

**IN THE SUPREME COURT OF OHIO**

Willis and Annette Boice

Appellants,

Supreme Court Case No. 2012-0413

On Appeal from the Lucas County  
Court of Appeals, Sixth Appellate District

Court of Appeals Case No. L-09-1253

v.

Village of Ottawa Hills, et al.

Appellees.

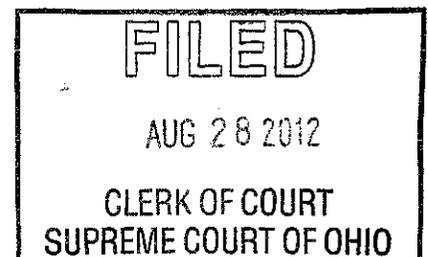
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**JOINT MOTION TO SUPPLEMENT THE RECORD**

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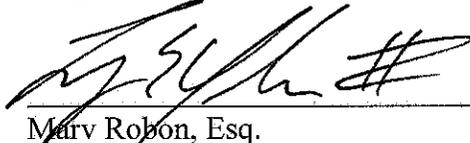
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Attorneys for Appellants



Now come the parties, by and through their respective counsel, and hereby file their joint motion to supplement the record pursuant to S.Ct.Prac.R. 5.8. In support of their motion, the parties hereby state they were notified by the Lucas County Court of Common Pleas' court reporter that Defendant's Exhibit I was "missing" from the record. Defendant's Exhibit I was the Affidavit of Peter Boice dated July 5, 2005. It was filed by Plaintiffs in Lucas County Court of Common Pleas Case No. CI04-5482 on July 5, 2005. The document is attached to this motion, and marked as Defendant's Exhibit I. While this document is part of the court record as a pleading, it is missing from the record as a trial exhibit. As such, the parties jointly move to supplement the record with the attached document marked Defendant's Exhibit I.

Respectfully submitted,



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Marv Robon, Esq.  
Larry Yunker, Esq.  
Counsel for Plaintiffs

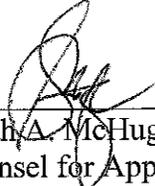


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Sarah A. McHugh, Esq.  
Emily C. Zillgitt, Esq.  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was this 24<sup>th</sup> day of August, 2012 sent to **Marvin Robon, Esq. and Larry Yunker, Esq.** Attorneys for Appellants/Cross-Appellees, 1701 Woodlands Drive, Suite 100, Maumee, Ohio 43537.

  
\_\_\_\_\_  
Sarah A. McHugh  
Counsel for Appellees/Cross-Appellants  
Village of Ottawa Hills, et al.

FILED  
LUCAS COUNTY

2005 JUL -5 P 2:35

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COMMON PLEAS COURT FOR LUCAS COUNTY, OHIO

Willis Boice, et al.,	)	Case No. CI04-5482
	)	
Appellants/Plaintiffs,	)	Hon. Charles S. Wittenberg
	)	
vs.	)	<u>AFFIDAVIT OF PETER BOICE</u>
	)	<u>IN SUPPORT OF</u>
Village of Ottawa Hills and the	)	<u>ADMINISTRATIVE APPEAL</u>
Village of Ottawa Hills	)	
Zoning Commission, et al.,	)	Marvin A. Robon (0000664)
	)	Gregory R. Elder (0034626)
Appellees/Defendants.	)	BARKAN & ROBON LTD.
	)	1701 Woodlands Drive
	)	Maumee, Ohio 43537
	)	Phone: (419) 897-6500
	)	Fax: (419) 897-6200
	)	Attorneys for Appellants/Plaintiffs
	)	
	)	

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STATE OF OHIO )  
) SS:  
COUNTY OF LUCAS )

Affiant, after being first duly cautioned and sworn, alleges and avers as follows:

1. I have personal knowledge of all matters contained herein.
2. I am the son of the Appellants, Willis Boice and Annette Boice.

LAW OFFICES  
BARKAN & ROBON LTD.  
1701 WOODLANDS DRIVE  
MAUMEE, OHIO 43537-4092  
(419) 897-6500

Defendant's  
Exhibit  
I

3. I attended the August 19, 2004 hearing before the Zoning Commission of the Village of Ottawa Hills in support of the application of my parents.
4. I presented facts in support of that application.
5. My parents were the owners of 2550 Westchester, located in Ottawa Hills, which contained a home that was constructed on that parcel by prior owners in approximately 1941 ("Parcel 1").
6. My parents are also the owners of an abutting parcel of real estate, commonly known as 2570 Westchester, which is a vacant lot ("Parcel 2").
7. In approximately 1926, Parcel 1 and Parcel 2 were platted as two separate lots and the plat was filed and accepted by the Village of Ottawa Hills.
8. In approximately 1941, before my parents purchased either parcel, the prior owners constructed a home on Parcel 1, with a small portion of the home being constructed the lot line onto Parcel 2.
9. In approximately 1973, before my parents purchased these parcels, the prior owners obtained the approval of the Village of Ottawa Hills and its Zoning Commission to move the original lot line from Parcel 1 and Parcel 2, in order to add a small amount of land to Parcel 1 so that the house would not encroach onto Parcel 2.
10. When the Village of Ottawa Hills and its Zoning Commission approved this change of lot line, Parcel 2 remained a legally buildable lot in that it had approximately 0.76 acres and the minimum lot size for building was approximately 0.33 acres at that time.
11. On or about April 5, 1974, my parents acquired Parcel 1 and the house located thereon. At the same time, they acquired the subject Parcel 2. As stated in the record, they

purchased the subject lot knowing that it was a buildable lot because they told me so in prior conversations with them.

12. In 2004, I was informed by the Ottawa Hills Village Manager, Mark Thompson, that my parents could not build on Parcel 2, based on the retroactive application of a new zoning amendment, which apparently required 0.803 acres for a buildable lot, and Parcel 2 was 0.76 acres.

13. My parents appealed that decision to the Ottawa Hills Zoning Commission.

14. On April 19, 2004 the Village of Ottawa Hills Zoning Commission held a hearing, which I attended and presented facts on behalf of my parents.

15. My parents have since sold Parcel 1, containing the house, but they still own Parcel 2, the vacant lot.

Further Affiant saith naught.

 7-1-05  
Willis Boice

Sworn to before me and subscribed in my presence on the 5<sup>th</sup> day of July, 2005.

  
Notary Public

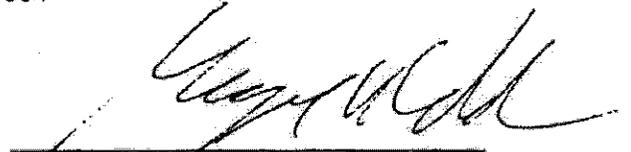


GREGORY R. ELDER  
Notary Public - State of Ohio  
Commission has no expiration.  
Section 147.03-ORC

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served this 5<sup>th</sup> day of July, 2005, by ordinary U.S. Mail upon the following:

Sara H. McHugh, Maloney, McHugh & Kolodgy, Ltd., 20 N. St.  
Clair Street, Toledo, Ohio 43604

  
\_\_\_\_\_  
Of Counsel