

ORIGINAL

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

OSNABURG TOWNSHIP ZONING)
INSPECTOR,)
Plaintiff-Appellant,)
)
v.)
)
ESLICH ENVIRONMENTAL, INC.,)
Defendant/ Third-Party)
Plaintiff-Appellee,)
)
v.)
)
OSNABURG TOWNSHIP, et al.,)
Third-Party Defendant-)
Appellant.)

CASE NO. 2009-0228

ON APPEAL FROM THE OHIO
COURT OF APPEALS FOR STARK
COUNTY, FIFTH APPELLATE
DISTRICT, CASE NO. 2008-CA-00026

FILED
DEC 10 2009
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION TO RECONSIDER OF PLAINTIFF-APPELLANT OSNABURG
TOWNSHIP ZONING INSPECTOR AND
THIRD-PARTY DEFENDANT-APPELLANT OSNABURG TOWNSHIP

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SUPREME COURT OF OHIO

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MOTION FOR RECONSIDERATION
S.Ct. R. XI(2)

Now come Appellants, the Osnaburg Township Zoning Inspector, Osnaburg Township, and the Osnaburg Township Trustees, and move this Supreme Court to reconsider its order by entry of December 1, 2009, dismissing this case *sua sponte* for the reasons set forth in the accompanying memorandum in support.

Respectfully submitted,

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Osnaburg Township Trustees.

MEMORANDUM IN SUPPORT

The lower court held that state law regarding construction and demolition debris landfills, R.C. Chapter 3714, preempts township zoning, a holding which is supported by neither the statutory nor case law of this state. This Court's decision to dismiss this case without decision renders the role of local zoning questionable at best. In a wider sense, the dismissal of this case leaves a decision in place which may be used to defeat local laws in any area of parallel state regulation.

It became apparent during oral argument that this Honorable Court does not perceive an issue of statewide interest because this case developed over time upon a number of disputed facts. The facts, though, are tangential to the decision that was rendered by the trial court and affirmed by the Fifth District Court of Appeals. Both decisions were rendered upon stipulations, eliminating the possibility of clarifying the remaining factual issues because the trial court granted summary judgment.

This is an issue of great public interest, however, because it strikes to the very heart of the relationship between local and state government. It is difficult to imagine circumstances more fraught, in which the public interest is greater, than cases concerning landfills. The lower courts' decision effectively assures townships and local governments that zoning is immaterial once a landfill is established, even as a nonconforming use in a *residential district*, as long as the C & D landfill complies with state regulations.

This case has never been about stopping a landfill. This landfill exists and has been a presence in Osnaburg Township for a long time. Nor is this case about stopping the landfill's expansion. Instead, this case began simply enough with a township zoning inspector asking a court to require appellee to follow the proper procedure required by the township zoning

resolution prior to expansion of a nonconforming use. That simple request has resulted in the invalidation of the single family residential zoning classification.

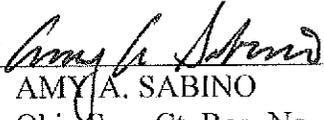
Public debate over landfills and the courts' role in their existence has often been described in terms of "not in my backyard." The lower court's decision in this case tells township residents that, yes, in your backyards, in your front yards, wherever, in fact, a landfill exists, state regulations enforced through the E.P.A. (and by extension the Board of Health) are all that matter and local zoning controls have no place in the discussion.

For the reasons delineated above, appellants respectfully urge this Court to reconsider its decision of December 1, 2009 dismissing this case without decision.

Respectfully submitted,

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PROOF OF SERVICE

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