

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

COPLEY TOWNSHIP

Appellant

v.

CITY OF FAIRLAWN, OHIO, et al.

Appellees

JACOB POLLOCK, et. al.

Appellants

v.

CITY OF FAIRLAWN, et al.

Appellees

C.A. Nos.     27010  
                  27012  
                  27040

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE Nos.     CV 2011-07-4035  
                  CV 2012-02-1060

DECISION AND JOURNAL ENTRY

Dated: March 25, 2015

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HENSAL, Presiding Judge.

{¶1} Copley Township and Jacob Pollock, a citizen of the City of Fairlawn, appeal a judgment of the Summit County Court of Common Pleas that found in favor of Fairlawn on their claims for injunctive and declaratory relief. For the following reasons, this Court affirms.

I.

{¶2} Montrose is a name used regionally to describe the location where Copley, Fairlawn, and Bath Township come together. Over the past several decades, it has grown into an expansive commercial area with multiple strip malls, hotels, restaurants, and big-box retailers.

Because of its size and importance to the region, the city and townships provide joint fire and police protection to the entire Montrose area, not only the parts within their individual boundaries.

{¶3} The principal arterial road that runs through Montrose is State Route 18. It runs east from the Medina county line, under Interstate 77, and into the center of Montrose before veering southeast toward downtown Akron. Interstate 77 runs north and south near the west end of Montrose, and businesses by the intersection of the interstate and Route 18 are generally referred to be in Montrose West. A couple miles south of Route 18 the interstate turns east toward the southern part of Akron forming an “L” shape. Cleveland-Massillon Road, meanwhile, is a north-and-south minor arterial road that intersects with Route 18 in the heart of Montrose. As it passes through Montrose, it runs parallel to Interstate 77, but it intersects with the interstate to the south of the area after the interstate has completed its eastern turn. This case involves the roughly rectangular area of land formed by Route 18 on the north, Cleveland-Massillon on the east, and the interstate on the west and south. The focus is on Rothrock Road, which also forms an “L” as it runs through Copley and Fairlawn just inside the “L” formed by the interstate. At one time Rothrock ran south from Route 18 on a fairly straight course until it reached Cleveland-Massillon. When the interstate was built, however, Rothrock was redirected so that it bent to the east to join with Cleveland-Massillon farther north. The northernmost part of Rothrock is entirely within Copley and is part of Montrose’s expansive commercial district. Farther south, Rothrock roughly forms the border between Copley and Fairlawn with Fairlawn on the east and Copley on the west. After the road bends east toward Cleveland-Massillon, it is entirely within Fairlawn.

{¶4} For many years a Wal-Mart and Sam's Club have operated in a part of Montrose that is in Fairlawn. Around 2006, however, the owner of the stores began acquiring a number of undeveloped commercial parcels in Copley along Rothrock. Although there are other big box stores on Rothrock, they are at the far north end of the road near many other commercially-developed properties. The parcels that the Wal-Mart and Sam's Club owner acquired, on the other hand, are farther south along the road and across from residential developments. When Fairlawn's city officials learned about the acquisitions, they became concerned about the effect it would have on residents living in that part of the city if Montrose's commercial development began to creep south along Rothrock. They noted that, although Copley has zoned the western side of Rothrock for commercial use, they have zoned the eastern side for residential use. Their concern was that the increased traffic generated by more big-box stores along Rothrock would degrade the quality of life for nearby residents. According to Fairlawn's mayor William Roth, ten percent of the city's housing stock lies in the area between Rothrock and Cleveland-Massillon, including the Rothrock Ridge high-end subdivision.

{¶5} The first act that Fairlawn's city council took in response to the stores' anticipated move was to close Rosemont Boulevard, which is a residential road that runs between Rothrock and Cleveland-Massillon. Because the western end of Rosemont is near the southern end of the planned Wal-Mart and Sam's Club development, the city closed the road to avoid it turning into a thoroughfare for commercial traffic. Next, in April 2011, the Fairlawn city council passed an ordinance authorizing Mayor Roth to close Rothrock at a point along the road's southern east-to-west stretch. The ordinance provided, however, that the closure had to preserve access to residents who live along Rothrock and in Rothrock Place, a small development of 12 houses that runs off of Rothrock.

{¶6} In July 2011, Copley sued Fairlawn, challenging its plan to close Rothrock. It alleged that the city failed to properly vacate the road, that the ordinance was unreasonable, arbitrary, capricious or pursued in bad faith, that the ordinance unlawfully prevented equal access to the roads, and that the ordinance unlawfully turned Rothrock into a gated private drive. It sought an injunction enjoining Fairlawn's city officials from implementing the ordinance and limiting access to Rothrock.

{¶7} In December 2011, Fairlawn's city council passed two new ordinances regarding Rosemont and Rothrock. The one for Rosemont modified the closure of that road so that school buses and police, fire, and emergency medical service vehicles could continue using it. The one for Rothrock eliminated the ability of local residents to use the closed part of the road. Copley subsequently amended its complaint to account for the changes in the ordinances. Mr. Pollock, meanwhile, filed a taxpayer action against the city with 20 separate counts, seeking injunctive relief. The trial court consolidated the cases. Following discovery, the court granted summary judgment to Fairlawn on most of Copley's and Mr. Pollock's claims but set for trial the issue of whether Fairlawn's decision to close Rothrock was unreasonable, arbitrary, capricious, or pursued in bad faith.

{¶8} At trial, Copley and Mr. Pollock argued that Fairlawn's decision to close Rothrock was unreasonable because it turned the part of the road that runs north and south into a very lengthy cul-de-sac, jeopardizing the ability of emergency services to provide a timely response to residents along the road. In particular, they noted that there is a large senior-living facility at the bend in Rothrock's "L" whose residents regularly require emergency care. They also argued that it was per se unreasonable for Fairlawn to close Rothrock because the road serves as a principal highway for the area. They further argued that Fairlawn had pursued the

closure in bad faith, alleging that Fairlawn was acting in concert with the owners of the buildings where Wal-Mart and Sam's Club are currently located to prevent the stores from leaving the city. They noted that the owner of the current store locations had even paid the City's legal fees in a different action that contested the relocation.

{¶9} Fairlawn argued at trial that closing Rothrock is necessary to preserve the residential character of that part of the city. It argued that, if the Wal-Mart and Sam's Club move to Rothrock, traffic along the road will increase three-fold and could increase even more if the rest of the parcels that Copley has zoned for commercial use are developed. Regarding emergency response times, it explained that its revised plan for Rosemont provides for the installation of an electronically-controlled gate that safety forces will be able to open remotely from their vehicles as they approach it. The city also explained that it intends to use water-filled barriers to close Rothrock, which can be pushed out of the way by vehicle or by hand if emergency access is needed. It also presented expert testimony that closing Rothrock will not significantly affect emergency response times to the structures along the road.

{¶10} The trial court found that Rothrock is not a principal highway and, therefore, its closure is not unreasonable per se. It found that the effect on emergency response times was not significant enough to make Fairlawn's decision to close the road unreasonable. It also found that there was no evidence that Fairlawn had a bad faith motive when it passed the ordinance. It explained that, just because the city may have collaborated with others who opposed the stores moving to Copley did not negate its legitimate goal of preserving and protecting a residential neighborhood. It concluded that Copley and Mr. Pollock failed to meet their burden of proof and, therefore, denied their request for injunctive relief. Copley has appealed, assigning one

error. Mr. Pollock has also appealed, assigning four errors. This Court has combined and rearranged some of the assignments of error for ease of consideration.

### MR. POLLOCK’S THIRD ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT AGAINST POLLOCK ON HIS CLAIMS THAT FAIRLAWN IMPROPERLY CLOSED ROTHROCK WITHOUT FIRST VACATING IT UNDER CHAPTER R.C. 723.

{¶11} Mr. Pollock argues that the trial court incorrectly granted Fairlawn summary judgment on his claim that the city did not have authority to close Rothrock because it did not comply with Revised Code Chapter 723. He argues that the court incorrectly concluded that, because Fairlawn did not vacate the road, it did not have to follow the procedures in Chapter 723. Under Civil Rule 56(C), summary judgment is appropriate if:

(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

*Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). To succeed on a motion for summary judgment, the movant bears the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent’s case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). If the movant satisfies this burden, the nonmoving party “must set forth specific facts showing that there is a genuine issue for trial.” *Id.* at 293, quoting Civ.R. 56(E). This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶12} Mr. Pollock notes that Article I, Section 19 of the Ohio Constitution provides that public roads “shall be open to the public, without charge.” According to him, Chapter 723 provides the only authority for a municipality to vacate a public road, including merely closing a

road as Fairlawn has done with Rothrock. He argues that, because the city admitted it did not follow the procedures for vacating a road, the closure was unauthorized.

{¶13} In *Cleveland v. Shaker Heights*, 30 Ohio St.3d 49 (1987), the Ohio Supreme Court held that language in Section 723.01 requiring municipalities to keep streets “open” did not mean that all of a city’s streets have to remain open to two-way traffic or “preclude reasonable regulations of vehicular traffic and traffic patterns by a municipality.” *Id.* at 52. It explained that there was no authority for Cleveland’s “strained construction of the term ‘open’ which, if accepted, would forever bind municipalities to the traffic patterns on streets which existed when they were opened.” *Id.* For similar reasons, we conclude that the Ohio Constitution’s mandate that roads remain “open to the public, without charge,” does not mean that a municipality is not permitted to close any of its roads.

{¶14} Regarding whether Fairlawn had to comply with Chapter 723 when it decided to close, but not vacate, Rothrock Road, we note that the procedural requirements in Section 723.06 apply only when a city intends to “vacate” a street. The term “vacate” is not specifically defined in the Revised Code, but Section 723.08 indicates that vacating a road “operate[s] as a revocation of the acceptance thereof by the legislative authority.” When a “street is vacated by a city, the land of which it comprised passes in equal halves to the abutting lot owners \* \* \*.” *Taylor v. Carpenter*, 45 Ohio St.2d 137, 139 (1976). In this case, Fairlawn has not revoked its acceptance of the responsibility to maintain Rothrock or ceded its interest in the land beneath the road to abutting land owners. The city merely intends to barricade the road in one location to prevent through traffic. Upon review, we conclude that its plan does not amount to a vacation of the road that required it to follow the procedural requirements in Chapter 723. Mr. Pollock’s third assignment of error is overruled.

## MR. POLLOCK’S FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN APPLYING THE RULE ESTABLISHED IN *CITY OF CLEVELAND V. CITY OF SHAKER HEIGHTS*, 30 OHIO ST.3D 49 (1987), WHEN IT FOUND THAT ROTHROCK WAS NOT A PRINCIPAL HIGHWAY CONNECTING COPLEY AND FAIRLAWN AND ENTERED JUDGMENT ON THAT BASIS AGAINST POLLOCK ON HIS CLAIM THAT FAIRLAWN ACTED UNREASONABLY, ARBITRARILY, CAPRICIOUSLY, OR IN BAD FAITH WHEN IT CLOSED ROTHROCK.

## MR. POLLOCK’S SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT SEGMENTED THE EVIDENCE AND FAILED TO CONSIDER THE EVIDENCE ON THE RECORD AS A WHOLE GOING TO WHETHER FAIRLAWN’S CLOSING ROTHROCK PASSED CONSTITUTIONAL MUSTER.

## COPLEY’S ASSIGNMENT OF ERROR

THE TRIAL COURT INCORRECTLY PERMITTED FAIRLAWN TO BARRICADE ROTHROCK ROAD

{¶15} Copley and Mr. Pollock argue that the trial court incorrectly determined that Fairlawn’s plan to barricade Rothrock was not unreasonable, arbitrary, capricious, or pursued in bad faith. In *Shaker Heights*, the Ohio Supreme Court explained that, under their Home Rule authority, municipalities have “broad powers and duties with respect to streets and highways within their limits.” *Shaker Heights*, 30 Ohio St.3d at 51. Nevertheless, a city may not create a traffic plan that is “clearly unreasonable and/or arbitrary, capricious or pursued in bad faith \* \* \*.” *Id.* at 53. The Supreme Court also held that “[a]dverse extraterritorial traffic effects on a neighboring municipality are not, standing alone, enough to overcome the presumption of the validity of a legislative enactment taken under a municipality’s home rule powers.” *Id.* at paragraph two of the syllabus.

{¶16} Regarding the standard of review, this Court “will not disturb factual findings of the trial court unless those findings are against the manifest weight of the evidence.” *Home*



*Builders Assn. of Dayton & the Miami Valley v. Beavercreek*, 89 Ohio St.3d 121, 130 (2000). If an issue presents a question of law, however, “we apply a de novo standard of review.” *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, ¶ 4. “[W]hether the trial court correctly applied the law to the facts of a case presents a question of law \* \* \*.” *Fuline v. Green*, 9th Dist. Summit Nos. 25704, 25936, 2012-Ohio-2749, ¶ 6. We also note that the relief that Copley and Mr. Pollock sought was an injunction prohibiting Fairlawn from closing Rothrock. “The right to an injunction exists only where the movant has proved by clear and convincing evidence that such relief is necessary to protect that party from irreparable injury for which there i[s] no adequate legal remedy.” *Ormsby v. Transcontinental Oil & Gas, Inc.*, 9th Dist. Summit No. 18063, 1997 WL 600619, \*1 (Sept. 17, 1997). “The allowance of an injunction rests within the sound discretion of the trial court.” *Farrow Restoration, Inc. v. Kowalski*, 81 Ohio App.3d 54, 57 (9th Dist.1991). “Absent an abuse of discretion, a reviewing court will not disturb the trial court’s decision refusing an injunction.” *Id.* “Abuse of discretion \* \* \* implies an unreasonable, arbitrary, or unconscionable attitude on the part of the court.” *Id.*

{¶17} Copley and Mr. Pollock argue that the trial court incorrectly determined that Fairlawn’s decision to close Rothrock is not unreasonable. Mr. Pollock argues that the closure is per se unreasonable under *Shaker Heights* because Rothrock is a principal highway. Copley argues that the closure is unreasonable because the City’s decision does not promote the general health, safety, welfare, or morals of the community. Copley contends that closing the road will not protect Fairlawn’s residents but will merely make it more difficult for emergency services to access properties along Rothrock and will turn the congestion that is currently experienced on other nearby roads into gridlock.

{¶18} Regarding Mr. Pollock’s argument that the closure is unreasonable per se, the Ohio Supreme wrote in *Shaker Heights* that “injunctive relief [will] lie on the basis of unreasonableness alone, if a municipality attempt[s] to barricade a principal highway connecting a neighboring municipality.” *Shaker Heights*, 30 Ohio St.3d at 53. The Court did not give any specific guidance, however, about which roads constitute “principal highway[s].” Mr. Pollock and Fairlawn, therefore, presented expert witnesses who offered their opinions about the term. Fairlawn’s expert from the Akron Metropolitan Area Transportation Study (“AMATS”) noted that the Ohio Department of Transportation (“ODOT”) assigns urban roads into one of four categories depending on its characteristics: principal arterial, minor arterial, collector, and local road. He testified that a “principal highway” would likely include roads that are either a principal or minor arterial road, which are the most important and heavily-travelled roads running through a community and connecting it to its neighbors. Rothrock, by comparison, is classified as a local road, which is the least significant classification. Although he conceded that an argument could be made that Rothrock should be deemed a collector road, he opined that, because it does not have any of the characteristics of an arterial road, it does not constitute a principal highway.

{¶19} Mr. Pollock’s experts disagreed with Fairlawn’s expert. They testified that whether a road constitutes a principal highway has little to do with ODOT’s classification system. Instead, they opined that it should be determined by examining a road’s function in the community. Regarding Rothrock, they pointed out that it operates as a relief mechanism for drivers seeking to come and go from Montrose while avoiding the heavily-trafficked Cleveland-Massillon. They argued that, if Cleveland-Massillon becomes obstructed, Rothrock is the only reasonable bypass for drivers. They also pointed out that, when Fairlawn sought money to

improve Rothrock in the early 1990s, the city described Rothrock as a “major access road for egress and ingress into a major retail and commercial area \* \* \*.” Mr. Pollock’s experts opined that, in light of its local importance, it constitutes a principal highway.

{¶20} Because the term “principal highway” is not defined by statute and was not defined by the Ohio Supreme Court in *Shaker Heights*, the trial court examined the dictionary definitions of “principal” and “highway” and determined that a “principal highway” can be “defined as a most important, or higher priority, road.” After reviewing the evidence, it concluded that Rothrock does not qualify as a principal highway “under any reasonable definition \* \* \*.”

{¶21} Although in use since at least the 1860s, the term “principal highway” has never been defined by the Ohio Supreme Court or the General Assembly. *See* 63 Ohio Laws 121; R.C. 5555.95. It, therefore, was appropriate for the trial court to consider the dictionary definition as well as the opinions of expert traffic planners and engineers in forming its judgment. Mr. Pollock, in fact, does not challenge the court’s definition of the term as “a most important, or higher priority, road” or its reliance on expert witnesses. Instead, he objects to the fact that the trial court held that a road’s importance can be determined by looking at its ODOT classification, thus adopting Fairlawn’s expert’s opinion over his own experts’ opinions. He also argues that the court erred when it compared Rothrock to the roads at issue in *Shaker Heights*.

{¶22} Because the experts disagreed about the characteristics of a principal highway and whether Rothrock meets that criteria, the trial court necessarily had to weigh their opinions, which is a finding of fact that this Court will not disturb unless it was against the manifest weight of the evidence. *Bowen v. Bowen*, 132 Ohio App.3d 616, 637 (9th Dist.1999) (“[R]esolutions of conflicts in evidence are matters for the trier of facts.”), quoting *Crull v. Maple Park Body Shop*,

36 Ohio App.3d 153, 154 (12th Dist.1987); *Moss v. Marra*, 8th Dist. Cuyahoga No. 82188, 2003-Ohio-6853, ¶ 9 (concluding that, if the Supreme Court of Ohio did not define a term, it “presumably [left] that term open as a question of fact.”). When reviewing the manifest weight of the evidence in a civil case, this Court

weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.

*Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist.2001).

{¶23} According to Mr. Pollock, it was improper for the trial court to conclude that “[t]he importance or priority of Rothrock can be determined based on ODOT classifications” instead of its “actual function as demonstrated by its undisputed configuration, history, and design capacity.” He notes that the Ohio Supreme Court made no reference to ODOT’s classification system in *Shaker Heights*.

{¶24} Fairlawn submitted a description of the ODOT system, which is called “Functional Classification.” Recognizing that streets and highways do not operate independent of each other, the system groups roads “in a hierarchy based on the type of highway service they provide.” The criteria used to classify roads includes “geography, population density, traffic volumes, \* \* \* spacing, and distance and speed of travel.” The ODOT system, therefore, does use a road’s “function” to classify it, although perhaps painting with a broader brush than the approach advocated by Mr. Pollock’s experts.

{¶25} Upon careful review of the record, we conclude that the trial court did not lose its way when it accepted the testimony of Fairlawn’s expert and found that Rothrock is not a principal highway. As Mr. Pollock has, himself, acknowledged, Rothrock functions primarily as

a bypass for traffic seeking to avoid the congestion around the intersection of Cleveland-Massillon and Route 18. The southern part of the road typically serves only 2,000 to 3,000 vehicles per day, as compared to Cleveland-Massillon and Route 18, which handle well over 10,000 vehicles per day. The mere fact that Rothrock can accommodate more traffic and would be the most convenient alternative route for drivers if Cleveland-Massillon becomes obstructed does not compel us to overturn the trial court’s finding of fact.

{¶26} Mr. Pollock next argues that the court erred when it compared the roads at issue in this case with the ones in *Shaker Heights*. The trial court wrote that Rothrock does not qualify as a principal highway “particularly when considered in contrast and comparison to the roads at issue in the *Shaker Heights* decision.” Mr. Pollock notes that, in *Shaker Heights*, the streets were arranged in a grid pattern and provided access solely to residential properties. Rothrock, on the other hand, does not share the redundancy of the streets at issue in *Shaker Heights*. Rothrock also has three lanes for 3,750 feet of its length and, according to Mr. Pollock, provides access to a far more diverse type of properties than the roads in *Shaker Heights*.

{¶27} In *Shaker Heights*, the city of Shaker Heights closed three roads in order to prevent through-traffic in a residential neighborhood. *Shaker Heights*, 30 Ohio St.3d at 50. The trial court in that case found that one of the roads was a “minor arterial,” which carried approximately 7,000 cars a day. The other two were “collector” streets that intersected with the minor arterial. In its brief to the Ohio Supreme Court, Cleveland agreed that the road that the trial court found was a minor arterial road was a “major east-west artery” and argued that its closure was unauthorized because it shifted a substantial traffic burden onto the other east-west roads in the vicinity. Nevertheless, the Supreme Court held that Shaker Heights’ traffic plan “did not approach” the closure of a principal highway. *Id.* at 53.

{¶28} Compared to the minor arterial that the Supreme Court held was not a principal highway in *Shaker Heights*, Rothrock carries substantially less traffic and has been assigned a much lower functional classification. We, therefore, conclude that the trial court correctly determined that a comparison between Rothrock and the roads at issue in *Shaker Heights* supports the conclusion that Rothrock is not a principal highway.

{¶29} Mr. Pollock also argues that the trial court erred when it considered whether there remained a “minimum circuitry of travel” in determining whether closing Rothrock is per se unreasonable. We conclude, however, that we do not have to resolve whether it was appropriate for the court to use that phrase because any error in the court’s usage was invited by Mr. Pollock. At trial, Mr. Pollock argued that the court should assess whether Rothrock is a principal highway by looking at the importance of the road locally. He argued that Rothrock is essential for traffic coming and going from Montrose and that it would be hazardous to reroute the traffic that uses Rothrock because of the lack of alternative routes through the area. His arguments, therefore, necessarily asked the court to analyze “circuitry of travel,” which is whether there are enough alternative traffic routes if Rothrock is closed. The trial court did exactly that in its decision, finding that “there are sufficient, albeit somewhat less convenient, alternative routes available in the absence of access to Rothrock Road.” Mr. Pollock’s first assignment of error is overruled.

{¶30} Proceeding to Copley’s assignment of error, the township argues that the trial court incorrectly permitted Fairlawn to barricade Rothrock. It contends that the ordinance authorizing Mayor Roth to close Rothrock does not protect the citizens of Fairlawn and, therefore, is unreasonable, arbitrary, capricious, or pursued in bad faith.

{¶31} “[I]n order to be a valid exercise of the city’s police power, [an] ordinance ‘must directly promote the general health, safety, welfare or morals and must be reasonable, the means

adopted to accomplish the legislative purpose must be suitable to the end in view, must be impartial in operation, must have a real and substantial relation to such purpose and must not interfere with private rights beyond the necessities of the situation.” *Hausman v. Dayton*, 73 Ohio St.3d 671, 678 (1995), quoting *Teegardin v. Foley*, 166 Ohio St. 449 (1957), paragraph one of the syllabus. The Ohio Supreme Court has recognized, however, that “whether regulations prescribed by a[n] \* \* \* ordinance have a real or substantial relation to the public health, safety, morals or general welfare is committed, in the first instance, to the judgment and discretion of the legislative body.” *Willott v. Village of Beachwood*, 175 Ohio St. 557, 560 (1964). “[If] such a judgment deals with the control of traffic, volume of traffic, burden of traffic, \* \* \* and development of the community as a whole, or, in short, where the judgment is concerned with what is beneficial or detrimental to good community planning, it is in the first instance a legislative and not a judicial matter.” *Id.* “The legislative, not the judicial, authority is charged with the duty of determining the wisdom of \* \* \* regulations, and the judicial judgment is not to be substituted for the legislative judgment in any case in which the issue or matter is fairly debatable.” *Id.*; *see also Shaker Heights*, 30 Ohio St.3d at 53 (“[C]ourts may not usurp the legislative function by substituting their judgment for that of the legislative body.”). According to the Supreme Court, “absent \* \* \* special \* \* \* circumstances \* \* \*, a decision by a city regarding connection to or vacation of streets at or within its borders is not subject to injunctive relief by a neighboring municipality.” *Shaker Heights* at 54.

{¶32} Copley argues that *Shaker Heights* is factually distinguishable from this case because there was no evidence presented in it about the effect that barricading the three roads would have on other area streets. In comparison, each of the experts in this case agreed that closing Rothrock will increase the burden on several other roads that already experience heavy

traffic. Copley also argues that *Shaker Heights* is distinguishable because Shaker Heights' decision to close its roads came only after it received complaints about motorists who used the residential streets as a "cut-through to reach other destinations." *Id.* at 49. Fairlawn, in contrast, has not received any complaints about the traffic on Rothrock. Copley also argues that, since the property where the stores intend to move is on the west side of Rothrock, which backs up on Interstate 77, it is only suitable for commercial use. It contends that, if Fairlawn is successful in closing Rothrock, it will deprive the owners of those parcels of any useful purpose. Copley further argues that the entire reason Rothrock was rerouted when the interstate was constructed instead of being converted into a cul-de-sac was because of its importance as an alternate route for drivers seeking to avoid congestion on Cleveland-Massillon. According to Copley, closing Rothrock will make Montrose's bad traffic situation worse and, when the Wal-Mart and Sam's Club are built, it will make some roads impossible for travel.

{¶33} Copley's and Fairlawn's experts disagreed about the extent to which closing Rothrock will affect other area streets. Because no one can know for sure how drivers will alter their behavior, each of them made educated guesses about how many vehicles will use each of the area roads if Rothrock is closed, let alone once the Wal-Mart and Sam's Club move. It was for the trial court to determine the plausibility of their traffic models. What stood out to the trial court about those models, however, was the effect that the relocation of the stores would have on Fairlawn's residents if Rothrock is not closed. It determined that placing such a large development in an area that had largely functioned as a residential area would have a devastating effect on residential traffic by creating a number of choke points that would not be alleviated by



the developer's proposed improvements. Its findings are not against the manifest weight of the evidence.<sup>1</sup>

{¶34} Regarding the fact that Fairlawn closed Rothrock before receiving any citizen complaints, Copley has not cited any authority for the proposition that a city must wait to respond to problems instead of acting prospectively to avoid them. Regarding whether Fairlawn's actions will prevent property owners from using their land, there was no testimony presented at trial that indicated that Rothrock's closure will make any of the properties along the road unmarketable. To the contrary, it was not disputed that Wal-Mart and Sam's Club intend to move to Rothrock regardless of the outcome of this case.

{¶35} Copley next argues that Fairlawn's plan does not actually protect the residents of the Rothrock Ridge sub-division. It notes that Rothrock goes around Rothrock Ridge, not through the development. It also notes that the development was designed to face inward away from Rothrock and that large mounds were constructed along the perimeter of the development to serve as a buffer between residents living in the development and the light and noise that would normally come from being near an interstate. Copley argues that the gate that Fairlawn intends to install at the west end of Rosemont together with the existing mounding is sufficient to insulate the residents of Rothrock Ridge from anything that happens along Rothrock. Regarding residents who live on or directly off of the north and south stretch of Rothrock, Copley argues

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<sup>1</sup> We note that, although each of the experts opined that closing Rothrock, by itself, would moderately increase the amount of traffic on other roads, they agreed that those roads would remain functional. It was only the combination of closing Rothrock with the opening of additional big-box stores along the road that would potentially cause gridlock. Fairlawn's expert opined that the issue could be alleviated, however, if the developer of the new store locations made additional road improvements.

that Fairlawn's plan actually makes things worse for those residents because they will have no choice than to pass by the Wal-Mart and Sam's Club to access a main road. It will also make it more difficult for emergency personnel to reach those locations. Copley, therefore, argues that the City's plan does not have a real and substantial relation to a valid legislative purpose and is unreasonable, arbitrary, capricious, or pursued in bad faith.

{¶36} Whether the construction of the new Wal-Mart and Sam's Club stores will harm the character of the nearby residential developments is a question of fact. Fairlawn's expert opined that, if the Wal-Mart and Sam's Club are built along Rothrock, "the traffic impacts on adjacent residential neighborhoods \* \* \* are likely to be negative and far-reaching." He also opined that, "[w]hen viewed solely as a strategy for protecting residential neighborhoods from the negative impacts of new commercial development, the proposal to close Rothrock Road to through traffic makes a good deal of sense." We conclude that the trial court did not lose its way when it found that Fairlawn had "legitimate concerns" for nearby residents and their properties "as well as safety concerns based on the traffic problems that are likely to occur if the \* \* \* stores move forward without significant additional traffic improvements."

{¶37} Regarding emergency response times, both sides presented expert witnesses about the effect closing Rothrock would have on emergency services attempting to respond to a distress call along Rothrock, especially calls from the senior-living facility. Copley's expert explained that the closure would increase the response time from its main fire station, which is on Cleveland-Massillon south of Interstate 77. Fairlawn's experts countered that the first responders should actually come from Copley's other fire station, which is on Route 18 west of the interstate. Copley's expert also opined that the closure will increase the time it takes to transport patients to Akron's hospitals via the interstate. Fairlawn's experts countered that,

considering the advanced life support services that an ambulance unit is able to render and the fact that most emergency room services are available at a medical center in Montrose West, not everyone who requires emergency care will have to be transported to Akron. Fairlawn's fire chief also testified that ambulances will be able to push the barriers on Rothrock out of the way if they need to use the road for quicker access to the interstate. Alternatively, someone else could move the barrier while the ambulance unit is preparing a patient for transport.

{¶38} Although we note that there was testimony that Fairlawn's plan may not be the optimal possible solution for all of its residents, no one proposed an alternative plan that would do a better job of meeting the city's legitimate goal of protecting its residents from the effects of increased commercial development down Rothrock. Upon review of the record, we conclude that the trial court's decision is fully supported by the evidence and that it did not abuse its discretion when it declined to issue an injunction prohibiting Fairlawn from barricading Rothrock. Copley's assignment of error is overruled.

{¶39} Regarding Mr. Pollock's second assignment of error, he argues that the trial court incorrectly examined each issue in this case separately instead of considering the evidence as a whole. He asserts that, even though the Ohio Supreme Court held in *Shaker Heights* that adverse extraterritorial effects "standing alone" are not enough to overcome the presumption of a validly enacted ordinance, it does not mean that those effects should not be considered at all. According to Mr. Pollock, in determining whether Fairlawn's ordinance was permitted, the trial court should have considered its extraterritorial effects together with the importance of Rothrock to local travel and the evidence he presented that Fairlawn closed the road in bad faith.

{¶40} Mr. Pollock has not cited any authority in support of his argument. Moreover, even if this Court agrees with his logic, the trial court wrote in its decision that, "[u]pon a

cautious, thorough, and thoughtful examination, giving careful consideration to every relevant fact and circumstance, and upon application of the law, \* \* \* Fairlawn's home rule authority stands to preclude this Court from intervening or interfering with its legislation and execution of the road closure plan." We, therefore, reject Mr. Pollock's argument that the trial court did not consider the record as a whole when rendering its decision. Mr. Pollock's second assignment of error is overruled.

#### MR. POLLOCK'S FOURTH ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT EXCLUDED DAN ZARKOVACKI'S TESTIMONY THAT STARK AND NEWMAN AGREED TO FUND FAIRWAY PARK PROPERTIES, LLC'S LAWSUIT CHALLENGING THE ZONING FOR THE PROJECT ON THE GROUNDS THAT THE TESTIMONY WAS IRRELEVANT.

{¶41} Mr. Pollock's final argument is that the trial court incorrectly struck testimony by Dan Zarkovacki about the details of Fairway Park Properties, LLC's lawsuit against Wal-Mart and Sam's Club. As the trial court noted in its decision, Fairlawn is not the only one who has opposed Wal-Mart and Sam's Club's move to Rothrock. Fairway Park is a residential community that is across Rothrock from where Wal-Mart and Sam's Club plan to move. Its owner, Mr. Zarkovacki, brought an action challenging the zoning for the project. According to Mr. Pollock, the owners of the current Wal-Mart and Sam's Club locations financed Fairway Park's lawsuit just as they financed an action by Fairlawn that challenged the project's environmental compliance. After Mr. Zarkovacki testified about his lawsuit, the trial court struck his testimony as irrelevant. Mr. Pollock argues that the court's decision was incorrect because Mr. Zarkovacki's testimony tended to prove his theory that the owner of the current Wal-Mart and Sam's Club locations was the one actually behind Fairlawn's effort to close Rothrock.

{¶42} Evidence Rule 402 provides that “[e]vidence which is not relevant is not admissible.” “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 401. “Generally speaking, the question of whether evidence is relevant is ordinarily not one of law but rather one which the trial court can resolve based on common experience and logic.” *State v. Lyles*, 42 Ohio St.3d 98, 99 (1989). Even if evidence is relevant, its admission or exclusion “rests within the sound discretion of the trial court.” *State v. Sage*, 31 Ohio St.3d 173 (1987), paragraph two of the syllabus. Unless the trial court “has clearly abused its discretion and [a party] has been materially prejudiced thereby, this court should be slow to interfere.” *Lyles* at 99, quoting *State v. Maurer*, 15 Ohio St.3d 239, 265 (1984).

{¶43} Although Mr. Zarkovacki may have received assistance from the same third party that helped fund one of the city’s lawsuits, he testified that Fairlawn was not a party to his zoning case and had not been involved in the case in any way, including preparing the complaint or paying his attorney fees. His testimony, therefore, had, at most, minor relevance to whether the city acted in bad faith when it authorized Mayor Roth to close Rothrock. Upon review of the record, we conclude that the trial court exercised appropriate discretion when it struck his testimony. Mr. Pollock’s fourth assignment of error is overruled.

### III.

{¶44} The trial court did not err when it determined that Fairlawn is authorized to close Rothrock and denied Copley and Mr. Pollock’s requests for injunctive and declarative relief. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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JENNIFER HENSAL  
FOR THE COURT

MOORE, J.  
CONCURS.

CARR, J.  
CONCURRING IN JUDGMENT ONLY.

{¶45} I concur in the judgment of the majority but write separately to clarify and emphasize certain points. Although I agree with the majority’s ultimate conclusion, I do not necessarily agree with the characterization and analysis of the expert testimony. “It is not [an] expert’s responsibility to accurately provide legal definitions[.]” *Duponty v. Kasamias*, 7th Dist.

Mahoning No. 06 MA 72, 2007-Ohio-5047, ¶ 43 (recognizing, albeit in the medical malpractice context, that “[p]roviding legal definitions \* \* \* is the province of the court.”). Thus, I would not hold that this case hinges on the trial court’s resolution of a factual dispute with respect to the expert testimony. Instead, I believe the trial court considered the expert testimony within the framework of a multi-tiered legal analysis that was necessary to determine whether Rothrock Road constituted a principal highway. *See generally Fickle v. Conversion Technologies Internatl., Inc.*, 6th Dist. Williams No. WM-10-016, 2011-Ohio-2960, ¶ 24-25 (recognizing that the interpretation of an undefined statutory term is a question of law for the court, not a question of fact dependent on expert testimony).

{¶46} As the majority noted, the term “principal highway” was not defined by the Supreme Court of Ohio in *Cleveland v. Shaker Heights*, 30 Ohio St.3d 49 (1987). Consequently, the trial court’s initial responsibility in this matter was to define what constitutes a principal highway. The trial court did exactly that by setting forth the definitions of “principal” and “highway” as defined by Merriam-Webster’s Dictionary, and then concluding that “[a] principal highway can, therefore, be defined as a most important, or higher priority, road.” After the trial court defined what principal highway meant, it then had to determine what criteria it would use to determine whether Rothrock Road qualified as a principal highway under that definition. To aid the trial court in this assessment, the parties provided expert testimony as to what factors should be examined in determining whether a road constitutes a principal highway. The trial court considered the experts’ factors and ultimately determined that Rothrock Road was not a principal highway. Although the trial court did not explicitly enumerate the factors it considered, the court nonetheless gave an overview of the criteria it deemed important, such as ODOT’s classification, Rothrock Road’s relationship to nearby roads, and Rothrock Road’s actual usage

in comparison to other roads. Thus, while I would prefer the development of a uniform test to determine whether a road constitutes a principal highway, I agree with the trial court's ultimate conclusion in this case that Rothrock Road does not constitute a principal highway.

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