

**IN THE SUPREME COURT OF OHIO**

STATE ex rel. CORNERSTONE DEVELOPERS, LTD.,	:	CASE NO. 2015-2092
Relator,	:	
v.	:	<b>Expedited Election Case Under S.C. Prac. R. 12.08</b>
GREENE COUNTY BOARD OF ELECTIONS, <i>et al.</i> ,	:	
Respondents.	:	

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**ANSWER OF RESPONDENT SUGARCREEK TOWNSHIP TO ORIGINAL ACTION IN MANDAMUS AND PROHIBITION**

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Now comes Respondent Sugarcreek Township (“Respondent”) and for its Answer to Relator’s Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition states as follows:

1. Answering Paragraph 1, Respondent denies the allegations contained therein.
2. Answering Paragraph 2, Respondent denies that Relator Cornerstone has properly pled or is entitled to an original action requesting a writ of mandamus and/or prohibition. Respondent denies the remaining allegations in Paragraph 2 as written as a levy does not not “reduce the area currently served.”
3. Answering Paragraph 3, Respondent denies the allegations as written as Respondent’s allegations do not accurately reflect the proposed fire district boundaries.
4. Answering Paragraph 4, Respondent states that the language of R.C. § 505.37 speaks for itself and therefore, Respondent denies Relator’s characterization of said statute. Respondent states further that the clear and unambiguous language of R.C. 505.37(C) states that, the “board of township trustees of any township 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.” Respondent denies the remaining allegations contained there.

5. Answering Paragraph 5, Respondent states that this Court’s decision in *Sugarcreek Township v. City of Centerville* speaks for itself and therefore Respondent denies the allegations as written.
6. Answering Paragraph 6, Respondent admits that on October 19, 2015, the Sugarcreek Township Trustees passed Sugarcreek Township Resolution No. 2015.10.19.06 for the creation of the Sugarcreek Township Fire District and Resolution No. 2015.10.19.06 declaring the necessity for levying a tax exceeding the ten mill limitation for the benefit of the Sugarcreek Fire District pursuant to R.C. 5705.19(I). Respondent is without sufficient information or knowledge as to when the Greene County Board of elections certified the levy and therefore denies the same. Respondent denies the remaining allegations contained therein.
7. Answering Paragraph 7, Respondent denies the allegations contained therein.
8. Answering Paragraph 8, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.
9. Answering Paragraph 9, Respondent admits the allegations contained therein.
10. Answering Paragraph 10, Respondent denies the allegations as written.
11. Answering Paragraph 11, Respondent admits the allegations contained therein.
12. Answering Paragraph 12, Respondent denies the allegations contained therein.

13. Answering Paragraph 13, Respondent admits this Court possesses original jurisdiction to hear this action.
14. Answering Paragraph 14, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.
15. Answering Paragraph 15, Respondent denies the allegations contained therein.
16. Answering Paragraph 16, Respondent states that as part of the type II annexation, the development was annexed into the City of Centerville and, pursuant to O.R.C. §709.023, shall not, at any time, be excluded from the Township. Respondent is without knowledge or information sufficient to form a belief as to the accuracy of the map, as altered, in Exhibit 1 and therefore denies the same.
17. Answering Paragraphs 17 and 18, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same. To the extent Relator explains the Ohio Legislature's development of TIF plans or how TIFs are structured, Respondent states that the law speaks for itself.
18. Answering Paragraph 19, Respondent admits that in April, 2006 Sugarcreek Township properly placed a TIF on certain properties but denies the remaining allegations contained therein.
19. Answering Paragraph 20, Respondent states the Relator refers to a single TIF plan. Relators either mistakenly believe or deliberately misstate that the TIF currently in place on their property is the same as the proposed TIF described in 18. This assertion is wholly inaccurate and the language in the TIF in place on their property, which is public

knowledge, speaks for itself. Therefore, Respondent denies the allegations contained in paragraph 20 as written.

20. Answering Paragraph 21, Respondent admits that the lawsuit referenced in paragraph 21 was filed by Sugarcreek Township seeking various declarations from the court, but denies, as stated, the remaining allegations contained therein.

21. Answering Paragraphs 22 and 23, Respondent denies, as stated, the allegations contained in paragraphs 22 and 23 of Relator's Complaint. Respondent further states the decision referenced in these paragraphs speaks for itself.

22. Answering Paragraph 25, Respondent states the decision referenced in these paragraphs speaks for itself and therefore Respondent denies the allegations contained therein.

23. Answering Paragraphs 26, 27, 28, 29 and 30, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

24. Answering Paragraph 31, Respondent admits that the property at issue is subject to property taxes.

25. Answering Paragraph 32, Respondent denies the allegations as written.

26. Answering Paragraph 33, Respondent denies the allegations as written.

27. Answering Paragraph 34, Respondent states that consistent with Revised Code Chapter 5705, funds collected from the levies are deposited in a special fund. Respondent denies the remaining allegations as written.

28. Answering Paragraph 35, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations as to what Cornerstone and its predecessors have paid for and therefore denies the same. Respondent states further that to date Relator

has received Fire/EMS protection, which was provided by Respondents without interruption.

29. Answering Paragraph 36, Respondent denies the allegations therein.
30. Answering Paragraph 37, Respondent admits that on November 17, 2014, the Township passed Resolution No. 2014.11.17.08 for the creation of the Sugarcreek Township Fire District. Respondent denies the remaining allegations as written.
31. Answering Paragraph 38, Respondent states that Chief Pavlak's statements and the contents of the Township's working session notes, speak for themselves and therefore Respondent denies the allegations as written.
32. Answering Paragraph 39, Respondent states that the deposition transcript of Sugarcreek Township Administrator speaks for itself and therefore Respondent denies the allegations as written.
33. Answering Paragraph 40, Respondent admits that pursuant to the 2014 Resolution, Sugarcreek Township sought to create the Fire District effective February 1, 2015. Respondent denies the remaining allegations as written.
34. Answering Paragraph 41, Respondent admits that no taxes were levied for the proposed Fire District but denies the remaining allegations contained therein.
35. Answering Paragraphs 42 and 43, Respondent states that the content of the Dayton Daily News article, cited by Relator, speaks for itself and therefore, Respondent denies the allegations as written. Respondent further admits that Centerville contracts with Washington Township for its fire services.
36. Answering Paragraph 44, Respondent states that the letter referenced therein speaks for itself and therefore denies the allegations as written.

37. Answering Paragraph 45, Respondent states that the Dayton Daily News article speaks for itself but Respondent is without sufficient information or knowledge as to the truth of said article and therefore denies the allegation as written.
38. Answering Paragraph 46, Respondent states that the Dayton Daily News article speaks for itself but Respondent is without sufficient information or knowledge as to the truth of said article and therefore denies the allegation as written.
39. Answering Paragraph 47, Respondent admits that on January 13, 2015, Relator exercised its adequate remedy at law and 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. Respondent is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained therein and therefore denies the same.
40. Answering Paragraph 48, Respondent admits that Relator moved for a temporary restraining order and application for preliminary injunction and that the parties entered into an agreed preliminary injunction in which the parties agreed to maintain the status quo pending the expedited resolution of the matter. Respondent states further that the filings in the referenced case speak for themselves and therefore Respondent denies the remaining allegations as written.
41. Answering Paragraph 49, Respondent admits the allegations contained therein.
42. Answering Paragraph 50, Respondent admits that on February 19, 2015 Respondent passed Resolution No. 2015.02.19.02 rescinding Resolution No. 2014.11.17.08 titled "In RE: Creation of Sugarcreek Township Fire District," effective immediately upon passage of the

resolution. Respondent states further that thereafter, on March 12, 2015, Relator voluntarily dismissed the State Court litigation.

43. Answering Paragraph 51, Respondent states that the referenced press release speaks for itself and therefore denies the allegations as written.

44. Answering Paragraph 52, Respondent states that the deposition of Barry Tiffany taken on March 2, 2015, speaks for itself as to what had been done up to the time of that deposition and therefore Respondent denies the allegations as written. Respondent denies further that an Exhibit B is attached to Relator's Complaint.

45. Answering Paragraph 53, Respondent denies the allegations as written.

46. Answering Paragraph 54, Respondent admits that Relators again exercised their adequate remedy available at law and filed suit in federal court, *Cornerstone Developers, Ltd., et al. v. Sugarcreek Township, et al.*, Case No. 1:15-cv-169 (S.D. Ohio). Respondent is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained therein and therefore denies the same.

47. Answering Paragraph 55, Respondent admits that Relators requested the United States District Court to certify two questions to the Ohio Supreme Court. Respondent further states that Relators' Motion to Certify speaks for itself.

48. Answering Paragraph 56, Respondent states that the Motion for Partial Judgment on the Pleadings speaks for itself.

49. Answering Paragraph 57, Respondent denies the allegations as written. Respondent further states that the federal court did address Cornerstone's Motion to Certify Questions to the Ohio Supreme Court in its Order and Opinion.

50. Answering Paragraph 58, Respondent denies the allegations as written.

51. Answering Paragraph 59, Respondent denies the allegations as written.
52. Answering Paragraph 60, Respondent denies the allegations therein.
53. Answering Paragraphs 61, 62, 63 and 64, Respondent denies the allegations therein.
54. Answering Paragraph 65, Respondent denies the allegations as written.
55. Answering Paragraph 66, Respondent admits the allegations contained therein.
56. Answering Paragraph 67, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.
57. Answering Paragraph 68, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.
58. Answering Paragraph 69, Respondent denies the allegations therein.
59. Answering Paragraph 70, to the extent said paragraph reincorporates other paragraphs of Relator's Complaint, all defenses, denials, and averments by lack of knowledge to same are specifically incorporated by reference herein.
60. Answering Paragraphs 71 and 72, Respondent denies the allegations therein.
61. Answering Paragraph 73, Respondent states that the language contained in R.C. 505.37(C) speaks for itself.
62. Answering Paragraphs 74 and 75, Respondent denies the allegations therein.
63. Answering Paragraphs 76 and 77, Respondent states that the language contained in R.C. 505.37(C) speaks for itself.
64. Answering Paragraph 78, Respondent denies the allegations therein.

65. Answering Paragraph 79, to the extent said paragraph reincorporates other paragraphs of Relator's Complaint, all defenses, denials, and averments by lack of knowledge to same are specifically incorporated by reference herein.
66. Answering Paragraph 80, to the extent said paragraph incorporates allegations against Respondent, Respondent denies that any issues on the ballot of its citizens are not in compliance with the laws of the State of Ohio.
67. Answering Paragraph 81, to the extent said paragraph incorporates allegations against Respondent, Respondent denies the allegations therein.
68. Answering Paragraph 82, Respondent states the language of R.C. 505.37 speaks for itself.
69. Answering Paragraphs 83 and 84, to the extent said paragraphs incorporate allegations against Respondent, Respondent denies the allegations therein.
70. Answering Paragraphs 85 and 86, Respondent states the language of R.C. 505.37(C) speaks for itself.
71. Answering Paragraph 87, to the extent said paragraph incorporates allegations against Respondent, Respondent denies the allegations therein.
72. With regard to the relief requested, Respondent denies that Relator is entitled to relief of any kind.

#### **Additional Affirmative Defenses**

73. Relator's Complaint fails to state a claim upon which relief can be granted.
74. Relator has failed to exhaust its administrative remedies.
75. Relator's Complaint is barred by the doctrines of laches, waiver, and/or estoppel.
76. Relator has no clear legal right to the relief for which he prays.
77. Respondent has no clear legal duty to perform the act(s) requested.

78. Relator has an adequate remedy at law, barring mandamus, including the lawsuit currently pending in the Greene County Court of Common Pleas, Case No. 2015 cv 0760.
79. Relator's Complaint has failed to comply with the requirements set forth in Chapter 2731 of the Ohio Revised Code.
80. Respondent is not a proper party in this lawsuit.
81. Relator's Complaint may be barred by the doctrines of res judicata, collateral estoppel, issue preclusion and/or claim preclusion.
82. Respondent has acted in conformity with Ohio law.
83. Relator has an adequate remedy at law, barring prohibition.
84. No Respondent has exercised or is about to exercise judicial or quasi-judicial authority.
85. The Court lacks subject matter jurisdiction to hear this case.
86. Relator lacks standing to bring this case.
87. Respondent reserves the right to add additional defenses, including additional affirmative defenses, as discovery progresses.

WHEREFORE, having responded to Relator's Complaint, Respondent prays this Court issue an order dismissing this case.

Respectfully submitted,

/s/ Stephanie R. Hayden  
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### **CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the Respondent Sugarcreek Township's Answer has been served via email to the following:

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