

IN THE SUPREME COURT OF OHIO

STATE EX REL. PAUL L. JACQUEMIN
7347 Hyland Croy Road
Plain City, Ohio 43064

STATE EX REL. MARY M. JACQUEMIN
7347 Hyland Croy Road
Plain City, Ohio 43064

Relators,

-v-

UNION COUNTY BOARD OF ELECTIONS
835 East 5th Street
Marysville, Ohio 43040

Respondent.

CASE NO.

**ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS**

**PEREMPTORY AND/OR
ALTERNATIVE WRITS REQUESTED**

**RELATORS' COMPLAINT IN ORIGINAL ACTION FOR
WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS**

Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Derek Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

Laura M. Comek (0070959)
LAURA M. COMEK LAW LLC
300 E. Broad Street, Suite 450
Columbus, Ohio 43215
Phone: (614) 221-0717
Facsimile: (614) 221-1278
laura@comeklaw.com

Counsel for Relators

Thayne D. Gray (0059041)
Assistant Prosecuting Attorney
UNION COUNTY PROSECUTOR'S
OFFICE
221 West Fifth Street, Third Floor
Marysville, Ohio 43040
Phone: (937) 645-4190
tgray@co.union.oh.us

Counsel for Respondent

Petition For Writ Of Prohibition and/or Writ of Mandamus

Relators Paul L. Jacquemin and Mary M. Jacquemin (“Relators”) bring this original action requesting that a writ of prohibition and/or a writ of mandamus be issued ordering Respondent Union County Board of Elections (“Respondent” or “Board”) to act in accordance with Ohio Rev. Code §519.12 and the decisions of this Court and/or to prevent Respondent from certifying to the ballot a referendum on Jerome Township Rezoning Resolution 15-167, adopted by the Board of Trustees of Jerome Township, Union County, Ohio.

Relators aver as follows:

Jurisdiction and Parties

1. The Court possesses jurisdiction over the subject matter of this action and over Respondent pursuant to Section 2, Article IV of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code.
2. Relators Paul L. Jacquemin and Mary M. Jacquemin are the owners of the property located at 7347 Hyland Croy Road, Plain City, Ohio, 43064, whose property was included in the subject rezoning application, and are the protestors against the Petition for Zoning Referendum on Jerome Township Resolution 15-167 (“Referendum Petition”).
3. Respondent Union County Board of Elections is the duly established and acting election authority for Union County, Ohio, pursuant to Ohio Rev. Code §3501.06.

4. Relators affirmatively allege that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonable delay or lapse of time in asserting their rights herein and, further, there is no prejudice to Respondent. [See, e.g., *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277].
5. Relators lack an adequate remedy in the ordinary course of law.

Factual Background

6. On May 26, 2015, Relators and Schottenstein Real Estate Group executed a Zoning Application, a proposal to amend the zoning classification of 60.43 acres of three parcels of land, two owned by Relators (Parcel Nos.1700310380000 and 1700310381000) and one owned by Arthur and Elizabeth Wesner (Parcel No. 1700310360000), in Jerome Township, Union County, Ohio, from Rural Residential to Mixed Use Planned Development. The application was filed with the Township on May 26, 2015. [See, Zoning Application, appended hereto as Exhibit A].
7. On December 23, 2015, the Jerome Township Board of Trustees convened a public hearing on the rezoning request regarding Relators' and Arthur and Elizabeth Wesners' property. At the conclusion of the hearing, the Jerome Township Trustees voted 2-1 to adopt Resolution 15-167. [See, December 23, 2015 Jerome Township Board of Trustees

Meeting Minutes, including Resolution 15-167, appended hereto as Exhibit B].

8. Resolution 15-167 states as follows:

“The Jerome Township Trustees hereby enter into record a Resolution adopting and modifying the recommendation of the Jerome Township Zoning Commission. It is recognized that the applicant filed a Preliminary Zoning Plan Application for a Mixed Used Planned Development (PUD #15-120).

It is recognized by the Trustees that the application meets the requirements of the Jerome Township Comprehensive Plan and further the applicant and co-applicants have agreed to make substantial financial contributions to the needed road improvements. The application further meets the needs of the Township regarding senior housing and care and multi-unit housing in accordance with future needs as presented to the Township by the Mid Ohio Regional Planning Commission (MORPC) and other independent studies.

It is agreed that after passage, the applicant or their representatives will negotiate with Township representatives in good faith the following terms of passage to be presented in text upon such time the Final Development Plan is presented for approval.

1. Terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed for the Final Development Plan and also reimburse Jerome Township and agreed upon expenses in the execution of these documents should they be necessary.
2. Applicant and or their legal representative shall enter into an agreement in the Final Development Plan as an agreement that will include negotiated reimbursement to Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development until such time tax revenue is generated at projected build out.
3. Negotiate in good faith with any other terms and conditions as necessary in the text of the Final Development Plan.

Jerome Township further reserves the right to negotiate further terms of the Final Development Plan beyond the scope of this resolution.

Amended portion of the resolution is to include the modifications as presented by the Applicant/Developer in their memorandum dated December 22, 2015.”

9. Resolution 15-167 incorporated a December 22, 2015 memorandum, which was not attached to the Referendum Petition. [See, December 22, 2015 memorandum, appended hereto as Exhibit C].
10. On January 21, 2016, a group of petitioners filed the Referendum Petition with the Jerome Township Board of Trustees seeking to submit the adoption of Resolution 15-167 to the electors of Jerome Township. [See, Sample Petition, appended hereto as Exhibit D].
11. The summary on the first page of each Part-Petition states as follows:

“A Zoning amendment approving rezoning an irregular “L” shaped site of approximately 60.43 acres Between the West side of Hyland Croy Road and the East side of US 33 from U-1 Rural District to P.U.D. Planed (*sic.*) United Development for Parcels 17-0031038000 and 17-0031038100 known as the “Jacquemin Farms.”

The P.U.D. Planed (*sic.*) Unit Development (Res. 15-167) provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility (See Development Site Map – Exhibit #2 and Plot Map – Exhibit #3.) The Nearest intersection being Hyland Croy Road and SR 161 – Post Road.

All as more fully described and identified in the attached:

 - 1) The Record of Proceedings of Jerome Board of Trustees Public Hearing of December 23, 2015 (Exhibit #1)
 - 2) “Jacquemin Farms. Vicinity “Site” Map (exhibit #2
 - 3) Development Plot Map (exhibit #3)”
12. On February 4, 2016, Relators filed a Protest Against Petition for Zoning Referendum on Jerome Township Resolution 15-167 (“Protest”)

with Respondent. [See, February 4, 2011 Protest, appended hereto as Exhibit E].

13. On February 9, 2016, a second protest was filed by Arthur and Elizabeth Wesner, who also own land subject to Resolution 15-167, which set forth additional protest grounds that are not part of this Court action.
14. On March 4, 2016, at its regular board meeting, Respondent decided not to certify the Referendum Petition until a protest hearing could be conducted.
15. On March 23, 2016, the Board Director set April 12, 2016 as the date for the protest hearing.
16. On April 6, 2016, Relators filed a Pre-Hearing Brief with Respondent, providing additional legal arguments in support of their protest. [See, Pre-Hearing Brief, appended hereto as Exhibit F].
17. On April 12, 2016, Respondent held a quasi-judicial hearing on the two protests in which Respondents' counsel, protestors Arthur and Elizabeth Wesner's counsel, and Referendum Petition representatives were present. Respondent heard sworn testimony and accepted exhibits from the parties at the hearing, which were entered into the record.

18. At the conclusion of the hearing on the protests, Respondent Board members voted 3-1 to certify the Referendum Petition and place the issue on the November 8, 2016 general election ballot.

First Claim for Relief: Writ of Prohibition

19. Relator incorporates by reference Paragraphs 1 through 18 above.
20. Ohio Rev. Code §519.12(H) provides, in relevant part:

“The proposed amendment, if adopted by the board, shall become effective in thirty days after the date of its adoption, unless, within thirty days after the adoption, there is presented to the board of township trustees a petition . . .

* * *

Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and **a brief summary of its contents**. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.” (Emphasis supplied).

21. The “brief” summary” of the resolution’s content “must be accurate and unambiguous; otherwise the petition is invalid and the subject resolution will not be submitted for vote. . . if the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and the subject resolution will not be submitted for vote.” *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St.3d 212, 218-219 (2006).

22. Petition signers may rely upon the summary language instead of wading through pages of exhibits attached to the petition before deciding whether to sign the Referendum Petition. *State ex rel. Gemienhardt*, 109 Ohio St.3d at 221.
23. The summary contained in the Referendum Petition was in fact ambiguous, misleading, inaccurate, and contained material omissions which would confuse the average person.
24. In addition, the Referendum Petition summary contained select information outside of Resolution 15-167 which created a further deficiency. By including only a portion of the information about the subject rezoning, but omitting other essential information about the rezoning, the petitioners deceived electors about the nature of the zoning amendment. *See, East Ohio Gas Co. v. Wood Cty. Bd. of Elections*, 83 Ohio St.3d 298, 301-302 (1998).
25. As referenced in Relators' protest, ground 1, the Referendum Petition summary is ambiguous and misleading because it states that the resolution "provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility," but the summary materially omits that the land was re-zoned for "mixed use," which would allow for not only residential use, but also retail, office, institutional, and agricultural purposes per the Preliminary Development Plan approved by the Township. Further, in fact only 125, not 250, adult living facility units

will be constructed. [See, Preliminary Development Text, appended hereto as Exhibit G].

26. As referenced in Relators' protest, ground 2, the Referendum Petition summary is ambiguous and misleading because it only references Parcel Nos. 17-0031038000 and 17-0031038100, but materially omits a third parcel subject to the rezoning, Parcel No. 17-003103600, which is owned by Arthur and Elizabeth Wesner. The Wesner' property is approximately one fifth of the acreage being rezoned. When questioned at the April 12, 2016 protest hearing about why the summary omitted a parcel number, a Referendum Petition organizer testified that it might have been an oversight. Further, the summary makes only reference to "Jacquemin Farms," and makes no reference to the Wesners' property.
27. As referenced in Relators' protest, ground 3, the Referendum Petition summary is ambiguous and misleading because it materially omits that Resolution 15-167 imposed three significant requirements on the zoning applicants, which include the applicants must: (1) negotiate the terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed; (2) enter into an agreement to reimburse Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the

- proposed development; and (3) negotiate any other terms and conditions as necessary in the text of the Final Development Plan.
28. As referenced in Relators' protest, ground 4, the Referendum Petition summary is ambiguous and misleading because it materially omits that Jacquemin Farms, which is a beloved community destination, will continue to operate on the site its "you-pick" agricultural farm and its retail farm market. Rather, the summary references only residential uses for the land being rezoned.
29. As referenced in Relators' protest, ground 5, the Referendum Petition summary is inaccurate and misleading because it incorrectly describes the zoning classifications as changing from "U-1 Rural District to P.U.D. Planed (*sic.*) Unit Development" when the December 23, 2016 meeting minutes clearly and accurately state that the zoning classification would change from "RU (Rural Residential District) to PD (Planned Development District." Testimony at the hearing established that there are substantive differences between the former and latter terms.
30. As referenced in Relators' protest, ground 6, the Referendum Petition summary is ambiguous and misleading because it inaccurately describes the location of the land area describing that the "nearest intersection [is] Hyland Croy Road and SR 161 – Post Road" when in fact this stated intersection is approximately a half mile south of the

subject parcel and was the subject of a recent highly controversial rezoning of a different property to allow for “big box” retail. In fact, two other intersections, Hyland Croy Road and Park Mill Drive as well as Hyland Croy and Weldon Road, actually border the property subject to Resolution 15-167. Further, there is actually not an intersection of Hyland Croy Road and SR 161 - Post Road.

31. As referenced in Relators’ protest, ground 7, the Referendum Petition summary is ambiguous and misleading because it inaccurately describes the owners of the land as “Jacquemin Farms” when, in fact, the owners of the land are Paul and Mary Jacquemin and additionally, Arthur and Elizabeth Wesner own a significant portion of the land that is subject to Resolution 15-167.
32. As referenced in Relators’ protest, ground 8, the Referendum Petition summary is ambiguous and misleading because it includes a misleading description of the shape of the land area as an “irregular L” shape.
33. As referenced in Relators’ protest, ground 9, the Referendum Petition summary is ambiguous and misleading because it omits any reference to the December 22, 2015 memorandum that was significant to Resolution 15-167 as it modified the original application.
34. Respondent, acting in a quasi-judicial capacity, abused its discretion and clearly disregarded applicable law and acted without legal

authority by concluding that the Referendum Petition summary was sufficient to comply with R.C. 519.12, i.e., that it is not inaccurate or misleading and does not contain material omissions.

35. Respondent's decision to reject Relator's protest and to permit the submission of the Referendum Petition to the electors was a quasi-judicial act unauthorized by law.
36. Relators have no adequate remedy at law apart from a writ of prohibition.

Second Claim for Relief: Writ of Mandamus

37. Relator incorporates by reference Paragraphs 1-36 above.
38. Respondent has a clear legal duty to reject the Referendum Petition because it failed to meet the requirements of Ohio Rev. Code § 519.12 in that the summary of the Referendum Petition was inaccurate, ambiguous, misleading, and contained material omissions which would confuse the average person.
39. Relators have a clear legal right to a decision from Respondent that complies with Ohio Rev. Code §519.12 and the case law of this Court.
40. Relators have no adequate remedy at law to compel Respondents to properly apply Ohio Rev. Code §519.12.

Prayer for Relief

WHEREFORE, Relators respectfully pray the Court to grant the following relief:

- A. Issue a Peremptory Writ of Prohibition or Writ of Prohibition prohibiting Respondent from certifying the Referendum Petition and submitting the issue to the ballot for the November 8, 2016 General Election;
- B. Issue a Peremptory Writ of Mandamus or Writ of Mandamus ordering Respondent to sustain Relators' protest;
- C. Assess the costs of this action against Respondent;
- D. Award Relators' their attorneys' fees and expenses; and
- E. Award such other relief as may be appropriate.

Respectfully submitted,

/s/ J. Corey Colombo

Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Derek Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

Laura M. Comek (0070959)
LAURA M. COMEK LAW LLC
300 E. Broad Street, Suite 450
Columbus, Ohio 43215
Phone: (614) 221-0717
Facsimile: (614) 221-1278
laura@comeklaw.com

Counsel for Relators

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit A



Jerome Township
Union County, Ohio

9777 Industrial Parkway
Plain City, Ohio 43064
Office (614) 873-4480
Fax (614) 873-8664

Application Form

PUD Zoning

Office Use Only:	
Application #: _____	Date: _____
Fee: \$ _____	Check #: _____

Agent / Applicant Information:

Agent / Applicant Name: SCHOTTENSTEIN REAL ESTATE GROUP Date: 5/26/15

Mailing Address: 2 EASTON OAK #510, COLUMBUS, OH 43219

Email Address: dh@sreregroup.com or williamwestbrook@yahoo.com Phone: 614-418-8907 or 614-571-1155

Property Information:

Property Address: 7437 HYLAND-CROFT ROAD, PLAIN CITY, OH 43064

Property Owner: PAUL & MARY JACQUEMIN, ARTHUR & ELIZABETH WISNER

Parcel ID # (s) 170031038000 & 170031036000
170031038100

Acreage: 60.43 Current Zoning: RURAL RESIDENTIAL Subdivision Name: N/A

PUD Zoning Information:

PUD Type Requested:

- Residential
- Commercial / Office
- Industrial
- Mixed-Use
- Modification of Existing PUD

Adjacent Land Uses:

North: METRO PARK
South: AGRICULTURE
East: LIGHT INDUSTRIAL
West: AGRICULTURE / RESIDENTIAL

Proposed Utilities:

- Public Sewer
- On-Site Sewer
- Public Water
- Private Well

The undersigned certifies that this application and the attachments thereto contain all the information required by the Zoning Resolution and that all information contained within this application is true and accurate to the best of his/her knowledge. Applicant hereby certifies that they have legal ownership or legal control over the property to be rezoned and agrees to be bound by the provisions of the Jerome Township Zoning Resolution.

SCHOTTENSTEIN REAL ESTATE GROUP

Agent / Applicant Signature: Donald J. Hentz Jr. Date: May 26, 2015

Property Owner Signature (if different from the Applicant): _____

The owner(s) of land, in requesting that the Zoning Resolution be amended to include such land in the PUD, shall file fifteen (15) paper copies, and one electronic copy, of the application, Zoning Plan, and Zoning Text for such amendment with the Jerome Township Zoning Commission which shall contain:

1. Application form and supplementary information:

- name, address and telephone number of the owner and applicant;
- name, address and telephone number of the urban planner, architect, landscape architect, surveyor and/or engineer assisting in the preparation of the Zoning Plan;
- legal description of the property and the address of the property;
- description of existing uses;
- present zoning district;
- a vicinity map at a scale approved by the Zoning Commission showing the relationship of the PUD to the adjacent properties, existing streets and public service facilities in the area;
- a list of the names and addresses of all owners of property which are within, contiguous to and directly across the street from the subject property as such addresses appear on the County Auditor's current tax list; and
- any other matter or information deemed necessary or relevant by the Zoning Commission for the proposed amendment.

2. Zoning Plan

In addition to the application required herein, fifteen (15) copies of the proposed Zoning Plan shall be submitted with the application. The proposed Zoning Plan shall be prepared and endorsed by a qualified urban planner, architect, landscape architect, engineer and/or surveyor, with all mapping to be at a scale of at least 1" = 100', and shall include, in text and map form, the following:

- Proposed location and size of the proposed planned district. This includes a survey map of the boundaries of the site and a legal description.
- A list and description of the precise uses proposed for the development. Listed uses shall be defined by their customary name or identification, except where they are specifically defined or limited in the Zoning Plan or this Zoning Resolution. Any listed use may be limited to specific areas delineated in the proposed Zoning Plan.
- Concept site plan of the proposed planned district, and proposed layout of all subareas.
- Proposed densities, number of lots and dimension parameters, and building intensities.
- Proposed parks, playgrounds, schools and other public facilities or open spaces including woodland preservation and natural topography preservation areas with their suggested ownership.
- Locations of stream channels, watercourses, wooded areas and buffer areas shall be designated. Existing topography and drainage patterns shall also be shown.
- Relation to existing and future land use in surrounding area.
- Proposed provision of water, sanitary sewers, surface drainage, and street lighting.
- Proposed traffic and pedestrian circulation pattern, indicating both public and private streets or highways, access points to public rights-of-ways, bike paths and trails, sidewalks and any off-site street improvements.
- An anticipated schedule for the development of units to be constructed in progression and a description of the design principles for buildings and streetscapes; tabulation of the number of acres in the proposed phase for various uses, the number of housing units proposed by type; building heights; open space; building intensity; parking areas; density and public improvements proposed.
- Engineering feasibility studies and schematic plans showing, as necessary, water, sewer and other utility installations, waste disposal facilities, surface drainage, and street improvements.

- Site plan, showing approximate nonresidential building locations(s), various functional use areas, circulation, and their relationship.
- General architectural design criteria for proposed buildings, structures, signs and exterior lighting with proposed control features.
- Deed restrictions, protective covenants, and other legal statements or devices to be used to control the use, development and maintenance of the land, the improvements thereon, including those areas which are to be commonly owned and maintained.
- Projected schedule of site development.
- Evidence that the applicant has sufficient control over the land to carry out the proposed development.
- Regulation Text for development in the proposed Planned Unit Development District. That text must set forth and define the uses to be permitted in the proposed Planned Unit Development District and the development standards applicable to the proposed District. The Regulation Text is intended to guide all development of the property proposed to be designated as a PUD.

3. Zoning Text

This Regulation Text shall only apply to the PUD in question and all development within that PUD. All appropriate regulatory areas should be addressed by the applicant in the Regulation Text including, without limitation, the following:

- All required setbacks including, but not limited to, buildings, service areas, off-street parking lots and signage, including rear, front and side yard areas.
- All maximum height and size requirements of buildings, mechanical areas and other structures.
- All parking and loading space standards per building square footage or dwelling unit type, including dimensions of all parking stalls, aisles and loading spaces.
- All street and road right-of-way and pavement width dimensions, curb cut spacing and other related circulation standards.
- All pedestrian and bicycle walkway, trail and sidewalk dimensional standards, including rights-of-way and pavement width, and pavement standards.
- All screening and landscaping standards, including buffer dimensions, height, landscape material, maintenance standards, and screening standards for off-street parking areas, loading docks, trash receptacles and dumpsters, ground- and roof-mounted mechanical units and adjoining areas.
- All proposed signage and graphic standards, including height, setback, square footage, colors, corporate logos and type.
- All exterior lighting standards, including light intensity, placement, height and materials for parking lots, walkways, sidewalks and accent lighting.
- All exterior architectural design standards, including material, color and styles.
- A list and description of the precise uses proposed for the development. Listed uses shall be defined by their customary name or identification, except where they are specifically defined or limited elsewhere in the Zoning Plan or this Zoning Resolution. Any listed use may be limited to specific areas delineated in the proposed Zoning Plan;
- Frontage requirements, minimum lot area requirements, yard areas, lot coverage restrictions and perimeter setback requirements.
- Accessory structure standards and limitations.
- Open space area, uses and structures, including proposed ownership and sample controlling instruments.
- Any other regulatory area or matter deemed necessary or relevant by the Zoning Commission.
- The Regulation Text should contain the following provision: All development standards not specifically addressed by the Regulation Text shall be regulated by those general development standards set forth in the Zoning Resolution.

Case No. _____

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STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit B

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

**Application for a Zoning Amendment PUD 15-120
Submitted by Schottenstein Real Estate Group
RU (Rural Residential District) to PD (Planned Development District)
(Approximately 60.43 acres)
Parcel Numbers 17-0031038000, 17-0031038100 and 17-0031036000**

The Jerome Township Board of Trustees met in special session on December 23, 2015 at 8:00 a.m. for a public hearing continued from November 30, 2015. Board Chairman Ronald Rhodes called the meeting to order. Ronald Rhoades, Joe Craft and C.J. Lovejoy answered the roll call. Also in attendance was Gary Smith, Zoning Inspector.

The Jerome Township Board of Trustees opened the Public Hearing on the proposed application for a Zoning Amendment. The original application PUD 15-120, submitted by Schottenstein Real Estate Group, requests an amendment from RU (Rural Residential District) to PD (Planned Development District) be granted for approximately 60.43 acres. This property is identified as parcel numbers 17-0031038000, 17-0031038100 and 17-0031036000 and is located at 7437 Hyland Croy Road, Plain City, Ohio.

The Board provided an overview of the application and the various items discussed at the previous meeting. Included as part of the overview were the following points:

- Board has received a number of calls and emails both in support and against the rezoning
- LUC met on June 11, 2015 where the Committee recommended to approve the zoning amendment with the condition that all staff and LUC Zoning & Subdivision Committee comments be included with extra emphasis on the Traffic Impact Study being approved by both the Union County Engineer's Office and the City of Dublin before Jerome Township approves the application
- Jerome Township Zoning Commission voted to recommend the application in a five to zero vote also with the condition that the traffic study be completed and that prior to the adoption of a final development plan, a formal agreement must be executed between the developer and the County detailing the required traffic improvements and the developer's required contribution to those improvements
- Review of the design and layout (multi-family)
- Land use and fit with route 33 corridor
- 300 dwelling units
- 250 bed senior care facility (three stories reduced from four)
- Density of 8 units per acre (higher than current standards, Jerome Township is typically 3 - 6)
- Traffic concerns

Gary Smith reported that he was instructed by the Board to submit a list of questions to the applicant who responded and submitted a revised development text yesterday.

Dana McDaniel, Dublin City Manager, addressed the Board. As in the previous meeting Mr. McDaniel presented an argument against the application noting the following items:

- Not consistent with the comprehensive plan
- Major issues with traffic
- Financial contribution concerns
- Ongoing discussions regarding utilities (water and sewer)

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

He concluded by stating that the City of Dublin does not support the proposed rezoning and does not support the Jerome Township Comprehensive Plan.

Laura Comek provided an update on where the traffic study stood. In addition she stated that the City of Dublin was to spend \$40 to \$60 million dollars and provided a tax calculation sheet of the amount of tax revenue to be generated by the project.

Paul Jacquemin, co-applicant, stated he has been a land owner for forty-five years and currently owns and operates a business on this property. Due to growth in the area the property is now not ideal for growing produce but wants to continue to operate and make sales on part of the property.

Joseph Hinricks, Pastor at St. Brigid of Kildare, stated he supported the senior facility as a need for the area.

Don Hunter of Schottenstein Realty Group reviewed the questions posed to the applicant by the Board including the following:

1. Fire departments ability to service the area with the senior living facility
2. Assisted living – need
3. Assisted living – operation
4. Ponds
5. Unit breakdown
6. Unit size
7. Comprehensive plan
8. Total number of apartments
9. Weldon Road
10. Roadway improvements (applicant's commitment)
11. Roadway improvements (tax revenue)

Joe Craft questioned the number of parking spaces in the assisted living area. It was indicated that in sub area B there are 214 spaces proposed.

C.J. Lovejoy commented on the working agreement indication that the traffic issue needs to be resolved before the final development plan with an infrastructure agreement.

Mr. Craft questioned the document on tax revenue indication that it was not in agreement with the information he had obtained from the Fiscal Officer.

Jesse Dickinsen stated that there were problems with the traffic and indicated his willingness to assist with a referendum.

Dave Gulden and Brad Bodenmiller of the LUC reviewed the plan back in June and have approved the modifications including the sub area B density. They also discussed the lack of mounding and landscaping along Route 33.

Andrew Diamond stated he was opposed to the rezoning and the development stating that the proposed plan is not consistent with the Crossroads Plan. He indicated that a decision needs to be postponed as 300 apartments do not make sense.

Fernando Arona, a resident of Jerome Village indicated that the residents of Jerome Township will be affected by this development on a daily basis.

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

Deacon Frank Iannarino, of St. Brigid of Kildare, stated that this project would be a major asset for the community especially for residents who do not want to leave the area as they get older.

Jim Mitchell read a letter from Ken Gorden a past trustee candidate.

Steve Pagura indicated that the project was a good buffer next to single family residents.

Laura Comek addressed the conditions indicated by the LUC.

Joe Sullivan went through the revision of the application including setback, mounding, and traffic.

It was moved by Ron Rhodes and seconded by C.J. Lovejoy that the Jerome Township Board of Trustees adopt the following resolution:

The Jerome Township Trustees hereby enter into record a Resolution adopting and modifying the recommendation of the Jerome Township Zoning Commission. It is recognized that the applicant filed a Preliminary Zoning Plan Application for a Mixed Use Planned Development (PUD #15-120).

It is recognized by the Trustees that the application meets the requirements of the Jerome Township Comprehensive Plan and further the applicant and co-applicants have agreed to make substantial financial contributions to the needed road improvements. The application further meets the needs of the Township regarding senior housing and care and multi-unit housing in accordance with future needs as presented to the Township by the Mid Ohio Regional Planning Commission (MORPC) and other independent studies.

It is agreed that after passage, the applicant or their representatives will negotiate with Township representatives in good faith the following terms of passage to be presented in text upon such time the Final Development Plan is presented for approval.

- 1. Terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed for the Final Development Plan and also reimburse Jerome Township and agreed upon expenses in the execution of these documents should they be necessary.**
- 2. Applicant and or their legal representative shall enter into an agreement in the Final Development Plan as an agreement that will include negotiated reimbursement to Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development until such time tax revenue is generated at projected build out.**
- 3. Negotiate in good faith with any other terms and conditions as necessary in the text of the Final Development Plan.**

Jerome Township further reserves the right to negotiate further terms of the Final Development Plan beyond the scope of this resolution.

Amended portion of the resolution is to include the modifications as presented by the Applicant/Developer in their memorandum dated December 22, 2015.

The vote resulted as follows:

Ronald Rhodes, yes
Lonnie (Joe) Craft, no
Charles (C.J.) Lovejoy, yes

The motion carried. (Res. 15-167)

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

At 9:50 a.m. it was moved that the Jerome Township Board of Trustees adjourn.
The motion carried.

Ronald Rhodes, Chairman

Robert Caldwell, Fiscal Officer

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit C

MEMORANDUM

TO: Jerome Township Trustees
Gary Smith
CC: Jennifer Huber
FROM: Schottenstein Real Estate Group c/o Laura Macgregor Comek, Esq.
RE: Jacquemin Farms Development
DATE: December 22, 2015

All:

This Memorandum is a follow up relative to the Jacquemin Family and the Schottenstein Real Estate Group's planned development of the Jacquemin Farms Site. Gary Smith, Township Zoning Officer, provided a list of questions from the Township Trustees. Below is our response to the Trustees' questions.

Generally speaking, I think it is important to consider the CONTEXT in which this rezoning project is being considered:

The Jacquemin Farms site is the Fourth site, in recent history, to develop with access/traffic along Hyland-Croy Road. The three prior sites (Jerome Village, Riviera and Celtic Crossing) have been permitted to zone and develop along the Hyland-Croy Corridor, and with direct roadway access to Hyland-Croy Road.

This development, like each prior development, will pay for its 'site improvements.' In addition, like each prior development, the Jacquemin Farms site will need more concentrated review/study to determine the extent of the project's regional impacts. The developer will pay its fair share of roadway improvements.

Zoning is the first step. Schottenstein Real Estate Group and the Jacquemin Family (the co-applicants) agree to participate and determine their regional contributions (roadway and other considerations) as a condition of Final Development Plan Approval.

1. The Wirchainski property, south of Jacquemin Farms (and further south to Post Road) is planned and zoned for ONLY large format retail and commercial uses. There are no residential uses with the approved Wirchainski zoning. The Jacquemin Farms Site, and adjacent Gorden Family Farms property, represent the balance of mixed-uses (i.e., multifamily residential, senior living and farm market/boutique retail) in the area.
2. There is a very intense and concerted effort by Dublin to develop the ground along US 33 in Dublin with Office, Institutional and Educational uses. Those areas are already defined within the corridor. Outside that core area, begins the transitional land uses, from more to less intense. By the time those uses get to Jacquemin Farms, multi-family, senior living and farm market/boutique retail are the most appropriate uses as between US 33 itself and large format retail and the existing single-family developments located east of Hyland-Croy Road..

All these points being considered, Schottenstein Real Estate Group, and Paul and Peg Jacquemin, co-applicants, request Jerome Township APPROVE the rezoning, and allow the remaining work to begin.

Outlined on the following pages is the list of Trustee questions that were sent to the co-applicants by Gary Smith. The questions have been "cut and pasted" and appear below as presented. Answers are provided in italics below each question:

1. **Fire Department**

There is some concern over the increase in services to the fire department in regards to both the rental community and the assisted living facility. The township has gotten an opinion from the chief that the assisted living facility will likely result in an increase of between 8% in runs for the department. We have not heard from the chief on the likely demands on manpower or equipment from the multi-family however. If the fire department is required to add an additional full time staff member for each shift (or the equivalent part time staff) this will increase the department's costs by approximately \$ 180k per year in manpower (1 full time staff member at \$60k for 3 shifts daily) and an unknown cost in equipment. In addition, there is concern over the lag in timing of the tax payments (a year behind) and the increase in demands on the Fire Department. Can the applicant address how the development will pay for the increase in demand for services?

*Response: As it relates to the assisted living facility, members of our development team, Bill Westbrook and Craig Bohning, met with Sam Parsons of the Division of Fire on December 8, 2015. They discussed the possible increase in runs if it were a nursing home (skilled nursing facility). A skilled nursing facility is not the identified user for the Jacquemin Farms Development. A skilled nursing facility requires a license to operate and the number of licenses is very limited and set by the state for each county. The reality here is that any development will increase the possibility of fire and ems 'runs' to the site. That being said, our user is The Villas At St. Therese. The Villas At St. Therese will consist of 75 independent units and 50 assisted living units. The Villas At St. Therese facility is NOT the higher runs/calls rate required by skilled nursing facilities. In terms of additional real property taxes, the improved value of the site for the independent and assisted living facility and the multi-family residential is expected to generate approximately \$150,000 annually in new fire/ems property tax payments for the first year of full property tax assessment. When the farm market/boutique retail is fully redeveloped, an approximate additional \$40,000 annually in fire/ems property taxes will be paid. **At that point, the new fire/ems property tax payments are projected to total approximately \$190,000 annually.***

2. **Assisted Living** – at least one of the trustees has expressed a disinterest in allowing age restricted apartments or condo's if the assisted living proves to not be viable. Can the applicant provide any market data to show that there is enough need for 2 assisted living facilities in that proximity and/or would the applicant be willing to consider a non- residential use as a fall- back position if the site ends up not being viable for a 2nd assisted living facility?

Response: In fact, there is strong demand for senior living throughout the country, but particularly here in Central Ohio. The demand for senior living tracks the baby boom generation, which generation set demand for all forms of commercial and residential business. Most recent studies show that each year, the population of Ohioans turning 65 years of age will increase from 5 to 8% per year. In contrast, the general population growth rate for the State of Ohio is less than 1% per year. Simply stated, our aging population wants to remain in their communities, but these persons do not want the demands of home maintenance and upkeep. They also wish to access quality healthcare. Very importantly, there is a strong demand for senior housing to be located near family, friends and worship communities. With regard to market reports, a November 2016 Vogt Santer market report shows a 94.5% occupancy rate for Assisted Living Facilities in the North/Northwest Columbus Submarkets. Occupancy rates for Independent Living Facilities that have been opened for a year or more, approach 100%. Currently, there are only 68 independent living units under construction in the North/Northwest Columbus Submarkets. The Co-Applicants are happy to restrict the use of subarea B to Adult Congregate Living Facility (ALF) uses, eliminating the age restricted market rate multi-family use.

3. **Assisted living** – One of the trustees would like to have a little more information on how the Assisted Living facility would likely function. For example, would this be a memory care / dementia facility that might need to be gated, would it be skilled nursing, etc.?

Response: As discussed, the ALF user for subarea B is The Villas At St. Therese, which will be developed, owned and operated by The Roman Catholic Diocese of Columbus, Diocesan Retirement Community Corporation. This new facility will consist of 75 Independent living units and 50 assisted units. Memory care units will be part of the assisted living units. The number of memory care units is undetermined at this point. All memory care units will be secured. Additional operating information is listed below:

- *There will be 31 staff members (includes full time and part time employees).*
 - *Nurses' aides, there are 3 eight hour shifts with 2 of each assigned for each shift.*
 - *Dietary there are 2 eight hour shifts (estimate 3-4 staff members)*
 - *Housekeeping there is one eight hour shift (estimate 3-4 staff members)*
- *Ratio of staff to residents 1:25 for nursing dept.*
- *Daily auto count*
 - *Estimate 15 of the 50 residents will have automobiles*
 - *20 staff member will drive automobiles to the property*
 - *About 20-25 visitor automobiles in a 24 hour period.*
- *The Villas provides services 24 hours a day, 7 days a week.*
- *All residents are expected to be ambulatory, however roughly 15 percent would need wheelchair assistance outside of their room.*

Further details regarding The Villas At St. Therese operations will be presented at the December 23 Jerome Township Trustees Zoning

4. **Ponds** – Can the applicant provide some additional information on the width and depth of the ponds adjacent to the freeway, as well as their distance to the freeway

Response: The Stormwater management and pond system has been designed by the civil engineering firm of EMH&T. Key facts:

- *Long Basin (West Side)*
 - *Distance to edge of travel lane 105' min to 125' to the top of basin*
 - *Top Width = Varies from 40' to 120'*
 - *Total Depth = approx. 8' (4' to normal pool and 4' below normal pool)*
- *Southwest Basin*
 - *Distance to edge of travel lane Approx. 115' to top of basin*
 - *Top Width = approx. 260' x 260'*
 - *Total Depth = approx. 12' (4' to normal pool and 8' below normal pool)*

During the Final Development Plan process, EMH&T and the applicants will work with the Ohio Department of Transportation and the Union County Engineer to insure that the storm water management system meets with proper engineering and safety practices.

5. **Unit Breakdown** – Can the applicant provide a definitive breakdown in the text on the total number of 1 bedroom, 2 bedroom and 3 bedroom apartments? If the applicant is looking for flexibility in the overall unit mix would the applicant be willing to provide a maximum number of 3 bedroom apartments?

Response: The breakdown for the rental units is:

<u>Type</u>	<u># units</u>	<u>#%</u>	<u>SF</u>	<u>SF w/Garage</u>
Garden 1 BR	28	9%	750	no garage
Garden 2 BR	56	19%	1,025	no garage
Garden 2BR (with 1 car attached Garage)	72	24%	1,080	1,400
Garden 2 BR (with 1 car attached Garage)	18	6%	1,300	1,620
Townhouse 2 BR (all attached Garages)	84	28%	1,210	1.425
Garden 3 BR	14	5%	1,350	no garage
Townhouse 3BR (with 1 car attached Garage)	28	9%	1,570	1,770
Total	300	100%		

The co-applicants are happy to have the zoning text stipulate the above rental unit breakdown.

6. **Unit Size** – Can the applicant clarify in the text the minimum square footage intended for the proposed 1 bedroom, 2 bedroom, and 3 bedroom apartments?

Response: Please see response to question 5.

7. **Comprehensive Plan** – At least one of the trustees has indicated a concern over the proposed mix of uses as it relates to the recommendations of the comprehensive plan. In specific, the concern is that this project is predominantly residential in nature (+/- 88% of the site devoted to residential uses) when the comp plan seems to indicate a predominantly commercial / office development. The trustees would like the applicant to address how they see this plan fitting within the recommendations of the comprehensive plan and to discuss if the applicant would be willing to change the mix of uses on this project to include less residential?

Response: Please note that The Villas At St. Therese, as with other ALF uses, is considered an institutional or commercial use and not a residential use. Therefore the 88% residential figure is not appropriate or accurate. As discussed above, this Site cannot be considered without the CONTEXT of surrounding land uses (existing, planned and zoned but pending development). There is NO RESIDENTIAL planned for the southerly parcels. There is only large format retail and commercial uses which to be supported, will need residential units. There is no defined percentage (%) for what mix of uses is required. On the contrary, the mix is determined often by a "best efforts" analysis. The underpinnings of this analysis is simple, there must be people living in close proximity to support retail and commercial uses. "Critical Mass" is the term commonly used to find the right 'balance.' In either event, this site is the best, most appropriate site for the multi-family, senior living (ALF), and farm market/boutique retail uses. The proposed uses are appropriate and compatible given the property location next to a high intensity freeway and to existing single family residential located east of Hyland-Croy Road.

8. **Total # of Apartments** – In line with #6 above, at least one of the trustees has indicated a concern over constructing a total of 300 apartment units at that location. Would the applicant be willing to discuss reducing the total number of units?

Response: As discussed above, the balance of residential versus retail/commercial heavily favors residential units to support adjacent neighborhood scaled commercial. In this case, 300 rental units are needed to make the project workable. Also, the proposed multi-family plan is low to moderate density. The scale of the multi-family plan is appropriate and necessary for a high quality development. Very importantly, the multi-family plan provides the necessary scale for the many shared amenity areas, which include the large central green with an expansive lake and walking paths. The amenity areas will be used by residents, employees and visitors to the senior living, farm market/boutique retail, and the multi-family community. In the case of this development, 300 rental units are appropriate and needed to make the project workable.

9. **Weldon Road** – Will the entrance and stub street planned for the existing ROW of Weldon Road be proposed as a public street or will the ROW be abandoned (is it already?) and the improvements made private and maintained by the developer? The abandonment and purchase of the ROW by the applicant would be preferable to at least one of the trustees.

Response: Access along Weldon Road (publicly dedicated right of way) has been approved by the Fire Department and will allow for increased site access, internal utility, etc. The Developer will reconstruct the road to appropriate specifications for the length of the road as shown on the Zoning Plan.

10. **Roadway Improvements** – In light of some of the recent events in the township with other projects, at least one of the trustees would like to further clarify / solidify the applicant's intent to help construct and pay for any roadway improvements / impacts that are required as a result of this development. The trustee would like further clarification on the total amount of dollars (given whatever information is available at this time) that the applicant feels they should be responsible for and if they are willing to pay this amount out of pocket

Response: The applicants will pay their fair share of roadway and other area/site improvements. The applicants fully expect to work closely with the Township, Union County, and other entities as may apply, to develop a payment that reflects the impact of this development on regional improvements. An excellent example of this spirit of cooperation and partnership is the May 2015 Infrastructure Agreement between The City of Dublin and the Developer of the new Riviera residential community. Under the May 2015 Infrastructure Agreement, the Riviera Developer obtained a direct Hyland-Croy roadway connection and agree to pay \$125,000 towards offsite intersection improvements

The applicants have agreed, as required by the recommendation of the Zoning Commission, to make their participation and a final infrastructure funding agreement, in accordance with Ohio law and other general established policies and procedures for such funding, A CONDITION OF DEVELOPMENT PLAN APPROVAL by the Township. The Developer along with the Developer's traffic engineer, Carpenter Marty Transportation, is working cooperatively with the Union County Engineer, The Ohio Department of Transportation, and the City of Dublin towards a final infrastructure funding agreement. All parties recognize that there is additional work needed to arrive at a final funding agreement. However, as expression of good faith and cooperation, the Developer will pay a MINIMUM OF \$250,000 towards offsite intersection improvements

11. **Roadway Improvements** – From the last trustee meeting, one of the trustees would like clarification regarding the statement that “there will be plenty of tax dollars to pay” for the roadway improvements. Is it the applicant’s intent to pursue TIF financing for these improvements? The County Commissioners have made it clear to the township that they will not approve a TIF for residential or for apartments based upon past experience. In light of that, if all 3 trustees cannot come to an agreement to approve a township TIF for this project, will the developer still financially be able to move forward with the project to include the payment of their fair share of the impacts / roadway improvements?

Response: As set forth above, the applicants fully expect to participate in the 'standard' development process whereby site and regional improvements are evaluated, and each parties funding determined. This site alone is expected to generate more than \$ 1.5 million annually in new property tax revenue. Over a 30 year period, the development will generate approximately \$53 million in new property taxes. The applicants will cooperate with the Township on a variety of funding options/sources, as the Township may determine are in the best interests of the Township. The applicants will commit to participate in Joint Economic Development District (JEDD) in partnership with Jerome Township.

Again, please note as outlined in Question #10, The applicants have agreed to make their participation and a final funding agreement, in accordance with Ohio law and other general established policies and procedures for such funding, A CONDITION OF DEVELOPMENT PLAN APPROVAL by the Township.

It is worth repeating, there is well established 'standard' process for evaluating the impacts of a particular development to roads (nearby and regional in nature). This process was followed by Dublin for Riviera and Celtic Crossing; and for Jerome Village. Zoning approval for this property is merely the first step to that analysis and process.

The applicants will proceed with the development, if the property is zoned and the Development Plan(s) are approved, regardless whether a TIF is approved or not.

Finally, if the zoning is approved by Jerome Township, and the final development plan is approved in a timely fashion by Jerome Township, the applicants will commit to develop the property in Jerome Township. We will not seek to annex the property into the City of Dublin, nor will we accept an annexation offer from the City of Dublin.

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit D

PETITION FOR A TOWNSHIP ZONING REFERENDUM

To be filed with the Board of Township Trustees within 30 days after the adoption of the amendment.
Revised Code 519.12, 3501.38

Amendment of Zoning Resolution and map to rezone approximately 60.43 acres applied for

by Schottenstein Real Estate Group from U-1 Rural District to P.U.D. Planed Unit Development (Res. 15-167)
(Name and number of the proposal, if any)

A proposal to amend the zoning map of the unincorporated area of JEROME Township,
UNION County, Ohio, adopted on the 23rd day of
DECEMBER, 2015.

The following is a brief summary of the proposed zoning amendment:

A Zoning amendment approving rezoning an irregular "L" shaped site of approximately 60.43 acres Between the West side of Hyland Croy Road and the East side of US 33 from U-1 Rural District to P.U.D. Planed Unit Development for Parcels 17-0031038000 and 17-0031038100 known as the "Jacquemin Farms." The P.U.D. Planed Unit Development (Res. 15-167) provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility (See Development Site Map - Exhibit #2 and Plot Map - Exhibit #3.) The Nearest intersection being Hyland Croy Road and SR 161 - Post Road.

All as more fully described and identified in the attached:

- 1) The Record Of Proceedings of Jerome Township Board Of Trustees Public Hearing of December 23, 2015 (Exhibit #1)
- 2) "Jacquemin Farms." Vicinity "Site" Map (exhibit #2)
- 3) Development Plot Map (exhibit #3)

To the Board of Township Trustees

of JEROME Township, UNION County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of JEROME Township, included within the JEROME Township Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area at the preceding gubernatorial election, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of JEROME Township residing within the unincorporated area of the township included in the JEROME Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on the 8th day of NOVEMBER, 2016, pursuant to Section 519.12 of the Revised Code.

Signatures on this petition must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<i>Jennifer McDonald</i>	7411 Spruce Ct	Jerome	Union	1/14/16
2.	<i>Kevin Brandy</i>	8180 McKittrick Rd	Jerome	Union	1-14-16
3.	<i>Molly Freese</i>	10123 Horseshoe Way	Jerome	Union	1/14/16
4.	<i>Mark Good</i>	10197 Bayberry Way	Jerome	Union	1/14/16
		VOTING RESIDENCE			

	SIGNATURE	ADDRESS STREET AND NUMBER	TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Dana Rodgers</i>	7435 Spruce Ct Plain City OH 43064	Jerome	Union	1/14/16
6.	<i>[Signature]</i>	7435 Spruce Ct Plain City OH 43064	Jerome	Union	1/14/16
7.	<i>[Signature]</i>	7451 Spruce Ct	Jerome	Union	1/14/16
8.	<i>[Signature]</i>	7452 Spruce Ct.	Jerome	Union	1/14/16
9.	<i>[Signature]</i>	7423 Spruce Ct	Jerome	Union	1/14/16
10.	<i>Adrian Glanvill</i>	7450 Spruce Ct	Jerome	Union	1/14/16
11.	<i>Elizabeth Glanvill</i>	7400 SPRUCE CT	Jerome	Union	1/14/16
12.	<i>[Signature]</i>	10090 Honeysuckle Way Plain City	Jerome	Union	1/14/16
13.	<i>[Signature]</i>	10635 Honeysuckle Way Plain City, OH, 43064	Jerome	Union	1/14/16
14.	<i>[Signature]</i>	7535 Ross Ave Dublin OH 43017	Jerome	Union	1/17/16
15.	<i>[Signature]</i>	7551 Ross Ave Dublin, OH	Jerome	Union	1/17/16
16.	<i>[Signature]</i>	7551 Ross Ave Dublin, OH	Jerome	Union	1/17/16
17.	<i>[Signature]</i>	7564 Ross, Dublin OH	Jerome	Union	1/17/16
18.	<i>[Signature]</i>	7564 Ross, DUBLIN OH	Jerome	Union	1/17/16
19.	<i>[Signature]</i>	8999 Tardon Field Dublin OH	Jerome	Union	1/17/16

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, Andrew J Diamond, declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Andrew J Diamond
 (Signature of Circulator)

7411 Spruce Ct.
 (Permanent residence address)

Plain City OH 43064
 (City or Village, State and Zip Code)

**WHOEVER COMMITS ELECTION
 FALSIFICATION IS GUILTY OF A
 FELONY OF THE FIFTH DEGREE**

Form 6-0 - Petition for township zoning referendum

Filed _____

Township Fiscal Officer _____

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

**Application for a Zoning Amendment PUD 15-120
Submitted by Schottenstein Real Estate Group
RU (Rural Residential District) to PD (Planned Development District)
(Approximately 60.43 acres)
Parcel Numbers 17-0031038000, 17-0031038100 and 17-0031036000**

The Jerome Township Board of Trustees met in special session on December 23, 2015 at 8:00 a.m. for a public hearing continued from November 30, 2015. Board Chairman Ronald Rhodes called the meeting to order. Ronald Rhoades, Joe Craft and C.J. Lovejoy answered the roll call. Also in attendance was Gary Smith, Zoning Inspector.

The Jerome Township Board of Trustees opened the Public Hearing on the proposed application for a Zoning Amendment. The original application PUD 15-120, submitted by Schottenstein Real Estate Group, requests an amendment from RU (Rural Residential District) to PD (Planned Development District) be granted for approximately 60.43 acres. This property is identified as parcel numbers 17-0031038000, 17-0031038100 and 17-0031036000 and is located at 7437 Hyland Croy Road, Plain City, Ohio.

The Board provided an overview of the application and the various items discussed at the previous meeting. Included as part of the overview were the following points:

- Board has received a number of calls and emails both in support and against the rezoning
- LUC met on June 11, 2015 where the Committee recommended to approve the zoning amendment with the condition that all staff and LUC Zoning & Subdivision Committee comments be included with extra emphasis on the Traffic Impact Study being approved by both the Union County Engineer's Office and the City of Dublin before Jerome Township approves the application
- Jerome Township Zoning Commission voted to recommend the application in a five to zero vote also with the condition that the traffic study be completed and that prior to the adoption of a final development plan, a formal agreement must be executed between the developer and the County detailing the required traffic improvements and the developer's required contribution to those improvements
- Review of the design and layout (multi-family)
- Land use and fit with route 33 corridor
- 300 dwelling units
- 250 bed senior care facility (three stories reduced from four)
- Density of 8 units per acre (higher than current standards, Jerome Township is typically 3 - 6)
- Traffic concerns

Gary Smith reported that he was instructed by the Board to submit a list of questions to the applicant who responded and submitted a revised development text yesterday.

Dana McDaniel, Dublin City Manager, addressed the Board. As in the previous meeting Mr. McDaniel presented an argument against the application noting the following items:

- Not consistent with the comprehensive plan
- Major issues with traffic
- Financial contribution concerns
- Ongoing discussions regarding utilities (water and sewer)

1 #
Exhibit #3

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

He concluded by stating that the City of Dublin does not support the proposed rezoning and does not support the Jerome Township Comprehensive Plan.

Laura Comek provided an update on where the traffic study stood. In addition she stated that the City of Dublin was to spend \$40 to \$60 million dollars and provided a tax calculation sheet of the amount of tax revenue to be generated by the project.

Paul Jacquemin, co-applicant, stated he has been a land owner for forty-five years and currently owns and operates a business on this property. Due to growth in the area the property is now not ideal for growing produce but wants to continue to operate and make sales on part of the property.

Joseph Hinricks, Pastor at St. Brigid of Kildare, stated he supported the senior facility as a need for the area.

Don Hunter of Schottenstein Realty Group reviewed the questions posed to the applicant by the Board including the following:

1. Fire departments ability to service the area with the senior living facility
2. Assisted living – need
3. Assisted living – operation
4. Ponds
5. Unit breakdown
6. Unit size
7. Comprehensive plan
8. Total number of apartments
9. Weldon Road
10. Roadway improvements (applicant's commitment)
11. Roadway improvements (tax revenue)

Joe Craft questioned the number of parking spaces in the assisted living area. It was indicated that in sub area B there are 214 spaces proposed.

C.J. Lovejoy commented on the working agreement indication that the traffic issue needs to be resolved before the final development plan with an infrastructure agreement.

Mr. Craft questioned the document on tax revenue indication that it was not in agreement with the information he had obtained from the Fiscal Officer.

Jesse Dickinsen stated that there were problems with the traffic and indicated his willingness to assist with a referendum.

Dave Gulden and Brad Bodenmiller of the LUC reviewed the plan back in June and have approved the modifications including the sub area B density. They also discussed the lack of mounding and landscaping along Route 33.

Andrew Diamond stated he was opposed to the rezoning and the development stating that the proposed plan is not consistent with the Crossroads Plan. He indicated that a decision needs to be postponed as 300 apartments do not make sense.

Fernando Arona, a resident of Jerome Village indicated that the residents of Jerome Township will be affected by this development on a daily basis.

**Jerome Township Board of Trustees
Public Hearing**

December 23, 2015

Deacon Frank Iannarino, of St. Brigid of Kildare, stated that this project would be a major asset for the community especially for residents who do not want to leave the area as they get older.

Jim Mitchell read a letter from Ken Gorden a past trustee candidate.

Steve Pagura indicated that the project was a good buffer next to single family residents.

Laura Comek addressed the conditions indicated by the LUC.

Joe Sullivan went through the revision of the application including setback, mounding, and traffic.

It was moved by Ron Rhodes and seconded by C.J. Lovejoy that the Jerome Township Board of Trustees adopt the following resolution:

The Jerome Township Trustees hereby enter into record a Resolution adopting and modifying the recommendation of the Jerome Township Zoning Commission. It is recognized that the applicant filed a Preliminary Zoning Plan Application for a Mixed Use Planned Development (PUD #15-120).

It is recognized by the Trustees that the application meets the requirements of the Jerome Township Comprehensive Plan and further the applicant and co-applicants have agreed to make substantial financial contributions to the needed road improvements. The application further meets the needs of the Township regarding senior housing and care and multi-unit housing in accordance with future needs as presented to the Township by the Mid Ohio Regional Planning Commission (MORPC) and other independent studies.

It is agreed that after passage, the applicant or their representatives will negotiate with Township representatives in good faith the following terms of passage to be presented in text upon such time the Final Development Plan is presented for approval.

- 1. Terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed for the Final Development Plan and also reimburse Jerome Township and agreed upon expenses in the execution of these documents should they be necessary.**
- 2. Applicant and or their legal representative shall enter into an agreement in the Final Development Plan as an agreement that will include negotiated reimbursement to Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development until such time tax revenue is generated at projected build out.**
- 3. Negotiate in good faith with any other terms and conditions as necessary in the text of the Final Development Plan.**

Jerome Township further reserves the right to negotiate further terms of the Final Development Plan beyond the scope of this resolution.

Amended portion of the resolution is to include the modifications as presented by the Applicant/Developer in their memorandum dated December 22, 2015.

The vote resulted as follows:

Ronald Rhodes, yes
Lonnie (Joe) Craft, no
Charles (C.J.) Lovejoy, yes

The motion carried. (Res. 15-167)

**Jerome Township Board of Trustees
Public Hearing**

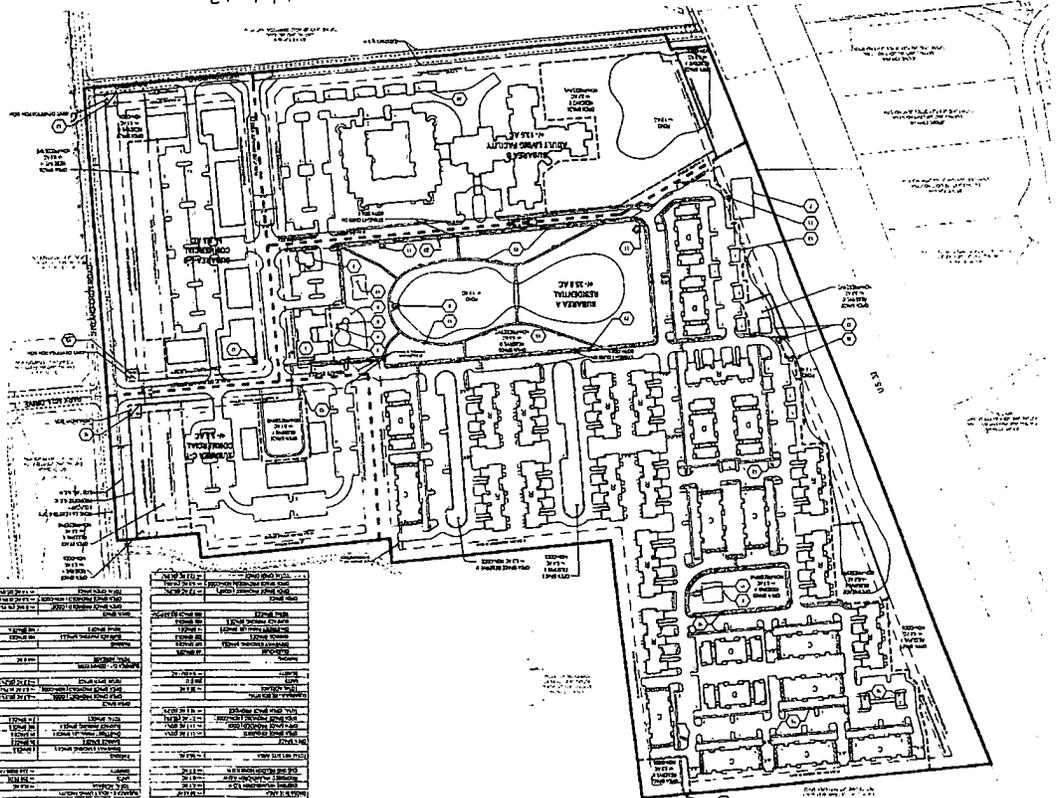
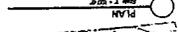
December 23, 2015

At 9:50 a.m. it was moved that the Jerome Township Board of Trustees adjourn.
The motion carried.

Ronald Rhodes, Chairman

Robert Caldwell, Fiscal Officer

PLAN # 3



COPIED NOTES
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODES.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL PLUMBING AND MECHANICAL CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL ELECTRICAL CODES.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL FIRE AND ALARM CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL FIRE AND LIFE SAFETY CODES.
4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL SAFETY CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL HEALTH CARE FACILITIES CONSTRUCTION CODES.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL HEALTH CARE FACILITIES CONSTRUCTION CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL HEALTH CARE FACILITIES CONSTRUCTION CODES.
6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL HEALTH CARE FACILITIES CONSTRUCTION CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL HEALTH CARE FACILITIES CONSTRUCTION CODES.
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PRELIMINARY NOT FOR CONSTRUCTION

101 West Chester Road, Suite 200
 Cincinnati, Ohio 45240
 Phone: 513.763.1000
 Fax: 513.763.1001
 www.ohm.com

OHM
 OFFICE OF HOUSING MANAGEMENT

Schematic Plan Estate Group
 Jacquemin Farms in Jerome Township
 Union County, Ohio
ZONING PLAN

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit E

McTigue & Colombo LLC

ATTORNEYS AT LAW

DONALD J. MCTIGUE
J. COREY COLOMBO
DEREK S. CLINGER
MICHAEL P.G. STINZIANO, OF COUNSEL

545 EAST TOWN STREET
COLUMBUS, OHIO 43215

TEL: (614) 263-7000 | FAX: (614) 263-7078 | WWW.ELECTIONLAWGROUP.COM

FILED

2016 FEB -4 PM 3:30

BOARD OF ELECTIONS
UNION COUNTY, OHIO

February 4, 2016

Gary G. Wallace, Director
Union County Board of Elections
835 East 5th Street, Suite A
Marysville, Ohio 43040

**Re: Protest Against Petition for Zoning Referendum
on Jerome Township Resolution 15-167**

Dear Director Wallace:

On behalf of this firm's clients, Paul L. and Mary M. Jacquemin, qualified electors of Jerome Township residing at 7347 Hyland Croy Road, Plain City, Ohio 43064, I am hereby filing a protest against the Petition for Zoning Referendum on Jerome Township Resolution 15-167 ("Referendum Petition").

Due to the following **clear facial defects**, I request that the Union County Board of Elections sustain their protest and disqualify the Referendum Petition. The summary is misleading, inaccurate, and contains material omissions: (1) it omits that part of the land was re-zoned for "mixed use"; (2) it omits one of the three parcel numbers that were re-zoned by the amendment; (3) it omits that the resolution imposed additional conditions on the applicant; (4) it omits that Jacquemin Farms will continue to operate on a portion of the site; (5) it incorrectly describes the zoning classifications of the zoning change; (6) it inaccurately describes the location of the re-zoned land; (7) it inaccurately identifies the owners of land; (8) it contains a misleading description of the shape of the land area; and (9) it omits any reference to the December 22, 2015 memorandum that modifies the application. Further, the Referendum Petition (10) failed to attach an "appropriate map" to the petition.

R.C. § 519.12(H) requires each part of a referendum on a township zoning amendment to contain a "brief summary" of the amendment's contents. The Ohio Supreme Court has stated on several occasions that the brief summary "must be accurate and unambiguous; otherwise the petition is invalid and the subject resolution will not be submitted for vote." *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St. 3d 212, 218-219 (2006). Thus, "if the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and the subject resolution will not be submitted for vote." *Id.* at 219. Further, election laws related to petitions must be strictly construed. *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St. 3d 595 (1991).

The above standard is an objective one. It does not depend upon subjective evidence that persons were misled or confused by the petition. *Olen Corp. v. Franklin Cty. Bd. of Elections*, 43 Ohio App. 3d 189, 193 (1988).

- 1. The summary of the Referendum Petitions is ambiguous and misleading because it omits that part of the land was re-zoned for mixed use.**

One fatal defect is that the summary omits that the land was re-zoned for mixed use. The Ohio Supreme Court has explained that the summary must “apprise the reader of the present zoning status of the land and of the precise nature of the requested change.” *Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections*, 12 Ohio St. 3d 140, 142 (1984). Moreover, the Court has held that it would be a material omission to exclude the “permitted, conditional, and prohibited uses and developmental standards in a zoning amendment.” *Gemienhardt*, 109 Ohio St. 3d at 220. The referendum petition states that “[t]he P.U.D. Planed [*sic*] Unit Development (Res.15-167) provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility.” Although this is true, this summary entirely omits the fact that the entire eastern section of the land was re-zoned for commercial use. Indeed, Res. 15-167 refers to the PUD as a “Mixed Use” Planned Development – not merely a residential development. The commercial re-zoning is an important aspect of Res. 15-167, as it is expected to boost the local economy by providing valuable jobs and services. The omission of this aspect misleads signers as to the precise nature of the zoning amendment.

Further, the summary is misleading not just because it omits the fact that the land was re-zoned for commercial use, but because it implies that the land was re-zoned only for residential purposes. The Ohio Supreme Court has repeatedly held that it is misleading for a summary to include *only some* of the proposed uses for re-zoned land, but exclude others. *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St. 3d 346, 356-57 (2005) (“The summary is thus misleading because it suggests that only the uses that were included in the summary . . . were included in the new resolution. . . . Citizens could have avoided this deception by either including all of the material proposed uses set forth in the development agreement or excluding all of the uses”); *East Ohio Gas Company v. Wood Cty. Bd. of Elections*, 83 Ohio St. 3d 298, 301-02 (1998) (“this ambiguity results from the inclusion of only that portion of East Ohio’s stated reason indicating its desire to develop its property for industrial purposes and the omission of the remaining portion emphasizing that these industrial uses would be in accordance with the planned industrial district requirements, i.e., subject to township oversight and control.”) The summary’s inclusion of the language about the residential units and the adult living facility and its exclusion of the commercial uses is fatally ambiguous and misleading. The average person reading the summary would have no idea that the land was also re-zoned for commercial use – they would only know that it was re-zoned to allow for 300 residential units and a 250-bed adult living facility, i.e., residential use. Thus, the inclusion of one aspect of the amendment, and the exclusion of another, is a fatal defect.

2. The summary of the Referendum Petitions is ambiguous and misleading because it omits one of the three re-zoned parcels.

Another fatal defect is that the summary includes only two of the three re-zoned parcels in its description. It is undoubtedly misleading, inaccurate, and a material omission to exclude significant portions of the affected parcels of land from the summary, and as explained above, it is further misleading to include some crucial aspects of the amendment, but exclude others. *See McCord*, 106 Ohio St. 3d at 356-57; *East Ohio Gas Company*, 83 Ohio St. 3d at 301-02. Resolution 15-167 re-zones Parcels 17-0031038000, 17-0031038100, and 17-0031036000. However, the summary on the referendum petition states that only Parcels 17-0031038000 and 17-0031038100 were re-zoned by the amendment. This is misleading as it does not accurately describe the precise nature of the requested change as it suggests that only two parcels of land were re-zoned, instead

of three. Therefore, the summary's omission of one of the three re-zoned parcels of land is a fatal defect.

3. The summary of the Referendum Petitions is ambiguous and misleading because it omits that the Resolution imposed additional conditions on the applicant.

Another fatal defect is that the summary omits that the resolution requires the applicants to negotiate, in good faith, with Jerome Township for several important terms and conditions. Again, the Ohio Supreme Court has held that "material omissions which would confuse the average person" are fatal to a petition. *Gemienhardt*, 109 Ohio St. 3d at 219. Resolution 15-167 requires the applicant to (1) negotiate terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed; (2) enter into an agreement to reimburse Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development; and (3) negotiate any other terms and conditions as necessary in the text of the Final Development Plan. Without such information in the summary, the average reader could reasonably be confused as to who would bear responsibility for the additional costs related to the proposed development, such as Fire and EMS protection. This ambiguity could mislead average readers into opposing the amendment and signing the petition.

4. The summary of the Referendum Petitions is ambiguous and misleading because it omits that Jacquemin Farms will continue to operate on the site.

Another fatal defect is that the summary omits that Jacquemin Farms will continue to operate on a portion of the site. Again, the Ohio Supreme Court requires that the summary "apprise the reader of the present zoning status of the land and of the precise nature of the requested change." *Shelly & Sands*, 12 Ohio St. 3d at 142. In *Shelly & Sands*, the Ohio Supreme Court found a petition summary was ambiguous and misleading because it failed to inform the reader that the operation of a sand and gravel quarry would continue, regardless of the results of the referendum. *Id.* at 142. Here, the language of the petition summary states that the land "known as Jacquemin Farms" would be re-zoned entirely for "300 Residential Units and a 250 Bed Adult Living Facility." In other words, the summary implies that that Jacquemin Farms will cease to operate its business on any portion of the site. However, Jacquemin Farms will continue to operate as a fruit and vegetable farm, and as a farmer's market. Jacquemin Farms will continue to offer patrons the opportunity to pick their own produce in the field and to purchase fresh fruits, vegetables, and other farm-related products at the Jacquemin Farms retail farm market. Jacquemin Farms is a well-respected and beloved fixture in the community, having been in business for approximately 30 years. The omission that Jacquemin Farms will continue to operate on the site misleads readers who may wish to see Jacquemin Farms continue to operate as both a farm and a farmer's market.

5. The summary of the Referendum Petitions is inaccurate and misleading because it incorrectly describes the zoning classifications of the zoning change.

Another fatal defect is that the summary incorrectly describes the zoning classifications of the zoning change. The petition summary states that land area would be rezoned "from U-1 Rural District to P.U.D. Planed [*sic*] Unit Development." This is simply wrong. The meeting minutes explain that the land area would be re-zoned from RU (Rural Residential District) to PD (Planned Development District). The petition summary uses incorrect zoning codes, and accordingly, misleads the average person as to the precise nature of the requested change.

6. The summary of the Referendum Petitions is ambiguous and misleading because it inaccurately describes the location of the land area.

Another fatal defect is that the summary inaccurately describes the location of the three parcels. Again, the summary must be “accurate and unambiguous.” *Gemienhardt*, 109 Ohio St. 3d at 218-219. The summary states that the “nearest intersection [is] Hyland Croy Road and SR 161 – Post Road.” This is inaccurate as it is not the nearest intersection. Indeed, two intersections actually border the affected area: the intersection of Hyland Croy Road and Weldon Road is located at the southeast corner of the parcels, and the intersection of Hyland Croy Road and Park Mill Drive is located on the eastern boarder of the parcels. Even then, there are closer intersections that do not directly border the affected area, such as the intersection of Hyland Croy Road and Tullymore Drive to the north. The intersection of Hyland Croy Road and SR 161-Post Road is over a half-mile south of the re-zoned parcels, and there are several other parcels of land located in between. This misleads readers as to the true location of the re-zoned parcels which could very well be the difference between a voter supporting or opposing the zoning amendment. Accordingly, the inaccurate description of the parcels’ location is a fatal defect.

7. The summary of the Referendum Petitions is ambiguous and misleading because it inaccurately identifies the owners of the land.

Another defect in the summary is that it inaccurately identifies owners of the affected land area. The summary states that the affected land area is “known as ‘Jacquemin Farms.’” However, only a part of the affected land is known as “Jacquemin Farms” – the part that is owned by Paul and Mary Jacquemin. The other part of the land is owned by Arthur and Elizabeth Wisner and is not known as “Jacquemin Farms.” This is misleading to the average reader as it suggests that only Jacquemin Farms was re-zoned by the amendment, when in fact, this is only one part of the affected land area. Accordingly, this inaccurate description of the land area is a fatal defect.

8. The summary of the Referendum Petitions is ambiguous and misleading because it includes a misleading description of the shape of the land area.

Another defect in the summary is the extraneous and misleading description of the land area as an “irregular ‘L’ shaped site.” Including extraneous information in the petition that causes it to be confusing or misleading is a basis for rejecting the petition. *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App. 2d 1 (1976), *aff’d* 48 Ohio St. 2d 173. This description of the land does not appear in the resolution or the meeting minutes, and it takes a considerable amount of imagination to see the supposed “L-shape.” This description is entirely inaccurate. Moreover, the summary of the re-zoned land as “irregularly shaped” in the very first sentence of the summary seems intended to mislead the average person into thinking this zoning amendment is inherently flawed. Therefore, the misleading description of the land area is a fatal defect.

9. The summary of the Referendum Petitions is ambiguous and misleading because it omits any reference to the December 22, 2015 memorandum that modifies the original application.

Another fatal defect in the summary is that it fails to reference the December 22, 2015 memorandum that is referenced in Resolution 15-167. Said memorandum modifies the original application and includes important provisions regarding the zoning and uses of the affected land area. Accordingly, this is a material omission that could mislead the average reader as to the precise nature of the requested change.

10. The Referendum Petition did not contain an “appropriate map” as required by R.C. 519.12(H).

R.C. 519.12(H) also requires that the referendum petition be “accompanied by an appropriate map of the area affected by the zoning proposal.” *McCord*, 106 Ohio St. at 357. The Ohio Supreme Court has explained that a map is considered appropriate “if it does not mislead the average person about the area affected by the zoning resolution.” *Id.* Here, the petition contained two misleading maps.

The first map is misleading to readers because the affected area appears to be subdivided into four – and possibly five – parts without any further explanation. It is not apparent from reading the map whether just one subdivision, or all four or five, are affected by the zoning proposal. Moreover, one part of these subdivisions is all white, while the remaining subdivisions are shaded. Yet, it is not apparent what the significance, if any, is of the shading. These defects could mislead the average person about the area affected by the zoning resolution.

The second map is misleading to readers because most of the descriptive text is illegible. The font used on the map is so small that it would likely require a magnifying glass just to read it. Even then, the font is so small that in most instances, the ink from each letter appears to have bled into the adjacent letters making it impossible to discern. One of the few instances of legible text on the map is a scale which, assuming this version of the map is a shrunken version of another map, is wholly inaccurate in its reduced form. These defects mean that the average reader would not understand what they are actually looking at, and could further be misled as to the true size of the proposed development. Accordingly, this map is not appropriate. Other maps that clearly show the affected area were available to the Petitioners.

Conclusion

For the reasons stated herein, the Protestors request the Union County Board of Elections sustain their protest and disqualify the Referendum Petition. The Protestors reserve the right to amend this protest, including the right to raise any deficiency that comes to light from further review of the Referendum Petition. Please direct all communication regarding this protest to my attention. Thank you.

Respectfully submitted,



Donald J. McTigue, Esq.

We hereby approve the filing of the above protest:



Paul L. Jacquemin



Mary M. Jacquemin

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit F

**BEFORE THE BOARD OF ELECTIONS
UNION COUNTY, OHIO**

IN RE: PROTEST AGAINST
PETITION FOR ZONING REFERENDUM
ON JEROME TOWNSHIP RESOLUTION 15-167

:
:
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:
:

PROTESTERS PAUL AND MARY JACQUEMIN'S PRE-HEARING BRIEF

INTRODUCTION

The basis for Paul and Mary Jacquemin's February 4, 2016 protest against the Petition for Zoning Referendum on Jerome Township Resolution 15-167 ("Referendum Petition" or "Petition") is that the summary attached to the Petition contains material omissions, and is misleading and inaccurate due to the following ten clear facial defects: (1) it omits that part of the land was re-zoned for "mixed use"; (2) it omits one of the three parcel numbers that were re-zoned by the amendment; (3) it omits that the resolution imposed additional conditions on the applicant; (4) it omits that Jacquemin Farms will continue to operate on a portion of the site; (5) it incorrectly describes the zoning classifications of the zoning change; (6) it inaccurately describes the location of the re-zoned land; (7) it inaccurately identifies the owners of land; (8) it contains a misleading description of the shape of the land area; and (9) it omits any reference to the December 22, 2015 memorandum that modifies the application; and further, (10) the Referendum Petition failed to attach an "appropriate map" to the Petition.

LAW AND ANALYSIS

By choosing to summarize Resolution 15-167 in language other than that employed by the Board of Township Trustees, petitioners' language must satisfy the applicable test in R.C. § 518.12(H). This provision requires each part of a referendum on a township zoning amendment to contain a "brief summary" of the amendment's contents that "must be accurate and unambiguous;

otherwise the petition is invalid and the subject resolution will not be submitted for vote.” *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St. 3d 212, 218-219 (2006). Thus, “if the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and the subject resolution will not be submitted for vote.” *Id.* at 219. Further, election laws related to petitions must be strictly construed. *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St. 3d 595 (1991). The above standard is an objective one. It does not depend upon subjective evidence that persons were misled or confused by the petition. *Olen Corp. v. Franklin Cty. Bd. of Elections*, 43 Ohio App. 3d 189, 193 (10th Dist.1988). The summary attached to the Referendum Petition contained ten clear facial defects.

1. The summary of the Referendum Petitions is ambiguous and misleading because it omits that part of the land was re-zoned for mixed use.

One fatal defect is that the summary omits that the land was re-zoned for mixed use. The Ohio Supreme Court has explained that the summary must “apprise the reader of the present zoning status of the land and of the precise nature of the requested change.” *Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections*, 12 Ohio St. 3d 140, 142 (1984). Moreover, the Court has held that it would be a material omission to exclude the “permitted, conditional, and prohibited uses and developmental standards in a zoning amendment.” *Gemienhardt*, 109 Ohio St. 3d at 220.

The summary on the Referendum Petition does not apprise the reader of the precise nature of the requested change. The summary states that “[t]he P.U.D. Planed [*sic*] Unit Development (Res.15-167) provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility.” Although this is true, this summary entirely omits the fact that the entire eastern section of the land was re-zoned for commercial use. Indeed, Res. 15-167 refers to the PUD as a “Mixed Use” Planned Development—not merely a residential development as implied by the inclusion of only residential units and facilities. The commercial re-zoning is an important aspect of Res. 15-

167, as it is expected to boost the local economy by providing valuable jobs and services. The omission of this aspect misleads signers as to the precise nature of the zoning amendment.

Further, the summary is misleading not just because it omits the fact that the land was re-zoned for commercial use, but because it implies that the land was re-zoned only for residential purposes. The Ohio Supreme Court has repeatedly held that it is misleading for a summary to include *only some* of the proposed uses for re-zoned land, but exclude others. *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St. 3d 346, 356-57 (2005) (“The summary is thus misleading because it suggests that only the uses that were included in the summary . . . were included in the new resolution. . . . Citizens could have avoided this deception by either including all of the material proposed uses set forth in the development agreement or excluding all of the uses”); *East Ohio Gas Company v. Wood Cty. Bd. of Elections*, 83 Ohio St. 3d 298, 301-02 (1998) (“this ambiguity results from the inclusion of only that portion of East Ohio’s stated reason indicating its desire to develop its property for industrial purposes and the omission of the remaining portion emphasizing that these industrial uses would be in accordance with the planned industrial district requirements, i.e., subject to township oversight and control.”) The summary’s inclusion of the language about the residential units and the adult living facility and its exclusion of the commercial uses is a material omission which is ambiguous and misleading. The average person reading the summary would have no idea that the land was also re-zoned for commercial use—they would only know that it was re-zoned to allow for 300 residential units and a 250-bed adult living facility, i.e., residential use. Thus, the inclusion of one aspect of the amendment, and the exclusion of another, is a fatal defect.

A reference in the summary of the Referendum Petition to attachments which more completely and accurately explain the precise nature of the change cannot cure an omission. In *Gemienhardt*,

the Ohio Supreme Court explained that although a circulator attached the full text of the relevant zoning amendments to the petition, this would not cure a material omission because “petition signers could have justifiably relied upon [the] summary language instead of wading through the tens of pages [of attachments] before deciding whether to sign the petition.” *Gemienhardt*, 109 Ohio St. 3d at 221. Despite Mr. Diamond’s contention in his March 1, 2016 Rebuttal of Protests (“Diamond Rebuttal”) he filed with the Board, the Referendum Petition’s reliance on attachments does not cure the summary’s failure to apprise the reader of the precise nature of the change.

2. The summary of the Referendum Petitions is ambiguous and misleading because it omits one of the three re-zoned parcels.

Another fatal defect is that the summary includes only two of the three re-zoned parcels in its description. It is undoubtedly misleading, inaccurate, and a material omission to exclude significant portions of the affected parcels of land from the summary, and as explained above, it is further misleading to include some crucial aspects of the amendment, but exclude others. *See McCord*, 106 Ohio St.3d at 356-57; *East Ohio Gas Company*, 83 Ohio St.3d at 301-02. The Diamond Rebuttal relies heavily upon the Ohio Supreme Court’s opinion in *State ex rel. Rife v. Franklin Cty. Bd. of Elections*, 70 Ohio St.3d 632 (1994) to contend that the summary does not need to include information not found in the resolution itself. However, in *McCord*, the Ohio Supreme Court explained that this is the case only if the summary summarizes only the language of the resolution itself; if the summary includes information outside of the resolution’s language, then the summary must still satisfy the applicable test. 106 Ohio St.3d at 353-354.

Resolution 15-167 re-zones Parcels 17-0031038000, 17-0031038100, and 17-0031036000. However, the summary on the Referendum Petition states that only Parcels 17-0031038000 and 17-0031038100 were re-zoned by the amendment. Not including a re-zoned parcel is a material omission. Moreover, including two re-zoned parcels, but excluding the third, is inaccurate and

misleading because it implies that only the two mentioned parcels were re-zoned, when there were actually three re-zoned parcels. Therefore, the summary's inclusion of two re-zoned parcels, and omission of the third re-zoned parcel, is a fatal defect.

3. The summary of the Referendum Petitions is ambiguous and misleading because it omits that the Resolution imposed additional conditions on the applicant.

Another fatal defect is that the summary omits that the resolution requires the applicants to negotiate, in good faith, with Jerome Township for several important terms and conditions. Again, the Ohio Supreme Court has held that "material omissions which would confuse the average person" are fatal to a petition. *Gemienhardt*, 109 Ohio St. 3d at 219. Resolution 15-167 requires the applicant to (1) negotiate terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed; (2) enter into an agreement to reimburse Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development; and (3) negotiate any other terms and conditions as necessary in the text of the Final Development Plan. Contrary to what the Diamond Rebuttal contends, these requirements are in the resolution itself. Without such information in the summary, the average reader would reasonably be confused as to who would bear responsibility for the additional costs related to the proposed development, such as Fire and EMS protection. This ambiguity would mislead average readers into opposing the amendment and signing the Petition.

4. The summary of the Referendum Petitions is ambiguous and misleading because it omits that Jacquemin Farms will continue to operate on the site.

Another fatal defect is that the summary omits that Jacquemin Farms will continue to operate on a portion of the site. Again, the Ohio Supreme Court requires that the summary "apprise the reader of the present zoning status of the land and of the precise nature of the requested change." *Shelly & Sands*, 12 Ohio St. 3d at 142. In *Shelly & Sands*, the Ohio Supreme Court found a petition

summary was ambiguous and misleading because it failed to inform the reader that the operation of a sand and gravel quarry would continue, regardless of the results of the referendum. *Id.* at 142. Here, the language of the Petition summary states that the land “known as Jacquemin Farms” would be re-zoned entirely for “300 Residential Units and a 250 Bed Adult Living Facility.” In other words, the summary implies that that Jacquemin Farms will cease to operate its business on any portion of the site. However, Jacquemin Farms will continue to operate as a fruit and vegetable farm, and as a farmer’s market. Jacquemin Farms will continue to offer patrons the opportunity to pick their own produce in the field and to purchase fresh fruits, vegetables, and other farm-related products at the Jacquemin Farms retail farm market. Jacquemin Farms is a well-respected and beloved fixture in the community, having been in business for approximately 30 years. The omission that Jacquemin Farms will continue to operate on the site misleads readers who may wish to see Jacquemin Farms continue to operate as both a farm and a farmer’s market.

5. The summary of the Referendum Petitions is inaccurate and misleading because it incorrectly describes the zoning classifications of the zoning change.

Another fatal defect is that the summary incorrectly describes the zoning classifications of the zoning change. The Petition summary states that land area would be rezoned “from U-1 Rural District to P.U.D. Planed [*sic*] Unit Development.” This is simply wrong. The meeting minutes explain that the land area would be re-zoned from RU (Rural Residential District) to PD (Planned Development District). Moreover, Petition signers should not have to wade through pages of attachments in order to fact-check the summary. *See, Gemienhardt*, 109 Ohio St. 3d at 221. Thus, because the Petition summary uses incorrect zoning codes, it is inaccurate and misleads the readers as to the precise nature of the requested change.

6. The summary of the Referendum Petitions is ambiguous and misleading because it inaccurately describes the location of the land area.

Another fatal defect is that the summary inaccurately describes the nearest intersection to the re-zoned land. The summary did not need to identify a nearby intersection, but because it did, the information must be “accurate and unambiguous.” *Gemienhardt*, 109 Ohio St. 3d at 218-219. The summary states that the “nearest intersection [is] Hyland Croy Road and SR 161 – Post Road.” However, the intersection of Hyland Croy Road and SR 161-Post Road is over a half-mile south of the re-zoned parcels, and there are several other parcels of land located in between. Indeed, two intersections actually border the affected area: the intersection of Hyland Croy Road and Weldon Road is located at the southeast corner of the parcels, and the intersection of Hyland Croy Road and Park Mill Drive is located on the eastern boarder of the parcels. Even then, there are closer intersections that do not directly border the affected area, such as the intersection of Hyland Croy Road and Tullymore Drive to the north. This inaccurate description of the “closest intersection” misleads readers as to the true location of the re-zoned parcels which may have been the difference between a voter agreeing or declining to sign the Petition. Accordingly, the inaccurate description of the parcels’ location is a fatal defect.

7. The summary of the Referendum Petitions is ambiguous and misleading because it inaccurately identifies the owners of the land.

Another defect in the summary is that it inaccurately identifies owners of the affected land area. The summary did not need to identify the owners of the land, but because it did, the information must be “accurate and unambiguous.” *Gemienhardt*, 109 Ohio St. 3d at 218-219. The summary states that the affected land area is “known as ‘Jacquemin Farms.’” However, only a part of the affected land is known as “Jacquemin Farms” – the part that is owned by Paul and Mary Jacquemin. The other part of the land is owned by Arthur and Elizabeth Wesner and is not known

as “Jacquemin Farms.” This is misleading to the average reader as it suggests that only Jacquemin Farms was re-zoned by the amendment, when in fact, this is only one part of the affected land area. Accordingly, this inaccurate description of the land area is a fatal defect.

8. The summary of the Referendum Petitions is ambiguous and misleading because it includes a misleading description of the shape of the land area.

Another defect in the summary is the extraneous and misleading description of the land area as an “irregular ‘L’ shaped site.” The summary did not need to describe the shape of the re-zoned land, but because it did, the description must be “accurate and unambiguous.” *Gemienhardt*, 109 Ohio St. 3d at 218-219. Including extraneous information in the petition that causes it to be confusing or misleading is a basis for rejecting the petition. *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App. 2d 1 (8th Dist.1976), *aff’d* 48 Ohio St. 2d 173. This description of the land does not appear in the resolution or the meeting minutes, and it takes a considerable amount of imagination to see the supposed “L-shape.” This description is entirely inaccurate. Moreover, the summary of the re-zoned land as “irregularly shaped” in the very first sentence of the summary seems intended to mislead the average person into thinking this zoning amendment is inherently flawed. Therefore, the misleading description of the land area is a fatal defect.

9. The summary of the Referendum Petitions is ambiguous and misleading because it omits any reference to the December 22, 2015 memorandum that modifies the original application.

Another fatal defect in the summary is that it fails to reference the December 22, 2015 memorandum that is referenced in Resolution 15-167. Said memorandum modifies the original application and includes important provisions regarding the zoning and uses of the affected land area. Accordingly, this is a material omission that misleads the average reader as to the precise nature of the requested change.

10. The Referendum Petition did not contain an “appropriate map” as required by R.C. 519.12(H).

The Referendum Petition also failed to contain an appropriate map as required by R.C. 519.12(H), which requires that the referendum petition be “accompanied by an appropriate map of the area affected by the zoning proposal.” *McCord*, 106 Ohio St. at 357. The Ohio Supreme Court has explained that a map is considered appropriate “if it does not mislead the average person about the area affected by the zoning resolution.” *Id.* Here, the Petition contained two misleading maps.

The first map misleads readers because the affected area appears to be subdivided into four – and possibly five – parts without any further explanation. It is not apparent from reading the map whether just one subdivision, or all four or five, are affected by the zoning proposal. Moreover, one part of these subdivisions is all white, while the remaining subdivisions are shaded. Yet, it is not apparent what the significance, if any, is of the shading. These defects mislead the average person about the area affected by the zoning resolution.

The second map misleads readers because most of the descriptive text is illegible. The font used on the map is so small that it would likely require a magnifying glass just to read it. Even then, the font is so small that in most instances, the ink from each letter appears to have bled into the adjacent letters making it impossible to discern. One of the few instances of legible text on the map is a scale which, assuming this version of the map is a shrunken version of another map, is wholly inaccurate in its reduced form. These defects mean that the average reader would not understand what they are actually looking at, and further misled as to the true size of the proposed development. Accordingly, this map is not appropriate. Other maps that clearly show the affected area were available to the Petitioners.

CONCLUSION

For the reasons stated herein, the Protestors request the Union County Board of Elections sustain their protest and disqualify the Referendum Petition from appearing on any future ballot.

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue (0022849)

J. Corey Colombo (0072398)

Derek S. Clinger (0092075)

MCTIGUE & COLOMBO LLC

545 East Town Street

Columbus, Ohio 43215

Tel: (614) 263-7000

Fax: (614) 263-7078

dmctigue@electionlawgroup.com

ccolombo@electionlawgroup.com

dclinger@electionlawgroup.com

Counsel for Paul and Mary Jacquemin

Case No. _____

In The
Supreme Court of Ohio

STATE EX REL. PAUL L. JACQUEMIN, et al.,
Relators,

v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

Exhibit G

Development Text - Planned Development District

- a. Proposed location and size of the proposed planned district. This includes a survey map of the boundaries of the site and a legal description.

The site is generally located on the west side of Hyland-Croy Road adjacent to US 33, north and contiguous to Weldon Road and south of the and contiguous to the Glazier Ridge Metro Park. Included in this application is a legal description/ Survey (Exhibit "A") and Existing Conditions Plan (Exhibit "D") for the parcels to be included in the community and the submitted plans are consistent with that legal description. The Survey shows a gross site area of 60.43 acres. The existing ROW's of Hyland-Croy Road and Weldon Road within the property are a total 1.51 acres. The proposed requested additional ROW for Hyland-Croy Road is 0.53 acres.

- b. A list and description of the precise uses proposed for the development. Listed uses shall be defined by their customary name or identification, except where they are specifically defined or limited in the Zoning Plan or this Zoning Resolution. Any listed use may be limited to specific areas delineated in the proposed Zoning Plan.

The Community will be divided into four (4) Subareas: Subarea A - Residential, Subarea B - Adult Living Facilities (ALF), Subarea C-1 - Commercial and Subarea C-2 - Commercial.

The proposed uses for Subarea A - Residential will include attached multi-family rental residential including attached and detached garages, a private community building, a private pool complex, community garden, dog park, sidewalks, gazebo, pedestrian bridge, retention basins, paved driveways, parking, landscaping, and other amenities consistent with a high quality rental residential community.

The proposed uses for Subarea B - Adult Living Facilities (ALF) will include:
Nursing Care Facilities - 623110
Continuing Care Retirement Community - 6233
Independent Senior Residential with additional services and amenities
~~Condominiums and/or Rental Residential with at least 90 percent of the occupied units include at least one resident who is verified to be over the age of 55, and the community follows a policy that demonstrates an intent to provide housing for those aged 55 or older.~~
Retention basin(s), landscaping, signs, drives, parking and sidewalks

The proposed uses for Subareas C-1 & C-2 - Commercial will include:

All Permitted Uses in the Local Retail District (except 447 Gasoline Stations). Other Permitted Uses will be 44613 Optical Good Stores, 5242 Agencies, Brokerages and Other Insurance Related Activities, 541213 Tax Preparation Services, 541921 Photography Studios, Portraits, various offices uses consistent with 523, 524, 525, 541 (except 541940 Veterinary Services , 541850 Outdoor Advertising and 5417 Research & Development), 5312 Offices of Real Estate Agents and Brokers, 621 (except 6214 Significant Medical Facilities & 6215 Medical Laboratories), 561 and 6244 Child Day Care Services.

It is the intent for the Jacquemin Family Farmer's Market to continue to operate consistent with present operations (including farming in smaller fields) and in its existing facilities all on Subareas C-1 and C-2. Future additions, renovations and new buildings with the uses listed below will be consistent in quality and character of the existing buildings subject to the appropriate Building Code. The proposed uses for Subareas C-1 and C-2 as the Jacquemin Family Farmer's Market will include:

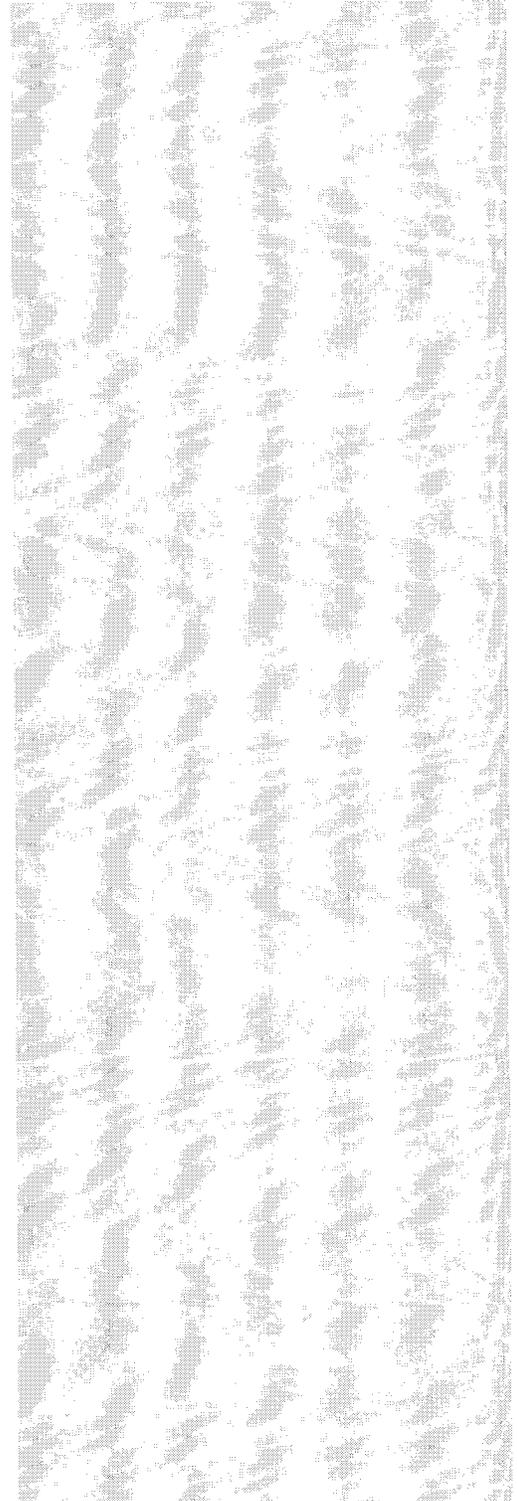
The Permitted Uses will be: 111212 Other Vegetable Farming, 11133 Fruit and Nut Farming, 4452 Specialty Food Stores, 4453 Beer, Wine and Liquor Stores, 311811 Retail Bakeries (not to exceed 5,000 square feet for processing), 7225111 Full-Service Restaurants, 722513 Limited-Service Restaurants, 445320 Fruit and Vegetable Markets, 312120 Breweries (not to exceed 5,000 square feet for processing), 453220 Gift, Novelty and Souvenir Stores and various farm related entertainment such as hay rides, corn mazes etc

- c. Concept site plan of the proposed planned district, and proposed layout of all subareas.

This Planned District Development (PD) Zoning Plan Application includes copies of the Zoning Plan (Exhibit "E-1") & Illustrative Plan (Exhibit"E-2") and the Preliminary Utility Plan (Exhibits"F-1").

- d. Proposed densities, number of lots and dimension parameters, and building intensities.

The Site Data Chart on the Zoning Plan (Exhibit "E-1") details the relevant information. All perimeter setbacks are shown on the Zoning Plan (Exhibit "E-1"), also.



- e. Proposed parks, playgrounds, schools and other public facilities or open spaces including woodland preservation and natural topography preservation areas with their suggested ownership.

The Open Spaces provided in the Zoning Plan (Exhibit "E-1") will be used for retention basins, landscaping, utility easements and other general passive recreational uses.

The Open Spaces, consistent with the Jerome Township Zoning Resolution, are a total of 11.7 acres or 20.0% of the net (excluding existing and requested ROW of Hyland-Croy Road & Weldon Road) development area of 58.3 acres. Also attached is the Open Space Plan (Exhibit "E-3") that depicts the Open Space consistent with the Township Resolution and the actual Open Space including extraordinary setbacks which totals 18.8 acres or 32.2% of the net development area.

All Open Space shall be owned and maintained by the Owner(s) of the open space located and identified in the particular Subareas.

- f. Locations of stream channels, watercourses, wooded areas and buffer areas shall be designated. Existing topography and drainage patterns shall also be shown.

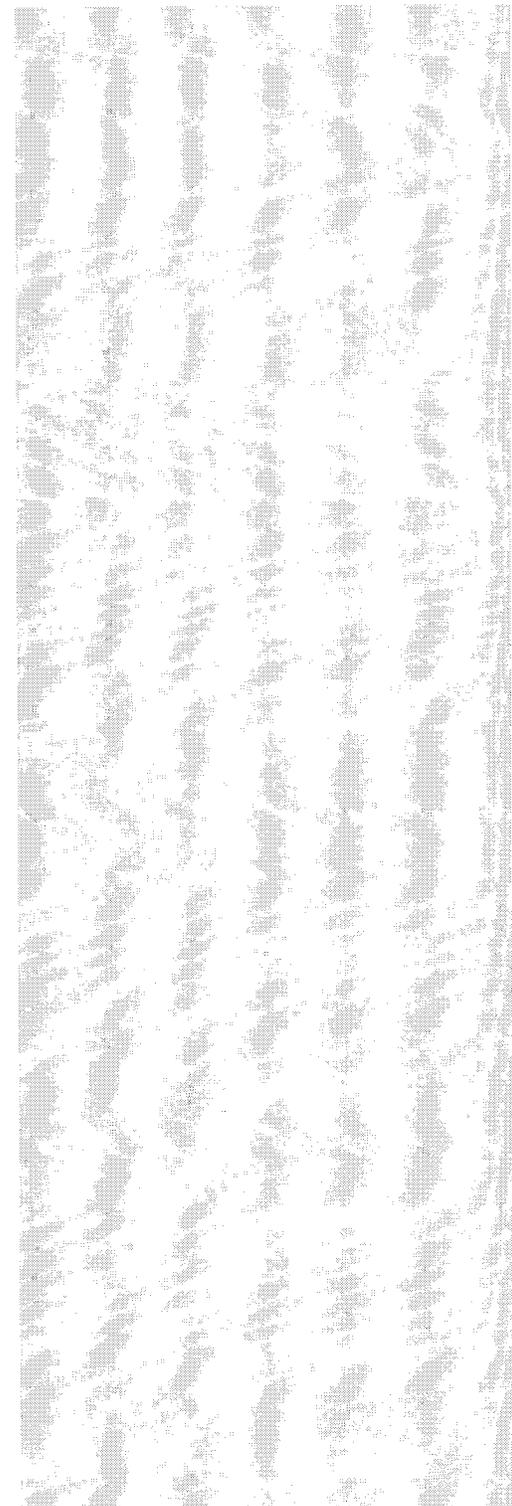
The Existing Conditions Plan (Exhibit "D-1") shows that there are no existing watercourses or wooded areas (except some minor tree rows along some the boundaries) and provides the existing topography and drainage patterns.

- g. Relation to existing and future lands use in surrounding area.

The existing land uses are Glacier Ridge Metro Park and one single family residence in a wooded area to the north, across Hyland-Croy Road are open space parks owned by the City of Dublin and agriculture on the southern part of the east boundary, across Weldon Road agriculture on the south boundary and across U.S. Route 33 light industrial and commercial uses.

The future land uses as proposed in the Jerome Township 2008 Comprehensive Plan are Mixed Commercial and Retail where the single family residence is to the north, where the agriculture is to the east and where the agriculture is to the south.

The property to the south of Weldon Road has been rezoned to an extensive and intensive retail use including "big box" retailers.



The existing uses to the north with Glacier Ridge Metro Park and to the west with apparent fully developed light industrial and commercial uses are both not expected to change in the near term.

- h. Proposed provision of water, sanitary sewers, surface drainage, and street lighting.

Water and sewer service will be provided by the City of Marysville as is shown on the Preliminary Utility Plan (Exhibit "F-1")

On site surface drainage will be as required by the development regulations of Union County and Ohio EPA. The site is tributary to the Scioto River.

The Preliminary Utility Plan (Exhibit "F-1") shows the proposed layouts for water, sanitary sewer and drainage systems.

The location of the proposed street and parking lighting is shown on the Zoning Plan (Exhibit "E-1") and examples of the proposed lighting fixtures are provided in Exhibit "E".

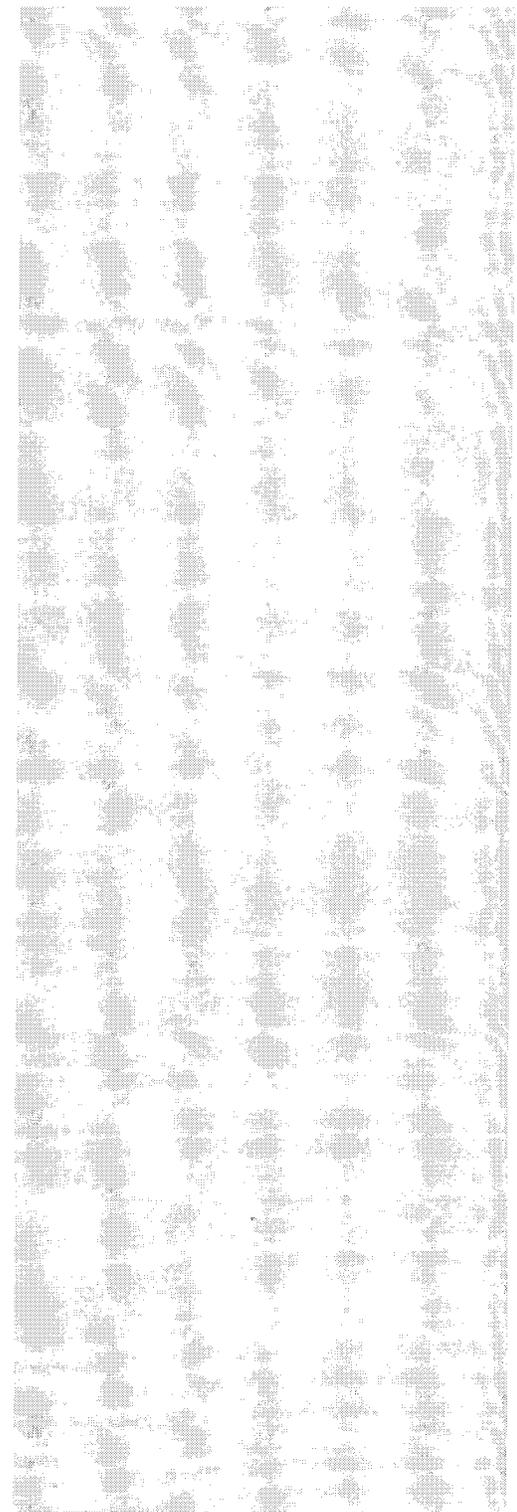
- i. Proposed traffic and pedestrian circulation pattern, indicating both public and private streets and highways, access points to public rights-of-ways, bike paths and trails, sidewalks and any off-site street improvements.

The Zoning Plan (Exhibit "E-1") provides and identifies the only possible public street but it may be a private street. The final determination for the ownership for that street will be with the Development Plan submission. All other streets and parking are private.

A Traffic Impact Study was provided to Union County Engineer and the City of Dublin on June 19, 2015.

All proposed sidewalks are identified on the Preliminary Zoning Plan (Exhibit "E-1").

- j. An anticipated schedule for the development of units to be constructed in progression and a description of the design principles for buildings and streetscapes; tabulation of the number of acres in the proposed phase for various uses, the number of housing units proposed by type; building heights; open space; building intensity; parking areas; density and public improvements proposed.



The applicant is anticipating submitting an application for Development Plan Approval immediately after approval of the Zoning Plan. It is scheduled that the site construction for **Subarea A** to commence in the Fall, 2015. **Subarea A** is a total of 35.6+/- acres and proposes 300 multi-family rental residential units or a density of 8.4 units per acre. Subarea A has 7.2+/- acres of open space or 20.2% of openspace.

Subarea B submission of an application for Development Plan approval and commencement of development will be determined when a specific service provider (s) has been identified. Subarea B has a total 10.6+/- acres. Presently as planned, Subarea B has 2.7+/- acres open space or 25.5% of open space. This application agrees to a maximum 250 beds for one or more facilities.

Schottenstein Real Estate Group and the Jacquemin Family (the co-applicants) agree to participate in a study to determine their share of regional roadway contributions based upon impact, as a condition of Development Plan Approval.

Subareas C-1 and C-2 will continue existing operations of the Jacquemin Family Farmer's Market with an application submittal for Development Plan approval when the Jacquemin Family Farmer's Market has ended the present uses as described in Section b. above. This application agrees to a maximum of 120,000 square feet in gross building area. Subareas C-1 & C-2 have a total of 12.1 acres with 1.8 +/- acres in open space or 14.9% of open space.

k. Engineering feasibility studies and schematic plans showing, as necessary, water, sewer and other utility installations, waste disposal facilities, surface drainage, and street improvements.

The Preliminary Utility Plan (Exhibit "F-1") provides the schematic layout of the various public utilities. Provided in Exhibit "G" are service letters for the provisions of electrical, gas, cable, internet, public sewer, public water and fire protection.

l. Site plan, showing approximate nonresidential building location(s), various functional use areas, circulation, and their relationship.

The Zoning Plan (Exhibit "E-1") depicts the proposed building placements, pedestrian and vehicular circulation and their relationship.

m. General architectural design criteria for proposed buildings, structures, signs and exterior lighting with proposed control features.

Architectural Design & Considerations

1. Attached residential building types

- a) Two-story townhouse and garden buildings as shown on attached drawings (Exhibit "I"). ~~The architectural style shall be traditional~~

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Zoning Commission hearing.

farmhouse vernacular with clapboard and board and batten siding and brick or stone elements.

- b) Amenity and accessory buildings including community building, trash and maintenance building, detached garages, mail gazebo, etc.
- c) Final building elevations shall be consistent with the building elevations attached to this Development Text (Exhibit "I"). Notwithstanding the foregoing, the attached building elevations are conceptual and may be adjusted to reflect engineering, and/or architectural refinements or other conditions at the time of approval of the development plan.

2. **Subarea B** - Adult Living Facilities (ALF)

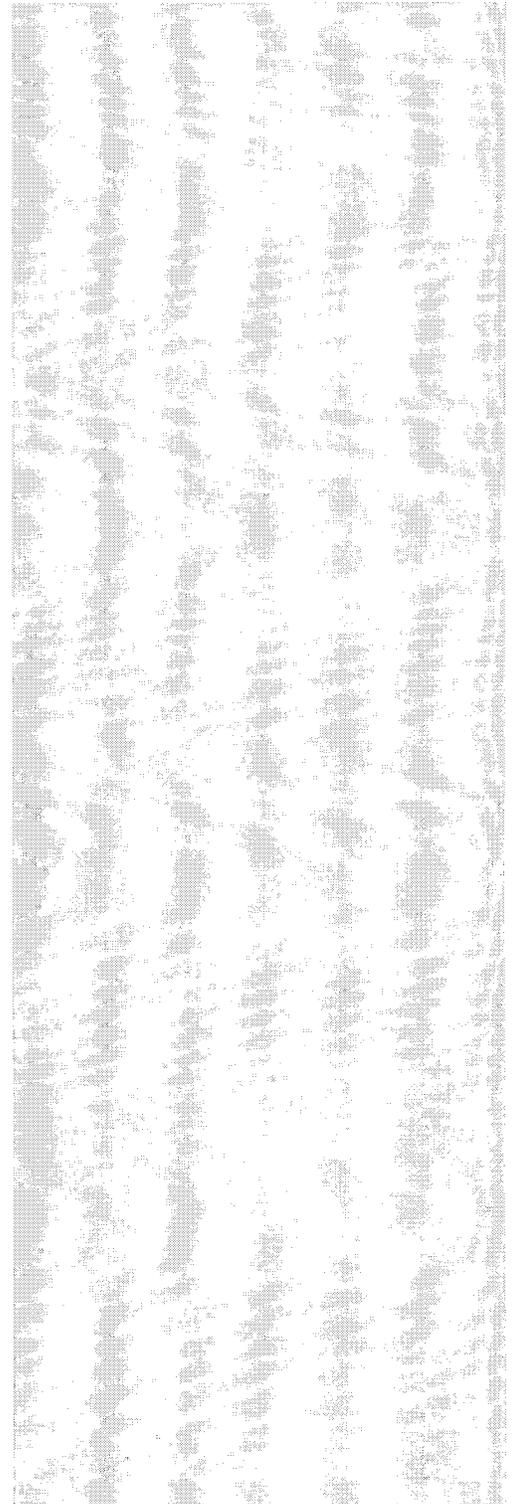
- a) Maximum three-story buildings of traditional architectural style with clapboard siding and brick or stone elements.

3. **Subarea C-1 and C-2** - Commercial

- a) Maximum two-story farmhouse and agrarian structures of clapboard and board and batten siding and brick or stone elements.

4. **Building Materials**

- a) Exterior materials - brick, stone, synthetic stone, wood, fiber-reinforced cement siding, composite trim and upgraded vinyl siding are approved exterior finish materials. Vinyl siding shall have a minimum thickness of .040" with high quality matte finish in clapboard and board and batten profiles to mimic historic wood detailing.
- b) Windows in residential buildings - traditional single or double-hung vinyl.
- c) Windows in commercial/retail buildings - traditional single or double-hung wood, vinyl, aluminum or clad wood windows.
- d) Shutters shall be wood or vinyl.
- e) Gutters and downspouts - extruded aluminum.
- f) Roof - minimum 25 year dimensional asphalt singles or standing seam metal.



5. Building Colors – exterior colors for siding, doors, shutters, fascia, cornices, soffits and miscellaneous trim shall be selected from a pre-approved color guide of historic colors included in the Development Plan.
6. Rooftop and ground mounted screening – all mechanical equipment or other utility hardware on roof, ground or building shall be screened from public view with natural or other materials that are harmonious with the associated building(s). Ground mounted mechanicals shall not be permitted in any setback.
7. Roof types – pitched roofs shall be required to have a 6:12 or greater rise over run on main roof area. Minor gables, dormers, upper section of gambrel roof and porch roofs are permitted to have a minimum of 4:12 rise over run. Roof materials for pitched roof shall be dimensional asphalt shingles or standing seam metal roof. A pitched roof can be accomplished with a donut design (pitched roof appearance on all four facades and a flat membrane roof interior to the perimeter pitched roof).

Subarea A – Elevations for all the residential buildings and a conceptual design sketch of the community building are provided in Exhibit "I".

Subarea B - Refer to the Overall Birdseye Conceptual Site Renderings provided in Exhibit "I".

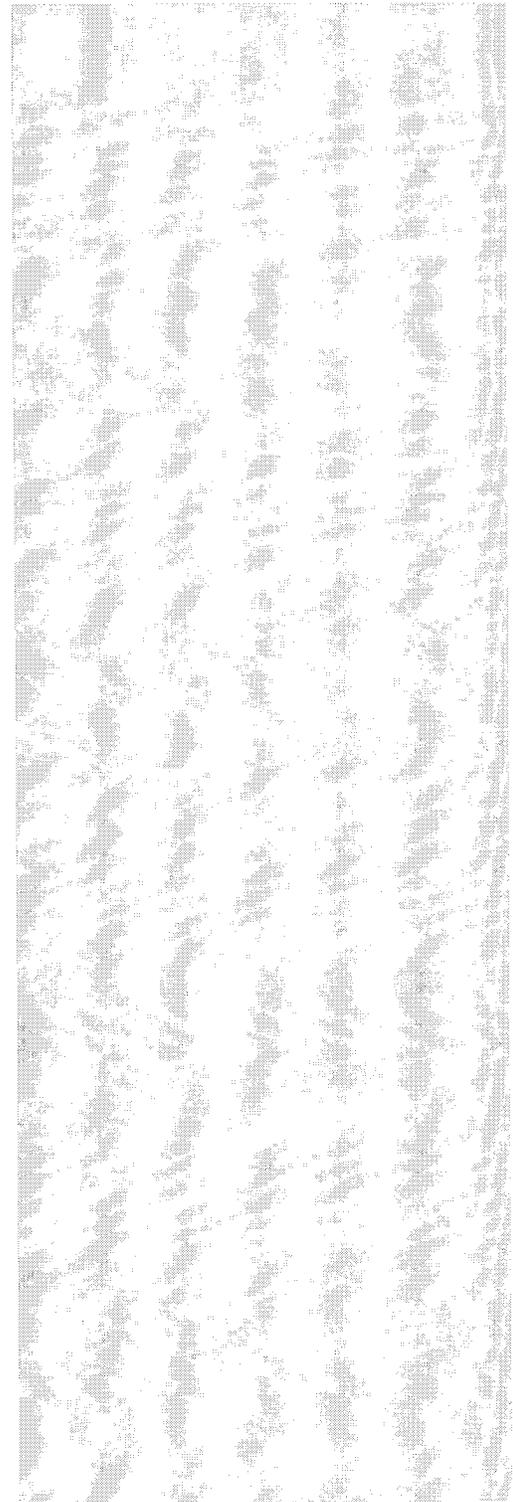
Subarea C-1 - Conceptual design elements are provided in Exhibit "I".

Subarea C-2 - Conceptual design elements are provided in Exhibit "I".

Overall Birdseye Conceptual Site Renderings is provided in Exhibit "I".

- n. Deed restrictions, protective covenants, and other legal statements or devices to be used to control the use, development and maintenance of the land, the improvements thereon, including those areas which are to be commonly owned and maintained.

The applicant proposes to form a Property Owners' Association for the sole purpose of approving the architectural and landscaping design for new and renovated buildings for each Subarea. The applicant will provide the definitive process of those approvals with the first submission of a Development Plan for the site.



o. Projected schedule of site development.

See Section j. above about the process and schedule for site development by Subarea. The only public street is projected to commence site development in the 1st or 2nd quarter of 2016.

p. Evidence that the applicant has sufficient control over the land to carry out the proposed development.

The Owners of the properties have signed Real Estate Purchase Agreements that grant Schottenstein Real Estate Group (Applicant) permission to rezone these properties for the proposed uses. If requested, applicant will provide access to the Jerome Township Zoning Inspector to those agreements to affirm that permission.

q. Regulation text for development in the proposed Planned Unit Development District. That text must set forth and define the uses to be permitted in the proposed District. The Regulation Text is intended to guide all development of the property proposed to be designated as a PD.

This Regulation Text shall only apply to the PD in question and all development within that PUD. All appropriate regulatory areas should be addressed by the applicant in the Regulation Text including, without limitation, the following:

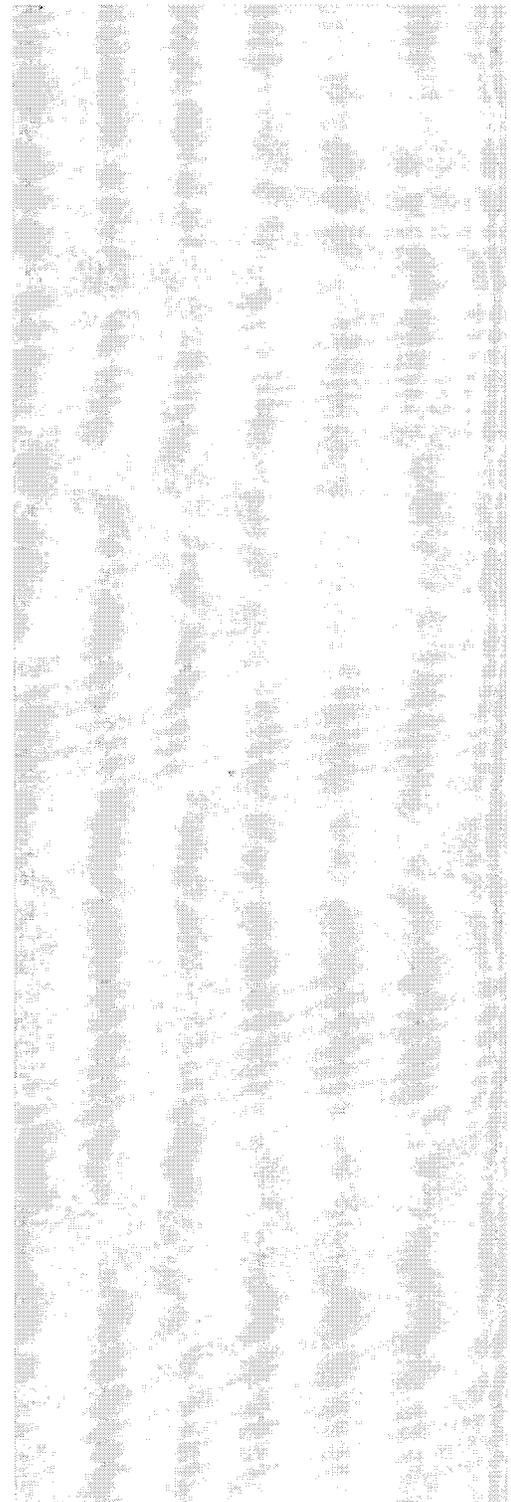
- i. All required setbacks including, but not limited to, buildings, service areas, off-street parking lots and signage, including rear, front and side yard areas.

Subarea A:

Setback from proposed internal public street right-of-way:

20 feet building and parking/ vehicle circulation areas.

Setback from adjacent residential zoning district, metro-park, and Subarea C-1:



30 feet building and parking/ vehicle circulation areas, except for a 20 feet setback for parking located adjacent to a C building in the northeast corner of Subarea A near the boundary between Subarea A and Subarea C-1.

Setback from US 33 right-of-way:

100 feet building and parking/ vehicle circulation areas.

Setback from Subarea B boundary:

0 feet parking/ vehicle circulation areas.

20 feet building and structures

Subarea B

Setback from proposed internal public street right-of-way:

20 feet building and parking/ vehicle circulation areas.

Setback from US 33 right-of-way:

100 feet building and parking/ vehicle circulation areas.

Setback from Weldon Road ROW:

25 feet building and parking/ vehicle circulation areas.

Setback from Subarea A boundary:

0 feet parking/ vehicle circulation areas.

20 feet building and structures

Subarea C-1

Setback from Hyland-Croy Road right-of-way:

100 feet parking and vehicular circulation.

100 feet building and structures .

Setback from adjacent north residential zoning district:

20 feet parking and vehicular circulation areas.

40 feet for loading, delivery, and service areas.



40 feet for buildings

Setback from Subarea A boundary:

30 feet building and parking/ vehicle circulation areas, except for shared private street.

Setback from proposed internal public street right-of-way:

20 feet building and parking/ vehicle circulation areas.

Subarea C-2

Setback from Hyland-Croy Road right-of-way:

100 feet parking and vehicular circulation.

100 feet building and structures.

Setback from Weldon Road right-of-way:

20 feet parking and vehicular circulation.

40 feet building and structures.

Setback from proposed internal public street right-of-way:

20 feet building and parking/ vehicle circulation areas.

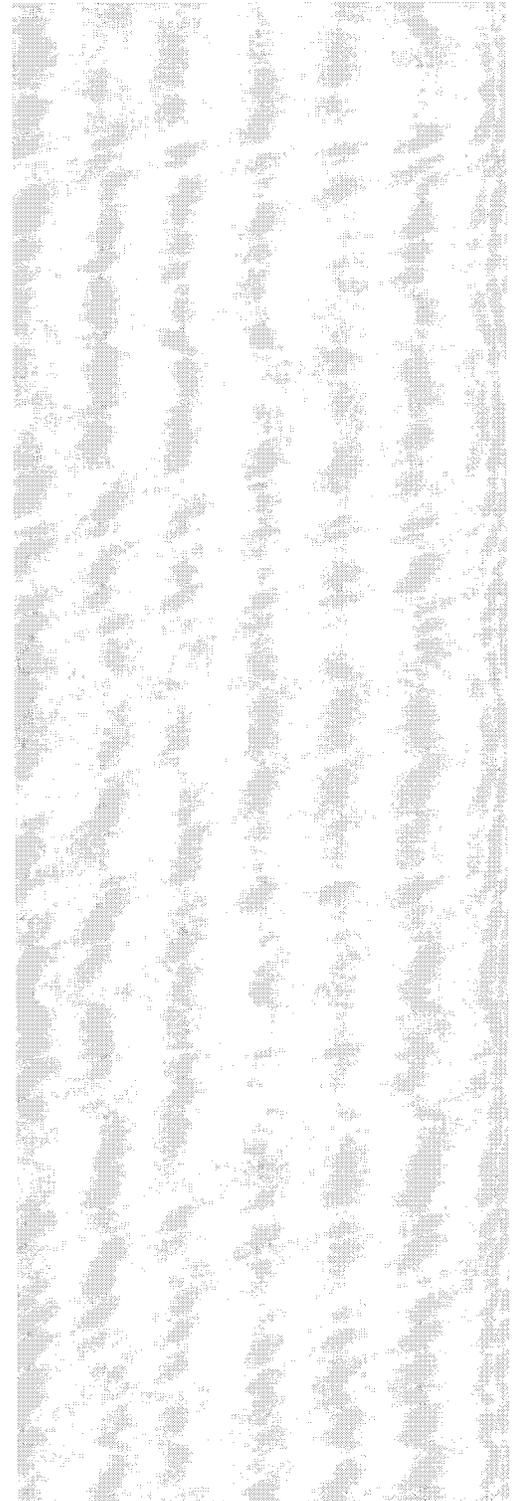
- i. All maximum height and size requirements of buildings, mechanical areas and other structures. The definition of Height of Building is in Section 300 Definitions of the Jerome Township Zoning Resolution entry number 16.

Subarea A - the maximum building height is 38 feet.

Subarea 8 - the maximum building height will be a three (3) story facility and will not exceed 59 feet. .

Subarea C-1 - the maximum building height is 40 feet.

Subarea C-2 - the maximum building height is 40 feet.



- iii. All parking and loading space standards per building square footage or dwelling unit type, including dimensions of all parking stalls, aisles and loading spaces.

Minimum parking for Subarea A shall be 2 spaces per dwelling unit.
Minimum parking for Subarea B shall be 1 space per two (2) beds and 1 for each employee on the largest shift.
Minimum parking for Subarea C-1 and C2 shall be per the zoning code by use as defined at time of Development Plan.
Parking spaces may be provided in surface lots, attached or detached garages, or on-street (public or private) spaces.
Subareas C-1 and C-2 shall be permitted to share parking or combined parking – Sec. 610.03) with recorded cross-access agreement of the property owners.
Drive aisles shall be 22 feet in width.
Parking stalls shall be minimum of 9 feet in width and 19 feet in length

- iv. All street and road right-of-way and pavement width dimensions, curb cut spacing and other related circulation standards.

All of the public and private ROW's, pavement dimensions, curb cut spacing and other related circulation standards are shown specifically or by scale on the Zoning Plan (Exhibit "E-1") and/or the Preliminary Utility Plan (Exhibit "F-1").

- v. All pedestrian and bicycle walkway, trail and sidewalk dimensional standards, including rights-of-way and pavement width, and pavement standards.

All sidewalks shown on the Preliminary Zoning Plan (Exhibit "E-1") will be at least 4 feet in width.

- vi. All screening and landscaping standards, including buffer dimensions, height, landscape material, maintenance standards, and screening standards for off-street parking areas, loading docks, trash receptacles and dumpsters, ground- and roof-mounted mechanical units and adjoining areas.

The proposed landscape design is as shown on the Preliminary Landscape Plan (Exhibit "H-1").



Off-street parking areas shall be screened with a 3 feet 6 inch tall evergreen hedge for headlight screening, consistent with code Section 610.03.9.

Loading docks shall be located to the side or rear of the building, and shall be screened from views off-site to a minimum height of 6 feet with a fence, wall, mound, or evergreen hedge or any combination thereof.

Trash receptacles and dumpsters shall be screened on all sides within an enclosure or building compatible with the associated subarea architecture. Enclosure may consist of a screen fence or wall with gates, and shall be at least 6 feet in height.

Roof-mounted mechanical units shall be screened from ground level view from adjacent properties with an architecturally compatible screening enclosure.

Ground-mounted mechanical units shall be screened on all sides with a screen fence, wall, or evergreen hedge. Screen shall be at least one foot taller than the object intended to be screened.

Subarea C-1: Buffering shall be provided along the north property line adjacent to the existing residential zoned property, and along the west property line shared with Subarea A, per zoning code Section 620 .

- vii. All proposed signage including height, setback, square footage and colors.

All the locations for the proposed signs on the Zoning Plan (Exhibit "E-1") and the conceptual sign details are shown in Sign Details (Exhibit "E-1")

Signs may be internally illuminated by white interior light of reasonable intensity with logos and/or letters lit or silhouetted on an opaque background. No additional background lighting shall be permitted. Signs may be externally illuminated. External light sources shall be shielded by a decorative fixture or screened from view and directed only at the sign being lit.

Joint Identification Signs:

Two (2) signs shall be permitted within Subarea C-2 along the Hyland-Croy frontage for the purposes of identifying the development.



One sign shall be permitted to be located at the intersection with Park Mill Drive, and one sign shall be permitted to be located at the intersection with Weldon Road.

Signs shall not exceed 6 feet in height and 60 square feet of display area per side. Signs will be permitted a maximum overall height of eight (8) feet from grade. Signs may include the development name and up to four (4) tenants/users of any subarea. The proposed Example of the Joint Identification Sign in Exhibit E is for establishing the design intent only and applicant will provide in the Development Plan submission a specific detailed Joint Identification Sign for approval.

Subarea C-1 shall be permitted one monument sign along the Hyland-Croy Road frontage, and shall meet the requirements of Section 455.08.2

Subarea C-1 and C-2: individual building tenants shall be permitted one wall sign per elevation fronting a public street, to a maximum of two (2) wall signs per tenant.

- vii. All exterior lighting standards, including light intensity, placement, height and materials for parking lots, walkways, sidewalks and accent lighting.

All of the proposed locations of the free standing exterior lights are shown on the Zoning Plan (Exhibit "E-1"). In addition, in Subarea A above each garage door will have an exterior light and beside each entry door will also have an exterior light. All of the proposed exterior lights have conceptual designs in Exhibit "E-4 & E-5". Light poles may include metal and/ or engineered wood/ glu-lam poles designed for use in site lighting. Final pole selection will be specified in the Development Plan.

Lighting for private streets and vehicle-use areas shall be provided per code requirements.

Maximum height of light fixtures in parking areas and along public or private streets shall be 24 feet.

Maximum height of light fixtures in pedestrian areas shall be 15 feet.

Light fixtures, poles, and bases shall be consistent and/or complimentary in style throughout the development.

Site light fixtures shall be designated "full-cut-off". Building mounted lighting shall not require such designation.



Building-mounted lighting shall be permitted to meet site lighting requirements if so demonstrated with a photometric plan.

- ix. All exterior architectural design standards, including material, color and styles.

Please review standards in Section m. above.

- x. A list and description of the precise uses proposed for the development. Listed uses shall be defined by their customary name or identification, except where they are specifically defined or limited elsewhere in the Zoning Plan or this zoning Resolution. Any listed use may be limited to specific areas delineated in the proposed Zoning Plan.

Please review proposed uses in Section b. above.

- xi. Frontage requirements, minimum lot area requirements, yard areas, lot coverage restrictions and perimeter setback requirements.

All frontages, size of parcels and perimeter setback requirements are shown on the Zoning Plan (Exhibit "E-1").

- xii. Accessory uses and/or structure standards and limitations.

Subarea A - All of the proposed accessory uses and structures are shown on the Zoning Plan (Exhibit "E-1"). Examples of various accessory structures are a gazebo, compactor building and mail kiosk(s). The design of these structures will be of consistent character and materials of the residential and/or the community building. More detailed designs and standards will be provided in the Development Plan Application.

Multifamily Pool shall be permitted - code Section 645.03.2.

Compactor/ Utility building shall be architecturally consistent with the Subarea A architectural theme and shall be subject to the building setbacks of the subarea.

Subarea A and B shall be permitted detached garages, consistent with the architectural detailing of the Subarea and shall be subject to the building setbacks of the subarea.

A gazebo shall be permitted within Reserve F. The structure shall not exceed 25 feet in length or width.



- xiii. Open space area, uses and structures, including proposed ownership and sample controlling instruments.

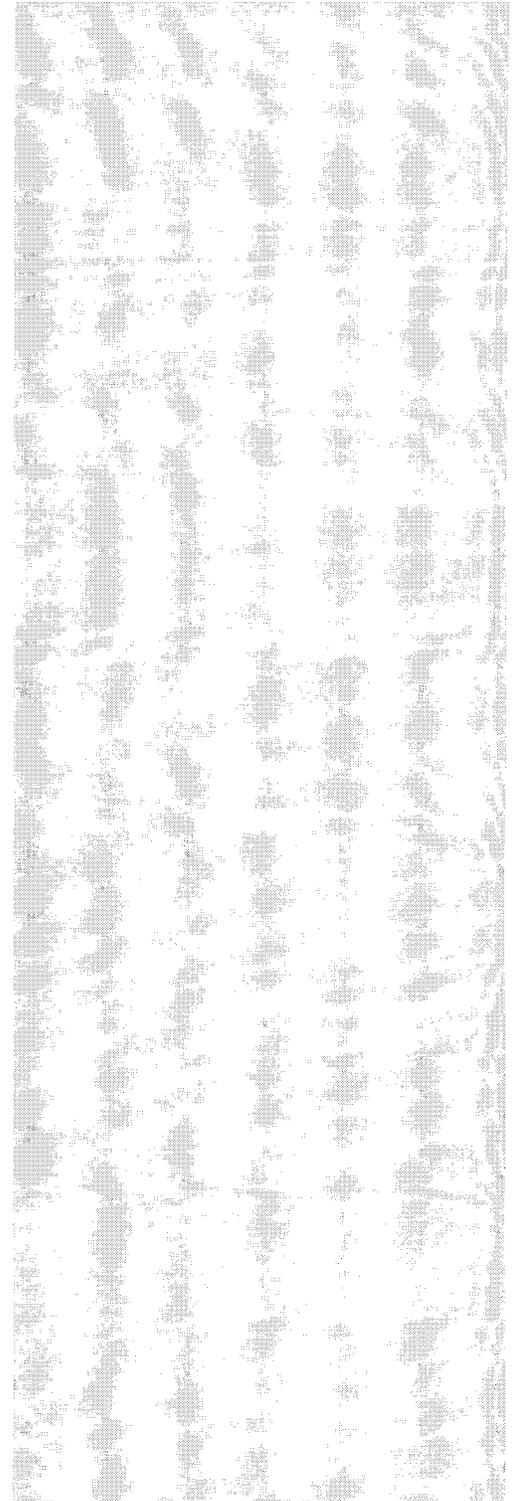
Please review information provided in Section e. above.

- xiv. Any other regulatory area or matter deemed necessary or relevant by the Zoning commission.

None applicable at this time

- xv. The Regulation Text should contain the following provision: All development standards not specifically addressed by the Regulation Text shall be regulated by those general development standards set forth in the Zoning Resolution.

The Applicant acknowledges that any standards not addressed in this application will be subject to the general development standards set forth in the Zoning Resolution.



Case No. _____

In The
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STATE EX REL. PAUL L. JACQUEMIN, et al.,
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v.

UNION CTY. BD. OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

AFFIDAVIT OF RELATOR MARY M. JACQUEMIN

Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Derek Clinger (0092075)
McTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

Laura M. Comek (0070959)
LAURA M. COMEK LAW LLC
300 E. Broad Street, Suite 450
Columbus, Ohio 43215
Phone: (614) 221-0717
Facsimile: (614) 221-1278
laura@comeklaw.com

Counsel for Relators

Thayne D. Gray (0059041)
Assistant Prosecuting Attorney
UNION COUNTY PROSECUTOR'S OFFICE
221 West Fifth Street, Third Floor
Marysville, Ohio 43040
Phone: (937) 645-4190
tgray@co.union.oh.us

Counsel for Respondent

Union County

/ss

State of Ohio

I, Mary M. Jacquemin, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced herein, and further state as follows:

1. I am a Relator in this action, along with my husband, Paul L. Jacquemin.
2. Relators are the owners of the property located at 7347 Hyland Croy Road, Plain City, Ohio, 43064, which property was included in the subject rezoning application, and are the protestors against the Petition for Zoning Referendum on Jerome Township Resolution 15-167 ("Referendum Petition").
3. Relators acted with the utmost diligence in bringing the instant action, there has been no unreasonable delay or lapse of time in asserting our rights herein and, further, there is no prejudice to Respondent Board of Elections.
4. Relators lack an adequate remedy in the ordinary course of law.
5. On May 26, 2015, Relators and Schottenstein Real Estate Group executed a Zoning Application, a proposal to amend the zoning classification of 60.43 acres of three parcels of land, two owned by Relators (Parcel Nos. 1700310380000 and 1700310381000) and one owned by Arthur and Elizabeth Wesner (Parcel No. 1700310360000), in Jerome Township, Union County, Ohio, from Rural Residential to Mixed Use Planned Development. The application was filed with the Township on May 26, 2015. [See, Zoning Application, appended to the Complaint as Exhibit A].
6. On December 23, 2015, the Jerome Township Board of Trustees convened a public hearing on the rezoning request regarding Relators' and Arthur and Elizabeth Wesners' property. At the conclusion of hearing, the Jerome Township Trustees voted 2-1 to adopt Resolution 15-167. [See, December 23, 2015 Jerome Township Board of Trustees Meeting Minutes, including Resolution 15-167, appended to the Complaint as Exhibit B].

7. Resolution 15-167 states as follows:

“The Jerome Township Trustees hereby enter into record a Resolution adopting and modifying the recommendation of the Jerome Township Zoning Commission. It is recognized that the applicant filed a Preliminary Zoning Plan Application for a Mixed Used Planned Development (PUD #15-120).

It is recognized by the Trustees that the application meets the requirements of the Jerome Township Comprehensive Plan and further the applicant and co-applicants have agreed to make substantial financial contributions to the needed road improvements. The application further meets the needs of the Township regarding senior housing and care and multi-unit housing in accordance with future needs as presented to the Township by the Mid Ohio Regional Planning Commission (MORPC) and other independent studies.

It is agreed that after passage, the applicant or their representatives will negotiate with Township representatives in good faith the following terms of passage to be presented in text upon such time the Final Development Plan is presented for approval.

1. Terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed for the Final Development Plan and also reimburse Jerome Township and agreed upon expenses in the execution of these documents should they be necessary.
2. Applicant and or their legal representative shall enter into an agreement in the Final Development Plan as an agreement that will include negotiated reimbursement to Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development until such time tax revenue is generated at projected build out.
3. Negotiate in good faith with any other terms and conditions as necessary in the text of the Final Development Plan.

Jerome Township further reserves the right to negotiate further terms of the Final Development Plan beyond the scope of this resolution.

Amended portion of the resolution is to include the modifications as presented by the Applicant/Developer in their memorandum dated December 22, 2015.”

8. Resolution 15-167 incorporated a December 22, 2015 memorandum, which was not attached to the Referendum Petition. [See, December 22, 2015 memorandum, appended to the Complaint as Exhibit C].
9. On January 21, 2016, a group of petitioners filed the Referendum Petition with the Jerome Township Board of Trustees seeking to submit the adoption of Resolution 15-167 to the electors of Jerome Township. [See, Sample Petition, appended to the Complaint as Exhibit D].
10. The summary on the first page of each Part-Petition states as follows:

“A Zoning amendment approving rezoning an irregular “L” shaped site of approximately 60.43 acres Between the West side of Hyland Croy Road and the East side of US 33 from U-1 Rural District to P.U.D. Planed (*sic.*) United Development for Parcels 17-0031038000 and 17-0031038100 known as the “Jacquemin Farms.”

The P.U.D. Planed (*sic.*) Unit Development (Res. 15-167) provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility (See Development Site Map – Exhibit #2 and Plot Map – Exhibit #3.) The Nearest intersection being Hyland Croy Road and SR 161 – Post Road.

All as more fully described and identified in the attached:

 - 1) The Record of Proceedings of Jerome Board of Trustees Public Hearing of December 23, 2015 (Exhibit #1)
 - 2) “Jacquemin Farms. Vicinity “Site” Map (exhibit #2
 - 3) Development Plot Map (exhibit #3)”
11. On February 4, 2016, Relators filed a Protest Against Petition for Zoning Referendum on Jerome Township Resolution 15-167 (“Protest”) with Respondent. [See, February 4, 2011 Protest, appended to the Complaint as Exhibit E].
12. On April 6, 2016, Relators filed a Pre-Hearing Brief with Respondent, providing additional legal arguments in support of their protest. [See, Pre-Hearing Brief, appended to the Complaint as Exhibit F].
13. On April 12, 2016, Respondent held a quasi-judicial hearing on the two protests. Respondent heard sworn testimony and accepted exhibits from the parties at the hearing, which were entered into the record.

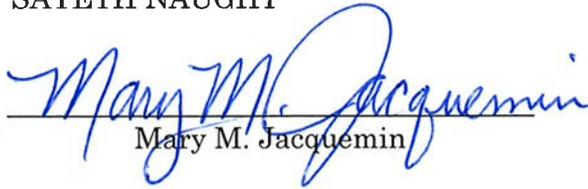
14. At the conclusion of the hearing on the protests, Respondent Board members voted 3-1 to certify the Referendum Petition and place the issue on the November 8, 2016 general election ballot.
15. The summary contained in the Referendum Petition was in fact ambiguous, misleading, inaccurate, and contained material omissions which would confuse the average person.
16. In addition, the Referendum Petition summary contained select information outside of Resolution 15-167 which created a further deficiency. By including only a portion of the information about the subject rezoning, but omitting other essential information about the rezoning, the petitioners deceived electors about the nature of the zoning amendment.
17. As referenced in Relators' protest, ground 1, the Referendum Petition summary is ambiguous and misleading because it states that the resolution "provides for approximately 300 Residential Units and a 250 Bed Adult Living Facility," but the summary materially omits that the land was re-zoned for "mixed use" which would allow for not only residential use, but also retail, office, institutional, and agricultural purposes per the Preliminary Development Plan approved by the Township. Further, in fact only 125, not 250, adult living facility units will be constructed. [See, Preliminary Development Text, appended to the Complaint as Exhibit G].
18. As referenced in Relators' protest, ground 2, the Referendum Petition summary is ambiguous and misleading because it only references Parcel Nos. 17-0031038000 and 17-0031038100, but materially omits a third parcel subject to the rezoning, Parcel No. 17-003103600, which is owned by Arthur and Elizabeth Wesner. The Wesner' property is approximately one fifth of the acreage being rezoned. When questioned at the April 12, 2016 protest hearing about why the summary omitted a parcel number, a Referendum Petition organizer testified that it might have been an oversight.
19. As referenced in Relators' protest, ground 3, the Referendum Petition summary is ambiguous and misleading because it materially omits that Resolution 15-167 imposed three significant requirements on the zoning applicants, which include the applicant must: (1) negotiate the terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed; (2) enter into an agreement to reimburse Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the

proposed development; and (3) negotiate any other terms and conditions as necessary in the text of the Final Development Plan.

20. As referenced in Relators' protest, ground 4, the Referendum Petition summary is ambiguous and misleading because it materially omits that Jacquemin Farms, which is a beloved community destination, will continue to operate on the site. Rather, the summary references only residential uses for land being rezoned.
21. As referenced in Relators' protest, ground 5, the Referendum Petition summary is inaccurate and misleading because it incorrectly describes the zoning classifications as changing from "U-1 Rural District to P.U.D. Planed (*sic.*) Unit Development" when the December 23, 2016 meeting minutes clearly and accurately state that the zoning classification would change from "RU (Rural Residential District) to PD (Planned Development District."
22. As referenced in Relators' protest, ground 6, the Referendum Petition summary is ambiguous and misleading because it inaccurately describes the location of the land area describing that the "nearest intersection [is] Hyland Croy Road and SR 161 – Post Road" when in fact this stated intersection is approximately a half mile south of the subject parcel and was the subject of a recent highly controversial rezoning of a different property to allow for "big box" retail. In fact, two other intersections, Hyland Croy Road and Park Mill Drive as well as Hyland Croy and Weldon Road, actually border the property subject to Resolution 15-167.
23. As referenced in Relators' protest, ground 7, the Referendum Petition summary is ambiguous and misleading because it inaccurately describes the owners of the land as "Jacquemin Farms" when, in fact, the owners of the land are Paul and Mary Jacquemin and additionally, Arthur and Elizabeth Wesner own a significant portion of the land that is subject to Resolution 15-167.
24. As referenced in Relators' protest, ground 8, the Referendum Petition summary is ambiguous and misleading because it includes a misleading description of the shape of the land area as an "irregular L" shape.
25. As referenced in Relators' protest, ground 9, the Referendum Petition summary is ambiguous and misleading because it omits any reference to the December 22, 2015 memorandum that was significant to Resolution 15-167 as it modified the original application.

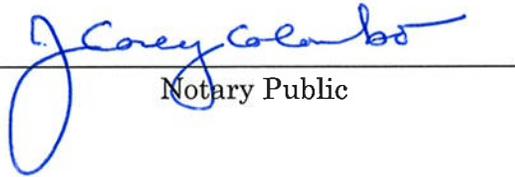
26. I have read the Complaint filed in this action and state that matters as alleged therein are true.

FURTHER AFFIANT SAYETH NAUGHT



Mary M. Jacquemin

Sworn to and subscribed before me this 21 day of April, 2016.



Notary Public



JOHN COREY COLOMBO
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.