	Worthington	Sharon	0.6
ANX-EXP2-02-10	Worthington	Sharon	0.646
ANX-EXP2-01-10	Columbus	Prairie	0.92

2009	To Municipality	From Township	Acreage
DT-26-09	Detachment	Grove City-Jackson Twp	0.23
ANX-EXP2-25-09	Columbus	Jackson	89.63
ANX-EXP1-24-09	New Albany	Plain	92.7
ANX-EXP2-23-09	Withdrawn		
ANX-EXP2-22-09	Worthington	Sharon	0.7
ANX-EXP2-21-09	Withdrawn		
ANX-EXP1-20-09	Columbus	Plain	7.2
ANX-EXP2-19-09	Urbancrest	Jackson	0.476
ANX-EXP2-18-09	Columbus	Prairie	11.457
ANX-EXP2-17-09	Reynoldsburg	Truro	0.442
ANX-EXP2-16-09	Hilliard	Brown	7.3
ANX-EXP2-15-09	Withdrawn		
ANX-EXP2-14-09	Lockbourne	Hamilton, Harrison (Pickaway Co.)	464.4
BC-13-09	Boundary Change	Montgomery	
ANX-EXP2-12-09	Grove City	Jackson	1.07
ANX-EXP2-11-09	Columbus	Prairie	0.471
BC-10-09	Boundary Change	Washington	
	Hilliard	Norwich	89.6

News

There are currently no news items to be displayed.

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Building Fees
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Floodplain
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Public Meetings
Community Development Services
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Subdivisions
Subordination Procedures
Contact Us

ANX-EXP2-09-09			
ANX-EXP1-08-09	Columbus	Plain	4.8
ANX-EXP1-07-09	Westerville	Sharon	13.675
ANX-EXP2-06-09	Columbus	Prairie	0.172
ANX-EXP2-05-09	Columbus	Madison	0.418
ANX-EXP2-04-09	Columbus	Plain	3.106
ANX-EXP2-03-09	Columbus	Franklin	4.26
ANX-EXP2-02-09	Hilliard	Brown, Norwich	424.1
ANX-EXP2-01-09	Columbus	Sharon	1.593
2008	**To Municipality**	**From Township**	**Acreage**
ANX-EXP2-32-08	Grove City	Jackson	5.191
ANX-EXP2-31-08	Withdrawn		
ANX-EXP2-30-08	Hilliard	Brown, Norwich	493.6
ANX-EXP2-29-08	Gahanna	Jefferson	6.3
ANX-EXP2-28-08	Columbus	Mifflin	2.4
ANX-EXP2-27-08	Columbus	Prairie	0.83
ANX-REG-26-08	Dublin	Perry	1.25
ANX-EXP2-25-08	Columbus	Franklin, Norwich	10.71
ANX-EXP2-24-08	Columbus	Prairie	1.55
BC-23-08	Boundary change	Washington	
ANX-REG-22-08	Columbus	Franklin	0.95
ANX-EXP2-21-08	New Albany	Plain	53.0
ANX-EXP2-20-08	Columbus	Franklin, Norwich	10.99
ANX-EXP2-19-08	Columbus	Franklin	4.26
ANX-EXP2-18-08	Reynoldsburg	Truro	0.5
ANX-EXP2-17-08	Columbus	Washington	4.1
ANX-EXP2-16-08	Gahanna	Jefferson	27.9
BC-15-08	Boundary change	Columbus-Obetz	32.5
ANX-EXP2-14-08	Columbus	Mifflin	2.8
ANX-EXP2-13-08	Columbus	Mifflin	0.29
ANX-MUNI-12-08	Gahanna	Jefferson	10.3
ANX-EXP2-11-08	Columbus	Prairie	0.506

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