

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

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John Thornborough, et al., :  
Appellants, : Case Nos. 2007 CV 01076  
v. :  
Council of the Village of Granville, Ohio, : Judge Spahr  
et al, :  
Appellees. :

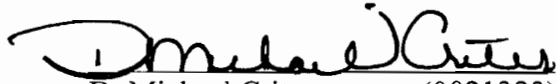
**MOTION OF APPELLEE VILLAGE OF GRANVILLE TO  
DISMISS THE COUNCIL OF THE VILLAGE AND THE VILLAGE  
PLANNING COMMISSION AS APPELLEES**

Now comes Appellee, Village of Granville, and moves this Court to dismiss the unnecessary and superfluous parties, the Council of the Village of Granville Ohio and the Planning Commission of the Village of Granville Ohio, as appellees in this appeal. As to the government entities, the correct and only appellee in this appeal is the Village of Granville.

A memorandum in support of this motion is attached hereto.

For the reasons set forth herein, Appellee Village of Granville respectfully requests this Court to dismiss the Village Council and the Village Planning Commission as appellees.

Respectfully submitted,



D. Michael Crites (0021333)  
Director of Law, Village of Granville Ohio  
James R. Gorry (0032461)  
Rich, Crites & Dittmer  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215  
Telephone: (614) 228-5822  
Facsimile: (614) 540-7468

Counsel for Appellee  
Granville Village Council

MEMORANDUM IN SUPPORT OF THIS MOTION

This is an administrative appeal from a zoning decision of the Council of the Village of Granville, Ohio, taken to this Court pursuant to R.C. 2506.01 et seq. This appeal concerns the issuance of an architectural review permit that approved the design of a proposed addition to be made by Denison University to Cleveland Hall located on the Denison campus. The application by Denison University for the permit was approved by the Village Planning Commission and subsequently by the Village Council on appeal. The appellants are neighbors and others who claim to be aggrieved by the decision of the Village Planning Commission and Village Council.

In their notice of appeal, Appellants joined the Village of Granville, itself, as an appellee. In addition to the Village, however, Appellants also joined as appellees the "Council of the Village of Granville Ohio" and the "Planning Commission of the Village of Granville Ohio."

The correct appellee in this case is the Village; and the Village Council and the Village Planning Commission are not proper appellees and should not be made parties to this appeal.

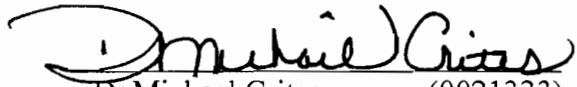
According to the Supreme Court, “[a] city council is not *sui juris* and therefore cannot sue or be sued in its own right, absent statutory authority.” *Cuyahoga Falls v. Robart* (1991), 58 Ohio St. 3d 1, 6, 567 N.E.2d 987, citing *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), 34 Ohio St. 2d 120, 122, 296 N.E.2d 544. See also *Council of Whitehall v. Rogers* (1980), 69 Ohio App. 2d 124, 432 N.E.2d 216. In *Mollette v. Portsmouth City Council*, 169 Ohio App. 3d 557; 2006 Ohio 6289; 863 N.E.2d 1092, the Fourth District Court of Appeals stated that “[i]nstead, ‘[a]n action involving the council should be brought against the city, or against the existing councilmen.’ *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), 34 Ohio St.2d 120, 122, 296 N.E.2d 544.” In *Terry v. Strongsville* (Aug. 3, 2000), 8th Dist. Nos. 76741, 77168, 2000 Ohio App. Lexis 3514, the Court held that a city council could not be named as an appellee in an appeal taken under R.C. 2506.01 because it was not a legal entity. In *Russell v. City of Dublin Planning & Zoning Commission*. 2007 Ohio 498; 2007 Ohio App. LEXIS 443, the Tenth District Court of Appeals stated the following:

Technically, when appealing a decision of the zoning commission, that commission is not a proper party-appellee. Instead, ‘either the municipality or [a representative of the commission] is a party adverse to the appellant and necessary to the appeal.’ *Gold Coast Realty, Inc. v. Bd. of Zoning App.* (1971), 26 Ohio St.2d 37, 268 N.E.2d 280, paragraph one of the syllabus. [P19]

Appellants sufficiently named the Village as an appellee in their notice of appeal. The other entities named in the notice of appeal, the Council and the Planning Commission, are not proper appellees.

For these reasons, this Court is respectfully requested to dismiss the Village Council and the Village Planning Commission as appellees herein.

Respectfully submitted,



D. Michael Crites (0021333)  
Director of Law, Village of Granville Ohio  
James R. Gorry (0032461)  
Rich, Crites & Dittmer  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215  
Telephone: (614) 228-5822  
Facsimile: (614) 540-7468

Attorneys for Appellee  
Village of Granville

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing brief was served on Geoffrey Judge, 964-A North 21st Street, Newark, Ohio, 43055, Dennis Cauchon, 327 East Broadway, Granville, Ohio, 43023, and James Jung, 221 West Broadway, Granville, Ohio, 43023, 43215, by regular U.S. Mail, postage prepaid, this 5 th day of September, 2007.



D. Michael Crites