

[Cite as *Southworth v. Marion Twp. Bd. of Trustees*, 2016-Ohio-1005.]
IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

RAMONA SOUTHWORTH, ET AL., :
 :
Plaintiffs-Appellants, : Case No. 15CA854
 :
v. :
 :
BOARD OF TRUSTEES OF MARION : DECISION & JUDGMENT ENTRY
TOWNSHIP, PIKE COUNTY, OHIO, :
ET, AL., :
 :
Defendants-Appellees. :

APPEARANCES:

Stephen C. Rodeheffer, 630 Sixth Street, Portsmouth, Ohio, for appellants.

Randall L. Lambert, 215 South Fourth Street, P.O. Box 725, Ironton, Ohio, for appellees.

CIVIL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 2-17-16

ABELE, J.

{¶ 1} Appellee Marion Township Board of Trustees (Trustees) petitioned appellee Pike County Board of Commissioners (Commissioners) for the vacation of part of Travis Road from the Southworth-Mosier property line south to State Route 32. After the Commissioners held a hearing on the petition and failed to vote on the issue within the statutory 60-day period, the Trustees deemed that portion of Travis Road vacated pursuant to R.C. 5553.045(D).

{¶ 2} The Commissioners subsequently conducted a hearing on the request of appellants, Ramona and James Southworth, who own real property that abuts the vacated portion of Travis Road, for damages caused by the road vacation. The Commissioners determined that the Southworths are not entitled to monetary damages.

{¶ 3} Pursuant to R.C. 5563.02, the Southworths appealed to the Pike County Court of Common Pleas from the Commissioners' decision finding that they are not entitled to damages resulting from the vacation of the portion of Travis Road. The common pleas court dismissed the appeal based on its determination that (1) it lacked jurisdiction because R.C. 5563.02 did not authorize an appeal from the deemed vacation of a township road based on the inaction of a board of commissioners, (2) that the Southworths were appealing from the Commissioners' denial of damages rather than the vacation of the road, and (3) that any taking of their property by the Commissioners' inaction would require an appropriation action to determine damages instead of an administrative appeal. The common pleas court further determined that the Commissioners lacked jurisdiction to determine damages because they were not responsible for any taking of property where their inaction deemed the property vacated. This appeal ensued.

{¶ 4} In their second assignment of error, the Southworths assert that the common pleas court erred by dismissing their appeal from the Commissioners' decision for lack of jurisdiction. Because an analysis of the pertinent statutory provisions demonstrates that any interested person may appeal from the final order or judgment of the board of county commissioners establishing a proposed vacation of a road, and the Commissioners did so here through their inaction on the Trustees' petition, the determination of damages is an appealable issue related to the Commissioners' decision. Furthermore, because an amendment to one of the statutory provisions precludes the initiation of an appropriation proceeding to determine compensation for a taking related to the vacation of a road, we agree with the Southworths' assertion. Thus, the common pleas court had jurisdiction under the pertinent statutory provisions over the Southworths' appeal from the Commissioners' damages determination associated with the

vacation of the road.

{¶ 5} In their first assignment of error, the Southworths contend that the common pleas court erred by finding that the Commissioners were without jurisdiction to make a determination of damages associated with a R.C. 5553.045 road vacation proceeding. We agree with the Southworths because the Commissioners' inaction resulted in the deemed approval of the Trustees' proposed vacation. Because the Commissioners are now precluded from initiating an appropriation action in common pleas or probate court to determine damages relating to a taking from a road vacation, the sole remedy available to an injured property owner is a board of county commissioners damages determination followed by a R.C. 5563.02 appeal to the common pleas or probate court and a jury trial in that court under R.C. 5563.05 from any adverse board determination. If this were not the case, property owners suffering a taking of their property from a road vacation would be left without any remedy to address this alleged infringement of their fundamental constitutional right of property.

{¶ 6} Therefore, because the common pleas court erred in dismissing the Southworths' appeal for lack of jurisdiction, and in further determining that the Commissioners are not authorized to determine damages associated with the taking caused by their vacation of the road abutting the Southworths' property, we sustain their assignments of error, reverse the common pleas court's judgment, and remand the cause to that court for further proceedings consistent with this opinion.

I. FACTS

{¶ 7} Ramona and James Southworth are married and own real property in Marion Township, Pike County, Ohio. (OP26, p. 2; OP2 Trans. 33) Their residence address is located

at 1100 Travis Road. (*Id.*) In 2002, Ramona filed an action in the common pleas court seeking a judgment declaring that Travis Road is a township road from the end of the paved portion of the road north of the Southworths' northern property line and south to State Route 32. (OP26, p. 2) In 2004, the common pleas court entered a judgment in Ramona Southworth's favor, which declared that Travis Road is a township road within Marion Township, that Travis Road extends from Beaver Pike to State Route 32, and that the Trustees have a statutory duty to maintain Travis Road from Beaver Pike to State Route 32. (OP2, Ex. 1B)

{¶ 8} Thereafter, the Trustees extended the paved portion of Travis Road south to the northern boundary of the Southworths' property, i.e., the Southworth-Mosier property line. (OP2 Trans. 8) The Trustees, however, determined that it would cost approximately \$2,000,000 to extend the improved roadway from the Southworth-Mosier property line south to State Route 32 and that the state would not necessarily permit access to that road from Travis Road. (*Id.* at 19-21) Because the Trustees determined that improving the remainder of Travis Road was not feasible, they decided to vacate that portion of the road instead of complying with the 2004 court order to maintain it. (*Id.* at 21, 25)

{¶ 9} In December 2007, the Trustees adopted a resolution to petition the Commissioners to vacate the portion of Travis Road headed south from the Southworth-Mosier property line to State Route 32. (OP2, Ex. 1C) In February 2008, after conducting a hearing on the Trustees' petition, the Commissioners adopted a resolution to grant the requested vacation pursuant to R.C. 5553.045(D). (OP2, Ex. 1D) The Commissioners determined that the vacation of that portion of Travis Road is for the public convenience and welfare and that no actual road is currently in use in that area of Travis Road. (*Id.*) The Commissioners made no damages

determination in its decision, even though Ramona Southworth had raised the issue at the hearing.

{¶ 10} Pursuant to R.C. 2506.01 and 2505.04, Ramona Southworth appealed the Commissioners' decision to the common pleas court. However, the common pleas court dismissed her appeal for lack of jurisdiction because R.C. 5563.02 is the exclusive means to appeal the Commissioners' decision to vacate a road. (OP21, Ex. B) On further appeal, we dismissed the case, after holding that "the Pike County Commissioners must make a determination regarding [Ramona Southworth's] compensation before legally vacating the section of Travis Road abutting her property" and that "[u]ntil it has done so, there is no final appealable order that we or the trial court may consider on appeal." *Southworth v. Pike Cty. Bd. of Commrs.*, 4th Dist. Pike No. 08CA783, 2009-Ohio-566, ¶ 13. We found that "there is no question that a taking has occurred" as a result of the vacation of part of Travis Road because in its April 2004 judgment, the common pleas court "determined that Travis Road abuts [Ramona Southworth's] property." *Id.* at ¶ 9. We concluded that "the Board of Commissioners cannot ignore the necessity to determine damages when there has been a taking." *Id.* at ¶ 8.

{¶ 11} In April 2009, instead of waiting for the Commissioners to finalize the vacation of the pertinent part of Travis Road by determining damages based on their previous resolution, the Trustees adopted a new resolution to petition the Commissioners to vacate the same part of Travis Road from the Southworth-Mosier property line south to State Route 32. (OP2, Ex. 1) The Commissioners held a hearing on the requested road vacation, but did not vote on the issue within 60 days after the Trustees' filed their resolution. (OP2, Exs. 1-2) In August 2009, the Trustees adopted a resolution that deemed that part of Travis Road to be vacated due to the

Commissioners' inaction. See R.C. 5553.045(D). (OP2, Ex. 1)

{¶ 12} In January 2014, the Southworths filed an original action in this court for a writ of mandamus to compel the Commissioners to conduct a hearing on damages incurred as a result of the taking of their property because of the vacation of the part of Travis Road that abutted their property. (OP26, p. 8) After mediation resulted in the Commissioners agreement to hold a hearing on damages, the case was dismissed on the parties' joint motion. (*Id.*)

{¶ 13} In May 2014, the Commissioners conducted the hearing on damages. (OP2 Trans) At the hearing, Trustee Berlin Caudill testified that he “didn’t see any” damage to the Southworths due to the vacation of Travis Road from where it abutted the northern boundary of their property south towards State Route 32, “but, you know, I’m sure they did.” (*Id.* at 19) The part of the road that was vacated had been flooded away in 1937, and to be recreated, an improved road would have to be placed on the Southworth-Schrader property line because it abutted these properties. (*Id.* at 19-21) According to Melvin Schrader, the owner with his son-in-law of neighboring property, the road had not been used by the public since the 1937 flood and he would not want a paved road to be placed there between their property and the Southworths. (*Id.* at 30-32)

{¶ 14} Ramona Southworth testified that she and her husband owned the property, including their house, which is adjacent to Travis Road. (*Id.* at 34-36) She testified that after she won her lawsuit in 2004 that declared Travis Road to be a township road that extended south all the way to State Route 32, the Trustees paved the section of Travis Road from a point north of their property and extended it south to the northern boundary of their property line. (*Id.* at 35) If the Trustees had extended the road south to State Route 32, it would have adjoined the eastern

boundary of the Southworths' property. (*Id.* at 36) Sandy Sinclair Real Estate, Inc. provided an appraisal of the damages that the Southworths would incur from the vacation of Travis Road from their northern boundary to State Route 32 and determined that the highest and best use of their abutting property would be one-acre lots that would have a collective value of \$60,000. (OP2, Ex. 2B; OP2 Trans. 37) This damages appraisal presumed the existence of an improved Travis Road along the eastern boundary of the Southworths' property. (OP2, Ex. 2B; OP2 Trans. 38)

{¶ 15} In June 2014, the Commissioners adopted a resolution and determined that the Southworths are not entitled to any monetary damages as a result of the vacation of part of Travis Road. (OP2) The Commissioners found that: (1) “[t]he section of Travis Road in question was never formally dedicated and had not been open to public use for more than seven decades”; (2) “[a]s a result of a 2006 [sic] court order, the Marion Township Trustees have turned a former farm lane into a township road abutting the Plaintiffs['] northern property line, giving the Plaintiffs access to a township road”; and (3) [t]he appraisal submitted by the Plaintiffs was not reflective of the Pike County Board of Health’s standards for useable land.” (*Id.*)

{¶ 16} The Southworths appealed the commissioners’ determination to the common pleas court pursuant to R.C. 5563.02. (OP2) Following a telephone conference with the parties—the Southworths, the Commissioners, and the Trustees—the court identified and requested that the parties brief three separate issues, including the following issues that are pertinent to this appeal:

2. Whether the Board of Commissioners has jurisdiction and authority to determine whether damages have occurred and, if so, the amount of compensation to be paid for such damages, as the result of vacation of a portion of a public

township road pursuant to R.C. §5553.045(D)? * * *

3. Whether the Pike County Court of Common Pleas has jurisdiction and authority to determine an appeal from a decision of the Board of Commissioners concerning the issue whether damages have occurred, and, if so, the amount of compensation to be paid for such damages, as a result of vacation of a public township road pursuant to R.C. §5553.045(D)?

{¶ 17} The parties filed memoranda and in January 2015, the common pleas court issued a decision and journal entry. (OP21-23, 26) The court dismissed the appeal based on its determination that it lacked jurisdiction because (1) R.C. 5563.02 did not authorize an appeal from the deemed vacation of a township road based on the inaction of a board of commissioners, (2) the Southworths were appealing from the Commissioners' denial of damages rather than the vacation of the road, and (3) any taking of their property by the Commissioners' inaction would require an appropriation action to determine damages instead of an administrative appeal. (OP26 at 14-16) The common pleas court further determined that the Commissioners lacked jurisdiction to determine damages because they not responsible for any taking of property where their inaction deemed the property vacated. (OP26 at 10-13)

{¶ 18} This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶ 19} The Southworths assign the following errors for review:

1. "The trial court erred in finding that the commissioners were without jurisdiction to make a determination as to damages from a road vacation proceeding under R.C. § 5553.045."
2. "The trial court erred in finding that it was without subject matter jurisdiction to hear an appeal from a determination of damages made by a board of county commissioners in a road vacation proceeding under R.C. § 5553.045."

III. STANDARD OF REVIEW

{¶ 20} The Southworths challenge the common pleas court’s judgment that it lacked jurisdiction over their administrative appeal under R.C. 5563.02 in their second assignment of error. In general, for administrative appeals, including special administrative appeals under R.C. 5563.02, “[c]ourts of common pleas only have ‘such powers of review of proceedings of administrative officers and agencies as may be provided by law.’ ” *Clifton Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 12AP-709, 2013-Ohio-2742, 994 N.E.2d 879, ¶ 9, quoting Ohio Constitution, Article IV, Section 4(B). Jurisdiction over an administrative appeal must thus be granted by specific statutory authority. *See River Room, Inc. v. Ohio Liquor Control*, 10th Dist. Franklin No. 14AP-956, 2015-Ohio-2924, ¶ 7.

{¶ 21} In their first assignment of error, the Southworths contest the trial court’s finding that the Commissioners lacked authority to determine damages from a road vacation proceeding under R.C. 5553.045. A “ ‘board of county commissioners is a mere creature of statute and has only such power and jurisdiction as are expressly conferred by statutory provision.’ ” *State ex rel. Cornell v. Greene Cty. Bd. of Commrs.*, 2d Dist. Greene No. 13-CA-23, 2014-Ohio-5584, ¶ 72, quoting *State ex rel. Shriver v. Bd. of Commrs. of Belmont Cty.*, 148 Ohio St. 277, 280, 74 N.E.2d 248 (1947). The Southworths’ assignments of error challenge the common pleas court’s determinations concerning its jurisdiction as well as the Commissioners’ authority, which must be resolved by an analysis of the pertinent statutes concerning road vacation proceedings. “ ‘The interpretation of a statute is a question of law that we review de novo.’ ” *State v. Seal*, 2014-Ohio-4167, 20 N.E.3d 292, ¶ 19 (4th Dist.), quoting *State v. Bundy*, 2012-Ohio-3934, 974 N.E.2d 139, ¶ 46 (4th Dist.). Therefore, this appeal raises questions of law that we review de

novo.

IV. LAW AND ANALYSIS

A. Jurisdiction of the Common Pleas Court

{¶ 22} For ease of analysis, we first consider the Southworths' second assignment of error, which challenges the common pleas court's dismissal of their appeal from the Commissioners' decision to deny them compensation from the vacation of Travis Road for lack of jurisdiction. "R.C. Chapters 5553 and 5563 contain special statutes specifically addressing the vacation of county roads and the right to appeal decisions of boards of county commissioners concerning proposed vacation. Consequently, R.C. Chapter 5563 prevails and is exclusively applicable to appeals in this area." *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs*, 72 Ohio St.3d 464, 468, 650 N.E.2d 1343 (1995); *J.J. Detweiler Enterprises, Inc. v. Washington Cty. Commrs.*, 4th Dist. Washington No. 02CA44, 2003-Ohio-4258, ¶ 12. These provisions likewise apply to township roads. *See Athens Cty. Bd. of Commrs. v. Goldsberry*, 4th Dist. No. 05CA18, 2005-Ohio-4705, ¶ 9.

{¶ 23} The Southworths appealed the Commissioners' determination of damages in connection with the road vacation pursuant to R.C. 5563.02, which provides that "[a]ny person * * * interested therein, may appeal from the final order or judgment of the board of county commissioners, made in any road improvement proceeding and entered upon their journal, determining any of the following matters: (A) The order establishing the proposed improvement; (B) The order dismissing or refusing to grant the prayer of the petition for the proposed improvement." R.C. 5553.01 defines "improvement" to include "vacation," so a final order or judgment of the board of county commissioners establishing the vacation of a road is

appealable under R.C. 5563.02.

{¶ 24} The Trustees petitioned the Commissioners to vacate the pertinent portion of Travis Road by passing a resolution and filing it with the Commissioners. R.C. 5553.045(B). The Commissioners then conducted a hearing on the petition in accordance with R.C. 5553.045(C). Under R.C. 5553.045(D), the Commissioners were then authorized to adopt a resolution to declare the road to be vacated, to implicitly adopt a resolution by failing to vote on the issue within 60 days after the Trustees' resolution was filed with it, or to deny the proposed vacation:

After the public hearing, if the board of county commissioners determines that the vacation of the road or portion of the road would be for the public convenience or welfare, it shall adopt a resolution by a majority vote declaring the road or portion to be vacated and file a certified copy of the resolution with the petitioner board of township trustees, the county recorder, and the county engineer.

If the board of county commissioners fails to vote on the issue of vacating the road or portion of the board within sixty days after the township's resolution is filed with it, the road or portion of the road specified in the resolution shall be deemed to be vacated, and the petitioner board of township trustees shall adopt another resolution describing the road or portion of the road that has been vacated and explaining this vacation is by action of this section. The board of township trustees shall file a certified copy of that resolution with the board of county commissioners, the county recorder, and the county engineer.

(Emphasis added.)

{¶ 25} The trial court determined that it lacked jurisdiction over the Southworths' appeal because the road was not vacated by the Commissioners, but rather was vacated by the Trustees. However, as we have previously held, "a board of township trustees does not have authority to vacate a township road. It must ask the board of county commissioners to do so * * *." *Goldsberry*, 2005-Ohio-4705, at ¶ 9, citing 1999 Ohio Atty.Gen.Ops. No. 99-005.

“Accordingly, if a board of county commissioners is the only entity granted the authority to vacate a township road, and the only mechanism for taking such action is found in R.C. Chapter 5553, it logically follows that the appellate procedure for appealing those decisions provided in that chapter would apply to township roads.” *Id.*

{¶ 26} Although it is true that we did not consider the deemed-vacated portion of R.C. 5553.045 in *Goldsberry*, we are not persuaded that our conclusion would be different because the decision is occasioned by the board of county commissioners’ inaction as opposed to its action. In this regard, the Eleventh District Court of Appeals recently rejected a similar contention and held that the deemed-vacation of a township road due to the inaction of a board of county commissioners to vote on a board of township trustees’ resolution proposing the vacation is appealable to the court of common pleas under R.C. 5563.02:

Distilled to their essence, the foregoing authority provides that a property owner is entitled to appeal the commissioners' decision in any road improvement proceeding granting the proposed improvement. R.C. 5563.02. Further, the vacation of a township road constitutes a road improvement and is the proper subject of an appeal under R.C. 5563.02. *Gibson, supra; Liberty Township Road, supra*. Finally, if the commissioners do not vote on the trustees' resolution to vacate a road within 60 days of its filing with the commissioners, the road is deemed to be vacated. R.C. 5553.045(D).

Applying these principles to this matter, the trustees' resolution to vacate South Linda Lane constituted a road improvement proceeding. By not voting on the petition within 60 days of its filing with the commissioners, South Linda Lane was deemed to be vacated. Thus, the Dennisons were authorized by R.C. 5563.02 to appeal the commissioners' vacation of the road to the trial court.

The trustees argue that, because the commissioners did not actually vote on the issue, they did not enter a final order establishing or refusing the proposed improvement, either of which is required for a party to appeal the commissioners' action under R.C. 5563.02. Thus, they argue the Dennisons were not entitled to appeal the commissioners' vacation pursuant to R.C. 5563.02. However, *since the commissioners' inaction is deemed to establish the vacation of the road, the*

*condition for an appeal under R.C. 5563.02 has been satisfied. * * * Moreover, if a party could not appeal the vacation simply because the commissioners failed to vote on the issue, R.C. 5563.02 would be thwarted because the commissioners could effectively grant the vacation and prevent the injured party from appealing simply by not voting on the issue.*

(Emphasis added.) *Dennison v. Lake Cty. Commrs.*, 11th Dist. No. 2013-L-067, 2014-Ohio-4294, ¶ 45-47.

{¶ 27} Therefore, notwithstanding the trial court's conclusion to the contrary, R.C. 5563.02 authorized an appeal from the deemed vacation of a road based on the Commissioners' failure to vote on the Trustees' petition for the proposed vacation of a portion of Travis Road.

{¶ 28} Next, the trial court reasoned that it lacked jurisdiction over the Southworths' appeal because they appealed from the Commissioners' denial of their request for damages from the vacation rather than from the vacation of the road. Nevertheless, the language of R.C. 5563.02 contemplates an appeal from the determination by a board of commissioners on matters of compensation or damages associated with the vacation of a road because "[a]ny person * * * desiring to appeal from the final order or judgment of the board upon any such questions, shall, at the final hearing upon matters of compensation or damages, give notice in writing of an intention to appeal, specifying therein the matters to be appealed from." In fact, in *Southworth*, 2009-Ohio-566, we specified at ¶ 12, that the prior administrative decision to vacate the portion of Travis Road, which resulted in a taking of the Southworths' property, would not be final and appealable under R.C. 5553.10 until the Commissioners held a hearing on the issue of damages or paid them the appropriate compensation. Therefore, we disagree with the trial court's second reason to support its claimed lack of jurisdiction over the Southworths' appeal.

{¶ 29} Furthermore, the trial court determined that if a taking had occurred, the

appropriate remedy is to institute an appropriation action in accordance with R.C. 163.10 to 163.22 rather than an appeal under R.C. 5563.02. R.C. 5553.10 provides that “[n]o road shall be opened or property taken until all compensation and damages allowed are paid, or the amount thereof, as allowed in accordance with sections 163.10 to 163.22, inclusive, of the Revised Code.” The United States and Ohio Constitutions guarantee that private property shall not be taken for public use without just compensation. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 52; Fifth and Fourteenth Amendments to the United States Constitution; Ohio Constitution, Article I, Section 19. “The right of property is a fundamental right, and ‘[t]here can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces.’ ” *Doner* at ¶ 52, quoting *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 38.

{¶ 30} "In Ohio, a property owner, having other means of access to his property, may not enjoin the vacation of a public way, or receive damages for its closing, unless his property abuts the vacated street.” *Eastland Woods v. Tallmadge*, 2 Ohio St.3d 185, 186, 443 N.E.2d 972 (1983); *High Street Properties, L.L.C. v. Cleveland*, 8th Dist. Cuyahoga No. 101585, 2015-Ohio-1451, ¶ 20. “ ‘The decisions in this state have clearly established that an abutting lot owner has such an interest in the portion of the street on which he abuts, that the closing of it * * * is a taking of private property for a public use, and cannot be done without compensation.’ ” *Eastland Woods* at 186, quoting *Kinnear Mfg. Co. v. Beatty*, 65 Ohio St. 264, 282, 62 N.E. 341 (1901).

{¶ 31} In *Southworth*, 2009-Ohio-566, at ¶ 9, we held that “there is no question that a taking has occurred; in an April 21, 2004 judgment entry, the Pike County Court of Common Pleas determined that Travis Road abuts [the Southworths’] property.” However, here the common pleas court determined that, based on the Commissioners’ and Trustees’ arguments, a factual issue remained concerning whether a taking occurred because it is unclear whether the vacated portion of Travis Road abuts the Southworths’ property. In essence, the common pleas court, Commissioners, and Trustees imply that our statement in *Southworth* is incorrect without explicitly stating so. Nevertheless, we find no evidence in the record on appeal to contradict our finding in *Southworth*. To the contrary, the uncontroverted testimony of all three witnesses at the Commissioners’ damages hearing established that the vacated portion of Travis Road abuts the eastern boundary of the Southworths’ property; thus, there was a taking of the Southworths’ property caused by the vacation of part of Travis Road.

{¶ 32} In *Jeffers v. Athens Cty. Bd. of Commrs.*, 4th Dist. Athens No. 06CA39, 2007-Ohio-2458, at ¶ 10, we discussed the appropriate procedure to determine the appropriate amount of compensation for a taking caused by the vacation of a road under the then applicable statutes:

Here, the agency is the Board, and *Eastland Woods* establishes that a taking is occurring. If the Board and Jeffers agree on the proper amount of compensation, then the road is legally vacated once the agreed amount is paid. But, if the Board and Jeffers do not agree, then the road is not legally vacated until the amount of compensation and damages is paid as determined in accordance with Revised Code Chapter 163. Therefore, assuming that negotiations have failed, the only way for the Board and Jeffers to know if they agree or disagree is for the Board to hold a hearing on the issue and determine the amount. Consequently, the trial court did not err when it found irregularity in the Board's proceedings and remanded the issue of compensation and damages to the Board for hearing.

{¶ 33} In accordance with *Jeffers*, the Commissioners eventually held a hearing on the issue of compensation and damages, at which they determined that the Southworths are not entitled to any compensation for the vacation of that part of Travis Road that abuts their property.

At that point, it is apparent that the parties disagreed as to the amount of compensation and damages due the Southworths. Pursuant to the applicable statutes in existence at the time *Jeffers* was decided in 2007, the Southworths' remedy would have been a mandamus action to compel the Commissioners to institute an appropriation action in the common pleas court or the probate court to determine the amount of compensation due them for the taking of their property in accordance with R.C. 5553.10. At that time, R.C. 5553.11 similarly provided that “[i]f the board of county commissioners, at its final hearing on the proposed improvement, orders the improvement established, it shall proceed in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code.”

{¶ 34} Nevertheless, as the Southworths aptly assert, R.C. 5553.11 has since been amended, with the stated purpose “to establish that proceedings to vacate a road are not subject to real property appropriation procedures.” Title to Sub. H.B. No. 318, 2008 Ohio Laws 165. R.C. 5553.11 now provides that “[i]f the proceeding is for an improvement *other than the vacation of a road* and the board of county commissioners, at its final hearing on the proposed improvement, orders the improvement established, it shall proceed in accordance with sections 163.10 to 163.22 of the Revised Code.” (Emphasis added.) Because R.C. 5553.10 and amended R.C. 5553.11 are related, they must be read in *pari materia*. See *State v. Chappell*, 127 Ohio St.3d 376, 2010-Ohio-5991, 939 N.E.2d 1234, ¶ 25. All statutory provisions bearing upon the same subject matter should be construed harmoniously unless they are irreconcilable, and in

reading them in pari materia, we must give a reasonable construction that provides a proper effect to each statute. *Id.*; see also *State v. Montague*, 4th Dist. Athens No. 12CA25, 2013-Ohio-5505, ¶ 9.

{¶ 35} In construing R.C. 5553.10 and amended R.C. 5553.11 in pari materia, for a road vacation proceeding that results in the taking of private property, no property shall be taken until all compensation and damages allowed are paid, but that determination is no longer made by a R.C. Chapter 163 appropriation proceeding. Instead, as before the amendment, the board of county commissioners initially holds a hearing and determines the amount, if any, of damages resulting from the taking. *Jeffers*, 2007-Ohio-2458, at ¶ 10. But because an appropriation proceeding is now precluded by amended R.C. 5553.11 in these types of cases, the damages issue must be resolved by appeal to the common pleas or probate court pursuant to R.C. 5563.02 and a jury trial in the context of that appeal under R.C. 5563.05.

{¶ 36} If we were to hold that an appeal were not available to determine the amount of compensation that a property owner might be entitled to from the taking of private property by a board of county commissioners' vacation of an abutting public road, property owners would have a fundamental constitutional right that could be infringed upon without remedy, an unreasonable construction of the pertinent statutory provisions that the General Assembly could not have intended. See *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, 29 N.E.2d 939, ¶ 29, quoting *State v. Wells*, 91 Ohio St.3d 32, 34, 740 N.E.2d 1097 (2001) (“We have therefore recognized that ‘statutes will be construed to avoid unreasonable or absurd consequences’ ”); R.C. 1.47(C) (establishing a presumption that in enacting a statute, “[a] just and reasonable result is intended”). Therefore, we believe that the trial court erred by determining that the Southworths

had to institute a mandamus action to compel the Commissioners to institute appropriation proceedings because those proceedings are no longer available under amended R.C. 5553.11 to property owners whose property has been taken due to a road vacation.

{¶ 37} Finally, the Commissioners' and Trustees' reliance on cases like *Ohio Multi-Use Trails Assn. v. Vinton Cty. Commrs.*, 182 Ohio App.3d 32, 2009-Ohio-2061, 911 N.E.2d 350, in support of their argument that the common pleas court lacked jurisdiction over the Southworths' appeal because the act of vacating a street is a legislative act that is not appealable under R.C. Chapter 2506, is misplaced because this case addresses appealability under R.C. 5563.02, not R.C. Chapter 2506. *See Dennison*, 2014-Ohio-4294, at ¶ 47, where the court of appeals rejected a similar objection because *Multi-Use Trails* did not address the applicability of an appeal under R.C. 5563.02 for the vacation of a road under R.C. 5553.045.

{¶ 38} Therefore, in the case sub judice the common pleas court erred by dismissing the Southworths' appeal for lack of jurisdiction. We sustain the Southworths' second assignment of error.

{¶ 39} B. Authority of Board of County Commissioners to Determine Damages
Associated with Road Vacation Proceeding

{¶ 40} In their first assignment of error, the Southworths contend that the common pleas court erred by finding that the Commissioners were without jurisdiction to make a determination of damages in a road vacation proceeding under R.C. 5553.045. As discussed in our disposition of their second assignment of error, the trial court erred by concluding that the Trustees, instead of the Commissioners, are the appropriate entity to determine damages because the vacation resulted from the Commissioners' inaction. Further, an appropriation proceeding was precluded

by amended RC. 5553.11.

{¶ 41} Therefore, under the language of R.C. 5563.02, which references the “final hearing upon matters of compensation and damages” before the board of county commissioners, R.C. 5553.09, which authorizes the board of county commissioners to cause the compensation and damages on account of a proposed improvement be paid to the persons entitled thereto, and R.C. 5553.10, which specifies that no property shall be taken until all compensation and damages are paid, the Commissioners are authorized to determine the amount of compensation, if any, the Southworths are entitled to by the taking of their property related to the vacation of the part of Travis Road abutting their property from the Southworth-Mosier line south to State Route 32. Without this remedy and the corresponding right to appeal an adverse board of county commissioners ruling on damages to the common pleas or probate court under R.C. 5563.02 and to have a jury trial on the matter under R.C. 5563.05 would render property owners like the Southworths without a remedy to address the infringement of their fundamental constitutional right to prevent the taking of private property without just compensation.

{¶ 42} Insofar as the trial court, Commissioners, and Trustees did not consider the taking of the Southworths’ property a settled issue, we held otherwise in *Southworth*, 2009-Ohio-566, at ¶ 9, and the uncontroverted evidence at the damages hearing before the Commissioners established that a taking of the Southworths’ property resulted from the vacation of the part of Travis Road abutting their property.

{¶ 43} Moreover, we expressly held in *Southworth* at ¶ 12, that the Commissioners are authorized to hold a hearing on the issue of damages associated with the taking of the Southworths’ property. *See also Jeffers*, 2007-Ohio-2458, at ¶ 10.

{¶ 44} Therefore, the common pleas court erred by finding that the Commissioners are without jurisdiction to make a determination of damages associated with the road vacation proceeding under R.C. 5553.045 and we sustain the Southworths' first assignment of error.

V. CONCLUSION

{¶ 45} Based on the foregoing, the common pleas court erred by dismissing the Southworths' appeal under R.C. 5563.02 for lack of jurisdiction and in finding that the Commissioners lacked authority to determine damages associated with the road vacation proceeding. Having sustained the Southworths' assignments of error, we reverse the judgment of the common pleas court and remand the cause to that court for further proceedings consistent with this opinion.

**JUDGMENT REVERSED AND CAUSE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and that the CAUSE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. Appellees shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J.: Concurs in Judgment & Opinion

Hoover, J.: Concurs in Judgment Only

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.