

Case No. 2016-0614

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

BRIEF OF AMICUS CURIAE ANDREW DIAMOND IN SUPPORT
OF RESPONDENT UNION CTY. BD. OF ELECTIONS

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I. INTEREST OF AMICUS CURIAE

I, Andrew I Diamond, am a resident of Jerome Township, Union County, Ohio. I am a circulator of the Petition of Referendum for Resolution 15-167. I have attended several public hearings regarding the proposed development of the site commonly known and referred to as Jacquemin Farms. I have heard the overwhelming public opposition to approving this zoning amendment and want to see that voters of Jerome Township are allowed to exercise their right to vote on this under the provisions of R.C. § 519.12.

I believe that the Union County Board of Elections decision to deny the Relator's protest was made after careful consideration of the evidence and testimony presented to them and was well within their discretion. The Union County Board of Elections recognized that the intent of the referendum petition was to allow the Jerome Township voters to become active participants in determining the future of their township.

II. STATEMENT OF FACTS AND CASE

Amicus Curiae Andrew Diamond refers to and accepts the procedural and factual background as set forth in the Merit Brief, Section II, Statement of Facts and Case, filed by Relators, Paul L. Jacquemin, et al. on May 13, 2016.

III. ARGUMENT

Amicus Curiae Andrew Diamond joins in support of the Respondents request for dismissal of the Relators Complaint. The denial of the Relator's protest of the Referendum Petition was made after careful consideration of the evidence and testimony presented and made after review of applicable law.

- A. Jerome Township failed to comply with R.C. § 149.43 by not making the text of Resolution 15-167 available within a reasonable time.

A public records request for the text of Resolution 15-167 was made immediately upon conclusion of the public hearing held by the Jerome Township trustees at 8:00am, December 23, 2015. It was not until January 14, 2016, 22 days later, that Jerome Township complied with the request and supplied the meeting minutes which contained the text of Resolution 15-167. This is an unreasonable amount of time considering that the Jerome Township trustees voted to approve the resolution on December 23, 2015. The text of the resolution should have been immediately available to the public, after all, the trustees just voted to approve this very text. This unreasonable delay left the circulators of the Referendum Petition very little time to prepare and circulate the petition. Ohio Rev. Code § 149.43 states that public records shall be promptly prepared and made available within a reasonable time. The text of Resolution 15-167 was neither promptly prepared nor made available within a reasonable time.

B. Jerome Township failed to comply with R.C. § 519.12 by not making the memorandum dated December 22, 2015 available to the public prior to the public hearing at 8am, December 23, 2015.

R.C. § 519.12 (F)(5) says that the text of the proposed zoning amendment shall be made available for inspection 10 days prior to the public hearing. The memorandum was dated and received by Jerome Township on December 22, 2015, and the public hearing was the following day, December 23, 2015. This failed to comply with the 10-day inspection period set forth in R.C § 519.12 (F)(5) and left the public with no opportunity to discuss it in the public hearing of December 23, 2015.

C. The Relators have acknowledged that a 250 Bed Adult Living Facility will be built, but in their protest choose to refer to it as a 125-unit Adult Living Facility.

In their protest letter to the Union County Board of Elections the Relators state that the description of a “250 Bed Adult Living

Facility” is true. They’ve now chosen to use the term “125 Unit Adult Living Facility.” This is nothing more than a change in terms introduced by the Relators after agreeing with the description provided by the Referendum Petition and the two descriptions should be considered to be one and the same.

D. Parcel No. 17-003103600 is not in its entirety included in the zoning amendment. Only a portion of Parcel No. 17-003103600 is included.

Parcel No. 17-003103600 is 22.777 acres in size. Only 13.114 acres of this parcel are included in the zoning amendment. Parcel No. 17-0031003600 will need to be divided with new parcel numbers assigned before the rezoning of Resolution 15-167 can take place. A partial parcel cannot be rezoned by itself. To have included Parcel No. 17-003103600 would have been taken to mean that over 70 acres would have been affected by the zoning amendment.

E. The Wesners are not mentioned in the brief summary because they are not mentioned anywhere in Resolution 15-167 or in any of the other documentation presented to the public.

Nowhere in Resolution 15-167 does the Wesner name appear. Nowhere in the memorandum dated December 22, 2105 does the Wesner name appear. Nowhere on the Vicinity Map does the Wesner name appear. Nowhere on the Plot Map does the Wesner name appear. Nowhere in the meeting minutes from the Public Hearing of December 23, 2015, does the Wesner name appear. The Wesner name does not appear in any of the documentation presented to the public. The Referendum Petition cannot be expected to supply information which is not included in the Resolution itself and has not been presented to the public. See *THE STATE EX REL. RIFE V. FRANKLIN COUNTY BOARD OF ELECTIONS ET AL. NO. 94-1908*

F. The zoning classifications used in the brief summary are the same as what was presented to the public and substantively the same as the classifications which superseded them.

The Jerome Township Zoning Code was adopted on April 20, 2015. In this new zoning code, the zoning classification “U-1” was superseded by “RU” and the zoning classification “PUD” was superseded by “PD”. This happened only one month prior to the “PUD” Zoning Application being submitted by the developers. The “U-1” and “PUD” terms were still commonly being used in all of the public hearings and in the even in the Zoning Application, itself. Even the maps that were presented by the developers in the public hearing of December 23, 2015 continued to use the old zoning classifications. These were the very maps attached to the Referendum Petition.

Furthermore, Gary Smith, the Jerome Township Zoning Inspector testified under oath at the protest hearing before the Union County Board of Elections that the old and new codes were the same thing:

MR. PARROTT: I have a question for you. Is U-1 residential district the same as R-U residential district? Are they one in the same? Equal? The same thing?

MR. SMITH: They are. The Township changed their Zoning Resolution over the summer, so U-1 became R-U.

MR. PARROTT: Identical thing?

MR. SMITH: Yes.

MR. PARROTT: And then is PUD, Planned Unit Development, the same thing, identical as to PD, Planned Development District?

MR. SMITH: Yes, same thing

The “U-1” and “PUD” zoning classifications were the commonly used classifications and have no substantive differences from the classifications that superseded them.

G. The intersection describing the location of the land is the same intersection as Jacquemin Farms uses on their own web site to describe the location of their farm.

The purpose of putting a major intersection in the brief description of the Referendum Petition is to help signers of the petition identify the location of the land that is the subject of zoning amendment. It is important that this be a major intersection well known to the public. Jacquemin Farms recognizes this and uses the following directions to their farm on their web site,

www.jacqueminfarms.com:

From Dublin and I-270: Take Rt. 33/161 West to the Plain City/Post Rd./Rt 161 exit. Turn right onto Post Rd. Then turn left onto Hyland-Croy Rd. Go down Hyland-Croy approximately 1/2 mile. Our farm is on the left-hand side...
7437 Hyland-Croy Rd.

These are the same roads that were used in the Referendum Petition to identify the location of the land.

H. The maps presented by the protesters as evidence are not the maps that were circulated with the referendum petition. They are poor quality photocopy reductions of the original maps.

The Relator's evidence, EXHIBIT D., in their COMPLAINT IN ORIGINAL ACTION FOR WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS is not an accurate representation of the Referendum Petition. The Relators have supplied a poor quality photocopy of reduced size rendering the maps almost unreadable.

The original maps that were attached to the Referendum Petition were 11 x 17 inches in size and clearly legible to the signers of the petition. The maps attached the Referendum Petition clearly showed the location of the land within the vicinity and clearly showed the detailed site development plot plan.

What the Relators have submitted as evidence is a false representation of what was presented to the signers of the Referendum Petition.

III. CONCLUSION

The evidence and testimony produced at the hearing of the Union County Board of Elections on April 12, 2016, showed that Jerome Township public officials put an unreasonable burden on the circulators of the Referendum Petition by failing to comply with public records requests within a reasonable time. The circulators were forced to hurriedly prepare and circulate the Referendum Petition in order to meet the 30-day requirement for filing the petition. Despite the delay, in harsh winter conditions, the circulators gathered over 300 signatures, almost triple the required number of 135.

The evidence and testimony produced at the hearing of the Union County Board of Elections on April 12, 2016, showed that the average person understood what they were signing. The Union County Board of Elections carefully considered the facts presented at the hearing and correctly denied the Relator's protest, certifying the referendum to the ballot in November, 2016, thereby allowing the voters of Jerome

Township to exercise their right to vote on the proposed zoning amendment

For the reasons above, I, *Amicus Curiae* Andrew I. Diamond, respectfully request that this Court dismiss the Relators request for a Writ of Prohibition and/or a Writ of Mandamus in this case.

Respectfully submitted,

/s/ Andrew I. Diamond

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2016, I served a copy of the foregoing brief on the following persons by email:

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