IN THE SUPREME COURT OF OHIO

JAY L. SUNDERLAND,	:	
	:	On Appeal from the Delaware
Plaintiff-Appellant	:	County Court of Appeals
	:	Fifth Appellate District
v.	:	
	:	
LIBERTY TOWNSHIP BOARD OF	:	Court of Appeals
ZONING APPEALS,	:	Case No. 20 CAH 06 0023
	:	
Defendant-Appellee	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF PLAINTIFF-APPELLANT, JAY L. SUNDERLAND

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents a question of public or great general interest because it involves a determination of when and how townships may retroactively apply zoning resolution amendments adopted pursuant to Section 519.12 of the Ohio Revised Code to matters occurring before the adoption of such zoning resolution amendments. This case also presents a question of public or great general interest because it involves a determination whether the retroactive application of zoning resolution amendments adopted pursuant to Section 519.12 of the Ohio Revised Code may render administrative appeals filed prior to the adoption of such amendments moot under Ohio law. The case presents specific issues regarding retroactive application of zoning resolution amendments adopted pursuant to Section 519.12 of the Ohio Revised Code, to an administrative appeal filed pursuant to Chapter 2506 prior to the adoption of such amendment, and whether such application renders an administrative appeal moot. Based upon the decision of the Fifth District Court of Appeals in this case, there now appears to be a conflict in the appellate courts (specifically the Fifth and Twelfth District Appellate Courts) on these issues. Therefore, a ruling by the Ohio Supreme Court on these issues will provide clarity statewide to townships and property owners that are governed by township zoning resolutions.

This case also involves substantial constitutional questions in that it involves the constitutional rights of parties who file administrative appeals regarding township zoning decisions pursuant to state law and how subsequent township actions in amending zoning resolutions may impact such appeals.

Generally, due process under the Ohio and United States Constitutions demands a right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner, where

the state seeks to infringe a protected liberty or property interest. *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 668 N.E.2d 457. By retroactively applying Liberty Township's zoning amendment to Mr. Sunderland's pending administrative appeal without providing notice, a hearing, a chance to present evidence and cross-examine witnesses, and make a full and complete record on these issues, the trial court and Liberty Township denied Mr. Sunderland's due process rights as protected by the Ohio and United States Constitutions and impermissibly retroactively applied the new zoning resolution amendment to Mr. Sunderland's administrative appeal in violation of the Ohio Constitution and established Supreme Court precedent.

I. *Statement of the Case*

On August 29, 2019, Jay L. Sunderland ("Mr. Sunderland") appealed a decision of the Appellee, Liberty Township Board of Zoning Appeals ("BZA") to the Common Pleas Court of Delaware County, Ohio, pursuant to Chapters 2505 and 2506 of the Ohio Revised Code. Mr. Sunderland's appeal sought the trial court's review of the August 1, 2019, decision of the BZA issued in Liberty Township Board of Zoning Appeals Case No. BZA #18-16, a copy of which was attached to Mr. Sunderland's notice of appeal.

With regard to the issues on appeal raised by Mr. Sunderland before the trial court, Mr. Sunderland asserted (1) that the Liberty Township Zoning Inspector did not have legal authority to issue a certain decision on May 22, 2018 that certain earthen structures in dispute were being used for agricultural purposes and were, thus, not subject to regulation by Liberty Township and (2) that the earthen structures at issue were not, in fact, being used for agricultural purposes under Ohio law.

On October 7, 2019, the BZA filed its Notice of Filing of the Record of Proceedings from the Board of Zoning Appeals as required by R.C. §2506.02.

On February 5, 2020, the BZA filed a motion to dismiss Mr. Sunderland's appeal before the trial court. The basis for the BZA's motion was that Mr. Sunderland's appeal had been rendered moot by the purported adoption by Liberty Township, after the administrative hearing and decision of the BZA and the filing of Mr. Sunderland's appeal, of certain revisions to the Liberty Township Zoning Resolution ("Zoning Resolution") that removed earthen mounds from the definition of "structure" and regulation of the same. In support of that motion, the BZA attached an affidavit of the Liberty Township Zoning Inspector, Tracey Mullenhour ("Ms. Mullenhour"), which purported to "verify and authenticate provisions of current and prior portions of the Liberty Township Zoning Resolution as they relate to the definition of a 'structure' in accordance with Article 4 of the Zoning Resolution." Ms. Mullenhour's affidavit is dated February 4, 2020 and is not contained in the Notice of Filing of the Record of Proceedings from the Board of Zoning Appeals as filed with the trial court on October 7, 2019 and was not part of the proceedings appealed from by Mr. Sunderland.

On February 21, 2020, Mr. Sunderland filed his memorandum *contra* to the BZA's motion to dismiss. In this response, Mr. Sunderland argued that the BZA's motion to dismiss must be denied because (1) it relies on information and evidence not in the transcript before the trial court (in the form of Ms. Mullenhour's affidavit) and which has not been subject to cross-examination by Mr. Sunderland in violation of R.C. §2506.03, (2) the purported amendment of the Zoning Resolution was not adopted in accordance with Ohio law and is therefore not law; (3) Mr. Sunderland's appeal is not moot; and (4) the attempt to amend the Zoning Resolution by Ms. Mullenhour and Liberty Township violates Mr. Sunderland's statutory rights and is in violation of R.C. §2921.45, the Ohio Constitution and the U.S. Constitution.

On May 4, 2020, the trial court entered its Judgment Entry (1) denying a motion to strike contemporaneously filed by Mr. Sunderland, and (2) granting the BZA's motion to dismiss.

On June 3, 2020, Mr. Sunderland filed his notice of appeal with the Fifth District Court of Appeals. On January 14, 2021, the Fifth District Court of Appeals conducted telephonic oral argument regarding Mr. Sunderland's appeal. On February 5, 2021, the Fifth District Court of Appeals entered its judgment entry and opinion denying Mr. Sunderland's appeal.

II. *Statement of Facts*

This case arises out of the construction of certain earthen mounds on property located within Liberty Township and identified as Delaware County Auditor's Parcel No. 3191100101900 (the "Property"). It is undisputed that the Appellant, Mr. Sunderland, is and was an owner of residential property located directly adjacent to the Property.

In late November 2017, Appellant, and others, complained to Liberty Township, specifically to Ms. Mullenhour, regarding the construction of such earthen mounds. Per the complaints, dirt for the earthen mounds was being moved from the Olentangy Falls East Subdivision and being placed onto the Property. Ms. Mullenhour contacted the development manager for Rockford Homes (the developer of the Olentangy Falls East Subdivision). She advised him of the complaints that she received and asked if the dirt would eventually be moved back to the Olentangy Falls East Subdivision. In response, the development manager for Rockford Homes advised that the property owner of the Property was building a berm on their property to screen the houses located in Olentangy Falls and Falls East from the view of their respective properties.

As part of Ms. Mullenhour's investigation of the complaints, Ms. Mullenhour sought legal advice regarding these issues. Based upon the legal advice received by Ms. Mullenhour, the complaints she had received, the investigation she conducted, and the statements from the development manager for Rockford Homes regarding the purpose for the earthen mounds, Ms.

Mullenhour made a determination that the earthwork was considered a 'structure' within the definition of 'structure' as set forth in the Zoning Resolution. Since the earthwork constituted a 'structure' within the definition of the Zoning Resolution, Ms. Mullenhour determined that such structure required a permit and a variance under the Zoning Resolution. On December 13, 2017, Ms. Mullenhour communicated her decision/determination to a representative of the Property's owner and provided him with an application for use and area variance.

On December 18, 2017, Martin Savko ("Mr. Savko"), who served as a contractor on the Olentangy Falls East project, but who is not the owner or representative of the Property, contacted Ms. Mullenhour via e-mail and advised that he had been given permission by the Property's owner to "recontour" the farm field to address rainwater that was draining onto his property. Specifically, he stated:

> During heavy rains water would run onto my property due to how the farm field was contoured. While performing the work I needed an area to lose some of the dirt I was excavating so I decided to build a landscape mound. [1]

As a result, Mr. Savko requested a delay of thirty (30) days for the Property owner to submit the application for use and area variance.[2] On December 18, 2017, Ms. Mullenhour agreed to an extension to February 15, 2018. There is no record that the Property owner ever submitted the application for use and area variance.

Despite never submitting the requested application for use and area variance, multiple communications were exchanged among many parties over the ensuing months, including the Appellant, Ms. Mullenhour, Liberty Township trustees, and the Delaware County Prosecutor's

[1] Thus, in this e-mail Mr. Savko admitted that the purpose for the landscape mounds' construction was as a landscape mound, which is consistent with the previous communication to Ms. Mullenhour from the development manager of Rockford Homes that the property owner wanted to build a berm to screen homes.

[2] It should be noted and is of significant consequence that Mr. Savko did not request that Ms. Mullenhour change her determination that the earthen mounds were determined to be 'structures' under the Zoning Resolution or that the Property owner was required to submit the application for use and area variance. Mr. Savko simply asked for a delay in filing of the documents requested by Ms. Mullenhour.

office. However, there is no record that the Property's owner engaged in any of these communications.

On May 10, 2018, months after Ms. Mullenhour issued her original determination and months after the deadlines established by Ms. Mullenhour for the Property owner to submit the application for use and area variance, Rich Rogers ("Mr. Rogers"), the farmer who farmed the Property, produced a letter to Ms. Mullenhour. Mr. Rogers' letter purported to state that the earthen mounds aided soil stability and the overall farming operation on the Property.

On May 22, 2018, Ms. Mullenhour issued an additional purported decision that the earthen mounds were structures incident to the use of land for agricultural purposes pursuant to Section 6.02 and 8.01 of the Zoning Resolution and R.C. Section 519.21.

On or about June 11, 2018, Mr. Sunderland filed his appeal of Ms. Mullenhour's May 22, 2018 purported decision to the BZA.

On June 25, 2019, the BZA held an evidentiary hearing. At this hearing, the Appellant and Appellee presented evidence as to whether the structures at issue were structures incident to the use of land for agricultural purposes. The Appellant was not permitted to present evidence related to the lack of legal authority for Ms. Mullenhour to issue her decision of May 22, 2018. The only reason cited by the BZA to deny Appellant the opportunity to present evidence related to Ms. Mullenhour's legal authority was that the sole issue on appeal was whether the earthen mounds at issue constitute structures incidental to an agricultural use within the meaning of R.C. § 519.21 such as to deprive Liberty Township authority to regulate such structures. The BZA issued its decision on August 1, 2019.

Mr. Sunderland filed his notice of appeal with the trial court on August 29, 2019.

On September 16, 2019, almost three (3) weeks after Mr. Sunderland filed his notice of appeal herein, Liberty Township amended its Zoning Resolution, effective October 16, 2019. The purpose for the amendment, in part, was to exclude 'landscape mounds', i.e., earthen mounds, from the definition of 'structure'.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: TRIAL COURTS MAY NOT RETROACTIVELY APPLY TOWNSHIP ZONING RESOLUTION AMENDMENTS WHERE SUCH AN APPLICATION WOULD EFFECTIVELY MOOT OR TERMINATE A PARTY'S PENDING ADMINISTRATIVE APPEAL.

There is no dispute that the zoning amendments relied upon by the trial court which became effective on October 16, 2019, were not in effect when the BZA entered its decision on August 1, 2019.

a. Ohio law does not, generally, permit the adoption of retroactive laws.

Under Ohio law, townships are creatures of statute and have no inherent power. Because townships derive their power from the Ohio legislature, they have only those powers expressly authorized or necessarily implied from the expressed grant of statutory power. *See, e.g., State ex rel. Butler Twp. Bd. of Trs. v. Montgomery County Bd. of County Comm'rs.* (2nd Dist., Dec. 12, 2008), 2008-Ohio-6542, 2008 Ohio App.LEXIS 5461; *Lawrence Twp. v. City of Canal Fulton* (5th Dist., Nov. 5, 2007), 2007-Ohio-6115; and *American Sand and Gravel, Inc. v. Fuller* (5th Dist., Mar. 18, 1987), 1987 Ohio App.LEXIS 6147. From these principles, it follows that townships, as creatures of statute, have no greater legal authority than that of the state legislature.

First, as it applies to the amendments adopted by Liberty Township on September 16, 2019, and made effective on October 16, 2019, there is no express grant of authority contained in R.C. §519.12 that permits Liberty Township to apply these regulations retroactively.

Second, Ohio law does not permit the adoption of retroactive laws. Article II, Section 28 of the Ohio Constitution states:

The general assembly shall have no power to pass retroactive laws…

The Ohio Supreme Court has recognized this prohibition. *See, e.g., State v. Cook* (1998), 83 Ohio St.3d 404. In this case, there is no dispute that Liberty Township has amended its zoning regulations, at least twice, in an attempt (1) to substantively affect and impair the vested right of Mr. Sunderland to file a complaint with Liberty Township regarding the structures at issue, (2) to deprive him of his vested right to appeal the decision of Ms. Mullenhour to the Liberty Township Board of Zoning Appeals as granted to him by the Liberty Township Zoning Resolution and Ohio law, and, now, (3) to deprive him of his statutory right to file an appeal with the trial court regarding the decision of the BZA as granted to him by Ohio law.

Finally, multiple Ohio courts have recognized that zoning authorities may not adopt retroactive zoning regulations, particularly where a use was unlawful prior to the adoption of a zoning regulation, as Ohio law will not protect unlawful acts. *See, e.g., Matthew v. Pernell* (2nd Dist., Dec. 11, 1989), 64 Ohio App.3d 707, 712; 582 N.E.2d 1075, 1078; *City of Canton v. Koury* (5th Dist., June 20, 2005), 2005-Ohio-3193; *Hunziker v. Grande* (8th Dist., Nov. 10, 1982), 8 Ohio App.3d 87, 456 N.E.2d 516; and *State ex rel. Am. Outdoor Adver. Co., LLC v. Abell* (11th Dist., Jan. 29, 2010), 2010-Ohio-319, *P52 ("…any retroactive application of the new [township zoning] regulations is unlawful, and respondent must follow the provisions of the prior resolution.")[3]

b. Through retroactive application of the zoning amendments purportedly adopted by Liberty Township, the trial court erred by impairing Mr. Sunderland's vested

[3] Many of the Ohio court cases that address retroactivity of zoning regulations construe R.C. §713.15, which applies to municipalities. R.C. §519.19 contains almost identical language to that of R.C. §713.15. Therefore, the legal analysis that applies to R.C. §713.15 equally applies to R.C. §519.19. *Cf.* R.C. §713.15 and R.C. §519.19.

substantive right of appeal that had accrued prior to the adoption of such amendments.

In the trial court's zeal to recognize and protect the property interests of one property owner to the detriment of Mr. Sunderland through its lengthy discussion of vested property rights (*See, e.g.*, Judgment Entry at 4 – 10), the Court completely ignores and, indeed, tramples over Mr. Sunderland's accrued, substantive, vested right of appeal in dismissing Mr. Sunderland's appeal.

i. Mr. Sunderland's right to appeal Ms. Mullenhour's decision and the BZA's decision are recognized property interests and vested substantive rights under Ohio law.

As the Twelfth District Court of Appeals has stated, a right to appeal which is granted by rule of court or statute is a property interest which is protected by the Due Process Clause of the Ohio Constitution. *See City of Hamilton v. Fairfield Twp.* (12th Dist., Jul 1. 1996), 112 Ohio App.3d 255, 271; 678 N.E.2d 599, 609. Here, Mr. Sunderland's appeal has been conferred from two separate sources. At the township level, Mr. Sunderland was conferred a statutory right of appeal by virtue of R.C. §§519.14(A) and 519.15 and associated provisions of the Zoning Resolution. More relevant to these proceedings, Mr. Sunderland was conferred a statutory right of appeal of the denial of his BZA appeal to the Delaware County Court of Common Pleas by virtue of R.C. §2506.01. Thus, Mr. Sunderland's right to appeal is a property interest protected by the Due Process Clauses of the Ohio Constitution and the United States Constitution.

Furthermore, as it relates to appeals prosecuted pursuant to Chapter 2506 of the Ohio Revised Code, the Twelfth District further stated:

> The right to prosecute a R.C. Chapter 2506 … appeal to its conclusion becomes a vested substantive right once the appeal is actually filed in the court of common pleas.

Id. at 273, 611. Thus, in this case, when Mr. Sunderland filed his Chapter 2506 appeal with the Delaware County Court of Common Pleas on August 29, 2019, such appeal became a vested substantive right in favor of Mr. Sunderland who retained the right to prosecute that appeal to its conclusion.

ii. Under Ohio law, subsequently adopted laws may not be retroactively applied to Chapter 2506 appeals once such appeals have been filed and become vested substantive rights.

In identifying these property interests and vested substantive rights, the Twelfth District also noted that once a Chapter 2506 appeal has been filed, no subsequently adopted statute could operate retroactively to terminate any appeals pending at the time of the adoption of such statute. *Id*. Any attempt to do so violates Article II, Section 28 of the Ohio Constitution. *Id*.

iii. The Delaware County Court of Common Pleas unlawfully retroactively applied and gave effect to the zoning amendments adopted by Liberty Township after Mr. Sunderland filed his Chapter 2506 appeal with the Delaware County Court of Common Pleas for the sole purpose of dismissing and terminating Mr. Sunderland's appeal.

Applying these concepts to this case, Mr. Sunderland filed his Chapter 2506 appeal in the Delaware County Court of Common Pleas on August 29, 2019. At that time, Mr. Sunderland's right to prosecute that appeal became a substantive vested right and, in accordance with *City of Hamilton*, no subsequently adopted statute or law can be applied retroactively to terminate that appeal. At the time of filing of Mr. Sunderland's appeal, earthen mounds were considered 'structures' pursuant to the Zoning Resolution, and earthen mounds and the application of the term 'structure' were material, substantive issues in Mr. Sunderland's appeal. While Liberty Township amended its resolution to remove earthen mounds from the definition of 'structure' on September 16, 2019, neither Liberty Township nor the Delaware County Court of Common Pleas could retroactively apply this new definition to Mr. Sunderland's appeal because it would

have the effect of terminating (or impairing) Mr. Sunderland's substantive, vested right of appeal. By giving effect to the new zoning amendments and applying the same to Mr. Sunderland's appeal for the purposes of dismissing the same as moot, the trial court violated Article II, Section 28 of the Ohio Constitution as explained by *City of Hamilton*.

iv. Mr. Sunderland's appeal is not moot.

Because Liberty Township's new zoning amendments cannot be applied retroactively to Mr. Sunderland's appeal for the purpose of depriving him of his right of appeal, Mr. Sunderland's appeal remains a live case and controversy. *See Burke v. Barnes* (1987), 479 U.S. 361, 363, 107 S.Ct. 734. Accordingly, Mr. Sunderland's appeal cannot be construed as being moot as argued by the trial court.

In summary, as discussed, *supra*, by giving effect to Liberty Township's new zoning amendments and applying the same to Mr. Sunderland's appeal for the purposes of dismissing the same as moot, the trial court violated Article II, Section 28 of the Ohio Constitution as explained by *City of Hamilton*. Because the trial court cannot retroactively apply Liberty Township's new zoning amendments to Mr. Sunderland's appeal, Mr. Sunderland's appeal is not moot and remains a live case and controversy. Accordingly, this matter must be reversed and remanded to the trial court for purposes of proceeding with Mr. Sunderland's appeal.

Proposition of Law No. 2: TOWNSHIPS, TRIAL COURTS, AND APPELLATE COURTS MAY NOT ALTER THE REMEDIES AVAILABLE TO A PARTY TO A PENDING ADMINISTRATIVE APPEAL WHEN SUCH REMEDIES HAVE BEEN ESTABLISHED BY THE OHIO REVISED CODE

To uphold the trial court's dismissal of Mr. Sunderland's appeal, the Fifth District Court of Appeals attempts to distinguish this case by stating that the township's zoning resolution amendment did not amount to retroactive application of a newly adopted zoning resolution.

Rather, as the Fifth District Court of Appeals states, the trial court merely found the prospective application of the zoning resolution amendment renders the action moot since it removes the remedy of prevailing in such an administrative appeal.

Assuming, *arguendo,* this is true, (1) townships are not legally permitted to alter the remedies established for administrative appeals and violations of zoning resolutions as set forth in the Ohio Revised Code and (2) courts may not engage in legal advisory opinions based upon a hypothetical set of facts that are not before the Court.

The remedies available for an administrative appeal are set forth in Ohio Revised Code Section 2506.08:

> If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the 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. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court.

Thus, pursuant to this statute, the trial court can find that the earthen structures at issue violated the Liberty Township Zoning Resolution, that was in effect at the time of the filing of Mr. Sunderland's appeal, which is exactly what Mr. Sunderland has requested of part of his appeal. In addition, the trial court can then order removal of the earthen structures or, if it chooses, remand the matter back to Liberty Township for further proceedings consistent with that finding.

Pursuant to such a finding and court order, the Liberty Township Zoning Inspector can require the removal of such earthen structures, as requested by Mr. Sunderland, pursuant to Ohio Revised Code Section 519.24.

Liberty Township, as a derivative political subdivision created by state statute with only the powers given to it by the Ohio General Assembly, cannot change these remedies as set forth by the Ohio General Assembly. Thus, contrary to the opinion of the Fifth Appellate District, if it construed the actions of Liberty Township in amending its zoning resolution as affecting the remedies available to Mr. Sunderland in his administrative appeal, it has no legal authority to alter those remedies as set forth under Ohio law by the Ohio General Assembly. Furthermore, the trial court and the appellate court equally cannot give authority to Liberty Township to do so where the General Assembly has not.

Because there is a remedy available to Mr. Sunderland for his administrative appeal, his administrative appeal is therefore not moot.

Proposition of Law No. 3: IN ADMINISTRATIVE APPEALS, TRIAL COURTS AND APPELLATE COURTS MAY NOT ENGAGE IN LEGAL ADVISORY OPINIONS REGARDING THE PROSPECTIVE APPLICATION OF TOWNSHIP ZONING RESOLUTION AMENDMENTS WHERE NO FACTUAL OR LEGAL RECORD REGARDING APPLICATION OF THE NEW TOWNSHIP ZONING RESOLUTION AMENDMENT HAS BEEN ESTABLISHED

Both the trial court and the appellate court spend considerable time in their respective opinions discussing the "what-ifs" if Mr. Sunderland prevails and engage in rank speculation about the prospective application of the zoning resolution amendment adopted by Liberty Township to alleged facts not part of the record in front of either the trial court or the appellate court. This is legally improper. The record in an administrative appeal is limited to the transcript filed with the trial court pursuant to R.C. §2506.02 or such additional evidence permitted in a hearing pursuant to R.C. §2506.03. *See* R.C. §2506.03. In ruling on an administrative appeal, it is of no consequence what may happen if the Court rules in favor of the party filing the appeal or how a new law may apply to certain facts not before the Court, unless

that new law may legally be applied retroactively to the administrative appeal. Stated another way, courts may not engage in issuing advisory opinions. *See, also, Lehman Bros. Holdings, Inc. v. United Petroleum Mktg.* (5th Dist. 2013), 2013-Ohio-233, ¶45("[c]ourts only have the power to resolve present disputes and controversies, but do not have the authority to issue advisory opinions to prevent future disputes.")

Mr. Sunderland's appeal merely asks the question as to whether the actions of the property owner at issue, and its surrogates, in constructing the earthen mounds violated the provisions of the Liberty Township Zoning Resolution in effect at the time of the filing of Mr. Sunderland's appeal. If so, then Mr. Sunderland requests a finding to that effect and for the abatement of the earthen structures. What occurs after that finding is and should be of no import to the Court because (1) there has been no action taken by Liberty Township with regard to any earthen structures pursuant to the new amendments to its zoning resolution; (2) it is unclear whether the new amendments to such resolution are, in fact, legal; (3) no appeal or other legal filing has been filed with any state court with regard to any earthen structures and the application of the new amendments to the zoning resolution by Liberty Township; and (4) no factual record has been developed for purposes of any state court action with regard to the application of the new amendments to any earthen structures in Liberty Township. Because none of these actions have occurred, it is improper for the trial court and the Fifth District Court of appeals to engage in their own inquiry or to speculate as to what future actions of the parties may be. That is for the parties to determine.

If this Court permits the decisions of the trial court and the Fifth District Court of Appeals to stand, it will invite townships and courts in the future to engage in these same types of activities. Townships and their officials will simply be free to engage in potentially unlawful

actions. Then, when a resident or affected party files an appeal to have such actions reviewed, the township can simply amend its resolution to render any administrative appeals moot to avoid scrutiny of its actions. Similarly, pursuant to such amendments and administrative appeals, courts will be encouraged to engage in rank speculation regarding prospective applications of new laws to alleged facts not in any transcript or record before such courts to deny administrative appeals as moot. This fundamentally undermines the operation of Chapter 2506 of the Ohio Revised Code and would potentially render administrative appeals meaningless.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

/s Grant A. Wolfe

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION OF PLAINTIFF-APPELLANT, JAY L. SUNDERLAND was served via electronic service and/or ordinary US mail on March 22, 2021, on the following:

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