

IN THE SUPREME COURT OF OHIO

State ex rel.,
Brian Ebersole, Sharon Valvona
And Thomas Happensack

Case No. 2014-1469

Original Action in Mandamus

Relators,

v.

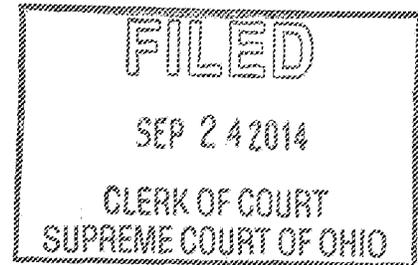
City Council of Powell, Ohio
And City Clerk of Powell, Ohio

Expedited Elections Matter Pursuant to
S.Ct.R. Prac.12.08

Respondents

The Center at Powell Crossing, LLC

Intervening Respondents



**OPPOSITION TO MOTION FOR RECONSIDERATION OF RELATORS BRIAN
EBERLE, SHARON VALVONA, AND THOMAS HAPPENSACK**

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OPPOSITION TO MOTION FOR RECONSIDERATION

Pursuant to Sup. Ct. 11.3(B), amicus curiae The Ohio Home Builders Association, Inc. (OHBA) and Building Industry Association of Central Ohio (BIA) respectfully submit this Opposition to Relators Motion for Reconsideration of its decision in *State ex rel. Ebersole v. Powell*, Slip Opinion No. 2014-Ohio-4078. OHBA and BIA urge the Court to deny Relators request for reconsideration. Relators seek to argue numerous points already briefed and considered in this Court's decision September 19, 2014. As Slip Opinion No. 2014-Ohio-4078 indicates, six justices found the charter amendment at issue clearly unconstitutional on its face, declaring it to unlawfully delegate legislative power, violating both *Eubank v. Richmond*, 226 U.S. 137, 33 S. Ct. 76, 57 L.Ed. 156 (1912) and *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210 (1928).

Futhermore, Supreme Court Rule of Practice 11.2(B) says "A motion for reconsideration shall not constitute a reargument of the case..." Reargument is exactly what is being proposed in Relators Motion, as each of these arguments was made previously. Thus, there is no need for the court to revisit issues previously briefed and considered. In order to provide safe, quality, affordable housing to all of the citizens of Ohio, adoption and enforcement of regulations on development must be lawful and constitutional ensuring certainty and predictability in the law, as the Court reinforced in its September 19th decision.

OHBA and BIA urge the Court deny Relators motion to reconsider. In light of Supreme Court Rule of Practice 11.2(B), the continued attempt to stop developments approved in compliance with all existing regulations, and circumventing a Council's authority to establish its Comprehensive Plan should be prevented and the motion denied.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 24th, 2014, a copy of the foregoing was served upon the following counsel via email pursuant to Civ.R. 5(B)(2)(f).



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