

Bond Case Briefs

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ZONING REFERENDUM - OHIO

State ex rel. Tam O'Shanter Company v. Stark County Board of Elections

Supreme Court of Ohio - October 12, 2017 - N.E.3d - 2017 WL 4558782 - 2017 -Ohio- 8167

Property owner who sought to rezone land filed a protest against petition for zoning referendum, alleging that petition was invalid.

The county board of elections denied the protest. Owner filed an original action seeking writs of mandamus and prohibition.

The Supreme Court of Ohio held that:

- It lacked jurisdiction over mandamus claim;
- Petition for zoning referendum was not deficient for failing to including a full and correct title of the zoning amendment application;
- Evidence supported conclusion that “name by which amendment was known” did not require inclusion of property owner’s name; and
- Brief summary of contents of amendment was not required to include name of property owner whose land was being rezoned.

In complaint for writ of mandamus challenging petition for zoning referendum, real objects sought were declaratory judgment and prohibitory injunction, and therefore, Supreme Court lacked jurisdiction over mandamus claim. Although relators framed their mandamus request in terms of compelling county board of elections to discharge affirmative duties, their true objectives were a declaratory judgment that the referendum petition was insufficient and a prohibitory injunction to prevent the referendum from being placed on the ballot.

Petition for zoning referendum was not deficient for failing to including a full and correct title of the zoning amendment application. Application consisted of a one-page form that did not provide a title for the application, and statute only required inclusion of title of application in event there was a discernable title.

Evidence supported conclusion that “name by which amendment was known,” as statutorily required portion of zoning referendum petition, did not require inclusion of property owner’s name, despite testimony from township’s fiscal officer stating the proposal was known by the name of the owner. County board of elections acted within its discretion in assigning greater weight to documents produced by the township, which referred to the amendment merely by number, rather than to the officer’s personal opinion.

Brief summary of contents of amendment in zoning-referendum petition was not required to include name of property owner whose land was being rezoned. Language of summary accurately reflected language of proposed zoning ordinance, and there was no legal support to contention that the omission of the name of the property owner would mislead or confuse electors.

