

In the Court of Common Pleas, Licking County, Ohio

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John Thornborough et al.,

Appellants,

v.

Council of the Village of Granville, Ohio, et al.,

Appellees.

LICKING COUNTY
COMMON PLEAS COURT

CASE NO. 07 CV 1076 -3 A 8:45

FILED
GARY B. WALTERS

MEMORANDUM OF DECISION
JUDGMENT ENTRY

I. NATURE OF THE PROCEEDINGS

This matter came before the Court on a motion to dismiss appellees Council of the Village of Granville and the Planning Commission of the Village of Granville filed by appellee, Village of Granville. Appellants, John Thornborough, et al., filed a memorandum contra.

II. FACTS

Appellants are appealing a zoning decision of the Council of the Village of Granville, Ohio, pursuant to R.C. 2506.01. The Village Planning Commission granted a permit to Denison University for an addition to Cleveland Hall on the Denison campus. The Village Council approved the permit on appeal. Appellants are neighbors and others who claim to be aggrieved by the decision.

III. CONCLUSIONS OF LAW

In their memorandum, Appellee Village of Granville asserts that the correct appellee in this case is the Village of Granville, and the Village Council and Planning Commission are not proper appellees.

Judge
Jon R. Spahr
740-670-5770

Judge
Thomas M. Marcelain
740-670-5777

Courthouse
Newark, OH 43055

“Technically, when appealing a decision of the zoning commission, that commission is not a proper party-appellee.” *Russell v. City of Dublin Planning & Zoning Comm.* 2007 Ohio 498, ¶19 (10th Dist. Franklin County 2007). Similarly, the Eleventh District Court of Appeals stated that for a zoning appeal, “the proper party to name as the appellee would have been the zoning inspector or the township trustees.” *Freedom Twp. Bd. of Zoning App. v. Bd. of Mental Retardation* (1984), 16 Ohio App.3d 387, 389.

“Where an appeal is filed from a decision of a municipal commissioner of building to the municipality's board of zoning appeals, either the municipality or its commissioner of building 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, paragraph one of the syllabus. “Admittedly, the board does represent the interest that the public has in having appeals correctly heard and decided and in having proper authorizations on such appeals for variances from the terms of the zoning resolution. However, it does not follow that the board or any of its members as such may become partisans when one of its decisions is questioned on an appeal to a court.” *A. DiCillo & Sons, Inc. v. Chester Zoning Bd. of App.* (1952), 158 Ohio St. 302, 305. Further, “[a] city council is not *sui juris* and therefore cannot sue or be sued in its own right, absent statutory authority.” *City of Cuyahoga Falls v. Robart* (1991), 58 Ohio St.3d 1, 6. Thus, neither the Council nor the Planning Commission is a proper party. The Village is a proper appellee.


The Supreme Court has held that an appeal may not be dismissed for failure to notify the municipality or the building commissioner where the appellant incorrectly designated the board of zoning appeals as the appellee. This was sufficient to put the municipality and commissioner on notice of the appeal. See *Gold Coast Realty, Inc. v. Bd.*

of *Zoning App.* (1971), 26 Ohio St.2d 37. In this instance, appellants have properly named the Village as appellee and properly perfected their appeal. The appellants will not be prejudiced by dismissal of the Council and Commission as parties to the appeal.

IV. CONCLUSION

The Court GRANTS appellee's motion to dismiss the Village Council and Planning Commission as appellees.

It is so ORDERED.



Jon R. Spahr, Judge

Copies of the Memorandum of Decision and Judgment Entry were mailed by ordinary U.S. Mail to all persons listed below on the date of filing.

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