

**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

**CINCINNATI NATURE CENTER, : CASE NO. 2018 CVH 01675  
ET AL.**

Plaintiffs

vs.

**UNION TOWNSHIP, CLERMONT  
COUNTY, OHIO, ET AL.**

Defendants

Judge McBride

**DECISION/ENTRY**

BARBARA A. WERTZ  
CLERK OF COMMON PLEAS COURT  
CLERMONT COUNTY, OHIO  
2019 MAR 14 PM 2:30

FILED

**STATE OF OHIO EX REL. : CASE NO. 2018 CVH 01744  
COMMITTEE TO PROTECT  
AVEY'S WAY**

Plaintiff-Relator

vs.

**BOARD OF TRUSTEES OF UNION  
TOWNSHIP, OHIO**

Defendant-Respondent

Judge McBride

**DECISION/ENTRY**

Strauss Troy, Co., LPA, Matthew W. Fellerhoff, Emily T. Supinger, and Jeffrey A. Levine, counsel for the plaintiffs Cincinnati Nature Center, Committee to Protect Avey's Way, Maria Jo Keri, and Anne Robinson, 150 East Fourth Street, 4th Floor, Cincinnati, Ohio 45202.

Schroeder, Maundrell, Barbieri & Powers, Lawrence E. Barbieri and Katherine L. Barbieri, counsel for the defendants Union Township, Clermont County, Ohio and the defendant-relator Board of Trustees of Union Township, 5300 Socialville Foster Road, Suite 200, Mason, Ohio 45040.

Flagel & Papakirk, LLC, James Papakirk and Hallie S. Borellis, counsel for the defendant Angeleke Sansalone, 50 East Business Way, Suite 410, Cincinnati, Ohio 45241.

This cause is before the court for consideration of the motion to consolidate the above captioned cases filed pursuant to Civ.R. 42(A)(1) by the plaintiff-relator State of Ohio ex rel. Committee to Protect Avey's Way on December 18, 2018.

The court heard oral arguments on the motion on February 25, 2019. At the conclusion of the arguments of counsel, the court took the motion under advisement.

Upon consideration of the motion, the record of the proceedings, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

### **FACTS OF THE CASE AND PROCEDURAL BACKGROUND**

The plaintiffs Cincinnati Nature Center, Committee to Protect Avey's Way, Maria Jo Keri, and Anne Robinson filed suit against the defendants Union Township, Clermont County, Ohio; Board of Trustees of Union Township (hereinafter referred to as "Board of Trustees"); and Angeleke Sansalone on November 27, 2018 in Case No. 2018 CVH 01675. The complaint concerns the proposed development of real property consisting of approximately 271 acres located on the east and west sides of Rumpke Road and north of Deervalley Drive and Surrey Trail in Union Township, Clermont County, Ohio ("the Property").

The complaint against the defendants includes five counts requesting that the court enter a declaratory judgment as follows: (1) a declaration that the Board of Trustees' Resolution 2018-52 is in violation of the Union Township Zoning Resolution

and the Consent Decree, (2) a declaration that the Board of Trustees improperly modified the Consent Decree to allow for the Miller Place Development, (3) a declaration that the Board of Trustees improperly changed the zoning designation of the Property by failing to follow the procedures for notice and hearings set out under R.C. 519.12, (4) a declaration that the Board of Trustees' actions deprived the plaintiffs of their its 1st, 5th, and 14th Amendment rights, and (5) a declaration that Resolution 2018-52 violates Section 6, Article VIII of the Ohio Constitution and is therefore unconstitutional, invalid, and of no effect, and that any attempted use of eminent domain, being for a solely private purpose, is a violation of Section 19, Article I of the Ohio Constitution.

Following the defendants' motions to dismiss, in a decision simultaneously filed with this one, the court dismissed the claims of the plaintiffs Committee to Protect Avey's Way, Maria Jo Keri, and Anne Robinson. The only remaining plaintiff in Case No. 2018 CVH 01675 is now the Cincinnati Nature Center.

Several weeks after Case No. 2018 CVH 01744 was filed, on December 14, 2018, the Committee to Protect Avey's Way (hereinafter referred to as "the Committee") filed a verified petition for a writ of mandamus, with the defendant named as the Board of Trustees of Union Township, Ohio (hereinafter referred to as "the Board of Trustees"). The mandamus action likewise concerns the Property and the legality of Resolution 2018-52. The Committee prays for (1) the court to issue a writ of mandamus directing the Board of Trustees to certify its petition for referendum to the Clermont County Board of Elections, (2) reasonable costs associated with this action under R.C. 2731.11, (3) attorney fees, and (4) other appropriate relief.

The Committee filed a motion to consolidate Case Nos. 2018 CVH 01675 and 2018 CVH 01744 pursuant to Civ.R. 42(A)(1) on December 18, 2018. Union Township filed a response in opposition to the motion on January 2, 2019, and Sansalone filed a response in opposition to the motion on January 29th. The Committee filed a reply in support of the motion on January 8th. On February 25th the court heard oral argument on the motion, after which it took the motion under advisement.

### **LEGAL STANDARD**

Civ.R. 42(A) allows for consolidation of civil cases, providing:

“(1) Generally. If actions before the court involve a common question of law or fact, the court may:

(a) join for hearing or trial any or all matters at issue in the actions;

(b) consolidate the actions; or

(c) issue any other orders to avoid unnecessary cost or delay.”<sup>1</sup>

“If a party files such motion, its granting or denial is purely discretionary with the trial court under Rule 42(A).”<sup>2</sup> Furthermore, “[t]he obvious purpose of Rule 42(A) is for convenience of trial, for preventing multiplicity of actions, and for the saving of costs.”<sup>3</sup>

As the Ohio Supreme Court has noted:

“[T]he thrust of Civ.R. 42(A) is to vest discretion in the Court of Common Pleas to determine whether consolidation of

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<sup>1</sup> Civ.R. 42(A)(1).

<sup>2</sup> 1970 Staff Note, Civ.R. 42. See *Connor & Murphy, Ltd. v. Applewood Village Homeowners' Assn.*, 12th Dist. Butler No. CA2007-09-213, 2009-Ohio-1447, ¶ 101 (“Civ.R. 42(A) provides a trial court with the discretion to consolidate cases for trial.”).

<sup>3</sup> 1970 Staff Note, Civ.R. 42.

cases is to be permitted where the circumstances specified in the rule exists. The purpose of the rule is to avoid unnecessary costs or delay in the interests of judicial efficiency. \* \* \* The management of cases lies within the discretion of the court, and not with the parties so long as the rights of the parties are adequately protected."<sup>4</sup>

### **LEGAL ANALYSIS**

In the present case, there are both common questions of law and fact, although only one or the other is required under Civ.R. 42(A). The events giving rise to the two cases are identical, namely, they both concern the actions of the Board of Trustees in rezoning the Property through Resolution 2018-52. They also include common questions of law, as they both involve the question of whether the Board of Trustees was required to follow R.C. 519.12, and if it was required to do so, whether it violated R.C. 519.12. Much of the same law is cited by the parties and the court in dealing with the various defendants' motions to dismiss in both cases. Given the commonalities of law and fact, the court finds that the above captioned cases should be consolidated.

### **CONCLUSION**

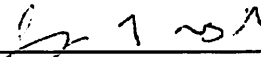
For the foregoing reasons, the court finds the Committee's motion to consolidate well-taken and hereby grants it.

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<sup>4</sup> (Quotations omitted.) *Dir. of Hwys. v. Kleines*, 38 Ohio St.2d 317, 319-320, 313 N.E.2d 370 (1974).

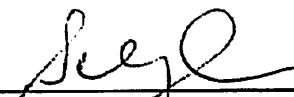
IT IS SO ORDERED.

DATED: 3-19-19

  
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Judge Jerry R. McBride

**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the within Entry were sent on this 14<sup>th</sup> day of March 2019 to Matthew W. Fellerhoff, at mwfellerhoff@strausstroy.com, Emily T. Supinger, at etsupinger@straustroy.com, and Jeffrey A. Levine, at jalevine@strausstroy.com, Attorneys for the Plaintiffs; James Papakirk, at jpapakirk@fp-legal.com, and Hallie S. Borellis, counsel for the defendant Angeleke Sansalone, at hborellis@fp-legal.com; and Lawrence Barbieri, at lbarbieri@smbplaw.com, and Katherine L. Barbieri, at kbarbieri@smbplaw.com, Attorneys for the Defendants Union Township, Clermont County, Ohio and the Board of Trustees of Union Township.

  
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Judicial Assistant to Judge McBride