ORIGINAL

In the Supreme Court of Ohio

Barbara Andersen **Michael McCarthy** **Relators** **vs** **State of Ohio City of Cleveland** **Respondent**	**Case No. 2015-0393** **Relators' Motion for Clarification of the Supreme Court of Ohio's Decision to Dismiss Relators' Original Action and Complaint**

Relators' Motion for Clarification of the Supreme Court of Ohio's Decision to Dismiss Relators' Original Action and Complaint

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Relators, (Pro Se), hereby move this honorable Court to clarify its decision to dismiss Relator's Original Action and Complaint with regard to the absence of the Court's consideration and/or opinion of the Constitutional matter of Due Process as concerns Relators' right of protection under the law, and the obligation of the City of Cleveland to follow City and the State of Ohio's laws. The grounds for Relators' Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

Barbara Andersen and Michael McCarthy
3802 Bosworth Rd.
Cleveland, Ohio 44111
216-941-9092

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SEP 28 2015
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
SEP 28 2015
CLERK OF COURT
SUPREME COURT OF OHIO

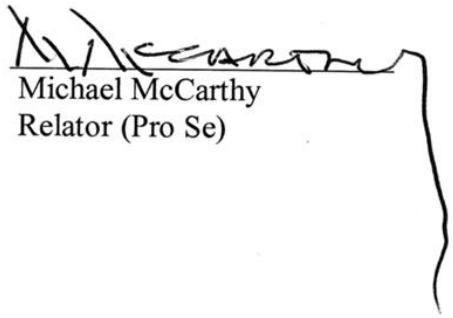
Certificate of Service

We certify that a true and accurate copy of Relators' Motion for Clarification was served via U.S. Mail on September 21, 2015 to:

William H. Armstrong, Jr.
Assistant Director of Law
Cleveland City Hall Room 106
601 Lakeside Ave. E.
Cleveland, Ohio 44114-1077

Counsel for Respondent

Barbara Andersen
Relator (Pro Se)



Michael McCarthy
Relator (Pro Se)

Memorandum in Support

I. Introduction and Statement of Fact

The Relators' Original Action and Complaint were dismissed by the Ohio Supreme Court as the result of a Motion to Dismiss filed by the Respondent. Respondent argues that Relators' Original Action and Complaint lack subject matter jurisdiction, fail to comply with the Supreme Court Rules of Practice, and are barred under the doctrine of res judicata.

Relators recognize and regret their inadequacies in navigating the judicial process. The Relators' request for clarification of the Supreme Court's decision to dismiss the Original Action and Complaint is unrelated to the Respondent's arguments noted above. Instead, Relators request that the Supreme Court clarify its decision to dismiss with regard to the absence of the Court's consideration or opinion on the Constitutional matter of Due Process raised by the Relators, as it concerns their rights of protection under the law, and the obligation of the City of Cleveland to follow City and State of Ohio's laws.

Because the Respondent did not follow Ohio laws and Cleveland Codified Ordinances (CCO), Relators argue that their right of reasonable property use under City, State, and Constitutional laws has been violated, resulting in criminal penalties for Respondent Andersen.

Relators' respectfully ask the Supreme Court to review and, if it pleases the Court, consider reopening Relators' Original Action and Complaint and order the City of Cleveland to follow Cleveland Codified Ordinances and the laws of the State of Ohio.

II. Law and Argument

The dismissed Original Action and Complaint filed by the Relators illustrate a problem concerning uniform site grading on a parcel of property inextricably combined in use and interest of easement between two homes at 3806 Bosworth Road and 3802 Bosworth Road (Relator's home). The entire parcel's specifically designated purpose is for drainage, thereby promoting the safe and sanitary condition for the benefit of both homes as described in the City of Cleveland's Building and Housing Department's (B&H) Mission Statement. See Attachment I. CCO Chapter 3125, Excavations, Soils, and Foundations, with the adopted Ohio Administrative Code 4101: 1-18 §1804.3 Site Grading (OAC). This issue has not been addressed with respect to the violation of Relators' right of reasonable property use under City, State, and Constitutional laws and therefore has not been previously litigated and should not be barred by res judicata or dismissed because it lacks subject matter jurisdiction.

The property at 3806 Bosworth (3806) has a negative grade condition and is retaining surface waters, causing flooding of the entire parcel in between the two homes with resulting infiltration into the 3806 home. In the past, prior to the swale excavation, the overall improper grade caused water infiltration into Relators' home at 3802 Bosworth. (3802) See Attachment II.

This issue was brought to the attention of the Housing Court, which refused to order a proper assessment, and focused solely on Relators' excavation, thus misrepresenting the intent of the OAC. Respondents' refusal to recognize this problem, apply the CCO and OAC to the parcel uniformly, and accept the parcel as a combined

entity in use, enjoyment, and interest of easement for the purpose of uniform drainage is a violation of both homeowners' right of reasonable use.

The 3806 property's hazardous condition is in violation of, ORC 3767.13 (C) ***"No person shall obstruct or impede the passage of a… collection of water."*** The OAC's specifications, with its inclusion concerning the use of swales, are mandatory and appurtenant to both properties for proper drainage in order to protect safety, health, and well-being of the occupants. *State v. Squires* (Ohio App. 2 Dist., 01-24-1996) 108 Ohio App.3d 716, 671 N.E.2d 627).

The City of Cleveland's Building and Housing Department's initial site grading assessment of the subject parcel was erroneous and the subsequent permitting of the fencing atop the adjacent 3806 property's improper site grading was wrongful. However, Respondent denies any irregularities of the site grading or errors made in their assessment and instead are treating the parcel as two separate entities, negating CCO, OAC, and the uniformity required. This is in violation of laws of Easement and its use, ***"A person or entity cannot assign the interest in an easement appurtenant to another."*** (Ohio Jur. 3d "Easements" §53 Generally).

The end result of Relators' numerous requests that the City of Cleveland enforce its codes concerning uniform site grading has resulted in violations and conviction of Andersen. Relators maintain that their corrective repair of the 3802 property is not in violation with regard to CCO and OAC rules and specifications applied uniformly to the parcel. Meanwhile, the 3806 plot condition is in opposition to the OAC § 1804.3 specifications. That this condition is allowed to remain is in violation of Ohio's Constitution Article 1 §1. Therefore, Relators' corrective repair of the improper original

condition of surface waters shedding directly onto the adjacent 3806 plot is a reasonable and lawful use of their property. ***"Whatever damage a proprietor may suffer by reason of the exercise of a neighbor's rightful command over his or her own soil is considered a loss without legal injury."*** *Frazier v Brown,* 12 Ohio St. 294, 1861 WL 32 (1861) (overruled on other grounds by *Cline v American Aggregates Corp.*, 15 Ohio St. 3d 384, 474 N.E. 2d 324 (1984), (Ohio Jur 3d Waters § 87)

Moreover, the Respondent's posture and analysis, along with judgments rendered by the Courts regarding this case are in violation of Ohio Constitution Article 2 § 26 Uniformity Clause, which states, "***All laws, of a general nature, shall have uniform operation throughout the state,"*** and of Ohio Constitution Article 1 § 1 of strict liability, that states, in part, "***Statutes or ordinances imposing restrictions upon the use of private property will be strictly construed…"*** *City of Westerville v. Kuehnert* (Franklin 1998) 50 Ohio App.3d 77, 553 N.E.2d 1085.

The end result of Relators' numerous requests that the City of Cleveland enforce its codes concerning uniform site grading has resulted in violations and conviction of Andersen. Respondent has framed this property use issue as a matter of opinion subject to their interpretation with optional and or selective enforcement instead of abiding by the "strict liability" of mandatory regulatory codes and ordinances of the City of Cleveland, State of Ohio, and Ohio's Constitution.

That the judgments rendered do not reflect proper application and enforcement of codes, ordinances, statutes, and laws concerning site grading, as well as the Constitutional questions and regulatory issues concerning the safety, health, and the well-being of the Relators and the community remains unaddressed and unresolved.

Additionally, allowing the judgment and Andersen's conviction to stand is allowing a permanently hazardous condition to remain, which obstructs the properties' reasonable use and violates the Relators'guaranteed constitutional right to protect our home and property, byway of the easement, as granted by the state of Ohio. §1 Easement Defined, & §2 Nature and Characteristics of Easement. (Ohio Jur 3d).

As this issue is one of public and great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution, Relators respectfully ask this Honorable Court to clarify its decision to dismiss the Original Action and reconsider the issue of original jurisdiction, *Middletown v. Campbell* (Butler1990) 69OhioApp.3d 411, 590 N.E.2d 1301. Improper site grading is a pervasive citywide problem and ignored by the City's oversight entities and departments, as noted in the Cleveland Plan Dealer article **"Cleveland near the worst on list of cities with unhealthy homes,"** dated 9/25/09. See Attachment III.

II. Conclusion

Relators move this honorable court to clarify its decision to dismiss Relators' case and address the genuine issue of our legal rights, privileges, and reasonable property use as outlined by Cleveland Codified Ordinances, the Ohio Administrative Code, the State of Ohio Constitution, and the guaranteed right to protect our property as enumerated in the Bill of Rights of the United States Constitution.

Respectfully submitted,

Barbara Andersen
(Pro Se)

Michael McCarthy
(Pro Se)

3802 Bosworth Rd.
Cleveland, Ohio 44111
216-941-9092

Affidavit

I, Barbara Andersen, and I, Michael McCarthy, do hereby make this affidavit and being first duly sworn state as follows:

1. Attachment I is an accurate copy of the portion cited from City of Cleveland's Building and Housing Department's Mission Statement.

2. Attachment II is an accurate copy of the photograph of the property at 3806 Bosworth Road, illustrating the negative grade condition.

3. Attachment III is an accurate copy of the 9/25/2009 Plain Dealer article, "Cleveland near the worst on list of cities with unhealthy homes."

Further Affiants sayeth naught.

Barbara Andersen (Pro Se)

Michael McCarthy (Pro Se)

Sworn to before me and subscribed in my presence this 23 day of September 2015.

Notary Public

NICHOLAS M. GALL SR. NOTARY PUBLIC STATE OF OHIO MY COMM. EXP. FEBRUARY 24, 2018

Home Building, Rehab, and Repair

Homeowners and Do-it-Yourselfers Permit Information

Homeowners who have hired contractors should call 216.664.2884 to verify that their contractor is registered and should ask the contractor for copies of permits before work begins. Work should not be accepted prior to final inspection by a Building and Housing inspector.

Owner-occupants of one- or two-family homes may perform alterations or build homes without being registered as contractors, but are subject to the same regulations that apply to contractors for permits, plan examination and inspection.

Contractors: Bonding, Insurance, Registration, and Licenses

216.664.2884 - Weekdays 8 am to 5 pm

To build or rehabilitate Cleveland homes, contractors must be bonded, insured and registered. Electricians and plumbers must also be licensed. Additional information is available on the Permit Guide webpage.

Plan Examination and Approval Process

Once permit applications are made, plans are reviewed by the City for code compliance. There is a charge of $15 per 1000 square feet of work and a minimum fee of $15 for reviewing plans for homes, garages, sheds, fences, and swimming pools. The review period varies according to the project's complexity. In general, review of one- and two-family homes can be completed in three to five working days.

For more information see the permit guide.

Building and Housing Inspections

Contractors and do-it-yourselfers are responsible for scheduling inspections by calling the office number listed on the building permit. Inspections should be made after foundation excavation (before pouring concrete), after rough-in (before concealing work), and upon completion. NOTE: If faulty work is discovered, the inspector will issue a violation notice, and a specific period of time is allotted to correct the problem.

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Department of Building and Housing
Edward W. Rybka, Director
601 Lakeside Ave. Room 510
Cleveland, Ohio 44114

P: 216.664.2282
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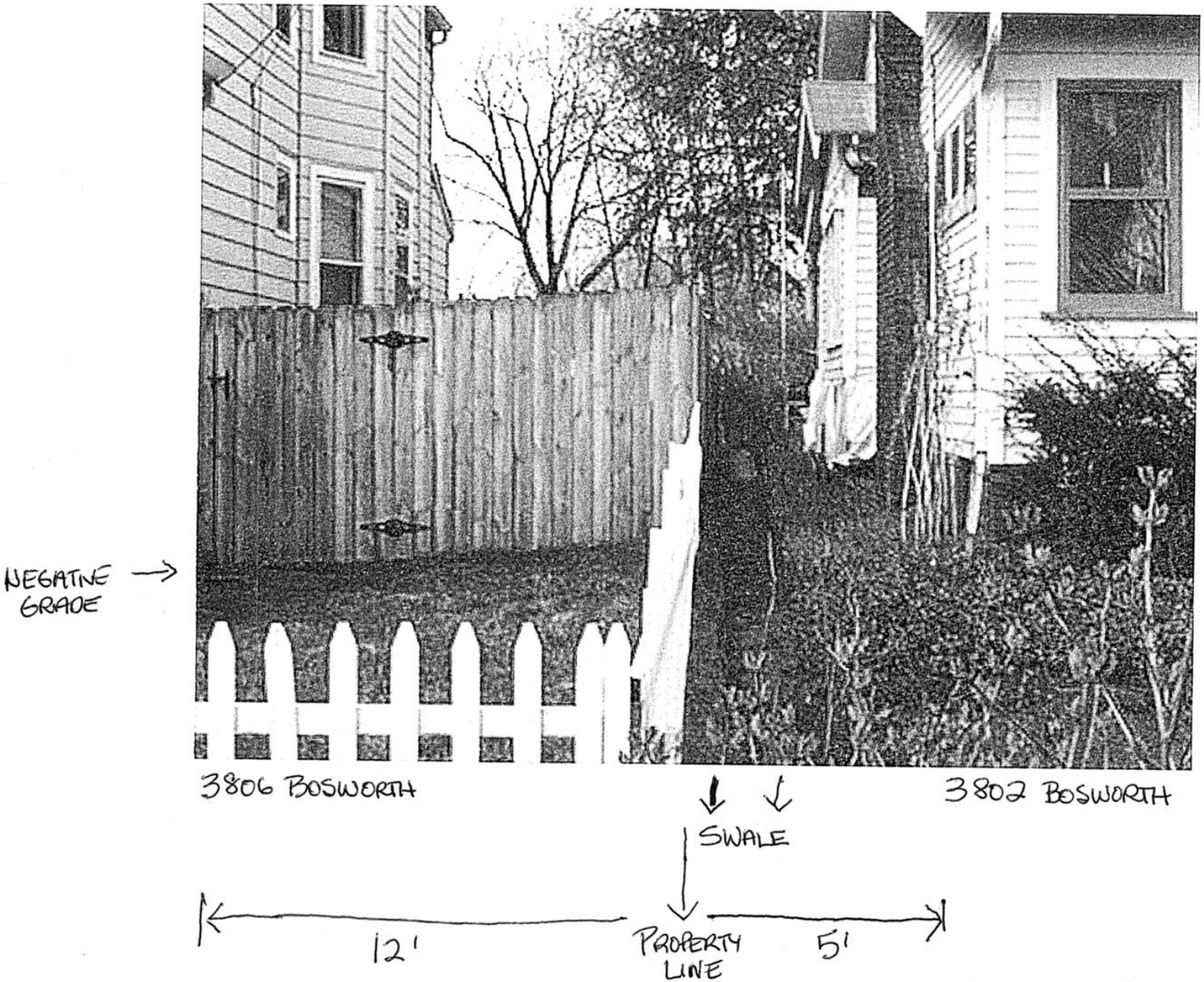
Relay Service: 711
Send Email

Mission Statement

To assure that all existing and new structures in the City of Cleveland are maintained and constructed in a safe and habitable manner through enforcement of the Building and Zoning Codes, pursuant to the review of plans, issuance of permits and inspection of property.

– Building and Housing

ATTACHMENT I



FRONT VIEW 3806/3802 BOSWORTH RD

ATTACHMENT II

Cleveland near the worst on list of cities with unhealthy homes

JOAN MAZZOLINI
Plain Dealer Reporter

Cleveland has more unhealthy homes — with cracks in walls, exposed wires and leaky roofs — than most other cities nationwide.

In fact, Cleveland was second to last nationwide for having homes with problems that are considered unhealthy or dangerous, according to a study by the National Center for Healthy Housing, which surveyed housing conditions in 44 cities nationwide.

The survey, based on information collected by the U.S. Census Bureau over several years, looked at such things as holes in floors, peeling paint, leaks and foundations to get what the group says is the first snapshot of housing conditions in the nation.

Overall, the most common problems are water leaks, roofing problems, damaged walls and signs of rodents, according to the survey. The group says water and roof problems contribute to dampness, which has been linked to asthma and other respiratory problems. Damaged walls can create lead poisoning in some homes, the group said.

SEE UNHEALTHY | B3

Severe physical problems	2.7%
Holes in floors	2.5%
Broken plaster/peeling paint	6.3%
Signs of mice	6.4%
Water leaks from outside	23.6%
Any identified problem	55.5%

Friday, September 25, 2009

The Plain Dealer | Breaking news: clevelandh.com

UNHEALTHY

FROM B1

Cleveland near worst on unhealthy homes list

Cleveland had a higher percentage of homes with many of these conditions. But in some categories it fared better. The city's homes had better kitchen facilities, fewer holes in floors and rat problems than other cities, for example.

Cleveland Housing Court Judge Ray Pianka said he isn't surprised.

"We have old housing stock with elderly owners who are below the poverty line," Pianka said. "Of course there will be problems. There's been a lot of deferred maintenance. The people I see would repair the problems if they could do so."

The Cleveland metropolitan area — made up of Ashtabula, Cuyahoga, Geauga, Lake, and Medina counties — did better in the rankings, coming in at 35th.

Jonathan Wilson, assistant director of the housing center, noted that cities with higher poverty rates tend to see more problem homes.

The comparisons with other cities were drawn from information gathered in several recent years. The Cleveland area's information came from a survey of about 1,800 households questioned in the 2004 American Community Survey conducted by the Census Bureau.

WHERE TO FIND THE REPORT: Go to http://tinyurl.com/y9xz9rx

Wilson said that among the group's goals was to help governments recognize problem areas so they could adjust their priorities.

"If they have a problem with peeling paint, they can increase inspection on rental units," he said. "They can make sure their housing codes are up to date, and advocates can use it to ask politicians what they are doing to improve the situation."

Wilson also said his organization hoped that this and future studies would spark communication between cities so they can learn what works from each other.

Pianka said the city's housing stock could benefit by having more housing inspectors to monitor conditions.

Ronald J.H. O'Leary, assistant director of the Department of Building and Housing, didn't disagree.

"Who wouldn't say they could use more people, but ... everyone has to live within their means and provide more and better services," O'Leary said.

He said even with financial constraints, the city is moving forward to address housing problems.

O'Leary cited programs the city has initiated, such as Fresh Coat Cleveland that provides paint to low-income property owners, or the programs for seniors to get help repairing their homes.

He also said that the city was being more aggressive in taking down the worst homes.

"In 2005, we demolished 195 structures. This year it will be 1,700," he said. Pianka said he was heartened to see the city enforce a rule that sellers fill out a "certificate of disclosure," which reveals whether the home has been cited for code violations, has been condemned or has other problems.

Some 40 cases have just arrived in Pianka's court filed against Internet sellers for failing to file, and he's expecting dozens more.

To reach this Plain Dealer reporter: jmazzolini@plaind.com 216-999-4563

Ranking the country's housing stock

The National Center for Healthy Housing reports that about 5.7 million U.S. families live in substandard housing — conditions that can cause illness, injury and deaths. Below are the top five metropolitan areas with homes in the best condition, the bottom five and where Ohio's three biggest cities — Cleveland, Columbus and Cincinnati — and their metro areas are ranked.

Rank	Selected metropolitan areas	Survey year
1	Charlotte, N.C.	2002
2 (tie)	Anaheim-Santa Ana (Orange County), California	2002
2 (tie)	Atlanta	2004
4 (tie)	Sacramento	2004
4 (tie)	Tampa-St. Petersburg-Clearwater, Florida	2004
18 (tie)	Cincinnati	1998
21 (tie)	Detroit	2003
24 (tie)	Columbus, Ohio	2002
24 (tie)	Pittsburgh	2004
35 (tie)	Cleveland	2004
39 (tie)	Los Angeles-Long Beach, California	2003
39 (tie)	Memphis, Tennessee	2004
39 (tie)	San Antonio, Texas	2004
39 (tie)	Dallas, Texas	2002
43	New York City	2003
44	San Francisco	1998
45	Oakland	1998

SOURCE: National Center for Healthy Housing

THE PLAIN DEALER

ATTACHMENT III