

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2008 SEP 11 3:17

STATE OF OHIO, CITY OF LORAIN, ex rel.
CLARENCE R. SKORVANIK

Plaintiff-Relator,

v.

CITY OF LORAIN
200 West Erie Ave.
Lorain, OH 44052-1647

and

SANFORD PRUDOFF,
Director, City of Lorain Department of
Community Development
200 West Erie Ave.
Lorain, OH 44052

and

HOWARD GOLDBERG,
Rehabilitation Administrator
City of Lorain Department of Community
Development
200 West Erie Ave.
Lorain, OH 44052-1647

and

DRAKE HOPEWELL
Housing Officer, City of Lorain
200 West Erie Ave.
Lorain, OH 44053-1614

and

RONALD MANTINI
Auditor – City of Lorain
200 West Erie Ave.
Lorain, OH 44052-1647

Case No.

08CV150515
CLERK OF COMMON PLEAS
RON NABAKUSAI

Judge

JUDGE RAYMOND J. EWERS

COMPLAINT UNDER R.C. § 733.56
ET SEQ. FOR PRELIMINARY AND
PERMANENT INJUNCTION, AND
VERIFIED PETITION FOR WRIT OF
MANDAMUS

and

THOMAS C. URBANEK
Treasurer – City of Lorain
Lorain Income Tax
605 West 4th Street
Lorain, Ohio 44052

and

DANIEL W. GIVEN
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

MITCHELL J. FALLIS,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

ANNE MARIE MOLNAR,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

MELANIE SZABO,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

DENNIS FLORES,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

TIM HOWARD,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

BRET SCHUSTER,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

EDDIE C. EDWARDS,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

GREGORY J. HOLCOMB,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

MYROSLAW I. SILECKY,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

J. CRAIG SNODGRASS,
City of Lorain Member of Council
200 West Erie Ave.
Lorain, OH 44052-1647

and

AMHERST EXEMPTED VILLAGE
SCHOOLS
185 Forest Street
Amherst, OH 44001-1605

and

LORAIN COUNTY JOINT VOCATIONAL
SCHOOL

15181 State Route 58
Oberlin, OH 44074

and

LORAIN CITY SCHOOLS

Charleston Administrative Center
2350 Pole Ave.
Lorain, OH 44052

and

LORAIN COUNTY BOARD OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES

9750 Murray Ridge Road
Elyria, OH 44035

and

LORAIN PUBLIC LIBRARY

6th & Reid Ave.
Lorain, OH 44055

and

AMHERST PUBLIC LIBRARY

221 Spring Street
Amherst, OH 44001

and

PORT AUTHORITY OF THE CITY OF
LORAIN

611 Broadway
Lorain, OH 44052

and

LORAIN COUNTY TB CLINIC

9890 Murray Ridge Road
Elyria, OH 44035

and

LORAIN COUNTY CHILDREN SERVICES
BOARD

226 Middle Ave.
Elyria, OH 44035

and

LORAIN COUNTY COMMUNITY
COLLEGE

1005 North Abbe
Elyria, OH 44035

and

LORAIN COUNTY METRO PARKS

12882 Diagonal Rd.
LaGrange, OH 44050

and

LORAIN COUNTY COMMUNITY
MENTAL HEALTH BOARD

1173 North Ridge Rd. East, Suite 101
Lorain, OH 44055

and

OHIO STATE DEPARTMENT OF
EDUCATION

25 South Front St.
Columbus, OH 43215-4183

and

LEE FISHER,
Director, Ohio Department of Development
77 S. High St., PO Box 1001
Columbus, OH 43216-1001

and

John or Jane Doe

Defendants.

**COMPLAINT UNDER R.C. § 733.56 ET SEQ. FOR PRELIMINARY AND
PERMANENT INJUNCTION, AND VERIFIED PETITION FOR WRIT OF
MANDAMUS**

The State of Ohio, City of Lorain, ex rel. Clarence R. Skorvanik (“Relator”) respectfully submits this Complaint and requests relief from this Court.

PARTIES

1. Relator Clarence R. Skorvanik is a resident and taxpayer in the City of Lorain, Lorain County, Ohio.

2. Defendant the City of Lorain, Ohio, is a political subdivision of the State of Ohio located in Lorain County, Ohio.

3. Defendant Sanford Prudoff is Director of the City of Lorain’s Department of Community Development.

4. Defendant Howard Goldberg is Renewal Administrator for the Department of Community Development.

5. Defendant Drake Hopewell is the Housing Officer for the City of Lorain and is responsible for accepting applications for tax-exemptions under the City’s CRA program and forwarding those applications to the Lorain County Auditor.

6. Defendant Daniel Given is a Member of the City Council of the City of Lorain.

7. Defendant Mitchell J. Fallis is a Member of the City Council of the City of Lorain.

8. Defendant Anne Marie Molnar is a Member of the City Council of the City of Lorain.

9. Defendant Melanie Szabo is a Member of the City Council of the City of Lorain.

10. Defendant Dennis Flores is a Member of the City Council of the City of Lorain.

11. Defendant Tim Howard is a Member of the City Council of the City of Lorain.

12. Defendant Bret Schuster is a Member of the City Council of the City of Lorain.

13. Defendant Eddie C. Edwards is a Member of the City Council of the City of Lorain.

14. Defendant Gregory J. Holcomb is a Member of the City Council of the City of Lorain.

15. Defendant Myroslaw I. Silecky is a Member of the City Council of the City of Lorain.

16. Defendant J. Craig Snodgrass is a Member of the City Council of the City of Lorain.

17. Defendants, Amherst Exempted Village Schools, Lorain County Joint Vocational School, Lorain City Schools, Lorain County Board of Mental Retardation and Developmental Disabilities, Lorain Public Library, Amherst Public Library, the Port Authority of the City of Lorain, the Lorain County TB Clinic, the Lorain County Children Services Board, Lorain County Community College, the Lorain County Metro Parks, and the Lorain County Community Mental Health Board are named as necessary parties because they will lose tax revenue that they would otherwise receive but for the City of Lorain's illegal, unconstitutional, and invalid tax-exemption scheme.

18. Ohio State Department of Education is named as a necessary party because it will have to pay school districts extra money to compensate for the lost tax revenue that the school districts would otherwise receive but for the City of Lorain's illegal, unconstitutional, and invalid tax-exemption scheme.

19. Defendant, Lee Fisher, Director of the Ohio Department of Development, is named as a necessary party because it is his responsibility to certify the City of Lorain's CRA program as valid under RC 3735.66, and the City of Lorain has not followed the necessary procedures to allow him to do so.

20. Defendants John Doe and/or Jane Doe are natural persons or public officials of the City of Lorain who are responsible for implementing an illegal tax-abatement scheme described in this complaint.

JURISDICTION AND VENUE

21. This Court has jurisdiction to determine whether City of Lorain Community Reinvestment Area tax-exemption program should be declared invalid under R.C. 2721.03 and Ohio R.Civ.P. 57.

22. This Court has jurisdiction over the petition for writ of mandamus under R.C. 2731.02.

23. This Court has jurisdiction over the claims raised as taxpayer claims under R.C. 733.56 *et seq.*

24. This Court has jurisdiction over all remaining civil matters under R.C. 2305.01.

25. This Court is the proper venue under Civ. R. 3(B)(3), (4), and (5).

FACTUAL BACKGROUND

26. City of Lorain officials have engaged in a series of improper activities that constitute abuses of corporate powers when legislating and implementing the City's Community Reinvestment Area tax-exemption program.

27. The City must follow state law, R.C. 3735.65 *et seq.*, when creating and implementing tax exemptions under a Community Reinvestment Area program.

28. The City of Lorain abused corporate powers when it amended Community Reinvestment Areas #1 through #5, and the City of Lorain and Lorain officials implemented a scheme to charge extremely high fees, disproportionate to any administrative burden, of the City for retroactive tax exemptions to existing structures.

29. Upon information and belief, the City of Lorain marketed this tax-exemption scheme only to property owners in CRAs 3 and 4. These CRAs are located in some of the wealthiest areas in the City of Lorain.

30. Upon information and belief, the City of Lorain marketed this tax-exemption scheme to property owners in CRAs 3 and 4, at least in part, to provide a benefit to Oster Homes, a developer who owns property and had built several housing developments in CRAs 3 and 4.

31. All CRAs, however, are illegal, unconstitutional, and invalid for the following reasons.

32. Lorain City Council and its members abused their corporate power by failing to identify a term of years for the proposed tax exemption as R.C. 3735.67(D) mandates. There is nothing to stop the City Council Committee of Tax Incentives, the Housing Officer, or the Department of Community Development from granting different terms of years to different applicants.

33. Lorain City Council and its members abused their corporate power by failing to identify a percentage of tax exemption to be applied to tax bills as R.C. 3735.66 requires. There is nothing to stop the City Council Committee of Tax Incentives, the Housing Officer, or the Department of Community Development from granting different percentages of tax exemptions to different applicants.

34. The Lorain City Council and its members abused their corporate power by delegating their legislative authority to set the term of years and the percentage of the tax exemptions to the City Council Committee of Tax Incentives or some other administrative body or officer.

35. The City of Lorain and Lorain officials, including the officials on Council

Committee on Tax Incentives, the Housing Officer, and officials in the Community Development Department, abused their corporate power by allowing applications to be submitted more than the year after the original construction and improvements in violation of R.C. 3735.67.

36. The City of Lorain and Lorain officials, including the officials on the Council Committee for Tax Incentives, the Housing Officer, and officials in the Community Development Department, abused their corporate power by failing to take the individual applications for the CRA tax exemption to City Council for approval of the specific terms of the exemption contract in violation of R.C. 731.01(A).

37. After the Lorain City Council amended the ordinances, the City of Lorain and various Lorain officials implemented an administrative scheme within CRA areas #3 and #4 to charge property-owners within those areas extremely high fees for retroactive tax exemptions for property that was already built. This tax-exemption scheme was an abuse of corporate power, illegal, invalid, and unconstitutional.

38. The City of Lorain and Lorain officials, including the officials on Council Committee on Tax Incentives, the Housing Officer, and officials in the Community Development Department, abused corporate power by selling tax exemptions for thousands of dollars in fees—fees that are, moreover, not reasonably related and disproportionate to the City's administrative burden in violation of Ohio law that provides that cities cannot charge excise taxes and cannot charge fees disproportionate to a city's administrative burden.

39. The City of Lorain and Lorain officials, including the officials on Council Committee on Tax Incentives, the Housing Officer, and officials in the Community Development Department, abused their corporate power by granting a retroactive tax abatement to existing properties in violation of the Community Reinvestment Act's plain purpose, as stated in

R.C. 3735.67(D), to instigate new construction and investment, and not merely to grant tax breaks.

40. The City of Lorain and Lorain officials, including the officials on Council Committee on Tax Incentives, the Housing Officer, and officials in the Community Development Department, abused their corporate power by retroactively creating new rights for existing structures that did not take advantage of previous exemption rights that expired in violation of Ohio Const., Art II, barring retroactive application of laws.

41. Lorain City Council member, Daniel Given, abused corporate power in his role as both City Council member and Tax Incentives Committee member by participating and voting on the amendments to the Community Reinvestment Areas, participating in making decisions about when, whether, and how much of a tax abatement to grant individual homeowners, by acting to approve applications, and by advocating legal resistance by the City and among homeowners to determinations that the program is illegal when he both works for Oster Homes, a developer who stands to benefit from tax exemptions being granted to homes in certain Community Reinvestment Areas, and owns a home in a Community Reinvestment Area. Mr. Given, moreover, applied for a tax exemption for that home through this tax-exemption program.

42. The City of Lorain and Lorain officials abused their corporate power by allowing a non-Council member to exercise legislative authority by serving on the City Council Committee of Tax Incentives Committee and making decisions about when, whether, and how much of a tax abatement to grant individual homeowners.

43. The City of Lorain and Lorain officials abused their corporate power by amending their CRA ordinances more than twice after 1994, and then failing, and continuing to fail to send those ordinances to the Ohio Director of Development for certification under R.C. 3735.66.

44. These abuses of corporate power harm taxpayers in the City of Lorain by illegally allowing some taxpayers to forgo paying property taxes for a fee, while the rest of the taxpayers must pay the full amount of taxes, thus covering the cost for government services for the taxpayers who were improperly and illegally granted a tax exemption.

45. These abuses of corporate power harm the state of Ohio by making the State cover the costs of the abatement for School Districts that lose money they would have otherwise received through this tax abatement.

46. On December 10, 2007, Relator Skorvanik, through legal counsel, sent a written demand under R.C. § 733.59 to the City of Lorain's law director Mark Provenza, demanding that the law director institute a suit to address the City's and city officials' abuse of corporate powers.

47. This demand requested that Mr. Provenza take action to

- a. seek to enjoin the City of Lorain, the Lorain Community Development Department, Sanford Prudoff, Community Development Director, and Howard Goldberg, Renewal Administrator, from contracting with property owners to grant tax abatements in exchange for fees under this administrative scheme and purportedly under these illegal ordinances and this illegal program and from implementing any such "contracts."
- b. seek a writ of mandamus to compel the City of Lorain, the Lorain Community Development Department, Sanford Prudoff, Community Development Director, and Howard Goldberg, Renewal Administrator, as well as the city of Lorain's auditor, Ronald L. Mantini, and treasurer, Thomas C. Urbanek, to return any fees illegally collected under this program.
- c. seek to enjoin members of the City Council Committee on Tax Incentives, from approving tax abatements.
- d. seek to enjoin the Lorain City Council, and each member in his or her official capacity and their successors, from unconstitutionally delegating their legislative authority to set the term of years and percentage of a tax abatement in a Community Reinvestment Area to a sub-committee, and especially to a sub-committee that includes a non-City Council member.

- e. Seek to enjoin Councilman Daniel Given from participating in any legislation or approving, or speaking or lobbying in his role as a City Council member for any tax abatements in any Community Reinvestment Areas that will benefit himself personally or his private employer, Oster Homes.

(A true and accurate copy of the demand letter is attached as Exhibit A and incorporated as though fully rewritten.)

48. On December 17, 2007, Mr. Provenza sent a response to the demand letter to counsel for Relator Skorvanik. (A true and accurate copy of Provenza's response letter is attached as Exhibit B and incorporated as though fully rewritten.)

49. In Mr. Provenza's response, he rejected the demands.

50. On August 20, 2008, Mr. Skorvanik sent a second taxpayer-demand letter. Since then Mr. Skorvanik has been monitoring progress in related litigation and it has become clearer to him that the City continually refuses to correct its abuses of corporate powers. This demand letter pointed out that "the City of Lorain has amended its CRA ordinances more than two times, yet the City of Lorain has not brought its program to the Director of the Ohio Department of Development for approval as R.C. 3735.66 requires. As the City continues to pass out exemptions and contemplate passing out exemptions this is a continuing failure." The letter, thus, demanded that the law director "seek a writ of mandamus compelling the City of Lorain, and Housing Officer, Drake Hopewell, to revoke all tax exemptions that have been granted to date under this illegal and invalid program." (A true and accurate copy of the second demand letter is attached as Exhibit C and incorporated as though fully rewritten.)

51. Director Provenza responded to this letter and has refused to take any action. (A true and accurate copy of Provenza's response letter to the second demand letter is attached as Exhibit D and incorporated as though fully rewritten.) Relator Skorvanik, thus, is bringing the

following counts against the City of Lorain and its officials and requesting the following relief.

COUNT I

(Injunctive Relief under R.C. 733.56: Enjoining the City of Lorain, Sanford Prudoff, Director of the Department of Community Development, Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development, and Drake Hopewell, Housing Officer for the City of Lorain, from entering into contracts charging fees to taxpayers in return for tax abatements)

52. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

53. Because the amended ordinances, administrative practices, and contracts under the tax-exemption scheme are illegal, unconstitutional and invalid, Relator is entitled to an injunction under R.C. 733.56 to enjoin the City of Lorain, Sanford Prudoff, Director of the Department of Community Development, Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development, and Drake Hopewell, Housing Officer for the City of Lorain, from entering into any contracts and charging any fees, or in the alternate, fees of this magnitude, for a tax-exemption under this administrative scheme and purportedly under its current Community Reinvestment Area ordinances.

COUNT II

(Injunctive Relief under R.C. 733.56: Enjoining Drake Hopewell, Housing Officer for the City of Lorain from certifying and approving any tax abatements under this administrative scheme and purportedly under Lorain Ordinance Nos. 53-06 (CRA4), 52-06 (CRA3), 19-06 (CRAs 1 &2), 54-06 (CRA5).

54. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

55. Because the amended ordinances and contracts under the tax-exemption scheme are illegal, unconstitutional, and invalid, Relator is entitled to an injunction under R.C. § 733.56, to enjoin Drake Hopewell, Housing Officer for the City of Lorain from certifying and approving

any further tax abatements under this administrative scheme and purportedly under these amended ordinances.

COUNT III

(Mandamus under R.C. 733.58: Compelling the City of Lorain, Sanford Prudoff, Director of the Department of Community Development, Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development, and Drake Hopewell, Housing Officer for the City of Lorain and the City of Lorain Auditor, Ronald L. Mantini, and treasurer, Thomas C. Urbanek to return to City of Lorain taxpayers fees collected under the tax-abatement program)

56. The Relators incorporate all prior allegations contained in this Complaint as if fully rewritten.

57. The property owners who applied for a tax-exemption under this illegal CRA program and who paid fees to receive these tax-exemptions have a clear legal right to have their illegally collected fees returned.

58. The officials have a clear legal duty to return these illegally collected fees.

59. Taxpayer Robert Skorvanik has no other adequate remedy at law.

60. Relators is entitled to a writ of mandamus to compel the City of Lorain, Sanford Prudoff, Director of the Department of Community Development; Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development; Drake Hopewell, Housing Officer for the City of Lorain; Ronald L. Mantini, City of Lorain Auditor; and Thomas C. Urbanek, City of Lorain treasurer to return fees illegally collected under this program.

COUNT IV

(Injunctive Relief under R.C. 733.56: Enjoining the City of Lorain City Council Committee of Tax Incentives, from approving any further tax exemptions under this administrative scheme and purportedly under City of Lorain Ordinance Nos. 53-06 (CRA4) (attached as Ex. C), 52-06 (CRA3) (attached as Ex. D), 19-06 (CRAs 1 &2) (attached as Ex. E), 54-06 (CRA5) (attached as Ex. F))

61. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

62. Because the amended ordinances, administrative practices, and contracts under the tax-exemption scheme are illegal, unconstitutional, and invalid, Relator is entitled to an injunction under R.C. 733.56, to prohibit members of the City Council Committee on Tax Incentives in their official capacity, from approving tax exemptions under this administrative scheme and purportedly under these amended ordinances.

COUNT V

(Injunctive Relief under R.C. 733.56: Enjoining the Lorain City Council from unconstitutionally delegating their legislative power to decide what term of years and percentage of a tax abatement is in a Community Reinvestment area to a subcommittee, to the Department of Community Development or the Housing Officer.)

63. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

64. Because it is illegal and unconstitutional to delegate legislative authority, Relator seeks to enjoin the Lorain City Council, and each member in his or her official capacity and their successors, including Daniel Given, Mitchell Fallis, Anne-Marie Molnar, Melanie Szabo, Dennis Flores, Tim Howard, Bret Schuster, Eddie C. Edwards, Gregory J. Holcomb, Myroslaw I. Silecky, and J. Craig Snodgrass, from unconstitutionally delegating their legislative authority to set the term of years and percentage of a tax abatement in a Community Reinvestment Area to a sub-committee, and especially to a sub-committee that includes a non-City Council member.

COUNT VI

(Injunctive Relief under R.C. 733.56: Enjoining Councilman Daniel Given from participating in any legislation or approving, or speaking or lobbying in his role as a City Council member for any tax abatements in any Community Reinvestment Areas that will benefit himself personally or his private employer, Oster Homes.)

65. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

66. Because Councilman Dan Given will benefit personally from receiving a 15-year 100% tax exemption on his home, and because Dan Given's employer, Oster Homes, will benefit from tax-exemptions in CRA areas #3 and #4, Relator seeks to enjoin Councilman Daniel Given from participating in any legislation or approving, or speaking or lobbying in his role as a City Council member for any tax abatements in any Community Reinvestment Areas that will benefit himself personally or his private employer, Oster Homes.

COUNT VII

(Mandamus under R.C. 733.58: Compelling the City of Lorain, and Housing Officer, Drake Hopewell, to revoke all tax exemptions that have been granted to date under this illegal and invalid program.)

67. Relator incorporates all prior allegations contained in this Complaint as if fully rewritten.

68. Because the City of Lorain must bring its program to the Director of the Ohio Department of Development for approval under R.C. 3735.66, after the City has amended its CRA ordinances more than twice, as it has done here, and because this is a continuing failure, Relator seeks a writ of mandamus compelling the City of Lorain, and Housing Officer, Drake Hopewell, to revoke all tax exemptions that have been granted to date under this illegal and invalid program.

PRAYER FOR RELIEF

For the reasons stated above, Relators respectfully demands the following relief from the Court:

1. The Court grant an injunction prohibiting the City of Lorain, Sanford Prudoff, Director of the Department of Community Development, Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development, and Drake Hopewell, Housing

Officer for the City of Lorain from entering into contracts charging fees to taxpayers in return for tax abatements.

2. The Court grant an injunction prohibiting Drake Hopewell, Housing Officer for the City of Lorain from certifying and approving any further tax abatements under this administrative scheme and purportedly under the amended CRA ordinances.

3. The Court issue mandamus compelling the City of Lorain, Sanford Prudoff, Director of the Department of Community Development, Howard Goldberg, Rehabilitation Coordinator of the Department of Community Development, and Drake Hopewell, Housing Officer for the City of Lorain and the City of Lorain Auditor, Ronald L. Mantini, and treasurer, Thomas C. Urbanek to return to City of Lorain taxpayers fees collected under the tax-abatement program.

4. The Court grant an injunction prohibiting the members of the City of Lorain Council Committee of Tax Incentives in their official capacities from approving any tax exemptions under this administrative scheme and purportedly under the amended ordinances.

5. The Court grant an injunction prohibiting the members of the Lorain City Council in the official capacity from unconstitutionally delegating their legislative power to decide what term of years and percentage of a tax abatement is in a Community Reinvestment area to a subcommittee, to the Department of Community Development or the Housing Officer.


6. The Court grant an injunction prohibiting Councilman Daniel Given from participating in any legislation or approving, or speaking or lobbying in his role as a City Council member for any tax abatements in any Community Reinvestment Areas that will benefit himself personally or his private employer, Oster Homes.

7. The Court issue mandamus compelling the City of Lorain, and Housing Officer, Drake Hopewell, to revoke all tax exemptions that have been granted to date under this illegal and invalid administrative program.

8. The Court award Relator all costs and attorneys fees incurred in this action, including, but not limited to, reasonable attorney's fees, research costs, investigative costs, record-production costs, and any other relief as the Court may deem equitable, just, or proper.

Respectfully submitted,

THE CHANDRA LAW FIRM, LLC



Subodh Chandra (0069233)

Jaime Bouvier (0071426)

1265 W.6th St., Suite 400

Cleveland, OH 44113-1326

216.578.1700 (Phone)

216.578.1800 (Fax)

Subodh.Chandra@StanfordAlumni.org


Jaime_Bouvier@yahoo.com

Attorneys for Plaintiff Clarence R. Skorvanik

REQUEST FOR SERVICE

TO THE CLERK:

Please issue the Summons and Complaint and serve the Complaint by certified mail to the Defendants listed in the Complaint's caption at the addresses listed above, making return according to law.



One of the Counsel for Relator Clarence R. Skorvanik

EXHIBIT A

December 10, 2007

Via facsimile and mail

Mark Provenza
Director of Law
City of Lorain
200 W. Erie Ave., 7th Floor
Lorain, OH 44052-1683

Re: Taxpayer Demand under R.C. § 733.56 *et al.*

Dear Director Provenza:

Our firm represents Clarence R. Skorvanik, who is a taxpayer of the City of Lorain. The taxpayer believes that City of Lorain officials have engaged in abuses of corporate powers. Officials abused corporate powers when they amended the City's Community Reinvestment Area ordinances and instituted programs granting tax abatements/exemptions under these ordinances. The City is charging exorbitant fees, disproportionate to the administrative costs of any tax-abatement program, to grant certain homeowners retroactive, illegal tax abatements. The City is also charging these fees only to those who are located in one of the most affluent areas of the city. The City further attempted to distance itself from this program by illegally delegating unrestrained legislative authority to a Council committee, at times with a non-Council person on it, to decide how much and for how long a tax abatement will be for any given homeowner.

The sponsoring Councilperson, Daniel Given, moreover, had a conflict of interest in that he was employed by the housing developer that would benefit. He would also personally benefit because he owns a home in one of the Community Reinvestment Areas. Based on an opinion from the Ohio Ethics Commission, he knew he had this conflict. Other City employees who participated in the crafting and administration of the program are also believed to have had conflicts of interest. In short, wealthy homeowners in Lorain are illegally being offered and charged for a tax benefit, at the expense of the rest of the taxpayers in the City of Lorain, and in Lorain County.

In particular, taxpayer Skorvanik charges as follows:

- It is an abuse of corporate power to grant a retroactive tax abatement to owners of existing properties when the Community Reinvestment Act's plain purpose is

to foster new construction and investment, and not merely to grant tax breaks.¹

- It is an abuse of corporate power to grant, retroactively, tax-abatements to owners of existing structures who did not take advantage of previous exemption rights that had expired.²
- It is an abuse of corporate power for City Council to delegate its legislative authority to the City Council Committee of Tax Incentives.³
- It is an abuse of corporate power for a City Council member who works for Oster Homes (a developer that stands to benefit from tax-abatements being granted to homes in certain Community Reinvestment Areas), who owns a home in a Community Reinvestment Area, and who applied for a tax abatement for that home through this tax-abatement program, to participate in passing the legislation; to participate in the City Council Committee of Tax Incentives; and to participate in making decisions about when, whether, and how much of a tax abatement to grant individual homeowners.
- It is an abuse of corporate power to allow a non-Council member to exercise legislative authority by serving on the City Council Committee of Tax Incentives Committee and making decisions about when, whether, and how much of a tax abatement to grant individual homeowners.
- It is an abuse of corporate power for City Council to fail to identify (as required by statute) a term of years for the proposed tax exemption,⁴ e.g., there is nothing to stop the City Council Committee of Tax Incentives from granting different terms of years to similarly situated applicants.
- It is an abuse of corporate power for City Council to fail to identify (as required

¹ Ohio Const., art. II, § 28; R.C. § 3735.67(D) (“The construction of new structures and the remodeling of existing structures are hereby declared to be a public purpose for which exemptions from real property taxation may be granted . . .”; *Stasia v. City of Dublin* (10th Dist. 1994), 93 Ohio App.3d 185, 189–90 (applying Ohio Const., art II, § 28 and holding that tax exemptions cannot be retroactively applied).

² See Ohio Const., art. II, § 28; *Stasia*, 93 Ohio App.3d at 189–90 (applying Ohio Const., art II, § 28 and holding that tax exemptions cannot be retroactively applied).

³ See R.C. §§ 731.01(A) “Except as provided in divisions (B) and (D) of this section, the legislative power of each city shall be vested in, and exercised by, a legislative authority, composed of not fewer than seven members. . .”; 731.17(A)(4) (“Each ordinance or resolution shall be passed, except as otherwise provided by law, by a vote of at least a majority of all the members of the legislative authority.”)

⁴ See R.C. § 3735.67(D)(3) (pre-1994 CRA statute) (“a period to be determined by the legislative authority adopting the resolution, but not exceeding fifteen years”).

Mark Provenza
Director of Law
December 10, 2007

by statute) a percentage of tax exemption to be applied to tax bills,⁵ e.g., there is nothing to stop the City Council Committee of Tax Incentives from granting different percentages of tax exemptions to similarly situated applicants.

- It is an abuse of corporate power to allow applications to be submitted more than the year after the original construction and improvements?⁶
- It is an abuse of corporate power for the City of Lorain sell tax exemptions for thousands of dollars in fees—fees that are, moreover, not reasonably related and disproportionate to the City’s administrative burden.⁷ Indeed, the City’s purported contracts imposed on homeowners admit that the fees are excessive, providing that the fees are intended to pay not just for the City’s “CRA program and costs associated with it,” but also for “Council-authorized costs and projects associated with the City of Lorain’s economic development, long range land use planning, and other activities that provide for an increase in the economic opportunities for the citizens of Lorain.” In short, the fees are a back-door, illegal tax that circumvented the proper municipal processes for tax increases.
- It is an abuse of corporate power for officials of the City of Lorain Department of Community Development to enter into supposed “contracts” with homeowners for abatements in exchange for fees when legislation authorizes neither.

Mr. Skorvanik requests that you, as the City of Lorain’s Director of Law, apply to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers under R.C. § 733.56, *et al.* More specifically, Mr. Skorvanik requests that you

- seek to enjoin the City of Lorain; the Lorain Community Development Department; Sanford Prudoff, Director of the Department of Community Development; and Howard Goldberg, Renewal Administrator; and any other relevant officials; from soliciting or accepting applications, and from contracting with property owners to grant tax abatements in exchange for

⁵ See R.C. § 3735.66 (“If construction or remodeling classified as residential is eligible for exemption from taxation, the resolution shall specify a percentage, not to exceed one hundred per cent, of the assessed valuation of such property to be exempted.”); *see also id.* (West 2007) (reciting uncodified law 1994 S 19, § 3, eff. 7-22-1994, which provides that the pre-1994/post 1994 distinction between the old and new CRA does not apply to R.C. § 3735.66).

⁶ See, e.g., R.C. §§ 3735.67(A), (B), (C), & (D) (pre-1994) (collectively provide that applicant has to apply in the year after the completion of the new structure).

⁷ See *Teamster’s Housing, Inc. v. City of East Cleveland* (8th Dist. 1987), 36 Ohio App.3d 83, 84; *City of Richmond Heights v. LoConti* (8th Dist. 1969), 19 Ohio App.2d 100, 115-16; *Cleveland v. Martinez* (Oh. Mun. 2003), 126 Ohio Misc.2d 36 at ¶ 7.

fees under these illegal ordinances and this illegal program and from implementing any such "contracts."

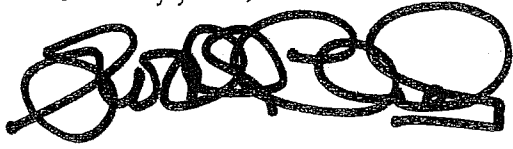
- seek a writ of mandamus to compel the City of Lorain; the Lorain Community Development Department; Sanford Prudoff, Community Development Director; and Howard Goldberg, Renewal Administrator; Ronald L. Mantini, Auditor; and Thomas C. Urbanek, Treasurer; to return to homeowners the supposed fees (rather, the taxes) illegally collected under this program.⁸
- seek to enjoin members of the City Council Committee on Tax Incentives, from approving tax abatements.
- seek to enjoin the Lorain City Council, and each member in his or her official capacity and their successors, from unconstitutionally delegating their legislative authority to set the term of years and percentage of a tax abatement in a Community Reinvestment Area to a sub-committee, and especially to a sub-committee that includes a non-City Council member.
- Seek to enjoin Councilman Daniel Given from participating in any legislation or approving or advocating in his role as a City Council member for any tax abatements in any Community Reinvestment Areas that will benefit himself personally or his private employer, Oster Homes.
- Seek to enjoin any non-City Council member currently acting on official Council Committee business from doing so regarding any role in tax abatements or otherwise.
- Seek to enjoin any other City of Lorain official, including any staff of the Department of Community Development, who would benefit personally or who have a family member who would benefit personally, from participating in any decisionmaking regarding tax abatements.

⁸ See R.C. § 733.56.

Mark Provenza
Director of Law
December 10, 2007

If you do not seek an injunction and a writ of mandamus before a court of competent jurisdiction within seven days, that is on or before December 17, 2007, the taxpayer will consider that you have failed to seek an injunction or a writ of mandamus as provided for under R.C. § 733.56 and § 733.58. Seven days is more than sufficient because, as you know, as law director, you have been familiar with the abuses of corporate power raised in this letter for months, yet have failed to act to correct these abuses. Thus, if you continue to fail to file suit seeking to correct and stop these abuses of corporate power, taxpayer Clarence R. Skorvanik will institute a suit in his own name, on behalf of the municipal corporation the City of Lorain under R.C. § 733.59.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Subodh Chandra', with a stylized, cursive script.

Subodh Chandra

EXHIBIT B



CITY OF LORAIN, OHIO

Department of Law

Lorain City Hall
200 West Erie Avenue, 7th Floor
Lorain, Ohio 44052-1683

Phone: (440) 204-2250
Fax: (440) 204-2257
e-mail: law_director@cityoflorain.org

Assistant Law Directors

R.J. Budway
James T. Walther

Civil Assistants

Donald M. Zaleski

Director of Law

Mark R. Provenza

December 17, 2007

Subodh Chandra
The Chandra Law Firm LLC
850 Euclid Avenue, Suite 701
Cleveland, Ohio 44114

Dear Attorney Chandra:

Your letter, on behalf of Mr. Skorvanik, requests that I file an injunction to enjoin the City of Lorain from exercising various statutory powers, in connection with the administration of its CRA exemption program. Apparently, Mr. Skorvanik believes the City has abused its corporate powers in the administration of its CRA program. As such, Mr. Skorvanik's request for an injunction necessarily includes a claim for declaratory relief and a ruling by a court that the City of Lorain's method of administering its CRA exemption program is "illegal," or constitutes an "abuse of power," in one or more of the respects set forth in your letter. As you are aware, "The Ohio Supreme Court has determined that 'actions for declaratory judgment and injunction are generally considered to be inappropriate where *** special statutory proceedings will be bypassed.'" State ex. rel. Taft-O'Conner 98 vs. Franklin County Court of Common Pleas (1998), 83 Ohio St. 3d 487, 489, 700 N.E. 2d 1232 cited in Parker vs. Giant Eagle, Inc., Case No. 01C.A.174, 2002 WL 31168571 at *5 (Mahoning Cty., September 26, 2002). Further, the Ohio Supreme Court has also repeatedly ruled that courts lack jurisdiction to hear such actions, and that any decision, other than a decision to dismiss, must be reversed on appeal. State, ex. rel. Albright v. Delaware County Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E. 2d 1387,1389 (1991).

As you have certainly already advised you client, O.R.C. §3735.70 establishes the exclusive, special statutory method for challenging the continued exemption of any property located in a CRA. O.R.C. §3735.70 states in pertinent part that:

Any person aggrieved under sections 3735.65 to 3735.69 of the Revised Code ***may appeal to the community reinvestment area housing council***, which shall have the authority to overrule any decision of a housing officer. ***Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.***

(emphasis added). Pursuant to this exclusive, special statutory method, any person challenging the continued exemption of any property granted a CRA tax exemption must first file a complaint with the Housing Officer who granted the exemption. An appeal to overrule the determination of the housing officer must then be made to CRA Housing Council. This exclusive, special statutory scheme only permits appeals from decisions of the CRA Housing Council to be taken to the Court of Common Pleas. Thus, before Mr. Skorvanik's applications for declaratory and injunctive relief can be heard by the courts, he must first bring his concerns to Housing Officer and the CRA Housing Council.

The Ohio Supreme Court has stated emphatically that courts have no jurisdiction to grant declaratory judgments and/or injunctions concerning matters committed exclusively to special statutory proceedings.

Courts of appeals have uniformly held that actions for declaratory judgment and injunction are inappropriate where special statutory proceedings would be bypassed. (Citations omitted). ***** However, since it is always inappropriate for courts to grant declaratory judgments, and injunctions that attempt to resolve matters committed to statutory proceedings, their decisions should always be reversed on appeal, except when they dismissed the actions. We find this tantamount to a holding that courts have no jurisdiction to hear the actions in the first place, and now so hold.**

State, ex. rel. Albright v. Delaware County Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E. 2d 1387,1389 (1991) (emphasis added.). *See, also, Galion v. Am. Fedn. of Sate, Cty., & Mun. Emp., Ohio Council 8 AFL-CIO, Local 2243*, 71 Ohio St.3d 620, 623, 646 N.E. 2d 813, 815-186 (1995), *See generally*, 35 OhJur.3d, Declaratory Judgments, §16 ("Where a special statutory method for determining a particular type of case has been provided, it cannot be bypassed in favor of a declaratory judgment action, especially where the statutory scheme is exclusive and the bypass thereof would circumvent a clear, legislative scheme.") In sum, because all matters challenging CRA exemptions are committed exclusively to special statutory proceedings, any taxpayer suit to circumvent those proceedings, and the legislative scheme established by §3735.65 et seq. is inappropriate and must be dismissed for lack of subject matter jurisdiction.

As you are also aware, Mr. Skorvanik's concerns are the gravamen of cases already pending in the Lorain County Court of Common Pleas, and before the Ohio Supreme Court. It appears that Mr. Skorvanik's charges repeat the same issues raised by the Lorain County Commissioners in a declaratory judgment action filed in September of this year. Your letter does not identify any issue not already before the Courts, nor any interest of the City to be advanced by the filing of any additional action, now, at taxpayers' expense.

For the reasons stated above, I must decline Mr. Skorvanik's request. Please thank Mr. Skorvanik for bringing his concerns to my attention. I encourage him to follow the progress of the cases currently before the courts for rulings pertaining to the topics of concern to him.

Sincerely,

A handwritten signature in black ink that reads "Mark R. Provenza". The signature is written in a cursive, slightly slanted style.

Mark R. Provenza
Law Director

MRP:tmd

EXHIBIT C

T H E
CHANDRA
L A W F I R M L L C

THE CHANDRA LAW FIRM, LLC

The City Club Building
850 Euclid Avenue, Suite 701
Cleveland, Ohio 44114.3355
216.965.6463 office
216.621.9283 fax

August 20, 2008

Via e-mail and mail

Mark Provenza
Director of Law
City of Lorain
200 W. Erie Ave., 7th Floor
Lorain, OH 44052-1683

Re: Taxpayer Demand under R.C. § 733.56, *et al.*

Dear Director Provenza:

Our firm represents Clarence R. Skorvanik, who is a taxpayer of the City of Lorain. The taxpayer believes that City of Lorain officials have engaged in a series of improper activities that constitute abuses of corporate powers. Aside from the abuses of corporate power described in Mr. Skorvanik's last taxpayer-demand letter, Mr. Skorvanik has identified additional abuses of corporate power. These are that the City of Lorain has amended its CRA ordinances more than two times, yet the City of Lorain has not brought its program to the Director of the Ohio Department of Development for approval as R.C. 3735.66 requires. As the City continues to pass out exemptions and contemplate passing out exemptions this is a continuing failure.

Thus, for the reason stated above, and for reasons set out in Mr. Skorvanik's prior letter, Mr. Skorvanik demands that you seek a writ of mandamus compelling the City of Lorain, and Housing Officer, Drake Hopewell, to revoke all tax exemptions that have been granted to date under this illegal and invalid program.

If you do not seek a writ of mandamus to force the City of Lorain to bring its program before the Ohio Department of Development for approval before a court of competent jurisdiction within seven days, that is on or before August 27, 2008, the taxpayer will consider that you have failed to seek an injunction or a writ of mandamus as provided for under R.C. § 733.56 and § 733.58. Seven days is more than sufficient because, as you know, you have been familiar with the problem raised in this letter, yet have failed to act.

Thus, if you have failed to file suit seeking to correct and put a stop to this abuse of corporate power, taxpayer Clarence R. Skorvanik will institute a suit in his own name, on behalf of the municipal corporation under R.C. § 733.59.

Sincerely yours,

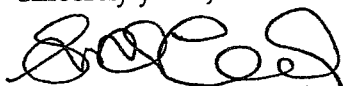

Subodh Chandra

EXHIBIT D



CITY OF LORAIN, OHIO

Department of Law

August 27, 2008

Director of Law

Mark R. Provenza

The Chandra Law Firm LLC
Subodh Chandra, Esq.
1265 W. 6th Street, Suite 400
Cleveland, OH 44113

Lorain City Hall
200 West Erie Avenue, 7th Floor
Lorain, Ohio 44052-1683

Phone: (440) 204-2250
Fax: (440) 204-2257
e-mail: law_director@cityoflorain.org

Assistant Law Directors

R.J. Budway
James T. Walther

Civil Assistants

Geoffrey R. Smith
Donald M. Zaleski

RECEIVED

AUG 28 2008

SUBODH CHANDRA

Dear Attorney Chandra:

Your letter of August 20, 2008, on behalf of Mr. Skorvanik, demands that I seek a writ of mandamus compelling the City of Lorain and its Housing Officer to 1) "revoke all tax exemptions that have been granted to date under this illegal and invalid program;" and to 2) "force the City of Lorain to bring its program before the Ohio Department of Development for approval as R.C. 3735.66 requires." (Skorvanik ltr 8/20/2008 --¶¶ 2,3). Your letter also demands I file an injunction to enjoin the City of Lorain from exercising various statutory powers in connection with the administration of its CRA exemption program.

Apparently, Mr. Skorvanik believes the City has abused its corporate powers in the administration of its CRA program. As such, Mr. Skorvanik's requests for a writ of mandamus and an injunction necessarily include a claim for declaratory relief and a ruling by a court that the City of Lorain's method of administering its CRA exemption program is "illegal," or constitutes an "abuse of power," in one or more of the respects set forth in your letter. As you are aware, "The Ohio Supreme Court has determined that 'actions for declaratory judgment and injunction are generally considered to be inappropriate where *** special statutory proceedings will be bypassed.'" State ex. rel. Taft-O'Conner 98 vs. Franklin County Court of Common Pleas (1998), 83 Ohio St. 3d 487, 489, 700 N.E. 2d 1232 *cited in* Parker vs. Giant Eagle, Inc., Case No. 01C.A.174, 2002 WL 31168571 at *5 (Mahoning Cty., September 26, 2002). Further, the Ohio Supreme Court has also repeatedly ruled that courts lack jurisdiction to hear such actions, and that any decision, other than a decision to dismiss, must be reversed on appeal. State ex. rel. Albright v. Delaware County Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E. 2d 1387,1389 (1991).

Since I last responded to a similar demand made by your client, the Ohio Supreme Court has ordered the County Auditor to list the very same CRA tax exemptions that Mr. Skorvanik now demands I file a writ of mandamus to revoke. State ex. rel. City of Lorain v. Stewart, 2008 WL 3823702 at *6. In so ruling the Ohio Supreme Court stated that "Lorain and its housing officer have established both a clear legal right to have the properties placed on county's exempt list and a clear duty on the part of the auditor to place the properties on that list." Id. at *7. Further, in granting the City of Lorain's writ of

mandamus, the Court made clear that actions for declaratory judgment and injunction are “inappropriate” in matters committed exclusively to special statutory proceedings. *Id.* at *8, The Ohio Supreme Court’s most recent opinion on this subject also cited, with approval, its previous decisions concluding that Courts have no jurisdiction in such matters. *Id.* Given the Ohio Supreme Court’s explicit guidance in these areas, there is no legal basis for a writ of mandamus, nor for the injunction you seek. Your letter fails to state what, if any, factual basis Mr. Skorvanik has to support his belief that the City of Lorain has amended its CRA legislation more than twice. Consequently, it also fails to establish how, if at all, the requirements of the present version O.R.C. §3735.66 apply to the City of Lorain’s CRA program. Finally, and most importantly, your letter fails to identify any interest of the City to be advanced by the filing of any additional action, now, at taxpayers’ expense.

As you have certainly already advised you client, O.R.C. §3735.70 establishes the exclusive, special statutory method for challenging the continued exemption of any property located in a CRA. O.R.C. §3735.70 states in pertinent part that:

Any person aggrieved under sections 3735.65 to 3735.69 of the Revised Code *may appeal to the community reinvestment area housing council*, which shall have the authority to overrule any decision of a housing officer. *Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.*

(emphasis added). Pursuant to this exclusive, special statutory method, any person challenging the continued exemption of any property granted a CRA tax exemption must first file a complaint with the Housing Officer who granted the exemption. An appeal to overrule the determination of the Housing Officer must then be made to CRA Housing Council. This exclusive, special statutory scheme only permits appeals from decisions of the CRA Housing Council to be taken to the Court of Common Pleas. Thus, before Mr. Skorvanik’s applications for declaratory and injunctive relief can be heard by the courts, he must first bring his concerns to Housing Officer and the CRA Housing Council.

The Ohio Supreme Court has stated emphatically that courts have no jurisdiction to grant declaratory judgments and/or injunctions concerning matters committed exclusively to special statutory proceedings.

Courts of appeals have uniformly held that actions for declaratory judgment and injunction are inappropriate where special statutory proceedings would be bypassed. (Citations omitted). *** **However, since it is always inappropriate for courts to grant declaratory judgments, and injunctions that attempt to resolve matters committed to statutory proceedings, their decisions should always be reversed on appeal, except when they dismissed the actions. We find this tantamount to a holding that courts have no jurisdiction to hear the actions in the first place, and now so hold.**

State, ex. rel. Albright v. Delaware County Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E. 2d 1387,1389 (1991) (emphasis added.). *See, also, Galion v. Am. Fedn. of Sate, Cty., & Mun. Emp., Ohio Council 8 AFL-CIO, Local 2243*, 71 Ohio St.3d 620, 623, 646 N.E. 2d 813, 815-186 (1995), *See generally*, 35 OhJur.3d, Declaratory Judgments, §16 ("Where a special statutory method for determining a particular type of case has been provided, it cannot be bypassed in favor of a declaratory judgment action, especially where the statutory scheme is exclusive and the bypass thereof would circumvent a clear, legislative scheme.") In sum, because all matters challenging CRA exemptions are committed exclusively to special statutory proceedings, any taxpayer suit to circumvent those proceedings and the legislative scheme established by §3735.65 et seq. is inappropriate and must be dismissed for lack of subject matter jurisdiction.

As you are also aware, the County Commissioners have voluntarily dismissed their declaratory judgment action. The County Commissioners and the City of Lorain have entered into a Memorandum of Understanding, and have agreed to work together toward a comprehensive settlement of their previous dispute concerning the CRA tax exemptions. Your letter does not identify any issue not already being addressed by the County Commissioners and the City of Lorain in the context of their good faith effort to resolve their dispute in the public interest, or any interest of the City to be advanced by the filing of any additional action, now, at taxpayers' expense.

For the reasons stated above, I must decline Mr. Skorvanik's request. Please thank Mr. Skorvanik for bringing his concerns to my attention. I encourage him to follow the progress of the cases currently before the courts for rulings pertaining to the topics of concern to him.

Respectfully,



Mark R. Provenza
Lorain Law Director

MRP/mtb