

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

FILED
2015 DEC 22 AM 11:31
DARRYL A. COFFEEY
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

**STATE EX REL. JAMES K. PURTELL, :
ET AL., :**

Relators, :

vs. :

CITY OF LOVELAND, ET AL., :

Defendant-Respondent :

CASE NO. 2015 CVH 00490

Judge McBride

DECISION/ENTRY

Statman, Harris & Eyrich, LLC, William B. Fecher, counsel for the relators, 441 Vine Street, 3700 Carew Tower, Cincinnati, Ohio 45202;

Strauss Troy, Joseph J. Braun, Franklin A. Klaine, Jr., and Emily Supinger, counsel for the defendant-respondent City of Loveland, 150 East Fourth Street, Cincinnati, Ohio 45202;

Aronoff Rosen & Hunt, Kevin L. Swick, counsel for the defendant DZ Investments LLC, 425 Walnut Street, Cincinnati, Ohio 45202.

This cause is before the court for consideration of a motion to dismiss filed by the defendant-respondent City of Loveland. The court held a hearing on the motion on July 10, 2015. At the conclusion of the hearing the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the written arguments of counsel, and the applicable law, the court renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The relators James Purtell and Lori Purtell brought suit in the name of the state against the defendants City of Loveland (hereinafter referred to as "City") and DZ Investment Company, LLC (hereinafter referred to as "DZ"). The relators reside on property that directly abuts the eastern side of property that DZ develops. The property that DZ develops is commonly known as White Pillars.

On December 7, 2002, the City adopted Resolution 2002-74, which approved in concept the establishment of a special planning district for White Pillars. Resolution 2002-74 set forth guidelines, a concept plan, and a description of permitted uses for the development of White Pillars.

On May 13, 2003 the City approved Ordinance 2003-11, which established a special planning district for White Pillars and adopted the plan originally set forth in Resolution 2002-74. In pertinent part, both Resolution 2002-74 and Ordinance 2003-11 provide:

"(G) Landscaping and buffers * * *

2. A year round visual screen shall be provided around the west, south, and east boundaries of the property.

Specifically, a buffer of forty (40) feet shall be provided along the eastern property line between Route 48 and the existing water tower. No structures may be located within this buffer other than fences or walls that are part of the approved design of the buffer. The buffer shall provide a continuous screening, either through the utilization of existing vegetation, or through the creation of earthen berms, or a combination of both. A continuous forty (40) foot wide, six (6) foot high earthen berm (or a series of staggered berms of the same dimensions that provide a solid visual screen) shall be provided within the buffer unless screening is provided by

existing natural vegetation. A double row of staggered trees from Plant List C in the landscaping and buffer sections of the Loveland Zoning Code shall be planted at 15 feet on center in the buffer area, unless otherwise approved by the City of Loveland. * * *

Where special circumstances exist, such as existing vegetation or unusual topography, modifications to these requirements can be approved, provided that it is demonstrated that an equal or greater level of visual buffering can be achieved. * * *

The City has approved building permits and construction along the eastern buffer zone.

The City has not required DZ to install an earthen berm or trees.

Plaintiffs filed their first amended complaint on May 7, 2015. On May 29, the City filed a motion to dismiss. The City's motion highlighted that the relators had not attached the correct resolution to their amended complaint. The relators had attached Resolution 2002-74 instead of Ordinance 2003-11.

The relators then filed a motion to amend their complaint to include causes of action for injunctions and to attach Ordinance 2003-11. The court heard oral argument on both motions on July 10, 2015. On November 4, 2015 the court granted the relators' request to amend their complaint. Accordingly, the relators filed a second amended complaint on November 18, 2015.

STANDARD OF REVIEW

The City's motion to dismiss is made pursuant to Civ.R. 12(B)(6), which provides that a party may move to dismiss an action on the basis of failure to state a claim upon which relief can be granted.

"A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint."¹ "Thus, the movant may not rely on allegations or evidence outside the complaint; such matters must be excluded * * *."² "The factual allegations of the complaint and items properly incorporated therein must be accepted as true. Furthermore, the plaintiff must be afforded all reasonable inferences possibly derived therefrom."³ "It must appear beyond doubt that the plaintiff can prove no set of facts entitling him to relief."⁴

LEGAL ANALYSIS

(A) WRIT OF MANDAMUS

R.C. 2731.01 provides that "a mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station."⁵ A writ of mandamus is considered an action at law, as opposed to an injunction, which is an action in equity.⁶

¹ *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117, 537 N.E.2d 1292 (1989).

² *Id.*, citing Civ.R. 12(B).

³ *Id.* at ¶ 12, quoting *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753, 756 (1988).

⁴ *Id.*, citing *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 280, 649 N.E.2d 182 (1995).

⁵ R.C. 2731.01.

⁶ *State ex rel. Trusz v. Village of Middleburg Heights*, 112 Ohio App. 87, 92, 163 N.E.2d 778, 82 Ohio Law Abs. 481, 16 O.O.2d 24 (8th Dist. 1960).

The Constitution confers jurisdiction on the court to issue a writ of mandamus.⁷ The Ohio Supreme Court has articulated three requirements for a writ to issue: "(1) a clear legal right to the relief prayed for; (2) respondents are under a clear duty to perform the acts; and (3) relator has no plain and adequate remedy in the ordinary course of the law."⁸

The issuance of a writ of mandamus has been characterized as "extraordinary in nature since it can only be maintained when there is no other adequate remedy to enforce clear legal rights."⁹ Courts will not issue a writ of mandamus "to compel the doing of a vain act."¹⁰

With respect to the first element, a clear legal right is a right that "the relator is entitled to as a matter of law."¹¹ The relators argue that the substance of Ordinance 2011-03(G) creates a duty for the City to enforce the ordinance and a right for the relators to have it enforced. Per the relators, the ordinance mandates a "'a year round visual screen * * * around the west, south, and east boundaries' consisting of a[n] * * * earthen berm' and a 'double row of staggered trees * * *' to be installed in the buffer zone."¹²

⁷ Id. at 97, citing *State ex rel. Moyer v. Baldwin*, 77 Ohio St. 532, 83 N.E. 907, 19 L.R.A.N.S. 49 (1908).

⁸ *State ex rel. Nat. Broadcasting Co., Inc. v. City of Cleveland*, 38 Ohio St.3d 79 (1988), citing *State ex rel. Berger, v. McMonagle*, 6 Ohio St.3d 28, 29, 6 OBR 50, 451 N.E.2d 225 (1983). See R.C. 2731.05 ("The writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law."); *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 578, 2001-Ohio-1613, 757 N.E.2d 357.

⁹ *State ex rel. McKinney v. McKay*, 11th Dist. Trumbull No. 2011-T-0039, 2011-Ohio-3756, ¶ 16; See *State ex rel. American Outdoor Advertising Company, LLC, v. Abell*, 11th Dist. Portage No. 2008-P-0073, 2010-Ohio-319, ¶ 19 (holding same).

¹⁰ *Village of Middleburg Heights*, 112 Ohio App. at 94.

¹¹ Id. at 99.

¹² Relators' Resp. at pg. 2, quoting Ordinance 2011-03(G).

The City, specifically the Zoning Administrator, has a duty to enforce the ordinance in accordance with Zoning Code 1109.02:

"[T]he Zoning Administrator shall have the following responsibilities and powers:

(a) Enforce the provisions of this Zoning Code and interpret the meaning and application of its provisions. * * *

(e) Make determinations as to whether violations of this Zoning Code exist, determine the nature and extent thereof, and notify the owner in writing, specifying the exact nature of the violation and the manner in which it shall be corrected by the owner, pursuant to the procedures in this Zoning Code. *
* *

(h) Determine the existence of any violations of this Zoning Code and enforce this Zoning Code."

Moreover, Zoning Code 1111.01 provides: "It shall be the duty of the Zoning Administrator to administer and enforce this Zoning Code in accordance with the provisions of this Zoning Code."

Both Resolution 2002-74 and Ordinance 2011-03 are recorded in the Table of Special Ordinances in the Codified Ordinances of the City of Loveland. They are specifically located in the sections for Zoning Plans and Procedures and Zoning Map Changes, respectively. As such, the ordinance falls within the purview of Zoning Code provisions that the City, specifically the Zoning Administrator, has a duty to enforce.

While the City has a duty to enforce Ordinance 2011-03, a plain reading of Section (G) conveys that the City has discretion to determine what DZ must do to the buffer zone of White Pillars that abuts the relators' property. In answer to the relators' argument, the City highlights the following language:

"* * *the buffer shall provide a continuous screening, *either through the utilization of existing vegetation, or through*

the creation of earthen berms, or a combination of both. A continuous forty (40) foot wide, six (6) foot high earthen berm (or a series of staggered berms of the same dimensions that provide a solid visual screen) shall be provided within the buffer ***unless screening is provided by existing natural vegetation.*** A double row of staggered trees from Plant List C in the landscaping and buffer sections of the Loveland Zoning Code shall be planted at 15 feet on center in the buffer area, ***unless otherwise approved by the City of Loveland.***¹³ (Emphasis added.)

Furthermore, Ordinance 2011-03(G) specifies that “[w]here special circumstances exist, such as existing vegetation or unusual topography, modifications to these requirements can be approved, provided that it is demonstrated that an equal or greater level of visual buffering can be achieved.”

Thus, the City has discretion in determining what type of screening DZ must provide and particular in determining whether it is some combination of existing vegetation and earthen berms or whether trees must be planted. Moreover, the City may approve modifications to the buffer zone requirements.

Due to this discretion, the relators do not have a clear legal right to have a buffer zone of earthen berm and trees, nor is the City under the clear duty to require such a buffer.¹⁴ Hence, the relators cannot satisfy the first two requirements for a writ of mandamus.

Even assuming arguendo that the relator could satisfy the first two elements, it still fails the third, which requires that the relator have no plain and adequate remedy in the ordinary course of the law.¹⁵ A “trial court exceeds its jurisdiction when it allows a

¹³ (Emphasis original to the City.) City Reply at pg. 3, quoting Ordinance 2011-03(G).

¹⁴ See *McMonagle*, 6 Ohio St.3d at 29.

¹⁵ See R.C. 2731.05.

writ of mandamus to issue if the relator had available a plain and adequate remedy in the ordinary course of the law, including an appeal pursuant to a local zoning code."¹⁶

A "plain and adequate remedy" has been interpreted to include administrative appeals, and thus a relator's failure to exhaust remedies "provided by an ordinance or statute usually precludes the issuance of a writ of mandamus."¹⁷ Administrative remedies must be sought first even in instances where obtaining the administrative remedy would "encompass more delay and inconvenience than seeking a writ in the first instance."¹⁸ "It has been said many times that mandamus cannot be used as a substitute for an appeal."¹⁹

The fact that an alternative remedy may no longer be available due to the relator's failure to timely pursue the remedy does not render the remedy inadequate.²⁰ A relator's "failure to exhaust remedies" is only a defense when the available remedy was "an effective remedy to afford the relief sought."²¹ When the "pursuit of an administrative remedy" would amount to "a vain act," such administrative remedy is ineffective.²²

For instance, in *Meier v. City of Avon Lake Zoning Bd. Of Appeals, Planning Commission*, 9th Dist. Lorain No. 4044, 1986 WL 11919, (Oct. 22, 1986), the petitioners sought a writ of mandamus to order the Planning Commission to issue them a permit to

¹⁶ *State ex rel., 506 Phelps Holdings, L.L.C. v. Cincinnati Union Bethel et al.*, 986 N.E.2d 1037, 2013-Ohio-388, ¶ 31 (1st Dist.).

¹⁷ *Meier v. City of Avon Lake Zoning Bd. Of Appeals, Planning Commission*, 9th Dist. Lorain No. 4044, 1986 WL 11919, *2 (October 22, 1986), citing *State ex rel. Ronald, Inc. v. Willoughby*, 170 Ohio St. 39 (1959).

¹⁸ *Meier* at *2, citing *State, ex rel. Willis, v. Sheboy*, 6 Ohio St.3d 167 (1983).

¹⁹ *Village of Middleburg Heights*, 112 Ohio App. at 91.

²⁰ *Twinsburg*, , 93 Ohio St.3d at 579.

²¹ *Phelps Holdings* at 986 N.E.2d at ¶ 32, citing *State ex rel. Cotterman v. St. Mary's Foundry*, 46 Ohio St.3d 42, 44, 554 N.E.2d 887 (1989).

²² *Meier*, 1986 WL 11919 at *3.

build. When the Planning Commission denied the permit, the petitioners appealed to the Board of Zoning Appeals, which rejected considering the appeal.²³ Thus, both recourse options of (1) following the administrative appellate procedure provided by ordinance, or (2) filing an appeal under the Revised Code were remedies that were “foreclosed to petitioners” because the Board of Zoning Appeals refused to entertain the appeal.²⁴ As such, the petitioners did not have a plain and adequate remedy at law, and the court issued a writ of mandamus.²⁵

The case of *State ex rel., King v. Campbell*, 7th Dist. Mahoning No. 80 C.A. 112, 1981 WL 4834 (Feb. 13, 1981) illustrates a similar situation to the one presented in the case at bar. The neighbor of the petitioner-relator had been violating an ordinance that prohibited parking within a setback line.²⁶ The petitioner wanted the ordinance enforced because the neighbor had removed the petitioner’s fence in order to park in the prohibited area.²⁷ The petitioner sought a writ of mandamus to compel the city of Youngstown, among other parties, to enforce the ordinance.²⁸

A zoning ordinance stipulated that the building inspector was to enforce the ordinance.²⁹ The petitioner contended that the failure of the city to enforce the ordinance left him without any legal remedy, thus necessitating a writ of mandamus.³⁰ The court explained that it could only issue such a writ in extraordinary circumstances,

²³ Id.

²⁴ Id.

²⁵ Id. at *3-4. See *State ex rel. Cubbon v. Winterfeld*, 104 Ohio App. 260, 148 N.E.2d 523, 4 O.O.2d 407 (1957) (finding an administrative appeal to be an inadequate remedy where the Board of Zoning Appeals refused to hear the case).

²⁶ *State ex rel., King v. Campbell*, 7th Dist. Mahoning No. 80 C.A. 112, 1981 WL 4834, *1 (Feb. 13, 1981).

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

namely when the "party seeking issuance has no other adequate means to attain the relief he desires."³¹

The court declined to issue the writ because the petitioner had failed to exhaust all remedies available to him.³² The zoning ordinance provided that a neighboring property owner, such as the petitioner, could bring a suit for an injunction to terminate the violation.³³ Furthermore, the court found that it did not have original jurisdiction to issue such an injunction.³⁴ As such, the court affirmed the dismissal of the petitioner's complaint.³⁵

Similarly to the petitioner in *State ex rel., King v. Campbell*, the relators have failed to exhaust all plain and adequate remedies in the ordinary course of the law. The purpose of the Zoning Code is to set forth "the powers and duties of the Planning and Zoning Commission, the Board of Zoning Appeals, the City Council and the Zoning Administrator with respect to the provisions of this Zoning Code."³⁶ In the chapter entitled "Enforcement," the Zoning Code further states: "It is the intent of this Zoning Code that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Zoning Appeals shall be to the courts as provided by law."³⁷

³¹ *Id.*, citing *Kerr v. United States District Court*, 426 U.S. 394, 403, 96 S.Ct. 2119 (1976).

³² *Campbell*, 1981 WL 4834 at *1.

³³ *Id.*

³⁴ *Id.*, citing Ohio Constitution, Article IV, Section 3.

³⁵ *Campbell* at * 2.

³⁶ Zoning Code 1109.01.

³⁷ Zoning Code 111.11.

The relators' second amended complaint is devoid of any allegations that the relators have previously raised their enforcement issue with Ordinance 2003-11 to the Zoning Administrator. The complaint also does not allege that the relators' appealed a negative decision from the Zoning Administrator to the Board of Zoning Appeals.

Moreover, the relators have not alleged that such administrative procedure would have been in vain, which would be the case if the Zoning Administrator refused to issue a decision or the Board of Zoning Appeals refused to hear the case.³⁸ The relators have failed to exhaust their remedies before asking this court to issue the extraordinary remedy of a writ of mandamus. As discussed, the relators also cannot demonstrate that the City had a clear duty to enforce the precise provision they take issue with in Ordinance 2003-11. For these reasons, the court dismisses the relators' claim for a writ of mandamus against the City.

(B) MONEY DAMAGES

The relators have also requested monetary relief under Zoning Code 113.01. Significantly, Zoning Code 113.01 does not provide for money damages. Rather, it allows "appropriate action or proceedings to prevent such unlawful" actions that contravene the Zoning Code.³⁹ Notably, the portion of the Zoning Code that enumerates remedies, which the relators do not cite, does not provide a basis for an

³⁸ See *Meier*, 1986 WL at *1.

³⁹ Zoning Code 113.01.

award of money damages.⁴⁰ The relators do not allege another cause of action that would give rise to money damages.

Even if they had a legitimate basis for relief, the City has sovereign immunity. The Supreme Court has described the statutory sovereign immunity analysis as having three tiers: (1) whether the City is a political subdivision performing a governmental function, (2) whether any of the five exceptions to sovereign immunity apply, and (3) if an exception does apply, whether any of the defenses apply to reinstate the sovereign immunity.⁴¹

Under R.C. 2744, “* * * a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function”⁴² A political subdivision is defined to specifically include a municipal corporation, such as the City.⁴³

A governmental function includes the “enforcement or nonperformance of any law,” and “[t]he provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures * * *”⁴⁴

⁴⁰ Zoning Code 113.03.

⁴¹ *Rankin v. Cuyahoga Cty. Dept. of Children and Family Servs.*, 118 Ohio St.3d 392, 2008-Ohio-2567, 889 N.E.2d 521, ¶¶ 8, 17, 27.

⁴² R.C. 2744.02(A)(1).

⁴³ R.C. 2744.02(F).

⁴⁴ R.C. 2744.02(C)(2)(i) and (p).

There are limited exceptions to sovereign immunity, and the relators have not argued that any exception applies here.⁴⁵ Rather than argue that a statutorily created exception applies, the relators contend: "There is nothing in the Ordinance which excepts claims against the City as beyond its coverage."⁴⁶ As this reason is not one of the listed exceptions in R.C. 2744.02(B), the City continues to enjoy the protection from money damages that sovereign immunity confers. Thus, the court dismisses the relators' claim for money damages against the City.

(C) INJUNCTIVE RELIEF

The relator also asks for injunctive relief from the City under R.C. 713.13 and Zoning Code 113.03.

R.C. 713.13 provides:

"No person shall * * * use any land in violation of any zoning ordinance or regulation * * * In the event of any such violation, or imminent threat thereof, the municipal corporation, or the owner of any contiguous or neighboring property who would be especially damaged by such violation, in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation."

Typically, an injunction will not lie where there is an adequate remedy at law, but R.C. 713.3 is an exception.⁴⁷ R.C. 713.13 is a "special" statute and thus "the availability of other legal remedies does not preclude the [movant's] prayer for an injunction pursuant to R.C. 713.13 to restrain the [opposing party's] zoning code violations."⁴⁸

⁴⁵ R.C. 2744.02(B).

⁴⁶ Relators' Brief at pg. 4.

⁴⁷ *Camp Washington Community Bd., Inc. v. Rece*, 104 Ohio.3d 750, 753, 663 N.E.2d 373 (1st Dist. 1995).

⁴⁸ *Id.*

In granting injunctions under R.C. 713.13, courts must "act in a careful and conservative manner and grant the relief only in situations which so clearly call for it as to make its refusal work a real and serious hardship and injustice."⁴⁹ Moreover, an injunction is not proper when the movant suffers no appreciable damage, where the injunction would require a mandatory and expensive act, or where enforcement requires continuous, close supervision by the court.⁵⁰

In the case at bar, injunctive relief under R.C. 713.13 is not available to the relator against the City. The statute explicitly mandates that "[N]o person shall" use land in violation of a zoning ordinance.⁵¹ A "person," as defined in R.C. 701.1, does not include municipal corporations like the City.⁵² After enumerating the violations of zoning ordinances that no "person" shall engage in, the statute enables either the municipal corporation or any owner of neighboring property to file suit for an injunction to "terminate such violation."

When read together, it is clear that a municipal corporation may file suit to enjoin a person violating a zoning ordinance.⁵³ Neither the definition of "person" employed in Title VII, nor the contextualized reading of R.C. 713.13, support a reading that permits

⁴⁹ Id.

⁵⁰ Id.

⁵¹ (Emphasis added.) R.C. 713.13.

⁵² Under Title VII of the Ohio Revised Code, which deals with municipal corporations, a "Person" includes a private corporation." R.C. 701.01. Moreover, the definition of "person" for the Ohio Revised Code generally does not include a municipality in its definition: "'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 15.9(C).

⁵³ In full, R.C. 713.13 reads: "No person shall erect, construct, alter, repair, or maintain any building or structure or use any land in violation of any zoning ordinance or regulation enacted pursuant to sections 713.06 to 713.12, inclusive, of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution. In the event of any such violation, or imminent threat thereof, the municipal corporation, or the owner of any contiguous or neighboring property who would be especially damaged by such violation, in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation."

the relator to file a suit to enjoin the City. As the City highlighted in oral argument, R.C. 713.13 is allowing neighboring property owners to step into the shoes of the City.

A review of the Zoning Code that the relator cites as an alternative source for injunction leads to the same conclusion. Zoning Code 113.03 provides the remedies available for Zoning Code violations. As with the Ohio Revised Code, the Zoning Code provides that "(1) No person shall fail or refuse to comply with an order by the Zoning Administrator * * * (2) No person shall * * * use or occupy any structure or property in violation of the Zoning Code."⁵⁴

The Zoning Code permits the City and certain officers of the City to file suit for an injunction on its behalf.⁵⁵ Further, a person "who has suffered harm as a result of the violations" may also seek an injunction.⁵⁶ The Zoning Code defines "person" to include "an individual, corporation, business trust, estate, trust, partnership and association."⁵⁷ Similar to the Ohio Revised Code, the Zoning Code enables municipal corporations and injured individuals to "file suit for injunction or damages" against the "person" who is in violation. A clear reading of the Zoning Code does not evidence an intention for individuals to file for an injunction against the City.⁵⁸ For the forgoing reasons, the court dismisses the relators' claim for injunctive relief against the City.

⁵⁴ (Emphasis added.) Zoning Code 1113.03(a).

⁵⁵ Zoning Code 113.03(c).

⁵⁶ Id.

⁵⁷ Zoning Code 101.02(k).

⁵⁸ Zoning Code 113.03 provides: "(a) Prohibitions. (1) No person shall fail or refuse to comply with an order issued by the Zoning Administrator. A separate offense shall be deemed committed each day upon which a violation occurs or continues. (2) No person shall construct, modify, alter, use or occupy any structure or property in violation of the Zoning Code. A separate offense shall be deemed committed each day upon which a violation occurs or continues. * * * (c) Civil Remedies. The City, the City Manager on behalf of the City or any officer designated by the City Manager on behalf of the City may, in addition to the criminal remedies provided in this Zoning Code, file suit for injunction against any violation of this Zoning Code, or if the violation has caused damages to the City for a judgment for damages and any


CONCLUSION

For the foregoing reasons, pursuant to Civ.R. 12(B)(6) the City's motion to dismiss the relators' complaint against it is well-taken and granted.

As to the remaining claims in the case, a case management conference will be held on January 8, 2016 at 10:50 a.m.

IT IS SO ORDERED.

DATED: _____



Judge Jerry R. McBride

person, property owner or occupant of property who can show that the person, property owner or occupant of property has suffered harm or whose property has suffered harm as a result of violations of this Zoning Code may file suit for injunction or damages to the fullest extent provided by the law." (Emphasis original.)