

**IN THE SUPREME COURT OF OHIO**

**STATE ex rel.  
CORNERSTONE DEVELOPERS, LTD.**

*Relator,*

v.

**GREENE COUNTY BOARD OF  
ELECTIONS, et. al.,**

*Respondents.*

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**Case No. 2015-2092**

**ORIGINAL ACTION IN  
MANDAMUS/PROHIBITION**

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**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT  
GREENE COUNTY BOARD OF ELECTIONS**

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	:	<b>MANDAMUS/PROHIBITION</b>
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	:	
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**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT  
GREENE COUNTY BOARD OF ELECTIONS**

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For its Answer and Affirmative Defenses to Relator’s Complaint for Writ of Mandamus and for Writ of Prohibition, Respondent Greene County Board of Elections (GCBOE), by and through statutory counsel, the Office of the Greene County Prosecuting Attorney, states:

**ANSWER**

1. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator’s allegations in ¶ 1 of the Complaint, and denies the same.
2. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator’s allegations in ¶ 2 of the Complaint, and denies the same.
3. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator’s allegations in ¶ 3 of the Complaint, and denies the same.

4. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 4 of the Complaint, and denies the same.
5. This Court's opinion in *Sugarcreek Township v. City of Centerville*, 133 Ohio St. 3d 467, 2012-Ohio-4649, speaks for itself, and GCBOE denies that this Court previously decided the issue of whether Sugarcreek Township *must* provide Fire and EMS Service to the property annexed by the City of Centerville in that case. (*emphasis added*)
6. GCBOE admits that Sugarcreek Township passed a resolution to submit the question of a tax levy to support a Fire District to electors, and that GCBOE certified the question for placement on the March 15, 2016 ballot. The GCBOE denies all other allegations contained in ¶ 6 for want of knowledge.
7. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 7 of the Complaint, and denies the same.
8. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶8 of the Complaint, and denies the same.
9. GCBOE admits that pursuant to its statutory duties, it reviews the sufficiency of local questions or issues for certification and placement on the ballot, but denies that it is "responsible" for placing initiatives on the ballot.
10. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 10 of the Complaint, and denies the same.
11. R.C. 3501.11(V) speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 11 for want of knowledge..

12. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 12 of the Complaint, and denies the same.
13. Admits.
14. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 14 of the Complaint, and denies the same.
15. GCBOE denies the allegation that Relator lacks an adequate remedy in the ordinary course of law. In fact, it is the understanding of Counsel for the BOE that Relator and Sugarcreek Township are presently litigating multiple issues regarding the creation of a fire district in the unincorporated areas of the Township in the Greene County Court of Common Pleas Case No. 2015 CV 0760. The instant tax levy at issue was filed with the GCBOE on October 28, 2015, which would have given Relator plenty of time to seek an injunction or declaratory judgment action on this issue. Relator's failure to pursue other legal remedies does not give rise to a Complaint in Mandamus.
16. Admits.
17. Admits.
18. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 18 of the Complaint, and denies the same.
19. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 19 of the Complaint, and denies the same.

20. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 20 of the Complaint, and denies the same.
21. GCBOE admits that there is a lengthy litigation history between Sugarcreek Township and City of Centerville since the 2006 annexation, but GCBOE denies any other allegations contained in ¶ 21 for want of knowledge.
22. GCBOE admits that Sugarcreek Township and the City of Centerville previously had a case before this Court, but is without knowledge as to what the parties argued, and denies the other allegations in ¶ 22, for want of knowledge.
23. This Court's decision in *Sugarcreek Township v. City of Centerville*, 133 Ohio St. 3d 467, 2012-Ohio-4649, speaks for itself. GCBOE was not a party to that prior litigation, and denies any other allegations in ¶23 for want of knowledge.
24. This Court's decision in *Sugarcreek Township v. City of Centerville*, 133 Ohio St. 3d 467, 2012-Ohio-4649, speaks for itself. GCBOE was not a party to that prior litigation, and denies any other allegations in ¶24 for want of knowledge.
25. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 25 of the Complaint, and denies the same.
26. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 26 of the Complaint, and denies the same.

27. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 27 of the Complaint, and denies the same.
28. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 28 of the Complaint, and denies the same.
29. Admits.
30. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 30 of the Complaint, and denies the same.
31. Assuming that it is true that Relator purchased the property at issue in 2010, the GCBOE admits that the property has been subject to a Fire and EMS levy by the Township.
32. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 32 of the Complaint, and denies the same. According to GCBOE's records, Sugarcreek Township has had a fire levy dating back to Nov. 2, 1954.
33. According to GCBOE records, Sugarcreek Township has passed 7 tax levies for EMS and Fire Services, some of which were additional, some were renewal, and some were renewal and increase levies.
34. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 34 of the Complaint, and denies the same.

35. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 35 of the Complaint, and denies the same.
36. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 36 of the Complaint, and denies the same.
37. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 37 of the Complaint, and denies the same.
38. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 38 of the Complaint, and denies the same.
39. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 39 of the Complaint, and denies the same.
40. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 40 of the Complaint, and denies the same.
41. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 41 of the Complaint, and denies the same.
42. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 42 of the Complaint, and denies the same.

43. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 43 of the Complaint, and denies the same.
44. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 44 of the Complaint, and denies the same.
45. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 45 of the Complaint, and denies the same.
46. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 46 of the Complaint, and denies the same.
47. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 47 of the Complaint, and denies the same.
48. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 48 of the Complaint, and denies the same.
49. GCBOE denies that it participated in discovery or court-facilitated mediation in Greene County Common Pleas Case No. 2015-CV-0031. GCBOE denies all other allegations in ¶ 49 for want of knowledge.
50. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 50 of the Complaint, and denies the same.

51. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 51 of the Complaint, and denies the same.
52. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 52 of the Complaint, and denies the same.
53. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 53 of the Complaint, and denies the same.
54. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 54 of the Complaint, and denies the same.
55. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 55 of the Complaint, and denies the same.
56. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 56 of the Complaint, and denies the same.
57. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 57 of the Complaint, and denies the same.
58. GCBOE received Sugar creek Township Resolution No. 2015.10.19.07, which declares the necessity for levying a tax exceeding the ten mill limitation and authorizing request of the county auditor to provide certain information for

the benefit of the Sugarcreek Township Fire District, on October 28, 2015. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's other allegations in ¶ 58 of the Complaint, and denies the same.

59. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 59 of the Complaint, and denies the same.

60. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 60 of the Complaint, and denies the same.

61. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 61 of the Complaint, and denies the same.

62. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 62 of the Complaint, and denies the same.

63. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 63 of the Complaint, and denies the same.

64. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 64 of the Complaint, and denies the same.

65. Admits.

66. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 66 of the Complaint, and denies the same.

67. Admits.

68. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 68 of the Complaint, and denies the same.

69. Deny. It is not within the purview of the GCBOE to determine the authority of a Township to initiate a tax levy. The GCBOE merely ensures that the taxing authority has complied with the statutory requirements in Revised Code Titles 57 and 35.

#### MANDAMUS

70. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 70 of the Complaint, and denies the same, unless specifically admitted herein.

71. GCBOE admits that the statement in ¶ 71 is generally true, but denies that it has any authority to dictate or discern what issues political subdivisions can pose to its electors. Its review of tax levies for political subdivision is more of a review as to form, than as to substance.

72. R.C. 507.35 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 72 for want of knowledge.

73. R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 73 for want of knowledge.

74. R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 74 for want of knowledge.

75. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 75 of the Complaint, and denies the same.

76. R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 76 for want of knowledge.

77. R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 77 for want of knowledge.

78. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 78 of the Complaint, and denies the same.

#### PROHIBITION

79. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 79 of the Complaint, and denies the same, unless specifically admitted herein.

80. GCBOE admits that the statement in ¶ 80 is generally true, but denies that it has any authority to dictate or discern what issues political subdivisions can pose to its electors. Its review of tax levies for political subdivision is more of a review as to form, than as to substance. GCBOE further denies that it acts in a judicial or quasi-judicial capacity in certifying matters to the ballot. *See generally, State ex rel. Scherach v. Lorain Cty. Bd. of Elections*, 123 Ohio St. 3d 245, 2009-Ohio-5349.

81. GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 81 of the Complaint, and denies the same.
- 82.R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 82 for want of knowledge.
- 83.R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 83 for want of knowledge.
- 84.GCBOE is without sufficient information or knowledge to form a belief as to the veracity Relator's allegations in ¶ 84 of the Complaint, and denies the same.
- 85.R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 85 for want of knowledge.
- 86.R.C. 505.37 speaks for itself, and to the extent the complaint requires an answer, GCBOE denies the allegations in ¶ 86 for want of knowledge.
- 87.The allegations contained in ¶ 87 of the Complaint call for a legal conclusion for which no response is required. To the extent further answer is required, Respondent denies any remaining allegations.
- 88.GCBOE specifically denies that Relator is entitled to the relief requested in the Complaint for Mandamus and/or Prohibition.
- 89.GCBOE specifically denies any and all allegations contained in Relator's Complaint not expressly admitted above. Moreover, all of the case law, other legal authority, and exhibits cited throughout the Complaint speak for themselves.

90. GCBOE specifically denies that it has a clear legal duty to determine the merits of levies placed on the ballot by a taxing authority.

91. GCBOE specifically denies that it acts in a judicial capacity or quasi-judicial capacity in certifying matters to the ballot.

## **AFFIRMATIVE DEFENSES**

### **First Defense**

92. Relator has failed to state a claim upon which it is entitled to relief from Respondent GCBOE.

### **Second Defense**

93. Relator has failed to satisfy the requirements for a writ of mandamus to issue.

### **Third Defense**

94. Relator has failed to satisfy the requirements for a writ of prohibition to issue.

### **Fourth Defense**

95. Respondent GCBOE's conduct, to the extent it is at issue in Relator's Complaint, was authorized by and in compliance with Ohio law.

### **Fifth Defense**

96. Respondent GCBOE is not a proper party to this lawsuit.

## Sixth Defense

97. Respondent reserves the right to add additional defenses, including additional affirmative defenses, as they may become apparent during the course of this case.

WHEREFORE, having answered Relator's Complaint, Respondent Greene County Board of Elections respectfully requests that this Court dismiss the matter in its entirety, with prejudice.

Respectfully submitted,  
Office of the  
Greene County Prosecuting Attorney

/s/ Elizabeth A. Ellis  
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*Counsel for Respondent  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Answer and Affirmative Defenses of Respondent Greene County Board of Elections was served by electronic mail or by facsimile transmission on January 8, 2016, upon the following:

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