

IN THE SUPREME COURT OF OHIO

Welsh Development Company, et alia,

Appellants,

v.

Warren County Regional Planning
Commission,

Appellee.

Case Nos. 2010-0611 and 2010-0858

On Appeal from the Warren County Court
of Appeals, Twelfth Appellate District

MEMORANDUM OF APPELLANTS IN OPPOSITION
TO MOTION FOR RECONSIDERATION

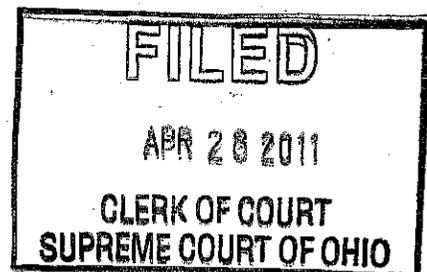
Matthew C. Blickensderfer (0073019)
(COUNSEL OF RECORD)
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 651-6162
Facsimile: (513) 651-6981
mblickensderfer@fbtlaw.com

Robert J. Surdyk (0006205)
(COUNSEL OF RECORD)
Kevin A. Lantz (0063822)
Surdyk Dowd & Turner
1 Prestige Place, Suite 700
Miamisburg, Ohio 45342
Phone: (937) 222-2333
Facsimile: (937) 222-1970
rsurdyk@sdtlawyers.com
klantz@sdtlawyers.com

Scott D. Phillips (0043654)
Benjamin J. Yoder (0082664)
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8200
Facsimile: (513) 870-0999
sphillips@fbtlaw.com
byoder@fbtlaw.com

COUNSEL FOR APPELLEE WARREN
COUNTY REGIONAL PLANNING
COMMISSION

COUNSEL FOR APPELLANTS WELSH
DEVELOPMENT COMPANY, INC.,
DANIEL PROESCHEL, ANGELA
PROESCHEL, ROBERT PROESCHEL,
MARY PROESCHEL, JERALDINE
HOFFER, AND KARL HOFFER



The Warren County Regional Planning Commission's motion for reconsideration should be denied for two reasons: (1) the motion is based entirely on a false premise about the Court's holding in this case; and (2) the motion simply repeats arguments that were briefed, considered by the Court, and unanimously rejected.

First, the Commission's argument for reconsideration is based entirely on the incorrect premise that the appellants did not "file" their notices of appeal with the Commission. The Commission's argument is as follows: The 1986 amendments to Chapter 2505 of the Revised Code make the Rules of Appellate Procedure applicable to administrative appeals to the extent Chapter 2505 does not contain a relevant provision. The Rules of Appellate Procedure require that a notice of appeal be filed with the trial court, not the reviewing court. Because the appellants filed only with the reviewing court (here the court of common pleas) and not with the trial court (here the Commission), the Commission contends, the Court's decision allowing this procedure permits an appellant in an administrative appeal to file its notice of appeal with the reviewing court rather than the trial court. Therefore, the Commission's argument goes, the Court's decision in this case violates the amendments to Chapter 2505.

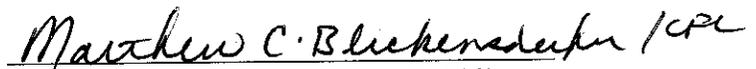
This argument simply ignores what the Court held. The whole point of this appeal – and the entire point of the Court's decision – was that the notices of appeal *were* "filed" with the Commission. The Court held that "[b]ecause copies of the notices of appeal and complaints were timely delivered to the WCRPC, they were 'filed' based on our definition of the term" *Welsh Development Co., Inc. v. Warren County Regional Planning Comm'n*, ___ Ohio St.3d ___, 2011-Ohio-1604, ¶ 31, ___ N.E.2d ___. Yet even after this Court has held in perfectly clear terms that the notices of appeal were "filed" with the Commission, the Commission asks for reconsideration on the theory that the notices of appeal were *not* "filed" with the Commission.

Thus, the motion for reconsideration does not challenge the Court's holding – it simply ignores it. That is no reason to reconsider the decision.

Second, the Commission's argument for reconsideration is merely a repetition of some of the same arguments this Court unanimously rejected. The Commission made these exact points in its merits brief. See Combined Merit Brief of Appellee Warren County Regional Planning Commission on Certified Conflict and Discretionary Appeal at 5-8, 11-12. The appellants addressed these points in their reply brief. See Reply Brief of Appellants Welsh Development Company, Inc., Daniel Proeschel, Angela Proeschel, Robert Proeschel, Mary Proeschel, Jeraldine Hoffer, and Karl Hoffer at 2-3, 4-5. And the Court necessarily rejected these arguments in deciding that the notices of appeal were "filed" with the Commission.

A motion for reconsideration "shall not constitute a reargument of the case," S.Ct. Prac. R. 11.2. This motion is nothing more than that. Merely repeating the same arguments is not a reason for reconsideration.

Respectfully submitted,



Matthew C. Blickensderfer (0073019)

(COUNSEL OF RECORD)

FROST BROWN TODD LLC

2200 PNC Center

201 East Fifth Street

Cincinnati, Ohio 45202

Phone: (513) 651-6162

Facsimile: (513) 651-6981

mblickensderfer@fbtlaw.com

Scott D. Phillips (0043654)
Benjamin J. Yoder (0082664)
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8206
Facsimile: (513) 870-0999
sphillips@fbtlaw.com
byoder@fbtlaw.com

COUNSEL FOR APPELLANTS WELSH
DEVELOPMENT COMPANY, INC., DANIEL
PROESCHEL, ANGELA PROESCHEL, ROBERT
PROESCHEL, MARY PROESCHEL,
JERALDINE HOFFER, AND KARL HOFFER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum of Appellants in Opposition to the Motion for Reconsideration was served by ordinary U.S. mail, postage prepaid, on April 28, 2011 on the counsel listed below:

Robert J. Surdyk (0006205)
Kevin A. Lantz (0063822)
Surdyk Dowd & Turner
1 Prestige Place, Suite 700
Miamisburg, Ohio 45342
Phone: (937) 222-2333
Facsimile: (937) 222-1970
rsurdyk@sdtlawyers.com
klantz@sdtlawyers.com

COUNSEL FOR APPELLEE
WARREN COUNTY REGIONAL
PLANNING COMMISSION


Matthew C. Blickensderfer