[Cite as *Golf Village N., L.L.C. v. Powell*, 2018-Ohio-151.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GOLF VILLAGE NORTH, LLC, ET AL.	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiffs - Appellants	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
THE CITY OF POWELL, OHIO, ET AL.	:	Case No. 17 CAH 04 0024
	:	
Defendants - Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 16 CV F 07 412
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	January 11, 2018

APPEARANCES:

For Plaintiffs-Appellants	For Defendants-Appellees
JOSEPH R. MILLER JOHN M. KUHL CHRISTOPHER L. INGRAM KARA M. MUNDY Vorys, Sater, Seymour and Pease LLP 52 E. Gay Street, P.O. Box 1008 Columbus, Ohio 43215-1008	EUGENE L. HOLLINS YAZAN S. ASHRAWI MICHELLE Y. HARRISON Frost Brown Todd LLC 10 West Broad Street, Suite 2300 Columbus, Ohio 43215

Baldwin, J.

{¶1} Plaintiffs-appellants Golf Village North, LLC and Triangle Properties, Inc. appeal from the November 7, 2016 and March 15, 2017 Judgment Entries of the Delaware County Court of Common Pleas.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Golf Village North, LLC ("Golf Village") owns two parcels of real property encompassing approximately 8.1 acres in Powell, Ohio. The property is located at the northeast corner of Sawmill Parkway and Seldom Seen Road. Appellant Golf Village is seeking to develop the property, which is zoned for commercial use, as a residential hotel.

{¶3} On April 1, 2016, appellant Golf Village, through its counsel, sent a letter to the Director of Development of the City of Powell asking for approval of the proposed use of the property as a residential hotel. Appellant specifically asked for a "prompt decision pursuant to Section 1133.05(a) [of the Codified Ordinances of the City of Powell] that the proposed residential hotel is a permitted use for the Property so that Golf Village North LLC may proceed with submitting a final development plan to the City of Powell for approval." In response, the Director of Development, in a letter to appellants' counsel dated May 5, 2016, stated that Section 1133.05(a) of the Powell Codified Ordinances "does not establish a process whereby an applicant may seek an advisory opinion from the Zoning Administrator." The letter further stated that "the zoning code clearly contemplates that an applicant must submit a full and complete application for a recommendation by staff and review and consideration by the appropriate boards and commissions."

{¶4} Thereafter, on May 24, 2016, appellant submitted a Board of Zoning Appeals Application for Appeal appealing the decision of the Zoning Administrator denying appellant's request for the approval of a proposed use of the subject property. No hearing was held. The Law Director of the City of Powell sent an e-mail to appellants' counsel on June 9, 2016 stating that there was "no appealable administrative action as there is no process for requesting an advisory opinion from the Zoning Administrator under the City of Powell Codified Ordinances." The Law Director further encouraged appellant to submit an appropriate application for Zoning Certificate approval.

{¶5} On July 8, 2016, appellants filed a Notice of Appeal with the Delaware County Court of Common Pleas, appealing the decision of the City of Powell made on June 9, 2016 refusing to hear appellant Golf Village's administrative appeal. Appellants, on October 12, 2016, filed a Motion to Supplement the Record with Additional Evidence and Stay Briefing. The trial court denied appellants' motion pursuant to a Judgment Entry filed on November 7, 2016.

{¶6} After briefs were filed by the parties, the trial court, as memorialized in a Judgment Entry filed on March 15, 2017, dismissed the appeal. The trial court held, in part, that there was no final appealable order from which appellant Golf Village could appeal and that it, therefore, had no subject matter jurisdiction.

{¶7} On March 27, 2017, appellants filed a Motion for Relief from Judgment. The trial court denied the motion on May 30, 2017.

{¶8} Appellants now raise the following assignments of error on appeal:

{¶9} "I. THE COURT OF COMMON PLEAS ERRED BY CONCLUDING THAT IT LACKED SUBJECT MATTER JURISDICTION OVER THIS APPEAL ON THE BASIS THAT THERE WAS NO FINAL APPEALABLE ORDER."

{¶10} "II. THE COURT OF COMMON PLEAS ERRED BY DENYING APPELLANTS' MOTION TO SUPPLEMENT THE RECORD WITH ADDITIONAL EVIDENCE PURSUANT TO R.C. 2506.03."

{¶11} "III. THE COURT OF COMMON PLEAS ERRED BY FINDING THAT THE ZONING CODE IS NOT UNCONSTITUTIONALLY VAGUE AS APPLIED TO APPELLANTS' PROPERTY."

{¶12} "IV. THE COURT OF COMMON PLEAS ERRED BY DETERMINING THAT THERE WAS NO VIOLATION OF DUE PROCESS."

{¶13} "V. THE COURT OF COMMON PLEAS ERRED BY FINDING THAT THERE WAS NO VIOLATION OF EQUAL PROTECTION."

{¶14} "VI. THE COURT OF COMMON PLEAS ERRED BY NOT FINDING THAT APPELLANTS' RESIDENTIAL HOTEL IS A PERMITTED USE."

{¶15} "VII. THE COURT OF COMMON PLEAS ERRED BY DENYING APPELLANTS' MOTION FOR RELIEF FROM JUDGMENT."

I

{¶16} Appellants, in their first assignment of error, argue that the trial court erred in holding that it lacked subject matter jurisdiction on the basis that there was no final appealable order. We disagree.

{¶17} "'Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits' and 'defines the competency of a court to render a valid judgment in a particular action.' " *Cheap Escape Co. v. Haddox, L.L.C.,* 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 6, quoting *Morrison v. Steiner,* 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). Because a court without subject-matter jurisdiction lacks the power to adjudicate the merits of a case, parties may challenge jurisdiction at any

time during the proceedings. *Pratts v. Hurley,* 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11. Whether a trial court possessed subject-matter jurisdiction is a question of law which we consider de novo. *John Roberts Mgt. Co. v. Obetz,* 188 Ohio App.3d 362, 2010-Ohio-3382, 935 N.E.2d 493, ¶ 8 (10th Dist.).

{¶18} Appellants filed their appeal pursuant to R.C. Chapter 2506. R.C. 2506.01 provides, in relevant part, as follows:

> (A) Except as otherwise provided in sections 2506.05 to 2506.08 of the Revised Code, and except as modified by this section and sections 2506.02 to 2506.04 of the Revised Code, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code….
>
> (C) As used in this chapter, "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding.

{¶19} In the case sub judice, appellants sought a determination from the Director of Development that their proposed use of the subject property as a residential hotel was permissible. Appellants, in their April 1, 2016 letter to the Director of Development,

specifically cited to Section 1135.05(a) of the Powell Codified Ordinances which provides, in part, that the Zoning Administrator shall "[e]nforce the provisions of this Zoning Ordinance, and interpret the meaning and application of its provisions."

{¶20} However, as noted by the trial court, neither the May 5, 2016 letter nor the June 9, 2016 e-mail determined appellants' rights, duties or privileges to develop the property as residential hotel. Rather, because there is no provision in the City of Powell Codified Ordinances for advisory opinions, the Director of Development encouraged appellants to submit an application pursuant to the applicable zoning requirements.

{¶21} Moreover, as noted by the trial court, even preliminary approval or denial of the proposed use by the City of Powell would not have constituted a final appealable order. The Ohio Supreme Court, in *State ex rel. Harpley Builders, Inc. v. Akron*, 62 Ohio St.3d 533, 584 N.E.2d 724 (1992), held that "Preliminary approval of a real estate project does not determine the final rights and duties of the developer until further action is taken. Therefore, the grant of preliminary approval is not a final appealable order under R.C. 2506.01." *Id.* at 536. Had the advisory opinion requested by appellants been given, appellants still would have had to file a full and complete application for zoning certificate approval. Appellants, in their April 1, 2016 letter, acknowledged as much in asking for a "prompt decision pursuant to Section 1133.05(a) that the proposed residential hotel is a permitted use for the Property so that Golf Village North LLC may proceed with submitting a final development plan to the City of Powell for approval." A final decision would have been made after a full and complete application was submitted by appellants.

{¶22} Based on the foregoing, we find that the trial court did not err in dismissing appellants' appeal because there was no final appealable order. The trial court, therefore, did not have subject matter jurisdiction.

{¶23} Appellants' first assignment of error is, therefore, overruled.

II, III, IV, V, VI, VII

{¶24} Based on our disposition of appellants' first assignment of error, appellants' remaining assignments of error are moot.

{¶25} Accordingly, the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Baldwin, J.

Delaney, P.J. and

John Wise, J. concur.