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SUMMIT COUNTY
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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

The Committee to Save the Old School, <i>et al.</i> ,)	CASE NO. CV 2014 02 0892
)	
Plaintiff-Appellant,)	JUDGE TOM PARKER
)	
vs.)	
)	
City of Twinsburg,)	<u>JUDGMENT ENTRY</u>
)	(Final & Appealable)
Defendant-Appellee.)	
)	
)	

This matter involves an administrative appeal related to a certificate of appropriateness for the demolition of a former public school building located at 8997 Darrow Rd., Twinsburg, Ohio, issued by the Twinsburg Architectural Review Board. The court has considered appellants' brief, appellee's brief, appellants' reply brief, the record filed on April 1, 2014, R.C. § 2506.04 and other applicable law. Upon due consideration, the court determines that appellants lack standing to assert this administrative appeal and hereby DISMISSES the administrative appeal.

Moreover, even if appellants did not lack standing and the court *were* to reach the merits of appellants' appeal, the decision of the Twinsburg Architectural Review Board to issue a certificate of appropriateness was not unlawful, unreasonable or against the manifest weight of the evidence and the court would affirm that decision. The court's decision is explained below.

STATEMENT OF CASE AND LAW

A. Factual Background

The Committee to Save the Old School is an unincorporated community activist organization. Appellant Hale is an individual who resides in Twinsburg, Ohio. Appellee,

the City of Twinsburg, is a municipal corporation located in northern Summit County, Ohio.

This case involves a school building located at 8997 Ravenna Road. The building is a 44,000 square foot red brick building sitting on 5.6 acres. It was built in the 1920s. The building and property are owned by the City of Twinsburg and located in the central downtown commercial area of the city. The building has been vacant since Kent State University vacated the premises upon the completion of their new facility with the city.

Twinsburg's administration, through its representative, Larry E. Finch, approached the city's appointed architectural review board ("ARB") at its regularly scheduled meeting on July 18, 2013 to notify the board that the city wanted to obtain a certificate of appropriateness for the demolition of the school building, as required by Twinsburg's ordinance 1349.09(f).

On August 15, 2013, the ARB reconvened with an agenda item to discuss the merits of granting the certificate of appropriateness requested by the city. At this meeting, ten individuals spoke regarding the merits of the certificate of appropriateness, including Larry Finch, the city's representative. Mr. Finch represented that the building failed to meet the standards necessary to meet the criteria required of historically significant buildings pursuant to the city's ordinances. Of the remaining nine speakers, five stated reasons why they felt the building should be preserved and three supported demolition. Appellant Hale spoke at this meeting regarding the purpose and intent of section 1170 of the Codified Ordinances of the city. After hearing from these individuals, the ARB tabled the issue until the following meeting.

On September 5, 2013, the ARB reconvened to determine if a certificate of appropriateness should be granted for the building. Mr. Finch attended this meeting again

and represented the city. Individuals in the audience were provided the opportunity to address the ARB. The ARB then made two separate motions on this matter. The ARB determined that the building was “historically significant” pursuant to Section 1170.03 of the Twinsburg Code of Ordinances and refused to issue a certificate of appropriateness.

After the ARB denied the certificate of appropriateness, the ARB and the city engaged in a series of meetings required by § 1170.13. The meetings occurred on October 7, 2013, November 19, 2013 and at a work session on December 12, 2013. The ARB convened on December 12, 2013 to reconsider the issue. At this meeting the ARB unanimously approved the granting of the requested certificate of appropriateness.

Appellant Hale filed an appeal of the decision of the City of Twinsburg Architectural Review Board to city council. City council considered his appeal on January 21, 2014, heard testimony, and ultimately confirmed the decision of the ARB to grant the certificate of appropriateness.

B. Arguments Presented

Appellants filed their brief on June 23, 2014. Appellants have assigned two errors to the decision of the Twinsburg Architecture Review Board to issue the certificate of appropriateness for demolition. In Assignment of Error No. 1, appellants contend that the ARB lacked jurisdiction to consider the certificate of appropriateness for demolition of the old school. In their Assignment of Error No. 2, appellants argue that Twinsburg did not follow procedures outlined in its code of ordinances to grant a certificate of appropriateness.

Appellants contend that Twinsburg was required to follow a specific procedure in seeking a certificate of appropriateness to demolish the building. Appellants argue that the Twinsburg Code of Ordinances required the following process:

1. All applicants “shall complete a demolition permit application; TCO 1349.07(a);
2. The form “shall include the certified signature of the property owner.” TCO 1349.07(a)(1);
3. There must be a “Demolition Site Plan” and “Restoration Plan.” TCO 1349.07(a)(2) & (3);
4. Fees and Bonds must be paid. TCO 1349.11
5. Before demolition, a certificate of appropriateness must be obtained from the Twinsburg Architectural Review Board. TCO 1349.09(f) and TCO 1170.11.

Appellants represent that Twinsburg reversed this process by requesting a certificate of appropriateness for demolition from the ARB without meeting the TCO requirements. Appellants contend that there was no “applicant” for a certificate of appropriateness and that the ARB lacked jurisdiction to even consider issuing one. However, appellants do not cite any case law in support of this argument.

Regarding Assignment of Error II, appellants argue that Twinsburg’s administration simply ignored the requirement of the demolition permit application and that the ARB did not have the necessary evidence to make an informed non-arbitrary or capricious decision. Appellants argue that, without plans to give them knowledge about the impact of their decision, the ARB’s decision to grant a certificate of appropriateness was arbitrary and capricious.

Appellee, the City of Twinsburg, filed a brief on August 1, 2014. Appellee contends that the appellants do not have standing to bring this lawsuit. Appellee cites two Ohio Supreme Court cases, *Schomaeker v. First National Bank of Ottawa*, 66 Ohio St.2d 304, 421 N.E.2d (1981) and *Willoughby Hills v. C.C. Bar’s Sahara, Inc.* In *Willoughby Hills*, the court explained that, in order to have standing, a litigant must be “directly affected” as a private property owner, as distinguished from the public at large, to

challenge a board of zoning's approval of a variance. Appellee also cites *City of Macedonia v. Twinsburg Township Board of Zoning Appeals*, 9th Dist. No. 22925, 2006-Ohio-2688, 2006 Ohio App.LEXIS 2522, a decision from the Ninth District Court of Appeals, relying on the *Willoughby Hills* decision. Appellee argues that neither appellant has demonstrated a single fact showing any kind of harm to an entity or individual which would be unique to them and give them standing in this case.

Appellee also argues that, even if they did have standing, appellants' assignments of error lack merit. Appellee represents that it *did* follow the procedures outlined in the city's code of ordinances. The city acknowledges that it has not yet submitted all the necessary documentation required for the issuance of a demolition permit. However, the city argues that it was not seeking a demolition permit yet, but rather a certificate of appropriateness, which it was required to seek prior to requesting a demolition permit. Appellee contends that appellants' entire argument hinges on the incorrect assertion that the city was required to obtain a demolition permit prior to obtaining the certificate of appropriateness. Appellee argues that it properly sought the certificate of appropriateness before seeking the demolition permit.

Appellee also argues that the ARB's issuance of the certificate of appropriateness was supported by a preponderance of substantial, reliable and probative evidence. The ARB issued the certificate of appropriateness permitting Appellee to submit an application for a permit to demolish the building after holding eight meetings over five months and discussing the merit of the demolition. The ARB voted on the matter after first hearing evidence presented by representatives of the City and allowing full and unfettered participation by any individuals who expressed a desire to be heard on the issue of demolishing the old school

Appellants filed a reply brief on August 25, 2014. Appellants argue that the Twinsburg Code of Ordinances does not limit who may appeal the Architectural Review Board's decisions. They argue that the TCO authorizes their appeal because it states that the ARB's decisions may be appealed to the City Council. Appellants also argue that their status as taxpayers gives them an ownership interest in the city's building.

Appellants cite *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 471, 1999-Ohio-123 (1999) for the proposition that "when the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to named parties." Appellants then repeat their arguments related to the process they feel the city was required to follow related to seeking a certificate of appropriateness. They argue that before the certificate of appropriateness could be issued, the city was required to start the process of seeking a demolition permit. Twinsburg's codified ordinances 1349.09 indicates that applicants (for a demolition permit) must obtain a certificate of appropriateness from the Twinsburg Architectural Review Board prior to the granting of a demolition permit. However, contrary to appellants' argument, the ordinance does not clearly state that the parties seeking a demolition permit must begin that process before seeking a certificate of appropriateness. The court will fully address the parties' arguments below.

III. Standard of Review

The parties generally agree on the standard of review in this case. R.C. 2506.03 provides:

(A) The hearing of an appeal taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code shall proceed as in the trial of a civil action, but the court shall be confined to the transcript filed under section 2506.02 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that [an exception] applies. . .

When reviewing an administrative appeal pursuant to § 2506.04 of the Revised Code, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. R.C. 2506.04; *See also, Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493, 735 N.E.2d 433 (2000).

Trial courts are not permitted to substitute their judgment for that of the administrative agency. *Dudovich v. Lorain Metro. Housing Auth.* 58 Ohio St. 2d 202, 207 (1979). Instead, courts are required to give “due deference” to the administrative agency’s resolution of evidentiary conflicts. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980). If a preponderance of reliable, probative and substantial evidence exists, the trial court must affirm the agency decision; if no evidence supportive of the agency decision exists, the court may then reverse, vacate, modify or remand. *Dudovich, supra*, at 207.

IV. Law & Analysis

A. Standing

In *Schomaeker v. First Natl. Bank of Ottawa*, 66 Ohio St. 2d 304, 311-312, 421 N.E.2d 530 (1981), the Supreme Court of Ohio held that in order to have standing in an R.C. Chapter 2506 appeal, the party must be directly affected by the decision of the administrative body. In *Willoughby Hills v. C.C. Bar’s Sahara, Inc.*, 64 Ohio St.3d 24, 27, 1992-Ohio-111, 591 N.E. 2d 1203, the Supreme Court of Ohio discussed the issue of when a private party has standing to appeal pursuant to R.C. Chapter 2506:

The 'directly affected' language in Schomaeker merely serves to clarify the basis upon which a private property owner, as distinguished from the public at large, could challenge the board of zoning appeals' approval of the variance. The private litigant has standing to complain of harm which is unique to himself. In contrast, a private property owner across town, who seeks reversal of the granting of a variance because of its effect on the character of the city as a whole, would lack standing because his injury does not differ from that suffered by the community at large. The latter litigant would, therefore, be unable to demonstrate the necessary unique prejudice which resulted from the board's approval of the requested variance.

A review of the record shows that the appellants have failed to establish that they have suffered a specific harm that is "unique" to them and that is different "from that suffered by the community at large." *Id.*

One of the appellants, the Committee to Save the Old School, is not even a legal entity. It is unclear who is involved in this committee and/or what the committee's interest is in the old school building. As to Mr. Hale, it appears that he lives down the street from the old school building. However, he has not made any attempt to show how demolishing the old school building would uniquely harm him in any way. Accordingly, the court determines that the named appellants have failed to show that they have standing to assert this administrative appeal.

B. Substance of the Appeal

Even if appellants did have standing to assert the present administrative appeal, their assignments of error lack merit. Appellants are not arguing that the decision of the ARB was "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of reliable and probative evidence." Rather, appellants argue that appellee did not follow the correct procedure when approaching the ARB for a certificate of appropriateness. Appellants have not cited any case law supporting their argument that there is a specific procedure to be followed when approaching the ARB or that the ARB

lacked jurisdiction to consider the request due to appellant's failure to follow that procedure.

Appellants have narrowly construed the Twinsburg Codified Ordinance and, in accordance with their narrow interpretation, believe that appellee was required to begin the process of applying for a demolition permit before it obtained a certificate of appropriateness. However, the actual ordinance simply states, that "applicants must obtain a certificate of appropriateness from the Twinsburg Architectural Review Board prior to the granting of a demolition permit." The ordinance does not specifically state that the process of applying for a demolition permit must be initiated before the certificate of appropriateness may be obtained. Consequently, the language of the ordinance does not support the narrow interpretation argued by appellants.

Equally unpersuasive is the appellants' argument that there was no applicant for the certificate of appropriateness. Clearly, the City of Twinsburg, the owner of the building in question, is and/or will be the applicant for the demolition permit. As stated above, appellants' insistence that the application for demolition be filed before the certificate of appropriateness does not find support in the city's ordinances.

The trial court's role in reviewing administrative appeals is limited to determining whether the ARB's decision was "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of reliable and probative evidence." Upon review of the record submitted to the court and the parties' arguments, the court finds that the ARB's decision to issue a certificate of appropriateness was not "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of reliable and probative evidence." The ARB made its decision after several meetings and public hearings and after the review of specific information regarding the historical significance of

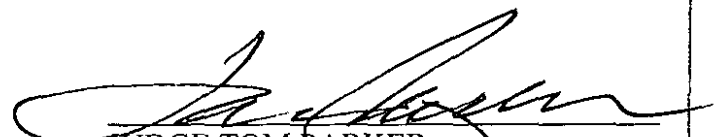
the building in question. This is not a case involving a city's attempt to circumvent the normal procedure and to avoid public involvement with its decision to demolish a city-owned building. Appellants have had the opportunity to be heard on this issue and to voice their opinions. Thus, even if the appellants *had* shown that they had standing to challenge the ARB's issuance of the certificate of appropriateness, this court would affirm the ARB's decision.

CONCLUSION

WHEREFORE, after reviewing the record, the court finds that the appellants lacked standing to file this administrative appeal. The court also finds that, even if the appellants did have standing, the decision of the Twinsburg Architectural Review Board in this matter was not unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of reliable and probative evidence. WHEREFORE, the court dismisses this appeal.

This court's decision does not preclude appellants, or members of the public, from further participating in the process related to the application for a permit to demolish which appellee will presumably seek in this matter. However, as explained by the Ohio Supreme Court in *Willoughby Hills*, the only parties who will have standing to challenge the issuance of a permit for demolition will be parties who can show that they will suffer a unique harm by the demolition of the building. Please proceed accordingly.

IT IS SO ORDERED.


JUDGE TOM PARKER

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry on the journal.

JUDGE TOM PARKER

Attorney Warner D. Mendenhall
Attorney David Maistros

CC:KAS
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