[Cite as *Internal. Union of Operating Engineers v. Cleveland*, 2015-Ohio-5271.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102937

INTERNATIONAL UNION OF OPERATING ENGINEERS

PLAINTIFF-APPELLANT
vs.

CITY OF CLEVELAND

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-817984

BEFORE: Celebrezze, A.J., Jones, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 17, 2015

ATTORNEYS FOR APPELLANT

William Fadel
3515 Prospect Avenue
Cleveland, Ohio 44115

Jonah Grabelsky
Wuliger, Fadel & Beyer, L.L.C.
1340 Sumner Avenue
Cleveland, Ohio 44115

ATTORNEYS FOR APPELLEE

Barbara A. Langhenry
Director of Law
BY: Carolyn M. Downey
Assistant Director of Law
City of Cleveland
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Plaintiff-appellant, International Union of Operating Engineers, Local 18 ("appellant"), brings this appeal challenging the trial court's order affirming the City of Cleveland Board of Zoning Appeals' decision to uphold the denial of appellant's demolition permit. Specifically, appellant argues: (1) the trial court's order was not supported by a preponderance of reliable, probative, and substantial evidence as a matter of law, and (2) the trial court failed to provide the basis upon which it made its ruling. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On March 9, 2007, appellant purchased the commercial property located at 3600 Euclid Avenue, Cleveland, Ohio 44115. At the time of the purchase, the building was vacant and non-functional.

{¶3} On April 4, 2013, the City of Cleveland's Department of Building and Housing conducted an interior inspection of the property. The inspection revealed the following violations: (1) the sanitary facilities were damaged, deteriorated, missing, or inoperable; (2) there was no supply of hot water; (3) there was no proper provision for running water, and running water facilities were damaged; (4) the heating facilities were unapproved, damaged, deteriorated, and/or missing; (5) the electrical facilities were damaged and deteriorated; (6) the baseboards, window trim, window sills, and interior trim were deteriorated, damaged, or missing; (7) the door jambs and casings were

damaged or missing; (8) the entrance and dwelling unit door locks were damaged or missing; (9) the interior stair railings, treads, risers, and spindles were damaged, deteriorated, and/or missing; (10) the window lights, sashes, weights, frames, and sills were damaged, deteriorated, and/or missing; (11) the interior of the building was not maintained in a sanitary matter; (12) the gutters and downspouts were decayed, missing, or deteriorated; (13) the roof was not maintained, weather-tight, and not devoid of leaks, and was otherwise missing roofing material; and (14) the interior walls and floors were weak, damaged, and cracked, and were otherwise missing material. Based on these violations, the Department of Building and Housing declared the property a public nuisance and condemned the property, and issued the following condemnation notice and order:

> Pursuant to Section 310.09, 367.04, 369.19, and 369.21 of the codified ordinances of the city of Cleveland, the Director of Building and Housing does hereby declare the structure as and located at 3600 Euclid Avenue, Cleveland, Ohio 44115 to be a public nuisance in that it constitutes an eminent danger and peril to human life and public health, safety and welfare, and that the aforesaid condition constitutes an emergency. Therefore, you are hereby notified that the city of Cleveland pursuant to said Section 3103.09, 367.04, 369.19 and 369.21 of the codified ordinances will summarily abate said public nuisance created as a result of said emergency by demolition of the structure if the violations listed in the attached notice are not entirely corrected by the date set forth in said notice.

{¶4} Upon receipt of the condemnation notice, appellant filed an application for a demolition permit with the Department of Building and Housing. Due to the fact that the property is located within a "design review" district, Cleveland Codified Ordinance

("C.C.O.") 341.08 required the Department of Building and Housing to send appellant's application to the Cleveland Planning Commission for review. A demolition permit for property located within a design review district must be approved by the Cleveland Planning Commission — the demolition permit cannot be unilaterally issued by the Department of Building and Housing. After holding a hearing, the Cleveland Planning Commission denied appellant's application for a demolition permit.

{¶5} Appellant filed an appeal with the City of Cleveland's Board of Zoning Appeals. Appellant's appeal challenged the Planning Commission's denial of the demolition permit, and did not dispute the Department of Building and Housing's condemnation order. Appellant had the burden of demonstrating that the Planning Commission's decision was illegal, arbitrary, capricious, or unreasonable and unsupported by a preponderance of substantial, reliable, and probative evidence. Following a public hearing, the Board of Zoning Appeals affirmed the Planning Commission's decision denying appellant's demolition permit.

{¶6} Appellant filed an appeal with the Cuyahoga County Court of Common Pleas, pursuant to R.C. Chapter 2506, challenging the Board of Zoning Appeals' ruling. Appellant filed a motion for summary judgment, which was denied by the trial court. In 2013-CV-817986, a separate case involving the demolition of the same property, appellant filed: (1) a petition for a writ of mandamus, and (2) a writ of prohibition in the common pleas court. The trial court granted the city of Cleveland's motions to dismiss

the petitions, finding that until appellant's R.C. Chapter 2506 administrative appeal was resolved, the petitions were premature.

{¶7} On March 26, 2015, the trial court affirmed the Board of Zoning Appeals' denial of appellant's demolition permit. The trial court's journal entry stated:

> According to the record, the board of zoning appeals' decision is based upon hearings before the board as well as the [C]leveland planning commission, and it is not arbitrary, capricious, or unlawful. According to the record, appellant failed to document any reason outlined in [R.C.] §2506.03 to admit additional evidence. Upon review of the whole record, there is a preponderance of probative, substantial and reliable evidence to support the decision by the [C]leveland board of zoning appeals. This court affirms the [C]leveland board of zoning appeals' decision. The finding was not "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record."

{¶8} Appellant filed the instant appeal, assigning two errors for review:

> I. The trial court's decision is not supported by a preponderance of reliable, probative, and substantial evidence as a matter of law.
>
> II. The trial court's decision failed to state the basis upon which it determined that the Board of Zoning Appeals' final decision was neither unconstitutional, illegal, arbitrary, capricious, unreasonable, nor unsupported by a preponderance of the substantial, reliable, and probative evidence.

II. Law and Analysis

A. Standard of Review

{¶9} In appeals brought under R.C. 2506.04, trial courts and appellate courts apply different standards of review. R.C. 2506.04 provides that when an administrative decision is appealed, the common pleas 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." Furthermore, R.C. 2506.04 provides that the common pleas court judgment "may be appealed by any party on questions of law."

{¶10} The Ohio Supreme Court has explained the different standards of review:

> "In an R.C. Chapter 2506 administrative appeal of a decision of the board of zoning appeals to the common pleas court, the court, pursuant to R.C. 2506.04, 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."

Cleveland Clinic Found. v. Bd. of Zoning Appeals of the City of Cleveland, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 23, quoting *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, 465 N.E.2d 848 (1984); *see also Rabkewych v. City of Cleveland Bd. of Bldg. Stds. & Appeals*, 8th Dist. Cuyahoga No. 101804, 2015-Ohio-1952, ¶ 28.

{¶11} Thus, 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." *Kisil* at fn. 4. Furthermore, in *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261, 533 N.E.2d 264, (1988), the Ohio Supreme Court emphasized the limited scope of the court of appeals' standard of review:

> It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. * * * The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative

> agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so.

Id. at 261.

{¶12} In a R.C. 2506.04 administrative appeal, the issue regarding whether the trial court abused its discretion is "[w]ithin the ambit of 'questions of law.'" *Kisil* at *id.*

B. Trial Court's Judgment

1. Condemnation Notice vs. Emergency Demolition Order

{¶13} First, appellant argues that the trial court's decision affirming the Board of Zoning Appeals' denial of its demolition permit is not supported by a preponderance of the reliable, probative, and substantial evidence as a matter of law. Specifically, appellant argues that Cleveland Codified Ordinance ("C.C.O.") 341.08 mandated the city of Cleveland to issue a demolition permit because of the property's status as an emergency public nuisance under C.C.O. 3103.09(j).

{¶14} We initially note that appellant, in making this argument, misstates that language of C.C.O. 3103.09, which sets forth provisions for unsafe structures. Appellant contends that C.C.O. 3103.09(j) "expressly states that the City 'shall' remedy an emergency via demolition." However, C.C.O. 3103.09(j) provides that, in cases of emergency, "the Director shall promptly cause the building, structure or a portion of those to be made safe or removed."

{¶15} C.C.O. 3103.09 provides in relevant part:

(b)(1) [Declaration of Nuisance] All buildings or structures that are injurious to or a menace to the public health, safety or welfare, or are structurally unsafe, unsanitary or not provided with adequate safe egress, or constitute a fire hazard, or are vacant and open to public entry, or are otherwise dangerous to human life or injurious to the public, or in relation to existing use constitute a hazard to the public health, safety or welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, are, severally, for the purposes of this Building Code, declared to be "unsafe structures". All unsafe structures or conditions are declared to be public nuisances. The public nuisance shall be abated by correction of the violations to the minimum standards of the Codified Ordinances of Cleveland, Ohio, 1976, applicable City rules and regulations, the Revised Code, and Ohio Administrative Code, including the Ohio Building Code, or by demolition.

(j) [Cases of Emergency] In cases of emergency that, in the opinion of the Director, involve immediate danger to human life or health, the Director shall promptly cause the building, structure or a portion of those to be made safe or removed. For this purpose he or she may at once enter the structure or land on which it stands, or any abutting land or structure, with assistance and at the cost as he or she deems necessary. He or she may request the Director of Public Safety to enforce the orders he or she gives that are

> necessary to cause the building, structure or a portion of those to be made safe or removed. The Director of Public Safety has the authority to enforce the orders. He or she may order adjacent structures and premises to be vacated, and protect the public by an appropriate fence or other means as may be necessary, and for this purpose may close a public or private way.

{¶16} Robert Brown, director of city planning, acknowledged that the Building and Housing Department did in fact condemn the building, issuing a "standard condemnation" order. C.C.O. 369.21, which governs condemnation of premises, states:

> (a) Any dwelling, dwelling unit, building or structure determined by the Commissioner of Housing to have any of the following defects shall be condemned as unfit for human habitation:
>
> (1) One which is so damaged, decayed, dilapidated, insanitary, unsafe or vermin-infected that it creates a hazard to the health, welfare or safety of the occupants or of the public;
>
> (2) One which lacks illumination, ventilation or sanitary facilities adequate to protect the health or welfare of the occupants or of the public; or
> (3) One which, because of its general condition or location is insanitary or otherwise dangerous to the health, safety or welfare of the occupants or of the public.
>
> (b) Notice of such condemnation and placarding the condemned dwelling, dwelling unit, building or structure shall be accomplished as provided in this Housing Code.

{¶17} However, Brown explained that although a standard condemnation order uses the term "emergency," it does not mean that the building must be demolished immediately to prevent it from collapsing:

> Building and Housing condemned the building, but Building and Housing made it clear that it is a standard condemnation and a standard condemnation means either repair the building or demolish it. It's one or the other. It was not a Forthwith Demolition Order which I think you know, I'm not sure if you do. But, when Building and Housing finds a building that has to come down immediately because there's a jeopardy of it collapsing, they are actually exempted from going through design review at all. Even if it's a landmark building, they can take the building down or order it down right away. That was not the case here. This was a standard condemnation which does use the language "emergency" and, you know, all the things the applicant stated, but it's a standard condemnation notice which says "repair or demolish."

{¶18} Brown further explained the difference between an emergency demolition ordinance violation and a standard condemnation order that includes the term "emergency":

> I realize that the language can be confusing, but I do know that we have thousands of cases like this and when the Building and Housing Department condemns a building, that's the language that it uses and there's a difference between that language and an order to demolish. An order to demolish could, because of an immediate hazard that could cause the buildings to collapse and injure someone, is exempted from any design review.
> That's not the case here. The Building Department has never come to the City Planning Commission and said, you need to waive this from your process because this is an immediate need for demolition. There was no demolition order. There was a condemnation, which is different than a demolition order, and I realize the language is confusing.

{¶19} Appellee contends that C.C.O. 341.08 does not mandate the Planning Commission to approve a demolition permit when the Department of Building and Housing issues a condemnation order. Appellee argues that a condemnation notice is neither an order nor a mandate for the immediate demolition of the structure, and that the term "imminent hazard" does not mean that the structure is in jeopardy of collapsing. Instead, appellee states, condemnation orders are issued to prevent occupancy of the

structure until the violations are corrected. Appellee argues that had the director who signed appellant's condemnation notice believed that the structure constituted a C.C.O. 3103.09(j) emergency, the director would have issued an order for an immediate emergency demolition, bypassing the Planning Commission's review.

{¶20} In *Rabkewych,* 8th Dist. Cuyahoga No. 101804, 2015-Ohio-1952, this court reviewed a judgment of the Cuyahoga County Court of Common Pleas affirming the city of Cleveland Board of Building Standards and Building Appeals' decision to condemn and demolish appellant's property. *Id.* at ¶ 1. The Department of Building and Housing conducted an inspection of appellant's property and found the property to be a "public nuisance in that it constitutes an eminent danger and peril to human life and public health, safety and welfare, and that the aforesaid condition constitutes an emergency." *Id*. at ¶ 3. The city issued a condemnation notice of violation and demolition order, requiring immediate abatement of the code violations. *Id*. Appellant filed an appeal with the Board, requesting more time to correct the violations and requesting "that the city of Cleveland cease efforts to demolish the structure." *Id*. at ¶ 4.

{¶21} During the Board's hearing on appellant's appeal, the city building and housing commissioner testified that the structure is "obviously collapsing." *Id*. at ¶ 12. Furthermore, the chief building official of Building and Housing testified that "there's a great concern of residents in this area. Tremont is really densely packed with people that [the structure] should not be standing in this condition." *Id*. at ¶ 14. The chief building official further stated that the structure was an "emergency and it needs to come down immediately." *Id*. Finally, the Ward 3 area coordinator testified that one of the structure's compromised walls "is literally maybe four feet from an occupied structure,"

and that "[i]f that wall were to collapse and those people were in their home sleeping, that is going to kill the people in the house next door." *Id*. at ¶ 15. The Board denied appellant's appeal, finding that the building was an imminent danger, and remanded the matter to the Department of Building and Housing for immediate action. *Id*. at ¶ 19.

{¶22} Based on the city's evidence that appellant's structure was a public nuisance, unsafe, and an immediate danger to human life, the trial court held that the city had the right to immediately demolish the property under C.C.O. 3103.09. *Id*. at ¶ 35. Furthermore, the trial court affirmed the Board's decision, as nothing in the record suggested that the Board's decision was "unconstitutional, illegal, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, and probative evidence." *Id*. at ¶ 40.

{¶23} This court affirmed the trial court's judgment finding, in relevant part:

> We disagree with [appellant] that the common pleas court abused its discretion in affirming the Board's decision because the court is correct that there is nothing in the record to show that the Board's decision was unconstitutional, illegal, arbitrary, capricious, or unreasonable, and it was also supported by a preponderance of substantial, reliable, and probative evidence. Notably, [appellant] never challenged the Board's finding that his property was an unsafe structure.

Id.

{¶24} Appellant argues the condition of the 3600 Euclid Avenue building was the same as the building in question in *Rabkewych*. We disagree, and find that the instant matter is distinguishable from *Rabkewych*.

{¶25} Despite the fact that the Department of Building and Housing's condemnation order used the term "emergency," appellant's structure, unlike *Rabkewych*, did not require immediate demolition to prevent the building from collapsing.

{¶26} It is undisputed that the Department of Building and Housing's inspection of appellant's building unveiled several violations. However, unlike *Rabkewych*, the Department of Building and Housing determined that these violations rendered the building uninhabitable, and as a result, issued the condemnation notice to terminate occupancy of the building until the violations were corrected. Furthermore, the department neither determined that the violations compromised the building's structural stability nor determined that the violations required an immediate demolition of the building.

{¶27} Brown testified about his observations during a tour of appellant's building:

> on August 12th with the applicant present, we took a tour of the building and we actually brought two architects, Jerry Rothenberg and Paul Volpe, on the tour and they're both actually from the Design Review Committee and so, we took a tour, I was on that tour as well, where we saw a lot of what we would call "superficial damage" like ceiling tiles coming down, you know, plaster falling off, things like that. The architects who took the tour observed no structural problems with the building and the applicant really hasn't claimed that the building is structurally un-stable or anything like that.

{¶28} Martin Sinclair, the chief inspector for Building and Housing who inspected the property, testified about his observations of appellant's building:

> what constitutes the hazards is the accessibility of the general public to pry their way in. It's not easily * * * they keep the buildings secured, but

> there's a number of things in there. There's mold. There's electrical equipment that we're not being able to test it or anything to know what exactly is left in there. Holes in some of the floors. No lighting.
>
> Water facilities and plumbing are gone and off and as far as structurally the condition of the building, not being an engineer, I couldn't make an evaluation, but I do know that the interior photographs would constitute an uninhabitable building and worth condemning.

Mr. Brown stated that he had no disagreement with Mr. Sinclair's assessment.

{¶29} Richard Riccardi, zoning administrator, and Carol Downey, assistant director of law on behalf of the Department of Building and Housing, both confirmed that: (1) there are two types of condemnations — one that is eminent where there is a threat to the safety and the building is about to collapse, and one that is not eminent, and (2) city followed proper and standard procedure in reviewing appellant's demolition permit.

{¶30} After reviewing the record, we conclude that the decision of the common pleas court is supported by a preponderance of reliable, probative, and substantial evidence. Appellant merely argues that the building is an "emergency" requiring demolition based on the language of the Department of Building and Housing's condemnation notice. Aside from the language of the condemnation notice, appellant fails to present any evidence, such as structural instability or a danger of collapsing, that would constitute an "emergency" and warranting immediate demolition. Furthermore,

appellant failed to dispute appellees' findings that the building was not a "forthwith emergency."

{¶31} Appellant argues that the trial court abused its discretion in affirming the Board of Zoning Appeals' ruling because the city issued two separate and entirely contradictory orders: (1) the Department of Building and Housing's condemnation notice, and (2) the Planning Commission's denial of the demolition permit. We disagree, and note that appellant misstates the language of the condemnation notice. The Department of Building and Housing's condemnation notice stated that appellant's building would be demolished "if the violations listed in the attached notice are not entirely corrected by the date set forth in said notice." The condemnation notice did not, as appellant claims, outright mandate the demolition of the building. Furthermore, as there is nothing in the record to show that the Board of Zoning Appeals' decision was unconstitutional, illegal, arbitrary, capricious, or unreasonable, and it was also supported by a preponderance of substantial, reliable, and probative evidence, we find that the trial court did not abuse its discretion in affirming the board's decision.

2. Demolition in a Design Review District

{¶32} C.C.O. 341.08, which governs demolition and moving, states:

> For applications proposing the demolition or moving of a building in a Design Review District, other than for emergency demolition activities ordered by the Director of the Building and Housing to remedy conditions

that pose immediate danger to human life or health, the following provisions shall apply:

(a) Criteria for Action. In considering a request to demolish or move a building or other structure located within a Design Review District, the City Planning Commission and its Local Design Review Advisory Committee shall consider the following factors in making its decision to approve or disapprove the request:

(1) The architectural and historic significance of the subject building or structure;

(2) The significance of the building or structure in contributing to the architectural or historic character of its environs;

(3) In the case of a request to move a building or other structure, the relationship between the location of the subject building or structure and its overall significance;

(4) The present and potential economic viability of the subject building or structure, given its physical condition and marketability;

(5) The presence of conditions on the subject property that are dangerous or are detrimental to the immediate area and cannot be reasonably remedied other than by the proposed demolition;

(6) The degree to which the applicant proposes to salvage and facilitate re-use of structures proposed for demolition; and

(7) The design quality and significance and the appropriateness of the proposed re-use of the property.

{¶33} Appellant argues that the C.C.O. 341.08 multifactor review was inapplicable and not proper, because the Department of Building and Housing declared the property an "emergency." However, appellee argues that appellant received a standard condemnation order, rather than an emergency demolition order.

{¶34} Carol Downey testified that both the Department of Building and Housing and the Planning Commission followed proper procedure in reviewing appellant's demolition permit. Ms. Downey explained that when demolition is sought by the owner of property located in a design district, as was the case in the instant matter, the standard procedure is for the Planning Commission to review the demolition permit, because the Department of Building and Housing "cannot unilaterally under those circumstances issue a demolition permit." Furthermore, Mr. Brown testified that if the Department of Building and Housing, rather than appellant, wanted to demolish appellant's property, the department would go through the exact same procedure, and be subjected to the Planning Commission's review of the demolition permit:

> Almost every meeting of the Planning Commission, Building and Housing is at the meeting to request demolition of a building. Deputy Director Ron O'Leary is typically the person present from Building and Housing and would ask either the Planning Commission or the Landmarks Commission if it's a designated building district for approval to demolish the building. Sometimes that approval is denied. On the other hand, as I said, if the Building Department says this is an immediate Forthwith Demolition Order, they actually just notify us and do not even come to the meeting. They proceed with the demolition either directly by the City or by the owner and there is no design review conducted.

{¶35} A representative of appellee testified that the Planning Commission, in conducting the multifactor review under C.C.O. 341.08, determined that: (1) the building was architecturally and historically significant, and (2) there was no evidence that the building was unable to be rehabilitated and reused.

{¶36} Appellant further contends that appellee's application of the C.C.O. 341.08 multifactor review was "fatally defective." Specifically, appellant argues that: (1) the Planning Commission arbitrarily determined that the building was architecturally and historically significant without having any information regarding who the architect was and when it was built, and (2) appellee only considered the building's architectural and historical significance, without addressing any of the other C.C.O. 341.08 factors. We disagree, and find that: (1) the appellee's testimony regarding the C.C.O. 341.08 analysis supported the denial of appellant's demolition permit, and (2) the Planning Commission is not required to demonstrate all seven C.C.O. 341.08 factors in order to deny a demolition permit.

{¶37} Robert Brown addressed the architectural and historical significance of appellant's building. Although Mr. Brown was not immediately able to recall who the architect of the building was or when the building was built during the parties' first meeting, he researched and presented the information about the building's architectural and historical significance at the parties' second meeting:

> So, at the [Planning Commission] meeting on August 16th, we went in detail through the architectural and historic significance of these buildings and we actually presented a power-point here, our staff did, and went through and explained not only are the buildings architecturally significant

> and it was explained why, but historically this was the first major headquarters of the company Bearings which is a major international company and of course it's still across the street in its new headquarters and the building at the corner was actually built as the first, as far as I know, the first company owned headquarters of Progressive Insurance, one of the fortune five hundred companies. They occupied this building until, let's see, from 1951 to 1971. In 1971, they sold it to Bearings which occupied the other building and Bearings took over both of the buildings in 1971 and they occupied them both until 1999 when Bearings built its new headquarters across the street. So, our position was, they're both architecturally and historically significant in Cleveland housing, two of our major companies, and we went through all of this and the applicant was there and saw the presentation and commented on it.

{¶38} In a letter to the Board of Zoning Appeals, Jeffrey Johnson, councilman of ward 8, also opposed appellant's demolition request based on "the historic importance of the property," and indicated that "Cleveland Landmarks Commission has agreed and did vote to nominate [the building] as a City landmark[.]"

{¶39} The record does not support appellant's argument that appellee only considered two of the seven C.C.O. 341.08 factors. Mr. Brown testified about the standards that are considered when there is a request to demolish a building located in a design review district:

> two of the things that we always look at is documentation of the condition of the building to be demolished and also documentation of its economic viability; if someone is claiming that there is really no way to save the building, we ask for those things. The applicant had not brought any of that information to the committee, so the committee tabled it.

Mr. Brown also testified about the lack of evidence regarding the ability to reuse or rehabilitate the building under the fourth C.C.O. 341.08 factor:

> There was no economic studies submitted showing that the cost of rehab would outweigh the possible sale or lease of the building and, in fact, you

> know, a standard question that the Planning Commission always asks an applicant asking for demolition of a building that's deemed significant is, have you tried to find a buyer or renter who would consider rehabbing the building.
>
> In this case, the applicant said, no, the Union has made it clear it has no interest, and I'm not saying this in a negative way. It was just the statement of fact that the Union has no interest in selling or leasing the building and made no attempt to find a buyer or a lessee who was willing to rehabilitate the building.

{¶40} Mr. Brown testified about the economic viability analysis:

> whenever the Commission asks for an analysis of the economic viability of a building, the two sides of the equation always needs to be presented. One was the cost of rehab and then what's the real estate analysis of the ability to sell or lease the building after rehabilitation and did the two sides of the equation match up. There was nothing submitted about what the rehabilitation of this building would yield in terms of being able to sell or lease the building and that's always the argument that the Planning Commission and the Landmarks Commission has to hear. That was not submitted to us.

Furthermore, Mr. Brown testified "when the Union took over this building, it had been occupied I believe the very year before, so the building was certainly in occupiable and habitable condition."

{¶41} Appellees presented testimony that appellant's building was neither in jeopardy of collapsing nor posed an immediate danger to the immediate area. Mr. Brown testified about the "superficial damage" he observed during the tour of appellant's building, and stated that the architects "observed no structural problems with the building."

{¶42} Mr. Brown testified about appellant's demolition proposal:

> Well, all I can say is by the testimony of the applicant, the testimony was that the Union purchased these buildings for the purpose of demolishing them and creating either future parking or development space. I think that's what the applicant stated, that the Union never had any intention of selling or leasing these buildings for occupancy.

{¶43} Jim Haviland, executive director of Midtown Cleveland Incorporated, testified "we felt there was significance in keeping the three-story [building]," and that Midtown Cleveland "offered to help the Union redevelop or repurpose that building." Furthermore, Mr. Haviland testified about his concerns regarding "a demolition right at a major transit stop," and proposed that a partial demolition would be more appropriate.

{¶44} After reviewing the record, we conclude that the C.C.O. 341.08 analysis was proper, because there was no evidence that appellant's building presented an immediate hazard or a danger of collapsing, exempting the demolition permit from design review. Instead, appellant merely argues that the demolition permit was exempt from design review because the Building and Housing Department's condemnation notice used the term "emergency." Furthermore, we conclude that the record does not support appellant's argument that appellee's C.C.O. 341.08 analysis was defective or incomplete.

{¶45} Accordingly, appellant's first assignment of error is overruled.

C. Trial Court's Failure to State a Basis for its Judgment

{¶46} Appellant further argues that the trial court's decision should be reversed, as a matter of law, because the court failed to provide a basis upon which it made its judgment.

{¶47} The trial court's March 26, 2015 journal entry states, in relevant part:

> according to the record, the board of zoning appeals' decision is based upon hearings before the board as well as the [C]leveland planning commission, and it is not arbitrary, capricious, or unlawful. According to the record, appellant failed to document any reason outlined in R.C. §2506.03 to admit additional evidence. Upon review of the whole record, there is a preponderance of probative, substantial and reliable evidence to support the decision by the [C]leveland board of zoning appeals. This court affirms the [C]leveland board of zoning appeals' decision. The finding was not "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." However, the court notes that appellant has a remedy available by returning to the city's planning commission and following the outlined procedures.

{¶48} Appellant's reliance on *Davis v. Barberton*, Ninth Dist. Summit No. 23767, 2008-Ohio-113, ¶ 11; is misplaced. In *Davis*, the Ninth District Court of Appeals held "[w]here a trial court fails to cite substantial, reliable and probative evidence when affirming an administrative agency's decision, it is error." *Davis v. Barberton*, *id.* at ¶ 11 *see also Kohrman v. Cincinnati Zoning Bd. of Appeals*, 165 Ohio App.3d 401, 407, 2005-Ohio-5965, 796 N.E.2d 890, 2 ¶ 16 (1st Dist.) (finding the trial court erred in relying on statements made during oral arguments before the Zoning Board of Appeals, rather than evidence that was presented to the hearing examiner). However, in *Davis*, the trial court failed to consider several pieces of evidence in the record. Accordingly, the court of appeals reversed the trial court's judgment, holding that the trial court "did not meet its burden of citing substantial, reliable, and probative evidence in support of the Board's finding." *Davis* at *id.*

{¶49} In the instant matter, the trial court's judgment was based on a review of the whole record. The trial court reviewed the records from: (1) the hearing before the

Board of Zoning Appeals, and (2) the hearing before the Cleveland Planning Commission. Furthermore, the trial court noted that appellant failed to admit any additional evidence under R.C. 2506.03. After review, we conclude that the trial court's decision was based on a thorough review of the entire record, and, unlike *Davis*, we cannot say that there was evidence in the record that the trial court failed to consider.

{¶50} Appellant directs this court to *Cain v. McKee*, Eleventh Dist. Trumbull No. 2395, 1977 Ohio App. LEXIS 7616 (Jan. 24, 1977), where, based on the record from the Board of Zoning Appeals' hearing, the trial court reversed the Board "with no reason given for the decision." *Id.* at *2. The 11th District Court of Appeals reversed the trial court's judgment, emphasizing that in R.C. 2506.04 appeals, it is important for a trial court to make the necessary findings on which its judgment is based:

> When questions of fact may properly enter into the decision of the Common Pleas Court in a Chapter 2506 appeal, we think it imperative that the Common Pleas Court make the necessary findings on which its judgment is predicated. In this respect, we find the necessity of the Common Pleas Court findings akin to a motion for separate findings authorized under Civil Rule 52. Without the findings supportive of its final order, we do not know on what basis or finding the Common Pleas Court predicated its judgment. If the actual reason was a factual judgment concerning where the preponderance of substantial, reliable and probative evidence on the whole record lies, it should be so stated. For this Court to establish where the preponderance lies would, we believe, usurp the function of the Common Pleas Court in its capacity as the fact finder when our function in this type appeal is limited to questions of law.

Id. at *4-5.

{¶51} The instant matter is distinguishable from *Cain*, because the trial court's judgment was not based on any factual findings. The record before the trial court

included the Board of Zoning Appeals' Resolution of appellant's appeal challenging the Planning Commission's denial of the demolition permit. The Board's Resolution provides, in relevant part:

> WHEREAS, appellant cites the Notice of Violation issued for the property at 3600 Euclid Avenue on April 11, 2013, by the Cleveland Department of Building and Housing as cause to apply for a demolition permit.
>
> WHEREAS, testimony given in the hearing verified that the property is located within the Midtown Design District subject to the Cleveland Codified Ordinances established under Chapter 341, specifically section 341.08.
>
> WHEREAS, when demolition is sought by the owner of property in a Design District, the Department of Building and Housing cannot unilaterally issue a demolition permit under those circumstances.
>
> WHEREAS, with due consideration given to the testimony and other evidence submitted at the hearing, the Board finds that the Planning Commission exercised their authority in a lengthy and reasonable manner of review.
>
> WHEREAS, the motion of the Cleveland Planning Commission to deny the request for demolition was determined with sensitivity for the totality of the circumstances before them and in accordance with the provisions under Section 341.08 of the Cleveland Codified Ordinances; now therefore,
>
> BE IT RESOLVED that based upon the evidence, the case made by the appellant, that it was arbitrary, and the testimony by Building and Housing's legal representative that the demolition permit application process is the same across-the-board for any applicant in a Design District, the appellant did not prove that the City Planning Commission was arbitrary in its motion rendered on September 20, 2013 and the decision to deny the appellant's request for demolition of the property located at 3600 Euclid Avenue is affirmed.

{¶52} The trial court's judgment was based upon a review of the entire record, including the records of the hearings before the Board of Zoning Appeals and Planning

Commission. As the trial court's judgment was not based on any factual findings, the trial court was not required to cite the findings on which its judgment was predicated. Furthermore, R.C. 2506.04 does not require a trial court to provide a detailed basis upon which it made its judgment.

{¶53} We find that the trial court's judgment is fully supported by a preponderance of reliable, probative, and substantial evidence, and that the trial court was not required to cite the specific findings on which its judgment was based. Accordingly, appellant's second assignment of error is overruled.

III. Conclusion

{¶54} Based on our limited standard of review, we will affirm the common pleas court's decision if we find that it is supported by a preponderance of reliable, probative, and substantial evidence.

{¶55} It is undisputed that the Department of Building and Housing's condemnation notice used the term "emergency" to describe the condition of appellant's building. However, the condemnation notice did not, as appellant argues, mandate the demolition of the building. There was no evidence in the record that appellant's building presented an immediate hazard or a danger of collapsing, exempting the demolition permit from design review. Instead, the evidence in the record shows that appellant's building was uninhabitable, rather than structurally unstable or in danger of collapsing. Thus, the C.C.O. 341.08 multifactor analysis was proper, and appellant's

demolition permit was not exempt from design review based on the language in the condemnation notice.

{¶56} As the trial court's judgment was based on a review of the whole record, rather than factual findings, the trial court was not required to cite the specific findings on which its judgment was based.

{¶57} After reviewing the record, we conclude that the decision of the common pleas court is supported by a preponderance of reliable, probative, and substantial evidence. Furthermore, as there is nothing in the record to show that the Board of Zoning Appeals' decision was unconstitutional, illegal, arbitrary, capricious, or unreasonable, and it was also supported by a preponderance of substantial, reliable, and probative evidence, we find that the trial court did not abuse its discretion in affirming the board's decision.

{¶58} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and
ANITA LASTER MAYS, J., CONCUR