

RECORD OF PROCEEDINGS
Jerome Township Board of Trustees
Public Hearing

Minutes of

Meeting

GOVERNMENT FORMS & SUPPLIES 6-14-2012-2013 FORM NO. 16146

Held _____

December 30, 2019

20 _____

Consent Decree
Homewood Corporation, Plaintiff vs. Jerome Township, et al., Defendants

The Board of Township Trustees of Jerome Township, Union County, Ohio met in special session on December 30, 2019 at 8:00 a.m. for a public hearing for the purpose of considering entering a Consent Decree in the matter styled Homewood Corporation vs. Jerome Township, et al. (Case No. 2:19-cv-04165) Board Chairman Joe Craft called the meeting to order. Ronald Rhoades, Joe Craft and C.J. Lovejoy answered the roll call. Also in attendance were legal counsel and members of the public.

The Jerome Township Board of Trustees opened the public hearing by swearing in those who wished to speak.

Mr. Craft thanked all for attending. He indicated as noted, anyone wishing to speak would be afforded three (3) minutes of time and would appreciate cooperation in this respect.

Mr. Craft stated that we are here pursuant to Ohio Revised Code §505.07, which provides as follows:

Settlement of court action - zoning issue subject to referendum. Notwithstanding any contrary provision in another section of the Revised Code, section 519.12 of the Revised Code, or any vote of the electors on a petition for zoning referendum, a township may settle any court action by a consent decree or court-approved settlement agreement which may include an agreement to rezone any property involved in the action as provided in the decree or court-approved settlement agreement without following the procedures in section 519.12 of the Revised Code and also may include township approval of a development plan for any property involved in the action as provided in the decree or court-approved settlement agreement, provided that the court makes specific findings of fact that notice has been properly made pursuant to this section and the consent decree or court-approved settlement agreement is fair and reasonable.

If the subject of the consent decree or court-approved settlement agreement involves a zoning issue subject to referendum under section 519.12 of the Revised Code, the board of township trustees shall publish notice of their intent to meet and consider and take action on the decree or court-approved settlement agreement and the date and time of the meeting in a newspaper of general circulation in the township at least fifteen days before the meeting. The board shall permit members of the public to express their objections to the consent decree or court-approved settlement agreement at the meeting. Copies of the proposed consent decree or court-approved settlement agreement shall be available to the public at the township fiscal officer's office during normal business hours.

At least ten days prior to the submission of a proposed consent decree or settlement agreement to the court for its review and consideration, the plaintiff in the action involving the consent decree or settlement agreement shall publish a notice that shall include the caption of the case, the case number, and the court in which the consent decree or settlement agreement will be filed, the intention of the parties in the action to file a consent decree or settlement agreement, and, when applicable, a description of the real property involved and the proposed change in zoning or permitted use, in a newspaper of general circulation in the township.

On September 10, 2019, Homewood Corporation filed suit in the Common Pleas Court of Union County, Ohio, naming as Defendants Jerome Township, the Jerome Township Board of Trustees and the individual current Trustees, all in their official capacities. The suit was identified as Homewood Corp. v. Jerome Township Board of Trustees, et al. Union County Common Pleas Case No. 19 CVO 154. In that suit, Homewood alleged various federal law violations, including alleged violations of 42 U.S.C. § 1983, claiming that Defendants had violated Homewood's rights of due process and equal protection. Homewood also raised various "state law" claims.

On September 19, 2019 this original suit was removed from the Union County Court of Common Pleas to the United States District Court for the Southern District of Ohio, Eastern Division and was assigned as follows: Homewood Corp. v. Jerome Township Board of Trustees, et al., Case No. 2:19-cv-04165.

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Held

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On November 27, 2019 Homewood filed an Amended Verified Complaint for Declaratory Judgment, Injunction and Damages.

On December 2, 2019, Homewood filed an Amended Complaint, alleging it has been damaged in an amount exceeding ten million dollars, plus attorneys' fees and costs.

The following history is appropriate:

- Homewood is the owner of property comprising approximately 80+/- acres located generally at the intersection of US Route 33 and US Route 42, in Jerome Township.
- By Township Resolution (unnumbered) dated April 4, 1973, this property was zoned "PUD" (Planned Unit Development), pursuant to the Jerome Township Zoning Resolution.
- This PUD was part of a master planned 550+/- acres.
- This 1973 Township PUD zoning also included a Preliminary Plan Map which permitted multi-family residential development within the entire Homewood Property as PUD.

This PUD designation for the Homewood Property was shown on the official Township Zoning Maps dating from 1973 until the early 1990s. However and for reasons not fully explained at some point beginning in the early 1990s, the Jerome Township Zoning Map(s) no longer consistently reflected this PUD zoning, but rather occasionally showed the Homewood Property as being zoned "RU" Rural Residential.

On or about November 30, 2017, Homewood filed an application for rezoning of the Property from RU, as the zoning maps showed it to a "PD" (Planned Development district.)

Following several public hearings with the Jerome Township Zoning Commission occurring in 2018 and following two (2) revisions to Homewood's application materials, Homewood revised its application, plans and text for a third time and thereafter, on May 24, 2019 resubmitted for Jerome Township Zoning Commission consideration.

On June 24, 2019 the Jerome Township Zoning Commission held a public hearing on Homewood's third revised plan. Thereafter, the Jerome Township Zoning Commission voted unanimously 5-0 to recommend approval of the rezoning to the Jerome Township Board of Trustees.

On August 6, 2019 the Jerome Township Board of Trustees convened and held public hearings pursuant to O.R.C. §519.12, on the Homewood rezoning application. Following the August 6, 2019 Public Hearing, the Jerome Township Board of Trustees voted 3-0 to approve the Homewood zoning application. This unanimous vote by the Jerome Township Board of Trustees was legal and valid as a motion and affirmative voice vote.

On or about August 15, 2019 a corresponding Resolution (No. 19-077) was generated by the Jerome Township Board of Trustees.

On September 3, 2019 a Referendum Petition was filed with respect to the Homewood zoning application. This Referendum Petition incorporated, by reference and attachment, the August 15, 2019 Jerome Township Resolution No. 19-077.

In the pending lawsuit, Homewood and Jerome Township dispute whether any official Township action(s) were taken by any elected or appointed Township official or its Board of Trustees to officially change the Homewood Property zoning from PUD to RU. Again; for unexplained reasons, the Official Township Zoning Maps inconsistently also reflect RU zoning.

Homewood claims that the Property has been unlawfully misclassified by the Township as RU for almost thirty (30) years. Homewood also claims that during this time, Homewood has been unreasonably deprived of the lawful use of the Property. These things are disputed by Jerome Township and the Jerome Township Board of Trustees.

Following discovery which has taken place during the lawsuit, Homewood and Jerome Township now believe that the action of the Jerome Township Board of Trustees taken on August 6, 2019, to approve the Homewood application, constituted the subsequent approval of a Homewood Final PUD Development Plan for the property, rather than an application for rezoning from RU to PD. Jerome Township and Homewood further believe that pursuant to

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Ohio law, specifically R.C. § 519.021, this subsequent action in approving Homewood's Final Development Plan within an established PUD was administrative in nature, not legislative.

The Planned Unit Development Regulations from the Jerome Township 1975 Township Zoning Resolution function pursuant R.C. § 519.021(a), which in turn provide that a property owner, such as Homewood, is permitted to apply to rezone to PUD, and thereafter pursue subsequent approval or disapproval of the proposed uses or development within that PUD. The parties believe that it is this procedure which was intended to be and was accomplished, and that the subsequent approval by the Township Trustees was an administrative action.

In any event, there remains a dispute relating to Homewood's allegations in the pending lawsuit regarding, among other claims and causes of action, the alleged zoning misclassification of the property, as indicated by the inconsistencies in the Township's official zoning records and zoning maps.

Given the parties' disputes and differences regarding the Homewood Property, its zoning classification and the pending lawsuit, Homewood and the Jerome Township Board of Trustees believe it best to attempt to settle their differences by a Consent Decree subject, of course, to the Ohio statutory procedure identified within and provided by Ohio Revised Code §505.07, and subject also to approval by the Federal District Court.

The public's comments and observations were now invited and welcomed. Mr. Craft reminded the public to please note again; each person will be afforded three (3) minutes of time.

Barry Adler, a resident of Jerome Township spoke before the Board indicating he has legal standing as a circulator of the referendum petition. He submitted a document to the Board which he identified as exhibit A. He stated that based upon the details of facts, the action was not administrative but legislative. He stated that the original PUD expired after ten years and there is no evidence of an extension. He also stated that there are an additional 4.5 acres which were not a part of the original PUD. He asked the Board to have his comments reviewed by the Union County Prosecutor and requested the Board to continue the hearing until such review could be completed.

It was moved by Joe Craft and seconded by Ron Rhodes that the Jerome Township Board of Trustees adopt the following motion:

The Jerome Township Board of Trustees have the notice of the December 30, 2019 meeting entered into the record as Exhibit #1.

The vote resulted as follows:

Ronald Rhodes, yes
 Lonnie (Joe) Craft, yes
 Charles (C.J.) Lovejoy, yes
The motion carried.

It was moved by Joe Craft and seconded by C.J. Lovejoy that the Jerome Township Board of Trustees adopt the following motion:

The Jerome Township Board of Trustees enter Exhibit A received from Barry Adler into the official record.

The vote resulted as follows:

Ronald Rhodes, abstain
 Lonnie (Joe) Craft, yes
 Charles (C.J.) Lovejoy, yes
The motion carried.

Mr. Craft addressed those in attendance stating that the Board has had many discussions with legal counsel and the Union County Prosecutor in the matters of this case and need a decision regarding the consent decree. Mr. Rhodes agreed that the Board needed to move forward today. He also stated that he just received the information from Mr. Adler which he had not seen before today, thus why he abstained from the motion. Mr. Craft stated that in light of the length of litigation and cost to the Township, it was in the best interest to agree to the consent decree. Mr. Lovejoy added that in discussions with legal counsel, the Board originally

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GOVERNMENT FORMS & SUPPLIES 644-894-8335 FORM 100-118

Held _____

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felt they had not done anything wrong but agreed it is in the Township's best interest to settle the matter.

It was moved by Joe Craft and seconded by Ron Rhodes that the Jerome Township Board of Trustees adopt the following resolution:

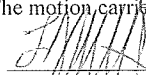
The Jerome Township Board of Trustees approve the Consent Decree in the matter of Homewood Corporation, Plaintiff vs. Jerome Township, et al., Defendants for consideration by the District Court pursuant to ORC 505.07.

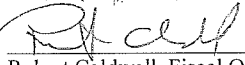
The vote resulted as follows:

Ronald Rhodes, yes
Lonnie (Joe) Craft, yes
Charles (C.J.) Lovejoy, yes

The resolution carried. (Res. 19-136)

At 8:34 a.m. it was moved by Joe Craft and seconded by Ron Rhodes that the Jerome Township Board of Trustees adjourn. The motion carried.


Lonnie (Joe) Craft, Chairman


Robert Caldwell, Fiscal Officer