

ZONING COMMISSION

I. OVERVIEW

A. Since a township is a creature of statute, townships have only those powers expressly conferred upon them by statute or those necessarily implied therefrom. *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875).

B. Ohio Revised Code Chapter 519 sets out the powers of townships in relation to zoning.

C. Zoning has been defined as the division of a community into districts and the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. In other words, zoning is concerned with “land use” as opposed to “land ownership.”

D. Zoning is an exercise of the police power, and, accordingly, must be justified on the basis of promoting the public convenience, comfort, prosperity, or general welfare.

1. The Ohio Constitution vests the “police powers” of the State in the general assembly.

2. Ohio Revised Code Chapter 519 constitutes a delegation of a portion of those police powers to the township.

E. Since a township’s power to zone is a creature of statute, there are many limitations imposed upon this power.

1. Constitutional limitations.

(a) Zoning regulations must be reasonable. Regulations which are found to be unreasonable and arbitrary constitute an unconstitutional taking of property without due of process of law.

(b) Since zoning is a “legislative” function, courts traditionally will not question the expediency, advisability, or wisdom of the legislation.

(i) Courts can determine whether zoning regulations are so unreasonable and arbitrary as to be unconstitutional. However, zoning regulations are presumed valid and any illegality must be plain, apparent, and beyond debate. In other words, there is presumption of constitutionality attached to zoning regulations.

(ii) Since zoning regulations are in derogation of property rights, they are strictly construed in favor of the property owners.

(c) The constitutionality of a zoning provision may be challenged in one of two ways.

(i) Whether the zoning provision is clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community. (Must be shown “beyond fair debate.”)

(ii) Does the zoning provision deny the property owner of all economically viable use of the land (i.e., effect a taking).

2. Statutory limitations.

(a) Since the power of a township to adopt and administer a zoning resolution is a specific statutory grant of authority, a township cannot enact regulations which are in conflict with the applicable statutes.

(b) Ohio Revised Code Chapter 519 limits the ability of a township to regulate certain types of uses:

(i) Townships may not force discontinuance of a “lawful” nonconforming use (meaning a lawful use existing at the time of the enactment of the zoning resolution). In addition, the zoning resolution must provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms. (R.C. 519.19)

(ii) Zoning resolutions must classify outdoor advertising as a business use and must permit such advertising in all districts zoned for industry, business, or trade, or lands used for agricultural purposes. (R.C. 519.20)

(iii) Townships may not prohibit the use of land for “agricultural” purposes or the construction or use of buildings or structures incidental to the agricultural land use on which the buildings or structures are located. However, townships may regulate “agriculture” in any platted subdivision or in any area consisting of 15 or more lots approved under Ohio Revised Code Section 711.131 that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated

public road. (No authority to regulate agriculture on lots greater than 5 acres.) (R.C. 519.21)

(iv) In districts zoned for agricultural, industrial, residential, or commercial uses, townships may not prohibit the use of any land for a farm market where 50% or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, townships may regulate factors such as the size of the structure, size of parking areas that may be required, setback building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety. (R.C. 519.21)

Townships may also regulate factors pertaining to agritourism, except farm markets, as size of the structure used primarily for agritourism, size of parking areas that may be required (but not requiring that they be improved in any manner), setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect health and safety. (R.C. 519.21)

(v) Except for telecommunications towers located in an area zoned for residential use, townships may not regulate the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad. (R.C. 519.211)

(vi) Townships may not prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, and restaurant is permitted. (R.C. 519.211)

(vii) Townships may not prohibit permanently sited manufactured homes. (R.C. 519.212)

(viii) Townships may regulate small wind farms. (R.C. 519.213)

II. CREATION AND FUNCTION OF ZONING COMMISSION

A. Ohio Revised Code Section 519.04 - governs the creation and composition of zoning commission (five members and two alternates).

B. Zoning commission usually acts in a legislative capacity.

1. Rezoning context.
2. Administrative capacity.

C. Ohio Revised Code Section 519.05 – Rules Governing Organization and Meetings

1. Zoning commission is required to organize and adopt rules in accordance with zoning resolution.
2. Must keep record of actions and determinations.
3. Ohio Revised Code Section 121.22 – Sunshine Law
 - (a) No executive session.
 - (b) A public body must, by rule, establish a reasonable method whereby persons can determine the time and place of regular meetings and the time, place, and purpose of a special meeting.
 - (i) Special meetings.
 - (ii) Emergency meetings.

III. COMPREHENSIVE PLANS

A. Section 519.02 – Townships may regulate zoning considerations “in accordance with a comprehensive plan”

B. What is a Comprehensive Plan from a Legal Perspective?

1. *Cassel v. Lexington Township Bd. of Zoning Appeals*, 163 Ohio St. 340 (1955): Under Ohio Revised Code Section 519.02, township zoning classifications must be based upon a comprehensive plan. This limitation requires, at the very least, a general plan to control and direct the use and development of property within the township by dividing the township into districts according to its present and potential use.

2. The purpose of requiring a comprehensive plan is to prevent “piecemeal” or “spot zoning.” *Board of Township Trustees Ridgely Township v. Ott*, Huron App. No. H-93-16 (January 21, 1994). (Entire township zoned Agriculture. Although the zoning text established five districts, none were shown on zoning map. Court held there was no comprehensive plan.)

3. A township zoning resolution (i.e. text and map) can constitute a “comprehensive plan” within the meaning of statute. *Cent. Motors Corp. v. Pepper Pike*, 63 Ohio App.2d 34 (1979); *Ryan v. Plain Township Board of Trustees*, Franklin App. No. 89AP-1447 (December 11, 1990).

4. Stated differently, a township is not required to have a comprehensive plan which is separate and distinct from its zoning resolution. *Reese v. Copley Twp. Bd. of Trustees*, 129 Ohio App.3d 9 (1998).

5. *B.J. Alan Company, et al. v. Congress Township Board of Zoning Appeals, et al.*, Supreme Court of Ohio Case No. 08-0306 (On Appeal from the Wayne County Court of Appeals, Ninth Appellate District, C.A. No. 07CA0051): Congress Township adopted a zoning resolution in 1994 which contained two (2) zoning districts, specifically “Agricultural District” and “Business/Industry District.” However, no property within the Township was designated to be within the Business/Industry District. Phantom Fireworks sought a use variance to sell fireworks which was denied by the Board of Zoning Appeals. Upon appeal to the Common Pleas Court, the trial court overruled Phantom’s appeal and affirmed the decision of the BZA. Upon appeal to the Court of Appeals, the appellate court found the Township’s zoning resolution to be invalid, in that it did not regulate uses in accordance with a comprehensive plan. Although the Township admittedly did not have its own stand-alone comprehensive plan, the testimony indicated that it relied on the Wayne County comprehensive plan when drafting its zoning resolution. The Supreme Court reversed the decision of the Court of Appeals and held that a county-wide comprehensive plan can (but does not automatically) qualify as a comprehensive plan under Ohio Revised Code Section 519.02 and that the Wayne County Comprehensive Plan does qualify as a comprehensive plan encompassing Congress Township. The Supreme Court did not, however, determine whether or not the Congress Township Zoning Resolution was “in accordance” with the Wayne County Comprehensive Plan and directed the Court of Appeals to consider that issue. The Supreme Court noted that Ohio Revised Code Section 519.02 does not require townships to create their own comprehensive plans. Instead, this statute only requires that a township’s zoning resolution be in accordance with “a” comprehensive plan. In this case, that comprehensive plan was created by Wayne County. The primary points of the case are:

(a) Ohio Revised Code Section 519.02 requires that a township zoning resolution must be in accordance with “a” comprehensive plan.

(b) The township need not be the author of the plan. However, the plan must apply to, encompass, and demonstrate an intent to include the township within its purview.

(c) The township zoning must be “in accordance with” the relied-upon comprehensive plan.

6. *White Oak Prop. Dev., LLC v. Washington Twp.*, 2012-Ohio-425 (Ohio App. 12 Dist.) (February 6, 2012). A condominium developer sued Washington Township claiming that its zoning resolution and the accompanying zoning map were invalid under Ohio Revised Code Section 519.02. The common pleas court found in favor of the Township, and the Developer appealed. Upon appeal, the Developer claimed that the zoning resolution was unenforceable because it did not zone in accordance with a comprehensive plan. The appellate court found in favor of the Township and held that the zoning resolution and map constituted a comprehensive plan pursuant to Section 519.02. The zoning resolution and map not only set forth a comprehensive zoning plan, but the Township also applied the plan in a manner consistent with its goals. The resolution reflected the current, primarily agricultural, use of the land, it allowed for change, and was neither rigid nor unchangeable. Further, the zoning plan contained clearly defined districts and promoted public health and safety. Also, the map did not leave the “vast majority” of the Township “unzoned.” The map identified district boundaries and promoted the uniform classification of land so as to preserve its principle use, agriculture. Accordingly, the map, when read in conjunction with the resolution, zoned in accordance with the overall plan.

7. *Apple Group, Ltd. v. Granger Twp. Board of Zoning Appeals*, 2015-Ohio-2343. A property developer sought to develop a 44-home subdivision on property zoned for 2-acre minimum lots, which resulted in the developer seeking 176 variances, 4 for each of the proposed 1-acre lots. The application was denied by the BZA, and that decision was upheld by the common pleas court and the appellate court. On appeal to the Ohio Supreme Court, the question was whether the Township’s zoning resolution and map were sufficient to meet the requirement of having a comprehensive plan, or whether a separate, standalone comprehensive plan was required under Ohio Revised Code Section 519.02. The Ohio Supreme Court determined that a comprehensive plan may be included within a township’s zoning resolution and need not be separate and distinct, if the zoning resolution “(1) reflects current land uses, (2) allows for change, (3) promotes public health and safety, (4) uniformly classifies similar areas, (5) clearly defines district locations and boundaries, and (6) identifies the use or uses to which each property may be put.”

C. Process to create and amend a comprehensive plan.

1. Ohio Revised Code Section 519.12 analogy.

- (a) Contract for planning services.
- (b) Meeting vs. hearing.
- (c) Trustees’ modification (unanimous vs. majority).

(d) Need to amend.

D. General Welfare.

1. *Akron Metropolitan Housing Authority Board of Trustees v. State of Ohio*, Franklin County Common Pleas Court Case Number 05CV-5857 (2007).

(a) Filed May 26, 2005, seeking a declaration that S.B. 18 was unconstitutional.

(b) Trial Court held that S.B. 18 was violative of the single-subject rule and unconstitutional. Upon appeal, the Court of Appeals affirmed the decision of the trial court declaring SB 18 unconstitutional, and consequently null and void, in its entirety. (*Akron Metropolitan Housing Authority Board of Trustees v. State of Ohio*, 10th Dist. No. 07AP-738 (2008).)

IV. ZONING AMENDMENTS

A. Amendments to a zoning resolution may be initiated in one of three ways:

1. By motion of the zoning commission;

2. By the passage of a resolution by the board of trustees; or

3. By the filing of an application for an amendment by one or more owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission.

(a) The trustees may require the owner or lessee to pay a fee for applications to amend the zoning resolution in order to defray the cost of advertising, mailing, and other expenses. If a fee is required, it shall be required generally for each application.

(b) If the board of trustees initiates an amendment to the zoning resolution, it shall, upon passage of such a resolution, certify it to the township zoning commission. R.C. 519.12

B. Upon the adoption of a motion, or the certification of a resolution, or the filing of an application, the zoning commission sets a date for a public hearing.

1. The public hearing shall be not less than 20 nor more than 40 days from the date of the certification of the resolution, or the date of adoption of a motion, or the date that the application was filed.

2. Notice of the public hearing must be given by the zoning commission by one publication in one or more newspapers of general circulation in the township at least 10 days before the date of the hearing.

C. If the proposed amendment intends to rezone or redistrict 10 or fewer parcels of land, written notice of the hearing must be mailed by the zoning commission, by first class mail, at least 10 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 address of these owners as appearing on the county auditor's current tax list. Failure of delivery of such notice does not invalidate any such amendment. In addition to the time, place and date of the hearing, the published and mailed notices must also contain the following information:

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;

D. If the proposed amendment alters the text of the zoning resolution or rezones or redistricts more than ten parcels of land, then only a published notice is required. However, this notice, in addition to the time, place and date of the hearing, must contain the following information:

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 a motion, or the certification of a resolution, or the filing of an application for an amendment to the zoning resolution, the zoning commission must transmit a copy, together with the applicable text and map pertaining to the amendment, to the county or regional planning commission.

1. *Exception: the zoning commission of a limited home rule township may, but is not required to, submit to the regional planning commission.

2. The county or regional planning commission is required to recommend the approval or denial of the proposed amendment or the approval of some modification thereof and to submit its recommendation to the zoning commission. The commission shall, in turn, consider the recommendation at its public hearing.

F. Within 30 days after the public hearing, the zoning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof. It shall then submit its recommendation, together with the application, motion, or resolution, the text and map pertaining thereto, and the recommendation of the county or regional planning commission, to the board of trustees.

G. Upon receipt of the recommendation, the trustees set a time for a public hearing on the proposed amendment.

1. The date for the public hearing shall be not more than 30 days from the date of the receipt of the recommendation from the zoning commission.

2. Notice of the public hearing shall be given by the trustees by one publication in one or more newspapers of general circulation in the township at least 10 days before the date of the hearing. (A mailed notice is not required.)

3. If the proposed amendment intends to rezone or redistrict 10 or fewer parcels of land, the published notice must, in addition to the time, place and date of the hearing, contain the following information:

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

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

(c) 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;

(d) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

(e) 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;

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

(g) Any other information requested by the board.

4. If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, the published notice must, in addition to the time, place and date of the hearing, contain the following information:

(a) The name of the board of township trustees that will be conducting the hearing on the proposed amendment;

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

(c) 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;

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

(e) Any other information requested by the board.

H. Within 20 days after the public hearing, the trustees shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. If the trustees

deny or modify the zoning commission's recommendation, the majority vote of the board shall be required.

I. An amendment adopted by the trustees becomes effective 30 days after the date of the adoption unless within 30 days after such adoption, a referendum petition is presented to the board.

J. An amendment is adopted by the trustees at the time the trustees vote to approve the amendment.

K. 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.

V. CONDUCTING THE REZONING HEARING

- A. Call hearing to order.
- B. Establishing ground rules.
 - 1. Order of presentation.
 - 2. Number of speakers and time limitations.
 - 3. Formality.
 - (a) Recording.
 - (b) Podium.
 - (c) Sign in sheet.
 - 4. Multiple meetings.
- C. Appropriate Considerations.
 - 1. Comprehensive Plan.
 - 2. Other plans and factors.
 - 3. Testimony – real or speculative.
 - 4. Schools and traffic.
 - 5. Need for a use and competition.

6. Environmental Protections.
- D. The Decision.
1. Majority rules – maybe . . . rules of procedure.
 2. Tie vote.
 3. The motion.
 - (a) Engage in discussion.
 - (b) Articulate a legitimate basis.
 - (c) Beware of “conditions.”

VI. CONFLICTS OF INTEREST AND ETHICAL CONSIDERATIONS

- A. Ohio Revised Code Chapter 102 – Ohio Ethics Laws
1. Personal Interests.
 2. Family and business associates.
 3. Advisory opinions.
 4. Ohio Ethics Commission Hot Line: 614-466-7090
 5. Ohio Ethics Law Manual:
<https://www.ethics.ohio.gov/education/factsheets/EthicsLawOverview.pdf>
- B. Primary prohibitions:
1. Use of authority or influence to secure a thing of value if the thing of value has a substantial and improper influence upon the public official.
 - (a) Prohibits actions, discussions, lobbying, etc.
 - (b) Thing of value includes a “detriment.”
 2. Cannot solicit or accept anything of value if the thing of value has a substantial and improper influence upon the public official.
 3. Individual meetings with applicants or opponents.
 - (a) Legislative vs. administrative.

(b) Perception vs. reality.

4. Trustees' attendance at Zoning Commission hearings (and vice versa).

5. Ohio Revised Code Section 511.13 – Interest in a township contract is prohibited. (Absolute prohibition.)

6. Ohio Revised Code Section 2921.42 – Unlawful interest in a public contract is prohibited. (Exceptions.)

7. Ohio Revised Code Section 102.09 – Copies of Chapter 102 and Section 2921.42.

REZONING FACTORS

Rezoning can be defined as a legislative change of the existing zoning regulations. The procedure for a rezoning is statutory and the procedure for townships is governed by Ohio Revised Code (R.C.) §519.12. Although the revised code sets forth the procedure, it does not establish the guidelines for determining the validity of a rezoning decision. Before discussing what factors a township zoning board should consider and what challenges can be made to the rezoning decision, it is important to look at the purpose behind zoning.

The main purpose behind zoning is to protect the general health, safety, and welfare of the community. A governmental body is vested with these "police powers" in order to protect the community at large. Zoning is also used to facilitate the orderly development of a particular area. Although a property owner has a right to use his property, this right is subordinate to the police powers and general good of the community. There are, however, many challenges which a property owner can raise so as to protect his property.

Rezoning and amendments allow townships to change and grow with the times. This prevents the township and the residents from being forever limited in the use of property in the township. In addition, it allows the township to address the problems of particular property owners without being forced to draw a new comprehensive zoning plan. The zoning entity is therefore vested with the authority to determine zoning questions.

Zoning decisions made by the board are presumed to be valid. Brown v. Cleveland, 66 Ohio St. 2d 93. In order to be found unconstitutional, it must "be beyond fair debate that the zoning classification prohibits the economically viable use of land, without substantially advancing legitimate interests in health, safety or welfare of the community." Columbia Oldsmobile, Inc. v. Montgomery, 52 Ohio St. 3d 239 at 243. This is one of the tests that is applied by courts of Ohio. As a result, courts will look at the test as two parts. First, does the regulation prohibit the reasonable economic use of the property? Second, the court will ensure that the regulation benefits the health, safety, and welfare of the community. The court will then make certain that the decision was not arbitrary, capricious or unreasonable.

FACTORS TO BE CONSIDERED

The question as to what factors a township zoning body should consider is still not finalized. In most cases it will depend upon the particular facts and circumstances. It is extremely important that a board take great care not to be arbitrary, capricious or unreasonable when making its decision. Some factors, however, should be considered in every zoning case. The Supreme Court of Kansas, in Golden v. City of Overland Park, 224 Kan 591, 584 P. 2d 130 (1978), listed factors that should be considered when making a rezoning decision. These factors include:

1. The character of the neighborhood;
2. The zoning and uses of properties nearby;
3. The suitability of the subject property for the uses of which it has been restricted;
4. The extent to which removal of the restrictions will detrimentally affect nearby property;

5. The length of time the subject property has remained vacant as zoned; and
6. The relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner. 584 P. 2d at 136.

The aforementioned factors are not delineated in any one Ohio case; however, the factors have been considered in Ohio cases. For instance many Ohio cases look at the surrounding property. See Gerijo, Inc. v. Fairfield, 70 Ohio St. 3d 223 at 230 ("use of the ... classification ... was specifically tailored to meet the needs of areas surrounding Gerijo's property."), Franchise Developers, Inc. v. Cincinnati, 30 Ohio St. 3d 28 (considering aesthetics of the community). Courts have also considered the suitability of the property to the current restrictions. Smythe v. Butler Township 85 Ohio App 3d 616 (Property could be used for agriculture purposes under the current zoning and fact that property may be more valuable zoned for residential purposes is alone insufficient to justify a rezoning). Finally as mentioned above, courts in Ohio look to see if the zoning regulation advances the health, safety, and welfare of the community. Columbia Olds at 243. The benefit of the health, safety, and welfare must outweigh the loss which the restrictions impose upon the landowner. Curtis v. Cleveland, 170 Ohio St 127. As you can see, the factors listed in the Golden case above are a good indication of some of the general considerations in the rezoning process.

CHALLENGES TO REZONING

In addition to the aforementioned factors, courts can also consider various minor issues some of which will be discussed in greater detail below. These considerations include traffic (see below), aesthetics (see below) and environmental and ecological concerns (Smythe at 621). Furthermore, courts may look at emergency access, road capacity, density, flooding, sewage system, ground water, municipal revenue, property values and the comprehensive plan. See Smythe supra, Williott v. Village of Beachway 175 Ohio St 557, 26 Ohio Ops 2d 249.

Once the decision has been made, there are many challenges which may be raised against the rezoning decision. It is important to remember that a zoning ordinance may be valid on its face, but unconstitutional as applied to a particular property. The primary challenge is that the board's decision was arbitrary, capricious or unreasonable. This is the prevailing standard of review used by courts in determining the validity of a challenge to a rezoning request.

The second major challenge to a rezoning decision is that it does not serve a proper purpose under the police power or does not carry out the objectives of the zoning enabling act. As illustrated above, the courts in Ohio specifically look at the police powers as part of the test to determine the validity of a zoning regulation. This is then coupled with the arbitrary and capricious test mentioned above. Finally, the court will look to see if there is a taking as discussed below.

In addition, the rezoning decision may be challenged as being an unconstitutional taking without just compensation. This challenge is normally raised in the context of a denial of a rezoning request. A property owner will argue that the denial deprived him of the use of his or her property. The property owner does have the right to use the property but not to its

highest and best use. A township can impose limitations on the use of the property, so long as it does not render the property useless. The mere fact that the property owner will not be able to earn a higher return on the property is insufficient to result in an unconstitutional taking. See Ketchel v. Bainbridge 52 Ohio St. 3d 239 at 243.

The rezoning decision can also be challenged as being in violation of the equal protection clause. This argument is raised where a rezoning board allows or has allowed other property owners to utilize their property in a manner similar to the rezoning request. In addition, the argument can be raised to prevent a governmental body from practicing exclusionary zoning.

As mentioned, the procedure for enacting a zoning ordinance or rezoning property is statutory in nature. A challenge may also be raised if the township fails to follow these procedures.

TRAFFIC

Controlling traffic flow and street congestion are legitimate concerns to be considered in zoning decisions. Rohan, Zoning and Land Use Controls, §34.02 [2] [B], 34-38, Pearson v. City of Grand Blanc, 961 F. 2d 1211 (6th Cir. 1992). Under the police powers, safety hazards such as traffic congestion may be regulated. Columbia Olds at 66. The Court of Appeals in the Smythe case also held that traffic considerations are related to the protection of the safety of the community. Id at 622.

There is little debate that traffic is a valid consideration; however, the weight given to the consideration will vary. For instance, if the traffic will pose a safety hazard, then it is within the police power of the government to eliminate the traffic congestion. Brown at 93. The use of zoning to control traffic congestion, however, is not favored by the courts. 10 O Jur 3d 371, Buildings, Zoning and Land Control §168. Furthermore, traffic considerations alone will not justify a particular zoning restriction. Smythe at 622, Columbia Olds at 67. If traffic regulation is part of a comprehensive plan then the consideration is more important Columbia Olds at 67.

Cases from other states also vary as to the amount of weight to be given to traffic considerations. Some agree that traffic alone is insufficient to deny a rezoning. Marietta v. Tranton Corp. 316 S.E. 2d 461 (GA, 1984) (Evidence that a rezoning decision would increase traffic and change property character was insufficient to set aside rezoning), Lindsey v. Fayetteville, 256 Ark. 352, 507 S.W. 2d 101 (1974). (Excess traffic alone is not sufficient ground to justify a zoning change, traffic conditions are important factors). In some cases, however, the increase in traffic coupled with other factors has been found to be sufficient to deny a rezoning request Pearson supra (court considered traffic problems, over commercialization and the relationship between traffic and neighborhood deterioration).

To summarize, traffic is a valid consideration when determining a rezoning. Traffic alone, however, is insufficient to deny a rezoning request. Columbia Olds at 67. A township should consider the increase in traffic that would be generated by the rezoning, but this consideration is only part of a thorough decision making process. The board must look at the circumstances as a whole and how this decision will promote the health, safety, and welfare of the community. This is then balanced against the detriment incurred by the land owner.

A CHECKLIST FOR DEFENSIBLE DECISION MAKING

A. Elements of Defensible Procedures

1. Notice

Notice should be adequate and timely. It should be reasonably calculated to apprise interested parties of a proposed action and afford them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare.

2. Opportunity To Be Heard

All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

3. Full Disclosure

All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute.

4. Unbiased Decisions

The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified.

5. Timely Decisions

Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

6. Findings

Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. Written documentation should reflect:

- List of all facts (documents, exhibits, testimony, etc.);
- List of standards;
- Weighing of evidence;
- Determination of compliance; and
- The decision with any conditions or reflections.

7. Complete Records

A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

8. Clear Rules

Rules for the proceedings should be set out clearly in advance and followed.

B. Elements of Defensible Decisions

1. Legitimate Public Interest

Does the regulation advance a legitimate public interest? Many zoning regulations have the intent and effect of accomplishing results that are not legitimate public policy objectives.

2. Is the regulation a reasonable way to accomplish that public interest?

There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

3. Can the relationship between the regulation and public interest be documented?

A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.

4. Does the regulation allow a reasonable economic use of property?

Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property possible under the zoning regulation.

5. Is the regulation fairly applied?

Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

The bottom line is that a court will be reluctant to overturn a decision that is well reasoned, supported by valid planning analysis, allows some reasonable use of the property, and was fairly made. Regardless of whether you are approving or denying a development request, the reasonableness and fairness of your decisions are what is critical.

Selected Ethics Laws - Ohio Revised Code

511.13 Interest in township contract prohibited - exception.

No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board. No such person shall be individually liable to any contractor upon any contract made under sections [511.08](#) to [511.17](#), inclusive, of the Revised Code, nor shall he be liable to any person on any claims occasioned by any act or default of a contractor or anyone employed by him.

This section does not apply where such person is a shareholder of a corporation, but not an officer or director thereof, and owns not more than five per cent of the stock of such corporation, the value of which does not exceed five hundred dollars.

If a stockholder desires to avail himself of the exception provided in this section, he shall, before entering upon such contract, first file with the clerk of the board of county commissioners, an affidavit, stating his exact status and connection with the corporation.

Effective Date: 10-01-1953 .

102.01 Public officers - ethics definitions.

As used in this chapter:

(A) "Compensation" means money, thing of value, or financial benefit. "Compensation" does not include reimbursement for actual and necessary expenses incurred in the performance of official duties.

(B) "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct, ward, or district committee member under section [3517.03](#) of the Revised Code, any presidential elector, or any delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

(C)

(1) "Public agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity.

(2) Notwithstanding any contrary provision of division (C) (3)(a) of this section, "public agency" includes a regional council of governments established under Chapter 167. of the Revised Code.

(3) "Public agency" does not include either of the following:

(a) A department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; that does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated;

(b) The nonprofit corporation formed under section [187.01](#) of the Revised Code.

(D) "Immediate family" means a spouse residing in the person's household and any dependent child.

(E) "Income" includes gross income as defined and used in the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, interest and dividends on obligations or securities of any state or of any political subdivision or authority of any state or political subdivision, and interest or dividends on obligations of any authority, commission, or instrumentality of the United States.

(F) Except as otherwise provided in division (A) of section [102.08](#) of the Revised Code, "appropriate ethics commission" means:

(1) For matters relating to members of the general assembly, employees of the general assembly, employees of the legislative service commission, and candidates for the office of member of the general assembly, the joint legislative ethics committee;

(2) For matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;

(3) For matters relating to all other persons, the Ohio ethics commission.

(G) "Anything of value" has the same meaning as provided in section [1.03](#) of the Revised Code and includes, but is not limited to, a contribution as defined in section [3517.01](#) of the Revised Code.

(H) "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering. "Honorarium" does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts

of nominal value or trivial items of informational value; or earned income from any person, other than a legislative agent, for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to the public official's or employee's office or position of employment.

(I) "Employer" means any person who, directly or indirectly, engages an executive agency lobbyist or legislative agent.

(J) "Executive agency decision," "executive agency lobbyist," and "executive agency lobbying activity" have the same meanings as in section [121.60](#) of the Revised Code.

(K) "Legislation," "legislative agent," "financial transaction," and "actively advocate" have the same meanings as in section [101.70](#) of the Revised Code.

(L) "Expenditure" has the same meaning as in section [101.70](#) of the Revised Code when used in relation to activities of a legislative agent, and the same meaning as in section [121.60](#) of the Revised Code when used in relation to activities of an executive agency lobbyist.

Amended by 132nd General Assembly File No. TBD, SB 239, §1, eff. 10/29/2018.

Amended by 132nd General Assembly File No. TBD, HB 49, §610.38, eff. 6/29/2017.

Amended by 131st General Assembly File No. TBD, HB 64, §125.10, eff. 1/1/2018.

Amended by 129th General Assembly File No. 94, SB 208, §1, eff. 7/3/2012.

Amended by 129th General Assembly File No. 1, HB 1, §1, eff. 2/18/2011.

Effective Date: 03-02-1994; 05-18-2005.

Related Legislative Provision: *See 129th General Assembly File No. 94, SB 208, §8 .*

See 129th General Assembly File No. 94, SB 208, §7 .

See 129th General Assembly File No. 94, SB 208, §6 .

See 129th General Assembly File No. 94, SB 208, §5 .

See 129th General Assembly File No. 94, SB 208, §4 .

See 129th General Assembly File No. 94, SB 208, §3 .

102.03 Representation by present or former public official or employee prohibited.

(A)

(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section [4905.02](#) of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section [3734.01](#) of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

(5) As used in divisions (A)(1), (2), and (3) of this section, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(8) Division (A) of this section does not prohibit a nonelected public official or employee of a state agency, as defined in section [1.60](#) of the Revised Code, from becoming a public official or employee of another state agency. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new state agency on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former state agency. However, no public official or employee of a state agency shall, during public employment or for twelve months thereafter, represent or act in a representative capacity for the official's or employee's new state agency on any audit or investigation pertaining to the official's or employee's new state agency in which the public official or employee personally participated at the official's or employee's former state agency through decision, approval,

disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(9) Division (A) of this section does not prohibit a nonelected public official or employee of a political subdivision from becoming a public official or employee of a different department, division, agency, office, or unit of the same political subdivision. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new department, division, agency, office, or unit on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former department, division, agency, office, or unit of the same political subdivision. As used in this division, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(10) No present or former Ohio casino control commission official shall, during public service or for two years thereafter, represent a client, be employed or compensated by a person regulated by the commission, or act in a representative capacity for any person on any matter before or concerning the commission.

No present or former commission employee shall, during public employment or for two years thereafter, represent a client or act in a representative capacity on any matter in which the employee personally participated as a commission employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section [4732.12](#) of the Revised Code, or patients of persons licensed under section [4731.14](#) of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, "contributions," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" have the same meanings as in section [3517.01](#) of the Revised Code.

(H)

(1) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section [3345.011](#) of the Revised Code, who is required to file a financial disclosure statement under section [102.02](#) of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section [102.02](#) of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section [3345.011](#) of the Revised Code, pays membership dues. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section [102.02](#) of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(2) No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. The house of representatives and senate, in their code of ethics, and the Ohio ethics commission, under section [111.15](#) of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section [102.08](#) of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and

improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use the public official's or employee's official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section [309.06](#) and section [2921.421](#) of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections [733.621](#) and [2921.421](#) of the Revised Code, for a township law director appointed under section [504.15](#) of the Revised Code to appoint assistants and employees in accordance with sections [504.151](#) and [2921.421](#) of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section [313.05](#) of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section [733.621](#) of the Revised Code.

(L) No present public official or employee with a casino gaming regulatory function shall indirectly invest, by way of an entity the public official or employee has an ownership interest or control in, or directly invest in a casino operator, management company, holding company, casino facility, or gaming-related vendor. No present public official or employee with a casino gaming regulatory function shall directly or indirectly have a financial interest in, have an ownership interest in, be the creditor or hold a debt instrument issued by, or have an interest in a contractual or service relationship with a casino operator, management company, holding company, casino facility, or gaming-related vendor. This section does not prohibit or limit permitted passive investing by the public official or employee.

As used in this division, "passive investing" means investment by the public official or employee by means of a mutual fund in which the public official or employee has no control of the investments or investment decisions. "Casino operator," "holding company," "management company," "casino facility," and "gaming-related vendor" have the same meanings as in section [3772.01](#) of the Revised Code.

(M) A member of the Ohio casino control commission, the executive director of the commission, or an employee of the commission shall not:

(1) Accept anything of value, including but not limited to a gift, gratuity, emolument, or employment from a casino operator, management company, or other person subject to the jurisdiction of the commission, or from an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission;

(2) Solicit, suggest, request, or recommend, directly or indirectly, to a casino operator, management company, or other person subject to the jurisdiction of the commission, or to an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission, the appointment of a person to an office, place, position, or employment;

(3) Participate in casino gaming or any other amusement or activity at a casino facility in this state or at an affiliate gaming facility of a licensed casino operator, wherever located.

In addition to the penalty provided in section [102.99](#) of the Revised Code, whoever violates division (M)(1), (2), or (3) of this section forfeits the individual's office or employment.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 130th General Assembly File No. 51, HB 83, §1, eff. 3/20/2014.

Amended by 129th General Assembly File No. 129, SB 314, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No. 38, HB 519, §1, eff. 9/10/2010.

Effective Date: 09-05-2001; 09-15-2004; 03-31-2005; 04-26-2005.

2921.42 Having an unlawful interest in a public contract.

(A) No public official shall knowingly do any of the following:

- (1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;
- (2) Authorize, or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;
- (3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;
- (4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;
- (5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

- (1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;
- (2) The shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;
- (3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

- (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;
- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;
- (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public

official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public moneys if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the moneys are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with sections [309.06](#) and [2921.421](#) of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections [733.621](#) and [2921.421](#) of the Revised Code, or for a township law director appointed under section [504.15](#) of the Revised Code to appoint assistants and employees in accordance with sections [504.151](#) and [2921.421](#) of the Revised Code.

(G) This section does not apply to a public contract in which a township trustee in a township with a population of five thousand or less in its unincorporated area, a member of the township trustee's family, or one of the township trustee's business associates has an interest, if all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the township and the amount of the contract is less than five thousand dollars per year;

(2) The supplies or services are being furnished to the township as part of a continuing course of dealing established before the township trustee held that office with the township;

(3) The treatment accorded the township is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted with full knowledge by the township of the interest of the township trustee, member of the township trustee's family, or the township trustee's business associate.

(H) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of this section is void and unenforceable.

(I) As used in this section:

(1) "Public contract" means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either;

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(2) "Chief legal officer" has the same meaning as in section [733.621](#) of the Revised Code.