ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OHIO

Sugarcreek Township,

Appellee,

v.

City of Centerville,

Appellant

Supreme Court Case No.
11-0926

On Appeal from the
Greene County Court of Appeals
Second Appellate District

Court of Appeals
Case No. 2010-CA-0052

MEMORANDUM OF *AMICUS CURIAE* CITY OF DELAWARE IN SUPPORT OF APPELLANT, CITY OF CENTERVILLE, OHIO

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STATEMENT OF THE CASE AND FACTS

The City of Delaware adopts and incorporates the Statement of the Case and Facts contained in the Appellant's, City of Centerville, Memorandum in Support of Jurisdiction.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No.1

R.C. 709.023(H) enacted as part of annexation reform does not guarantee a township will be paid all township real property taxes forever, free from temporary exemption provided by Ohio's tax increment financing law solely because the expedited type-2 100% owner supported annexation process is followed.

Expedited Type-2 annexations, under the provisions of Ohio R.C. 709.023, have been used exclusively by property owners and developers in the City of Delaware and many other municipalities since annexation reform took place in 2001. The Type-2 process requiring 100% of the property owners to participate is simpler, more consistent, and more reliable in its outcome. It can be negotiated with a greater degree of certainty than any other annexation procedure set forth in Ohio R.C. Chapter 709. It is an 'expedited' process that allows property owners a more rapid response to capture development opportunities that may become available with short timelines. Because Type-2 annexations do not permit a city to conform its boundaries and exclude the township from the territory to be annexed, a joint jurisdiction between the city

and township is created. These joint jurisdictions have existed throughout Ohio long before annexation reform in 2001. They are the product of every annexation, until boundaries are altered or conformed through a separate process following annexation. Since annexation reform, joint jurisdictions in cities like Delaware and Centerville also exist in many places across the state because Type-2 annexations have become the preferred process for bringing property into a city and boundaries are not then conformed. Property annexed by a Type-2 procedure, in many cases, receives unique services from the city to which it is annexed and has all the rights and privileges of every other property in the city following annexation.

It is the position of the City of Delaware that the municipal TIF statute, Ohio R.C. 5709.40(F) provides a list of twelve local taxes levies that are excepted from a TIF plan. The list provided in this special provision does not include township real property taxes. As the Second District Court of Appeal correctly noted, "[i[n matters of statutory interpretation, expression of one thing generally suggests the exclusion of others." Sugarcreek Township v. Centerville, 193 Ohio App. 3d 408, 414, 2011-Ohio-1830.

In contrast, R.C. 709.023(H) states that "territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township ... and, thus, remains subject to the township's real property taxes." Under R.C. 1.51, if a general provision conflicts with a special provision, they shall be construed, if possible, so that effect is given to both.

The Second District Court of Appeal decision concludes that the way to give effect to both provisions is to conclude that "Centerville cannot *diminish* the outside millage on taxes on the real property at issue imposed by Sugarcreek Township or the revenue therefrom." *Id.* at 415 (emphasis added). The City of Delaware disagrees that the application of a TIF diminishes the township's outside millage. In order to properly reconcile these two provisions, one must understand how a TIF works. A TIF does not exempt any of the taxes existing at the time of the TIF. Rather, a TIF exempts a portion of the real estate taxes on the *increase* in value that results from the development. In this way, the property remains subject to the township property taxes due at the time of the TIF. Therefore, a TIF agreement does not diminish the amount of taxes due to the township at all. None of the existing taxes are diverted to the TIF. As a result, Centerville's position is reconcilable R.C. 709.023(H).

In fact, the TIF *increases* taxes paid to the township in two ways. First, by exempting only a portion of the increase in value, a TIF entitles the township to all of the tax revenue it was entitled to before the TIF plus a portion of the taxes that result from an increase in value. In addition, because TIFs only last for a limited period of time, the township receives the full amount of taxes on the increase in value when the TIF expires.

The key here is that the increase in value results from the TIF itself. Without the ability to use a TIF to stimulate development, there would be no property value increase to squabble over. Therefore, a decision in favor of Sugarcreek hurts not only cities like Delaware that rely on TIF to grow and

create jobs, but also townships like Sugarcreek. Sugarcreek is attempting to reap the benefits of TIF development prior to the improvement being paid for through the diversion of the *increase* in taxes attributable to the development. Instead, the result will be that no development will occur, and townships like Sugarcreek will be deprived of the increase in tax value along with the City.

CONCLUSION

The City of Delaware urges this Court to issue a decision which will provide certainty to the Cities that would grow and develop if allowed to rely on the certainty of statutes regarding annexation and taxation. A proper understanding of how a TIF works reveals that Centerville's position is not in conflict with 709.023(H). A holding in favor of Centerville would benefit both cities and townships by fostering the increase in land values for both. But more importantly, it benefits the citizens of Ohio by continuing the use of a valuable tool to help the economy. Any other result will have a dramatic effect on growth and development in the State of Ohio.

Respectfully Submitted,

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Certificate of Service

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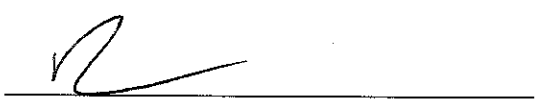

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