

The special meeting of the Council of the Village of Chagrin Falls was called to order at 7:30 p.m. by Mr. Maersch.

Members present: Berkobein, Lutz, Maersch, Muscenti, Newell, Rogoff, Mitchell.
Members absent: None
Official present: Mayor Tomko, Himes, Markowitz

AMICUS CURIAE BRIEF JOINDER IN STATE EX REL. HUTTMAN V. CITY OF PARMA

Mr. Markowitz said he was asked on Friday by the North East Ohio Law Directors Association to see if he wanted to sign onto a brief as law director and more importantly whether the village would agree to sign onto this brief on behalf of the appellant, which is the City of Parma. There are a number of communities, maybe about fifteen or twenty, that were friends of the court brief writers who got together through the Law Directors Association to file a brief on behalf of the appellant in that case in the Court of Appeals because Parma had lost the case in the Trial Court. The Trial Court ruled in 2015, September 29th, that the city could be sued by a property owner. They had alleged that due to inflow and infiltration of storm water it has caused backup into their home and caused damage and that the city could be liable because the operation of a sanitary sewer system is a proprietary function and therefore the city can be negligent and therefore be liable. The issue in the case, which is something that it is really more of a nuance for trial to understand, is that Ohio has an immunity provision and that provision says that in essence we want to get rid of cases as quickly as we can when the courts believe that the government is immune from suit and in this case it goes against that theory which is that they put out an expert report in the Trial Court and there was no trial yet. This was only on summary judgement which is where you file briefs and ask the court to rule as to whether or not the case should be dismissed. The city filed that motion. It was denied because an expert said, "there is a lot of inflow and infiltration in your system based on reports that I have read and therefore I should be entitled to testify as an expert at a trial at which the plaintiff could prove negligence and therefore the city could be liable". The city has the statutory right to appeal that denial of immunity to the Court of Appeals, which they did, and the Court of Appeals upheld the Trial Court saying that communities in our district are going to have to stand trial on all these claims so that if somebody has a backup of sewage in their house and they can put out an expert report that says oh, well we know there is infiltration in your system that you may be liable for and therefore subject all communities in our county to be sued quite often.

The other part of this case was that the property owners wanted to file class action on behalf of every property owner in Parma who has suffered some infiltration into their home from the sewage system. The Court of Appeals held that that class action could not proceed because as of now it appears that every property owner has to prove a unique set of circumstances as to why they have infiltration and therefore it wasn't really amenable to class action but they have reserved the ability of the Trial Court after hearing some of the cases to decide that this could be a class action, which could be really devastating to Parma and any other community that got hit with one of these lawsuits because most people won't file this kind of a case on their own because the damage is minimal, they have insurance coverage for the most part, it is difficult to win, it is expensive to file because you have to hire a lot of experts, and so the only way these cases are going to proceed in the future are most likely if it is class action so that is an important issue out there.

Mr. Maersch said does the Amicus Brief deal with the class action issue? Mr. Markowitz said it does in a very limited sense because they are not appealing on that issue because the city won on that issue so we are not asking the court to take the case on that basis but we are pointing out the severity of the harm if the court upholds each Court of Appeals decision. I am assuming that the plaintiffs

have a cross appeal on the class action.

Mr. Maersch said can you talk about in addition to the merits of the case the other issue is the Ohio Supreme Court is not, it is not an appeal as of right. Mr. Markowitz said you have to approve one of two ways of getting a case into the Ohio Supreme Court and it is either you have a constitutional issue, which we don't, or it is a matter of great public interest. The brief explains why it is of great interest to all the municipalities in Ohio and secondly it is explaining why there is an important reason to knock out these cases on immunity early and why this defeats that purpose. The Supreme Court likes to see Amicus Briefs filed by parties that have an interest in the outcome because it gives it perspective from people who have a broader perspective other than just the specific parties in the case. So on cases like this quite often you will see Amicus Briefs. I have been in front of the Supreme Court more than a dozen times and I'd say ten out of the twelve there have been Amicus Briefs on the case. Our North East Ohio Law Directors Association as well as the Ohio Municipal League has been very actively involved in filing Amicus Briefs on cases like this.

Mr. Maersch said they are not all from Cuyahoga County but I will read them anyway: Aurora, Bay Village, Beachwood, Brecksville, Cleveland Heights, Garfield Heights, Hudson, Lakewood, Macedonia, North Ridgeville, North Royalton, Olmsted Falls, Pepper Pike, Richmond Heights, Rocky River, Shaker Heights, Solon, Westlake, Willoughby Hills, Bratenahl, Cuyahoga Heights, Gates Mills, Glenwillow, Highland Heights, Mayfield, Oakwood, Orange, Richfield, and Cuyahoga County itself.

Mr. Markowitz said everybody in the Supreme Court knows Chagrin Falls. I don't care what part of the state they come from they all know of the village. I think it would be really helpful if the court were to see that Chagrin Falls has enough of an interest in this and sign onto the brief.

Moved by Mr. Mitchell, seconded by Mr. Newell to join the Amicus Brief on behalf of the Village of Chagrin Falls in State ex rel. Huttman v. City of Parma. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None.

ADJOURNMENT

The meeting adjourned at 7:48 p.m.

President of Council

Clerk of Council