

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

UNION TOWNSHIP-CLERMONT
COUNTY, C.I.C., INC.,

Appellee,

- VS -

CARL LAMPING, BUILDING OFFICIAL,
CLERMONT COUNTY BUILDING
DEPARTMENT,

Appellant.

CASE NO. CA2014-07-050

OPINION
3/23/2015

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2013CVF01206

Schroeder, Maundrell, Barbieri & Powers, Lawrence E. Barbieri, 5300 Socialville-Foster Road, Suite 200, Mason, Ohio 45040, for appellee

G. Ernie Ramos, Jr., 101 East Main Street, Batavia, Ohio 45103, for appellant

M. POWELL, J.

{¶ 1} Appellant, Carl Lamping, Building Official, Clermont County Building Department (building department), appeals a decision of the Clermont County Court of Common Pleas vacating an order of the Ohio Board of Building Appeals (BBA). The BBA's order affirmed an adjudication order issued by the building department finding appellee,

Union Township-Clermont County, C.I.C., Inc. (CIC), in violation of the Ohio Building Code for failing to obtain a permit for roof work. For the reasons outlined below, we reverse the decision of the common pleas court and reinstate the BBA's order.¹

{¶ 2} In 2013, renovations began on a building owned by CIC. As a part of the renovations, felt and shingles were removed and then replaced on a portion of the roof. The roof work was completed by a contractor by the end of April 2013. Prior to completing the roof work, employees of the building department happened to drive by CIC's building and noticed the renovations in progress. The employees of the building department stopped and inquired as to whether CIC had obtained a permit for the roof work. A contractor performing the work for CIC indicated that a permit would be sought. CIC later determined that no permit was needed, and no permit was ever obtained.

{¶ 3} On June 7, 2013, the building department issued an adjudication order finding CIC in violation of the Ohio Building Code for failing to obtain a permit for the roof work. CIC appealed the adjudication order to the BBA. A hearing was held on July 22, 2013, whereby both parties presented testimony and evidence. Included in the evidence was testimony and documentation that at the time the roof work was being performed, the building department's website stated in its section of frequently asked questions that a permit was required for "new roofs, not shingles only." The building department presented testimony that the information included on the website was incorrect and further presented evidence that a permit was in fact required. On July 26, 2013, the BBA issued a final order upholding the adjudication order and finding CIC in violation of the Ohio Building Code.

{¶ 4} CIC filed an appeal of the BBA's order to the common pleas court. After filing briefs and the record of the BBA, a hearing was held. The common pleas court found that

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

requiring CIC to obtain a permit when the building department's website indicated that a permit was not needed for "shingles only" was irrational. As a result, the common pleas court found the BBA's order unreasonable and vacated the BBA's order.

{¶ 5} Lamping now appeals and asserts two assignments of error for review.

{¶ 6} Assignment of Error No. 1:

{¶ 7} THE COURT ERRED IN THAT IT APPLIED THE WRONG STANDARD OF REVIEW.

{¶ 8} The building department asserts the common pleas court applied an incorrect standard of review when it vacated the BBA's order. Specifically, the building department contends that the common pleas court utilized the standard outlined in R.C. 2506.04, which applies generally to agency decisions, rather than the more specific standard for buildings outlined in R.C. 3781.031.

{¶ 9} R.C. 2506.04 provides that the reviewing 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." In contrast, R.C. 3781.031(D) provides that the court will not affirm a board of building appeals' order "unless the preponderance of the evidence before it supports the reasonableness and lawfulness of the order and any rule of the board of building standards upon which the order is based in its application to the particular set of facts or circumstances involved in the appeal."

{¶ 10} The Tenth District held in *84 Lumber Co. v. McMillen*, 10th Dist. Franklin No. 76AP-364, 1976 WL 190437 (Dec. 14, 1976), that a common pleas court engaged in proper analysis despite utilizing the incorrect statutory standard to review an order from the Board of Building Appeals. In discussing the availability and breadth of judicial review of an administrative agency's order, the Tenth District discussed the similarities between the

standards set forth in R.C. 2506.04 and 3781.031. In both R.C. 2506.04 and 3781.031, "the appropriate extent of the judicial review of the order of the administrative agency would entail the review of the record by the trial court, and entail the weighing by the trial court of the evidence to determine whether the evidence preponderates in favor of the order of the agency." *84 Lumber* at *7.

{¶ 11} The two standards are substantially similar in that each requires the court of common pleas to weigh the evidence and overturn an agency's order if it is unreasonable. Although R.C. 2506.04 also lists "unconstitutional, illegal, arbitrary, capricious," as a basis to reverse an administrative order, these terms are synonymous with the requirement of R.C. 3781.031 that the administrative order not be affirmed "unless the preponderance of the evidence before it supports the reasonableness and lawfulness of the order." Specifically, if an agency order is "unconstitutional" or "illegal" under R.C. 2506.04, then it is necessarily not "lawful" under R.C. 3781.031. Likewise, if an agency order is "arbitrary" or "capricious" under R.C. 2506.04, then it is also not "reasonable" under R.C. 3781.031. Additionally, R.C. 2506.04 requires that the evidence a common pleas court weighs in determining whether the agency order is supported by a preponderance of the evidence, be "substantial, reliable, and probative." There is no similar language regarding the quality of the evidence to be weighed by a court of common pleas in a review of an agency order pursuant to R.C. 3781.031. If this difference in the two standards is of any import, it is to render the R.C. 2506.04 standard more deferential to the agency's determination than a R.C. 3781.031 review.

{¶ 12} Given the foregoing, we find that any error by the common pleas court applying the incorrect standard of review is harmless as it did not affect the substantial rights of the parties. See Civ.R. 61. By vacating the BBA's order using a substantially similar and perhaps more deferential standard, the common pleas court necessarily determined that the correct, and perhaps less deferential, standard also mandated the vacation of the BBA's

order. Therefore, we review the common pleas court's determination as though it had applied the correct standard. The building department's first assignment of error is overruled.

{¶ 13} Assignment of Error No. 2:

{¶ 14} THE COURT ERRED IN FINDING THAT REASONABLE RELIANCE ON THE WEBSITE OF THE CLERMONT COUNTY BUILDING DEPARTMENT RENDERED THE ADJUDICATION ORDER AND OHIO BOARD OF BUILDING APPEALS ORDER UNREASONABLE.

{¶ 15} The building department argues that the common pleas court erred in relying on its website to determine that the BBA's order was unreasonable. Specifically, the building department asserts that the common pleas court improperly utilized equitable estoppel to find the orders unreasonable. Furthermore, the building department argues that it set forth ample evidence that CIC's conduct required a permit. As such, the common pleas court should have found that the reasonableness and lawfulness of the BBA's order was supported by the preponderance of the evidence.

{¶ 16} The plain language of R.C. 3781.031(D) requires the building department to establish by a preponderance of the evidence the reasonableness and lawfulness of a board of building appeals' order. *S.R. Products v. Gerrity*, 156 Ohio App.3d 150, 154, 2004-Ohio-472, ¶ 21 (8th Dist.), citing *Copeland Corp. v. Ohio Dept. of Indus. Relations*, 53 Ohio App.3d 23, 25 (3d Dist.1988). When reviewing a judgment of a common pleas court, an appellate court will only consider questions of law and will not weigh the evidence. *Gerrity* at ¶ 22; *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). As such, an appellate court will not substitute its judgment for that of the administrative agency or the common pleas court, unless it finds that there is not a preponderance of reliable evidence to support the board's decision. *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34 (1984). Within the ambit of questions of law is included whether a common pleas court abused its discretion.

Henley at 147. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

I. Equitable Estoppel

{¶ 17} At the crux of the building department's argument is that the common pleas court improperly utilized equitable estoppel to find the BBA's order unreasonable. The building department argues that CIC cannot rely upon equitable estoppel because the doctrine does not apply when an agent of the state is exercising a governmental function. While CIC states that it was reasonable to rely on the information contained on the building department's website, it contends that this case does not involve equitable estoppel. Rather, CIC asserts that the information contained on the website aids with interpreting the Ohio Building Code.

{¶ 18} "Equitable estoppel precludes a party from asserting certain facts where the party, by his conduct, has induced another to change his position in good faith reliance upon that conduct." *State ex rel. Cities Serv. Oil Co. v. Orteca*, 63 Ohio St.2d 295, 299 (1980). However, the doctrine of equitable estoppel does not apply against a state or its agencies in the exercise of a governmental function. *State ex rel. Chevalier v. Brown*, 17 Ohio St.3d 61, 63 (1985). "[P]rotection from crime, or fires, or contagion, or preserving the peace and health of citizens and protecting their property," are all governmental functions. *Gerrity* at ¶ 28, citing *City of Wooster v. Arbenz*, 116 Ohio St.281, 284 (1927). The doctrine of estoppel also does not apply if an officer or agent of the government enters an agreement or arrangement that violates the law. *Id.* at ¶ 29. Furthermore, "it is well settled that a mistake does not provide a basis for the application of the doctrine of equitable estoppel." *Id.* Rather, a person who seeks information from the government must assume the risk that the advice of public advisor might be incorrect. *Id.*, citing *Richfield v. Nagy*, 9th Dist. Summit No. 12300,

1986 WL 2914 (Mar. 5, 1986).

{¶ 19} The board of building standards has the authority to make "rules governing the erection, construction, repair, alteration, and maintenance of all buildings * * *." R.C. 3781.10(A)(1). "The standards shall relate to the conservation of energy and the safety and sanitation of those buildings." *Id.* The board of building standards also has the authority to designate officers of a county to enforce such rules on its behalf. R.C. 3781.10(E)(7). Thus, maintaining a website to exercise its governmental function was proper for a county building department.

{¶ 20} At the time work was being done on CIC's roof, the building department's website stated that a permit was required for "new roofs, not shingles only." At the hearing before the BBA, Lamping conceded that the website contained this information, but that the information was incorrect and a mistake. Lamping testified that, in fact, the Ohio Building Code requires a permit to replace shingles on a roof. In vacating the orders, the common pleas court stated:

Based upon Lamping's testimony, it is reasonable for a person or entity to rely on the Building Department's website to determine whether a permit is necessary. In this case, [CIC] sought that information on the website and found that a permit was not required to replace shingles on a roof. Therefore, for the County then to require [CIC] to obtain a permit was not governed by reason and was, thus, irrational.

The common pleas court's finding places the issue at bar within the context of equitable estoppel as it clearly found that CIC consulted the website and relied upon the information contained therein to determine that a permit was not needed.

{¶ 21} It is undisputed that the building department's website stated that a permit was required for "new roofs, not shingles only." If CIC visited the website when it considered whether a permit was required for its roof work and relied upon this statement, it did so at its own risk. Lamping testified at the BBA hearing that the information on the building

department's website regarding roofing permits was incorrect and a mistake. CIC cannot claim that the building department is lawfully estopped from enforcing the Ohio Building Code based on incorrect information contained on the building department's website as the building department's website does not supersede the Ohio Building Code. Consequently, the common pleas court abused its discretion when it found that CIC's reliance upon the building department's website rendered the adjudication order unreasonable.

II. Abuse of Discretion

{¶ 22} We now turn to the building department's overarching argument that it set forth ample evidence to show CIC's conduct required a permit. The factual background of this matter is undisputed. Simply put, CIC removed felt and shingles from a portion of the roof on its building and installed new shingles without obtaining a permit. When a local zoning ordinance is applied to undisputed facts contained in the record, such an application is a question of law and is appropriate to be considered by an appellate court engaging in review of an administrative appeal. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 148 (2000). The matter before us requires nothing more than an application of the law (i.e., the regulations) to those facts.

{¶ 23} The evidence presented by both parties relates to interpreting terms in the Ohio Building Code such as "reroofing" and "repair." Consequently, to evaluate whether the common pleas court abused its discretion in vacating the BBA's order, we must interpret the Ohio Administrative Code and look to the definitions therein to determine whether the reasonableness and lawfulness of the BBA's order was supported by sufficient evidence.

{¶ 24} "No clear standard has evolved to determine the level of lucidity necessary for a writing to be unambiguous. * * * When confronted with allegations of ambiguity, a court is to objectively and thoroughly examine the writing to attempt to ascertain its meaning." *Meadowwood Manor, Inc. v. Ohio Dept. of Health*, 12th Dist. Brown No. CA2006-08-010,

2007-Ohio-2067, ¶ 19, citing *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, ¶ 11. "Only when a definitive meaning proves elusive should rules for construing ambiguous language be employed." *Id.* The fact that language may be susceptible to more than one interpretation does not necessarily render a provision ambiguous. *Id.* However, words in a statute do not exist in a vacuum. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, ¶ 19. A court must give effect to all parts of a statute and consider, in context, all of the words used, giving effect to the overall statutory scheme. *Meadowwood* at ¶ 19. These maxims apply equally to administrative regulations. *State ex rel. Brilliant Elec. Sign Co. v. Indus. Comm.*, 57 Ohio St.2d 51, 54 (1979).

{¶ 25} Furthermore, as a reviewing court, we must afford due deference to the interpretation of the building department and the board of building standards that the regulations require a permit for reroofing, so long as that construction proves reasonable. *Meadowwood* at ¶ 21, citing *Northwestern Ohio Bldg. & Construction Trades Council v. Conrad*, 92 Ohio St.3d 282 (2001). "An administrative agency's reasonable interpretation of local zoning codes is recognized as an area of administrative expertise and is to be presumed valid." *Glass City Academy, Inc. v. Toledo*, 179 Ohio App.3d 796, 2008-Ohio-6391, ¶ 18 (6th Dist.), citing *Lamar Outdoor Advertising, Inc. v. Dayton Bd. of Zoning Appeals*, 2d Dist. Montgomery No. 20158, 2004-Ohio-4796, ¶ 6.²

{¶ 26} "Reroofing" and related terms are set forth and defined in Ohio Adm.Code

2. We recognize that zoning restrictions are ordinarily construed in favor of the property owner because they "are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled[.]" *Saunders v. Clark Cty. Zoning Dept.*, 66 Ohio St.2d 259, 261 (1981). However, "[a] property owner's right to an existing zoning classification vests upon the submission of its application for a zoning permit." *Speedway, L.L.C. v. Berea Planning Comm.*, 8th Dist. Cuyahoga No. 99341, 2013-Ohio-3433, ¶ 9, citing *Gibson v. Oberlin*, 171 Ohio St. 1, 5-6 (1960). Furthermore, a permitted or principal use is one that is "allowed as of right, provided the landowner meets all other requirements, e.g., building code requirement." *Id.*, quoting *Dinardo v. Chester Twp. Bd. of Zoning Appeals*, 186 Ohio App.3d 111, 2010-Ohio-40, ¶ 23 (11th Dist.). In this instance, CIC did not apply for a permit in order to vest its rights. Additionally, because repairs and reroofing fall under the building code, it is a permitted use. As such, CIC would be entitled to complete the work as long as it complied with the building code requirements. Under the facts and circumstances of this case, CIC as the landowner is not entitled to any presumption.

4101:1-15-01. "Reroofing" is defined as: "The process of recovering or replacing an existing roof covering." Ohio Adm.Code 4101:1-15-01 section 1502.1. "Roof recover" is defined as: "The process of installing an additional roof covering over a prepared existing roof covering without removing the existing roof covering." Ohio Adm.Code 4101:1-15-01 section 1502.1. "Roof replacement" is defined as: "The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering." Ohio Adm.Code 4101:1-15-01 section 1502.1. "Roof covering" is defined as: "The covering applied to the roof deck for weather resistance, fire classification or appearance." Ohio Adm.Code 4101:1-15-01 section 1502.1.

{¶ 27} "Repairs" and "minor repairs" are set forth and defined in Ohio Adm.Code 4101:1-2-01. "Repair" is defined as: "The reconstruction or renewal of any part of an existing building for the purpose of its maintenance." Ohio Adm.Code 4101:1-2-01 section 202. "Minor repair" is defined as: "The reconstruction or renewal of any part of an existing building for the purpose of its maintenance when the work has limited impact on access, safety or health." *Id.* Ohio Adm.Code 4101:1-1-01 section 102.10.2 provides: "Minor repairs to structures may be made without application or notice to the building official." Within the definition of "minor repair," numerous items are exempted from the definition. Ohio Adm.Code 4101:1-2-01 section 202. "Reroofing" is not listed as an exemption from a minor repair. *Id.*

{¶ 28} When looking at the plain meaning of the words defined in the Ohio Administrative Code, "reshingling" is included within the definition of "reroofing." The Union Township Administrator testified that the work done on CIC's roof involved taking old shingles off of the roof and putting new shingles on the roof. This removal of old shingles and installation of new shingles constituted the replacement of an existing roof covering as shingles are applied to the roof deck for both weather resistance and appearance. The

replacement of an existing roof covering is the definition of "reroofing." As such, based on the plain reading of the Ohio Administrative Code, the definition of "reroofing" encompasses "reshingling."

{¶ 29} Based on the plain reading of the code, it is difficult to discern whether "reroofing" is classified as a "repair" or "minor repair." Both definitions provide for the reconstruction or renewal of a part of a building in order to maintain it, and there is no dispute that "reroofing" falls within this definition. It is unclear, however, whether "reroofing" fits into the additional requirement to constitute a "minor repair" by having limited impact on access, safety, or health. The building department and the board of building standards interpret "reroofing" as requiring a permit as evidenced by Lamping's testimony and indicated in a memorandum issued by the board of building standards on May 16, 2013.³ Consequently, both administrative agencies interpret "reroofing" as a "repair." This interpretation is reasonable given the definition of "repair."

{¶ 30} By looking to the plain meaning of terms in the Ohio Administrative Code and giving deference to the reasonable interpretation of the administrative agencies with jurisdiction, the reasonableness and lawfulness of the BBA's order was supported by the preponderance of the evidence as a matter of law. Reshingling is included in the definition of "reroofing," and reroofing requires a permit as a matter of law. As such, CIC was required to obtain a permit to complete its roof work. The common pleas court abused its discretion in finding otherwise. The building department's second assignment of error is sustained.

{¶ 31} Judgment reversed, and the BBA's order is reinstated.

HENDRICKSON, J., concurs.

3. CIC argues that the memorandum issued by the board of building standards that states reroofing requires a permit is inapplicable because it was issued after it had completed its roof work. Nevertheless, the memorandum does not change the interpretation held by the board of building standards that was in place at the time CIC performed its roof work. Rather, it provides guidance as to its interpretation of the Ohio Administrative Code.

PIPER, P.J., dissents.

PIPER, P.J., dissenting.

{¶ 32} It is easy to concur with much of the majority opinion and even with the majority's conclusion that this case should be reversed. Yet I firmly dissent from the majority's decision not to remand this matter for the common pleas court to apply the correct law "to the particular set of facts or circumstances involved in the appeal." R.C. 3781.031(D). Despite the lack of a request to do so, the majority decides to reinstate the BBA's order rather than permit the common pleas court to apply the correct law to the facts or circumstances as they may be determined to exist.⁴

{¶ 33} Estoppel is a principle based in equity and generally cannot be asserted against a government agency. Thus the common pleas court's decision premised upon "reliance" was a misapplication of law. The common pleas court's decision, however, acknowledged other legal and factual arguments advanced by counsel which were supported by testimony and evidence. Since "reliance" ended the need for further analysis, the common pleas court did not address the application of the facts or circumstances to these other issues impacting a determination of the reasonableness of the BBA's order. This matter should be reversed and remanded for the common pleas court to apply the correct law to the particular facts or circumstances involved. See R.C. 3781.031(D).

{¶ 34} Before the BBA's order can be affirmed, the evidence must support "the reasonableness and lawfulness" of the agency's order. The common pleas court should be permitted to make determinations as to the "reasonableness" of the particular circumstances

4. Appellant correctly argues the common pleas court misapplied the law and requested we reverse. Reversal followed by further proceedings is appropriate because the correct law must be applied to the particular set of facts or circumstances which the common pleas court stopped short of doing because it rested on the application of "reliance." The common pleas court did not address all of the issues presented below.

or facts as determined to exist. This of course can only be performed by determining what evidence is significant, where credibility lies, and in assigning weight to the evidence in an effort to determine if the burden of proof has been met.⁵

{¶ 35} Evidence suggests the building department in its website interpreted the code to say that if applying "shingles only," no permit was required. CIC argues this website interpretation is what the code required at the time and thus a subsequent enforcement order to the contrary is unreasonable. The building department minimizes CIC's arguments by indicating the website publication was "incorrect" and "a mistake." How the code read and how the code was interpreted at the time of this incident can only be determined by the BBA or the common pleas court as we have no record which weighs in on this issue. Whether the interpretation published on the website by the building department was always a "mistake" or was at one time considered by the BBA and the building department to be the correct code interpretation can only be determined in assigning weight to the facts or circumstances that existed at the time.

{¶ 36} Additional evidence supports CIC's suggestion that this website declaration was the reading of the code at the time of this incident. Evidence was presented that surrounding counties, at that time, also interpreted the code as not requiring a permit if the reroofing involved a replacement of "shingles only." Other evidence was presented that no enforcement actions requiring a permit for "shingles only" could be documented. The majority accepts the building department's argument that no weight should be given these facts or circumstances encompassing the agencies' interpretation of the code at the time of

5. It is worth noting that in administrative appeals an appellate court's review is statutorily "more limited" than a common pleas court's review and the common pleas court's standard of review emphasizes application of "particular" facts or circumstances involved. R.C. 3781.03(D). This application of particular facts or circumstances is assigned to the common pleas court, not an appellate court. The standard of review also permits a common pleas court to consider "circumstances" which the majority opinion does not address.

this incident, and the majority determines, incorrectly in my opinion, that the facts or circumstances are undisputed.

{¶ 37} Additionally, the majority mistakenly accepts the BBA's factual determination that this repair was not minor as a matter of law. Whether or not a repair is minor is fact driven. The majority applies the BBA's recent publication as to its enforcement of the code as if that interpretation and enforcement of the code was always the BBA's interpretation which led to enforcement. No evidence in the record suggests such. Of necessity, weight must be assigned to the evidence in order to resolve competing arguments.

{¶ 38} Particularly, weight must be assigned to the evidence to determine whether under the facts and circumstances of this case, reshingling constitutes a repair or a minor repair. If a repair does not impact "access, safety, or health," that repair can be exempted from the permit requirement because it is considered a "minor repair." There is no factual evidence presented in the record that this particular repair impacted "access, safety, or health." Therefore, the common pleas court, not an appellate court, must determine if the facts or circumstances as occurred herein consists of a "repair" (requiring a permit) or a "minor repair" (which does not require a permit). These are also questions of fact, not matters of law.

{¶ 39} The majority finds it difficult "to discern whether or not reroofing is classified as a 'repair' or a 'minor repair.'" After traversing a tortured maze of definitions, the majority's decision employs "due deference" to the BBA's order which found the nature of the repair to be reroofing, requiring a permit.⁶ Yet there was no evidence presented before the BBA which established factually that the nature of the repair or that the circumstances impacted "access,

6. "Deference" is only a polite and respectful approach or attitude to a person or entity. See *Black's Law Dictionary* (10th Ed.2014). "Due deference, however, does not contemplate uncritical acquiescence to administrative findings." *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.*, 66 Ohio St.2d 192 (1981). Deference should not result in an unwillingness to challenge arguments nor should it render a conclusive presumption.

safety, or health." No evidence exists to suggest that the facts or circumstances as they occurred were anything other than a minor repair.

{¶ 40} All this being said, I immensely respect the majority's effort at resolving this administrative dispute. Yet, contrary to the assertions of the majority, I perceive the code on this subject matter to be unclear, sometimes circular or overlapping, and ambiguous within the ordinary meaning of the word. This permits code enforcement at times to be perceived as selective when in reality code enforcement should be clear, certain, and uniform. Yet pragmatically, and to no particular fault, situations and circumstances do not always lend themselves to clear, certain, and uniform code enforcement. This is precisely why the statutory standard of review intentionally permits the common pleas court to consider the "particular circumstances" and not just the "facts."⁷ The end goal is a determination grounded in reason, as well as law, which the common pleas court should have the opportunity to determine and apply.

7. Rather than an appellate court sua sponte applying the common pleas court's standard of review while simultaneously declaring the weight of evidence as having been sufficiently met with "undisputed" facts and circumstances, we should do as the building department requested which is reverse, so the common pleas court can apply the correct standard of review, the pertinent portion being:

The court shall not affirm the agency's order unless the preponderance of the evidence before it supports the reasonableness and lawfulness of the order and any rule of the board of building standards upon which the order is based in its application to the particular set of facts or circumstances involved in the appeal. R.C. 3781.031(D).