**[Cite as *Cooper State Bank v. Columbus*, 2015-Ohio-2533.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Cooper State Bank et al., | : | |
| Appellants-Appellants, | : | No. 14AP-414<br>(M.C. No. 2012 EVA 60282) |
| v. | : | No. 14AP-415<br>(M.C. No. 2006 EVA 60024) |
| City of Columbus, | : | |
| Appellee-Appellee. | : | (REGULAR CALENDAR) |

D E C I S I O N

Rendered on June 25, 2015

*Jeffrey M. Lewis Co., LPA*, and *Jeffrey M. Lewis*, for appellants.

*Richard C. Pfeiffer, Jr.*, City Prosecutor, and *Joshua T. Cox*, for appellee.

APPEALS from the Franklin County Municipal Court, Environmental Division.

BROWN, P.J.

**{¶ 1}** Cooper State Bank ("bank") and W. Cooper Enterprises, LLC ("Enterprises"), appellants, have filed an appeal from two judgments of the Franklin County Municipal Court, Environmental Division, which found in favor of the City of Columbus ("the city"), appellee, on a zoning variance application filed by appellants.

**{¶ 2}** In 2005, Enterprises purchased a building and associated real estate in Columbus, Ohio. The site includes a billboard that is situated directly above the building. The bank leases the building for its banking business. On November 7, 2005, the bank filed an application for variance with the Columbus Graphics Commission ("commission"), seeking variances from Columbus City Code ("C.C.C.") 3378.01, which prohibits a billboard to be used as an on-premises sign, and C.C.C. 3377.04, which

regulates the maximum size of on-premises signage. The provisions are part of the Graphics Code. The commission denied appellants' request for variance.

**{¶ 3}** On March 23, 2006, appellants filed an administrative appeal in the Franklin County Municipal Court, Environmental Division. Appellants were also granted a stay of the commission's order. On November 4, 2011, the court (1) vacated the decision of the commission regarding the C.C.C. 3378.01 variance, finding Columbus City Council ("city council"), not the commission, had jurisdiction over the requested variance, (2) remanded the commission's decision for findings of fact and conclusions of law regarding the C.C.C. 3377.04 variance, and (3) did not reach the constitutionality of the two city code provisions. Appellants appealed the decision, and this court dismissed the appeal in *Cooper State Bank v. Columbus Graphics Comm.*, 10th Dist. No. 11AP-1069, 2012-Ohio-3337, as not being taken from a final appealable order.

**{¶ 4}** On November 20, 2012, the commission held a hearing on remand and filed findings of fact and conclusions of law. Appellants appealed the commission's decision. On April 21, 2014, the trial court issued a decision affirming the commission's decision. Appellants appeal the trial court's November 4, 2011 and April 21, 2014 judgments, asserting the following assignments of error:

> [I.] The Trial Court erred in determining that the Columbus Graphics Commission ("Commission") lacked jurisdiction to grant Appellant Cooper State Bank ("Bank") a variance from Columbus City Code ("CCC") §3378.01.
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> [II.] The Trial Court erred in not reversing the decision of the Commission when same was arbitrary, capricious, unreasonable, and unsupported by the preponderance of substantial, reliable, and probative evidence in the record as a matter of law.
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> [III.] The Trial Court erred by not finding CCC §§3378.01 and 3377.04 unconstitutional as applied to Appellants.
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> [IV.] The Trial Court erred by not reversing the decision of the Commission as Bank was denied Fundamental Due Process in the Commission proceedings.
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> [V.] The Trial Court erred by not allowing an evidentiary hearing so that Bank could demonstrate that it was denied Fundamental Due Process in the Commission proceedings.

> [VI.] The Trial Court erred in remanding this case back to the Commission, as that body's decision-making was tainted, eliminating any chance for Appellants to receive Due Process.

**{¶ 5}** Appellants argue in their first assignment of error that the trial court erred when it determined that the commission lacked jurisdiction to grant appellants a variance from C.C.C. 3378.01. In the present case, the trial court found that C.C.C. 3382.05(C) prohibited the commission from granting a variance from C.C.C. 3378.01 which provides, in pertinent part:

> The purpose of this chapter is to regulate the installation and use of billboards and other off-premises signs. These regulations have been designed to provide protection for certain sensitive uses, including but not limited to, residential and institutional uses, by limiting the frequency, intensity and proximity of billboard and other off-premises sign locations.
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> A. Each billboard shall be considered a permanent sign subject to all the provisions of this chapter, to this Graphics Code and to all other applicable codes. Where a conflict exists, the most restrictive provision shall apply.
>
> B. No person shall utilize any billboard as an on-premises sign.

An on-premises sign is "a sign which pertains to the use of the premises on which it is located." C.C.C. 3303.19.

**{¶ 6}** C.C.C. 3382.05 provides, in pertinent part:

> Any request for a variance from this Graphics Code shall be heard and decided by the graphics commission as provided by this Graphics Code.
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> A. The graphics commission shall have the power, upon application, to grant a variance from one or more provisions of this Graphics Code. No variance shall be granted unless the commission finds that a hardship exists, based upon special physical conditions which:
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> 1. Are due to exceptional shallowness, shape, topographic conditions or other extraordinary situations peculiar to the premises itself; or

> 2. Differentiate the premises from other premises in the same zoning district and the general vicinity; or
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> 3. Prevent a reasonable return in service, use or income compared to other conforming premises in the same district; and
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> 4. Where the result of granting the variance will not be injurious to neighboring properties and will not be contrary to the public interest or to the intent and purpose of this Graphics Code.
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> B. In granting a variance, the graphics commission may impose such requirements and conditions regarding the location, character, and other features of the graphics as the commission deems necessary to carry out the intent and purpose of this Graphics Code and to otherwise safeguard the public safety and welfare.
>
> C. Nothing in this Graphics Code shall be construed as authorizing the commission to affect changes in the Zoning Map or to add to the uses permitted in any zoning district.

**{¶ 7}** In the present case, appellants were seeking a variance from C.C.C. 3378.01(B), which prohibits any person from utilizing a billboard as an on-premises sign. The trial court found that the type of variance appellants sought under C.C.C. 3378.01(B) was a "use" variance rather than an "area" variance, and the zoning code prohibits the commission from granting a use variance. The court held that use variances can only be obtained from city council pursuant to C.C.C. 3382.05(C). Therefore, the court concluded, the commission was without jurisdiction to decide whether appellants were entitled to such a variance.

**{¶ 8}** The court in *Dsuban v. Union Township Bd. of Zoning Appeals*, 140 Ohio App.3d 602, 606 (12th Dist.2000) defined "variance" and explained the differences between use and area variances:

> A variance permits a property owner to use his property in a manner that is prohibited by zoning regulations. *Nunamaker v. Jerusalem Twp. Bd. of Zoning Appeals* (1982), 2 Ohio St.3d 115, 118, 2 OBR 664, 666-667, 443 N.E.2d 172, 174-175. A variance results in a departure from the literal enforcement of a zoning ordinance or resolution. *Id*. Ohio courts have recognized two distinct types of variances: use and area. A use

> variance allows a landowner to use existing property in a manner that is inconsistent with uses of surrounding property and is not permitted by a zoning regulation. *Craig v. Kent City Council* (Aug. 2, 1991), Portage App. No. 90-P-2247, unreported, 1991 WL 147437, citing 6 Rohan, Zoning and Land Use Controls (1984), Section 43.01(Z). An area variance authorizes deviations from restrictions upon the construction and placement of buildings and other structures such as modification of area, yard, height, floor space, frontage, density, setback, and similar restrictions. *Id*.

*Id*. at 606. *See also Muncie v. Columbus*, 10th Dist. No. 92AP-1110 (June 1, 1993), citing *Kisil v. Sandusky*, 12 Ohio St.3d 30 (1984); *Duncan v. Middlefield*, 23 Ohio St.3d 83 (1986) (area variances relate to frontage, setback, or height restrictions, and use variances involve development or conversion of property for a use not permitted in the zoning classification).

**{¶ 9}** We find the trial court did not err when it found that the variance appellants seek is a use variance. By seeking the use of a billboard as an on-premises sign, appellants are requesting to use its property in a manner that is inconsistent with the uses of any other property owner and that is expressly prohibited by the zoning code. The use of a billboard as an on-premises sign is not a modification of a restriction of measurement, degree, or dimension, which area variances entail. An area variance is a deviation from a restriction, whereas a use variance is a prohibited use that is a use of the property that is new or different than other surrounding properties. *See, e.g., Craig v. Kent City Council*, 11th Dist. No. 90-P-2247 (Aug. 2, 1991). In Rohan, Zoning and Land Use Controls, the author gave examples of each type of use. An example of a use variance is a commercial establishment, such as a nursery or garage, in a residential zone, while an example of an area variance is where a building is constructed with a floor area in excess of the limit prescribed in the ordinance. 6 Rohan, Zoning and Land Use Controls, Section 43.01(2). Here, the use of a billboard as an on-premises sign is analogous to the use variance example in Rohan, Zoning and Land Use Controls because it seeks a new and different use that is prohibited by the zoning code, and is not merely seeking to deviate from a measurement or dimension limitation set forth in the zoning code.

**{¶ 10}** We addressed a use variance in *Columbus v. Bazaar Mgt., Inc.* 10th Dist. No. 82AP-33 (Jan. 6, 1983). In that case, a building was located in a business or

commercial district and the premises was used as a car wash. The car wash became a permitted non-conforming use when the property was rezoned as a residential district. The board of zoning adjustment then granted a special permit for the continued use of the structure at that location to become retail shops. A restaurant was operated in one of the shops. Years later, the board of zoning adjustment found the address was in violation of the zoning code because the restaurant was an unapproved use and the premises had insufficient off-street parking.

**{¶ 11}** On appeal, we explained that the C.C.C. granted the board of zoning adjustment certain powers but provided, in language almost identical to current C.C.C. 3382.05, that "[n]othing herein shall be construed as authorizing the Board to effect changes in the Zoning Map, or to add to the uses permitted in any district." *Bazaar Mgt*., citing former C.C.C. 3309.06(a). We found that the language of C.C.C. 3309.06(a) prohibited the board of zoning adjustment from granting use variances which can only be obtained from city council. We further found that no provision in the zoning code permitted one non-conforming use, i.e., a car wash, to be changed into a different use, i.e., retail shops, through the special permit process, and the non-conforming use ceases to exist once it is abandoned. We then concluded that the board of zoning adjustment's granting of the special permit for the use of the building as retail shops in the residential zone was an impermissible granting of a use variance. The use variance sought in *Bazaar Mgt.* is analogous to the variance appellants sought in the present case. Both sought to legalize a use beyond the limits of the applicable zoning code.

**{¶ 12}** Appellants attempt to distinguish *Bazaar Mgt.* by arguing that commercial uses were not permitted in a residential district in *Bazaar Mgt.*, while billboards are permitted in commercial districts here under C.C.C. 3378.03(A); therefore, appellants maintain, their request is not for the commission to effect changes in the zoning map or add to the uses permitted in a zoning district. However, as the city points out, the use of a billboard as an on-premises sign is not permitted in any zoning district. For the commission to grant such a variance would be to add to the permitted uses regardless of the zoning district, which would violate C.C.C. 3382.05(C)'s prohibition against the commission's granting of use variances. The variance appellants seek in the present case does not raise the issue of whether a billboard is permitted in the particular zoning

district, but whether a billboard may be used as an on-premises sign in the zoning district. As billboards may not be used as an on-premises sign in any zoning district, what appellants seek is a use variance, which the commission is without jurisdiction to grant. For these reasons, we find appellants' first assignment of error without merit and overrule it.

**{¶ 13}** Appellants argue in their second assignment of error that the trial court erred when it failed to reverse the decision of the commission when it was arbitrary, capricious, unreasonable, and unsupported by the preponderance of substantial, reliable, and probative evidence in the record as a matter of law. Given our disposition of appellants' first assignment of error, appellants' second assignment of error applies only to C.C.C. 3377.04, which sets the maximum graphic area for a ground sign to be erected within the first 100 feet of setback from the abutting street right-of-way.

**{¶ 14}** Appellants appealed the commission's decision to the environmental division of the municipal court pursuant to R.C. 2506.01. R.C. 1901.183(I) grants jurisdiction to the environmental division of a municipal court to hear appeals from "any final order of any * * * commission * * * that relates to a local building, * * * zoning * * * ordinance, or regulation, in the same manner and to the same extent as in similar appeals in the court of common pleas." R.C. 2506.01(A) states that "every final order * * * or decision of any * * * commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located."

**{¶ 15}** R.C. 2506.04 provides the standard of review for appeals taken pursuant to R.C. 2506.01 and provides as follows:

> If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 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. The judgment of the court may be appealed by any party on

> questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

**{¶ 16}** The Supreme Court of Ohio has explained that, in an R.C. Chapter 2506 administrative appeal, the trial court must consider "the 'whole record,' including any new or additional evidence admitted under R.C. 2506.03, and [determine] whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). While the trial court may not "blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise," the trial court is charged with "weigh[ing] the evidence in the record * * * to determine whether there exists a preponderance of reliable, probative and substantial evidence to support the agency decision." *Dudukovich v. Lorain Metro. Housing Auth.*, 58 Ohio St.2d 202, 207 (1979).

**{¶ 17}** The standard of review to be applied by the court of appeals is more limited in scope. *Henley* at 147. R.C. 2506.04 " 'grants a more limited power to the court of appeals to review the judgment of the common pleas court only on "questions of law," which does not include the same extensive power to weigh "the preponderance of substantial, reliable and probative evidence," as is granted to the common pleas court.' " *Id*., quoting *Kisil* at fn. 4. Whether a trial court abused its discretion is within the ambit of "questions of law" for appellate court review in administrative appeals under R.C. 2506.04. *Id*. at 148, citing *Kisil* at fn. 4. Thus, while " '[i]t is incumbent on the trial court to examine the evidence,' " such is not the charge of the court of appeals. *Id*., quoting *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261 (1988). An appellate court may not substitute its judgment for that of the administrative agency or the trial court absent the approved criteria for doing so. *Id*.

**{¶ 18}** In the present case, appellants propose that the trial court erred when it failed to find that no evidence was presented at the commission hearing that would support the commission's decision. With our standard of review in mind, appellants assert that this argument raises a question of law. However, the content of appellants' argument actually seeks to have this court reweigh the evidence and find it was insufficient, which is not within our providence. *Dudukovich* at 207.

**{¶ 19}** In its order, the commission made the following findings of fact: (1) the only thing that distinguishes the present situation from any other commercial properties with billboards on them is that this billboard appears to be sitting over the building, (2) the property was subject to the billboard lease when purchased by appellants, (3) the premises are located in a major commercial corridor, and (4) the requested variance would more than double the allowable size of an on-premises ground sign from 300 to 782 square feet, which is excessive and inconsistent with the system of regulation of on-premises signs set forth in R.C. Chapter 3377. The commission made the following conclusions of law: (1) appellants failed to establish that special physical conditions exist that are due to the exceptional shallowness, shape, topographic conditions, or other extraordinary situations peculiar to the premises itself, (2) appellants failed to establish that special physical conditions exist that differentiate the premises from other premises in the same zoning district and general vicinity, and (3) an increase in the allowable size of an on-premises ground sign by 482 square feet would be contrary to the intent and purpose of the Graphics Code.

**{¶ 20}** Contrary to appellants' argument, there was evidence presented at the hearing to support the commission's factual findings and legal conclusions. Initially, we note that this case is not the type of case that lends itself well to witness testimony. It is largely driven by undisputed facts, with the commission weighing those facts and coming to a conclusion based on their expertise in the area. In this type of proceeding, many of the facts are presented by counsel. Here, appellants' counsel provided much of the argument and factual background for the application. The commission also heard testimony from William Cooper, a member of the board for the bank and Enterprises, and Jeff Murray, who represented Northland Community Council. The commission's four factual findings and three legal findings were based upon the testimony and attorney's factual summary. Cooper and appellants' attorney explained that the billboard appears to sit directly over the building. The commission found this was the only distinguishing factor between the present situation and the situation of other commercial properties with billboards on them, and this situation is not so special as to differentiate it from any other commercial property with a billboard. In their appellate brief, appellants point out other distinguishing characteristics of the property that they believe renders the situation

extraordinary and peculiar to these premises, such as not every commercial lot in Columbus having a billboard on it and the fact that appellants can convey any message but their own on the billboard. However, neither of these facts renders the situation extraordinary or peculiar. No business can use a billboard on its property as an on-premises sign, and it is not extraordinary that not every property has a billboard. The commission could clearly conclude that having the billboard directly over the building, as opposed to beside it, was not so special as to demand a variance.

**{¶ 21}** The commission also had evidence to support its finding that an increase in the allowable size of an on-premises ground sign by 482 square feet would be contrary to the intent and purpose of the Graphics Code. The commission found that the requested variance would more than double the allowable size of an on-premises sign, which it believed to be an excessive departure from the Graphics Code. Although appellants claim there was no evidence to support a finding that such a departure would be injurious to neighboring properties or contrary to public interest, Murray testified that he feared if this variance were granted every business up and down the road would seek to put up a billboard advertising their business. Murray's testimony supports the commission's concern that surrounding property owners could be injured because they view the variance as unfair competition and could seek their own variances. Although appellants also argue that other messages more offensive than its own bank advertisement could be on the billboard, we fail to see how this argument is relevant. The actual content of the message on the board is not at issue. Whether appellants' own bank advertisement on the billboard is innocent or obscene, as argued by appellants, it is prohibited by C.C.C. 3377.04.

**{¶ 22}** Therefore, after reviewing the argument and evidence presented at the hearing before the commission, we find the trial court did not err when it found the commission's decision was not arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence in the record as a matter of law. Appellants' second assignment of error is overruled.

**{¶ 23}** Appellants argue in their third assignment of error that the trial court erred when it failed to find C.C.C. 3378.01 and 3377.04 were unconstitutional as applied to appellants. Again, given our disposition under appellants' first assignment of error, we

need only address this assignment of error with regard to C.C.C. 3377.04. Like statutes and ordinances, administrative rules may be constitutionally challenged on their face or as applied. *Wymsylo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, ¶ 20, citing *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456 (1997). Facial challenges allege that no set of circumstances exists under which the act would be valid. *Id*., citing *U.S. v. Salerno*, 481 U.S. 739, 745 (1987). A party raising an as-applied constitutional challenge, on the other hand, alleges that the application of the statute in the particular context in which he has acted or proposes to act would be unconstitutional. *Id*. at ¶ 22.

**{¶ 24}** Parties advancing an as-applied challenge must raise that challenge at the first available opportunity, and failure to do so results in waiver. *Id*. at ¶ 20. They need not do so if arguing a facial challenge. *Id*., citing *Bd. of Edn. of South-Western City Schools v. Kinney*, 24 Ohio St.3d 184 (1986), syllabus, and *Reading v. Pub. Util. Comm*., 109 Ohio St.3d 193, 2006-Ohio-2181, ¶ 16. Thus, a facial constitutional challenge may be raised for the first time in an appeal from an administrative agency, but an as-applied constitutional challenge must be raised first in the agency to allow the parties to develop an evidentiary record. *Id*., citing *Reading*. *See also Garrett v. Columbus Civ. Serv. Comm*., 10th Dist. No. 11AP-1113, 2012-Ohio-3271 (a facial challenge is decided without regard to extrinsic facts, while an as-applied challenge requires extrinsic facts, and the litigant must raise the as-applied challenge, in the first instance, before the administrative agency to allow the parties to develop an evidentiary record).

**{¶ 25}** Appellants have raised an as-applied constitutional challenge as to C.C.C. 3377.04. However, because appellants did not raise this constitutional challenge before the commission, appellants have waived the issue for purposes of appeal. Therefore, we overrule appellants' third assignment of error.

**{¶ 26}** We address appellants' fourth and sixth assignments together, as they are related. Appellants argue in their fourth assignment of error that the trial court erred when it did not reverse the decision of the commission, as appellants were denied due process in the commission proceedings. Appellants argue in their sixth assignment of error that the trial court erred when it remanded this case to the commission, as the commission's decision-making was tainted, eliminating any chance for appellants to receive due process.

**{¶ 27}** Although due process entitles an individual in an administrative proceeding to a fair hearing before an impartial tribunal, a substantial showing of personal bias is required to disqualify a hearing officer or to obtain a ruling that the hearing is unfair. *Staschak v. State Med. Bd. of Ohio*, 10th Dist. No. 03AP-799, 2004-Ohio-4650, citing *St. Anthony Hosp. v. United States Dept. of Health & Human Servs.*, 309 F.3d 680, 711 (C.A. 10, 2002), and *Broadway Video v. Cleveland Bd. of Zoning Appeals*, 8th Dist. No. 71184 (June 12, 1997) (holding that there must be evidence of bias or prejudice in the manner in which an administrative hearing is conducted in order to support a denial of due process). In the absence of any evidence to the contrary, administrative officers and public boards are presumed to have properly performed their duties in a lawful, impartial manner. *State ex rel. Cydrus v. Ohio Pub. Emps. Retirement Sys.*, 127 Ohio St.3d 257, 2010-Ohio-5770, ¶ 34; *West Virginia v. Ohio Hazardous Waste Facility Approval Bd.*, 28 Ohio St.3d 83, 86 (1986). Thus, when considering the action of an administrative body, "there is a presumption of honesty and integrity unless there is a showing to the contrary, 'and the party alleging a disqualifying interest bears the burden of demonstrating that interest to a reviewing court.' " *Sanger v. Village of Geneva-on-the-Lake*, 11th Dist. No. 92-A-1743 (July 13, 1993), quoting *Ohio State Bd. of Pharmacy v. Poppe*, 48 Ohio App.3d 222, 229 (12th Dist.1988).

**{¶ 28}** Appellants contend that the commission members were biased against them. Appellants assert that the commission members interjected their own evidence and opinions during the hearings, and demonstrated bias in their comments about their inability to trust appellants based on a variance at another site. Appellants also argue that the commission members showed bias in favor of the community and community council.

**{¶ 29}** Although appellants' arguments under their fourth and sixth assignments of error fail to direct us to the specific parts of the record in which the commission members demonstrated bias, their statement of facts includes examples of alleged bias on the part of various commission members. Appellants point to one member's suggestion that the billboard should have a public service advertisement to avoid negative content; one member's suggestion that the billboard content be neutral; one member's suggestion that the city has a zoning interest in regulating competitive advantages between property owners; several members' suggestions that the bank should pay money out of its own

funds to do public advertising on the billboard; some members' suggestions that the city has an interest in regulating unfair competition among business owners; the commission chairman's indication that he worked near the bank, and the electronic sign did not seem to be in zoning compliance; and the commission chairman's expressing his uncertainty as to whether appellants would follow any commitments.

**{¶ 30}** After reviewing the transcript of the February 2006 meeting, we disagree with appellants' claim of bias. The suggestions by commission members as to alternative ideas for the billboard do not appear to equate with bias. Many of these suggestions and comments were relevant to whether appellants were suffering a hardship. Some of the suggestions were in response to appellants' arguments that it had few other options for a billboard that sits directly above its building and could potentially harbor content objectionable to, or harmful to, the bank's commercial interests. Some of the suggestions also related to the fact that appellants had agreed to lease the billboard for 12 years to control the content. Furthermore, the comments regarding the impact of the billboard on competitive commercial interests were pertinent to whether the granting of the variances would be injurious to neighboring properties or contrary to public interests. One committee member specifically explained that "injurious," as used in the zoning code, could mean that other business owners might be at a disadvantage if the variances were granted. The commission members' comments, therefore, were not an indication of bias.

**{¶ 31}** Furthermore, the commission chairman's comment that the bank's electronic sign did not seem to be in zoning compliance, as well as his expression of uncertainty as to whether appellants would follow any commitments, do reflect his personal opinions and rely on evidence not produced at the meeting. We agree that opinions should be limited to the matter at hand and should be based on evidence in the record, but the chairman's comments do not show substantial personal bias that is so extreme as to display clear inability to render a fair judgment. *See Meadowbrook Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 06AP-871, 2007-Ohio-6534, ¶ 25 (a showing of substantial personal bias will be required before a hearing officer may be disqualified or the results of a hearing vacated. In practice, this means a personal bias so extreme as to display clear inability to render a fair judgment). Therefore, we find this argument without merit.

**{¶ 32}** Appellants also argue that the November 2012 meeting on remand was unfair in that two commission members who were not present at the original 2006 meeting participated. The purpose of the November 2012 meeting was to provide findings of fact and conclusions of law pursuant to a remand from the common pleas court. It is clear from the record that the commission members at the November 2012 meeting had read the transcript from the 2006 proceeding. The evidence relating to the variance issues before the commission in 2006 involved no determinations of witness credibility or demeanor. Although Cooper provided testimony at the 2006 meeting, the transcript gives no indication that the commission questioned his credibility. Based on the commission members' questions, it appears the commission believed his testimony and factual history of the matter. Importantly, the commission's findings of fact involved no issues of credibility and did not rely on any finding that any witness testimony was unbelievable. Therefore, we find this argument without merit.

**{¶ 33}** Appellants also contend that it was a conflict of interest for the Columbus City Attorney's Office to both represent the board in its legal matter, such as the present appeal, while also advising the commission at the November 2012 meeting. We fail to find any conflict of interest here. It is true that the city attorney's office represents the board in legal matters and also provides advice to the commission, a municipal governmental entity. However, a review of the November 2012 meeting transcript reveals that counsel for the city attorney's office did not advocate for any result during the proceeding and provided only a few instances of general legal guidance regarding procedure. The participation and comments of counsel for the city attorney's office were extremely brief. We fail to see how appellants were prejudiced by the participation of the city attorney's office in the proceedings or any other stage of the matter. Furthermore, although appellants also claim the city attorney's office drafted the findings of fact and conclusions of law for the commission, nothing in the record before us reveals such. For the foregoing reasons, appellants' fourth and sixth assignments of error are overruled.

**{¶ 34}** Appellants argue in their fifth assignment of error that the trial court erred when it did not allow an evidentiary hearing so appellants could demonstrate that they were denied due process in the commission proceedings. Appellants maintain that the

common pleas court should have granted them an evidentiary hearing, pursuant to R.C. 2506.03, to "flesh out" the bias of several commission members. 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 one of the following applies:
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> (1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.
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> (2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:
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> (a) Present the appellant's position, arguments, and contentions;
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> (b) Offer and examine witnesses and present evidence in support;
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> (c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
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> (d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
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> (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
>
> (3) The testimony adduced was not given under oath.
>
> (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.
>
> (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

> (B) If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

We review the trial court's decision to allow the introduction of additional evidence pursuant to R.C. 2506.03 under an abuse of discretion standard. *State ex rel. 506 Phelps Holdings, L.L.C. v. Cincinnati Union Bethel*, 1st Dist. No. C-120461, 2013-Ohio-388, ¶ 44, citing *Saeed v. Cincinnati*, 1st Dist. No. C-030854, 2004-Ohio-3747, ¶ 18.

**{¶ 35}** In addressing this argument, the trial court, citing *N. Coast Payphones, Inc. v. Cleveland Bd. of Zoning Appeals*, 8th Dist. No. 88090, 2007-Ohio-6814, found that because none of the grounds listed in R.C. 2506.03 were implicated by appellants' argument of bias, it was not required to allow additional evidence. We agree. R.C. 2506.03 does not provide that an evidentiary hearing must be held based on a claim of bias against one or more members of the administrative agency. Under these circumstances, we cannot find any abuse of discretion by the trial court in denying an evidentiary hearing to "flesh out" any possibly bias by the commission. Therefore, appellants' fifth assignment of error is overruled.

**{¶ 36}** Accordingly, appellants' six assignments of error are overruled, and the judgments of the Franklin County Municipal Court, Environmental Division, are affirmed.

*Judgments affirmed.*

TYACK and KLATT, JJ., concur.

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