

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

ROBERT FERGUSON,	:	OPINION
Appellant,	:	
- vs -	:	CASE NO. 2003-P-0041
RAVENNA TOWNSHIP, et al.,	:	
Appellees.	:	

Administrative Appeal from the Portage County Court of Common Pleas, Case No. 2002 CV 0644.

Judgment: Affirmed.

Louis R. Myers, 229½ South Chestnut Street, P.O. Box 72, Ravenna, OH 44266 (For Appellant).

Victor V. Viglucci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 466 South Chestnut Street, Ravenna, OH 44266 (For Appellees).

DIANE V. GRENDELL, J.

{¶1} Robert Ferguson (“Ferguson”) appeals the March 11, 2003 judgment entry of the Portage County Court of Common Pleas overruling his objections to the magistrate’s decision, which affirmed the decision of the Ravenna Township Board of Trustees (the “Board”) ordering the removal of the structures on Ferguson’s property. For the reasons set forth below, we affirm the decision of the trial court in this matter.

{¶2} On May 7, 2002, after providing the requisite notice, the Board met and conducted a hearing regarding Ferguson's property. Ferguson was present at this hearing and testified about his intent to fix the property. Owners of neighboring property also testified at this hearing regarding the "dangerous" and "deplorable condition of the house" that "has been going on for 20 years" and the resulting decrease in property values of the neighboring property. The Board found that the "present condition of the premises and structures thereon are a public nuisance and fall within the parameters of an insecure, unsafe or structurally defective structure pursuant to R.C. 505.86." Thus, the Board ordered the removal of the structures on Ferguson's property.

{¶3} Ferguson timely appealed the Board's decision to the Portage County Court of Common Pleas. Both parties subsequently filed motions for a hearing to present additional evidence. The trial court granted these motions on November 8, 2002, and the hearing was held before a magistrate on January 3, 2003. At the hearing, the Board submitted an inspection report conducted by the Ravenna Township Fire Department ("fire department's inspection report") and an inspection report from the Portage County Building Department ("building department's inspection report"). The Board also proffered photographs of the property.

{¶4} At the hearing, Ferguson testified that he was planning on fixing the property and that he had obtained building permits in order to do so. On cross-examination, Ferguson testified that the house had been vacant since at least 1995. Ferguson admitted that the house is uninhabitable and that it would be a health risk for someone to inhabit the home in its current condition. Ferguson acknowledged that the building permits were issued for work of \$2,000. Ferguson admitted that it would cost

well in excess of \$2,000 to make the home structurally sound and habitable and that the permits he obtained would fail to accomplish this endeavor.

{¶5} On February 6, 2003, the magistrate found “that the decision of the [Board] to remove the structure(s) located at 6240 Wall Street was not illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.” Thus, the magistrate affirmed the Board’s decision. Ferguson timely filed objections to the magistrate’s decision. On March 11, 2003, the trial court overruled Ferguson’s objections and adopted the magistrate’s decision.

{¶6} Ferguson timely appealed and raises the following assignments of error:

{¶7} “[1.] The trial court erred [sic] in considering the Township’s additional evidence not contained in the transcript.

{¶8} “[2.] The statutory grounds to support the Township’s removal order are not contained in the record.”

{¶9} In the interests of judicial economy, both of Ferguson’s assignments of error will be considered together. Ferguson claims that, on appeal to the court of common pleas, the Board should have been “limited to the public record and matters contained therein and that the additional evidence offered by them [was] inappropriate.” Ferguson also claims that the removal order was improperly issued because a finding that the house was insecure, unsafe, or structurally defective, as required by R.C. 505.86, was absent from the evidence in the record.

{¶10} In an administrative appeal, the court of common pleas “may reverse the board if it finds that the board’s decision is not supported by a preponderance of

reliable, probative and substantial evidence. An appeal to the court of appeals, pursuant to R.C. 2506.04, is more limited in scope and requires that court to affirm the common pleas court, unless the court of appeals finds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence.” *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34. “It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. The appellate court is to determine only if the trial court abused its discretion.” *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261.

{¶11} An abuse of discretion consists of more than an error of law or judgment. Rather, it implies that the court’s attitude is unreasonable, arbitrary or unconscionable. *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169 (citation omitted). Reversal, under an abuse of discretion standard, is not warranted merely because appellate judges disagree with the trial judge or believe the trial judge erred. *Id.* Reversal is appropriate only if the abuse of discretion renders “the result *** palpably and grossly violative of fact and logic [so] that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222 (citation omitted).

{¶12} R.C. 2506.03 “makes liberal provision for the introduction of new or additional evidence” in an administrative appeal. *Kisil*, 12 Ohio St.3d at 34, quoting *Cincinnati Bell v. Glendale* (1975), 42 Ohio St.2d 368, 370. Thus, in reviewing an appeal of an order of a board, the trial court “may consider new or additional evidence.”

Smith v. Granville Twp. Bd. of Trustees, 81 Ohio St.3d 608, 612, 1998-Ohio-340 (citation omitted).

{¶13} In this case, *both* parties moved for a hearing in which to submit additional evidence. Thus, considering the trial court’s discretion to consider new evidence, as discussed above, we cannot find that the trial court’s decision to grant the parties’ motions was unreasonable, arbitrary or unconscionable. Thus, it was not an abuse of discretion for the trial court to consider the new evidence introduced at the hearing, including the building department’s inspection report.

{¶14} “A board of township trustee may provide for the removal *** of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by any fire department under contract with the township or by the county building department.” R.C. 505.86(B). Thus, to properly order the removal of the house on Ferguson’s property, the house would have to be declared insecure, unsafe, or structurally defective by the fire department or the building department.

{¶15} In this case, the building department’s inspection report regarding the house located on Ferguson’s property stated that the “building structure is a serious hazard.” Since insecure, unsafe, and structurally defective are undefined in the statute, these words must be “accorded [their] common, everyday meaning.” *State v. Dorso* (1983), 4 Ohio St.3d 60, 62. As defined, unsafe and hazardous are synonymous. See Webster’s II New College Dictionary (1999) (the definitions of both unsafe and hazardous include the definition of “dangerous”). Thus, since the building department declared the house to be a “serious hazard,” we cannot conclude that the trial court

abused its discretion in finding that the house had been declared insecure, unsafe, or structurally defective by the building department.¹

{¶16} Since we found above that the trial court did not err in considering the additional evidence, including the building department's inspection report, and since this report declared the house insecure, unsafe, or structurally defective, we find that the decision of the common pleas court is supported by a preponderance of reliable, probative and substantial evidence.

{¶17} For the foregoing reasons, we hold that Ferguson's assignments of error are without merit. The decision of the Portage County Court of Common Pleas is affirmed.

Judgment affirmed.

JUDITH A. CHRISTLEY and WILLIAM M O'NEILL, JJ., concur.

1. Although the building department's inspection report was two years old at the time of the hearing, the evidence, including testimony from Ferguson, indicated that no work was performed on the house in that time frame and that the house's condition only had worsened since the report was issued.