Supreme Court of Ohio Clerk of Court - Filed December 29, 2015 - Case No. 2015-2092

IN THE SUPREME COURT OF OHIO

STATE ex rel. **CORNERSTONE DEVELOPERS, LTD.,** 3475 Newmark Drive Miamisburg, Ohio 45342 **Relator,** **-v-** **GREENE COUNTY BOARD OF ELECTIONS** 552 Ledbetter Road Xenia, Ohio 45385 **and** **SUGARCREEK TOWNSHIP** 2090 Ferry Road Sugarcreek Township, Ohio 45305 **and** **JON HUSTED,** Ohio Secretary Of State 180 E. Broad Street, Floor 16 Columbus, Ohio 43215 **and** **CITY OF CENTERVILLE** 100 West Spring Valley Road Centerville, Ohio 45458 **Respondents.**	**Case No.: _____** **Original Action in Mandamus and Prohibition** **Expedited Election Case Under S.C.Prac.R. 12.08**

RELATOR'S VERIFIED COMPLAINT IN ORIGINAL ACTION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

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INTRODUCTION

1. This case stems from Respondent Sugarcreek Township's displeasure at the Ohio Supreme Court's decision in *Sugarcreek Township v. City of Centerville*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, holding that it must provide fire and emergency services to Relator Cornerstone Developer, Ltd.'s ("Cornerstone") development. Sugarcreek Township is perversely using R.C. § 505.37 to illegally remove incorporated areas from fire and EMS protection for the stated purpose of warding off any possible future annexation of its land by municipalities. Pursuant to R.C. § 505.37, the only legitimate purpose to create a fire districts is to guard against the occurrence of fires or to protect property and lives of its citizens.

2. Cornerstone, in the name of the State of Ohio, brings this original action requesting that a writ of mandamus and/or prohibition be issued ordering Respondents Greene County Board of Elections ("Board of Elections") and Jon Husted, Ohio Secretary of State to act in accordance with Ohio Rev. Code § 505.37 and § 5705.14 and to prohibit the Board of Elections from placing a 5.3 mill tax levy on the March 15, 2016 ballot for a replacement fire district in Sugarcreek Township ("Replacement Fire District"). The creation of the Replacement Fire District is a blatant attempt to remove services from Cornerstone, its development, and the City of Centerville. The levy for the Replacement Fire District would reduce the area currently served by only providing fire protection and emergency medical services ("Fire and EMS Service") for the *unincorporated* areas of Sugarcreek Township, thus removing Fire and EMS Services from all incorporated areas of Sugarcreek Township.

3. The impacted incorporated areas of Sugarcreek Township are areas annexed into the City of Centerville. This is a heavily developed area. The area removed from Fire and EMS Service includes interstate I-675, two access ramps to/from I-675, several major intersections,

and arterial roads.[1] Properties orphaned from Fire and EMS Service include major retailers such as Costco, Kroger, Cabela, Cracker Barrel, Godfather's Pizza, Eagle Loan Company of Ohio, Mattress Firm, Donatos Pizza, Subway, Saxby's Coffee, and Tire Discounters.

4. R.C. § 505.37 provides Townships the ability to create fire districts "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence." Sugarcreek Township's creation of the Replacement Fire District to deter future annexations is not a proper purpose under R.C. § 505.37, and is at the expense of the safety and welfare of its citizens and people frequenting Sugarcreek Township. Furthermore, R.C. § 505.37 expressly states that only a municipality—not a township—may remove incorporated land from a township fire district.

5. In *Sugarcreek Township v. City of Centerville*, this Court held that a TIF covering Cornerstone's development does not violate R.C. § 709.023(H), and that "unless the affected boards of election approve a higher percentage, R.C. 5709.40(C)(4) caps the amount of taxes that may be exempted under the TIF at 75 percent. Townships continue to collect their full share of taxes on the unimproved portion of the property. In addition, they may collect their share of the taxes on the unexempted portions of improvements to the property – in one sense, a tax windfall that might not have existed without the TIF." 133 Ohio St.3d at 474, 2012-Ohio-4649, at ¶24, 979 N.E.2d at 268. This Court went on to hold that the Township "has not provided any support on the record that improvements arising from the TIF will result in an increased demand for fire protection and emergency services or that increased demand for these services will place the Township in dire fiscal straits. Furthermore, the Township fails to acknowledge that it will be entitled to collect taxes on 25 percent of the value of any improvements to the annexed land,

[1] These roads include Wilmington Pike, Feedwire Road, Brown Broad, Dille Drive, Charles Drive, and Cornerstone North Boulevard.

which arguably may be used to offset any increase demand in service." *Id.*, 133 Ohio St.3d at 474, 2012-Ohio-4649, at ¶25, 979 N.E.2d at 268. Thus, this Court held that Respondent Sugarcreek Township must provide Fire and EMS Service to Cornerstone's property.

6. Despite this Court's ruling, and still without any showing that "improvements arising from the TIF will result in an increased demand for fire protection and emergency services or that increased demand for these services will place the Township in dire fiscal straits,"[2] Sugarcreek Township Trustees passed resolutions on October 19, 2015, creating the Replacement Fire District for unincorporated areas, and placing on the ballot a 5.3 mill tax levy to support the Replacement Fire District. On December 22, 2015, the Greene County Board of Elections certified the 5.3 mill tax levy for the March 15, 2016 ballot.

7. Based upon this patently unlawful threat to the health, safety, and welfare of anyone entering or passing through Sugarcreek Township, Cornerstone states its Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition as follows:

PARTIES, JURISDICTION AND VENUE

8. Cornerstone is an Ohio limited liability company that owns two parcels of real estate located in Greene County, Ohio (the "Development"), consisting of a northern parcel of approximately 156 acres, the boundaries of which are Feedwire Road to the south, Wilmington Pike to the west, Brown Road to the north, and Interstate 675 to the east, and a southern parcel of approximately 72 acres, located immediately south of Interstate 675 on Wilmington Pike in Greene County, both of which are within the city of Centerville ("Centerville") and Respondent Sugarcreek Township pursuant to a type-2 annexation.

[2] The evidence will show via deposition testimony from Sugarcreek Township employees and trustees that no increased demand exists.

9. Respondent Greene County Board of Elections is the entity responsible for certificating and placing initiatives on the election ballot.

10. Respondent Sugarcreek Township is the entity illegally and unlawfully removing Fire and EMS Services from incorporated areas of Sugarcreek Township, and as such is the proponent of the ballot measure.

11. Respondent John Husted, Ohio Secretary of State, reviews and approves all ballot language.

12. Respondent City of Centerville is an interested party, as all property subject to Sugarcreek Township's efforts to remove Fire and EMS Services is incorporated into the City of Centerville.

13. The Court possesses original jurisdiction over the subject matter of this action and over Respondents pursuant to Chapter 2731 of the Ohio Revised Code.

14. Cornerstone affirmatively alleges that it has acted with the utmost diligence in bringing the instant action within seven days (including intervening holidays) of the Board of Election's certification of the 5.3 mill tax levy to fund the Replacement Fire District, and that there has been no unreasonable delay or lapse of time in asserting its rights herein.

15. Because of the proximity of the March 15, 2016 election, Cornerstone lacks an adequate remedy in the ordinary course of law. *See, e.g., State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 10.

STATEMENT OF FACTS

The Cornerstone Development and Its History

16. The Development is located within the jurisdiction of the Sugarcreek Township and through a Type II annexation, the Development is also in the City of Centerville. (*See* Township Map, attached hereto as Exhibit 1).

17. In May 2006, the former property owners of the Development, Dille Laboratories Corporation, signed and submitted petitions to the Greene County Board of Commissioners to annex the Development pursuant to R.C. § 709.023 into the City of Centerville. The Greene County Board of Commissioners granted the annexation petitions in June and July 2006, and the City of Centerville accepted the annexations in October 2006.

18. In conjunction with the type-2 annexation of the Development in 2006, Centerville entered into agreements with Cornerstone's predecessor in interest to implement a tax-increment financing ("TIF") plan for the annexed property. The Ohio Legislature developed TIF plans as tools for economic development, wherein 75% of tax dollars are devoted to qualified infrastructure improvements and 25% to the school district for a 10-year period. Both the tax dollar allocation and the duration of the TIF can be modified, but only by negotiating acceptable terms with the local school district.

19. Notably, Sugarcreek Township, in an attempt to ward off the annexation into Centerville, also placed a TIF ("Sugarcreek TIF") on the Development from which it now seeks to withdraw Fire and EMS Services.

20. The TIF plan exempted the Development from a portion of Centerville and Township property taxes so that these dollars can be used for public infrastructure improvements related to the development.

21. Dissatisfied with the TIF, the Township previously filed suit in the Greene County Court of Common Pleas, in case captioned *Sugarcreek Twp. v. Centerville*, Greene C.P. No. 2006-CV-0784 (Sept. 11, 2006), seeking, *inter alia*, a declaration that Centerville could not establish a TIF plan covering Township taxes applicable to the land at issue.

22. The suit reached the Ohio Supreme Court in 2012, where the Township argued that the TIF was financially burdensome as the Township "must provide fire protection and emergency services to the area subject to the TIF." *Sugarcreek Twp.*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, at ¶ 24.

23. This Court unanimously disagreed, indicating that under the TIF the Township receives funds for any "increased demand for fire and emergency services" in the Development. *Id.* at ¶¶ 26-27.

24. Moreover, while the Township argued that the improvements made in the Development would impose a great financial burden on the Township, this Court found that the Township had "not provided any support on the record that improvements arising from the TIF will result in an increased demand for fire protection and emergency services or that increased demand for these services will place the Township in dire fiscal straits." *Id.* at ¶ 25.

25. During the pendency of the *Sugarcreek Township v. City of Centerville* case, Cornerstone purchased the Development on June 28, 2010 from Dille Laboratories Corporation. The Development was purchased for residential and commercial real estate development, including for the construction of shopping centers, restaurants, and specialty retail stores.

26. Following the Ohio Supreme Court's confirmation of the validity of the Centerville TIF, and relying on the Township's obligations to provide Fire and EMS Service to the Development, Cornerstone began the $125 million development.

27. In February 2014, Cornerstone began land excavation and applications for Centerville permits for two lots in the Development, which were sold to Costco Wholesale Corporation ("Costco").

28. In May 2014, Cornerstone began installing the infrastructure required for Costco's operation, including the construction of utilities and roads. On July 7, 2014, Costco broke ground and began construction of its store.

29. Costco opened its store on November 13, 2014, providing jobs along with retail services to thousands of people in Greene County and the surrounding regions on a weekly basis.

30. In the year since Costco opened, several other businesses have opened in the Development, including a Chick-fil-A, Bagger Dave's Burger Tavern, and Dominos Pizza. A 5 Star Nutrition is scheduled to open by December 31, 2015, and a Cheddar's Casual Café and Cabela's store are under construction. Additionally, buildings for a Kroger and a Panda Express have been submitted for permits. The rapid success of the Development is due in part to the Centerville TIF and the public infrastructure improvements made in the Development.

The Current Fire and EMS Protection

31. At all times that the Development has been in the ownership of Cornerstone, along with when the Development was under prior ownership, the Development has been subject to Fire and EMS Services taxation levied by the Township.

32. Sugarcreek Township and the City of Bellbrook jointly operated a fire department from 1949-1987. The first fire levy in Sugarcreek Township was passed in 1976. In 1987, the City of Bellbrook created its own fire department, which forced Sugarcreek Township to partition its fire department and divide not only personnel, but resources and equipment as well. Sugarcreek Township separated and began operating its own fire department independent of

Bellbrook's fire department. Currently, Sugarcreek Township's fire department covers all of Sugarcreek Township, except for the City of Bellbrook and the City of Kettering.

33. Since 1988, Sugarcreek Township has levied an additional four tax levies for the benefit of Fire and EMS Services in the Township.

34. Pursuant to the tax levies, the Fire and EMS funds collected were placed into a fund to guard against the occurrences of fire and/or to protect the property and lives of the citizens against damage.

35. Pursuant to this taxation, Cornerstone and its predecessors have paid for Fire and EMS Service in the Township for the last 39 years.

The Township's Second Failed Attempt to Avoid Providing Fire and EMS Services to the Development, and the Greene County Injunction

36. Dissatisfied with the Supreme Court's ruling in *Sugarcreek Township v. City of Centerville*, the Township sought for a second time to avoid its responsibilities to protect the community through Fire and EMS Services to the Development.

37. On November 17, 2014, four days after Costco became fully operational, and long after the Township became aware of Costco's development, the Township proposed and passed Resolution No. 2014.11.17.08 (the "2014 Resolution") purporting to create a Sugarcreek Township Fire District (the "2014 Purported Fire District").

38. The 2014 Resolution was opposed by Sugarcreek Township Fire Chief Pavlak, who was quoted in the Township's working session notes as stating he "doesn't necessarily agree with it but he 'gets it.'"

39. Sugarcreek Township Administrator Barry Tiffany admitted at deposition that he had not consulted with Fire Chief Pavlak with regard to which portions of the Development would be excluded from coverage.

40. Sugarcreek Township sought to create the 2014 Purported Fire District effective February 1, 2015, and discriminately eliminate all Fire and EMS Services to the Development, I-675, and surrounding roads, while maintaining Fire and EMS Services for essentially all of the remainder of the Township.

41. The Township did not levy new taxes for the 2014 Purported Fire District, with the Township instead purporting to transfer funds, employees, buildings, and equipment from its Fire and EMS Service to the Township.

42. In an interview with the Dayton Daily News, Mr. Tiffany made clear that "the decision was made because Centerville was not offering enough funds from its tax collection on the Cornerstone property to cover the operating costs of the fire departments."

43. In the interview, Mr. Tiffany also stated: "It doesn't make good business sense," arguing that the Resolution gave Centerville "a couple months to either get something negotiated properly with us or with someone else to provide those services." Centerville does not have its own fire department.

44. In a letter issued on November 26, 2014, the Township further claimed that it was "resolute in not accepting any offer that would require our residents to bear the cost to provide service to this area."

45. On January 1, 2015, a Dayton Daily News article indicated that Fire and EMS Services could not be provided by the cities of Kettering or Bellbrook, or the Washington Township.

46. In a December 26, 2014 article in the Dayton Daily News, Centerville City Manager Greg Horn stated that "The Sugarcreek Twp. trustees have chosen to play 'political football' with vital safety services. . . Sugarcreek Twp. trustees have not been able to get over the

fact that this property was annexed to the city of Centerville at the request of the property owner and upheld by the courts."

47. To protect the safety of the public, on January 13, 2015, Cornerstone initiated a complaint against Sugarcreek Township in the Greene County Court of Common Pleas, styled *Cornerstone Developers, Ltd., et al., v. Sugarcreek Township, et al.,* Case No. 2015-CV-0031.

48. On this same date, Cornerstone also moved for a temporary restraining order and applied for a preliminary injunction with the court. On January 20, 2015, the Greene County Court of Common Pleas issued an agreed preliminary injunction. The preliminary injunction prohibited the Township from effectuating the 2014 Purported Fire District pending final disposition of the case, which was set for trial in March 2015.

49. In January and February 2015, the parties simultaneously conducted discovery and participated in three rounds of court-facilitated mediation in an attempt to resolve the issues of the parties. The mediation failed to resolve the matter.

50. On February 19, 2015, faced with the pending trial, Sugarcreek Township passed Resolution No. 2015.02.19.02 rescinding the 2014 Purported Fire District authorization (the "Rescinding Resolution").

51. Following the passage of the Rescinding Resolution, the Township issued a press release stating that it desired to avoid "undue cost" burdens on the Township to provide services "to a portion of a township that the fair share of the property taxes are not provided to help cover the costs."

52. Nonetheless, in his deposition, Barry Tiffany acknowledged that Sugarcreek Township had not conducted a study to determine what excess demand for Fire and EMS services would be generated by the Development.[3]

The Township's Third Attempt to Avoid Protecting the Development

53. Subsequent to the passage of the Rescinding Resolution, the Township continued to express dissatisfaction with providing Fire and EMS Services to the Development, and a desire to avoid doing the same.

54. In order to ensure that the Development continued receiving protection, and that Sugarcreek Township would not yet try again to remove Fire and EMS Services from the Development, Cornerstone filed suit in federal court (the "Federal Litigation"), *Cornerstone Developers, Ltd., et al. v. Sugarcreek Township, et al.*, Case No. 1:15-cv-169 (S.D. Ohio March 10, 2015).

55. In connection with the Federal Litigation, Cornerstone requested that the federal court certify to the Ohio Supreme Court the following questions:

A. Is a township authorized to remove services to an incorporated portion of the township without the consent of the respective municipality?

B. Can a township remove fire and emergency medical services to an incorporated territory on the basis that the property is subject to one or more tax increment financing districts?

[3] *See* Tiffany Dep. at Exhibit B, 10:8-22 ("Q: But there's no analysis the township has about what is adequate to fund the department, correct? . . . There's no study, correct? A: Not to my knowledge."); *id.* at 24:7-20 ("Q: You don't have a study that tells you the demand that's generated by this development, do you? . . . A: Based on lives you can deduce, but we have not done study work.").

56. In response, the Township moved for Partial Judgment on the Pleadings, denying that any judiciable controversy existed. The Township argued: "the Complaint is void of any allegations that such actions have been taken, that steps have been taken in the past to effectuate any of those actions, or that there is any evidence that such actions could occur in the immediate future."

57. On October 27, 2015, prior to addressing Cornerstone's Motion to Certify Questions to the Ohio Supreme Court, the federal court dismissed Cornerstone's federal claims, and declined to exercise supplemental jurisdiction on Cornerstone's state law claims.

58. On October 19, 2015, the Township's actions betrayed its position that the case was speculative, as the Township purported to recreate a discriminatory fire district through the passage of three resolutions:

A. Resolution 2015.10.19.06 ("Resolution 6"), which created the Replacement Fire District under O.R.C. § 505.37(C), removing all incorporated areas from Sugarcreek Township's Fire and EMS service;

B. Resolution 2015.10.19.07 ("Resolution 7"), which sought a 5.3 mill levy to fund the Replacement Fire District to be placed on the March 15, 2016 ballot; and

C. Resolution 2015.10.08 ("Resolution 8"), in which the Sugarcreek Township Trustees provided their intention to repeal the five existing fire levies if the voters passed the new 5.3 mill levy.

59. In the October 19, 2015 meeting, the Township stated that its purpose in passing the Resolutions 6, 7, and 8 was to discourage future annexations into the City of Centerville.

60. Discouraging annexations is not an expedient and necessary purpose for creating the Replacement Fire District.

61. Resolutions 6, 7, and 8 threaten the ability for Cornerstone to maintain its business, along with the safety and health of thousands of employees, contractors, and customers of Costco that work at and patronize Costco on a weekly basis. These Resolutions also ignore the Supreme Court's holdings in *Sugarcreek Township v. City of Centerville*, and attempt to destroy the TIF and the Development by refusing to provide the current Fire and EMS Services.

62. Resolutions 6, 7, and 8 also threaten the safety of the motoring public, with Fire and EMS Services being cut off for all incorporated areas of Sugarcreek Township, including portions of the nearby I-675, Feedwire Road, Brown Road, Dille Drive, Charles Drive, and Cornerstone North Boulevard, all of which are publically dedicated streets with public right of way. Under Resolutions 6, 7, and 8, any persons injured or in danger on these public roadways will soon be denied necessary and potentially life-supporting emergency services.

63. The loss of protection to I-675 is particularly egregious, as interstate traffic has higher speed and weight limits, and is more likely to include the transportation of hazardous materials. The dangers this poses to the public are manifold and self-evident.

64. Resolutions 6, 7, and 8 also threaten other incorporated areas in Sugarcreek Township, most notably Sugarcreek Crossing, which is just south of the Development across Feedwire Road. Sugarcreek Crossing is anchored by Target, Home Depot, Petsmart, and Fresh Thyme Farmers Market, which are all located in unincorporated Sugarcreek Township. However, the commercial outparcels of Sugarcreek Crossing are in the City of Centerville, including Cracker Barrel, Godfather's Pizza, Eagle Loan Company of Ohio, Mattress Firm, Donatos Pizza, Subway, Saxby's Coffee, and Tire Discounters. Under Sugarcreek Township's

plans to create the Replacement Fire District, an emergency in one portion of the Sugarcreek Crossing parking lot would provide Fire and EMS Service, but in another portion of the parking lot, there would be no Fire or EMS Service.

65. Cornerstone initiated a new action against Sugarcreek Township in Greene County Court of Common Pleas on November 10, 2015, in a case captioned *Cornerstone Developers, Ltd., et al. v. Sugarcreek Township, et al.*, Greene County Court of Common Pleas, Case No. 2015 CV 0760.

The Respondent Board of Elections Certifies
5.3 mill Levy for the Impending March 15, 2016 Ballot

66. In order to effectuate Resolution 7, the Township Fiscal Officer directed a certified copy of the resolution to the Respondent Board of Elections.

67. On December 22, 2015, the Respondent Board of Elections certified the 5.3 mill levy for the proposed Replacement Fire District and sent the ballot issue to the Secretary of State (the "Ballot Initiative").

68. On December 29, 2015, Relator requested that Respondent Jon Husted, Ohio Secretary of State, reject the Ballot Initiative as unlawful.

69. The effect of the Respondent Board of Election's actions is to place an issue on the March 15, 2015 ballot that is in violation of R.C. § 505.37 because a Township does not have authority to end Fire and EMS Services to incorporated areas—only the municipality may remove the incorporated areas.

FIRST CAUSE OF ACTION
(Writ of Mandamus)

70. Cornerstone incorporates the foregoing allegations as if fully restated herein.

71. Cornerstone brings this action for Writ of Mandamus against the Board of Elections and Ohio Secretary of State, as it is without authority or jurisdiction to place issues on the ballot which are not in compliance with the laws of the State of Ohio.

72. R.C. § 505.37 precludes the Township from excluding the Development from Fire and EMS Services.

73. R.C. § 505.37(C) provides that the board of township trustees may, by resolution, "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district of any portions of the township that it considers necessary."

74. The purpose of R.C. § 505.37 is to provide for the health, safety and welfare of the public, not to take away from the welfare or discourage annexation. In this way, the Ballot Initiative violates Ohio law.

75. Additionally, because Cornerstone and it predecessors have paid for Fire and EMS services since 1976, and Cornerstone is incorporated into Centerville, the Township cannot remove Fire and EMS Services without the consent of Centerville under R.C. § 505.37(C).

76. R.C. § 505.37(C) further provides that "[a]ny municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal."

77. R.C. § 505.37(C) also provides that "[a] board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal."

78. As Sugarcreek Township has maintained Fire and EMS Services for Cornerstone's Development and other incorporated areas of the Township within Centerville, it

cannot remove Fire and EMS Service without Centerville's consent. Centerville has not consented. In this way, the Ballot Initiative violates Ohio law.

SECOND CAUSE OF ACTION
(Writ of Prohibition)

79. Cornerstone incorporates the foregoing allegations as if fully restated herein.

80. Cornerstone brings this action for Writ of Prohibition against the Board of Elections and the Ohio Secretary of State, as it is without authority or jurisdiction to place issues on the ballot which are not in compliance with the laws of the State of Ohio.

81. R.C. § 505.37 precludes the Township from excluding the Development from current Fire and EMS Services.

82. R.C. § 505.37(C) provides that the board of township trustees may, by resolution, "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district of any portions of the township that it considers necessary."

83. The purpose of R.C. § 505.37 is to provide for the health, safety and welfare of the public, not to take away from the welfare or discourage annexation. In this way, the Ballot Initiative violates Ohio law.

84. Additionally, because Cornerstone and it predecessors have paid for Fire and EMS services since 1976, and Cornerstone is incorporated into Centerville, the Township cannot remove Fire and EMS Services without the consent of Centerville under R.C. § 505.37(C).

85. R.C. § 505.37(C) further provides that "[a]ny municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal."

86. R.C. § 505.37(C) also provides that "[a] board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal."

87. As Sugarcreek Township has maintained Fire and EMS Services for Cornerstone's Development and other incorporated areas of the Township within Centerville, it cannot remove Fire and EMS Service without Centerville's consent. Centerville has not consented. In this way, the Ballot Initiative violates Ohio law.

PRAYER FOR RELIEF

WHEREFORE, Relator Cornerstone Developers, Ltd., through counsel, demands judgment against the Respondents as follows:

A. For a Writ of Mandamus ordering the Respondent Board of Elections not to place the 5.3 mill tax levy to fund the Replacement Fire District on the March 15, 2016 ballot;

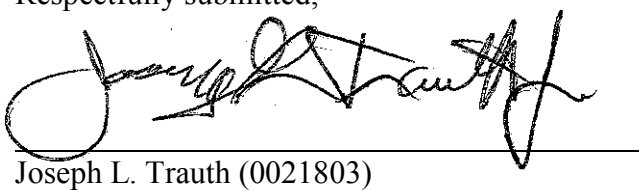
B. For a Writ of Prohibition preventing the Respondent Board of Elections from placing the 5.3 mill tax levy to fund the Replacement Fire District on the March 15, 2016 ballot;

C. For a Writ of Mandamus ordering Jon Husted, the Ohio Secretary of State, to remove the 5.3 mill tax levy to fund the Replacement Fire District from the March 15, 2016 ballot;

D. For a Writ of Prohibition preventing Jon Husted, the Ohio Secretary of State, from placing the 5.3 mill tax levy to fund the Replacement Fire District on the March 15, 2016 ballot;

E. Such other relief as this Court deems proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by electronic and facsimile mail this 29th day of December, 2015:

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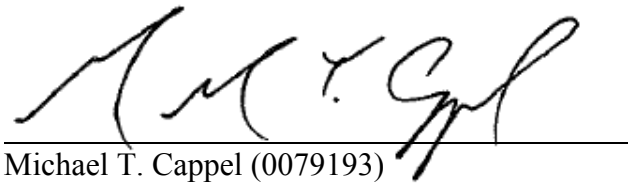
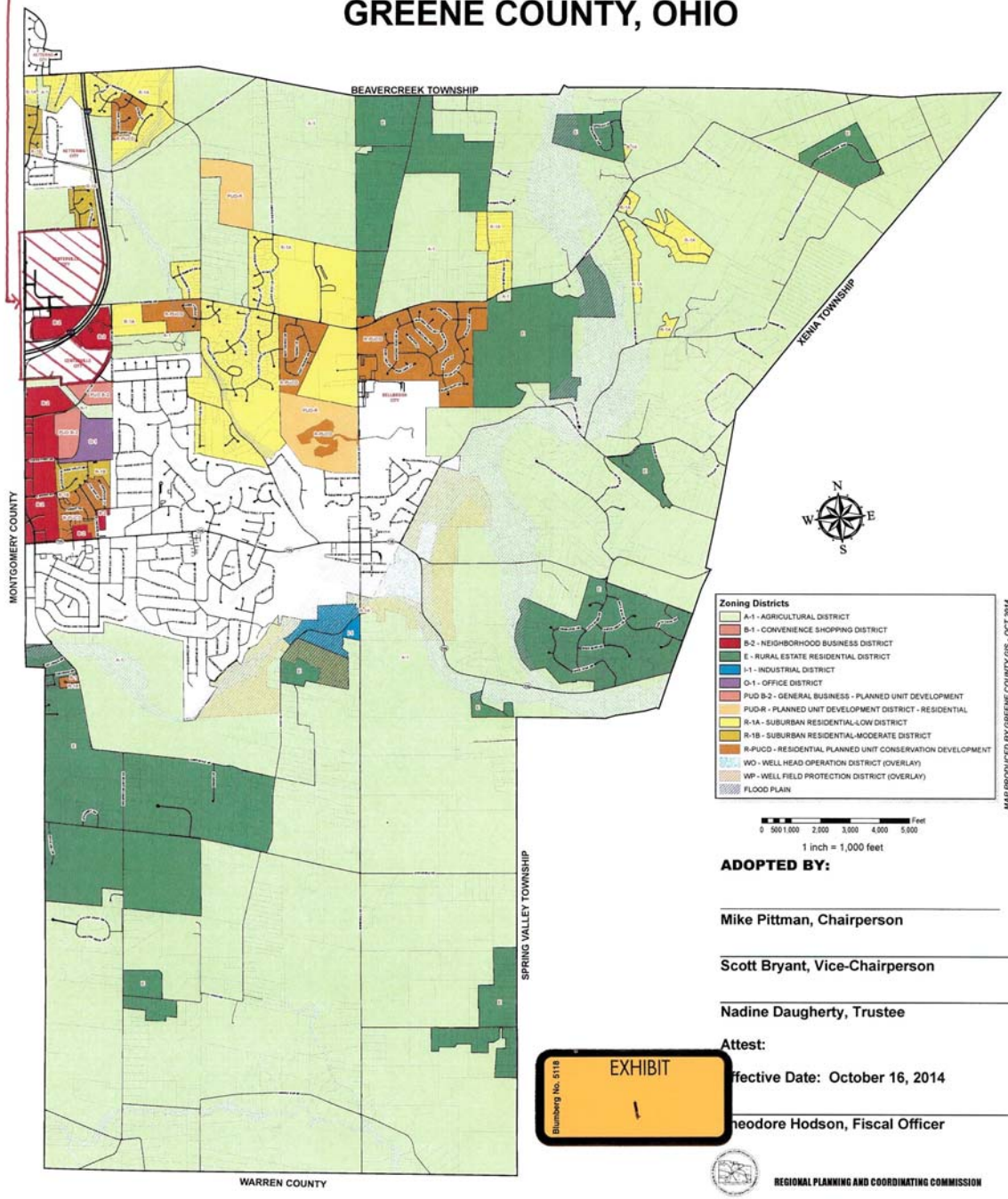


Michael T. Cappel (0079193)

OFFICIAL ZONING DISTRICT MAP
SUGARCREEK TOWNSHIP
GREENE COUNTY, OHIO



VERIFICATION

STATE OF OHIO)
: SS:
COUNTY OF MONTGOMERY)

Having been duly cautioned and sworn, I swear or affirm that I have reviewed the foregoing Relator's Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition, and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

George R. Oberer, Jr.
Managing Member of Oberer Construction, Ltd., which owns Oberer Construction Managers, Ltd., a 50% owner of Cornerstone Developers, Ltd.

The foregoing was subscribed and sworn to in my presence by George R. Oberer, Jr. this 28th day of December, 2015.

Notary Public

NOTARY PUBLIC STATE OF OHIO

SUSAN A. FAVALORO, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 27, 2019

PRAECIPE TO CLERK

Please issue a summons along with a copy of the Relator's Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition to the Respondents identified in the caption of the Complaint by certified mail.