

IN THE SUPREME COURT OF OHIO

STATE ex rel. ) Case No.: 2015-2092  
CORNERSTONE DEVELOPERS, LTD., )  
)  
Relator, ) ORIGINAL ACTION in Mandamus and  
-v- ) Prohibition  
)  
GREENE COUNTY BOARD OF ) Expedited Election Case Under  
ELECTIONS, et al., ) S.C.Prac.R. 12.08  
)  
Respondents. )

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RELATOR'S MERIT BRIEF

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## STATEMENT OF THE CASE

Respondent Sugarcreek Township's "(Sugarcreek" or the "Township") is attempting to avoid the implications of this Court's ruling against Sugarcreek in *Sugarcreek Township v. City of Centerville*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261. In *Sugarcreek*, this Court held that Sugarcreek must provide fire and emergency services to Relator Cornerstone Developer, Ltd.'s ("Cornerstone") development which is subject to two TIF districts. The primary TIF district is a voluntary TIF created by Respondent Centerville with the consent of Cornerstone and the local school district. The secondary TIF is an involuntary TIF imposed unilaterally by Sugarcreek Township without Cornerstone's consent.

To avoid this Court's decision, Sugarcreek attempted in 2014 to remove Cornerstone from fire and EMS protection by creating a smaller fire district that excluded the Cornerstone development. The Green County Common Pleas Court preliminarily enjoined the creation of the 2014 fire district. Shortly thereafter, the Township repealed the 2014 fire district.

Undeterred, and despite its own TIF on Cornerstone, Sugarcreek again purported to enact a fire district in October 2015. Relator is again challenging the 2015 fire district in Green County Common Pleas Court. The 2015 purported fire district removes I-675, ramps to/from I-675, major intersections and arterial roadway from fire and EMS protection. Also removed is the Cornerstone development, including major retailers such as Cabela, Kroger, Costco, and Chick-fil-A. Also excluded are properties outside the TIF including Cracker Barrel, Tire Discounters, and two retail centers.<sup>1</sup> Sugarcreek now seeks to fund the unlawfully reduced fire district through a levy on the 2016 March primary ballot.

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<sup>1</sup> All of these areas will be without fire and EMS protection as Centerville does not have its own fire department.

In a sheer act of inequity, Sugarcreek seeks to reduce services to real estate it has TIFed while still intending to collect the TIF. In other word, Sugarcreek will divert from the Bellbrook-Sugarcreek Local School District and the City of Centerville tax dollars paid by Cornerstone into Sugarcreek's road fund while simultaneously reducing services to Cornerstone's properties. The end result: Sugarcreek receives more dollars while providing less services. This is neither equitable nor legal.

The levy should not appear on the ballot for these reasons:

1. Sugarcreek Township failed to certify the levy to Respondent Greene County Board of Elections ("BOE") until no earlier than January 8, 2016. The certification should have occurred by December 16, 2015.
2. The removal of fire and EMS services to the incorporated portions of the Township is without statutory authority and is contrary to the express language of R.C. § 505.37(C) which vest sole authority to remove incorporated territory to the municipality—in this instance, Centerville.
3. Even if a township could remove incorporated territory from a fire district by creating a new district, Sugarcreek's stated purpose—deterring annexation—is invalid.
4. A political subdivision should be prohibited from removing services from a TIF district.

Sugarcreek's procedural flaw is fatal. It was required to "certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question." R.C. § 5705.03(B). Sugarcreek did not even vote to certify its levy until 23 days after the deadline to do so. This Court has "long held that in

cases involving tax levies and bond issues, the form of the ballot and *all procedural steps* are conditions precedent to the validity of the election.” *In re Contest of Election Held on Stark Cty. Issue 6*, 132 Ohio St.3d 98, 2012-Ohio-209, ¶ 13 (emphasis added). Compliance is exacting. The exception proves the rule: by a slim majority this Court once allowed for a township two minutes past the 4:00p.m. deadline to physically file a certifying resolution with the board of elections after previously delivering it electronically. *State ex rel. Orange Twp. Bd. of Trs. v. Del. County Bd. of Elections*, 2013 Ohio 36, 135 Ohio St. 3d 162, 985 N.E.2d 441. Even this limited leeway was a 4-3 decision. The entire court agreed, “the pertinent certified township resolution and auditor’s certificate had to be delivered to the board of elections by the 4:00 p.m. deadline on November 7, 2012, for the board to have a duty to place the proposed additional tax levy on the special-election ballot.” *Id.* at ¶ 25. Election laws demand strict compliance. *Id.* at ¶ 29. There is no way Sugarcreek Township could be said to have complied with R.C. § 5705.03(B).

On the merits, Sugarcreek should not be permitted to place this levy on the ballot because the purported creation of the 2015 fire district is ultra vires. Sugarcreek already operates a fire district. The current district is comprised of the unincorporated portions of the Township and the portions incorporated in Centerville. Excluded from the current district are portions of the Township incorporated into Bellbrook and Kettering, each of which has its own fire department. Only a municipality may withdraw its territory from township fire protection. R.C. § 505.37(C). The township has power only to remove unincorporated areas. *Id.* The 2015 fire district resolution purports to remove fire protection and EMS services from (and only from) incorporated portions of Centerville. The purported 2015 reduced fire district is invalid. Levies cannot be imposed for it.

Finally even if Sugarcreek could remove services from incorporated areas by dissolving its current fire district and creating a smaller one, it can do so only if its purpose is valid. A fire district may be created only when “it is expedient and necessary to guard against the occurrence of fires.” *Id.* Here, its purpose is clearly invalid. Each trustee and the township administrator stated that the purpose of the 2015 fire district is *to deter future annexations*. They also spoke of their hostility to the TIF. The reduced fire district cannot be “expedient and necessary” because fire and EMS protection already exist for the entire township. Sugarcreek should not be permitted to create a reduced fire district for the purpose of avoiding a TIF, protesting this Court’s prior holding, or to deter annexation.

The Centerville TIF to promote the Cornerstone Development cannot be ignored. The Township’s opposition to the TIF is the motivating factor behind its efforts to deny services to Cornerstone. It is the public policy of the State of Ohio to encourage economic development through Tax Increment Financing districts. Removing services from a TIF district defeats the entire purpose of the TIF. A township, which is an instrumentality of the State, has no statutory authority to thwart a TIF. This is especially true when the Township simultaneously is collecting revenue from a TIF it imposed on the same property.

Writs should issue removing the levy from the ballot because it is procedurally flawed and the purported creation of the taxing district was *ultra vires* and invalid.

## **STATEMENT OF FACTS**

### **A. The Parties**

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. (*See* Supplemental Verified Complaint, ¶ 8).

Respondent Greene County Board of Elections is the entity responsible for certificating and placing initiatives on the election ballot. (*Id.*, ¶ 9). 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 for a new 5.3 mill tax levy in Sugarcreek Township. (*Id.*, ¶ 10). Respondent John Husted, Ohio Secretary of State, reviews and approves all ballot language. (*Id.*, ¶ 11). 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. (*Id.*, ¶ 12).

**B. The Cornerstone Development and Its History**

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. (*Id.*, ¶ 16; a true and accurate copy of the Sugarcreek Township Zoning Map, with the Development outlined in red, is attached as **Exhibit 1**). 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. (*Id.*, ¶ 17). 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. (*Id.*)

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 (“Centerville TIF”) plan for the annexed property. (*Id.*, ¶ 18). 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. (*Id.*) 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. (*Id.*)

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. (*Id.*, ¶ 19; a true and accurate copy of Sugarcreek Township’s Resolution 2006.04.20.01, which created the Sugarcreek TIF, is attached as **Exhibit 2**). The Centerville 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. (*Id.*, ¶ 20).

Dissatisfied with the Centerville 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. (*Id.*, ¶ 21). The suit reached the Ohio Supreme Court in 2012, where the Township argued that the Centerville TIF was financially burdensome as the Township “must provide fire protection and emergency services to the area subject to the TIF.” (*Id.*, ¶ 22, citing *Sugarcreek Twp.*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, at ¶ 24). This Court unanimously disagreed, indicating that under the Centerville TIF the Township receives funds for any “increased demand for fire and emergency services” in the Development. (*Id.*, ¶ 23, citing *Sugarcreek Twp.*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, at ¶¶ 26-27). 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.*, ¶ 24, citing *Sugarcreek Twp.*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, at ¶ 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. (*Id.*, ¶ 25). The Development was purchased for residential and commercial real estate development, including for the construction of shopping centers, restaurants, and specialty retail stores. (*Id.*) 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. (*Id.*, ¶ 26).

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”). (*Id.*, ¶ 27). In May 2014, Cornerstone began installing the infrastructure required for Costco’s operation, including the construction of utilities and roads. (*Id.*, ¶ 28). On July 7, 2014, Costco broke ground and began construction of its store. (*Id.*) 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. (*Id.*, ¶ 29). In the year since Costco opened, several other businesses have opened in the Development, including a Chick-fil-A, Bagger Dave’s Burger Tavern, Dominos Pizza, and a 5 Star Nutrition. (*Id.*, ¶ 30). A Cheddar’s Casual Café and Cabela’s store are under construction. (*Id.*) Additionally, buildings for a

Kroger and a Panda Express have been submitted for permits. (*Id.*) The rapid success of the Development is due in part to the Centerville TIF and the public infrastructure improvements made in the Development. (*Id.*)

**C. The Current Fire and EMS Protection**

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. (*Id.*, ¶ 31).

Sugarcreek Township and the City of Bellbrook jointly operated a fire department from 1949-1987. (*Id.*, ¶ 32). The first fire levy in Sugarcreek Township was passed in 1976. (*Id.*) 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. (*Id.*) Sugarcreek Township separated and began operating its own fire department independent of Bellbrook's fire department. (*Id.*) Currently, Sugarcreek Township's fire department covers all of Sugarcreek Township, except for the City of Bellbrook and the City of Kettering. (*Id.*)

Since 1988, Sugarcreek Township has levied an additional four tax levies for the benefit of fire and EMS services in the Township. (*Id.*, ¶ 33). 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. (*Id.*, ¶ 34). Pursuant to this taxation, Cornerstone and its predecessors have paid for fire and EMS service in the Township for the last 39 years. (*Id.*, ¶ 35).

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

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. (*Id.*, ¶ 36). 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 2014.11.17.08 purporting to create a Sugarcreek Township Fire District (the "2014 Purported Fire District"). (*Id.*, ¶ 37; a true and accurate copy of Resolution 2014.11.17.08 is attached as **Exhibit 3**).

Resolution 2014.11.17.08 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.'" (*Id.*, ¶ 38). 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. (*Id.*, ¶ 39).

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. (*Id.*, ¶ 40). 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. (*Id.*, ¶ 41).

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." (*Id.*, ¶ 42). 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. (*Id.*, ¶ 43).

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. (*Id.*, ¶ 47). On this same date, Cornerstone also moved for a temporary restraining order and applied for a preliminary injunction with the court. (*Id.*, ¶ 48). On January 20, 2015, the Greene County Court of Common Pleas issued an agreed preliminary injunction. (*Id.*; a true and accurate copy of the Agreed Preliminary Injunction is attached hereto as **Exhibit 4**). 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. (*Id.*)

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. (*Id.*, ¶ 49). The mediation failed to resolve the matter. (*Id.*) On February 19, 2015, faced with the pending trial, Sugarcreek Township passed Resolution 2015.02.19.02 rescinding the 2014 Purported Fire District authorization. (*Id.*, ¶ 50; a true and accurate copy of Resolution 2015.02.19.02 is attached hereto as **Exhibit 5**). Following the passage of Resolution 2015.02.19.02, 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.” (*Id.*, ¶ 51). 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. (*Id.*, ¶ 52; *see* Deposition of Barry Tiffany, attached hereto as **Exhibit 6**, 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.”)).

Sugarcreek Township’s Fire Chief, Randy Pavlak also confirmed that there was no study to determine the demand for fire and EMS services at the Development. (*See* Deposition of Randy Pavlak, attached hereto as **Exhibit 7**, 23:6-11 (“Q. Have you seen any type of traffic study or any other type of study that delineates what the current demand for fire and EMS services is within the Cornerstone development? A. No.”); *id.* at 32:5-15 (“Q. Had you been asked to provide information, what information could you have provided regarding the demand for services within the Cornerstone development? A. Could have done a statistical analysis of call loads, demand for service. Q. That was not done prior to the enactment of the fire district, correct? A. Correct.”); *id.* at 46:10-17 (“Q. So my question to you is: Have you performed any type of economic analysis of how much money would be necessary to continue to provide service to this area, the Cornerstone development, in light of the TIF? A. I have not done one on just that area.”)).

Subsequent to the passage of Resolution 2015.02.19.02, the Township continued to express dissatisfaction with providing fire and EMS services to the Development, and a desire to avoid doing the same. (*Id.*, ¶ 53). 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). (*Id.*, ¶ 54). In connection with the Federal Litigation, Cornerstone requested that the federal court certify to the Ohio Supreme Court the following questions:

1. Is a township authorized to remove services to an incorporated portion of the township without the consent of the respective municipality?
2. 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?

(*Id.*, ¶ 55). 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.” (*Id.*, ¶ 56). 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. (*Id.*, ¶ 57).

**E. Sugarcreek Township Passes New Resolutions to Create Fire District and Remove Fire and EMS Services to the Development**

On October 19, 2015, the Township’s actions betrayed its position it did not intend to try again, as the Township purported to recreate a discriminatory fire district through the passage of three resolutions:

1. Resolution 2015.10.19.06 created the Replacement Fire District under O.R.C. § 505.37(C), removing all incorporated areas from Sugarcreek Township’s fire and EMS service;
2. Resolution 2015.10.19.07 sought a 5.3 mill levy to fund the Replacement Fire District to be placed on the March 15, 2016 ballot; and
3. Resolution 2015.10.08 declared that the Sugarcreek Township Trustees intended to repeal the five existing fire levies if the voters passed the new 5.3 mill levy.<sup>2</sup>

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<sup>2</sup> The composition of the Sugarcreek Board of Trustees has since changed.

(*Id.*, ¶ 58; a true and accurate copy of Resolution 2015.10.19.06 is attached hereto as **Exhibit 8**; a true and accurate copy of Resolution 2015.10.19.07 is attached hereto as **Exhibit 9**; a true and accurate copy of Resolution 2015.10.19.08 is attached hereto as **Exhibit 10**). Township Administrator Barry Tiffany introduced these resolutions, and explained it was in reaction to the TIF.

The township, I don't think it's any news to anybody had had some struggles with annexation in recent years and in particular in the last year trying to come to an agreement with the city of Centerville in the provision of fire services for that area in the city of Centerville that's also in Sugarcreek Township. . . . This Board of Trustees has heard very loud, very clear from its residents don't do it, don't subsidize it, don't lay down, don't take it from these guys, fight with all you got and don't give in. . . . So the best solution now is to form a fire district. The fire district operates basically just like the fire department. It will be a township fire district. It's just the township. It allows – by doing this, creating a fire district, it allows the township trustees to determine what the boundaries will be of the fire service area. . . . In other words, the city of Centerville will be left out. They will be responsible for providing services. They annexed it. They wanted it. The burden will be upon them to provide those services.

(*See Exhibit 11*, Transcript of Sugarcreek Township Board of Trustees' Meeting on October 19, 2015, 30:14-21, 31:11-15, 31:18-32:1, 32:6-10).

Mr. Tiffany also stated that the creation of the fire district should deter future annexations from Sugarcreek Township.

Another advantage to having a fire district that I think is very, very key to this decision for the future on top of all the other things that make sense is that in the future, once we design this – once we – now that we have a fire district, if there is an annexation, a territory that they annex automatically comes out of the fire district. It no longer has fire coverage. So they will have to negotiate for fire services again. Now, that's a heck of a disincentive to a property owner to know that if I annex, I got a battle coming because I don't have fire service. Now, this is in particular with the city of Centerville and the city of Beavercreek, neither one of them have fire companies or fire departments.

(*See Exhibit 11*, Transcript of Sugarcreek Township Board of Trustees' Meeting on October 19, 2015, 35:1-17).

After the introduction of these resolutions, the Sugarcreek Township trustees all confirmed the anti-annexation basis for creating the fire district. Trustee Scott W. Bryant stated:

There a lot of benefits to the fire district. Barry has mentioned that. . . the threat of annexation decreases significantly . . . this is just one more action that helps secure our borders, especially as a – when it comes to surrounding cities.

(See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees’ Meeting on October 19, 2015, 38:11-19). Trustee Nadine S. Daugherty agreed, and noted that “one of the best things is it helps deter annexation....” (See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees’ Meeting on October 19, 2015, 39:15-16). Trustee Michael E. Pittman also noted the anti-TIF purpose. “[I]t boils down to this, not only the annexation portion of it is good for us, but ultimately our citizens are going to subsidize the fire department for that piece of property. And we didn’t feel it was fair for our citizens to pay for fire service for the Cornerstone development.”<sup>3</sup> (See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees’ Meeting on October 19, 2015, 40:11-17).

As addressed below, discouraging annexations is not an expedient and necessary purpose for creating the Replacement Fire District. Resolutions 2015.10.19.06, 2015.10.19.07, and 2015.10.19.08 threaten the ability for Cornerstone to maintain its business, along with the safety and health of thousands of employees, contractors, and customers of the Development that work at and patronize it on a weekly basis. (*Id.*, ¶ 61).

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. (*Id.*) This Court held 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

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<sup>3</sup> Trustee Pittman confirmed the Relator was the target.

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, which arguably may be used to offset any increase demand in service.” *Sugarcreek Township*, 133 Ohio St.3d at 474, 2012-Ohio-4649, at ¶25, 979 N.E.2d at 268.

Resolutions 2015.10.19.06, 2015.10.19.07, and 2015.10.19.08 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. (*Id.*, ¶ 62). Under Resolutions 2015.10.19.06, 2015.10.19.07, and 2015.10.19.08, any persons injured or in danger on these public roadways will soon be denied necessary and potentially life-supporting emergency services. (*Id.*) The loss of protection to I-675 is troubling, 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. (*Id.*, ¶ 63).

Especially egregious, as Sugarcreek Township Fire Chief Pavlak acknowledged in his deposition, is that the highest volume of traffic incidents at the intersections of Feedwire Road and Wilmington Pike, Feedwire Road and Clys Road, and I-675 and Wilmington Pike, that will be removed from fire and EMS services under the Township’s plans. (See **Exhibit 7**, Deposition of Randy Pavlak, 19:16-23).

Resolutions 2015.10.19.06, 2015.10.19.07, and 2015.10.19.08 also threaten other incorporated areas in Sugarcreek Township, most notably Sugarcreek Crossing, which is just south of the Development across Feedwire Road. (*Id.*, ¶ 64). Sugarcreek Crossing is anchored by Target, Home Depot, Petsmart, and Fresh Thyme Farmers Market, which are all located in

unincorporated Sugarcreek Township. (*Id.*) 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. (*Id.*) 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. (*Id.*)

**F. Respondent Board of Elections Certifies 5.3 mill Levy for the March 15, 2016 Ballot Without the Township Making a Decision to Seek the Levy**

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”). (*Id.*, ¶ 67). On December 29, 2015, Relator requested that Respondent Jon Husted, Ohio Secretary of State, reject the Ballot Initiative as unlawful. (*Id.*, ¶ 68).

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. (*Id.*, ¶ 69). Moreover, the Board of Elections decided to place the issue on the ballot without the Township passing a resolution to pursue the levy. (*Id.*, ¶¶ 75, 76).

**G. Sugarcreek Township Belatedly Certifies 5.3 mill Levy**

When Sugarcreek Township passed Resolution 2015.10.19.07 on October 19, 2015, Sugarcreek Township requested the “Green County Auditor to certify to the Township the total current tax valuation of Sugarcreek Township (unincorporated areas only) and the dollar amount of revenue that would be generated by the following additional Fire District tax levy: 1) 5.3 mill.” (*Id.*, ¶ 73; *see also*, **Exhibit 9**). Resolution 2015.10.19.07 was thus the first resolution passed by Sugarcreek Township under R.C. § 5705.03(B)’s two resolution process. (*Id.*, ¶ 74).

Sugarcreek Township failed to pass a second resolution after certification by the Greene County Auditor until January 8, 2016. (*Id.*, ¶ 75). On January 8, 2016, Sugarcreek Township passed Resolution 2016.01.08.01, which provided:

**WHEREAS**, the Board of Trustees of Sugarcreek Township, Greene County, Ohio, previously formed and established the Sugarcreek Township Fire District consisting of the unincorporated areas of Sugarcreek Township, Greene County, Ohio; and

**WHEREAS**, having passed a Resolution of Necessity for Levying a Tax, 2015.10.19.07, and receiving certification from Greene County Auditor, David Graham, the Sugarcreek Board of Trustees moves for a Resolution to Proceed and desires to proceed and place this Fire District Levy on the March 15, 2016 Ballot.

**NOW THEREFORE BE IT RESOLVED**, that this Resolution to Proceed for Ballot is hereby adopted and that this Resolution shall take effect and be in force from and after the earliest time provided by law.

(*Id.*, ¶ 76; a true and accurate copy of Resolution 2016.01.08.01 is attached hereto as **Exhibit 12**).<sup>4</sup> As R.C. § 5705.19 requires that the second resolution to proceed to be certified to the county board of elections “not less than ninety days before the election, and Resolution 2016.08.01 was passed by Sugarcreek Township only 67 days before the March 15, 2016 election, the 5.3 mill tax levy does not comply with R.C. § 5705.19. (*Id.*, ¶¶ 77-78).

#### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

To be entitled to the requested writ of mandamus, Cornerstone must establish a clear legal right to the requested relief, a clear legal duty on the part of the Greene County Board of Elections and the Secretary of State to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12. Cornerstone must prove these requirements by clear and convincing evidence. *See State ex rel. Waters v. Spaeth*,

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<sup>4</sup> The composition of the Sugarcreek Township Board of Trustees changed between the two resolutions.

131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 13, *quoting State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus (“Relators in mandamus cases must prove their entitlement to the writ by clear and convincing evidence”). Because of the proximity of the March 15, 2016 election, Cornerstone has established that it lacks an adequate remedy in the ordinary course of the law. *Taxpayers for Westerville Schools*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, at ¶ 12.

Similarly, a writ of prohibition must be granted where a relator establishes that (1) a governmental entity is about to exercise quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *See, e.g., State ex rel. City of Upper Arlington v. Franklin County Bd. of Elections*, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177, ¶ 15; *State ex rel. Reese v. Cuyahoga County Bd. of Elections*, 115 Ohio St. 3d 126, 129, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 16; *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, ¶ 29.

Pursuant to R.C. 3501.11(V), Respondents BOE and Secretary of State are obligated to review ballot language for validity. A writ of mandamus should issue compelling them to exercise their authority to remove the levy from the ballot. Alternatively, a writ of prohibition should issue prohibiting them from finding the levy to be valid in the protest hearing Relator has requested.

**Proposition of Law No. 1: Pursuant to R.C. § 5705.03(B), a township must pass a resolution certifying a proposed tax levy to the county board of elections prior to both actual submission of the levy to the board of elections and the deadline for submission.**

Although Cornerstone would prefer to address the merits of its claims, the Ballot Initiative suffers from a procedural defect that Sugarcreek Township cannot cure – the Township

failed to pass a second resolution under R.C. § 5705.03(B) until January 8, 2016, which is only 67 days prior to the March 15, 2016 election, and thus in violation of R.C. § 5705.19.

R.C. § 5705.03(B)(1) and (3) requires a taxing authority to issue two separate resolutions to place a levy on a ballot, the first resolution requesting certification from the county auditor to determine the number of mills required to generate a specified amount of revenue, and a second resolution, certified to the county board of elections, requesting that the issue be placed on the ballot, to be accompanied with a copy of the county auditor's certification.

Specifically, R.C. § 5705.03(B)(1) provides:

When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills.

R.C. § 5705.03(B)(3) further provides:

If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor.”

Sugarcreek Township passed the first resolution, Resolution 2015.10.19.07, on October 19, 2015. Resolution 2015.10.19.07 specifically requested that the “Green County Auditor to certify to the Township the total current tax valuation of Sugarcreek Township (unincorporated areas only) and the dollar amount of revenue that would be generated by the following additional Fire District tax levy: 1) 5.3 mill.” (See **Exhibit 9**). Resolution 2015.10.19.07 was thus the first

resolution passed by Sugarcreek Township under R.C. § 5705.03(B)'s two-resolution process. (*Id.*, ¶ 74).

It was not until the filing of this instant Complaint for Writ of Mandamus and/or Prohibition that Sugarcreek Township realized that it failed to pass a second resolution under R.C. § 5705.03(B). On January 8, 2016, Sugarcreek Township passed Resolution 2016.01.08.01, which provided:

**WHEREAS**, the Board of Trustees of Sugarcreek Township, Greene County, Ohio, previously formed and established the Sugarcreek Township Fire District consisting of the unincorporated areas of Sugarcreek Township, Greene County, Ohio; and

**WHEREAS**, having passed a Resolution of Necessity for Levying a Tax, 2015.10.19.07, and receiving certification from Greene County Auditor, David Graham, the Sugarcreek Board of Trustees moves for a Resolution to Proceed and desires to proceed and place this Fire District Levy on the March 15, 2016 Ballot.

**NOW THEREFORE BE IT RESOLVED**, that this Resolution to Proceed for Ballot is hereby adopted and that this Resolution shall take effect and be in force from and after the earliest time provided by law.

(*Id.*, ¶ 76; *see also* **Exhibit 12**).

R.C. § 5705.19 provides:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

\* \* \*

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, or the

purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company.

As R.C. § 5705.19 requires that the second resolution to proceed to be certified to the county board of elections “not less than ninety days before the election,” and Resolution 2016.08.01 was passed by Sugarcreek Township only 67 days before the March 15, 2016 election, the Ballot Initiative does not comply with R.C. § 5705.19.

This Court has noted that “[e]lection statutes in Ohio are mandatory and require strict compliance unless the statute specifically permits substantial compliance.” *Stutzman v. Madison Cty. Bd. of Elections*, 93 Ohio St.3d 511, 514, 2001-Ohio-1624, 757 N.E.2d 297 (2001), citing *State ex rel. Wilson v. Hisrich*, 69 Ohio St.3d 13, 16, 630 N.E.2d 319 (1994), and *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 169, 602 N.E.2d 615 (1992).

The strict compliance to election statutes is demanding, and a recent Ohio Supreme Court case demonstrates how exacting such compliance must be. In *State ex rel. Orange Township Board of Trustees v. Delaware County Board of Elections*, Orange Township voted to place a 7.5-mill, three-year additional tax levy for fire protection and emergency medical services on a February 5, 2013 special-election ballot. 135 Ohio St. 3d 162, 2013-Ohio-36, 985 N.E.2d 441 at ¶ 3. Orange Township Trustees passed its first resolution, Resolution 12-453, which declared a necessity to levy an additional tax in excess of ten mills for fire and EMS services on November 7, 2012, and requested that the Delaware County auditor certify the current tax valuation and revenue generated by 7.5-mill levy. *Id.*, at ¶ 4. On that same day, the county auditor certified the estimated tax revenue and the Orange Township trustees then adopted the second resolution, Resolution 12-454, which declared the necessity of the 7.5-mill, three-year tax levy. *Id.*, at ¶¶ 5-

6. Orange Township trustees then needed to certify to the Delaware Board of Elections a copy of the Delaware County auditor's estimate property tax revenue and Resolution 12-454 by 4:00 p.m. on November 7. *Id.*, at ¶ 7. At 3:57 p.m. on November 7, an Orange Township Administrative Assistant personally delivered a paper copy of the auditor's certificate of estimated tax revenue with the board of elections. *Id.*, at ¶ 9. At 4:00 p.m., an Orange Township Fiscal Officer Assistant appeared at the Delaware County Board of Elections with Resolution 12-454. *Id.* The Board of Elections clerk required the Fiscal Office Assistant to show identification before file-stamping the resolution at 4:02 p.m. *Id.* The Delaware Board of Elections voted 4-0 to deny certification of the levy to the February 5, 2013 ballot, as the Township failed to submit documents by the 4:00 pm, November 7, 2012 deadline.

The Ohio Supreme Court granted Orange Township's writ of mandamus, and allowed the tax levy to proceed to the ballot, in part because the resolution was time-stamped only two minutes late, and "kept no citizen from becoming family with the proposed levy and harmed no one's rights." *Id.*, at ¶ 31. Critical to the 4-3 decision, the majority noted that the Orange Township Administrator emailed the requisite documents to the Delaware County Board of Elections Director at 3:52 p.m. and 3:53 p.m., and the statute did not explicitly set out whether electronic filings were acceptable. *Id.*, at ¶ 26.

This case is imminently distinguishable from *State ex rel. Orange Township Board of Trustees*, as Sugarcreek Township was not merely two minutes late with the physical delivery of Resolution 2016.01.08.01 and the Greene County auditor's certification of tax revenue – it was 23 days late in even voting to certify the tax levy. There is no evidence that Sugarcreek even

forwarded the Greene County auditor’s certification of tax revenue to the Board of Elections.<sup>5</sup> Strict compliance with the election statutes finds that although Sugarcreek Township eventually realized that it was in violation of R.C. § 5705.03(B) by failing to pass a second resolution, it’s alleged cure of this violation did not occur until January 8, 2016. As Resolution 2016.01.08.01 was passed only 67 days prior to the March 15, 2016 election, Sugarcreek Township’s Ballot Initiative is in blatant violation of R.C. § 5705.19.

**Proposition of Law No. 2: The express language of R.C. § 505.37(C) vests municipalities with sole authority to remove incorporated territory from a township fire district. A township has no authority to remove services from the incorporated portion while maintaining service to the remainder of the district.**

“In Ohio, townships are creatures of the law and have only such authority as is conferred on them by law.” *Drees Co. v. Hamilton Twp.*, 132 Ohio St. 3d 186, 2012-Ohio-2370, 970 N.E.2d 916. The Revised Code does not authorize a township to withdraw fire and EMS protection from incorporated areas. Rather, only the municipality may withdraw the territory from the township services. See R.C. § 505.37(C) (*compare* “Any ***municipal corporation may withdraw*** from a township fire district . . .” *with* “A board of township trustees may ***remove unincorporated territory*** of the township from the fire district.”) Because the Revised Code does not permit the unilateral withdraw of services to incorporated areas—such as Cornerstone—the Township must continue providing services.

Because the township is a creature of statute, it can only do what is expressly stated in the statute. There is no statutory authority to remove an incorporated area without the consent of the municipality. The Township may argue that it believes it can ignore the statute by terminating current services and creating a new district. However, the statute does not even contemplate the dissolution of fire and EMS services.

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<sup>5</sup> Relator has made a public records request to the Greene County Board of Elections, but has not yet received a response.

The Township might also argue that it isn't operating a fire district now. It is. It provides fire and EMS services to only a portion of the Township, excluding the areas incorporated into Kettering and Bellbrook. Those areas are not subject to the Township fire and EMS taxes. Thus, there is a taxing district within the Township. Moreover, even if the Township is viewed as providing fire and EMS without a district, R.C. § 505.37(A) does not contemplate the termination of those services once established.

The effective state of fire and EMS services in Sugarcreek Township is that the Township provides protection to the unincorporated portions of the Township and the portions in City of Centerville, but does not provide services in portions in other municipalities. Operationally, this is a fire district. R.C. § 505.37 only contemplates the removal of services to the incorporated portion by the action of the municipality. The Township's actions to avoid this limitation are impermissible. Accordingly, the purported levy is unlawful.

**Proposition of Law No. 3: Even if a township could remove incorporated territory from a fire district by creating a replacement district, it may do so only in the limited circumstance that the removal “is expedient and necessary to guard against the occurrence of fires.” R.C. § 505.37(B).**

The last time Sugarcreek's opposition to the Cornerstone development was before this Court, the Court reminded the Township “it is the policy of the state of Ohio to encourage annexation by municipalities of adjacent territory.” *Sugarcreek Twp. v. City of Centerville*, 133 Ohio St. 3d 467, 2012-Ohio-4649, ¶ 3, 979 N.E.2d 261. It is clear from the record from the Sugarcreek Township board meeting that *detering* annexation is the Township's policy behind the fire district antics and the levy.

Unsurprising, R.C. § 505.37 does not include “detering annexation” as a proper purpose to reduce fire and EMS services. R.C. § 505.37(C) specifically 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.” 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 *Richfield Township v. Toledo Metropolitan Park*, the Sixth Appellate District found that a township could exclude Metropolitan Park District’s Secor Park in its creation of a fire district. 6th Dist. Lucas No. L-81-034, 1981 Ohio App. LEXIS 10375 (June 19, 1981). In doing so, the Sixth Appellate District analyzed the factors to consider when the creation of a fire district is “necessary and expedient.” *Id.*, at \*4-5, citing 1976 Ohio Atty. Gen. Ops. 1, 3, 76-057. “It would appear that whether there is a practical public interest mandating fire protection is a question of fact to be determined on a local level. Among the factors to be considered are the cost of protection and the potential for loss of lives or property, the ability of the township or the district to meet the financial burden of fire protection within R.C. § 505.39 and R.C. § 505.40, and the availability of firemen or another fire department with which to contract.” *Id.* In finding for Richfield Township, the appellate court relied upon two factors, the “increased cost of protection” factor and the “potential for loss of lives or property” factor. When analyzing the “increased cost of protection” factor, the court noted that if the park was included in the fire district, Richfield Township would have been “forced to purchase new equipment, such as extra hose and a new off-the-road fire truck.” *Id.*, at \*7-8. The court also relied on the “potential for loss of lives or property” factor, when it found that Secor Park is “sparsely populated, the less potential for loss of lives would not mandate the inclusion of the park in the fire district.” *Id.*, at \*7. Accordingly, the court found that Richfield Township could have found that such “exclusion of the park was necessary and expedient.” *Id.*

In this matter, Sugarcreek Township trustees undertook no such analysis when they declared it was “necessary and expedient” to create the fire district under Resolution 2015.10.19.06. Disturbingly, the Township has been flippant regarding its termination of fire and EMS services to I-675, its ramps, major intersections, arterial roads, and large retail developments. In fact, Township Administrator Tiffany and Township Trustees Daugherty, Pittman, and Bryant were clear that Resolutions 2015.10.19.06, 2015.10.19.07, and 2015.10.19.08 were passed to deter future annexations.

The township, I don’t think it’s any news to anybody had had some struggles with annexation in recent years and in particular in the last year trying to come to an agreement with the city of Centerville in the provision of fire services for that area in the city of Centerville that’s also in Sugarcreek Township. . . . This Board of Trustees has heard very loud, very clear from its residents don’t do it, don’t subsidize it, don’t lay down, don’t take it from these guys, fight with all you got and don’t give in. . . . So the best solution now is to form a fire district.

(See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees’ Meeting on October 19, 2015, 30:14-21, 31:11-15, 31:18-32:1).

Another advantage to having a fire district that I think is very, very key to this decision for the future on top of all the other things that make sense is that in the future, once we design this – once we – now that we have a fire district, if there is an annexation, a territory that they annex automatically comes out of the fire district. It no longer has fire coverage. So they will have to negotiate for fire services again. Now, that’s a heck of a disincentive to a property owner to know that if I annex, I got a battle coming because I don’t have fire service. Now, this is in particular with the city of Centerville and the city of Beavercreek, neither one of them have fire companies or fire departments.

(See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees’ Meeting on October 19, 2015, 35:1-17).

The Sugarcreek Township trustees all confirmed the anti-annexation basis for creating the fire district. Trustee Scott W. Bryant stated:

There a lot of benefits to the fire district. Barry has mentioned that. . . . the threat of annexation decreases significantly . . . this is just one more action that helps secure our borders, especially as a – when it comes to surrounding cities.

(See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees' Meeting on October 19, 2015, 38:11-19). Trustee Nadine S. Daugherty agreed, and noted that "one of the best things is it helps deter annexation...." (See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees' Meeting on October 19, 2015, 39:15-16). Trustee Michael E. Pittman also noted that in creating the fire district, "it boils down to this, not only the annexation portion of it is good for us, but ultimately our citizens are going to subsidize the fire department for that piece of property. And we didn't feel it was fair for our citizens to pay for fire service for the Cornerstone development." (See **Exhibit 11**, Transcript of Sugarcreek Township Board of Trustees' Meeting on October 19, 2015, 40:11-17).

Simply put, discouraging annexations is not an expedient and necessary purpose for creating the Replacement Fire District. Sugarcreek Township cannot now point to an "increased cost of protection" factor in creating the Replacement Fire District, because both the Township Administrator and Township Fire Chief testified that no such studies were ever conducted.

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.

\* \* \* \*

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.

(See **Exhibit 6**, 10:8-22; 24:7-20).

Sugarcreek Township's Fire Chief, Randy Pavlak also confirmed that there was no study to determine the demand for fire and EMS services at the Development.

Q. Have you seen any type of traffic study or any other type of study that delineates what the current demand for fire and EMS services is within the Cornerstone development?

A. No.

\* \* \* \*

Q. Had you been asked to provide information, what information could you have provided regarding the demand for services within the Cornerstone development?

A. Could have done a statistical analysis of call loads, demand for service.

Q. That was not done prior to the enactment of the fire district, correct?

A. Correct.

\* \* \* \*

Q. So my question to you is: Have you performed any type of economic analysis of how much money would be necessary to continue to provide service to this area, the Cornerstone development, in light of the TIF?

A. I have not done one on just that area.

(See **Exhibit 7**, 23:6-11; 32:5-15; 46:10-17). And this Court has previously noted 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, which arguably may be used to offset any increase demand in service.” *Sugarcreek Township*, 133 Ohio St.3d at 474, 2012-Ohio-4649, at ¶25, 979 N.E.2d at 268. This lack of evidence has not changed since this Court’s decision in 2012.

Furthermore, when considering the “potential for loss of lives or property” factor, it is clear that excluding incorporated property from the Replacement Fire District is not a “necessary and expedient purpose.” Removing fire and EMS services threatens the safety and health of

thousands 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, as well as the 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.

The policy of the State of Ohio is to encourage annexation and economic development, not to put citizens' lives in peril. The Township is an instrumentality of the State and cannot act in defiance of these policies.

**Proposition of Law No. IV: A political subdivision may not remove services from real estate subject to a TIF**

In *Sugarcreek Twp. v. Centerville*, this Court ruled, "Although a township continues to receive tax revenue on property that a municipality annexes through an expedited type-2 process under R.C. § 709.023, the municipality may adopt a tax-increment financing plan under R.C. § 5709.40 that temporarily exempts from city and township property taxes a portion of the improvements made to the annexed property to encourage the annexed property's economic development." 133 Ohio St.3d 467 at Syllabus. This Court also found 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." *Id.* at ¶ 25. Thus, this Court held that a township must continue to provide services to a development subject to a municipal TIF. This holding was against Sugarcreek Township and the development was Cornerstone. So not only is

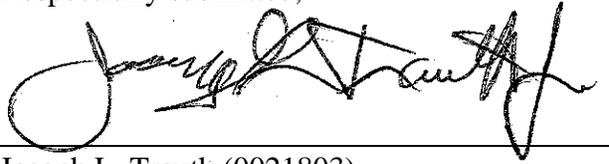
the law controlling, but Sugarcreek's lack of legitimate purpose to deny services to Cornerstone is *res judica* and Sugarcreek is estopped from arguing otherwise.

Even if estoppel didn't apply, Sugarcreek's witnesses testified that they possess no evidence that Cornerstone's level of service demand has placed the Township in dire fiscal straits. They never even conducted a demand study. To allow the Township to withdraw services from Cornerstone will work havoc on Ohio's TIF law. The law has created a delicate balance to foster economic development while ensuring appropriate levels of public funding. The law exempts certain taxes from being subject to a TIF, e.g., developmental-disability programs, county hospitals, mental-health services or facilities, libraries and township park districts. R.C. § 5709.40(F); *Sugarcreek*, 133 Ohio St. 3d, at ¶ 23. Public school districts are granted the right to negotiate TIF levels under certain circumstances. R.C. § 5709.40(B). Townships are afforded no such right. The entire purpose of a TIF can be thwarted if rogue townships are permitted to protest development by removing services from TIF districts. The General Assembly did not allow this. The Court should not either, especially where the Township has imposed its own TIF on the property it seeks to exclude.

### **CONCLUSION**

For the foregoing reasons, Relator Cornerstone Developers, Ltd., respectfully requests a Writ of Mandamus ordering the Greene County Board of Elections and 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, and a Writ of Prohibition preventing the Greene County Board of Elections and 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.

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 mail this 14<sup>th</sup> day of January, 2016:

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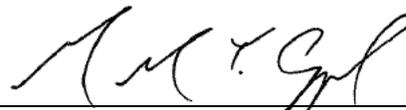
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Michael T. Cappel (0079193)

**IN THE SUPREME COURT OF OHIO**

<b>STATE ex rel.</b>	)	<b>Case No.: 2015-2092</b>
<b>CORNERSTONE DEVELOPERS, LTD.,</b>	)	
	)	
<b>Relator,</b>	)	<b>ORIGINAL ACTION in Mandamus and</b>
<b>-v-</b>	)	<b>Prohibition</b>
	)	
<b>GREENE COUNTY BOARD OF</b>	)	<b>Expedited Election Case Under</b>
<b>ELECTIONS, et al.,</b>	)	<b>S.C.Prac.R. 12.08</b>
	)	
<b>Respondents.</b>	)	

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**APPENDIX**

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R. C. § 505.37 .....	A-1
R. C. § 505.39 .....	A-5
R. C. § 505.40 .....	A-6
R. C. § 5705.03 .....	A-7
R. C. § 5705.19 .....	A-9
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## **505.37 Fire protection services.**

(A) The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney or, if the township has adopted limited home rule government under Chapter 504. of the Revised Code, with the approval of the specifications by the township's law director, purchase, lease, lease with an option to purchase, or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board. The board shall provide for the care and maintenance of fire equipment, and, for these purposes, may purchase, lease, lease with an option to purchase, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of fire-fighting equipment. The board may compensate the members of a volunteer fire company on any basis and in any amount that it considers equitable.

When the estimated cost to purchase fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services exceeds fifty thousand dollars, the contract shall be let by competitive bidding. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements:

- (1) It is published at least two weeks before the opening of bids.
- (2) It includes a statement that the notice is posted on the board's internet web site.
- (3) It includes the internet address of the board's internet web site.
- (4) It includes instructions describing how the notice may be accessed on the board's internet web site.

The advertisement shall include the time, date, and place where the clerk of the township, or the clerk's designee, will read bids publicly. The time, date, and place of bid openings may be extended to a later date by the board of township trustees, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications not later than ninety-six hours prior to the original time and date fixed for the opening. The board may reject all the bids or accept the lowest and best bid, provided that the successful bidder meets the requirements of section 153.54 of the Revised Code when the contract is for the construction, demolition, alteration, repair, or reconstruction of an improvement.

(B) The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination of these, may, through joint action, unite in the joint purchase, lease, lease with an option to purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code, and may prorate the expense of the joint action on any terms that are mutually agreed upon.

(C) 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. The board may purchase, lease, lease with an option to purchase, or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in section 9.60 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

Additional unincorporated territory of the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition. A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district.

If the township fire district imposes a tax, additional unincorporated territory of the township or a municipal corporation that is within or adjoining the township shall become part of the fire district only after all of the following have occurred:

- (1) Adoption by the board of township trustees of a resolution approving the expansion of the territorial limits of the district and, if the resolution proposes to add a municipal corporation, adoption by the municipal legislative authority of a resolution or ordinance requesting the addition of the municipal corporation to the district;
- (2) Adoption by the board of township trustees of a resolution recommending the extension of the tax to the additional territory;
- (3) Approval of the tax by the electors of the territory proposed for addition to the district.

Each resolution of the board adopted under division (C)(2) of this section shall state the name of the fire district, a description of the territory to be added, and the rate and termination date of the tax, which shall be the rate and termination date of the tax currently in effect in the fire district.

The board of trustees shall certify each resolution adopted under division (C)(2) of this section to the board of elections in accordance with section 5705.19 of the Revised Code. The election required under division (C)(3) of this section shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within ..... (description of the proposed territory to be added) be added to ..... (name) fire district, and a property tax at a rate of taxation not exceeding ..... (here insert tax rate) be in effect for ..... (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable)?"

If the question is approved by at least a majority of the electors voting on it, the joinder shall be effective as of the first day of July of the year following approval, and on that date, the township fire district tax shall be extended to the taxable property within the territory that has been added. If the territory that has been added is a municipal corporation and if it had adopted a tax levy for fire purposes, the levy is terminated on the effective date of the joinder.

Any 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. On the first day of July of the year following the adoption of the resolution or ordinance of

withdrawal, the municipal corporation withdrawing ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in the withdrawing municipal corporation terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

Upon the withdrawal of any municipal corporation from a township fire district created under division (C) of this section, the county auditor shall ascertain, apportion, and order a division of the funds on hand, moneys and taxes in the process of collection except for taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation and the remaining territory of the fire district.

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. On the first day of July of the year following the adoption of the resolution, the unincorporated township territory described in the resolution ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in that territory terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

(D) The board of township trustees of any township, the board of fire district trustees of a fire district created under section 505.371 of the Revised Code, or the legislative authority of any municipal corporation may purchase, lease, or lease with an option to purchase the necessary fire-fighting equipment, buildings, and sites for the township, fire district, or municipal corporation and issue securities for that purpose with maximum maturities as provided in section 133.20 of the Revised Code. The board of township trustees, board of fire district trustees, or legislative authority may also construct any buildings necessary to house fire-fighting equipment and issue securities for that purpose with maximum maturities as provided in section 133.20 of the Revised Code.

The board of township trustees, board of fire district trustees, or legislative authority may issue the securities of the township, fire district, or municipal corporation, signed by the board or designated officer of the municipal corporation and attested by the signature of the township fiscal officer, fire district clerk, or municipal clerk, covering any deferred payments and payable at the times provided, which securities shall bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code, and shall not be subject to Chapter 133. of the Revised Code. The legislation authorizing the issuance of the securities shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the securities. The securities shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

Section 505.40 of the Revised Code does not apply to any securities issued, or any lease with an option to purchase entered into, in accordance with this division.

(E) A board of township trustees of any township or a board of fire district trustees of a fire district created under section 505.371 of the Revised Code may purchase a policy or policies of liability insurance for the officers, employees, and appointees of the fire department, fire district, or joint fire district governed by the board that includes personal injury liability coverage as to the civil liability of those officers, employees, and appointees for false arrest, detention, or imprisonment, malicious prosecution, libel, slander, defamation or other violation of the right of privacy, wrongful entry or eviction, or other invasion of the right of private occupancy, arising out of the performance of their duties.

When a board of township trustees cannot, by deed of gift or by purchase and upon terms it considers reasonable, procure land for a township fire station that is needed in order to respond in reasonable time to a fire or medical emergency, the board may appropriate land for that purpose under sections 163.01 to 163.22 of the Revised Code. If it is necessary to acquire additional adjacent land for enlarging or improving the fire station, the board may purchase, appropriate, or accept a deed of gift for the land for these purposes.

(F) As used in this division, "emergency medical service organization" has the same meaning as in section 4766.01 of the Revised Code.

A board of township trustees, by adoption of an appropriate resolution, may choose to have the state board of emergency medical, fire, and transportation services license any emergency medical service organization it operates. If the board adopts such a resolution, Chapter 4766. of the Revised Code, except for sections 4766.06 and 4766.99 of the Revised Code, applies to the organization. All rules adopted under the applicable sections of that chapter also apply to the organization. A board of township trustees, by adoption of an appropriate resolution, may remove its emergency medical service organization from the jurisdiction of the state board of emergency medical, fire, and transportation services.

Amended by OHIO Acts of the 130th General Assembly File No. 7, HB 51, §101.01, eff. 7/1/2013.

Effective Date: 03-09-2004; 12-20-2005; 2007 HB119 09-29-2007; 2008 SB268 09-12-2008

## **505.39 Tax levy for fire protection.**

The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.

Effective Date: 09-24-1963

## **505.40 Bond issue for fire protection measures limited.**

No bonds shall be issued by the board of township trustees for the purpose of providing fire apparatus and appliances, buildings or sites therefor, sources of water supply and materials therefor, or for the establishment and maintenance of lines of fire-alarm telegraph, or for the payment of permanent, part-time, or volunteer fire-fighting companies to operate such equipment, unless approved by vote of the people in a township or fire district in the manner provided by section 133.18 of the Revised Code, and in no event in an amount exceeding the greater of one hundred fifty thousand dollars or two per cent of the total value of all property in the township as listed and assessed for taxation.

Effective Date: 10-30-1989

## **5705.03 Authorization to levy taxes - collection.**

(A) The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47 of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.

(B)

(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or a replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax. If a subdivision is located in more than one county, the county auditor shall obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county. The county auditor shall issue the certification to the taxing authority within ten days after receiving the taxing authority's resolution or ordinance requesting it.

(2) When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.

(3) If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor. The county board of elections shall not submit the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board. Before requesting a taxing authority to submit a tax levy, any agency or authority authorized to make that request shall first request the certification from the county auditor provided under this section.

(4) This division is supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the ten-mill limitation, including sections 133.18 and 5705.195 of the Revised Code.

(C) All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be

deposited in its treasury to the credit of the appropriate fund.

Effective Date: 12-21-1998; 03-30-2006

## **5705.19 Resolution relative to tax levy in excess of ten-mill limitation.**

This section does not apply to school districts, county school financing districts, or lake facilities authorities.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under

section 145.48 or 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services operated by a police department;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse, including yard waste;

(W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 128.01 of the Revised

Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold, and the operating expenses of, agricultural fairs operated by a county agricultural society or independent agricultural society under Chapter 1711. of the Revised Code. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 1515. of the Revised Code;

(WW) For the OSU extension fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation;

(YY) For any combination of the purposes specified in divisions (NN), (VV), and (WW) of this section. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of

that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (T), (Z), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in

division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election

When the electors of a subdivision or, in the case of a qualifying library levy for the support of a library association or private corporation, the electors of the association library district, have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.166, HB 360, §1, eff. 12/20/2012.

Amended by 129th General Assembly File No.140, SB 321, §1, eff. 6/26/2012, op. 1/1/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No.31, HB 313, §1, eff. 7/7/2010.

Amended by 128th General Assembly File No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 03-11-2004; 03-30-2006; 2008 HB385 09-12-2008; 2008 SB353 04-07-2009

**Related Legislative Provision:** See 131st General Assembly File No. TBD, HB 64, §812.70.

## **5709.40 Declaration that improvements constitute public purpose - blighted areas.**

(A) As used in this section:

- (1) "Blighted area" and "impacted city" have the same meanings as in section 1728.01 of the Revised Code.
- (2) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined under section 1.14 of the Revised Code.
- (3) "Housing renovation" means a project carried out for residential purposes.
- (4) "Improvement" means the increase in the assessed value of any real property that would first appear on the tax list and duplicate of real and public utility property after the effective date of an ordinance adopted under this section were it not for the exemption granted by that ordinance.
- (5) "Incentive district" means an area not more than three hundred acres in size enclosed by a continuous boundary in which a project is being, or will be, undertaken and having one or more of the following distress characteristics:
  - (a) At least fifty-one per cent of the residents of the district have incomes of less than eighty per cent of the median income of residents of the political subdivision in which the district is located, as determined in the same manner specified under section 119(b) of the "Housing and Community Development Act of 1974," 88 Stat. 633, 42 U.S.C. 5318, as amended;
  - (b) The average rate of unemployment in the district during the most recent twelve-month period for which data are available is equal to at least one hundred fifty per cent of the average rate of unemployment for this state for the same period.
  - (c) At least twenty per cent of the people residing in the district live at or below the poverty level as defined in the federal Housing and Community Development Act of 1974, 42 U.S.C. 5301, as amended, and regulations adopted pursuant to that act.
  - (d) The district is a blighted area.
  - (e) The district is in a situational distress area as designated by the director of development services under division (F) of section 122.23 of the Revised Code.
  - (f) As certified by the engineer for the political subdivision, the public infrastructure serving the district is inadequate to meet the development needs of the district as evidenced by a written economic development plan or urban renewal plan for the district that has been adopted by the legislative authority of the subdivision.
  - (g) The district is comprised entirely of unimproved land that is located in a distressed area as defined in section 122.23 of the Revised Code.
- (6) "Project" means development activities undertaken on one or more parcels, including, but not limited to, construction, expansion, and alteration of buildings or structures, demolition, remediation, and site development, and any building or structure that results from those activities.

(7) "Public infrastructure improvement" includes, but is not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities, including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and the enhancement of public waterways through improvements that allow for greater public access.

(B) The legislative authority of a municipal corporation, by ordinance, may declare improvements to certain parcels of real property located in the municipal corporation to be a public purpose. Improvements with respect to a parcel that is used or to be used for residential purposes may be declared a public purpose under this division only if the parcel is located in a blighted area of an impacted city. For this purpose, "parcel that is used or to be used for residential purposes" means a parcel that, as improved, is used or to be used for purposes that would cause the tax commissioner to classify the parcel as residential property in accordance with rules adopted by the commissioner under section 5713.041 of the Revised Code. Except with the approval under division (D) of this section of the board of education of each city, local, or exempted village school district within which the improvements are located, not more than seventy-five per cent of an improvement thus declared to be a public purpose may be exempted from real property taxation for a period of not more than ten years. The ordinance shall specify the percentage of the improvement to be exempted from taxation and the life of the exemption.

An ordinance adopted or amended under this division shall designate the specific public infrastructure improvements made, to be made, or in the process of being made by the municipal corporation that directly benefit, or that once made will directly benefit, the parcels for which improvements are declared to be a public purpose. The service payments provided for in section 5709.42 of the Revised Code shall be used to finance the public infrastructure improvements designated in the ordinance, for the purpose described in division (D)(1) of this section or as provided in section 5709.43 of the Revised Code.

(C)

(1) The legislative authority of a municipal corporation may adopt an ordinance creating an incentive district and declaring improvements to parcels within the district to be a public purpose and, except as provided in division (F) of this section, exempt from taxation as provided in this section, but no legislative authority of a municipal corporation that has a population that exceeds twenty-five thousand, as shown by the most recent federal decennial census, shall adopt an ordinance that creates an incentive district if the sum of the taxable value of real property in the proposed district for the preceding tax year and the taxable value of all real property in the municipal corporation that would have been taxable in the preceding year were it not for the fact that the property was in an existing incentive district and therefore exempt from taxation exceeds twenty-five per cent of the taxable value of real property in the municipal corporation for the preceding tax year. The ordinance shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (B) of this section or that is or has been within another district created under this division. An ordinance may create more than one such district, and more than one ordinance may be adopted under division (C)(1) of this section.

(2) Not later than thirty days prior to adopting an ordinance under division (C)(1) of this section, if the municipal corporation intends to apply for exemptions from taxation under section 5709.911 of the Revised

Code on behalf of owners of real property located within the proposed incentive district, the legislative authority of a municipal corporation shall conduct a public hearing on the proposed ordinance. Not later than thirty days prior to the public hearing, the legislative authority shall give notice of the public hearing and the proposed ordinance by first class mail to every real property owner whose property is located within the boundaries of the proposed incentive district that is the subject of the proposed ordinance.

(3)

(a) An ordinance adopted under division (C)(1) of this section shall specify the life of the incentive district and the percentage of the improvements to be exempted, shall designate the public infrastructure improvements made, to be made, or in the process of being made, that benefit or serve, or, once made, will benefit or serve parcels in the district. The ordinance also shall identify one or more specific projects being, or to be, undertaken in the district that place additional demand on the public infrastructure improvements designated in the ordinance. The project identified may, but need not be, the project under division (C)(3)(b) of this section that places real property in use for commercial or industrial purposes. Except as otherwise permitted under that division, the service payments provided for in section 5709.42 of the Revised Code shall be used to finance the designated public infrastructure improvements, for the purpose described in division (D)(1) or (E) of this section, or as provided in section 5709.43 of the Revised Code.

An ordinance adopted under division (C)(1) of this section on or after March 30, 2006, shall not designate police or fire equipment as public infrastructure improvements, and no service payment provided for in section 5709.42 of the Revised Code and received by the municipal corporation under the ordinance shall be used for police or fire equipment.

(b) An ordinance adopted under division (C)(1) of this section may authorize the use of service payments provided for in section 5709.42 of the Revised Code for the purpose of housing renovations within the incentive district, provided that the ordinance also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The ordinance shall designate the parcels within the district that are eligible for housing renovation. The ordinance shall state separately the amounts or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the general purpose of housing renovations.

(4) Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the incentive district is or will be located, and subject to division (E) of this section, the life of an incentive district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With approval of the board of education, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent. The approval of a board of education shall be obtained in the manner provided in division (D) of this section.

(D)

(1) If the ordinance declaring improvements to a parcel to be a public purpose or creating an incentive district specifies that payments in lieu of taxes provided for in section 5709.42 of the Revised Code shall be paid to the city, local, or exempted village, and joint vocational school district in which the parcel or incentive district is located in the amount of the taxes that would have been payable to the school district if the improvements had not been exempted from taxation, the percentage of the improvement that may

be exempted from taxation may exceed seventy-five per cent, and the exemption may be granted for up to thirty years, without the approval of the board of education as otherwise required under division (D)(2) of this section.

(2) Improvements with respect to a parcel may be exempted from taxation under division (B) of this section, and improvements to parcels within an incentive district may be exempted from taxation under division (C) of this section, for up to ten years or, with the approval under this paragraph of the board of education of the city, local, or exempted village school district within which the parcel or district is located, for up to thirty years. The percentage of the improvement exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting an ordinance under this section declaring improvements to be a public purpose that is subject to approval by a board of education under this division, the legislative authority shall deliver to the board of education a notice stating its intent to adopt an ordinance making that declaration. The notice regarding improvements with respect to a parcel under division (B) of this section shall identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvement that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance. The notice regarding improvements to parcels within an incentive district under division (C) of this section shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice; may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both; or may approve the exemption on the condition that the legislative authority and the board negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvement in excess of seventy-five per cent were that portion to be subject to taxation, or other mutually agreeable compensation. If an agreement is negotiated between the legislative authority and the board to compensate the school district for all or part of the taxes exempted, including agreements for payments in lieu of taxes under section 5709.42 of the Revised Code, the legislative authority shall compensate the joint vocational school district within which the parcel or district is located at the same rate and under the same terms received by the city, local, or exempted village school district.

(3) The board of education shall certify its resolution to the legislative authority not later than fourteen days prior to the date the legislative authority intends to adopt the ordinance as indicated in the notice. If the board of education and the legislative authority negotiate a mutually acceptable compensation agreement, the ordinance may declare the improvements a public purpose for the number of years specified in the ordinance or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. In either case, if the board and the legislative authority fail to negotiate a mutually acceptable compensation agreement, the ordinance may declare the improvements a public purpose for not more than ten years, and shall not exempt more than seventy-five per cent of the improvements from taxation. If the board fails to certify a resolution to the legislative authority within the time prescribed by this division, the legislative authority thereupon may adopt the

ordinance and may declare the improvements a public purpose for up to thirty years, or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. The legislative authority may adopt the ordinance at any time after the board of education certifies its resolution approving the exemption to the legislative authority, or, if the board approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board and the legislative authority.

(4) If a board of education has adopted a resolution waiving its right to approve exemptions from taxation under this section and the resolution remains in effect, approval of exemptions by the board is not required under division (D) of this section. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under division (D) of this section fewer than forty-five business days prior to the legislative authority's adoption of the ordinance, the legislative authority shall deliver the notice to the board not later than the number of days prior to such adoption as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(5) If the legislative authority is not required by division (D) of this section to notify the board of education of the legislative authority's intent to declare improvements to be a public purpose, the legislative authority shall comply with the notice requirements imposed under section 5709.83 of the Revised Code, unless the board has adopted a resolution under that section waiving its right to receive such a notice.

(E)

(1) If a proposed ordinance under division (C)(1) of this section exempts improvements with respect to a parcel within an incentive district for more than ten years, or the percentage of the improvement exempted from taxation exceeds seventy-five per cent, not later than forty-five business days prior to adopting the ordinance the legislative authority of the municipal corporation shall deliver to the board of county commissioners of the county within which the incentive district will be located a notice that states its intent to adopt an ordinance creating an incentive district. The notice shall include a copy of the proposed ordinance, identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period of time for which the improvements would be exempted from taxation, specify the percentage of the improvements that would be exempted from taxation, and indicate the date on which the legislative authority intends to adopt the ordinance.

(2) The board of county commissioners, by resolution adopted by a majority of the board, may object to the exemption for the number of years in excess of ten, may object to the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both. If the board of county commissioners objects, the board may negotiate a mutually acceptable compensation agreement with the legislative authority. In no case shall the compensation provided to the board exceed the property taxes forgone due to the exemption. If the board of county commissioners objects, and the board and legislative authority fail to negotiate a mutually acceptable compensation agreement, the ordinance adopted under division (C)(1) of this section shall provide to the board compensation in the eleventh and subsequent years of the exemption period equal in value to not more than fifty per cent of the taxes that would be payable to the county or, if the board's objection includes an objection to an exemption percentage in excess of seventy-five per cent, compensation equal in value to not more than fifty per cent of the taxes

that would be payable to the county, on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation. The board of county commissioners shall certify its resolution to the legislative authority not later than thirty days after receipt of the notice.

(3) If the board of county commissioners does not object or fails to certify its resolution objecting to an exemption within thirty days after receipt of the notice, the legislative authority may adopt the ordinance, and no compensation shall be provided to the board of county commissioners. If the board timely certifies its resolution objecting to the ordinance, the legislative authority may adopt the ordinance at any time after a mutually acceptable compensation agreement is agreed to by the board and the legislative authority, or, if no compensation agreement is negotiated, at any time after the legislative authority agrees in the proposed ordinance to provide compensation to the board of fifty per cent of the taxes that would be payable to the county in the eleventh and subsequent years of the exemption period or on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation.

(F) Service payments in lieu of taxes that are attributable to any amount by which the effective tax rate of either a renewal levy with an increase or a replacement levy exceeds the effective tax rate of the levy renewed or replaced, or that are attributable to an additional levy, for a levy authorized by the voters for any of the following purposes on or after January 1, 2006, and which are provided pursuant to an ordinance creating an incentive district under division (C)(1) of this section that is adopted on or after January 1, 2006, shall be distributed to the appropriate taxing authority as required under division (C) of section 5709.42 of the Revised Code in an amount equal to the amount of taxes from that additional levy or from the increase in the effective tax rate of such renewal or replacement levy that would have been payable to that taxing authority from the following levies were it not for the exemption authorized under division (C) of this section:

- (1) A tax levied under division (L) of section 5705.19 or section 5705.191 of the Revised Code for community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code;
- (2) A tax levied under division (Y) of section 5705.19 of the Revised Code for providing or maintaining senior citizens services or facilities;
- (3) A tax levied under section 5705.22 of the Revised Code for county hospitals;
- (4) A tax levied by a joint-county district or by a county under section 5705.19, 5705.191, or 5705.221 of the Revised Code for alcohol, drug addiction, and mental health services or facilities;
- (5) A tax levied under section 5705.23 of the Revised Code for library purposes;
- (6) A tax levied under section 5705.24 of the Revised Code for the support of children services and the placement and care of children;
- (7) A tax levied under division (Z) of section 5705.19 of the Revised Code for the provision and maintenance of zoological park services and facilities under section 307.76 of the Revised Code;
- (8) A tax levied under section 511.27 or division (H) of section 5705.19 of the Revised Code for the support of township park districts;
- (9) A tax levied under division (A), (F), or (H) of section 5705.19 of the Revised Code for parks and recreational purposes of a joint recreation district organized pursuant to division (B) of section 755.14 of the Revised Code;

(10) A tax levied under section 1545.20 or 1545.21 of the Revised Code for park district purposes;

(11) A tax levied under section 5705.191 of the Revised Code for the purpose of making appropriations for public assistance; human or social services; public relief; public welfare; public health and hospitalization; and support of general hospitals;

(12) A tax levied under section 3709.29 of the Revised Code for a general health district program.

(G) An exemption from taxation granted under this section commences with the tax year specified in the ordinance so long as the year specified in the ordinance commences after the effective date of the ordinance. If the ordinance specifies a year commencing before the effective date of the resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and duplicate of real and public utility property and that commences after the effective date of the ordinance. In lieu of stating a specific year, the ordinance may provide that the exemption commences in the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, provided that such tax year commences after the effective date of the ordinance. With respect to the exemption of improvements to parcels under division (B) of this section, the ordinance may allow for the exemption to commence in different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

Except as otherwise provided in this division, the exemption ends on the date specified in the ordinance as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the public infrastructure improvements and housing renovations are paid in full from the municipal public improvement tax increment equivalent fund established under division (A) of section 5709.43 of the Revised Code, whichever occurs first. The exemption of an improvement with respect to a parcel or within an incentive district may end on a later date, as specified in the ordinance, if the legislative authority and the board of education of the city, local, or exempted village school district within which the parcel or district is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement, and the board of education has approved the term of the exemption under division (D)(2) of this section, but in no case shall the improvement be exempted from taxation for more than thirty years. Exemptions shall be claimed and allowed in the same manner as in the case of other real property exemptions. If an exemption status changes during a year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(H) Additional municipal financing of public infrastructure improvements and housing renovations may be provided by any methods that the municipal corporation may otherwise use for financing such improvements or renovations. If the municipal corporation issues bonds or notes to finance the public infrastructure improvements and housing renovations and pledges money from the municipal public improvement tax increment equivalent fund to pay the interest on and principal of the bonds or notes, the bonds or notes are not subject to Chapter 133. of the Revised Code.

(I) The municipal corporation, not later than fifteen days after the adoption of an ordinance under this section, shall submit to the director of development services a copy of the ordinance. On or before the thirty-first day of March of each year, the municipal corporation shall submit a status report to the director of development services. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the funds created under section 5709.43 of the Revised Code; a description of the public infrastructure improvements and housing

renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.

(J) Nothing in this section shall be construed to prohibit a legislative authority from declaring to be a public purpose improvements with respect to more than one parcel.

(K) If a parcel is located in a new community district in which the new community authority imposes a community development charge on the basis of rentals received from leases of real property as described in division (L)(2) of section 349.01 of the Revised Code, the parcel may not be exempted from taxation under this section.

Amended by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.141, HB 509, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No.117, HB 508, §1, eff. 9/6/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 12-13-2001; 06-09-2004; 01-01-2006; 03-30-2006

**Related Legislative Provision:** See 129th General Assembly File No.141, HB 509, §6

## **709.023 [Operative 1/1/2016] Special annexation procedure where land is not excluded from township.**

(A) A petition filed under section 709.021 of the Revised Code that requests to follow this section is for the special procedure of annexing land into a municipal corporation when, subject to division (H) of this section, the land also is not to be excluded from the township under section 503.07 of the Revised Code. The owners who sign this petition by their signature expressly waive their right to appeal in law or equity from the board of county commissioners' entry of any resolution under this section, waive any rights they may have to sue on any issue relating to a municipal corporation requiring a buffer as provided in this section, and waive any rights to seek a variance that would relieve or exempt them from that buffer requirement.

The petition circulated to collect signatures for the special procedure in this section shall contain in boldface capital letters immediately above the heading of the place for signatures on each part of the petition the following: "WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OF ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE."

(B) Upon the filing of the petition in the office of the clerk of the board of county commissioners, the clerk shall cause the petition to be entered upon the board's journal at its next regular session. This entry shall be the first official act of the board on the petition. Within five days after the filing of the petition, the agent for the petitioners shall notify in the manner and form specified in this division the clerk of the legislative authority of the municipal corporation to which annexation is proposed, the fiscal officer of each township any portion of which is included within the territory proposed for annexation, the clerk of the board of county commissioners of each county in which the territory proposed for annexation is located other than the county in which the petition is filed, and the owners of property adjacent to the territory proposed for annexation or adjacent to a road that is adjacent to that territory and located directly across that road from that territory. The notice shall refer to the time and date when the petition was filed and the county in which it was filed and shall have attached or shall be accompanied by a copy of the petition and any attachments or documents accompanying the petition as filed.

Notice to a property owner is sufficient if sent by regular United States mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer shall be given by certified mail, return receipt requested, or by causing the notice to be personally served on the officer, with proof of service by affidavit of the person who delivered the notice. Proof of service of the notice on each appropriate government officer shall be filed with the board of county commissioners with which the petition was filed.

(C) Within twenty days after the date that the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed shall adopt an ordinance or resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation. The municipal corporation is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to the services described in that ordinance or resolution.

If the territory proposed for annexation is subject to zoning regulations adopted under either Chapter 303.

or 519. of the Revised Code at the time the petition is filed, the legislative authority of the municipal corporation also shall adopt an ordinance or resolution stating that, if the territory is annexed and becomes subject to zoning by the municipal corporation and that municipal zoning permits uses in the annexed territory that the municipal corporation determines are clearly incompatible with the uses permitted under current county or township zoning regulations in the adjacent land remaining within the township from which the territory was annexed, the legislative authority of the municipal corporation will require, in the zoning ordinance permitting the incompatible uses, the owner of the annexed territory to provide a buffer separating the use of the annexed territory and the adjacent land remaining within the township. For the purposes of this section, "buffer" includes open space, landscaping, fences, walls, and other structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks.

The clerk of the legislative authority of the municipal corporation to which annexation is proposed shall file the ordinances or resolutions adopted under this division with the board of county commissioners within twenty days following the date that the petition is filed. The board shall make these ordinances or resolutions available for public inspection.

(D) Within twenty-five days after the date that the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed and each township any portion of which is included within the territory proposed for annexation may adopt and file with the board of county commissioners an ordinance or resolution consenting or objecting to the proposed annexation. An objection to the proposed annexation shall be based solely upon the petition's failure to meet the conditions specified in division (E) of this section.

If the municipal corporation and each of those townships timely files an ordinance or resolution consenting to the proposed annexation, the board at its next regular session shall enter upon its journal a resolution granting the proposed annexation. If, instead, the municipal corporation or any of those townships files an ordinance or resolution that objects to the proposed annexation, the board of county commissioners shall proceed as provided in division (E) of this section. Failure of the municipal corporation or any of those townships to timely file an ordinance or resolution consenting or objecting to the proposed annexation shall be deemed to constitute consent by that municipal corporation or township to the proposed annexation.

(E) Unless the petition is granted under division (D) of this section, not less than thirty or more than forty-five days after the date that the petition is filed, the board of county commissioners shall review it to determine if each of the following conditions has been met:

- (1) The petition meets all the requirements set forth in, and was filed in the manner provided in, section 709.021 of the Revised Code.
- (2) The persons who signed the petition are owners of the real estate located in the territory proposed for annexation and constitute all of the owners of real estate in that territory.
- (3) The territory proposed for annexation does not exceed five hundred acres.
- (4) The territory proposed for annexation shares a contiguous boundary with the municipal corporation to which annexation is proposed for a continuous length of at least five per cent of the perimeter of the territory proposed for annexation.
- (5) The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed for annexation.

(6) The municipal corporation to which annexation is proposed has agreed to provide to the territory proposed for annexation the services specified in the relevant ordinance or resolution adopted under division (C) of this section.

(7) If a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create a road maintenance problem, the municipal corporation to which annexation is proposed has agreed as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem. As used in this section, "street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(F) Not less than thirty or more than forty-five days after the date that the petition is filed, if the petition is not granted under division (D) of this section, the board of county commissioners, if it finds that each of the conditions specified in division (E) of this section has been met, shall enter upon its journal a resolution granting the annexation. If the board of county commissioners finds that one or more of the conditions specified in division (E) of this section have not been met, it shall enter upon its journal a resolution that states which of those conditions the board finds have not been met and that denies the petition.

(G) If a petition is granted under division (D) or (F) of this section, the clerk of the board of county commissioners shall proceed as provided in division (C)(1) of section 709.033 of the Revised Code, except that no recording or hearing exhibits would be involved. There is no appeal in law or equity from the board's entry of any resolution under this section, but any party may seek a writ of mandamus to compel the board of county commissioners to perform its duties under this section.

(H) Notwithstanding anything to the contrary in section 503.07 of the Revised Code, unless otherwise provided in an annexation agreement entered into pursuant to section 709.192 of the Revised Code or in a cooperative economic development agreement entered into pursuant to section 701.07 of the Revised Code, territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township under section 503.07 of the Revised Code and, thus, remains subject to the township's real property taxes.

(I) Any owner of land that remains within a township and that is adjacent to territory annexed pursuant to this section who is directly affected by the failure of the annexing municipal corporation to enforce compliance with any zoning ordinance it adopts under division (C) of this section requiring the owner of the annexed territory to provide a buffer zone, may commence in the court of common pleas a civil action against that owner to enforce compliance with that buffer requirement whenever the required buffer is not in place before any development of the annexed territory begins.

(J) Division (C)(18) of section 718.01 of the Revised Code applies to the compensation paid to persons performing personal services for a political subdivision on property owned by the political subdivision after that property is annexed to a municipal corporation under this section.

Amended by 130th General Assembly File No. TBD, HB 5, §1, eff. 3/23/2015, applicable to municipal taxable years beginning on or after 1/1/2016.

Amended by 129th General Assembly File No. 195, HB 50, §1, eff. 3/27/2013.

Effective Date: 10-26-2001; 12-20-2005

**Note:** This section is set out twice. See also § 709.023, effective until 3/23/2015 operative until 1/1/2016.