

In the
Supreme Court of Ohio

CITY OF INDEPENDENCE,)	CASE NO. 2013-0984
)	
Appellee,)	
)	
v.)	On Appeal from the Cuyahoga County Court of
)	Appeals, Eighth Appellate District
OFFICE OF THE CUYAHOGA)	
COUNTY EXECUTIVE, et al.,)	Court of Appeals Case No. 97167
)	
Appellant.)	

APPELLEE CITY OF INDEPENDENCE'S MEMORANDUM IN RESPONSE TO
APPELLANT'S MOTION FOR RECONSIDERATION AND JOINT MEMORANDUM
IN SUPPORT OF AMICUS CURIAE, COUNTY ENGINEERS' ASSOCIATION OF
OHIO

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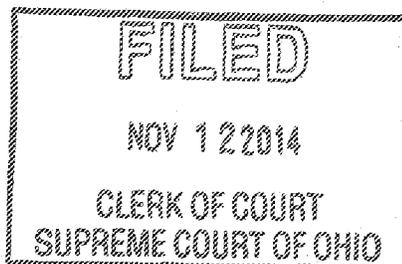
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Memorandum in Response

In their Motion for Reconsideration and Joint Memorandum in Support of that Motion, Appellant, Office of the Cuyahoga County Executive (“Cuyahoga County”), and its Amicus, County Engineers Association of Ohio, ask this Court, which found in favor of in Appellee, City of Independence (“Independence”), to change its mind, reverse itself, and instead adopt the position of the dissent. Clearly, the majority has already considered the dissent’s position, and has decided that position is incorrect. There is therefore no reason to grant Cuyahoga County’s request that this Court remand the case to the common pleas court for further proceedings.

This case is an administrative appeal under Chapter 2506 of the Revised Code. Recently, this Court noted “. . . the standard of review for courts of appeals in administrative appeals is designed to strongly favor affirmance. It permits reversal only where the common pleas court errs in its application or interpretation of the law or its decision is unsupported by a preponderance of the evidence as a matter of law.” *Cleveland Clinic Found. v. The Cleveland Board of Zoning Appeals*, ___ Ohio St.3d ___, 2014-Ohio-4809, ¶30. Here, the common pleas court ruled in favor of Independence and, both in the court of appeals and in this Court, Cuyahoga County failed to meet its heavy burden to challenge those rulings under this standard.

Cuyahoga County incorrectly asserts that the trial court and the appellate court did not correctly analyze the key issue and therefore this case should be remanded for a new analysis. The County claims that the courts below erred by determining that *the bridge* was of “general and public utility”, as opposed to whether *the road* is of “general and public utility”. However, contrary to Cuyahoga County’s assertion, and as this Court specifically recognized, the approach below was correct: the utility of the bridge and the road are intertwined and must be considered together. (Slip Op., ¶ 12). As this Court noted, “the evidence before those courts goes to the

nature of the road as much as it goes to the nature of the bridge” and “the lower courts’ findings that the Old Rockside Road bridge is a bridge of general and public utility . . . [are also] a determination that Old Rockside Road is a road of general and public utility. *Id.* Thus, Cuyahoga County’s intransigent argument, rejected by the common pleas court, the court of appeals and, now, this Court, is unavailing, and remand would serve no purpose because the common pleas court has already considered and rejected the County’s argument.

Contrary to Cuyahoga County’s claim, the fact that the common pleas court considered additional evidence not before the Cuyahoga County Board of Commissioners (“Board”) and, as a result, reached a conclusion different from that reached by the Board does not mean that the common pleas court erred. Under Cuyahoga County’s position, any common pleas court that does not defer to and merely rubber stamp the decision of the administrative board it is reviewing would be “fashion[ing] their own sense of justice.” Motion at 4. Such an argument is absurd especially given the provisions of R.C. 2506.03, which specifically allows the common pleas court to consider evidence not considered by the administrative agency. Indeed, Cuyahoga County’s proposed standard, if implemented, would eviscerate the entire administrative appeal process under Revised Code Chapter 2506.

Cuyahoga County’s argument also stubbornly ignores that in an administrative appeal, although the common pleas court makes a comprehensive evaluation of the decision under review, *id.*, ¶24, but that the appellate court’s function is much more limited. *Id.*, ¶¶25-30. Here, Cuyahoga County lost this case at the trial of court level because the evidence did not support its position. This does not constitute, at this late date, grounds for reconsidering this Courts’ affirmance of the decisions of the common pleas court and the court of appeals.

Cuyahoga County also makes the patently false assertion that replacing the bridge would cost Cuyahoga County \$5.3 million, while it would only cost Independence \$1.3 million, purportedly because Independence has obtained grant funding unavailable to the County.¹ (Motion at 3-4). This assertion implies that Cuyahoga County cannot obtain funding from the Ohio Department of Transportation, even though the County knows that to be false. Such attempts to undermine this Court's decision by dressing up previously unsuccessful arguments with false statements should not be countenanced.

CONCLUSION

Contrary to Cuyahoga County's assertion, the lower courts applied the correct legal standard and determined that the evidence established that the bridge supports a road of general and public utility, and that the responsibility for the maintenance of the bridge therefore belongs to Cuyahoga County. Cuyahoga County's request that this Court reconsider and reverse its position, simply because the common pleas court did not rubber stamp the ill-advised and arbitrary decision of the Board completely disrespects the law, this Court's merits decision, the decisions of the two lower courts, and Chapter 2506 of the Ohio Revised Code. Accordingly, Cuyahoga County's Motion should be denied.

Respectfully submitted,

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¹ None of these claimed "facts" is in evidence or in the record before this Court, in part because they are "facts" which are untrue.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by United States mail this 12th day of November 2014,

upon the following:

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