

Barbara Andersen
Michael McCarthy
Relators

vs

State of Ohio City of Cleveland
Respondent

Case No. 2015-0393

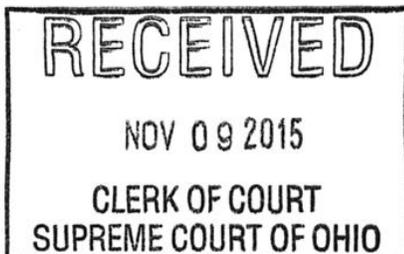
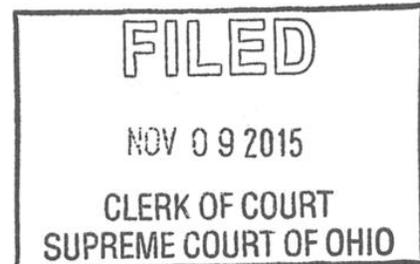
RELATORS' MOTION FOR AN ORDER TO STRIKE FROM THE RECORD AND OVERRULE RESPONDENT'S RESPONSE TO RELATORS' MOTION FOR AMENDMENT FOR THE SUBSTITUTION OF TWO PHOTOGRAPHS TO REPLACE THE PHOTOGRAPH PREVIOUSLY LABELED "ATTACHMENT II"

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Relators move this Honorable Court to Strike from the Record and Overrule the Respondent's Response to Relators' Motion for Amendment for the Substitution of Two Photographs to Replace the Photograph Previously Labeled "Attachment II." 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



Certificate of Service

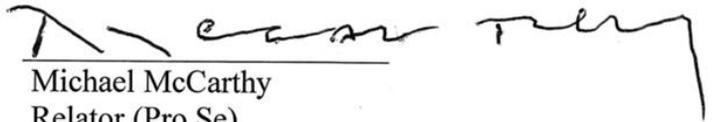
We certify that a true and accurate copy of Relators' Motion for Clarification was served via U.S. Mail on November 6, 2015 to:

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

The Respondent City of Cleveland has raised an objection to the Relators' Motion for Amendment for the Substitution of Two Photographs to Replace the Photograph Previously Labeled "Attachment II." Respondent argues that the photographs show the property from a different perspective; include added captions; and if accepted by the Court, will prejudice Respondent.

Contrary to the Respondent's assumption and assertions, these photographs are not from a different perspective but are merely better quality reproductions of the true and accurate portrait of the parcels' condition. Captions were added for clarity and context, for the benefit of the Court and the Respondent to better illustrate the diametrically opposing site grading plot conditions that are contrary to the mandatory positive drainage per Cleveland Codified Ordinance Chapter 3125 (CCO) and Ohio Administrative Code 4101:1-18 1804.3 Site Grading (OAC). "***The ground immediately adjacent to the foundation shall be sloped away from the building....***"

Relators filed the amended Motion for the reason that the Court and Respondents would likely not be able to discern details or determine context from the poor quality of the image previously submitted.

These photographs were submitted as visual aids in support of Relators' request that the Supreme Court clarify its decision to dismiss Relators' Original Action and Complaint 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.

The Respondent has misrepresented the parcels' condition and has chosen to focus on the Relators' procedural errors, negating the context of the parcel in its entirety and the laws appurtenant. Relators concede their ignorance, inexperience, and errors in the foregoing legal proceedings and beg this Honorable Court to consider the cause on its merits and clarify its decision to dismiss the Original Action and Complaint.

Respondent argues that the above-referenced captions and the Relators' Motion for Clarification amount to a "time-barred Motion for Reconsideration" and if the photos are accepted by the Court, "Respondents will be unduly prejudiced because they will not have the opportunity to respond."

The Respondent has responded repeatedly by rejecting any responsibility or oversight concerning the proper implementation of the codes and ordinances regarding OAC and its integral apparatus of a swale. See Cleveland Municipal Court Judgment Entry, 2-26-13 Case # 2012 CRB18789 pg. 3 ¶1 Charge #3, which misconstrues the CCO/OAC. Relators request that Respondent demonstrate what injury the City would suffer if the Court were to accept the photographs and offer a clarification of its decision.

Relators argue that they themselves are the party that has been unduly prejudiced by the entire proceedings, now for nearly a decade. As noted in Relators' Motion for Clarification, the crux of the issue is that the subject parcel is an inextricably combined entity for the primary purpose and fundamentally established engineering principal of uniform surface water drainage. See OH Const., Article 2 § 26 Uniformity Clause. This is facilitated by way of OAC specifications and regulated under strict liability as intended by the legislature, (see OH Const., Article 1 § 1), which Respondent has refused to accept or

acknowledge. *State v. Squires* (Ohio App. 2 Dist., 01-24-1996) 108 Ohio App.3d 716, 671 N.E.2d 627).

Additionally, the subject parcels' condition was addressed in a prior case involving Relator McCarthy in a report by Cleveland Building & Housing Department (B&H) Inspector Ed Sugar. See Cleveland Municipal Housing Court Case No. 2009 CRB 010462. Also see Cleveland's Board of Building Standards (BBS) Dockets, BBS A-173-09 allowing the swale and BBS A-245-11 nullifying the prior ruling, which created a conflict in the Relators' property use considering the two opposing site grading plot conditions.

Of judicial note is the Relators' Deed, entered in the record in the first action with the Housing Court. Within the four corners of this document it states, "***With all the privileges and appurtenances thereunto belonging; to have and to hold the same to said grantees, their heirs and assigns forever.***" This privilege and appurtenance includes CCO/OAC which protect the structure and its occupants' health, safety, and welfare See *State v. Shaffer* (Ohio App. 3 Dist., 09-16-1996) 114 Ohio App.3d 97, 682 N.E.2d 1040, Dismissed , appeal not allowed 77 Ohio St.3d 1543, 674 N.E.2d 1183.

Of judicial note is the right of "Easement," as established by our Deed of ownership by grant of the State of Ohio. See Ohio Jur 3d, §1 "Easement" Defined, & §2 Nature and Characteristics of Easement. The Respondent has disregarded our Deed from the start, its privilege and appurtenance, along with Ohio's reasonable use rule, "***Each possessor is legally privileged to make a reasonable use of his or her land...***" *McGlashan v. Spade Rockledge Terrace Condo Development Corp.*, 62 Ohio St. 2d 55, 16 Ohio Op. 3d 41, 402 N.E. 2d 1196 (1980).

Of judicial note is the term of “**privilege**” and its meaning. Ohio law defines privilege as immunity, license, or right conferred by law, bestowed by express or implied grant. See, ORC 2901.01 (A)(12).

Furthermore, Relators’ privilege has not received due respect, nor have their citations of code, ordinance, and law been seriously considered. The Board of Building Standards, the lower Housing Court, and the Eighth District Appellate Court have not addressed these issues in a meaningful way that would resolve the drainage issue between Relators’ home and the adjacent property in accordance with the relevant codes, ordinances, and uniformity as required by Ohio law. See *State v. Squires* (Ohio App. 2 Dist., 01-24-1996) 108 Ohio App.3d 716, 671 N.E.2d 627).

CONCLUSION

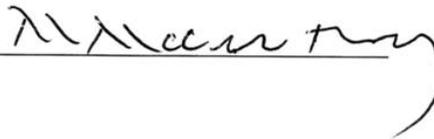
Relators move this honorable Court to strike from the record the Respondent’s objection to the substitution of these photographs for the reasons noted above. Respondent’s request is immaterial, as the amended photographs do not show the property from a different perspective - they simply show the 3806 property’s negative grade and 3802 property’s positive grade. Nor are the photographs intended to prejudice the Respondent. Therefore, Respondent is requesting relief to which they are not entitled.

Respectfully submitted,

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