

**In the Ohio Supreme Court**

Barbara Anderson and  
Michael McCarthy  
Relators

V.

State of Ohio  
City of Cleveland  
Respondent

Case 2015-0393

Relator’s Motion to Prevent  
the Miscarriage of Justice

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Relator’s Motion to Prevent the Miscarriage of Justice

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Relators’ move this Honorable Court to accept the Motion to prevent the miscarriage of justice. Relators also request this honorable Court to accept the previous motion, “Amendment for the Substitution of Two Photographs to Replace the Photograph Previously Labeled Attachment II”, that clearly illustrates the problem. The adjacent non-conforming site grading condition of a sloping toward structure that is contrary to the property’s use. Moreover, the condition is contrary to the entire parcels’ proper use according to Ohio Administrative Code 4101:1-18 § 1804.3 Site Grading. 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.  
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216-941-9092

## Memorandum in Support

Relators now Motion to prevent the Miscarriage of Justice, as the previously filed Original Action and Complaint are of genuine issue concerning Relators' private property use and Constitutional rights. In addition, it is a reasonable expectation that the Respondent respect and observe Relators' private property rights of use, as well as provide the basic city service of proper site grading/positive drainage to protect safety, health, and well-being. See Ohio Const., Art., 1 §1 of strict liability, which states, ***“Statutes or ordinances imposing restrictions upon the use of private property will be strictly construed; their scope cannot be extended to include limitations not clearly prescribed.”*** *City of Westerville v. Kuehnert* (Franklin 1998) 50 Ohio App.3d 77, 553 N.E.2d 1085.

There is no doubt that Relators have proven to be incompetent and ineffective in their Pro Se representation and defense, and are again before a Court due to errors of procedure and technicalities that Relators do not completely understand. Relators lack the financial resources for legal representation to battle the Respondent over alleged charges of building code violations, nor are they able to foot the cost of a counter-suit to litigate and defend their property's fundamental rights and safeguards appurtenant. Despite the deficiencies, according to the law, the safeguards are of a “strict liability” and the appurtenances established by deed, granted by the State of Ohio, are “forever.”

The Respondent, in a narrow focus, has not respected or observed Relators' private property use concerning their rights and privileges concerning the subject parcel that is inextricably combined with the adjoining property. See ORC 2901.01 (A)(12) Respondent has ignored the physical facts and omitted ordinance and statutes, which

allow a limited “Reasonable use” of said parcel “Easement” for the purpose of uniform site grading and drainage that by law is equally applied to each property owner’s portion of the parcel. See photo, Front view 3806, 3802 Bosworth Rd., & Ohio Administrative Code 4101:1-18 §1804.3 Site Grading (OAC).

It is not Relators’ intent to annoy the Court or to be vexatious. However, Relators question how the Respondent is immune from all errors, from the parcels’ first inspection to the subsequent permitting of a fence atop the improperly graded neighboring portion of the parcel that harbors an unsafe condition and obstructs Relators’ easement use, which by statute is protected by law and equity. See *Pilot Oil Corp. v. Ohio Dept., of Transp.*, 102 Ohio App.3d278, 658 N.E. 2d 1379 (10<sup>th</sup> Dist. Franklin County 1995).

In addition, Relators question the Respondent’s errors of review concerning omission of the previously noted Constitutional provision of “Strict Liability” attached to the regulatory issues of codes, ordinances, statutes and how, “Uniformity Clause” became a non-issue. Ohio Const., Art., 2 §26 *Kelleys Island Caddy Shack, Inc. v. Zaino* 775 N.E.2d 489, 96 Ohio St. 3d 375, 2002-Ohio-4930. ***“As to persons and things, Uniform operation throughout the state, as used in the State Constitution’s uniformity clause, means universal operation as to all persons and things in the same condition or category.”***

The Respondent’s lack of uniform enforcement of the mandatory safeguards of strict liability is an omission that has prejudiced Relators and violates their Constitutional rights. Respondent has maintained a posture throughout of not detecting any errors, defects, or omissions, and has assigned all faults to the Relators, which in turn, voids

reasonable use and ownership interests of the inextricably conjoined parcel. See Ohio Jur 3d, §1 “Easement” Defined, §2 Nature and Characteristics of Easement, & OAC.

In response to the Respondent’s claim that the case lacks subject matter jurisdiction, Relators argue this may fall under section 2 (B)(1) (f) Article IV of the Ohio Constitution: **“In any cause on review as may be necessary to its complete determination.”** Additionally, because the condition is a pervasive citywide problem and one that affects thousands of people and properties, Relators believe it is also of public and great general interest. See Cleveland Plain Dealer 9-25-09 “Unhealthy Homes”.

It is the Relators’ belief that the irregularities of the case concerning site grading, uniformity, and strict liability reveals Respondent’s lack of good faith. The contradictions and omissions of fact and law should allow the case to go forward with a determination inclusive of all laws concerning Relators’ property use. The Respondent’s misrepresentations are not in keeping with the safe and sanitary condition espoused in its Building & Housing Department’s (B&H) Mission Statement. Also see OAC 4101:8-1-01 § 113.2 Maintenance.

The non-application and non-enforcement of statutes, codes, and ordinances endanger the Relators’ and the community’s safety, health, and well-being. 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. The Respondent has ignored the Constitutional question of strict liability pertaining to the site grading issue. See Ohio Const., Art., 1 §1. Also ignored are the questions of uniformity (see Ohio Const., Art., 2 § 26) and the numerous regulatory issues - state and local - that have denied the Relators a

**“complete determination”** which in turn violates the Constitutional rights that property ownership provides.

The Respondent’s obstructive and non-cooperative posture takes no responsibility for proper oversight of the parcel, prior to any repair or construction or its current condition. See Cleveland Municipal Court Judgment Entry, 2-26-13 Case # 2012 CRB18789 (Judgment Entry) pg. 3. Charge #3 is not abiding, and in fact denies relevant codes, ordinances, and laws that regulate the issue of site grading uniformly applied. This has made it impossible for reasoned discourse in resolving the drainage issue between the two homes. See *Middletown v. Campbell* (Butler1990) 69OhioApp.3d 411, 590 N.E.2d 1301 dismissed, jurisdictional motion overruled 58 Ohio St.3d 713, 570 N.E.2d277.

Another example of the Respondent’s unreasonableness is Judgment Entry, pg. 3, Charge #7, “Defendant failed to provide positive drainage of the swale excavation.” To clarify, a “swale” by common definition, is equipment and an apparatus with structure that serves the purpose of collecting storm surface water to percolate into the ground. In context of the OAC, its purpose is to collect and transport surface storm water away from a structure. See OAC & OAC 4101:3-11-01 Storm drainage §1101.2 Where required.

Contrary to the expert writ of the Judgment Entry’s Charges & Findings, pg. 2, 3, if the “swale” is not serving its purpose and function, identifying the excavation as a “swale” is a flawed analysis and determination. Wherefore, the Court’s Charges & Findings, pg. 2, 3, and particularly Charge #7 are rendered an oxymoron, especially in light of, OAC, Ohio Jur 3d, Waters §53, Reasonable use, Ohio Jur 3d, §1 “Easement” Defined, §2 Nature and Characteristics of Easement, & Ohio Const., Art., 1 §1 & 2 §26.

Confirmation that the Relators' excavation is no doubt a "swale" is Respondent's Judgment Entry, pg.1 footnote, referencing the Board of Building Standards (BBS) A-173-09 Resolution allowing the swell [sic] excavation on the Relators' portion of the parcel. The problem however, is the BBS assessment assigned to the neighboring portion of the parcel is contrary to the OAC incorporated uniformity, only fixated on the 6-inch leading edge at the property's boundary where the allegedly undermined fence posts rest, and ignored the entire 12-feet of an 8% negative grade sloped toward the neighboring structure. See photo, Front view 3806, 3802 Bosworth Rd.

The BBS omits the OAC uniform specifications that clearly prescribe the mandatory condition of diverting surface water away from a structure. The BBS proclaimed to have reviewed all applicable CCO but does not meet the strict liability standard and their added caveat alters OAC scope, distorting and extending limitations. See Ohio Const. Art., 1 § 1

Easement has also been denied. Respondent has not carefully reviewed the record. The deed submitted in the first action is the instrument establishing easement to the property. See Ohio Jur 3d, §1 "Easement" Defined, & §2 Nature and Characteristics of Easement, *Western Education Soc. v Huntington*, 15 Ohio N.P.(n.S.) 481, 28 Ohio Dec. 483, 1914 WL 1288 (Super. Ct.1914) See *Corrigan v Illum. Co.*, 175 Ohio App. 3d 360, 2008-Ohio-684, 887 N.E.2d 363 (8<sup>th</sup> Dist. Cuyahoga County 2008) appeal allowed, 118 Ohio St. 3d 1505, 2008-Ohio-3369, 889 N.E.2d 1024 (2008) and judgment rev'd on other grounds, 122 Ohio St. 3d 265, 2009-Ohio-2524, 910 N.E.2d 1009 (2009). **"...It is the grant of use on the land of another."** The statutes authorize Relators an ownership interest in the real property affected.

Easement allows impingement upon the adjacent landowner for Relators to exercise their right of the properties' proper use and enjoyment regarding its site grading and drainage. See *City of Norwood v Forest Converting Co.*, 16 Ohio App. 3d 411, 476 N.E.2d 695 (1<sup>st</sup> Dist. Hamilton County 1984).

The issue of strict liability has come to the Relators' attention, see OH Const., Art., 1 §1, and its pertinence to the code and ordinance – OAC & Cleveland Codified Ordinance 3125 (d)(1) & (2) (CCO) - that restrict the properties' use. In this case, the Respondent, to its own benefit, has extended the use by an interpretation dividing the subject parcel, and assigning interest and refusing the OAC/CCO uniformity. See *Fruit Farms v Village of Holgate*, 442 F. supp.2d 470 (N.D. Ohio 2006) (applying Ohio laws), ***“A person or entity cannot assign the interest in an easement appurtenant to another.”***

The parcels' dimension between the two homes is 17 feet from foundation to foundation, 5 feet to the Relators' portion of the parcel, and 12 feet to the neighboring plot. These dimensions will perfectly accommodate the mandatory OAC site grading recommendations.

Unfortunately, Respondent chooses an interpretation that is discounting law and defying natural laws of gravity that facilitate drainage, and is not protecting Relators' health, safety, and well-being. All of these are genuine issues of code, ordinance, and law relative to the Relators' cause. That, and with a careful review of the affected property, applicable code, ordinance, and law will show there is only one logical solution to this issue and prove beyond reasonable doubt: Relators have committed no crime.

Paramount to solving this problem is the recognition and application of OAC 4101:1-18 §1804.3 Site Grading and the strict liability that is attached. It is of first order

of building, construction, and engineering logic, and states ***“The ground immediately adjacent to the foundation shall be sloped away from the building...for a minimum distance of ten feet...”*** Also see OAC 4101:3-11-01 Storm drainage §1101.2 Where required. ***All roofs, paved areas, yards... shall drain...provided that the storm water flows away from the building.*** See photo, Front view 3806, 3802 Bosworth Rd.

The neighboring lot is obviously in conflict with the OAC. The entire parcel’s surface features by law must adhere to the OAC. The parcel, though divided by a property line, in use it inextricably combined for storm surface water drainage. The properties’ easement at the boundary line is the apex of this use and the swale is the apparatus facilitating the function.

The parcel’s original condition of a continuous grade sloping down from the Relators’ home foundation to the adjacent property was illegal. See OAC & CCO 3125 (d)(1) & (2), ***“Surface water shall not be drained onto adjacent properties...”*** This condition, causing flooding and water retention, was resulting in infiltration into the Relators’ foundation. This corrected by the swale through only half of the OAC equation; the still occurring flooding and retention is causing harm on the adjacent property and poses the threat of reoccurrence and serious harm to Relators’ home.

The Respondent and BBS Res. A-173-09 allow the Relators’ excavation and use of a swale; however, both omit the OAC/CCO application and its uniformity. This interpretation negates that the parcel inextricably physically conjoined together forever. Thus, the Constitutional rights of the properties’ use and its strict liability are voided, to the Relators’ detriment. The Respondent, by not referencing the OAC in any Court document or report of inspection or BBS review and resolution as the basis of measure in

an assessment of the subject parcel, is an absence of which is not, in truth, a “Trial had on all matters” or “Careful review”. See, Housing Court's Judgment Entry, # 2012 CRB 18789, & 8<sup>th</sup> District Court of Appeals, # 99688.

The oversight entities of the B&H, BBS, Housing Court, and 8<sup>th</sup> District Court of Appeals and each expert in their respective fields have failed to recognize facts that have had a significant negative impact on the Relators’ and the neighboring homeowner’s health, safety, and well-being. The B&H’s initial errors of assessment concerning the parcels’ uniform site grading and subsequent permitting of the fence atop the adjacent improper grade are errors belonging solely to the Respondent. See photo, Front view 3806, 3802 Bosworth Rd.

The Respondent, as the public servant, is charged with the responsibility of oversight, having the wherewithal and obligation to ascertain true facts and guard against the forbidden prior overall existing and current neighboring condition concerning its improper site grading. See *State v. Squires* (Ohio App. 2 Dist., 01-24-1996) 108 Ohio App.3d 716, 671 N.E.2d 627). In addition, the Respondent has failed to recognize the attached strict liability of code and ordinance designed to protect Relators from the serious harm of the current neighboring adverse improper site grading. See *State v. Chereaso* (Geauga 1988) 43 Ohio App.3d 221, 540 N.E.2d 326.

Again, Relators ask the Supreme Court to review the case and recognize that Respondent’s indifference to building codes is failing to provide the proper uniform site grading assessment. That in turn allows the adjacent improper site grading condition to persist and is obstructing Relators’ access to the easement in violation of OAC/CCO, Ohio Jur 3d, §1 “Easement” Defined, & §2 Nature and Characteristics of Easement.

Respondent's interpretations are in violation of the law and jeopardizing the Relators' health, safety, and well-being, and that of the neighboring home and occupants. 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.

Relators cannot emphasize strongly enough the physical facts concerning the parcel of property, and the importance of uniformity and the shared rights of ownership interest of easement between two owners.

Respondent's order and findings of returning the parcel to the original condition as a reasonable option for resolution is neither legal nor reasonable. See Judgment Entry, pg. 2. Findings #9 infers filling in the swale. The alternative, pg. 2, Charges, #3, 5, 6, & Findings, #6, 4, 12, suggesting a retaining wall be installed to preserve the adjacent improper grading and fence is both inconsistent with OAC and the easements' use.

These Charges and Findings are devised contrivances by the Respondent and are what Relators view as compensation for the initial B&H errors of the parcels' site grading assessment and the permitting of the adjoining fence atop the improper condition. None of the Charges or Findings resolves or facilitates the mandatory uniform positive drainage on the parcel or abides by the strict liability attached to the OAC/CCO.

Each of these Charges and Findings cause duress and by Respondent's coercion, Relators will be committing an illegality. Finding #9 "Filling in the swale" will eliminate positive drainage on the Relators' property, returning it to the original improper condition in violation of CCO. See CCO 3125.01 (d)(1) & (d)(2) which states, "***Surface water shall not be drained onto adjacent properties...***" and "***Whenever the surface of a lot or plot is excavated ....positive drainage shall be provided...***"

The suggested retaining wall in Charges, #3, 5, 6 Findings #6, 4, 12 although preserving the Relators' swale and positive drainage, maintains the current adjoining plot's improper site grading condition without good cause, violating CCO 3125.01 (d)(1) & (d)(2). Respondent is straddling the issue with an interpretation that is treating the mandatory uniform site grading as an optional appurtenance observed and enforced at whim, without regard of the past resulting effects and its serious harm caused, nor the consequences of the current neighboring improper site grading adverse effects.

All of which again, is in violation of OAC, CCO, Ohio Jur 3d, §1 "Easement" Defined, §2 Nature and Characteristics of Easement, and ORC 3767.13(C): "***By statute, no person may...unlawfully...obstruct or impede the passage of a...collection of water.***" A retaining wall creates a permanent obstruction and impediment to the collection and the passage function of OAC/CCO positive drainage and regulatory laws of easement.

With that, and with the Respondent allowing the Realtors' swale excavation, the following statute supports the claim that the Relators have committed no crime. Realtor Andersen's brief filed in the first action with Housing Court Case # 2012 CRB 18789, cites this statute. "***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). See Ohio Jur 3d Waters § 87.

The use of site grading is an age-old concept that today is a worldwide standard and practice developed into a scientific mathematical formula. See OAC.

Relators' property ownership comes with rights of its maintenance and repair to protect the structure and personal health, safety, and well-being of its inhabitants. Rights conferred in Relators' deed (entered in the first action with the Housing Court) state, ***“With all the privileges and appurtenances thereunto belonging; to have and to hold the same to said grantees, their heirs and assigns forever.”***

Contrary to Judgment Entry, pg. 3, Charge #3 Relators repair and property use do not require a permit to protect themselves and their structure, nor does it warrant citation of code violations. See CCO 3133 (a) “Minor Repairs” ***“...shall not require permit...provided no changes other than those specifically permitted are made...in the drainage...”*** These codes specifically permit, OAC/CCO, OAC 4101:8-1-01 §113.2 Maintenance, §1804.3, OAC §1101.1 Storm Drainage & Residential Code of Ohio 4101:8-1-01 §401.3 Drainage.

The Respondent's posture, which strips Relators' “Forever” rights and focuses only on the swale without OAC incorporated uniformity is one-sided and unfair. Ohio's Reasonable Use Rule specifically calls for a ruling that considers harm v. utility, allowing some harm for a reasoned use. See Ohio Jur 3d Waters §58 *McGlashan v. Spade Rockledge Terrace Condo Dev. Corp.*, 62 Ohio St.2d 55, 402 N.E.2d 1196 (1980). In this instance, the harm is unavoidable as the neighboring and Relators' lots are physically conjoined, and by law inextricably combined in site grading and drainage use. See OAC

Relators' property's site grading and drainage swale repair is beyond reasonable doubt, as recognized by Ohio law, see CCO/OAC, of strict liability, see OH Const., Art., 1 § 1, legally privileged, mandatory, and of a reasonable use to be uniformly applied. See Ohio Const., Art., 2 § 26. The OAC written to include uniformity - it is the key to continuity between the two lots, facilitating proper surface water drainage and its disposal.

To ignore these facts is to place both structures in harm's way from the recurring neighboring water retention.

Despite Relators many complaints, the Respondent erred in the initial uniform site grading assessment and chose to permit the neighboring fence construction atop the non-conforming site grading condition, thus maintaining a nuisance and unsafe and unsanitary condition that is obstructing the easement and Relators' right to its designated Reasonable Use and purpose of surface water drainage.

Respondent's complaint, posture, charges, and conviction are completely irrelevant to Relators' legal and reasonable property use. The conflict should be between the neighboring owner and Respondent, which allowed their negative grade to persist, and then permitted the fence atop their non-conforming site grading.

The Respondent is at odds with the laws of Ohio and itself and attempting to alter the law by dividing the parcel to assign interest to preserve the B&H's error of permitting the neighboring non-conforming site grading condition and fence atop said grade.

The Housing Court's Judgment Entry (pg. 2, "Findings") makes allowance for the swale, albeit with an inclusion of the unwarranted, interest-assigning retaining wall. The proposed wall serves only to support Respondent's posture that does not identify the current neighboring non-conforming site grading. If a wall is constructed, it will permanently obstruct the easement. See Ohio Jur 3d Easements §45 & §50.

Moreover, the Judgment Entry that only examines effect without cause is not a complete determination. The Respondent is thoughtlessly forcing the two opposing site grading conditions together that oppose the OAC without consideration of the lasting effects, and is creating more problems. The prescriptive solution of OAC is all that is

required; this engineering standard, ***“The ground immediately adjacent to the foundation shall be sloped away from the building...”*** could not be simpler and it is of strict liability, see Ohio Const., Art., 1 § 1, & Art., 2 § 26. It is the Relators’ opinion that Respondent chooses to manipulate the law, assign blame to the Realtors, and deny and disregard the OAC because it proves Relators’ argument.

Respondent chooses to ignore the dire consequences the neighboring non-conforming site grading condition creates. The negative grade retains and impedes surface waters that in turn cause a host of structural, health, safety, and well-being issues to the adjacent home, as well as the Relators’ home, and obstructs the easement use.

Additionally, Respondent’s misrepresentation of the drainage issue causes Relators the undue burden of defending themselves from the Respondent’s frivolous prosecution that is a veiled attempt to cover for the B&H’s erroneous uniform site grading assessment and subsequent error permitting the fence atop the neighboring non-conforming grading.

Relators call attention to a number of statutes, codes, ordinances Relators have cited from the beginning of all court proceedings that include the directives, ***“No person shall”, “shall be”, “shall be provided”, “A person or entity cannot”*** See Ohio Const. Art., 1 § 1. These directives connote a “strict liability” to avoid interpretations that misconstrue their regulatory purpose or use, of which the Respondent has done this case. These directives are for the protection of the health, safety and well-being of the community. See *State v. Shaffer* (Ohio App. 3 Dist., 09-16-1996) 114 Ohio App.3d 97, 682 N.E.2d 1040, also see, in re Jon J. (Ohio App. 6 Dist., 07-20-2001) 144 Ohio App. 3d 572 760 N.E. 2d 943, & *State v. Chereaso* (Geauga 1988) 43 Ohio App.3d 221, 540 N.E.2d 326.

The Respondent's interpretation of the facts, disregarding the uniformity of the entire parcels' conditions, ignores true cause and effect; narrows focus for the sole purpose of prosecution, and are false. Respondent's misrepresentation of CCO 3125 Chapter and its omission of the OAC cross reference and the relevant Residential Code of Ohio 4101:8-1-01 §401.3 Drainage, OAC 4101:3-11-01 Storm drainage §1101.1 Where required, has prejudiced Relators.

These codes, ordinances, and statutes which are adopted by the City of Cleveland's CCO, are of a "strict liability" (see Ohio Const. Art., 1 § 1) and are to be uniformly applied. (see Ohio Const. & Art., 2 §26) Unfortunately, the Respondent omits these, and without consideration of these safeguards and Constitutional issues, there is an incomplete determination.

### **Conclusion**

Ultimately, Relators are trying to prevent the miscarriage of justice and contend that the Respondent's interpretations are unlawful and violate Relators' Constitutional rights of property ownership and its use. Relators ask the honorable Ohio Supreme Court to dismiss case No. CRB 2012 CRB 18788 that the Respondent has been pursuing for nearly a decade and dismiss the second case, see Cleveland Municipal Court No. CRB 2012 CRB18789 assigned to Relator Andersen regarding maintenance issues.

Restoration of the Relators' home has been in progress since 2004. The decades-long neglect by the previous owner and the poor oversight by the City's Building and Housing Division since the structure's construction in 1928, (particularly its improper site grading), has caused a chain reaction of successive maintenance failures.

Maintenance issues have now become a rush job with Respondent's involvement. These will take a great deal longer to resolve than the time allotted. As noted in the Original Action and Complaint, Relators would also ask consideration of Relator McCarthy's major health issues between 2000 to 2011 which included a lengthy recovery period. See surgeons' memo, Dr. Jeremy Lipman.

Of note, the Relators' Craftsman style home is 87 years old and the adjacent Colonial is 105 years old. To assume that the Respondent's analyses are accurate and there is not a discrepancy in site grading – as the photo clearly disproves - is not affording Relators the benefit of doubt, in a city ranked as, "... **near the worst on the list of cities with unhealthy homes**", see Cleveland Plain Dealer 9-25-09 "Unhealthy Homes".

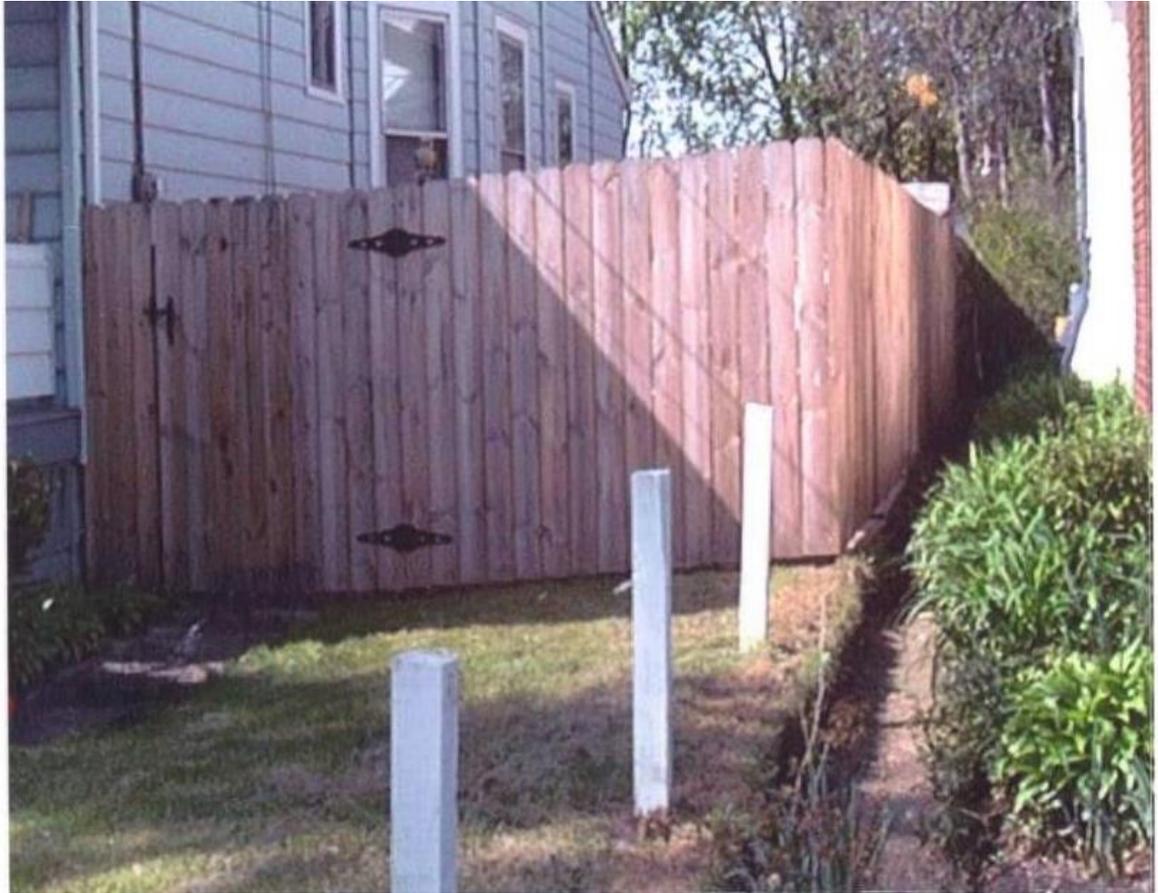
Relators respectfully request, and believe this cause deserves a thorough review that abides by the laws, codes, and ordinances that protect the health, safety and well-being of the community and preserve Relators' Constitutional rights as granted by the State of Ohio concerning their private property rights and use.

Respectfully submitted,

\_\_\_\_\_/s Barbara Andersen  
(Pro Se)

\_\_\_\_\_/s Michael McCarthy  
(Pro Se)

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



This is the front view of the 3806 lot, (left). On right is the 3802 swale excavation. Note the 3806's grade that slopes toward the structure in direct contradiction to the OAC 4101: 1804.3 Site Grading. The condition impedes drainage and in violation of statutes of easement, §1 Easement Defined, & §2 Nature and Characteristics of Easement (Ohio Jur 3d), and Ohio's Constitutional rights of Article, 1 §1, and Article, 2 § 26.



This is front view 3806(left) and 3802 (right) Bosworth Road... Note the swale excavation extends from the back yard to the front yard flush to the front walkway allowing surface water to travel down the properties line per the OAC 4101: 1804.3 Site Grading. The overall width of area foundation to foundation is 17 feet, 12 feet on 3806 and 5 feet on 3802.

If one could imagine, the 3806 grade, prior to the swale extended directly to the 3802 foundation in direct violation of See CCO 3125.01 (d)(1) & (d)(2) which states, ***“Surface water shall not be drained onto adjacent properties...”*** and ***“Whenever the surface of a lot or plot is excavated ....positive drainage shall be provided...”***

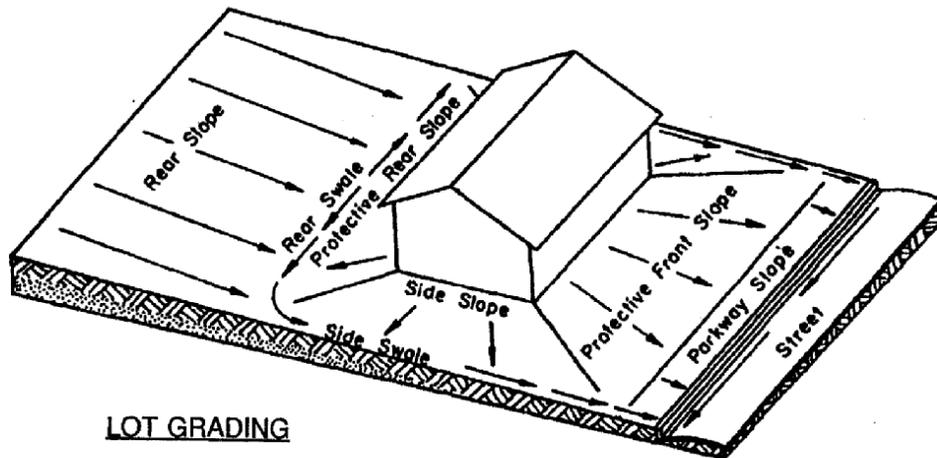


This is 3806 Bosworth Road... Foundation wall behind the stockade fencing, the spalling is result of the improper grade that slopes toward its structure trapping and retaining surface waters.



This is the back yard of 3806 Bosworth Road. Note the collapsed driveway apron due to the lack of any drainage receptacle, that has heaved, fractured and creates the pond that discharges into the homes foundation at the left of the photo.

**SURFACE:** Every dwelling should have a grading and landscaping plan that provides control of all surface water runoff on the lot. Additions to the landscape plan, maturity of shrubbery, soil erosion and similar changes tend to change drainage patterns and direction. This surface water is often directed against the foundation wall.



**LOT GRADING**

*Figure 1* above illustrates the most common drainage problem of a sloping lot. The uphill side of the house must have a drainage waterway (swale) to direct the water around the house. This drainage swale should be at least 10 feet from the house and sloped to convey accumulated water away from the dwelling efficiently, and into a proper outlet.

**SUBSURFACE:** Subsurface drainage systems are generally constructed of perforated, corrugated plastic tubing. Excess water is drained through pipelines which are placed underground. The pipelines drain the excess water from the lawn and/or foundations into outlet ditches or storm sewers.



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phone: 216-778-4852

01/13/2012

RE: Michael McCarthy  
Date of Birth: 7/26/1958

Michael McCarthy has ulcerative colitis and required an operation for treatment of this January 5, 2011 and April 5, 2011. Prior to his operations he was limited by his disease and a medication he was required to take which limited his ability to have sun exposure. His operations required significant recovery time and he continues to have somewhat decreased stamina.

If you have any questions, please feel free to contact me at the telephone number listed above.

Sincerely,

Jeremy M. Lipman, MD