

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. BRIAN EBERSOLE, *et al.*, :
: Relators, :
: Case No. 2014-1469 :
v. :
: ORIGINAL ACTION IN MANDAMUS :
CITY COUNCIL OF POWELL, OHIO, *et al.*, :
: Respondents. :

APPENDIX TO MERIT BRIEF OF INTERVENING RESPONDENT
THE CENTER AT POWELL CROSSING, LLC

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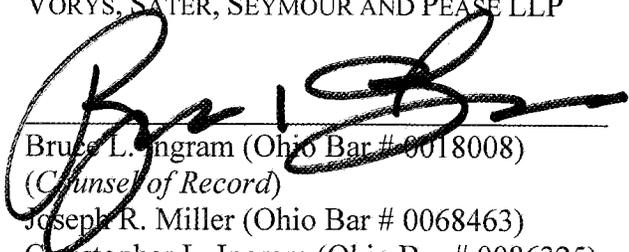
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SUPREME COURT OF OHIO

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Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

A large, stylized handwritten signature in black ink, appearing to read 'B. Ingram', is written over a horizontal line.

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TAB 1

EXHIBIT 1

City of Powell, Ohio AMENDMENT TO CITY CHARTER OF POWELL, OHIO

AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO ESTABLISHING A DUTY FOR THE CITY COUNCIL OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO.

WHEREAS, the people of the City of Powell, Ohio have determined that the Comprehensive Plan for the Village of Powell, Ohio of December 1995 is in need of wholesale revision because it is outdated as applied to the economic growth, technological advancement, and social conditions that shape the City of Powell, Ohio in the year 2014;

WHEREAS, on June 17, 2014, City Council of the City of Powell, Ohio passed Ordinance 2014-10 approving a Final Development Plan for the Center at Powell Crossing, LLC, a development of 14,000 Sq. Ft. of retail in two buildings, preserving the Old House for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street;

WHEREAS, the people of the City of Powell, Ohio have determined that the approval of the Final Development Plan pursuant to City of Powell, Ohio Ordinance 2014-10 is not in the best interests of the people of the City of Powell, Ohio.

NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF POWELL, DELAWARE COUNTY, OHIO TO ADOPT THE FOLLOWING AMENDMENTS TO THE CITY CHARTER OF POWELL, OHIO:

Article 4, Section 14: No later than February 1, 2015, the City Council of Powell, Ohio shall organize a Comprehensive Plan Commission to draft a Preliminary Comprehensive Plan for zoning and development in the City of Powell, Ohio. The Comprehensive Plan Commission shall consist of the following five members: (1) the President of the Bartholomew Run Homeowners Association or such person's designee; (2) the President of the Olentangy Ridge Civic Association or such person's designee; (3) the President of the Grandshire Homeowners Association or such person's designee; (4) the President of the Liberty Lakes Homeowners Association or such person's designee; and (5) the President of the Murphy Park Homeowners Association or such person's designee.

Article 4, Section 15: In drafting the Preliminary Comprehensive Plan, the Comprehensive Plan Commission shall take the following three procedural steps: Phase I, to make findings regarding the current state of the Powell community's character and identity in light of current socioeconomic conditions; Phase II, to draft a composite plan identifying specific zones and/or districts that reflect the natural, cultural, and visual elements of the City of Powell; and Phase III, to make recommendations to City Council through the creation of a Preliminary Comprehensive Plan.

Article 4, Section 16: The Comprehensive Plan Commission shall hold at least two public workshops between January 1, 2015 and June 30, 2015 to receive public input and encourage public deliberation regarding the creation of the Preliminary Comprehensive Plan.

Article 4, Section 17: The Comprehensive Plan Commission shall submit the Preliminary Comprehensive Plan to the City Council of Powell, Ohio no later than September 30, 2015.

Article 4, Section 18: The City Council of Powell, Ohio shall consider the Preliminary Comprehensive Plan, make adjustments as necessary consistent with the Phase I findings of Comprehensive Plan Commission, and pass an ordinance no later than March 31, 2016 legislatively adopting a Final Comprehensive Plan.

Article 4, Section 19: The Final Comprehensive Plan shall be in compliance with the following objective criteria: (1) the needs and desires of the residents of Powell are the paramount consideration; (2) preserve the natural, cultural, and visual elements of the City of Powell; (3) limit traffic congestion on Powell roads; (4) balance residential and non-residential land use in Powell based upon the scope and cost of existing City services and level of tax revenues; (5) land in Powell should be available for parking in retail areas; and (6) real property in the Powell "Downtown Business District" shall not be developed with "high-density housing."

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "high-density housing" includes but is not limited to the following real property: (a) residential real property improved with building(s) greater than two-stories in height; (b) real property improved with dwellings containing more than one family; (c) leased real property improved with dwellings containing more than one family; and (d) vacant land that will be used for dwellings containing more than one family.

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "family" means an individual living alone or a group of related or unrelated individuals living together in a household.

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "Downtown Business District" shall refer to the real property identified as the "Downtown Business District" on the "City of Powell Zoning Districts Map 2014" as of June 17, 2014.

Article 4, Section 20: All Ordinances of the City of Powell must comply with the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV.

Article 4, Section 21: The Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV shall not be compatible with Ordinance 2014-10 and/or the Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street.

Uncodified: No party, public or private, shall take any actions, including but not limited to construction activity, in reliance upon Ordinance 2014-10 and the Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street. The subject property for the Ordinance 2014-10 Final Development Plan shall remain economically viable for other uses, including residential and non-residential uses, notwithstanding this amendment to the City Charter of Powell, Ohio.

Uncodified: This Charter Amendment shall take effect on the earliest period allowed by law.

TAB 2

Oh. Const. Art. II § 1f

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE II
LEGISLATIVE

§ 1f. Power of municipalities

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

History

(Adopted September 3, 1912.)

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TAB 3

Oh. Const. Art. XVIII § 3

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE XVIII MUNICIPAL CORPORATIONS

§ 3. Powers

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

History

(Adopted September 3, 1912.)

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TAB 4

Oh. Const. Art. XVIII § 7

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

**Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE XVIII
MUNICIPAL CORPORATIONS**

§ 7. Home rule

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

History

(Adopted September 3, 1912.)

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Oh. Const. Art. XVIII § 8

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE XVIII MUNICIPAL CORPORATIONS

§ 8. Submission of question of election of charter commission; approval

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, Shall a commission be chosen to frame a charter. The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

History

(Adopted September 3, 1912.)

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Oh. Const. Art. XVIII § 9

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

**Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE XVIII
MUNICIPAL CORPORATIONS**

§ 9. Amendments to charter; submission; approval

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

History

(Amended January 1, 1971.)

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TAB 7

ORC Ann 731.31

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Page s Ohio Revised Code Annotated > **TITLE 7. MUNICIPAL CORPORATIONS**
> **CHAPTER 731. ORGANIZATION** > **INITIATIVE AND REFERENDUM**

§ 731.31. Presentation of petition

Any initiative or referendum petition may be presented in separate parts, but each part of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure, and each part of any referendum petition shall contain the number and a full and correct copy of the title of the ordinance or other measure sought to be referred. Each signer of any such petition must be an elector of the municipal corporation in which the election, upon the ordinance or measure proposed by such initiative petition, or the ordinance or measure referred to by such referendum petition, is to be held. Petitions shall be governed in all other respects by the rules set forth in *section 3501.38 of the Revised Code*. *In determining the validity of any such petition all signatures which are found to be irregular shall be rejected but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required by this section.*

The petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of any municipal corporation, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall the rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such municipal corporation, be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective on the fifth day after the day on which the board of elections certifies the official vote on such question.

History

GC § 4227-4; 102 v 521, § 4; 103 v 211; 115 v 214; Bureau of Code Revision, 10-1-53; 125 v S 242 (Eff 1-1-54); 138 v H 1062. Eff 3-23-81.

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ORC Ann. 2506.01

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Page s Ohio Revised Code Annotated > TITLE 25. COURTS -- APPELLATE > CHAPTER 2506. APPEALS FROM ORDERS OF ADMINISTRATIVE OFFICERS AND AGENCIES

§ 2506.01. Appeal from final order, adjudication, or decision of political subdivision officer or division

- A) Except as otherwise provided in *sections 2506.05 to 2506.08 of the Revised Code*, and except as modified by this section and *sections 2506.02 to 2506.04 of the Revised Code*, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505 of the Revised Code.
- B) The appeal provided in this section is in addition to any other remedy of appeal provided by law.
- C) As used in this chapter, final order, adjudication, or decision means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding.

History

127 v 963 Eff 9-16-57); 141 v H 412. Eff 3-17-87; 151 v H 23, § 1, eff. 8-17-06.

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TAB 9

ORC Ann 2506 02

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Page s Ohio Revised Code Annotated > TITLE 25. COURTS -- APPELLATE > CHAPTER 2506. APPEALS FROM ORDERS OF ADMINISTRATIVE OFFICERS AND AGENCIES

§ 2506 02 Filing of transcript

Within forty days after filing a notice of appeal in relation to a final order, adjudication, or decision covered by division A) of section 2506.01 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision. The costs of the transcript shall be taxed as a part of the costs of the appeal.

History

127 v 963 Eff 9-16-57); 141 v H 412. Eff 3-17-87; 151 v H 23, § 1, eff. 8-17-06.

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ORC Ann. 2506.03

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Page s Ohio Revised Code Annotated > TITLE 25. COURTS -- APPELLATE > CHAPTER 2506. APPEALS FROM ORDERS OF ADMINISTRATIVE OFFICERS AND AGENCIES

§ 2506.03. Hearing of appeal

- A) The hearing of an appeal taken in relation to a final order, adjudication, or decision covered by division (A) of *section 2506.01 of the Revised Code* shall proceed as in the trial of a civil action, but the court shall be confined to the transcript filed under *section 2506.02 of the Revised Code* unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:
- 1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.
 - 2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:
 - a) Present the appellant's position, arguments, and contentions;
 - b) Offer and examine witnesses and present evidence in support;
 - c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
 - d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
 - e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
 - 3) The testimony adduced was not given under oath.
 - 4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.
 - 5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.
- B) If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

History

127 v 963 (Eff 9-16-57); 141 v H 412. Eff 3-17-87; *151 v H 23*, § 1, eff. 8-17-06.

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TAB 11

ORC Ann 2506 04

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Page s Ohio Revised Code Annotated > TITLE 25. COURTS -- APPELLATE > CHAPTER 2506. APPEALS FROM ORDERS OF ADMINISTRATIVE OFFICERS AND AGENCIES

§ 2506 04 Finding and order of court

If an appeal is taken in relation to a final order, adjudication, or decision covered by division A) of *section 2506.01 of the Revised Code*, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

History

127 v 963 Eff 9-16-57); 141 v H 412. Eff 3-17-87; 151 v H 23, § 1, eff. 8-17-06.

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ORC Ann. 3501.39

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 140 Annotations current through May 19, 2014

Page s Ohio Revised Code Annotated > TITLE 35. ELECTIONS > CHAPTER 3501. ELECTION PROCEDURE; ELECTION OFFICIALS > POLLING PLACES

§ 3501.39. Grounds for rejection of petition

- A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:
- 1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.
 - 2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.
 - 3) The candidate s candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.
- B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(3) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.
- C)
- 1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.
 - 2) If a petition for the nomination or election of a candidate is invalidated under division (C)(1) of this section, that person s name shall not appear on the ballots for any office for which the person s petition has been invalidated. If the ballots have already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.

History

141 v H 555 (Eff 2-26-86); 143 v H 405 (Eff 4-11-91); 146 v H 99 (Eff 8-22-95); 149 v H 445, Eff 12-23-2002; 151 v H 3, § 1, eff. 5-2-06; 153 v H 48, § 1, eff. 7-2-10.

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TAB 13

1335.02 REQUIREMENTS FOR CERTIFICATE.

The following requirements must be fulfilled and approved prior to the issuance of a Certificate of Occupancy:

- (a) The building or structure is constructed and completed as per plans and specifications and is so certified by the property owner and general contractor if different from the property owner.
- (b) The curb box and water valve are installed properly.
- (c) The curb, driveway approach and public sidewalk are free from cracks and constructed as per the requirements of the City.
- (d) All manholes and sewers located on private property are free from debris and installed properly and to grade.
- (e) All final grades are completed as per accepted plot and grading plans, the lot pins are in and the lot is seeded or sodded.
- (f) The lot and street in front of the lot is clean, free of debris, mud and building material.
- (g) All fees and penalties have been paid.

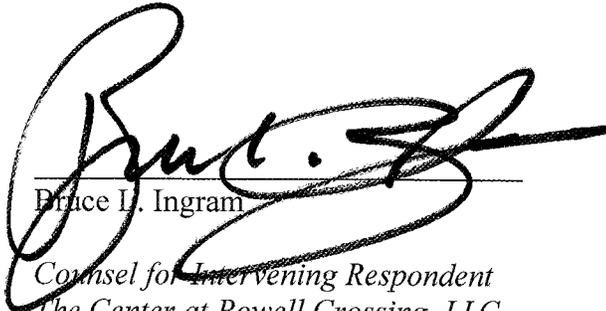
(Ord. 87-26. Passed 10-20-87.)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served via electronic mail to the following this 5th day of September, 2014:

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