ORIGINAL

IN THE SUPREME COURT OF OHIO

PETER BARUK, et al.	:	
Appellants,	:	**On Appeal from the Warren County Court of Appeals, Twelfth Appellate District**
vs.	:	
HERITAGE CLUB HOMEOWNERS' ASSOCIATION, et al.,	:	**Court of Appeals Case No. CA2013-09-086**
Appellees.	:	14-1220
	:	

NOTICE OF APPEAL OF APPELLANTS PETER AND ROSA BARUK

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FILED
JUL 17 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
JUL 17 2014
CLERK OF COURT
SUPREME COURT OF OHIO

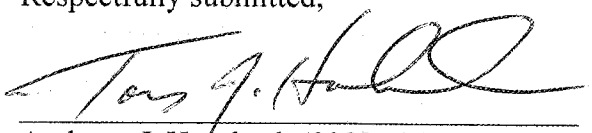
Notice of Appeal of Appellants Peter and Rosa Baruk

Appellants Peter and Rosa Baruk hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Warren County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals case no. CA2013-09-086 entered on April 14, 2014. After the judgment entry was issued, the Baruks filed an Application for Reconsideration on April 22, 2014, which the Twelfth Appellate District decided on June 12, 2014. Copies of the Court of Appeals' April 14, 2014 Judgment Entry and the June 12, 2014 Entry Denying the Baruks' Motion for Reconsideration are attached to this Notice.

This case is one of great public and general interest.

Dated: July 16, 2014

Respectfully submitted,



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Attorney for Appellants Peter and Rosa Baruk

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via ordinary U.S. mail, postage prepaid, this 16th day of July, 2014.

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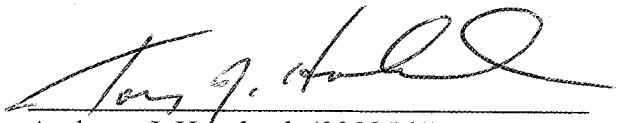

Anthony J. Hornbach (0082561)

Exhibit 1

COURT OF APPEALS
WARREN COUNTY
FILED
APR 14 2014
James L. Spaeth, Clerk
LEBANON OHIO

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

PETER BARUK, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2013-09-086
	:	JUDGMENT ENTRY
- vs -	:	
HERITAGE CLUB HOMEOWNERS' ASSOCIATION, et al.,	:	
	:	
Defendants-Appellees.	:	

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part and reversed in part and this cause is remanded for further proceedings according to law and consistent with the Opinion filed the same date as this Judgment Entry.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 50% to appellants and 50% to appellees.

Robert P. Ringland, Presiding Judge

Stephen W. Powell, Judge

(Dissents)

Mike Powell, Judge

Exhibit 2

COURT OF APPEALS
WARREN COUNTY
FILED
JUN 12 2014
James L. Spaeth, Clerk
LEBANON OHIO

IN THE COURT OF APPEALS OF WARREN COUNTY, OHIO

PETER BARUK, et al.,	:	CASE NO. CA2013-09-086 REGULAR CALENDAR
Appellants,	:	
vs.	:	ENTRY DENYING APPLICATION FOR RECONSIDERATION AND MOTION TO CERTIFY CONFLICT
HERITAGE CLUB HOMEOWNERS' ASSOCIATION, et al.,	:	
Appellees.	:	

The above cause is before the court pursuant to an application for reconsideration filed by counsel for appellants, Peter and Rosa Baruk, on April 22, 2014; a motion to certify conflict filed by counsel for appellants on April 23, 2014; a memorandum in opposition to the motion to certify conflict filed by appellees, Evans and Cathy Nwankwo, on May 2, 2014; a memorandum in opposition to the motion to certify conflict filed by counsel for appellee, Heritage Club Homeowners' Association, on May 5, 2014; and reply memoranda in support of the application for reconsideration and motion to certify conflict filed by appellants on May 12, 2014.

When reviewing an application for reconsideration, this court determines whether the application calls the attention of the court to an obvious error in its decision, or raises an issue for consideration which was either not considered at all or was not fully considered by the court when it should have been. *Grabill v. Worthington Industries, Inc.*, 91 Ohio App.3d 469 (10th Dist.1993). An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *Jones v. Catholic Healthcare Partners, Inc.*, 7th Dist. Mahoning No. 11 MA 23, 2013-Ohio-3990.

In their application for reconsideration, the Baruks claim that this court must reconsider its decision on the first and second assignments of error, as well as a portion of the third assignment of error. Specifically, the Baruks claim that this court's majority opinion misapplied the rules of statutory construction by (1) considering evidence of the City of Mason's administrative action with respect to the city's zoning code, even though the code is unambiguous, and (2) rewriting the Zoning Code's setback requirements.

This court's decision, however, was not based upon an interpretation of the Zoning Code. Instead, the majority decision was based upon a strict application of Civ.R. 56 and the Baruks' failure to meet their reciprocal burden to submit evidence to refute the fact that construction projects such as the one undertaken by the Nwankwos are not regulated by the Mason City zoning or building code.

Although the Baruks disagree with this court's holding, an application for reconsideration is not designed for use under such circumstances. The Baruks have failed to call this court's attention to an obvious error in its decision, or raise an issue for consideration that was not considered at all or not fully considered when it should have been. The application for reconsideration is accordingly DENIED.

Courts of Appeal derive their authority to certify cases to the Supreme Court of Ohio from Section 3(B)(4), Article IV of the Ohio Constitution, which states whenever the judges of a court of appeal find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by another court of appeals of the state, the judges shall certify the record of the case to the

supreme court for review and final determination. For a conflict to warrant certification, it is not enough that reasoning expressed in the opinions of the two courts of appeal are inconsistent; the judgments of the two courts must be in conflict. *State v. Hankerson*, 52 Ohio App.3d 73, (2d Dist.1989).

The Baruks argue that this court's decision is in conflict with a decision by the Eighth District Court of Appeals, *Miller v. City of Cleveland*, 8th Dist. No. 36654, (Dec. 29, 1977), and a decision by the Fifth District Court of Appeals, *Gruber v. Ohio Dept. of Human Resources*, 98 Ohio App.3d 72 (5th Dist.1994). Both of these cases essentially hold that a court is not permitted to consider evidence of administrative construction to assist with interpreting a statute where the statute is unambiguous. However, as noted above, this court's decision was not based upon an interpretation of the Mason Zoning Code. Unlike the Eighth District's decision in *Miller* and the Fifth District's decision in *Gruber*, the decision in this matter was not based upon statutory interpretation, but upon strict application of Civ.R. 56. Therefore, the present decision is not in conflict with *Miller* or *Gruber*. The motion for certification is therefore DENIED.

IT IS SO ORDERED.

Robert P. Ringland, Presiding Judge

Stephen W. Powell, Judge

Mike Powell, Judge