

# In The Supreme Court Of Ohio

ORIGINAL

OSNABURG TOWNSHIP ZONING  
INSPECTOR,

Plaintiff-Appellant,

v.

ESLICH ENVIRONMENTAL, INC.

Defendant/Third-Party  
Plaintiff-Appellee,

v.

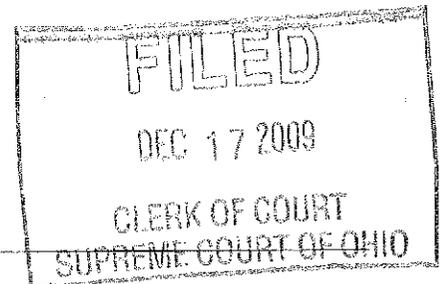
OSNABURG TOWNSHIP, et al.

Third-Party Defendant-  
Appellant.

CASE NO. 2009-0228

Appeal from the Ohio Court of Appeals for  
Stark County, Fifth Appellate District

Court of Appeals Case No. 2008-CA 00026



## APPELLEE'S MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION TO RECONSIDER

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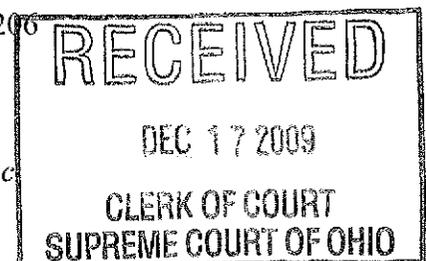
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## MEMORANDUM IN OPPOSITION

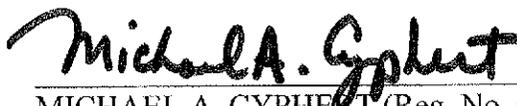
Despite the allegations of Appellants, Osnaburg Township Zoning Inspector, Osnaburg Township, and the Osnaburg Township Trustees (collectively “Osnaburg”), in Osnaburg’s Motion to Reconsider, this Court’s decision of December 1, 2009, which dismissed this cause as having been improvidently accepted, does not “render the role of local zoning questionable at best.” *Appellants’ Memorandum in Support*, p. 1. Nor does this Court’s dismissal create a means through which “local laws in any area of parallel state regulation” may be defeated. *Id.* Instead, the dismissal of this appeal merely reflects the decision to decline to address a factually-specific case from the Fifth District Court of Appeals, concerning only 28.2 acres of private land, and which correctly applied this Court’s prior precedent regarding conflicts between general state laws and local ordinances. As such, this Court’s dismissal was proper because the Court of Appeals’ decision involved neither a substantial constitutional question nor an issue of public or great interest.

The matter below involved a simple legal principle. The Fifth District Court of Appeals determined that, under the extremely unique facts of this case, application of Osnaburg’s Zoning Resolutions was in conflict with Revised Code Chapter 3714, a general state law governing the location, licensing and regulation of construction and demolition debris facilities. Following *Sheffield v. Rowland*, 87 Ohio St.3d 9, the Fifth District held “[w]hen the requirements of R.C. Chapter 3714 are met and a license is issued thereunder, any zoning regulation that prohibits the operation of such a facility is in direct conflict’ and, thus, ‘the state regulation prevails.’” *Osnaburg Twp. Zoning Inspector v. Eslich Environmental, Inc.* (Stark Cty.), 2008 Ohio 6671, P57.

The above holding does nothing more than reiterate the well-established precedent of this Court governing conflict analysis first announced in *Struthers v. Sokol* (1923), 108 Ohio St. 263 and reiterated through numerous subsequent decisions. The Court of Appeals did not create new law or misapply prior law from this Court. Nor did the decision, despite Osnaburg's protestations to the contrary, eradicate the role of local zoning authorities. Though this unremarkable decision is important to the individual litigants in this case, its significance is exceedingly limited in both scope and application, making this Court's dismissal of this case entirely proper.

Pursuant to the foregoing and Rule XI, Section 3, of the Rules of Practice of the Supreme Court of Ohio, Appellee Eslich Environmental, Inc. respectfully requests that this Honorable Court deny Osnaburg's Motion to Reconsider.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing *Appellee's Memorandum in Opposition to Appellants' Motion to Reconsider* was sent by regular U.S. Mail on this 16<sup>th</sup> day of December, 2009 to the following:

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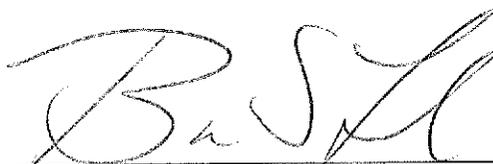
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