

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

LICKING COUNTY
COMMON PLEAS COURT

John Thornborough
13 Donald Ross Drive
Granville, OH 43023

2008 APR -9 P 3 41

and

Dennis Cauchon
327 E. Broadway
Granville, OH 43023

Case No. 2008 APY 1576
FILED
WALTERS
CLERK

and

James Jung
221 W. Broadway
Granville, OH 43023

CLERK OF COURT
OF APPEALS
LICKING COUNTY, OH
CARY R. WALTERS

2008 APR -9 PM 3:42

FILED

Appellees*

vs.

NOTICE OF APPEAL

Council of the Village of Granville, Ohio
141 E. Broadway
Granville, OH 43023

and

Planning Commission of the Village of
Granville, Ohio
141 E. Broadway
Granville, OH 43023

and

The Village of Granville, Ohio
141 E. Broadway
Granville, OH 43023

and

Denison University
Granville, OH 43023

Appellant**

* The parties designated as Appellees herein have heretofore been designated Appellants in proceedings before the Common Pleas Court.

** Denison University is designated as Appellant herein and has heretofore been designated Appellee in the Common Pleas Court.

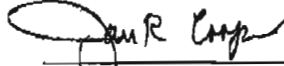
Apr. 9. 2008 4:15PM Morrow, Gordon & Byrd, Ltd.

No. 3119 P. 4/12

NOTICE OF APPEAL

Notice is hereby given that Denison University, a party herein, hereby appeals to the Court of Appeals of Licking County, Ohio, Fifth Appellate District, from the final judgment entered in this action on the 10th day of March, 2008.

Respectfully submitted,

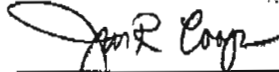


James R. Cooper (0023161)
Morrow, Gordon & Byrd, Ltd.
33 W. Main Street
P.O. Box 4190
Newark, OH 43058-4190
Telephone: (740) 345-9611
Facsimile: (740) 349-9816
Attorney for Denison University

PROOF OF SERVICE

A copy of the foregoing Notice of Appeal was served on Geoffrey Graham Judge, 984 North 21st Street, Suite A, Newark, Ohio 43055, Attorney for the now designated Appellees; and upon D. Michael Crites, Law Director, Village of Granville, and James R. Gorry, Assistant Law Director, RICH, CRITES, & DITTMER, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorneys for Council of the Village of Granville, Ohio, Planning Commission of the Village of Granville, Ohio, and The Village of Granville, Ohio, by ordinary U.S. mail, postage prepaid, this 9th day of April.

Respectfully submitted,



James R. Cooper (0023161)
MORROW, GORDON & BYRD, Ltd.
Attorney for Denison University

Apr. 9. 2008 4:15PM Morrow, Gordon & Byrd, Ltd.

No. 3119 P. 5/12

08 CA45

OHIO FIFTH DISTRICT COURT OF APPEALS
DOCKETING STATEMENT

LICKING COUNTY
COMMON PLEAS COURT

WARNING: A time-stamped copy of the judgment being appealed *must* be attached to this Statement.
WARNING: All requested information *must be provided*. Failure to file a fully completed docketing statement, typed or legibly printed, may result in this appeal being dismissed by the court, *sua sponte*.

John Thornborough, et al.

Appeal No.:

Trial Court No.:

Trial Court Judge:

2008 APR 09 P 3 41
FILED
GARY B. WALTERS
Judge

Plaintiff-Appellant Appellee (Circle One)

vs.

Council of the Village of Granville, Ohio et al.

Appellee's Counsel:

Phone No.:

Denison University

Defendant Appellant Appellee (Circle One)

Village of Granville's Counsel:

Phone No.:

Denison's Counsel: James R. Cooper 740-345-9611

Geoffrey G. Judge
740-345-1601
D. Michael Crites
614-228-5822

A. DATES: Of the judgment being appealed 3/10/08 Of the filing of the Notice of Appeal 4/9/08

B. PROBABLE ISSUES FOR REVIEW: (Including charges in criminal case)

(1) Whether the Common Pleas Court correctly applied the applicable standard of review set forth in R.C. 2305.04 in this administrative appeal from the decision of the Council of the Village of Granville, Ohio; (2) whether the Common Pleas Court correctly considered the findings and decision of the Village of Granville Planning Commission when the Council of the Village of Granville, conducted, in essence, a *de novo* hearing pursuant to ordinance.

C. THIS APPEAL SHOULD BE ASSIGNED TO: (Check One) (See Loc. App. R. 6(B) and App. R. 11.2)

- The regular calendar,
- The accelerated calendar, (See Loc. R. 6(B))
- The expedited calendar. (See Section F(3) on page two of this docketing statement and App. R. 11.2)

D. THE RECORD: This Docketing Statement will serve as a praecipe to the clerk to prepare and transmit the docket and journal entries.

Please indicate the Type of Record to be Filed: (Check One).

- Docket and Journal Entries Only, no transcript of proceedings.
- (Full or Partial Transcript has been prepared already. If partial, see App.R. 9(B).
- Statement of the record pursuant to App.R. 9(C).
- Agreed Statement of the Record pursuant to App.R. 9(D).
- Transcript of Proceedings. Less than or Greater than 100 pages.
 Full or Partial transcript has been ordered. If partial, see App.R. 9(B).

WARNING: If a transcript of proceedings is needed, a copy of the notice of appeal and an appropriate praecipe must be served by Appellant on the court reporter. A copy of the praecipe to the court reporter shall be filed with this Court showing service of the notice of appeal and praecipe upon the court reporter.

NAME OF COURT REPORTER, DATE SERVED _____

Please state with particularity which exhibits and/or evidence, other than paper exhibits or documentary evidence not of unusual bulk or weight, the parties request be transmitted as part of the record on appeal. (See APP.R. 10(B); Loc.App.R. 8(C)).

Docket, journal entries, and original papers; transcript of proceedings and exhibits in the Common Pleas Court's file and record. The transcript and record was made in administrative hearings which occurred at the Village of Granville and filed with the trial court.

2008 APR 09 PM 3:42
FILED
CLERK OF COURT
LICKING COUNTY, OH
GARY B. WALTERS

E. CRIMINAL CASE

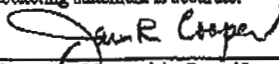
- 1. CHARGE: _____
- 2. DEGREE: () Misdemeanor () Felony
- 3. Is this an appeal of probation revocation? () Yes () No. If yes, what was the original charge and sentence? _____
- 4. Is this an appeal of Post-Conviction Relief? (R.C. 2953.21) () Yes () No. If yes, was a hearing held in the trial court? () Yes () No. What was the original charge and sentence? _____
- 5. Type of Appeal: (Check One)
 - () Appeal as of Right () State's Appeal as of Right (R.C. 2945.67(A))
 - () Appeal by Leave of Court (App.R. 5) () State's Appeal by Leave of Court
- 6. Is this an appeal for review of sentencing pursuant to R.C. 2953.08? () Yes () No.
- 7. Was counsel appointed for trial? () Yes () No.
- 8. Was counsel appointed for appeal? () Yes () No.
- 9. Was a stay of sentence requested in trial court? () Yes () No If yes, stay was: GRANTED DENIED PENDING

F. CIVIL CASE

- 1. ACTION BROUGHT IN LOWER COURT: The original Appellants (Appellees on appeal) appealed to the Court of Common Pleas of Licking County, Ohio, from administrative proceedings in the Village of Granville, Ohio.
- 2. Did this action originate in a Trial Court or in an Administrative Agency? Instate which.
 - () County Court () Municipal Court () Common Pleas Court () Administrative Agency
 - () Probate Court () Family Court () Juvenile Court () Other Village of Granville, Ohio
- 3. Must this case be expedited as being one of the following types: () Yes () No. If yes, check one of the following:
 - () Appeal under determination of local fiscal emergency brought by municipal corporation R.C. 118.04(C)
 - () Appeal brought by minor child under R.C. 2505.073
 - () Appeal involving matters of child custody, allocation of parental rights or responsibilities, or designation of a child's place of residence and legal custodian under R.C. 3109.04(H) and R.C. 3109.06.
 - () Appeal from orders granting or denying (1) termination of parental rights or (2) adoption of a minor child. (See App. R. 11.2 effective July 1, 2000) See Loc. R. 7
 - () Appeal from orders regarding dependent, abused, neglected, unruly, or delinquent children. (See App. R. 11.2 effective July 1, 2000) See Loc. R. 7
 - () Election contests as provided in R.C. 3515.08
- 4. Do you know of another case pending in this Court which raises the same issue(s)? () Yes () No. If yes, please cite case(s).
- 5. Have you determined in good faith that the judgment appealed from is a final appealable order? (R.C. 2505.02) () Yes () No.
- 6. Did the judgment dispose of all claims by and against all parties? () Yes () No.
- 7. If not, is there an express determination that there is "no just reason for delay"? (Civ.R. 54(B)) () Yes () No.
- 8. Was a stay of judgment requested in trial court? () Yes () No If yes, stay was: GRANTED DENIED PENDING Motion for partial modification, or, alternatively, motion for partial stay was filed in the Common Pleas Court on March 25, 2008.

CERTIFICATION

I certify that the information provided on this docketing statement is accurate.



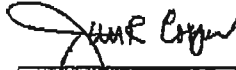
 Signature of Counsel (or Party if not represented by Counsel)
 & Supreme Court Reg. No. 0023161

Amended Effective January 1, 2008

CERTIFICATE OF SERVICE

A copy of the foregoing Docketing Statement was served on Geoffrey Graham Judge, 964 North 21st Street, Suite A, Newark, Ohio 43055, Attorney for the now designated Appellees; and upon D. Michael Crites, Law Director, Village of Granville, and James R. Gorry, Assistant Law Director, RICH, CRITES, & DITTMER, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorneys for Council of the Village of Granville, Ohio, Planning Commission of the Village of Granville, Ohio, and The Village of Granville, Ohio, by ordinary U.S. mail, postage prepaid, this 9th day of April.

Respectfully submitted,



James R. Cooper (0023161)
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Telephone: (740) 345-9611
Facsimile: (740) 349-9816
Attorney for Denison University

IV. CONCLUSIONS OF LAW

Appallants submit three assignments of error:

- I. THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT THE PROPOSED ARCHITECTURAL DESIGN FOR THE CLEVELAND HALL ADDITIONS MET THE REQUIREMENTS OF ALL FOUR STANDARDS WHICH WERE TO BE APPLIED AS SET FORTH IN SECTION 1161.02 OF SAID CODE.
- II. THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT THE PROPOSED ARCHITECTURAL DESIGN FOR THE CLEVELAND HALL ADDITIONS MET THE REQUIREMENTS OF THE LIST OF ARCHITECTURAL STYLES SET FORTH IN SECTION 1161.05, SINCE THIS LIST OF ARCHITECTURAL STYLES IS EXCLUSIVE (EXHAUSTIVE) AND THE PROPOSED CLEVELAND HALL ADDITIONS ARE OF A STYLE NOT INCLUDED.
- III. EVEN IF THE COURT SHOULD FIND APPELLANTS' ASSIGNMENT OF ERROR NO. 2 UNPERSUASIVE, THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT SAID PROPOSED ARCHITECTURAL DESIGN WAS CONSISTENT WITH EXISTING ARCHITECTURE ACCORDING TO THE REQUIREMENTS OF SECTION 1161.05 WHICH CONTAINS A LIST OF 18 ARCHITECTURAL STYLES THAT "ARE CONSIDERED CONSISTENT WITH EXISTING ARCHITECTURE IN THE VILLAGE...."

Assignment of Error I

Appellants contend that the Planning Commission and Council erred in finding that Denison's proposed architectural plans met the requirements of Village Code Section 1161.02. Granville Village Code Section 1161.02 states:

The purpose of the Architectural Review Overlay District is to preserve and encourage good architectural styles within the Village, reflecting the distinct phases of the Village's history. Therefore, in addition to the other requirements of this Zoning Ordinance, all applications for Zoning and Architectural Permits in the Architectural Review Overlay District which propose new construction, exterior modification and/or structural alteration shall be subject to review by the Planning Commission to determine that the proposed new construction, exterior modification or structural alteration:

- (a) Is stylistically compatible with other new, renovated and old structures in the Village District.
- (b) Contributes to the improvement and upgrading of the historical character of the Village District.
- (c) Contributes to the continuing vitality of the District.
- (d) Protects and enhances examples of the physical surroundings in which past generations lived.

The Commission and Council determined that Denison's design met all four requirements. As to subsection (a), the Commission stated in its findings that "[t]he addition is not similar to other structures to the Village District but protects their historic design by not matching other structures." The Village Council affirmed the Commission's findings, but stated, "[t]he proposed architectural design of the addition to Cleveland Hall is stylistically compatible with some other institutional buildings in the Village Institutional District."

Section 1161.05 of the code requires the commission to determine "whether the proposed architecture follows or exemplifies any one or a combination of" eighteen listed architectural styles. The Commission failed to include a determination under this section in its findings. The Council stated, "the proposed contemporary architectural design does not fall within one of the specific architectural styles identified in Section 1161.05," but added that a design may be approved if it did not fall under one of the listed styles as long as the design met the requirements of Section 1161.02.

Section 1159.01 expresses the purpose and intent of regulating the Village District. It states:

The goal of regulation in the Village District is to insure that any land use changes which occur within the District are harmonious and compatible with the appearance and the character of adjacent land uses and that such changes enhance the Village District.

... The preservation of existing structures which have historical and architectural significance as well as the integration of new and renovated structures with the character and appearance of existing structures in the Village District is emphasized.

The requirements of Section 1161.02 are clearly intended to carry out this purpose.

The Commission's finding that "[t]he addition is not similar to other structures to the Village District but protects their historic design by not matching other structures," is remarkably candid. This Court finds it difficult to construe this statement as a finding that the proposed design is stylistically compatible with the Village District. Further, the second half of the sentence addresses not the requirement of subsection (a), but the

requirements of subsections (b) and (d). The Council added the conclusory statement that the design "is stylistically compatible with some other institutional buildings in the Village Institutional District." This statement seems to contradict the finding of the Commission that the design was not similar to other structures.

The findings of the Commission and Council as to Section 1161.02(a) are not supported by a preponderance of the evidence in the record. While this Court does not reach the issue of whether the styles listed in 1161.05 are exhaustive, the Council admits the proposed design does not fall into one of the listed styles. Thus, there must be some other evidence to support the finding that the design was nonetheless stylistically compatible with other structures in the Village District. The record, however, is filled with evidence to the contrary. The proposed design is repeatedly referred to as "starkly modern" or in stark contrast to other structures and architectural styles in the District, and the Commission admitted it was "not similar."

Section 1159.01 states that land use changes should be "harmonious and compatible with adjacent land uses" and that "integration of new and renovated structures with the character and appearance of existing structures in the Village District is emphasized." ~~Read in light of Section 1159.01 and the intent of Section 1161.02 "to~~ preserve and encourage good architectural styles within the Village, reflecting the distinct phases of the Village's history," the finding of the Commission would render the requirement of Section 1161.02(a) meaningless. The Council's conclusory statement that the design is stylistically compatible with some other structures is similarly arbitrary and is unsupported by the record.

The Court finds appellants' first assignment of error to be well taken.

Assignments of Error II and III


Since appellants' first assignment of error is sustained, the Court need not address the second and third assignments.

V. CONCLUSION

For the reasons set forth above, appellants' first assignment of error is **SUSTAINED**, and the decision of the Council of the Village of Granville is **REVERSED**.

Costs to appellees.

It is so **ORDERED**. There is no just cause for delay. This is a final appealable order.



Jon R. Spahr, Judge

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

Geoffrey Graham Judge, Esq., Attorney for Appellants
964-A North 21st Street, Newark, OH 43055

D. Michael Crites, Esq., and James R. Gorry, Esq., Attorneys for Appellee
Village of Granville
300 East Broad Street, Suite 300, Columbus, OH 43215

James R. Cooper, Esq., Attorney for Appellee Denison University
33 West Main Street, P.O. Box 4190, Newark, OH 43058-4190