

IN THE SUPREME COURT OF OHIO

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

EVIDENCE OF RESPONDENT SUGARCREEK TOWNSHIP

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FILED
2015 NOV 10 PM 2:01
TERRI A. WELLS, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

GREENE COUNTY, OHIO

CORNERSTONE DEVELOPERS, LTD.,)
3475 Newmark Drive)
Miamisburg, Ohio 45342)

and)

OBERER DEVELOPMENT CO.,)
3475 Newmark Drive)
Miamisburg, Ohio 45342)

and)

OBERER CONSTRUCTION, LTD.,)
3475 Newmark Drive)
Miamisburg, Ohio 45342)

and)

GEORGE R. OBERER, JR.,)
3475 Newmark Drive)
Miamisburg, Ohio 45342)

Plaintiffs-Relators,)

-v-)

SUGARCREEK TOWNSHIP)
2090 Ferry Road)
Sugarcreek Township, Ohio 45305)

and)

Case No.: 2015 CV 0760

JUDGE
(Judge WOLAVER)

COMPLAINT FOR
DECLARATORY JUDGMENT,
MONETARY DAMAGES,
INJUNCTIVE RELIEF AND
MANDAMUS

SCOTT W. BRYANT, in his official)
capacity as Trustee of Sugarcreek)
Township)
 2090 Ferry Road)
 Sugarcreek Township, Ohio 45305)
and)
)
NADINE S. DAUGHERTY, in her official)
capacity as Trustee of Sugarcreek)
Township)
 2090 Ferry Road)
 Sugarcreek Township, Ohio 45305)
and)
)
MICHAEL E. PITTMAN, in his official)
capacity as Trustee of Sugarcreek)
Township)
 2090 Ferry Road)
 Sugarcreek Township, Ohio 45305)
and)
)
TED HODSON, in his official capacity as)
Fiscal Officer of Sugarcreek Township)
 2090 Ferry Road)
 Sugarcreek Township, Ohio 45305)
Defendants-Respondents.)

Plaintiff/Relator Cornerstone Developers, Ltd. ("Cornerstone"), and Plaintiffs/Relators Oberer Development Co. ("Oberer Development"), Oberer Construction, Ltd. ("Oberer Construction"), and George R. Oberer Jr. (the "Guarantors") (Cornerstone and the Guarantors, collectively, the "Plaintiffs"), by and through the undersigned counsel, for their Complaint for Declaratory Judgment, Monetary Damages, Injunctive Relief, and Mandamus against Defendants-Respondents Sugarcreek Township (the "Township"), Scott W. Bryant in his official capacity as Trustee of the Township, Nadine S. Daugherty in her official capacity as Trustee of the Township, Michael E. Pittman in his official capacity as Trustee of the Township

(collectively, the “Trustees”), and Ted Hodson in his official capacity as Fiscal Officer of the Township (collectively, the “Defendants-Respondents”), state as follows:

PARTIES, JURISDICTION AND VENUE

1. Cornerstone is an Ohio limited liability company with its principal place of business located at 3475 Newmark Drive, Miamisburg, Ohio 45342.
2. Oberer Development is an Ohio corporation with its principal place of business located at 3475 Newmark Drive, Miamisburg, Ohio 45342.
3. Oberer Construction is an Ohio limited liability company with its principal place of business located at 3475 Newmark Drive, Miamisburg, Ohio 45342.
4. George R. Oberer, Jr. is an individual Ohio resident.
5. Oberer Construction owns 100% of Oberer Construction Managers, Ltd., an Ohio limited liability company which owns 50% of Cornerstone.
6. Upon information and belief, the Township is a civil township organized under the law of Ohio, and operating in Greene County, Ohio.
7. Upon information and belief, Scott W. Bryant is an elected Trustee serving on the Board of Trustees for Sugarcreek Township.
8. Upon information and belief, Nadine S. Daugherty is an elected Trustee serving on the Board of Trustees for Sugarcreek Township.
9. Upon information and belief, Michael E. Pittman is an elected Trustee serving on the Board of Trustees for Sugarcreek Township.
10. Upon information and belief, Ted Hodson is the elected Fiscal Officer for Sugarcreek Township.

11. Jurisdiction and venue are proper in this Court under the Ohio Rules of Civil Procedure, as the Development (defined below), that is the subject of this Complaint, and the Defendants-Respondents are located within Greene County.

FACTS COMMON TO ALL COUNTS

The Sugarcreek Township Property at Issue

12. On June 28, 2010, Cornerstone purchased two parcels of real estate located in Greene County, Ohio (the "Development"), consisting of a northern parcel of approximately 157 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") pursuant to a Type II annexation.

13. The Development was purchased for residential and commercial real estate development, including for the construction of shopping centers, restaurants, and specialty retail stores. The Development was professionally designed for high visibility and convenient access to the public. A professional design image of the Development's intended layout is attached hereto as **Exhibit A**.

14. Cornerstone purchased and commenced the expansion of the Development by incurring several debts, including a commercial loan from First Financial Bank and a subdivision bond, under which Cornerstone has significant financial obligations.

15. The Guarantors guaranteed the credit facilities, the First Financial Bank loan, a subdivision bond to assist Cornerstone in financing the development, and debt service payments under the TIF. The debt service payments in particular continue to run for several years, thereby exposing the Guarantors to several years of liability.

16. In February of 2014, Cornerstone began land excavation and applications for Centerville permits for two lots within the Development, with the purpose of selling the lots to Costco Wholesale Corporation (“Costco”). In May of 2014, Cornerstone began installing the infrastructure required for Costco’s operation, including the construction of utilities and roads.

17. On July 7, 2014, Costco broke ground and began construction of its facility on the lots within the Development, and on July 14, 2014, Cornerstone sold the lots to Costco.

18. Costco has been fully operational since November 13, 2014, providing jobs along with retail services to thousands of people in Greene County and the surrounding region on a weekly basis, and a sizable sales tax base for Greene County.

19. These employees, contractors, and customers shop and work at Costco with the expectation that they will receive emergency services in the event of a fire or medical emergency from the responsible government entity.

20. The Development is located within the jurisdiction of the Township.

21. Through a Type II annexation, the Development is also in the City of Centerville.

22. 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 protection and emergency (“Fire and EMS”) services taxation levied by the Township.

23. This Fire and EMS services taxation is being levied pursuant to five voter authorized levies.

24. Pursuant to the tax levies, the Fire and EMS funds collected were placed into a general fund and/or special fund for the entire Township.

25. Pursuant to this taxation, Cornerstone and its predecessors in interest have paid to the Township’s general fund and/or special fund to provide for Fire and EMS services for many years.

26. In 2014, Cornerstone paid taxes into this general fund and/or special fund for the year 2013 (the "2013 Taxes"). The 2013 Taxes were collected to fund the Fire and EMS services for as long as the fire levies are in place. This information was confirmed by the Greene County auditor in an email dated December 30, 2014, attached hereto as Exhibit B.

27. In 2015, Cornerstone and Costco have already paid Fire and EMS taxes for the year 2014 (the "2014 Taxes").

Sugarcreek Township's First Attempt to Avoid Protecting the Development

28. In 2006, Centerville annexed a portion of the Development through an expedited Type II annexation process. Under that process, the annexed land still remained part of the Township and received Fire and EMS services from the Township.

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

30. The TIF plan exempts 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.

31. The Bellbrook Sugarcreek School District (the "School District"), with the Township's awareness, negotiated to receive 60% of the taxes on the commercial development within the Development, and 100% of the taxes on the residential component. This concession was necessary in order for the School District to agree to a 30-year TIF instead of a 10-year TIF.

32. Subsequently, the School District offered to reduce its compensation to 55% of the taxes on the commercial development if Centerville would direct those funds to the Township Fire and EMS services. The school district's surrender of 5% of the funds would be the equivalent of 30% of the funds required for Fire and EMS services. This would result in the Fire and EMS services getting 55% of the taxes on the improvements, and the School District getting 55% of taxes on commercial development.

33. The Township verbally agreed to this division of TIF proceeds in conversations with School Superintendent Dr. Keith St. Pierre.

34. Township Administrator Barry Tiffany has, on several occasions, admitted that the Township has agreed to the above-referenced compensation agreement.

35. As a result of these negotiations, Cornerstone agreed to reduce its share of the infrastructure improvement proceeds by \$2.5 million. Cornerstone amended its development agreement on this commitment that the Township made to the School District, as well.

36. Nonetheless, dissatisfied with the TIF, the Township previously filed suit in this Court, *Sugarcreek Twp. v. Centerville*, Greene C.P. No. 2006-CV-0784 (Sept. 11, 2006), before the Honorable Judge Wolaver, seeking, *inter alia*, a declaration that Centerville could not establish a TIF plan covering Township taxes applicable to the land at issue.

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

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

39. The Ohio Supreme Court's decision recognized that the Township would provide EMS and Fire services to the Development following the Type II annexation of the Development to Centerville.

40. This previous litigation arose out of the same common nucleus of operative facts as the present case—the Township's obligations to "provide fire protection and emergency services to the area subject to the TIF." The Court's decision marks the Township's subsequent attempts to avoid these obligations (to be explained below) as improper and showing bad faith.

41. Following the Ohio Supreme Court's confirmation of the TIF, and relying on the Township's obligation to provide EMS and Fire services to the Development, the Plaintiffs began to construct buildings in the \$125 Million project.

42. The Township has benefited from the TIF, as it has resulted in improved property real estate values within the Township along with the economic benefit of the construction and development. Upon the expiration of the TIF, the Township will have a windfall benefit.

The Township Acts to Remove Fire and EMS Protection Effective February 1, 2015

43. Dissatisfied with the Supreme Court's ruling, the Township sought again to avoid its responsibilities to protect the community through Fire and EMS services to the Development.

44. On November 17, 2014, four days after Costco became fully operational, and long after Defendants-Respondents became aware of Costco's operations, the Township held a meeting to discuss certain resolutions relating to the Development.

45. At this meeting, the Township proposed and passed Resolution No. 2014.11.17.08 (the "Resolution") concerning the creation of a Sugarcreek Township Fire District (the "Fire District"). A true and accurate copy of the Resolution is attached hereto as **Exhibit C**.

46. The Township did not follow proper procedure under the Ohio Revised Code in passing the Resolution.

47. Sugarcreek Township Fire Chief Pavlak opposed the Resolution, indicating that he “doesn’t necessarily agree with it but he ‘gets it.’” A true and accurate copy of the Township’s working session notes containing this statement are attached hereto as Exhibit D.

48. In fact, Fire Chief Pavlak was not consulted with regard to what properties were included in the map. See Deposition of Barry Tiffany (“Tiffany Dep.”) at 85:4-10, attached hereto as Exhibit E. (“Q: It sounds to me from his deposition like Chief Pavlak was not consulted with regard to what properties to include in that map; is that correct? At least when you were formulating the draft? A: Correct.”).

49. Effective February 1, 2015, the Fire District sought to discriminately eliminate all Fire and EMS services to the Development, while maintaining Fire and EMS services for essentially all of the remainder of the Township.

50. The Fire District also eliminated all Fire and EMS services to portions of nearby public roads—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, open to the motoring public. The portion of the I-675 that was excluded Fire and EMS services has no access to Centerville without travelling through the Township, creating yet another safety issue.

51. The Township did not levy new taxes for the Fire District, with the Township instead transferring funds from the Township general fund and/or special fund. The Township is transferring assets to the new Fire District that were paid for by the newly excluded areas, without any compensation to the newly excluded areas.

52. In an interview with the Dayton Daily News regarding the Resolution published on December 26, 2014, Township Administrator Barry Tiffany “said 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.” A true and accurate copy of the Dayton Daily News article is attached hereto as Exhibit F.

53. 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.

54. Lest there be any doubt about the Township’s intent to punish Plaintiffs because of the TIF, Defendants-Respondents issued a letter on November 26, 2014 explaining that “the Cornerstone Development” and “annexed land and roadways” were being denied Fire and EMS protection. A true and accurate copy of the November 26, 2014 Township letter is attached hereto as Exhibit G.

55. The Defendants-Respondents claimed “we were resolute in not accepting any offer that would require our residents to bear the cost to provide service to this area.”

56. On January 1, 2015, a Dayton Daily News article indicated that three neighboring communities would be unable to provide Fire and EMS services to the Development. A true and accurate copy of the Dayton Daily News article is attached hereto as Exhibit H.

57. The January article noted that Kettering City Manager Mark Schwieterman, in declining, indicated: “Among other factors, we do not believe the implementation date of Feb. 1, 2015 is reasonable nor something we could accomplish.”

58. The article noted that Bellbrook City Manager Mark Schlagheck, in declining, wrote: “Bellbrook believes it is in the best interests of the entire Bellbrook-Sugarcreek community that the fire and EMS services for the area in question be provided by Sugarcreek Twp. . . . The city of Bellbrook therefore requests that the city of Centerville negotiate a fair and equitable agreement with Sugarcreek Twp. for these services.”

59. The article also noted that Washington Township commented: “Washington Twp. believes it is in the best interests of the entire region that fire and EMS services for the area be provided by Sugarcreek Twp.”

60. As the Fire District removed protection from I-675, other agencies were prohibited from providing Fire and EMS services to the Development. This is because agencies must receive certification to provide interstate fire protection, and not all neighboring agencies have this certification. As a result, by removing I-675, the Township raised a barrier to several agencies, preventing them from making proposals to provide Fire & EMS services.

61. The Township did not receive voter approval to levy taxes for the Fire District, and there was no voter initiative or approval to create or fund the Fire District.

62. On December 9, 2014, Centerville’s planning commission recommended that Centerville allow no further construction on the Development until the Fire and EMS services issues were resolved. A true and accurate copy of Centerville’s summary of that resolution is attached hereto as Exhibit I.

63. In the December 26, 2014 article in the Dayton Daily News, Centerville City Manager Greg Horn stated that “the township’s decision threatens the safety of citizens using the property.”

64. Mr. Horn continued: “The Sugarcreek Twp. trustees have chosen to play ‘political football’ with vital safety services . . . Sugarcreek Twp. trustees have not been able to get over the fact that this property was annexed to the city of Centerville at the request of the property owner and upheld by the courts.”

65. In the January Dayton Daily News article, Mr. Horn noted: “Anytime you have that kind of overt threat to cease something that is vital and basic as safety services, it creates a lot of stress, it creates a lot of anxiety.”

66. In the January article, Miamisburg resident Garth Terry, who shops at the Costco twice a week, noted: “The one that’s suffering, and the one that’s victimized, is the citizens that are paying taxes”—those who are being denied essential services by the Township.

67. Faced with the impending risk to the health and safety of the people working and shopping at the Development, the Planning Commission of Centerville refused to approve any additional improvements on the Development without the reinstatement of Fire and EMS services. This moratorium on new improvements had the effect of bringing Cornerstone’s business to a halt.

68. The Resolution harmed the Plaintiffs, as the December article in the Dayton Daily News noted that the dispute caused a major tenant in the Development to be “concerned about customers’ safety,” and led to other businesses “questioning the developer about the future of emergency services at the development.”

69. Immediately following the passage of the Resolution, prospective businesses and land purchasers delayed negotiations and firm commitments with Cornerstone, preventing Cornerstone from closing on sales of lots within the Development.

70. Prior to the implementation of the Resolution, Cornerstone executed a purchase agreement with Realwitt, LLC, d/b/a Milano’s Atlantic City Subs (“Milano’s”), a restaurant chain, for Milano’s purchase of a lot within the Development for approximately one million dollars.

71. Milano’s delayed the waiver of its contingencies with Cornerstone regarding the sale, citing as a reason the uncertainty of viable Fire and EMS services. A true and accurate copy of a letter from Milano’s regarding the same is attached hereto as **Exhibit J**. Milano’s has refused to close and indicated it will construct its store elsewhere.

72. The Resolution also inhibited Cornerstone's sales negotiations with numerous other shopping center anchors, restaurants, and specialty retail stores. The stores have specific schedules for store openings in a given year, and if the timeliness cannot be met, the transactions most likely will be terminated.

The Township Revokes the Resolution

73. On January 13, 2015, the Plaintiffs initiated a complaint against the Defendants-Respondents in the Greene County Court of Common Pleas, styled *Cornerstone Developers, Ltd., et al., v. Sugarcreek Township, et al.*, Case No. 2015-CV-0031. ("Greene County I").

74. On this same date, Plaintiffs also moved for a temporary restraining order and applied for a preliminary injunction with the court.

75. On January 20, 2015, the court issued an agreed preliminary injunction in Greene County I. A true and accurate copy of the preliminary injunction order is attached hereto as **Exhibit K**.

76. The preliminary injunction prohibited the Township from effectuating the Fire District pending final disposition of Greene County I.

77. Also on January 20, 2015, Greene County I was set trial on the injunctive claims only beginning on March 5, 2015.

78. 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.

79. The mediation failed to resolve the matter.

80. On February 19, 2015, faced with the pending trial, the Township passed Resolution No. 2015.02.19.02 rescinding the fire district authorization (the "Rescinding

Resolution”). A true and accurate copy of the Rescinding Resolution is attached hereto as **Exhibit L**.

Sugarcreek Misleads the Greene County Court, and Subsequently the Federal Court, in Order to Avoid Judicial Review and Reenact the Resolution

81. Following the passage of the Rescinding Resolution, the Township issued a press release (the “Press Release”). A true and accurate copy of the Press Release is attached hereto as **Exhibit M**.

82. In the Press Release, the Township stated 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.”

83. In a deposition, Barry Tiffany has acknowledged that he had not reviewed a study of the funding needs of the fire department, and he had not seen documentation of the Fire and EMS services demand generated by the Development.¹

84. The Xenia Gazette discussed these updates in an article issued on February 21, 2015. A true and accurate copy of the Feb. 21, 2015 article is attached hereto as **Exhibit N**.

85. In the Feb. 21, 2015 article, Defendant Barry Tiffany was quoted as stating: “We felt that in the court process that the township may (have things) forced upon us that we were not prepared to accept.”

86. Tiffany further commented that Centerville’s “idea of taking care of the fire department and the rest of the world’s concept of that are two different things.”

87. The Township did not concede that its actions, in passing the Resolution, were in violation of Section 5705.14 of the Ohio Revised Code.

¹ See Tiffany Dep. at Exhibit E, 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.”).

88. The Township continued to maintain that providing Fire and EMS services to the Development was an unfair burden to the Township.

89. The Township refused to commit that it would not attempt to reenact the Fire District, leading potential purchasers of lots within the Development to express trepidation about locating in the Development with this issue unresolved and the potential for cessation of fire and EMS services.

Plaintiffs Initiate Federal Litigation – and Defendants Vehemently Deny Intent to Reintroduce the Resolution

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

91. Statements of Township Administrator Barry Tiffany suggested an intent to avoid providing these services, and potential purchasers in the Development expressed a reluctance to develop in the area.

92. Purchasers have started demanding indemnification from Plaintiffs, to account for the risk that Fire and EMS services would be removed from the Development and nearby motorways. This increased the liability already bore by Defendants in selling parcels within the Development.

93. In order to ensure that the Development continued receiving protection, Plaintiffs 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).

94. In connection with the Federal Litigation, Plaintiffs requested that the court certify to the Ohio Supreme Court the following questions:

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

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

95. In response, Defendants moved for Partial Judgment on the Pleadings, denying that any judiciable controversy existed. Defendants 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.” *See* Defendants’ Motion for Partial Judgment on the Pleadings, attached hereto as **Exhibit O**.

96. On October 19, 2015, Defendants’ actions betrayed their position and mooted their case as speculative, as Defendants purported to recreate a discriminatory fire district through the passage of three resolutions (the “New Resolutions,” attached hereto as **Exhibit P**):

- A. Resolution 2015.10.19.06 (“Resolution 6”), which seeks to create a new Fire District under O.R.C. § 505.37(C);
- B. Resolution 2015.10.19.07 (“Resolution 7”), which seeks to obtain funding for Resolution 6 on the impending March 2016 ballot; and
- C. Resolution 2015.10.08 (“Resolution 8”), which removes all Fire and EMS services from the Development.

97. In the October 19, 2015 meeting, the Defendants stated that their purpose in passing the New Resolutions was to discourage future annexations into the city of Centerville. (*See* Draft Township Minutes from October 19, 2015 at Item #11, attached hereto as **Exhibit Q**) (“Mr. Tiffany said [that the New Resolutions] will reduce the threat in our township of future Type II annexations.”)

98. Defendants have placed the citizens and patrons of the Development in the exact same position that they were in at the inception of the litigation initiated in Greene County, for which injunctive relief was immediately granted.

99. Moreover, Defendants method of passing and repealing resolutions prohibits judicial review of the matter, and prevents Supreme Court review of the legality of the Defendants' actions.

The Resolution's Threat to the Safety of People in Greene County, the Motoring Public, and the Commercial Viability of the Development

100. The New Resolutions threaten the ability for Cornerstone to maintain its business, along with the safety and health of thousands of employees, contractors, and customers of Costco that work at and patronize Costco on a weekly basis. The New Resolutions also serves to destroy the TIF by refusing to provide services required thereunder.

101. The impending termination of Fire and EMS services causes apprehension and unrest in both patrons and employees at Costco, with employees and customers requesting information on the future safety of the Costco.

102. The New Resolutions threaten the safety of the motoring public, with Fire and EMS services being cut off for 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. Pursuant to the Township's New Resolutions, any persons injured or in danger on these public roadways will soon be denied necessary and potentially life-supporting emergency services.

103. In an October 28, 2015 article in the Dayton Daily News, it was noted that Cabela's outdoor store is under construction in the Development, and smaller businesses, including a Chick-fil-A, Bagger Dave's Burger Tavern, and Domino's Pizza are gearing up to open in the coming weeks. The article is attached hereto as **Exhibit R**.

104. The loss of protection to I-675 is particularly egregious, as interstate traffic has higher speed and weight limits, and is more likely to include the transportation of hazardous materials. If the Township is allowed to cease services, a school bus of children that collides with a tanker full of gasoline on I-675 would not be entitled to receive emergency protection or medical assistance.

105. So long as the New Resolutions are in effect, Cornerstone is at further risk in its development efforts.

106. Cornerstone is currently subject to significant financial obligations to First Financial Bank under its commercial loan, a subdivision bond, and debt service payments under the TIF. The successful payment of these loan obligations is contingent upon continued sales of lots within the Development. The moratorium on construction and impending shutdown of Fire and EMS services that come with the New Resolutions threatens Cornerstone's ability to make payments under its loan and avoid delinquency.

107. The Guarantors are liable to these significant financial obligations, and Cornerstone's inability to meet its obligations under the First Financial Bank loan and subdivision bond will subject the Guarantors to liability for the debt and any accompanying financial damages.

108. The successful advancement of the Development and businesses contained therein will provide millions of dollars in sales taxes to Greene County. Upon information and belief, the Costco alone will provide over \$780,000 in sales tax revenue annually to Greene County, and the development of the other shopping center anchors in the Development will generate additional tax revenues.

109. Absent the Defendants-Respondents' wrongful acts, the Development will also provide tax proceeds to the School District and the Greene County Career Center, both of which will benefit with significant tax revenues from the Development.

COUNT I
(MONETARY DAMAGES BASED ON TAKING/TEMPORARY TAKING)

110. Plaintiffs incorporate the foregoing allegations as if fully restated herein.

111. Plaintiffs have been hindered in their negotiations with potential purchasers on the Development since the Township passed the New Resolutions.

112. At all times relevant to this action, Cornerstone has been in the process of preparing the Development for sale for retail, commercial and residential uses.

113. The Development is a prominent area of improvement within the Township, and was specifically the subject of previous litigation between the Township and Centerville regarding the validity of a TIF district Centerville created for the Development, *Sugarcreek Twp. v. Centerville*, Greene C.P. No. 2006-CV-0784. For this reason, the Defendants-Respondents had knowledge of the Development.

114. As a result of the real and present danger of the Township refusing to abide by its legal obligations to provide Fire and EMS services to the Development to the same extent it provides to the rest of the Township, potential purchasers of the lots within the Development have become hesitant to complete purchases of lots. At least one potential purchaser has canceled its contract.

115. The conduct of the Defendants-Respondents, in passing the New Resolutions, threatens the commercial viability of the Development, along with the finances of the Guarantors.

116. The conduct of the Defendants-Respondents, and their refusal to provide Fire and EMS services and assurances relating to the same, constitutes a permanent and/or temporary regulatory taking of the property for which Plaintiffs are entitled to just compensation because Defendants-Respondents' conduct has deprived Plaintiffs of the economically viable use of their properties.

117. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 19 of the Ohio Constitution, Plaintiffs are entitled to a monetary award of just compensation for Defendants-Respondents' uncompensated regulatory taking in an amount to be proven at trial.

COUNT II
(MANDAMUS)

118. Relators incorporate the foregoing allegations as if fully restated herein.

119. Pursuant to Article I, Section 19 of the Ohio Constitution, Relators have a clear legal right to receive compensation from Defendants-Respondents as a consequence of their taking of Plaintiffs' private Property.

120. Relators have no plain and adequate remedy in the ordinary course of law to require Defendants-Respondents to compensate them fairly for the losses they have incurred and will incur on account of Defendants-Respondents' taking of the Property.

121. Defendants-Respondents are under a clear legal duty to commence appropriation proceedings under Ohio Revised Code Chapter 163, so that the amount of compensation for the taking of Relator's Property can be determined.

COUNT III
(EQUAL PROTECTION VIOLATION)

122. Plaintiffs incorporate the foregoing allegations as if fully restated herein.

123. Defendants-Respondents' open, obvious, and notorious animus towards the Development, their extraordinary efforts to block the Development, and their intentional and purposeful discrimination against Plaintiffs by, inter alia, refusing to provide Fire and EMS services to the development on equal footing with other parcels within the Township violates the Equal Protection Clause of the United States Constitution.

124. Defendants have treated Plaintiffs differently than similarly situated properties in the Township.

125. There is no rational basis for such difference in treatment, as there is no conceivable basis which supports the Defendants' actions.

126. Defendants actions were moreover motivated by animus and ill-will towards Plaintiffs. Defendants actions were motivated by personal animus toward Plaintiffs.

127. Defendants-Respondents actions are discriminatory on their face.

128. As a result of the Defendants-Respondents' violation of Plaintiffs' Equal Protection Rights, Plaintiffs have each been damaged in an amount which will exceed \$75,000.

COUNT IV
(42 U.S.C. § 1983 AND § 1988)

129. Plaintiffs incorporate the foregoing allegations as if fully restated herein.

130. The Civil Rights Act, 42 U.S.C. § 1983, assures a remedy for any person who is deprived of their constitutional rights under the color of state law. 42 U.S.C. § 1988 provides for the recovery of attorneys' fees when a party prevails on a claim brought under 42 U.S.C. § 1983.

131. The deprivation of Plaintiffs' private property and civil rights by Defendants-Respondents has damaged each Plaintiff in an undetermined amount which will be in excess of \$75,000.

COUNT V
(DECLARATORY JUDGMENT)

132. Plaintiffs incorporate the foregoing allegations as if fully restated herein.

133. This claim is brought for declaratory relief pursuant to Ohio Civil Rule 2721 and Ohio Rev. Code § 2721.05, *et seq.* with respect to the Township's ability to exclude incorporated areas from fire and EMS protection, to transfer funds, assets, or employees from the Township general fund and/or special fund to the Fire District.

134. Ohio Rev. Code § 505.37 cannot permit the Township to exclude the Development from a fire district.

135. Moreover, Ohio Rev. Code § 505.37 does not authorize the Township to exclude the Development from a fire district for the purpose of discouraging annexations into the City of Centerville.

136. An actual, justiciable controversy exists with respect to the permissibility of the Defendants-Respondents actions under the Ohio Revised Code.

137. Speedy intervention by this Court is necessary to preserve the rights of the parties.

138. Plaintiffs are entitled to declaratory judgment as follows:

- A. That the Township is prohibited from withdrawing Fire and EMS services from incorporated areas without the consent of the municipality.
- B. That the Township should be prohibited from improperly transferring funds, assets, or employees from the Township general fund and/or special fund to a Fire District in direct violation of Section 5705.14 of the Ohio Revised Code;
- C. That Ted Hodson, as Fiscal Officer, should be prohibited from sending newly received tax dollars to a Fire District;

- D. That the Township should be prohibited from utilizing the Township general fund and/or special fund to fund a Fire District, for which the Fire District issued no tax levy;
- E. That the Township accepted payments from Cornerstone in 2014 for the 2013 Taxes and in 2015 for the 2014 Taxes to fund Fire and EMS services to the Development for as long as the fire levies are in place;
- F. That the Township accepted these taxation payments, and should be required to provide Fire and EMS services to the Development for as long as the fire levies are in place;
- G. That the Development is covered by a TIF obligation for the Township to continue to provide Fire and EMS protection to the area;
- H. That the Township must obtain voter approval for any taxation for a Fire District through a tax levy, and continue providing Fire and EMS services to the Development pursuant to the current tax levies;
- I. That the Township cannot place Resolution 7 on the impending March 2016 ballot;
- J. That Resolution 8 fails to comply with O.R.C. § 5705.19, and is invalid on its face; and
- K. That Resolution 8 is invalid on its face as Fire and EMS services cannot be “unnecessary” where no replacement services are provided.

COUNT VI
(INJUNCTIVE RELIEF)

139. Plaintiffs incorporate the foregoing allegations as if fully restated herein.

140. Cornerstone initiated this suit following the Township's passage of the New Resolutions, which wrongfully and improperly attempt to transfer funds, assets, and employees from the Township general fund and/or special fund to a new discriminatory fire district.

141. The Greene County Court previously granted a preliminary injunction prohibiting the fire district from coming into effect.

142. Following the initiation of this suit, Defendants-Respondents passed the Rescinding Resolution, abandoning their attempts to create the fire district but providing no assurances that a fire district would not be subsequently created.

143. The Township subsequently passed the New Resolutions.

144. The Township should be required to provide the Development with Fire and EMS services, for which Cornerstone has already made tax payments, while this matter is being reviewed by the Court.

145. The Township should be enjoined from removing Fire and EMS protection from the Development, and enjoined from placing the Resolution 7 on the impending March 2016 ballot.

146. Plaintiffs will be irreparably harmed if the Township is not enjoined from removing Fire and EMS services to the Development.

147. No adequate remedy at law exists to protect Plaintiffs from the Township's actions, which will irreparably damage the Development and the safety of the employees and customers at the Development.

148. The interest and equities of Plaintiffs through the temporarily, preliminarily, and permanently enjoining the Township from their desire to remove Fire & EMS services from the Development greatly exceeds and outweighs any interests which the Township may have in removing Fire & EMS services.

149. The public interest will be best served if the Court temporarily, preliminarily, and permanently enjoins Defendants' actions, as the safety and well being of the citizens of Greene County and neighboring areas is of the utmost importance.

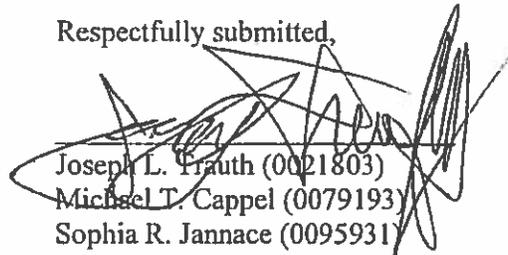
150. Plaintiffs are entitled to a preliminary injunction while this case remains pending, and issuance of a permanent injunction affording the relief requested herein.

WHEREFORE, Plaintiffs, through counsel, demand judgment against the Defendants-Respondents as follows:

- A. The Court declare that the threatened deprivation of fire and EMS protection, as applied to the subject Property, to be unconstitutional because they deny Plaintiffs the economically viable use of the subject Property, and constitute a taking of Plaintiffs' property rights without due process of law and without the payment of just compensation as required by the United States and Ohio Constitutions;
- B. The Court issue a preemptory Writ of Mandamus compelling Defendants-Respondents to initiate appropriation proceedings under Ohio Revised Code Chapter 163 to compensate Relators for the temporary taking of its property rights;
- C. The Court find that Defendants-Respondents have violated Plaintiffs' Equal Protection Rights,
- D. For declaratory relief described in Paragraph 138 above;
- E. For an injunction from prohibiting the Township from removing Fire and EMS protection from the Development so long as the Township provides these services anywhere in the Township;

- F. For actual damages in an amount to be proven at trial in excess of \$75,000; and
- G. For attorneys' fees, costs, and such other relief as this Court deems proper.

Respectfully submitted,



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Attorneys for Plaintiffs-Relators

VERIFICATION

STATE OF OHIO)
 : SS:
COUNTY OF MONTGOMERY)

Having been duly cautioned and sworn, I swear or affirm that I have reviewed the foregoing Complaint for Declaratory Judgment, Monetary Damages, Injunctive Relief, and Mandamus, and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

George Oberer Jr.
George Oberer Jr.

The foregoing was subscribed and sworn to in my presence by George Oberer Jr. this 10th day of November 2015.



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

Susan A. Favaloro
Notary Public

INSTRUCTIONS TO CLERK

Please serve the Summons and Complaint upon the Defendants at the addresses identified in the caption of the Complaint by certified mail, return receipt requested, returnable according to law.

6404057.1

EXHIBIT B

empower ex-offenders to solve personal, family and community problems. Mr. Moss introduced Mr. Gordy with the Circles hosted by Living Hope Church and Pastor Chad Current. Mr. Gordy noted that the most exciting thing he has seen is that the individuals they are trying to help want to walk in a new direction. Mr. Ken Moss at (937) 926-3523 is the contact for the area Circles program.

On behalf of the City Beautiful Commission, Mrs. Jan Prettyman announced that Albrecht Custom Home, Inc., at 63 Compark Road and Superior Dental of 6683 Centerville Business Parkway were the winners of the July Community Business Pride Awards. She announced the July Residential Landscape Award winners as follows:

Rick & Marcia Heben
6509 Atterbury Court

Greg & Amy Foley
440 Cedarleaf Drive

Roger & Brenda Ferry
871 Hyde Park Drive

Jack & Charlotte McCarthy
9710 Pawnee Pass

Lonnie & Deborah Holloway
7511 James Bradford Drive

Greg & Judy Mescher
790 Yankee Trace Drive

Howard & Dorothy Hensley
148 E. Franklin Street

Mayor Kingseed noted the following in the Mayor's Report:

He thanked everyone on the Americana Committee for organizing this great event that has become the signature event for Centerville and Washington Township.

In the City Manager's Report, Mr. Horn shared the following:

He thanked the residents for their patience on the East Spring Valley Road project. The Montgomery County Water Utility Department has finished the water line replacement, an extensive job that had to take place first. Concrete work and full depth asphalt are nearly complete. Milling and paving should be finished in the next few weeks.

The Summer Resurfacing Program benefitted from getting an early start this season. Included were curb work, full depth asphalt repair in different areas, crack filler and resurfacing. Work should be completed before the return of the children for the new school year.

In reference to the Americana Festival, Mr. Horn congratulated Jim Reppert for the honor of being named the Grand Marshal of the Americana Festival and for his outstanding record of service to the community over the years. He thanked the Americana Committee, our Public Works Department and the Police Department for working very closely with the Americana Committee.

Mr. Horn offered condolences to Carol Brunner and her family on the passing of her husband, Jim Brunner. He said Jim was a friend to our entire staff, served on the Planning Commission for many years and was named Volunteer of the Year in 2011.

Mr. Horn noted that the City receives Public Health Heat Advisories. This information is posted on the City's website and is also available on the heat line at 913-2000. He encouraged residents to check on their elderly neighbors.

As a reminder to all the golfers in the community, he stated that Yankee Trace is in good shape and ready for golf activity. Staff is hoping for a strong second half of the summer since the first half of the summer was a challenge with many rainy days and then oppressive heat.

Mrs. Wilder gave the statistics on Code violations and corrections for June, before presenting the community calendar for the remainder of July and for August. She reviewed items such as the Farmers Market, the Stubbs Park Veterans Memorial Enhancement Project, the Police Department's open house on August 3 from 1-4 p.m., the summer concert series, Yankee Trace opportunities, Public Works activities, recycling resources, and board and commission openings.

Mayor Kingseed offered condolences to Carol Wasson's family; Carol had been a long-time volunteer who served on the Arts Commission.

Mr. Horn introduced and welcomed Andrew Rodney, a newly hired member of the Planning Department.

PUBLIC HEARING: FINAL DEVELOPMENT PLAN FOR VOSS CHEVROLET VEHICLE STORAGE LOT, 290 LOOP ROAD

The Public Hearing was held concerning the Final Development Plan filed by Mr. Gregory Stout on behalf of Voss Chevrolet. In the report of the Planning Commission, Mr. Feverston presented background for the FDP at 290 Loop Road, an 11 acre wooded site where Voss is constructing a storage lot for dealership cars. The property is zoned B-PD, Business Planned-Development. He gave a history of activity on the site and showed the planned elevation changes, access points, landscape plan, drainage proposal, and the clearing boundary. Mr. Feverston showed photos of the area and pointed out that an updated proposal had been submitted by Judge Engineering earlier in the day. Staff recommended the Final Development Plan submitted earlier, subject to 11 conditions, but the Planning Commission, at its meeting on June 25, 2013, had voted not to recommend the plan to Council by a 5-1 margin. The Planning Commission, however, did approve a parking and paving setback variance for the parcel along the Loop Road frontage.

Gregory Stout, 100 Loop Road, thanked Council for providing a good forum at the Work Session, Monday, July 8, 2013. As a result of the exchange of information, Voss made some changes to the plans. He stated that the recent changes related mainly to the landscaping for the project. Of the 10.47 acres Voss purchased on Loop Road, the company proposed to develop only 1.19 acres. Mr. Stout summarized the issues as drainage and stormwater management, slope, vegetation, screening and sight lines and then addressed these items. He noted that the Planning Department had recommended approval of this project. He asked for Council's affirmative vote.

Mr. Brad Judge and Mark Stuart, both of Judge Engineering, addressed three concerns—the visual impact on the Village South residents, the severity of the 2:1 slope of the embankment, and the impact of stormwater runoff on properties in Village South. They showed a sight line drawing of the project from the perspective of the residents on the western side of the property assuming a 30' tree crown. The tree crown completely obscured the car lot. They also shared the Landscape Plan for the use of columnar juniper trees in a 10' strip on the back side of the

parking lot and showed lines of sight from various angles. Mr. Stuart passed samples of two different kinds of seeding mats that they are proposing to use to stabilize the slopes: hydroseeding of grass or crown vetch. The engineers reiterated that the rate of stormwater runoff will be reduced from 30 to 70% of its predevelopment rate with the proposed stormwater management practices. The pre-construction rate was based on their best approximation of conditions prior to any construction and as close to natural conditions possible.

Jim Foley, 351 Whittington Drive, stated that Voss may only be developing 1.2 acres of 10+ acres, but much of the vegetation will be cleared as the slopes are filled. He also noted that all the photos were in the summer when leaves on the trees provide buffers. About seven months of the year, the view will not be as Judge Engineering described it. He said residents would see the road, the traffic, other facilities and lights. He felt there would never be a significant visual buffer growing on the slopes.

Rodney Miller, 320 South Village Drive, agreed with Mr. Foley. In reference to the visual impact, Mr. Regis Lekan currently can see cars and the buses on Loop Road from his home in Village South. He expressed appreciation for changes in the landscape plan to include junipers, but asked for a very specific and enforceable landscape plan. Other important issues for residents of Village South included stormwater run-off from the acreage, the proper maintenance of the slopes and detention basin and possible future uses of the parcel. He urged consideration of all the issues that had been raised and asked for severe limits on the development plan.

Orville Huggins, 291 Edgebrook Drive, stated that a picture that Mr. Judge had shown of an area the day after a hard rain was misleading, because if you walked in that area you would be up to your ankles in water. He asked for a definitive plan for maintenance of the detention pond in perpetuity.

Margaret Foley, 351 Whittington Drive, asked the City Engineer and Judge Engineering about the possibility of a landslide on the east side of this property where the existing slope is more dramatic. She asked if the engineers had used digital elevation models and lidar. Mr. Judge stated his familiarity with lidar and digital modeling of terrain. He stated that the use of the slope stabilizations suggested, would be sufficient for slope stabilization. Ms. Foley also raised issues concerning oversight of the project and the lighting to be installed. Mr. Feverston defined the requirements in the code for minimal lighting for security purposes.

Council members discussed concerns regarding restrictions on future uses, determining that any change of use would require a new development plan to be submitted. When Mr. Compton asked how long crown vetch would take to become established, Mr. Judge stated that it would fill in quickly under the right conditions and would hold the 2:1 slopes in place. Mr. Cline asked how big the junipers would be when planted and verified that they could grow to twenty feet tall.

When questioned about the proposed extension to the east, Mr. Judge stated that 140 cars could be stored on the main area and 50 cars on the extension. Mr. Compton stated his concern for the uniqueness of the property and the possible impact on the adjoining neighborhood, before Mayor Kingseed noted that he would like for staff to have time to consider the proposed changes that had been submitted earlier in the day.

Mr. Compton moved to table the application for the Final Development Plan to a special meeting on July 29 or August 5, in order to give staff time to review the new proposal submitted by Judge Engineering on this date. Mrs. Kenley seconded the motion. The motion passed unanimously.

RECORD PLAN – HIGHLANDS AT YANKEE TRACE, SECTION 4

Mr. Feverston gave the staff report for the record plan for the final section of the Yankee Trace golf community to be developed by Great Traditions. He defined the area on a map showing the extension of Legendary Way terminating with a cul-de-sac bordered by lots for 14 single family attached and two single family detached homes. On June 25, 2013, the Planning Commission unanimously recommended approval of the record plan with the following thirteen conditions:

1. Execution of a Subdivider's Agreement is required with the City of Centerville.
2. In lieu of construction of the required improvements prior to the recording of the plat, a performance bond is required. The bond amount is based upon the engineer's estimate, which shall be submitted by the developer for approval by the City Engineer. The estimate is for the construction of the required public improvements including earthwork, storm sewer, pavement, emergency access drive, hiker biker path, traffic control, erosion control and restoration of the construction drive.
3. A one year maintenance bond in the amount of 10% of the original performance bond will be required when the public improvements are complete and the performance bond is released.
4. Provide for review and inspection fees per Section 1214 of the Centerville Municipal Code.
5. Protective covenant(s) shall be placed on the record plat, subject to approval by the City Attorney, that state the following:
 1. The adjoining lake was constructed by the City of Centerville for the purpose of golf course irrigation.
 2. The lake shall be used solely and exclusively by the City of Centerville.
 3. The water level may from time to time be low as a result of irrigation.
 4. These covenant(s) shall not be changed, altered or deleted without the approval by the City of Centerville.
6. The construction drive shall be maintained and kept in good condition at all times by Yankee Trace Development, Inc. The original design for the construction drive shall be included in the construction sets for this subdivision. This drive shall be reconditioned to original design by Yankee Trace Development, Inc. at the completion of all construction, including homebuilder construction that is associated with this subdivision subject to approval by the City Engineering Department.
7. The location of the access drive and the hiker/biker path as they merge onto Legendary Way shall be situated subject to the approval of the City Planner. The access easement shown on the record plat shall extend to the Legendary Way right-of-way where the

hiker/biker and emergency access drive is situated subject to approval by the City Planner.

8. A final grading and stormwater drainage plan shall be subject to approval by the City Engineering Department showing drainage calculations and incorporating retention and/or detention and erosion control during construction in accordance with the City Stormwater Drainage Control Ordinance.
9. The bank of the irrigation lake behind lots 59 and 60 shall be graded to provide a slope not to exceed 3:1 subject to approval by the City Engineer.
10. The grading behind lots 61-66 shall be modified to shift the drainage swale away from the rear of the houses to provide a minimum usable outdoor area in both width and gradient per Article 9.35 of the UDO subject to approval by the City Planner.
11. Lot 60 shall be modified to provide a minimum perimeter of 15 feet from the normal pool of the irrigation lake to the lot line and to eliminate the access easement on lot 60 subject to approval by the City Planner.
12. The minimum building setback for lot 59 and 60 shall be modified to also provide a minimum setback of 40 feet to the normal pool elevation of the irrigation lake subject to approval by the City Planner.
13. A landscape plan for Reserve Area N shall be submitted as a part of the construction plans subject to approval by the City Planner. This plan shall include a combination of evergreen and deciduous trees as required by the Residential Cluster Development Plan approved by the Planning Commission in 2006.

Mr. Compton made a motion to approve the Record Plan for the Highlands at Yankee Trace, Section 4, subject to the conditions recommended by the Planning Commission. Mr. Cline seconded the motion. The motion passed with seven ayes.

Mayor Kingseed explained that the Consent Agenda contains routine procedural and administrative matters which the Council had discussed in Work Sessions. Council Members read the Consent Agenda items into the record, before Mr. Beals sponsored the following items and moved for their approval:

- A. Resolution No. 30-13, A Service Resolution In Support Of The Proposed Annexation Of Property Containing 0.933 Acres More Or Less From Washington Township, Montgomery County, Ohio To The City Of Centerville, Montgomery County, Ohio Pursuant To The Requirement Of Section 709.023 Ohio Revised Code.
- B. Resolution No. 31-13, A Resolution Regarding Zoning Buffers In A Proposed Annexation Of Property Containing 0.933 Acres More Or Less From Washington Township, Montgomery County, Ohio To The City Of Centerville, Montgomery County, Ohio Pursuant To The Requirement Of Section 709.023(C) Ohio Revised Code.

- C. Resolution No. 32-13, A Resolution Authorizing The City Manager To Enter Into A Memorandum Of Understanding With The Montgomery County Land Reutilization Corporation (MCLRC) To Facilitate The Reclamation, Rehabilitation And Reutilization Of Vacant, Abandoned, Tax-Foreclosed Or Other Real Property Within The City Of Centerville.
- D. Resolution No. 33-13, A Resolution Declaring Specific Property No Longer Utilized By The City Of Centerville As Surplus Property And Authorizing The City Manager To Dispose Of Said Surplus Property In Accordance With The Guidelines Stated Herein.
- E. Resolution No. 34-13, A Resolution Supporting The Efforts Of The Washington Township Fire Department In Completing The 2010 Strategic Plan, 2013 Integrated Risk Management Plan/Standards Of Cover And 2013 Self-Assessment Manual, Suggesting Additional Goals And Requesting An Annual Report To Council.
- E. Reappointments as Follow:
 - Carolyn Basford to the Sister City Committee for three years.
 - Dan Carfagno, as Chairman of the Property Review Commission for one year.
 - Paul Clark as Chairman of the Planning Commission for one year.
 - Charles Graham as Chairman of the Board of Architectural Review for one year.

Mr. Cline seconded the motion. The motion passed unanimously with seven ayes.

**PUBLIC HEARING: ORDINANCE NUMBER 6-13: REWRITING CHAPTER 836,
PEDDLERS, VENDORS, CANVASSERS, AND CHARITABLE SOLICITORS**

Dr. Gresham made a motion to remove Ordinance Number 6-13 from the table for consideration. Mr. Cline seconded the motion. The motion passed with seven ayes. Dr. Gresham made the motion to table the public hearing for Ordinance No. 6-13, An Ordinance Repealing Chapter 836 "Peddlers and Solicitors" Of The Codified Ordinances Of The City Of Centerville And Enacting New Chapter 836 Entitled "Peddlers, Vendors, Canvassers, And Charitable Solicitations, until the August 19, 2013 Council Meeting. Mr. Cline seconded the motion. The motion passed with seven ayes.

**PUBLIC HEARING: ORDINANCE NUMBER 7-13: TIF FOR CORNERSTONE
NORTH**

Mr. Horn read a statement defining Tax Increment Financing, the need for a TIF at this time in conjunction with the development of Cornerstone North, and the terms of the agreement. Significant roadway improvements are needed on Feedwire Road and Wilmington Pike as well as public improvements within the parcel. The TIF will help to provide funding for these purposes. Only property taxes on the increase in the value of the Cornerstone property are included. The Bellbrook-Sugarcreek Local Schools and the Greene County Vocational School

District will not be affected by the terms of the TIF, in other words, school financing remains “whole.”

Mr. Cline sponsored Ordinance No. 7-13, An Ordinance Declaring The Improvement To Certain Parcels Of Real Property To Be A Public Purpose And Exempt From Taxation; Establishing A Tax Increment Equivalent Fund And Providing For The Collection And Deposit Of Service Payments Into That Fund, Specifying The Public Infrastructure Improvements Directly Benefiting The Parcels; And Authorizing Make-Whole Compensation Payments To The Bellbrook-Sugarcreek Local School District And The Greene County Vocational School District, and moved that it be passed. Mr. Singer seconded the motion. The motion passed unanimously.

PUBLIC HEARING: RESTRICTIONS OF STREET SALES OF FROZEN DESSERTS AND FOOD VENDING VEHICLES.

Mr. Feverston gave the staff report and stated that Chapter 836.03 of the Municipal Code “Restrictions on Street Sales of Frozen Desserts” is being repealed in its entirety. A new Chapter 844 “Mobile Food Vehicle Vendors” is being adopted. It will regulate mobile food vehicles and will allow them to operate in the public right-of-way provided it is not on a street designated as a Thoroughfare Street. Hours of operation will be 11:00 a.m. – 8:30 p.m. There is a license fee of \$200.00.

Mr. Compton sponsored Ordinance No. 8-13, An Ordinance Establishing Chapter 844 “Food Vending Vehicles” Of The Codified Ordinances Of The City Of Centerville And Repealing Chapter 836.03 “Restrictions On Street Sales Of Frozen Desserts”, and moved for its approval. Dr. Gresham seconded the motion. The motion passes with seven ayes.

Under Citizens’ comments:

Jack Wysong, 664 Legendary Way, voiced his concerns about having an emergency exit route for residents on Legendary Way. It was explained if there was a dire emergency, emergency personnel would use any means possible for the residents’ safety.

There being no further business, the meeting was adjourned.

Approved: _____
Mayor

ATTEST: _____
Clerk of Council

EXHIBIT C

The Council of the City of Centerville, County of Montgomery, State of Ohio, met on Monday, June 2, 2014, at about 7:30 P.M. in the Council Chambers of the Centerville Municipal Building. The Special Council Meeting was opened with an Invocation given by Mayor Mark Kingseed, who led the Pledge of Allegiance and also presided over the meeting. Council Members and City Staff were present as follows:

Deputy Mayor	Brooks Compton
Council Members	John Beals
	Paul Gresham
	Belinda Kenley
	John Palcher
	JoAnne Rau

Clerk of Council Debra James
City Manager Gregory Horn
Finance Director Steven Hinshaw
City Planner Andrew Rodney
City Engineer Douglas Spitler
Assistant to the City Manager Jennifer Wilder
Assistant to the City Manager Kristen Gopman
Economic Development Administrator Nathan Cahall
Municipal Attorney Scott Liberman

Mrs. James announced the receipt of a request from Mr. Dan Wilson for an extension of time for the Subdivider's Agreement related to the construction of a cul-de-sac and other improvements for Centerville Climate Storage at 86A Compark Road. In response to a question from Mr. Beals, Mr. Rodney stated the weather and work on storage units had been factors in the need for more time. He noted that staff was in favor of extending the expiration of the approval to September 1, 2014, giving time for the City to complete the work before winter using funds from the letter of credit required for the project, if necessary. Mr. Beals made a motion to approve the extension of the Subdivider's Agreement until September 1, 2014. Mrs. Kenley seconded the motion. The motion passed with seven ayes.

Mayor Kingseed explained that the Consent Agenda contains routine procedural and administrative matters which Council had discussed in Work Sessions. Mr. Liberman made two comments related to the agenda. First, he pointed out that Council had removed Item "B" from the Consent Agenda which would have set the public hearing for a clean-up amendment with numerous updates for the Unified Development Ordinance. The item was listed on the printed agenda for the meeting, but will be considered at a later time. Secondly, he noted that the exhibits for the ordinance for construction manager at risk had been delivered only earlier in the day. He pointed out a change to "Exhibit B, Expected Costs". The total cost of the project needs to increase by \$75,000. Mr. Liberman also said "Exhibit D, Proposed Schedule" should not reference roadway improvements on Feedwire Road and Wilmington Pike. The references will be removed and not be made part of the record.

Mr. Compton made a motion to approve the following consent agenda item which Mrs. Rau had read into the record:

1. Ordinance 08-14, An Ordinance Authorizing And Directing The City Manager To Enter Into Construction Manager At Risk Agreement With Oberer Construction Managers, LTD., And Cornerstone Developers, LTD. For Construction Management Services, be set for Public Hearing June 16, 2014.

Mr. Kenley seconded the motion. The motion passed unanimously.

PUBLIC HEARING FOR ORDINANCE NUMBER 05-14: COMPENSATION FOR BELLBROOK-SUGARCREEK SCHOOLS WITH THE CORNERSTONE TIF

Mrs. Kenley stated that she had a conflict of interest in relationship to this ordinance and recused herself from the Council Chambers.

City Manager Greg Horn gave the staff report for Ordinance Number 05-14. He explained that Tax Increment Financing is an important development tool capturing new tax growth from increasing property values to finance public infrastructure such as needed for Cornerstone North, Cornerstone South, Feedwire Road, Wilmington Pike, and the interstate highway interchange. Conservative estimates place the future value of the Cornerstone parcels at \$124 million. The TIF would allow some of the increase in tax dollars to be used to retire debt incurred in building the required public infrastructure. By law, the City was required to negotiate with the Bellbrook-Sugarcreek Schools concerning the sharing of the increase in property taxes. The proposed agreement allows the schools to collect 100% of any new taxes due them on the residential quadrant of the property because it has the potential to increase school enrollment and to collect 60% of the increased property tax on the commercial areas. The agreement also would require the City to limit the number of residential units that could potentially be built to 300. Owner-occupied housing units in the buffer along Brown Road would be a separate number.

Late last week, the Bellbrook-Sugarcreek School Board passed a resolution agreeing with these terms and also passed a waiver of the requirement for 45 days of notice. By law, the Greene County Career Center follows form with the same arrangement as the Bellbrook-Sugarcreek Schools, even though it was not party to the negotiations. In co-operation, the Board of the Greene County Career Center also passed a resolution waiving the 45 day notification period, because of tight constraints on the developer.

Municipal Attorney Scott Liberman noted that this ordinance amends Sections 1 and 2 of Ordinance 7-13. Section 4 would authorize the city manager to execute the Tax Increment Financing agreement with the schools.

Mayor Kingseed opened and closed the public hearing. No one spoke for/or against the Ordinance.

Mr. Compton asked questions to clarify Tax Increment Financing for the public. Dr. Hinshaw, the finance director, agreed that funds distributed by the Greene County Auditor as part of this agreement would only affect the distribution of the increase in property tax collected because of the development of the parcels. Dr. Hinshaw stated he did not know whether Greene County would send the entire amount to Centerville to distribute appropriately to the schools or would divide and distribute the funds directly. By law, no TIF funds would go into the general

fund; two new TIF accounts were created in the 2014 budget—one for debt retirement and one for TIF capital improvements.

Mr. Compton pointed out that this 30 year TIF, on what was expected to be a \$124 million development, would have benchmarks to be met before additional funding, bonding or debt would occur. Dr. Hinshaw explained the project would be built and the debt would be incurred in phases. \$4.3-\$4.5 million of debt would be required for \$4 million in capital improvements for onsite infrastructure and offsite improvements on Feedwire Road and Wilmington Pike. Once the first phase was in place and functioning properly, the City could consider investing in the next phase. The City would be protected from becoming over-extended. Mr. Horn added that the phasing of the debt was outlined in the amendment to the development agreement, next on the agenda.

Mayor Kingseed commended staff and the Oberer group for months of hard work and noted the importance of the development to the community with jobs and services to be created for the community for years to come. Increased tax revenue would come for all the governmental entities involved.

Dr. Gresham made a motion for approval of Ordinance Number 05-14, An Ordinance Amending Ordinance 7-13, Which Originally Related To The Creation Of A Tax Increment Financing, To Provide For Compensation To The Bellbrook-Sugarcreek Local School District And The Greene County Vocational School District And The Execution Of A Related Tax Incentive Agreement. Mr. Compton seconded the motion. The motion passed 6-0.

Mrs. Kenley returned to the Council dais.

RESOLUTION NUMBER 23-14: SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH CORNERSTONE DEVELOPERS

Mr. Horn gave the staff report concerning the Second Amendment to the Development Agreement with Cornerstone Developers covering both Cornerstone North and Cornerstone South. The original Development Agreement was signed in November 2013 and the first amendment was signed in May 2014. The TIF Ordinance set financing for the project, while this resolution added specifics for the project and resolved contingencies of earlier approvals.

Mr. Liberman gave further details concerning the components of the second amendment. Mr. Liberman noted that the original agreement had five or six contingencies that needed to be resolved. One of the conditions was an agreement with the Bellbrook-Sugarcreek Schools on the funding split. A second condition was to have a Construction Manager at Risk Agreement approved and in place. This contingency would be addressed by Emergency Ordinance 07-14, next on the agenda. The amendment to the Development Agreement also would cover the funding gap and the funding figures based upon the incentive agreement. Two miscellaneous amendments covered 3rd party beneficiaries and 3rd party litigation. The contingency period for the Development Agreement would be extended to July 7, 2014.

Dr. Hinshaw and Mr. Horn explained the developer had agreed to cover the “gap” between the infrastructure costs of the project for Phase One and what the City could reasonably

hope to recover through the use of the TIF after paying the schools the amounts owed to them. That gap amount was set at \$2.5 million. The developer may file a request for Special Assessment Financing where assessments are levied on individual lots and paid by future owners over a period of years. These amounts would be collected by the Greene County Auditor and would be used strictly to pay the debt for the onsite infrastructure improvements—water lines, sewer lines or roadways. The City is the conduit for the process because it has the ability to hold the debt. As a safeguard, the City would hold the first lien position in case of default. The City has used this tool for Clio Road improvements and subdivisions in the Yankee Trace Golf Community.

Mr. Compton made a motion for approval of Resolution Number 23-14, A Resolution Authorizing And Directing The City Manager To Enter Into The Second Amendment To The Development Agreement With Cornerstone Developers, Ltd. For Property Located In the City Of Centerville Consisting Of Approximately 228.5 Acres Located North And South Of I-675. Mr. Palcher seconded the motion. The motion passed unanimously, 7-0.

EMERGENCY ORDINANCE NUMBER 07-14: CONSTRUCTION MANAGER AT RISK AGREEMENT WITH OBERER CONSTRUCTION MANAGERS AND CORNERSTONE DEVELOPERS, LTD. FOR CORNERSTONE NORTH AND SOUTH

Mr. Horn explained Mr. Oberer's request for the use of a construction manager at risk for the Cornerstone North onsite infrastructure improvements because this extremely large project has a very strict timeline. The Costco building must be ready by November 1, 2014. Mr. Horn outlined the responsibilities of the construction manager at risk and of the City of Centerville for the onsite infrastructure improvements. The estimate for the onsite improvements is \$1.76 million; that amount would be paid to construction manager at risk, as the work is completed. Any overages would be the responsibility of the construction manager, Oberer Construction Managers, LTD/Cornerstone Developer's Ltd. Mr. Horn noted two changes to the costs listed in Exhibit D of the Agreement—the addition of \$50,000 for the installation of a temporary traffic signal on Wilmington Pike, if it is needed, and the addition of \$25,000 for maintaining traffic in the area plus initial mobilization for construction. He said that the precise amounts would be filled in on the bonding exhibit once actual bids for line items were known. The grand total will be used in determining the bond amount or letter of credit required from the developer to protect the City in the case of developer default. Mr. Horn noted, as staff reviews the exhibits, other minor changes might be required prior to the public hearing for the regular ordinance later in the month. Mr. Liberman suggested recognizing the changes to the exhibits in the motion. He also noted that the current legislation would be an emergency ordinance. The public hearing would be held later in the month when the regular ordinance is before Council.

When Mr. Beals asked who would bear the cost of overruns, Mr. Cahall stated that the developer would cover any costs over the \$1.76 million for onsite infrastructure improvements for Phase One. The \$75,000 was added to the cost of the project, so that the amount would be included in the bond or letter of credit that is required in case of default.

Following final questions from Council, Mr. Compton made a motion for approval of Ordinance Number 07-14, An Emergency Ordinance Authorizing And Directing The City Manager To Enter Into A Construction Manager At Risk Agreement With Oberer Construction

Managers, LTD., And Cornerstone Developers, LTD., For Construction Management Services, and moved for its approval with the modifications to the exhibits noted by Mr. Horn as recommended by Mr. Liberman. Mrs. Kenley seconded the motion. The motion passed unanimously, 7-0.

In Citizens Comments and concerns, Mr. George Oberer, Jr., Cornerstone Developers, thanked the Council and staff for supporting the project and the strict timeline. He promised to deliver a quality project.

Mr. Jack Wysong, 664 Legendary Way, asked for an explanation of the emergency ordinance process. Mr. Liberman explained, per the Centerville Charter, emergency ordinances take effect immediately and expire at the end of 75 days. A regular ordinance has a waiting period and is permanent. Passage of an emergency ordinance gives Council time to hold a public hearing and determine if the action should be permanent. There was also discussion of what would happen if the Council did not pass the regular ordinance following the public hearing on June 16, 2014. Mr. Liberman felt the agreement would be void at the end of 75 days.

Fire Chief Randy Pavlak of the Sugarcreek Fire Department expressed the need for adequate funding to support his department's ability to service the fire and EMS needs of the township. He stated Cornerstone constituted one third of the area his department covers. He also encouraged open lines of communication between the two entities. Mayor Kingseed assured Fire Chief Pavlak that the City of Centerville was aware of the situation and would be working with his department. He invited the Chief to attend meetings, contact Mr. Horn and engage in discussions.

Diane Wysong, 664 Legendary Way, asked why people in the annexed area were not served by Centerville Schools and Washington Township Fire and EMS crews. Mayor Kingseed stated that under the statute used for annexation, the area remains in Sugarcreek Township, even though it is governed by the City. Therefore, Sugarcreek Township must continue to provide those services. He stated that the schools possibly could come voluntarily to an agreement about jurisdiction, but no such interest had been expressed.

There being no further business, the meeting was adjourned. Council's next meeting will be June 16, 2014.

Approved: _____
Mayor

ATTEST: _____
Clerk of Council

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CORNERSTONE DEVELOPERS, LTD.,)	
<i>et al.</i> ,)	Case No.: 3:15-cv-00093
)
Plaintiffs/Relator,)	Judge Walter H. Rice
)
-v-)	PLAINTIFFS' NOTICE OF
	<u>ADDITIONAL FACTS</u>
SUGARCREEK TOWNSHIP, <i>et al.</i> ,)	
)
Defendants/Respondents.)	
)

This matter relates to essential and life-preserving Fire and EMS services that have been the subject of several lawsuits, and affect the health and safety of the residents of Greene County. In November 2014, Sugarcreek Township passed a resolution that served to discriminately eliminate all Fire and EMS services to the Development—services for which the Development had paid taxes for decades—while maintaining Fire and EMS services for essentially all of the remaining Township.

In the interest of the public safety of visitors to the Development (which includes, among other things, a thriving Costco business), Plaintiffs initiated litigation in the Greene County Court of Common Pleas, and were granted immediate injunctive relief. *See* Injunction Order, attached hereto as Exhibit A. Within a month of the passage of the Injunction Order, Defendants rescinded the Fire District in an effort to avoid judicial resolution of this matter. Knowing that Defendants were free to repeat their actions in enacting a Fire District, and based upon statements made by various Defendants, Plaintiffs initiated the present suit seeking, *inter alia*, (i) declaratory judgment and injunctive relief, such that the Township be prohibited from

withdrawing Fire and EMS services from the Development;¹ and (ii) that this Court certify to the Ohio Supreme Court the following questions:

- A. Is a township authorized to remove services to an incorporated portion of the township without the consent of the respective municipality?
- B. Can a township remove fire and emergency medical services to an incorporated territory on the basis that the property is subject to one or more tax increment financing districts?

Motion to Certify, Doc. 4. In response to Plaintiffs' requests for relief, Defendants denied that any judiciable controversy existed. Indeed, Defendants 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." *See* Defendants' Motion for Partial Judgment on the Pleadings, Doc. 12 at pg. 12.

Three days ago, Defendants' actions betrayed their position and mooted their argument that this case is speculative. On October 19, 2015, Defendants purported to recreate a fire district. This time excluding even more properties. Defendants did so via three resolutions:

- (1) Resolution 2015.10.19.06 ("Resolution 6"), which seeks to create a new Fire District under O.R.C. § 505.37(C);
- (2) Resolution 2015.10.19.07 ("Resolution 7"), which seeks to obtain funding for Resolution 6 on the impending March 2016 ballot; and
- (3) Resolution 2015.10.08 ("Resolution 8") (collectively, the "Resolutions" attached hereto as **Exhibit B**), which removes all Fire and EMS services from the Development.

¹ See Complaint, Doc. 1.

In essence, Defendants have placed the citizens and patrons of the Development in the exact same position they were in at the inception of the litigation initiated in Greene County, for which injunctive relief was immediately granted. This time, Defendants have gone even farther, to exclude additional properties from fire protection simply because the properties lie in the Township and the City of Centerville.

Defendants' passage of the Resolutions impacts the matter *sub judice* in two ways. First, it makes moot Defendants' arguments that there is not a judiciable controversy, and that "Plaintiffs have not pointed to any activity demonstrating Defendants have plans to simply repeat their actions." Defendants' Motion, Doc. 12 at pg. 11. Defendants have *in fact* passed a new Fire District, and Defendants *in fact* now seek to remove protection from the Development, its patrons, and the motoring public. Defendants are now removing all Fire and EMS services from the Development, and are placing Plaintiffs, along with the citizens of and visitors to Greene County, along with anyone traveling along I-675, in immediate danger.

Defendants' passage of the Resolutions impacts the current litigation in another vital way. Through the passage of the Resolutions, the immediacy of the need for certification becomes all the more apparent. Defendants seek to remove services from the Development in conjunction with voter-approved funding under O.R.C. § 505.37 on the upcoming March 15, 2016 primary election day. Defendants actions directly call into question the permissibility of Defendants removing services from the Development, the exact question upon which Plaintiffs seek Ohio Supreme Court certification.

II. CONCLUSION

Plaintiffs initiated this action and sought immediate certification to prevent Defendants from being in the exact position in which they now place themselves, pursuing a levy that is likely invalid. Defendants have materially changed their position and the facts underlying the

motions before this Court. Accordingly, Plaintiffs respectfully request that Defendants' Motion for Partial Judgment on the Pleadings be denied, and that this Court certify Plaintiffs' questions to the Ohio Supreme Court so that the important legal issues can be resolved prior to the election.

Respectfully submitted,

/s/ Sophia R. Jannace
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Charles M. Miller (73844)
Sophia R. Jannace (91361)
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Attorneys for Plaintiffs/Relator

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dawn M. Frick
Liza J. Brackman
8163 Old Yankee Street, Suite C
Dayton, OH 45458

Stephanie R. Hayden
Assistant Prosecuting Attorney
Greene County Prosecuting Attorney's Office
55 Greene Street
Xenia, OH 45385

/s/ Sophia R. Jannace
Sophia R. Jannace (91361)

EXHIBIT E

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January 8, 2016

VIA FACSIMILE AND OVERNIGHT MAIL

Hon. Jon A. Husted
Ohio Secretary of State
80 E. Broad St., 16th Floor
Columbus, Ohio 43215
Fax: (614) 644-0649

Llyn McCoy, Director
Greene County Board of Elections
551 Ledbetter Road
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Fax: (937) 562-6171

Re: *Objection to Sugarcreek Township's 5.3 mill Tax Levy*

Dear Hon. Jon A. Husted and Director McCoy,

I and the law firm of Keating Muething & Klekamp PLL represent Cornerstone Developers, Ltd. ("Cornerstone"). Cornerstone is an Ohio limited liability company that owns parcels of real estate located in Greene County, Ohio (the "Development"), consisting of a northern parcels, the approximate 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 southern parcels 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 Sugarcreek Township pursuant to a type-2 annexation. Cornerstone hereby submits its objection to a proposed 5.3 mill tax levy in Sugarcreek Township (the "Ballot Initiative").

On October 19, 2015, Sugarcreek Township purported to recreate a discriminatory fire district through the passage of three resolutions: (1) Resolution 2015.10.19.06, which created a fire district under O.R.C. § 505.37(C), removing all incorporated areas from Sugarcreek Township's Fire and EMS service (the "Replacement Fire District"); (2) Resolution 2015.10.19.07, which 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, in which the Sugarcreek Township Trustees provided their intention to repeal the five existing fire levies if the voters passed the new 5.3 mill levy. In the October 19, 2015 meeting, the Township stated that its purpose in passing these resolutions was to discourage future annexations into the City of Centerville.

R.C. § 505.37 provides Townships the ability to create fire districts "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and

lives of the citizens against damages resulting from their occurrence.” Sugarcreek Township’s creation of the Replacement Fire District to deter future annexations is not a proper purpose under R.C. § 505.37, and is at the expense of the safety and welfare of its citizens and people frequenting Sugarcreek Township. In this way, the Ballot Initiative violates Ohio law.

R.C. § 505.37(C) further provides that “[a]ny municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal.” R.C. § 505.37(C) also provides that “[a] board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal.” As Sugarcreek Township has maintained Fire and EMS Services for Cornerstone’s Development and other incorporated areas of the Township within Centerville, it cannot remove Fire and EMS Service without Centerville’s consent. Centerville has not consented. In this way, the Ballot Initiative violates Ohio law.

On December 22, 2015, the Greene County Board of Elections certified the 5.3 mill levy for the proposed Replacement Fire District and sent the ballot issue to the Ohio Secretary of State.

Sugarcreek Township also failed to comply with the requirements of R.C. § 5705.03(B). R.C. § 5705.03(B) 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.

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.” Resolution 2015.10.19.07 was thus the first resolution passed by Sugarcreek Township under R.C. § 5705.03(B)’s two resolution process. Sugarcreek Township failed to pass a second resolution after certification by the Greene County Auditor until January 8, 2016.

On January 8, 2016, Sugarcreek Township passed Resolution 2016.08.01, 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

Jon Husted, Ohio Secretary of State
Llyn McCoy, Greene County Board of Elections Chair
January 8, 2016
Page 3

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.

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." As 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.

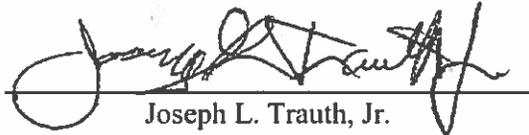
As the Ballot Initiative violates the purpose of R.C. § 505.37 as a fire district cannot be created to deter annexations, only a municipality may remove Fire and EMS Service under R.C. § 505.37(C), and Sugarcreek Township did not comply with R.C. § 5705.19 by certifying a resolution for a tax levy less than 90 days prior to an election, Cornerstone files this objection to the 5.3 mill levy, and request that the 5.3 mill tax levy is rejected as unlawful.

We look forward to your response to our objection.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By:



Joseph L. Trauth, Jr.

cc: Jordan S. Berman
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of foregoing Evidence of Respondent Sugarcreek Township's has been served via email on the same date of filing to the following:

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