

Case No. 2017-1285

In the
Supreme Court of Ohio

STATE EX REL. TAM O'SHANTER COMPANY, *et al.*,
Relators,
v.

STARK COUNTY BOARD OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

RELATORS' MERIT BRIEF

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I. INTRODUCTION

Relators Tam O'Shanter Company and Charles H. Bennell ("Relators") bring this action for a writ of prohibition to prevent Respondent Stark County Board of Elections ("Respondent" or "Board") from certifying a township zoning referendum petition for placement on the November 7, 2017 general election ballot and/or for a writ of mandamus ordering Respondent to comply with its affirmative statutory duty to uphold Relators' Protest and not certify the issue for placement on the ballot. Respondent was presented with unrebutted evidence, both documentary and sworn testimony, that the Referendum Petition filed against the Tam O'Shanter Rezoning Amendment ("Referendum Petition" or "Petition") failed to comply with the clear mandatory requirements of R. C. 519.12(H) to set forth the full and correct title of the zoning amendment resolution, motion or application, including furnishing the name by which the amendment is known, "Tam O'Shanter," and indeed failed to include the name anywhere on the petition, including in the summary.

For the reasons that follow, Relators are entitled to the requested writs of prohibition and mandamus.

II. STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

On August 25, 2017, following the submission of the Referendum Petition, Relators filed a protest of the Petition with Respondent Board. [See, Compl. ¶ 15; Exh. S (Evid. Vol. 1)]. On August 28, 2017, Respondent Board notified Relators that a protest hearing had been scheduled for September 13, 2017. [See, Compl. ¶ 15; Exh. S (Evid. Vol. 1)]. Before the hearing, on September 8, 2017, Relators filed a Pre-Hearing Memorandum in Support of Protest, along with sixteen supporting exhibits, with Respondent. [See, Compl. ¶ 18; Exhs. A-O (Evid. Vol. 1), U

(Evid. Vol. 2)]. At the September 13 protest hearing, Respondent Board heard sworn testimony from Relator Bennell and from the Jackson Township Fiscal Officer and Custodian of Records, Randy Gonzalez, and Respondent also accepted additional exhibits from the Relators, all of which are accepted into the record. [See, Compl. ¶ 19; Exhs. Q-R (Evid. Vol. 1)]. At the conclusion of the hearing on the Protest, Respondent Board voted to deny the Protest and to place the Referendum on the November 7, 2017 general election ballot. [See, Compl. ¶ 20]. Relators filed this original action the next day on September 14, 2017.

B. Statement of the Facts

Relator Tam O'Shanter Company is the owner of the property located at 5055 Hills & Dales Rd. NW, Canton, Ohio 44708, which was included in the subject rezoning application, and is one of the protestors against the Referendum Petition. [See, Compl. ¶2]. Relator Charles Bennell is a qualified elector of Jackson Township, Stark County, Ohio, the President of Relator Tam O'Shanter Company, and is one of the protestors against the Referendum Petition. [See, Compl. ¶3]. Respondent Board is the duly established and acting election authority for Stark County, Ohio, pursuant to R.C. 3501.06. [See, Compl. ¶4].

On April 20, 2017, Relator Tam O'Shanter Co. executed a Zoning Application, a proposal to amend the zoning classification of 62.11 acres of two parcels of land owned by Relator Tam O'Shanter Co. (Parcel Nos. 1625421 and 1629943) in Jackson Township, Stark County, Ohio from R-R Rural Residential to B-3 Commercial. [See, Compl. ¶7, Exh. B (Evid. Vol. 1)]. A cover letter and the application were filed with the Township on April 20, 2017. [*Id.*]

The Tam O'Shanter Rezoning Application was approved by multiple governmental bodies. On May 9, 2017, the Stark County Regional Planning Commission recommended approving Relator Tam O'Shanter Co.'s application with minor revisions. [See, Compl. ¶8]. On May 18,

2017, the Jackson Township Zoning Commission convened a public hearing on the rezoning request regarding Relator Tam O'Shanter Co.'s property. [See, Compl. ¶9]. At the conclusion of the hearing, the Commission unanimously recommended approving Relator Tam O'Shanter Co.'s application and request for zone change. [*Id.*]

On June 13 and 27, 2017, the Jackson Township Board of Trustees convened public hearings on the rezoning request regarding Relator Tam O'Shanter Co.'s property, after which the Jackson Township Board of Trustees unanimously approved the rezoning request with a minor modification. The modification re-zoned approximately 2.75 acres to B-1 Commercial instead of B-3 Commercial. [See, Compl. ¶10].

Following unanimous approval by the Trustees, Jackson Township a minority of residents opposing the Tam O'Shanter Rezoning Amendment circulated petitions for a referendum. [See, Compl. ¶12]. When signers of the Referendum Petition were presented with the Petition, here is what they saw:

PETITION FOR A TOWNSHIP ZONING REFERENDUM

* * *

Jackson Township Zoning Amendment 630-17

(Name and number of the proposal, if any)

* * *

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

Proposal: Propose to rezone R-R Rural Residential District to B-3 Commercial Business District approximately .36 acres, more or less, of parcel #1625421 located at the southeast corner of Everhard and Fulton and approximately 61.75 acres of a 112.84 acre tract, parcel #1629943 located approximately 70 ft. east and 185 ft. south of the southeast corner of Everhard and Fulton.

Decision of the requests being: Approved a modification of the Zoning Commission with the modification being approximately 2.75 acres rezoned to B-1 consisting of 300 ft. north of the southwest property line and 400 ft. east of the west property line and remaining approximate 59.36 acres rezoned B-3. * * *

[See, Rel. Exh. M (Evid. Vol. 1)].

There is no reference anywhere on the petition to “Tam O’Shanter,” the name of the property owner that filed the application and the name by which the amendment is known. Petitioners provided only the name of the township (“Jackson”) and the zoning amendment number (“630-17”). [See, Compl. ¶13, Exh. M].

On August 25, 2017, Relators filed a Protest Against Zoning Referendum Petition (“Protest”) with Respondent. [See, Compl. ¶15, Exh. S (Evid. Vol. 1)]. The Protest alleged that:

Pursuant to R.C. 519.12(H), the petition must contain the name or title by which the proposal is known, which is the name of the property owner (Tam O’Shanter Co.) or the applicant (Terry Moore), and the petitions at issue include neither.

On August 28, 2017, Respondent Board notified Relators that it had set September 13, 2017 as the date for the protest hearing. [See, Compl. ¶17, Exh. K (Evid. Vol. 1)]. On September 8, 2017, Relators filed a Pre-Hearing Brief with Respondent, providing additional legal arguments in support of their protest. [See, Compl. ¶18, Exh. U (Evid. Vol. 2)].

Relators’ evidence in their Pre-Hearing Brief and at the hearing on the Protest overwhelmingly established that, throughout the rezoning process, the name by which the proposal was known was the “Tam O’Shanter” Zoning Amendment or Request. Indeed, Relators provided unrebutted evidence that the zoning applicants (i.e., Relators), Jackson Township officials, Stark County officials, the local media, and even the opponents of the zoning amendment all consistently referred to the proposal as the “Tam O’Shanter” Zoning Amendment, Request or Proposal.

On March 30, 2017, Relator Bennell sent a letter to residents in neighborhoods adjacent to the Tam O’Shanter Company’s property inviting them to attend “AN INFORMATION MEETING ABOUT THE LONG-RANGE LAND PLAN FOR TAM O’SHANTER”. [See, Compl. ¶ 29; Rel. Exh. A (Evid. Vol. 1); Testimony of Charles Bennell, Tr.14-15 (Rel. Exh. T, Evid. Vol.2)]

[emphasis added]. The letter made three further references to “Tam O’Shanter.” [Id.]. On April 20, 2017, Relator Tam O’Shanter Co. filed its zoning application and cover letter with Jackson Township. [See, Compl. ¶30; Rel. Exh. B (Evid. Vol. 1)]. In the cover letter, the agent for Relator Tam O’Shanter Co., Attorney Terry Moore, identified the subject as “Tam O’Shanter Request for Map Amendment of Jackson Township Zoning Resolution.” [Id.] [emphasis added]. The application made eight additional references to “Tam O’Shanter.” [Id.]. Relators also presented evidence of a receipt dated April 20, 2017 that was issued to Relator Tam O’Shanter Company by the Township that references “Parcel #1625421 & 1629943 Tam O’Shanter.” [See, Compl. ¶31; Rel. Exh. C (Evid. Vol. 1)] [emphasis added].

As further evidence that Jackson Township consistently referred to the proposal as the “Tam O’Shanter” request or amendment, Relators presented Respondent Board with several public hearing notices and meeting agendas, all of which referred to “Tam O’Shanter.” On May 5, 2017, the Jackson Township Zoning Commission issued a notice of a public hearing to be held on Relators’ rezoning request, and this document identified the zoning amendment number as #630-17 and stated: “Terry Moore, Esq., 4775 Munson St. NW, Canton, Ohio 44718 agent for Tam O’Shanter Company, property owner, 5055 Hills & Dales Rd. NW, Canton, Ohio 44708 * * *” [See, Compl. ¶32; Rel. Exh. D (Evid. Vol. 1)] [emphasis added]. Attached to this notice was a map that referenced “Tam O’Shanter” in three different locations. [Id.]. Around this same time, on May 9, 2017, the Stark County Regional Planning Commission met to consider Relators’ request, and its agenda and decision that recommended approval of the proposal referenced “Tam O’Shanter” three times. [See, Compl. ¶33; Rel. Exh. E (Evid. Vol. 1)].

There were also repeated references to “Tam O’Shanter” at and in the lead-up to the Jackson Township Board of Trustees’ public hearings on June 13 and 27, 2017. [See, Compl. ¶10].

The notice of public hearing for the June 13 hearing, sent on June 2, 2017, identified both “Tam O’Shanter Company” and Amendment #630-17, and included a map that referenced “Tam O’Shanter” in three different locations. [See, Compl. ¶34; Rel. Exh. F (Evid. Vol. 1)]. During the June 13 hearing, “Tam O’Shanter” was referenced ninety (90) times, including by the opponents of the rezoning request. [See, Compl. ¶35; Transcript of June 13 hearing, Rel. Exh. G (Evid. Vol. 1)]. The Trustees’ notice of the continuance of the public hearing for additional public comment also identified the zoning amendment proposal as being: “Terry Moore, Esq., 4775 Munson St. NW, Canton, Ohio 44718 agent for Tam O’Shanter Company, property owner, 5055 Hills & Dales Rd. NW, Canton, Ohio 44708 * * *” [See, Compl. ¶36; Rel. Exh. H (Evid. Vol. 1)] [emphasis added].

Relators also provided evidence that the Board of Trustees’ Notice of Decision, that documents the zoning action ultimately taken by the Trustees on June 27, 2017, includes both the zoning amendment number and name of the property owner, “Tam O’Shanter” and the name of the Applicant, “Terry A. Moore, Esq.” The full Notice of Decision on Request for Amendment states as follows:

Amendment: #630-17

1/4 Section: 23SE, 25NW, 26NE

Amendment Request Made By: **Zoning Commission Resolution:**

Township Trustees Resolution _ Application of Land Owner/ Agent X

Property Owner:

Tam O’Shanter
5055 Hills & Dales Rd. NW
Canton, Ohio 44708
330-477-5111

Applicant:

Terry A. Moore, Esq.
4775 Munson St. NW
Canton, Ohio 44718
330-497-0700

Applicant Requests: Propose to rezone R-R Rural Residential District to B-3 Commercial Business District.

Location of Requested Change: Approximately .36 acres, more or less, of parcel #1625421 located at the southeast corner of Everhard and Fulton and approximately 61.75 acres of 112.84 acre tract, parcel #1629943 located approximately 70 ft. east and 185 ft. south of the southeast corner of Everhard and Fulton.

NOTICE IS HEREBY GIVEN that the above stated request for Amendment has been duly considered in accordance with Section 519.12 and related sections of the Ohio Revised Code by the JACKSON TOWNSHIP ZONING COMMISSION and the JACKSON TOWNSHIP BOARD OF TRUSTEES.

Decision of the requests being: Approved a modification of the Zoning Commission with the modification being approximately 2.75 acres rezoned to B-1 consisting of 300 ft. north of the southwest property line & 400 ft. east of the west property line & remaining approximate 59.36 acres rezoned B-3.

Date of Decision by Trustees: 6/27/17 Effective Date: 7/27/17

(Note: See ORC Section 519.12, “unless within thirty days after the adoption of the Amendment...there is presented...a petition, etc.””)

[See, Compl. ¶11; Exh. B (Evid. Vol. 1)] [bold original].

Attached to this Notice was a map that referenced “Tam O’Shanter” in three different locations.

[See, Compl. ¶37; Rel. Exh. I (Evid. Vol. 1)]. The Township Fiscal Officer explained in his sworn testimony that the Notice referenced “Tam O’Shanter” and that the Notice’s reference to “the above stated request” is in fact a reference to the “[t]he Tam O’Shanter property rezone.” [Testimony of Randy Gonzalez, Tr. 26-27 (Rel. Exh. T, Evid. Vol.2)].

Relators also provided evidence that following the approval of the zoning request, Relators’ agent, Attorney Terry Moore, continued to refer to the “Tam O’Shanter” zoning application in correspondence with the Township. [See, Compl. ¶38; Rel. Exh. J (Evid. Vol. 1)]. In a July 24, 2017 letter to the Jackson Township Administrator and Law Director, Michael Vaccaro, Attorney Moore identified the subject of the letter as “Zoning Application filed by Tam O’Shanter,” and went on to reference “Tam O’Shanter” three times in the body of the letter. [Id] [emphasis added].

All of the aforementioned documents, with the exception of Relator Bennell's March 30 letter to residents who live near the property, are public records. This, as the Fiscal Officer confirmed, means that they are readily available to the public for review. [Testimony of Randy Gonzalez, Tr. 26 (Rel. Exh. T, Evid. Vol.2) ("Yes. In fact, most of them are online.")]. And because all of these public records referred to "Tam O'Shanter," [id], any member of the public seeking information about the zoning amendment would repeatedly see the zoning amendment referred to as "Tam O'Shanter."

The Township Fiscal Officer testified that the zoning request was always known by the name "Tam O'Shanter" and that the amendment number is of little value to the public:

Q: But we do have a number here, 630-17. Who would you expect would actually know that 630-17 relates to Tam O'Shanter?
A: Short of our zoning inspector, no one that I know of.
Q: So throughout the entire process, was this rezoning always known as the Tam O'Shanter rezoning?
A: Yes.
Q: Would you consider that to be the name by which the proposed rezoning was known?
A: Absolutely.

[Testimony of Randy Gonzalez, Tr. 28-29 (Rel. Exh. T, Evid. Vol.2)].

In response to a question from one member of Respondent Board, the Township Fiscal Officer further testified that "#630-17" was not the name of the amendment, but just a tracking number "[s]imilar to a case in court. . . There's a case number and then a caption of the name." [Id, Tr. 41-42 (Rel. Exh. T, Evid. Vol.2)].

In addition to the evidence demonstrating that Jackson Township consistently referred to the proposal as the "Tam O'Shanter" rezoning, Relators also presented unrebutted evidence that the local newspaper, the Canton Repository, repeatedly referred to the proposal as the "Tam O'Shanter" rezoning request. [See, Compl. ¶39]. For example, on April 19, 2017, there was an

article titled “Tam O’Shanter Redevelopment Moving Forward.” [Rel. Exh. L:04 (Evid. Vol. 1)] [emphasis added]. On May 19, 2017, there was an article titled “Tam O’Shanter Zoning Change Clears Hurdle.” [Rel. Exh. L:15 (Evid. Vol. 1)] [emphasis added]. On June 27, 2017, there was an article titled “Jackson OKs Zone Change for Tam O’Shanter Golf Course.” [Rel. Exh. L:25 (Evid. Vol. 1)] [emphasis added]. On July 16, 2017, the newspaper’s Editorial Board published an editorial titled “Editorial: Green Space, Commercial Plan Makes Sense for Tam O’Shanter.” [Rel. Exh. L:32 (Evid. Vol. 1)] [emphasis added]. In total, there were twenty-nine (29) articles or letters to the editor in the Canton Repository from January 16, 2017 to August 28, 2017 that referred to the “Tam O’Shanter” rezoning request, including eleven of which that referenced “Tam O’Shanter” in the titles or headings. [See, Compl. ¶39; Rel. Exh. L (Evid. Vol. 1)].

Relators also provided evidence that opponents of Relators’ zoning request referred to it as the “Tam O’Shanter” zoning amendment or request. [See, Compl. ¶40]. In addition to their previously mentioned references to “Tam O’Shanter” at the June 13 public hearing, opponents of the zoning request created yard signs that state:

NO Commercial on
Tam O’Shanter
Preserve Our Township

[See, Rel. Exh. P (Evid. Vol. 1)] [emphasis original].

Although Relators, Jackson Township officials, the local media, and even the opponents of the rezoning request all consistently referring to the proposal as the “Tam O’Shanter” amendment, request or proposal, the Referendum Petition contains not a single reference to “Tam O’Shanter” or the name of the applicant. The Township Fiscal Officer confirmed this in his testimony:

Q: And do you see “Tam O’Shanter” anywhere on that petition? You’ll have to answer out loud.

A: Well, I'm still reading. I want to make sure.
Q: I'm sorry. I saw your head going.
A: No, I do not see it.
Q: Okay. Do you see the name of the applicant, Terry Moore, anywhere on there?
A: No. I do not.
Q: So if someone was presented this petition and asked to sign it, would they be able to tell from this document itself, from the four corners of this document, that this is the Tam O'Shanter rezoning?
A: It not written on there anywhere, no.

[Testimony of Randy Gonzalez, Tr. 28-29 (Rel. Exh. T, Evid. Vol.2)].

Relators also presented evidence to Respondent Board of the problematic consequences of the Referendum Petition failing to include any reference to "Tam O'Shanter." Subsequent ballot language for a referendum reflects the content (or lack of content) from the referendum petition, and, as a result, the ballot language for the referendum on Relators' rezoning amendment contains no references to "Tam O'Shanter." [See, Compl. ¶52; Rel. Exhs. Q-R (Evid. Vol. 1)]. Thus, the ballot language that voters will see on election day, like the petition itself, contains no reference to the name of the property owner, likely the most important way for voters to identify the land that is the subject of the referendum. [See, Tr. 46 (Rel. Exh. T, Evid. Vol.2)].

Despite having been presented with this overwhelming, unrebutted evidence demonstrating that the proposal was known as the "Tam O'Shanter" zoning amendment, Respondent Board members voted to deny the Protest and to place the Referendum on the November 7, 2017 general election ballot. [See, Compl. ¶20].

III. LAW AND ANALYSIS

A. Standard of Review

Relators are seeking writs of prohibition and mandamus. A writ of prohibition will issue where the officers against whom the writ is sought have exercised or are about to exercise quasi-judicial power, the exercise of such power is unauthorized by law, and the refusal to grant the writ

will result in injury for which no other adequate remedy exists. [*State ex rel. Starner v. DeHoff*, 18 Ohio St.3d 163, 164 (1985)]. To be entitled to a writ of mandamus, relators must establish that (1) they have a clear legal right for their protest to be granted and for the Referendum Petition to not be certified, (2) respondents have a corresponding legal duty to grant the protest, and (3) relators possess no adequate remedy in the ordinary course of law. [*State ex rel. Ebersole v. Powell*, 141 Ohio St.3d 9, 2014-Ohio-4078, 21 N.E.3d 267 *citing Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 54, 641 N.E.2d 1075 (1994)].

Respondent Board has a clear legal duty to determine whether the Referendum Petition satisfied the requirements set forth by Ohio law. Under R.C. 3501.11(K)(1), Respondent Board is required to “[r]eview, examine, and certify the sufficiency and validity of petitions * * *.” If a petition violates any requirement established by law, then Respondent Board must not accept the petition, and the issue shall not be submitted to the voters. [R.C. 3501.39(A)(4)]. Additionally, if a written protest is filed against a petition, Respondent Board is required to hold a hearing and determine whether the petition violates any requirement established law. [R.C. 3501.39(A)(2)]. If the Board determines that the petition violates a legal requirement, the Board shall not accept the petition, and the issue shall not be submitted to the voters. [*Id.*].

Finally, the proximity of the November 7, 2017 election establishes the lack of an adequate remedy in the ordinary course of law. [*State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 10]. As for the remaining requirements, “[i]n extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether the Board engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” [*Whitman v. Hamilton Cty. Bd. of*

Elections, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11]. Relators acted with utter promptness by filing the present action within one day of the Board's decision.

B. Respondent Board Acted in Clear Disregard of the Law and/or Abused its Discretion in Finding that the Referendum Petition Complied with R.C. 519.12(H)'s Requirement to Set Forth the Full and Correct Title of the Resolution, Motion or Application, Including Furnishing the Name By Which the Amendment Is Known.

Unlike the right of referendum and initiative in municipalities, there is no constitutional right to a township zoning referendum.¹ The right to present a township zoning referendum exists *solely by virtue of the statutory enactment* of the General Assembly in R.C. 519.12. Requirements for zoning referendum petitions are set forth in R.C. 519.12(H), which provides, in relevant part:

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. * * *

[emphasis added].

1. The provisions of R.C. 519.12(H) are mandatory.

The full and correct title requirement is mandatory and requires strict compliance. The standard that applies to the application of election laws has been set forth many times by this Court. "The settled rule is that election laws are mandatory and require strict compliance *** Substantial compliance is acceptable only when an election statute expressly permits it." [*State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 169 (1992); *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections*, 72 Ohio St.3d 289, 294-95 (1995); *State ex rel. Burech v. Belmont Cty. Bd. of Elections*, 19 Ohio St.3d 154 (1985); *State ex rel. Senn v. Bd. of Elections*, 51 Ohio St. 173, 174 (1977)]. Any rule of construction that referendum provisions are to be liberally construed so as to permit rather than preclude the exercise of the power cannot be

¹ At the September 13 Protest Hearing, counsel for petitioners misstated to Respondent Board that zoning township referendums are constitutionally protected. [See, Tr. 48-51 (Rel. Exh. T, Evid. Vol. 2)].

employed to override statutory requirements. [*East Ohio Gas Co. v. Wood Cty. Bd. of Elections*, 83 Ohio St.3d 298, 301 (1998); *Christy v. Summit Cty. Bd. of Elections*, 77 Ohio St.3d 35, 40 (1996); *Markus v. Trumbull Cty. Bd. of Elections*, 22 Ohio St.2d 197, 200 (1970) ([E]ven under the most liberal construction, the record in this case indicated that the petitions circulated * * * were prepared in a manner which failed to meet the petition form requirements contained in R.C. 519.12, and that the petitions could have misled those persons who signed them.)].

2. The full and correct title requirement informs signers.

The purpose of the full and correct title requirement is to “immediately alert signers of the nature of the proposed legislation.”² [*Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597, 575 N.E.2d 835 (1991) (interpreting R.C. 731.31)]. In fact, “[m]ore so than the text, the title immediately alerts signers of the nature of the proposed legislation * * * and helps prevent the signers from being misled * * *” [*Esch*, 61 Ohio St.3d at 597 (emphasis added)]. Alerting voters to the nature of proposal is particularly important in the context of zoning referendums which interfere with individual property rights. A referendum on a zoning amendment causes an automatic stay on the rezoning until it is approved at an election. The mere filing of the petition delays, and may ultimately prevent, a landowner from exercising their otherwise-legal interests in their property.

Unlike township zoning referenda, individual property rights are protected by the Ohio Constitution. [See, Ohio Constitution, Article I, Sections 1 and 19]. For this reason, the General Assembly has required that township zoning referendum petitions identify the actual name by which the zoning amendment is known by mandating that each part of the petition set forth the

² R.C. 519.12(H)’s full and correct title requirement is similar to several other statutory provisions that set forth “full and correct title” requirements for different referendum petitions. See, R.C. 303.12(H) (county zoning resolution referendums); R.C. 305.32 (county sales tax referendum); R.C. 731.31 (municipal initiatives and referendums).

full and correct title of the zoning resolution, motion or application, including furnishing the name by which the amendment is known, insuring that citizens are aware of what they are being asked to sign and potentially vote on.

The General Assembly has balanced the interests of citizens and property owners and determined that in order for a minority of citizens to be able to stop a lawful use of property by a property owner via a referendum petition, exacting informational requirements must be met to protect not only the property owner, but also would-be signers of the petition. Furnishing the name by which the zoning amendment is known may cause some persons to sign or equally not sign the petition. But by not furnishing the name, persons sign without knowing who is affected.

Based on the clear language of R. C. 519.12(H), the General Assembly considers the “name by which the amendment is known” to be an integral part of the requirement to provide on each part of the petition the full and correct title of the resolution, motion or application. The requirement to provide the name by which the amendment is known informs what is meant by “full” title of the resolution, motion or application. And while it is conceivable that there may be times when a zoning amendment is not known by any name and, only by a number, and there is no title, such as when initiated by the township itself, that is clearly not the case here. Here there is an application filed on behalf of the property owner that provides the name by which the application and subsequent amendment are known, and it is also in the Trustees’ Notice of Decision on Request for Amendment. [Rel. Exh. B, I (Evid. Vol 1)].

3. Failure to strictly comply with R.C. 519.12(H) invalidates the referendum petition.

Because the full and correct title provision is mandatory and requires strict compliance, a township zoning referendum petition’s failure to include the full and correct title is a fatal defect. [*Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App. 2d 1, 12 (8th Dist. 1976) *aff’ed* 48 Ohio

St.2d 173 (1976); *see also, Becker v. City of Eastlake*, 93 Ohio St.3d 502, 507, 756 N.E.2d 1228 (2001) (“Omitting the title . . . is a fatal defect because it interferes with the petition’s ability to fairly and substantially present the issue and might mislead electors.”)].³

The requirement under R.C. 519.12(H) to set forth on every part of the petition the “full and correct title” of the zoning amendment resolution, motion, or application includes, at a minimum, “the name by which the amendment is known.” As used in the statute, “furnishing the name by which the amendment is known” modifies everything that comes before it. Thus, if the zoning amendment’s “resolution, motion, or application” has a “name by which [it] is known,” then it must be “furnish[ed]” in the petition. That is what the General Assembly intended, which is reinforced by the form of the petition also prescribed in R.C. 519.12(H). It provides a blank space and instructs “**if the proposal is identified by a particular name** or number, or both, these **should be inserted here.**” *Id.* (emphasis added).

The importance of including the name by which the zoning amendment is known was central to the court’s holding in *Copenhefer v. Clark Cty. Bd. of Elections*. In that case the Second District Court of Appeals concluded that a petition containing the commission resolution number and the title: “Howard Marjorie Copenhefer Re-zoning Request” was not a misleading petition where the zoning resolution was numbered “Resolution No. 1066-00” and titled “Render Decision on the Request as filed by Howard and Marjorie Copenhefer for an Amendment of the Present Zoning Map for Bethel Township, Clark County, Ohio[.]” [*Copenhefer v. Clark Cty. Bd. of Elections*, Second Dist. Case No. 2001 CA 74, 2001 Ohio App. LEXIS 4881 (Oct. 31, 2001)]. The

³ The Court has invalidated a number of initiative petitions for failing to include the full and correct title under similar statutory requirements. [See, *Becker v. City of Eastlake*, 93 Ohio St.3d 502, 507, 756 N.E.2d 1228 (2001) (holding that a municipal initiative petition’s failure to include a title was a fatal defect under R.C. 731.31’s full and correct title requirement); *Esch*, 61 Ohio St.3d at 597-98 (holding that a municipal initiative petition’s failure to include a title was a fatal defect under R.C. 731.31’s full and correct title requirement); *Burech v. Belmont Cty. Bd. of Elections*, 19 Ohio St.3d 154, 155-56, 484 N.E.2d 153 (1985) (holding that a county sales tax referendum petition’s failure to include a copy of the title and text of the resolution sought to be referred was a fatal defect under R.C. 305.32)].

court discussed the purpose of the title requirement, which is to “fairly and substantially present the issues so as to not mislead those who sign the petitions.” *[Id. at *3]*. Thus, the court concluded that although the language was not verbatim, it was “hard pressed to disagree with the board that a reasonable person signing the petition in question would not be misled into believing that the petition referred to some other zoning matter than the matter sought to be subjected to referendum.”

Id. Because the language in the petition was “remarkably close” to that contained in the title of the commission resolution, the petition was not invalid. *[Id. at *4]*.

Unlike in *Copenhefer*, the Referendum Petition here does not provide a name by which the amendment is known, let alone one that is “remarkably close.” By omitting the name “Tam O’Shanter” from the title, the Referendum Petition did not “fairly and substantially” present the issue of the referendum and might have misled or confused signers. [See, *Becker*, 93 Ohio St.3d at 507].⁴ Without *any* reference to “Tam O’Shanter” in the Referendum Petition, signers were not alerted to the fact that the referendum concerned Relator Tam O’Shanter Company’s property.

In a case before the Fifth District Court of Appeals, *Appeal of Strader*, the court addressed the issue of whether a zoning amendment was known by a particular name. [*Appeal of Strader*, 5th Dist. Delaware No. 87-CA-21, 1988 WL 42630, 1988 Ohio App. LEXIS 1749 (May 2, 1988)]. In making the determination, the court considered whether the particular name had been used in notices regarding the zoning application and whether such name was used at the board of trustees’ meetings. *Id.* at *11-12. It was not. Thus, the court affirmed the board of elections’ finding that the rezoning proposal was not known by a particular name or title. *Id.*

⁴ At the September 13 Protest Hearing, one member of Respondent Board, while explaining his rationale for supporting a denial of Relators’ Protest, misstated this legal standard as requiring evidence that signers were in fact misled or confused. [Statement of Board Member Cline, Tr. 58 (Rel. Exh. T, Evid. Vol. 2] (“[T]here’s absolutely no evidence that anyone was confused or signed something in error”)]. However, this Court’s case law has never required such evidence. Rather, the Court has explained that failing to include the title is a fatal defect because it “might” mislead or confuse voters. *Becker*, 93 Ohio St.3d at 507.

The facts of the instant matter are 180 degrees different from the facts in *Strader* as Relators' zoning amendment has consistently been referred to as the "Tam O'Shanter" zoning amendment. Unlike *Strader*, Relators' zoning amendment was not referenced as the "Tam O'Shanter" zoning amendment in only a single instance. Rather, "Tam O'Shanter," referenced in various formats, is found on the following official, public documents: (1) Relators' April 20, 2017 zoning application [Rel. Exh. B (Evid. Vol. 1)]; (2) the Zoning Fees Revenue Receipt from Jackson Township [Rel. Exh. C (Evid. Vol. 1)]; (3) Jackson Township's May 5, 2017 Notice of Public Hearing [Rel. Exh. D (Evid. Vol. 1)]; (4) the Stark County Regional Planning Commission's May 9, 2017 Meeting Agenda and Decision [Rel. Exh. E (Evid. Vol. 1)]; (5) Jackson Township's June 2, 2017 Notice of Public Hearing [Re. Exh. F (Evid. Vol. 1)]; (6) Jackson Township's June 16, 2017 Notice of Public Hearing [Rel. Exh. H (Evid. Vol. 1)]; and (7) Jackson Township's June 27, 2017 Notice of Decision on Request for Amendment [Rel. Exh. I (Evid. Vol. 1)]. Additionally, (8) Relator Bennell referred to "Tam O'Shanter" in his invitation to the community to discuss the plans for the property [Rel. Exh. A (Evid. Vol. 1)]; (9) "Tam O'Shanter" was referenced *ninety* times at the Jackson Township Board of Trustees' June 13, 2017 public hearing [Rel. Exh. G (Evid. Vol. 1)]; (10) Relators' agent, Terry Moore, referred to "Tam O'Shanter" in his July 24, 2017 correspondence with Jackson Township [Rel. Exh. J (Evid. Vol. 1)]; (11) Opponents of the zoning request reference "Tam O'Shanter" on their pro-referendum yard signs [Rel. Exh. P (Evid. Vol. 1)]; and (12) *Twenty-nine* articles, editorials, and letters to the editor in the local newspaper, the Canton Repository, refer to the "Tam O'Shanter" proposal, including eleven of which that included "Tam O'Shanter" in the titles [Rel. Exh. L (Evid. Vol. 1)]. Further, (13) the Jackson Township Fiscal Officer and Custodian of Records provided sworn and unrebutted testimony that the zoning

amendment resolution, motion, or application was known as the “Tam O’Shanter” amendment. [Testimony of Randy Gonzalez, Tr. 28-29, 41-42 (Rel. Exh. T, Evid. Vol. 2)].

Compounding the problems created by the Referendum Petition’s failure to identify Relator Tam O’Shanter Company is the referendum ballot language, which was prepared by Respondent Board and based on the language used in the Petition. Like the Referendum Petition, the ballot language does not identify Relator Tam O’Shanter Company as the owner of the property subject of the referendum. This creates a significant risk that voters will not understand the nature of the referendum and may even be misled or confused into voting against it. Such confusion is precisely what the General Assembly sought to avoid when it enacted the mandatory—and not merely “hypertechnical” as Respondent Board’s Chair dismissed it⁵—full and correct title requirement of R.C. 519.12(H).

The Referendum Petition merely referenced the name of the township “Jackson” and zoning amendment number, which, as the Township Fiscal Officer testified, was not the “title” of the zoning amendment. [*Id*, Tr. 28-29, 41-42 (Rel. Exh. T, Evid. Vol.2)]. But the General Assembly has required more than the number because, while the inclusion of the number ties the referendum to a specific amendment, the mere number is not sufficiently informative to petition signers or voters, if informative at all.

Respondent board does not have the discretion to simply ignore the statutory requirement that setting forth the full title includes “furnishing the name by which the amendment is known,” and this violates the basic principle of statutory construction to give effect to the words used, and to not delete words used or insert words not used. [See, e.g., *State ex rel. Summit Cty. Republican Party Executive Commt. v. Brunner*, 118 Ohio St.3d 515, 2008-Ohio-2824, 890 N.E.2d 888, ¶ 26

⁵ Statement of Board Chair Ferruccio, Tr. 58 (Rel. Exh. T, Evid. Vol. 2) (“Basically I do think it’s a hypertechnical argument”).

(O'Donnell, J., concurring) ("it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used") (internal citations and quotations omitted); *State ex rel. Ganoom v. Franklin Cty. Bd. of Elections, et al.*, 148 Ohio St.3d 339, 2016-Ohio-5864, 70 N.E.3d 592, ¶ 21 (O'Connor, C.J., concurring) ("when construing a statute, we must give effect to all the enacted language and we may not enlarge the statutory language . . . statutes may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act") (internal citations and quotations omitted)].

C. Respondent Board Acted in Clear Disregard of Law or Abused its Discretion in Finding that the Referendum Petition Complied with R.C. 519.12(H) Despite Any Reference to "Tam O'Shanter" in the Petition, Including the Summary.

Respondent Board also abused its discretion and acted in clear disregard of Ohio law when it found that the Referendum Petition is valid despite any reference to "Tam O'Shanter" anywhere in the petition, including the summary of the zoning amendment. R.C. 519.12(H) requires that a township zoning referendum petition must contain "a brief summary" of the zoning amendment's contents. The purpose of this requirement is "to fairly and accurately present the question or issues to be decided, so as to ensure that voters can make free, intelligent, and informed decisions." [*State ex rel. Jacquemin v. Union Cty. Bd. of Elections*, 147 Ohio St.3d 467, 2016-Ohio-5880, ¶ 7 citing *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St.3d 212, 2006-Ohio-1666, 846 N.E.2d 1223 ¶ 38]. For this reason, "the petition summary must be accurate and unambiguous." [Id., citing *State ex rel. C.V. Perry & Co. v. Licking Cty. Bd. of Elections*, 94 Ohio St.3d 442, 445, 764 N.E.2d 411 (2002)]. If the petition summary is "misleading, inaccurate or contains material omissions which would confuse the average person, the petition is invalid and may not form the basis for submission to a vote." [Id at ¶ 8 (internal quotations and citations

omitted)]. A township zoning referendum petition summary must strictly comply with the requirement that it not be misleading or inaccurate and that it not contain material omissions. [*Id*, citing *Gemienhardt* at ¶ 57].

The Referendum Petition’s summary is inaccurate and misleading, and contained a material omission that could have misled or confused voters, because it failed to identify the owner of the property subject to the referendum, Relator Tam O’Shanter Company. Petitioners were required to summarize the contents of the entire zoning resolution, not only select parts of it. Yet, in providing a summary of the Jackson Township Board of Trustees’ June 27, 2017 Notice of Decision on Request for Amendment [*see, Rel. Exh. I (Evid. Vol. 1)*]—a document that is less than one-page in length, the petitioners omitted the portion of the decision that identifies the property owner, Relator Tam O’Shanter Company, and the applicant, Relator Tam O’Shanter Company’s agent, Terry A. Moore. That this information is part and parcel of the zoning amendment is clear not only by its inclusion in the header of the decision, but also by the subsequent notice towards the bottom of the decision that the “above stated request for Amendment,” which includes the reference to Relator Tam O’Shanter Company, was “duly considered.” Thus, the identity of the property owner was incorporated as a core element of the Trustees’ decision.

By omitting the identity of the land owner from the petition summary—and without any reference to the owner elsewhere—the summary could have created the mistaken impression that someone else’s property is the subject of the zoning referendum. For this reason, the Referendum Petition’s summary of the zoning amendment failed to strictly comply with the requirement that it not be misleading or inaccurate, and that it not contain a material omission, and Respondent Board abused its discretion or acted in clear disregard of Ohio law when it found otherwise.

IV. CONCLUSION

From any objective standard, the information contained in the Referendum Petition and in the resulting ballot language insufficiently informs the voters as to the nature of the referendum. And when voters are uninformed by the ballot language and do not understand the issue, they will vote against it. To ensure that petition signers and voters are properly informed, The General Assembly enacted a specific requirement that township zoning referendum petitions contain the name by which the zoning proposal is known and a brief summary of the zoning proposal's contents, which must be accurate and not misleading.

The Referendum Petition fails to strictly comply with R.C. 519.12(H) and, as a result, on election day, this is what the voters will see regarding the referendum:

**Proposed Zoning Amendment
(By Referendum Petition)
Jackson Township**

A majority affirmative vote is necessary for passage.

Proposed Zoning Amendment No. 630-17 authorizes re-zoning from R-R Rural Residential District to B-3 Commercial Business District approximately .36 acres, more or less, of parcel #1625421 located at the southeast corner of Everhard and Fulton and approximately 61.75 acres of a 112.84 acre tract, parcel #1629943 located approximately 70 ft. east and 185 ft. south of the southeast corner of Everhard and Fulton, modified by approximately 2.75 acres rezoned to B-1 consisting of 300 ft. north of the southwest property line and 400 ft. east of the west property line and the remaining approximate 59.36 acres are rezoned B-3.

Shall the zoning amendment as adopted by the Jackson Township Trustees be approved?

Yes

No

[See, Rel. Exh. R (Evid. Vol. 1)].

For the reasons above, the Relators respectfully request this Court issue a Writ of Prohibition prohibiting Respondent from certifying the Referendum Petition and placing the issue upon the ballot for the November 7, 2017 General Election and a Writ of Mandamus ordering Respondent to sustain Relators' protest.

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue (0022849)*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by e-mail on September 25, 2017, upon the following:

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Respectfully submitted,

/s/ Donald J. McTigue
Donald J. McTigue (0022849)

In the
Supreme Court of Ohio

STATE EX REL. TAM O'SHANTER COMPANY, *et al.*,
Relators,

v.

STARK COUNTY BOARD OF ELECTIONS,
Respondent.

Original Action in Prohibition and Mandamus

RELATORS' APPENDIX OF CITED STATUTES

Ohio Constitution, Article I, Section 1

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Ohio Constitution, Article I, Section 19

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

R.C. 303.12

(A)

(1) Amendments to the zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution by the board of county commissioners, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the county rural zoning commission. The board of county commissioners may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of county commissioners requires such a fee, it shall be required generally, for each application. The board of county commissioners, upon the passage of such a resolution, shall certify it to the county rural zoning commission.

(2) Upon the adoption of a motion by the county rural zoning commission, the certification of a resolution by the board of county commissioners to the commission, or the filing of an application by property owners or lessees as described in division (A)(1) of this section with the commission, the commission shall set a date for a public hearing, which date shall not be less than twenty nor more than forty days from the date of adoption of such a motion, the date of the certification of such a resolution, or the date of the filing of such an application. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in each township affected by the proposed amendment at least ten days before the date of the hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the county rural zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current tax list. The failure of delivery of that notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the county rural zoning commission that will be conducting the hearing;
- (2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication, by mail, or by both publication and mail;

(7) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of county commissioners for its action;

(8) Any other information requested by the commission.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the county rural zoning commission that will be conducting the hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of county commissioners for its action;

(6) Any other information requested by the commission.

Hearings shall be held in the county court house or in a public place designated by the commission.

(E) Within five days after the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the county rural zoning commission shall transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the county rural zoning commission. The recommendation shall be considered at the public hearing held by the county rural zoning commission on the proposed amendment.

The county rural zoning commission, within thirty days after the hearing, shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and shall submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of county commissioners.

The board of county commissioners, upon receipt of that recommendation, shall set a time for a public hearing on the proposed amendment, which date shall be not more than thirty days from the date of the receipt of that recommendation. Notice of the hearing shall be given by the board

by one publication in one or more newspapers of general circulation in the county, at least ten days before the date of the hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the board of county commissioners that will be conducting the hearing;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;
- (7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the board of county commissioners that will be conducting the hearing on the proposed amendment;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;
- (4) The name of the person responsible for giving notice of the hearing by publication;
- (5) Any other information requested by the board.

(H) Within twenty days after its public hearing, the board of county commissioners shall either adopt or deny the recommendation of the county rural zoning commission or adopt some modification of it. If the board denies or modifies the commission's recommendation, a majority vote of the board shall be required.

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 county commissioners a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in

that area at the most recent general election at which a governor was elected, requesting the board to submit the amendment to the electors of that area for approval or rejection at a special election to be held on the day of the next primary or general election occurring at least ninety days after the petition is submitted. 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.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here)

A proposal to amend the zoning map of the unincorporated area of Township, County, Ohio, adopted (date) (followed by brief summary of the proposal).

To the Board of County Commissioners of County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of Township, included within the County Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of County Commissioners to submit this amendment of the zoning resolution to the electors of Township residing within the unincorporated area of the township included in the County 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(date)....., pursuant to section 303.12 of the Revised Code.

Street Address or Date of Signature R.F.D. Township Precinct County Signing _____

STATEMENT OF CIRCULATOR

I,(name of circulator)....., declare under penalty of election falsification that I am an elector of the state of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing(number)..... signatures; that I have witnessed the affixing of every signature; that all signers were to 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.

.....
(Signature of circulator)

.....
(Address of circulator's permanent residence in this state)

(City, village, or township, and zip code)

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

No amendment for which such a referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect.

Within five working days after an amendment's effective date, the board of county commissioners shall file the text and maps of the amendment in the office of the county recorder and with the regional or county planning commission, if one exists.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

R.C. 305.32

Any referendum petition may be presented in separate petition papers, but each petition paper shall contain a full and correct copy of the title and text of the resolution or rule sought to be referred. Referendum petitions shall be governed by the rules of section 3501.38 of the Revised Code. In determining the validity of any such petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required by section 305.31 of the Revised Code.

The petitions and signatures upon such petitions shall be *prima-facie* presumed to be in all respects sufficient. No resolution submitted to the electors of any county, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the resolution was procured, nor shall the rejection, by a majority of the votes cast thereon, of any resolution submitted to the electors of such county, be held invalid for such insufficiency. No rule submitted to the electors of the county, and receiving a majority of the votes cast against repeal, shall be held invalid or void on account of the insufficiency of the petitions by which such submission was procured, nor shall the repeal, by approval of a majority voting for repeal, be held invalid for such insufficiency.

Resolutions receiving an affirmative majority of the votes cast thereon, shall become effective on the first day of the month following certification by the board of elections of the official vote on such question.

R.C. 519.12

(A)

(1) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of township trustees requires such a fee, it shall be required generally, for each application. The board of township trustees, upon the passage of such a resolution, shall certify it to the township zoning commission.

(2) Upon the adoption of a motion by the township zoning commission, the certification of a resolution by the board of township trustees to the commission, or the filing of an application by property owners or lessees as described in division (A)(1) of this section with the commission, the commission shall set a date for a public hearing, which date shall not be less than twenty nor more than forty days from the date of the certification of such a resolution, the date of adoption of such a motion, or the date of the filing of such an application. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of the hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the township zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current tax list. The failure of delivery of that notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the township zoning commission that will be conducting the hearing;
- (2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

(7) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(8) Any other information requested by the commission.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the commission.

(E) Within five days after the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the township zoning commission shall transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment.

The township zoning commission, within thirty days after the hearing, shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of township trustees.

The board of township trustees, upon receipt of that recommendation, shall set a time for a public hearing on the proposed amendment, which date shall not be more than thirty days from the date of the receipt of that recommendation. Notice of the hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of the hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the board of township trustees that will be conducting the hearing;

- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;
- (7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the board of township trustees that will be conducting the hearing on the proposed amendment;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;
- (4) The name of the person responsible for giving notice of the hearing by publication;
- (5) Any other information requested by the board.

(H) Within twenty days after its public hearing, the board of township trustees shall either adopt or deny the recommendations of the township zoning commission or adopt some modification of them. If the board denies or modifies the commission's recommendations, a majority vote of the board shall be required.

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, signed by a number of registered electors residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in that area at the most recent general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of that area for approval or rejection at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the petition is filed. 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.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here)

A proposal to amend the zoning map of the unincorporated area of Township, County, Ohio, adopted(date).... (followed by brief summary of the proposal).

To the Board of Township Trustees of Township, County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of Township, included within the Township Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of Township residing within the unincorporated area of the township included in the Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the primary or general election to be held on(date)...., pursuant to section 519.12 of the Revised Code.

Street Address Date of Signature or R.F.D. Township Precinct County Signing
.....

STATEMENT OF CIRCULATOR

I,(name of circulator)....., declare under penalty of election falsification that I am an elector of the state of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing(number)..... signatures; that I have witnessed the affixing of every signature; that all signers were to 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.

.....
(Signature of circulator)

.....
(Address of circulator's permanent residence in this state)

.....
(City, village, or township, and zip code)

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

The petition shall be filed with the board of township trustees and shall be accompanied by an appropriate map of the area affected by the zoning proposal. Within two weeks after receiving a petition filed under this section, the board of township trustees shall certify the petition to the

board of elections. A petition filed under this section shall be certified to the board of elections not less than ninety days prior to the election at which the question is to be voted upon.

The board of elections shall determine the sufficiency and validity of each petition certified to it by a board of township trustees under this section. If the board of elections determines that a petition is sufficient and valid, the question shall be voted upon at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the date the petition is filed with the board of township trustees, regardless of whether any election will be held to nominate or elect candidates on that day.

No amendment for which such a referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect.

Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the county or regional planning commission, if one exists.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

R.C. 731.31

Any initiative or referendum petition may be presented in separate parts, but each part of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure, and each part of any referendum petition shall contain the number and a full and correct copy of the title of the ordinance or other measure sought to be referred. Each signer of any such petition must be an elector of the municipal corporation in which the election, upon the ordinance or measure proposed by such initiative petition, or the ordinance or measure referred to by such referendum petition, is to be held. Petitions shall be governed in all other respects by the rules set forth in section 3501.38 of the Revised Code. In determining the validity of any such petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required by this section.

The petitions and signatures upon such petitions shall be *prima facie* presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of any municipal corporation, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall the rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such municipal corporation, be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective on the fifth day after the day on which the board of elections certifies the official vote on such question.

R.C. 3501.06

(A) There shall be in each county of the state a board of elections consisting of four qualified electors of the county, who shall be appointed by the secretary of state, as the secretary's representatives .

(B)

(1) On the first day of March in the years 2014 and 2016, the secretary of state shall appoint two of such board members for a term of three years. One of those board members shall be from the political party which cast the highest number of votes for the office of governor at the most recent regular state election, and the other shall be from the political party which cast the next highest number of votes for the office of governor at such election.

(2) Beginning in 2017, on the first day of March in odd-numbered years, the secretary of state shall appoint two of such board members for a term of four years. One of those board members shall be from the political party which cast the highest number of votes for the office of governor at the most recent regular state election, and the other shall be from the political party which cast the next highest number of votes for the office of governor at such election. Thereafter, all appointments shall be made on the first day of March in odd-numbered years for a term of four years.

(C) All vacancies filled for unexpired terms and all appointments to new terms shall be made from the political party to which the vacating or outgoing member belonged, unless there is a third political party which cast a greater number of votes in the state at the most recent regular state election for the office of governor than did the party to which the retiring member belonged, in which event the vacancy shall be filled from such third party.

R.C. 3501.11

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;
- (I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.
- (J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;
- (K)
 - (1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;
 - (2) Examine each initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to

place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

(L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;

(M) Issue certificates of election on forms to be prescribed by the secretary of state;

(N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;

(O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;

(P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;

(Q) Investigate and determine the residence qualifications of electors;

(R) Administer oaths in matters pertaining to the administration of the election laws;

(S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;

(T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;

(U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;

(V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;

(W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law.

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of

elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

R.C. 3501.39

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) In the case of an initiative petition received by the board of elections, the petition falls outside the scope of authority to enact via initiative or does not satisfy the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

(4) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

(B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(4) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.

(C)

(1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.

(2) If a petition for the nomination or election of a candidate is invalidated under division (C) (1) of this section, that person's name shall not appear on the ballots for any office for which the person's petition has been invalidated. If the ballots have already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.