

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

1221 ALUM CREEK DRIVE  
PROPERTIES, LLC

Plaintiff-Appellee

JUDGES:

Hon. Craig R. Baldwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. Kevin W. Popham, J.

-VS-

BOWLING GREEN TOWNSHIP  
BOARD OF ZONING APPEALS, ET AL.,

Defendant-Appellants

Case No. 2024 CA 00084

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Licking County Court of  
Common Pleas, Case No. 2023 CV  
01235

JUDGMENT:

Affirmed, in part; Reversed and  
Remanded, in part

DATE OF JUDGMENT ENTRY:

July 10, 2025

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellants

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*Hoffman, J.*

**{¶1}** Appellants Bowling Green Township Board of Zoning Appeals, et al. appeal the August 28, 2024 Decision and Order entered by the Licking County Court of Common Pleas, which reversed and remanded the Bowling Green Township Board of Zoning Appeals' ("the BZA") decision denying the conditional use application of appellee 1221 Alum Creek Drive Properties, LLC ("Alum Creek").

#### STATEMENT OF THE FACTS AND CASE

**{¶2}** In early 2023, Alum Creek submitted three (3) applications for conditional use permits to build whisky storage warehouses on three parcels of land in Bowling Green Township, Licking County, Ohio, to appellant Bowling Green Township Zoning Inspector ("the Zoning Inspector"). At the time Alum Creek submitted its original applications, the Bowling Green Township Zoning Resolution ("Zoning Resolution") permitted warehousing as a conditional use in the agricultural district. The parcels for which Alum Creek sought the conditional use permits were located in the agricultural district. The Zoning Inspector refused the applications and returned such to Alum Creek, noting the applications were not properly completed.

**{¶3}** Soon after the Zoning Inspector returned the applications to Alum Creek, the BZA began the process of amending the Zoning Resolution to remove all conditional uses from the agricultural district within Bowling Green Township. On February 11, 2023, the BZA submitted a request to the Licking County Planning Commission ("the Commission") for a non-binding recommendation. The Commission issued a staff report on February 27, 2023, which included the following comment: "The Commission staff does not feel that the complete elimination of the conditional uses is the best solution to address any concerns related to the possible development." The Commission scheduled

a public hearing on the proposed amendment for March 9, 2023, and placed notice of the hearing in the Newark Advocate on February 26, 2023.

**{¶4}** On March 17, 2023, the Bowling Green Township Trustees (“the Trustees”) placed notice in the Newark Advocate, stating the Trustees would hold a public hearing on the proposed amendment on March 28, 2023. The Trustees approved the amendment at the March 28, 2023 public hearing. The amendment, which became effective thirty (30) days after the hearing, removed all conditional uses from agricultural districts.

**{¶5}** Alum Creek resubmitted the three (3) applications for conditional use permits on June 12, 2023. In a correspondence dated June 24, 2023, the Zoning Inspector denied the applications because “warehousing is no longer a conditional use in the agricultural district of Bowling Green Township” based upon changes to the Bowling Green Township Zoning Resolution, which became effective on April 30, 2023.

**{¶6}** Alum Creek appealed the Zoning Inspector’s denial to the BZA, challenging the validity of the amendment to the Zoning Resolution as well as the Commission’s and the Trustees’ failure to comply with the applicable procedural requirements for amending the Zoning Resolution. On August 26, 2023, the BZA held a public hearing to consider the appeal. Subsequently, on September 18, 2023, the BZA voted to deny the appeal. The BZA issued a written decision on September 28, 2023, in which it set forth the factors it considered. Specifically, the BZA noted, “There were many concerning factors that were considered by the board. First and foremost, warehousing is no longer a conditional use in the agricultural district of Bowling Green Township, effective April 28<sup>th</sup>, 2023.” The BZA noted, “When considering the application and upon research and with information gathered there are multiple concerns.” *Id.* The BZA then analyzed the applications in light

of the general standards applicable to all conditional uses as set forth in Section 5.21 of the Zoning Resolution. Alum Creek filed a timely notice to the Licking County Court of Common Pleas.

{¶7} Via decision and order issued August 28, 2024, the trial court sustained Alum Creek's appeal and reversed and remanded the BZA's decision denying Alum Creek's applications for conditional use. The trial court found Alum Creek had standing to pursue its appeal from the BZA's decision. The trial court further found the BZA failed to provide adequate notice before amending the Zoning Resolution.

{¶8} It is from this judgment entry the BZA appeals, raising the following assignments of error:

I. THE TRIAL COURT ERRED IN RULING THAT PLAINTIFF-APPELLEE HAD STANDING TO APPEAL THE DECISION OF DEFENDANT-APPELLANTS' DENIAL OF PLAINTIFF-APPELLEE'S APPLICATIONS FOR CONDITIONAL USE PERMITS, AS SUCH RULING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND SHOULD BE REVIEWED DE NOVO.

II. THE TRIAL COURT'S DECISION THAT THE REMOVAL OF WAREHOUSES AS A CONDITIONAL USE UNDER THE TOWNSHIP ZONING CODE DID NOT CONSTITUTE A VALID AMENDMENT IS IN ERROR AND CONSTITUTES AN ABUSE OF DISCRETION, AS SAID AMENDMENT IS IN COMPLIANCE WITH THE BOWLING GREEN TOWNSHIP ZONING RESOLUTION AND THE OHIO REVISED CODE.

{¶9} In its first assignment of error, the BZA contends the trial court erred in finding Alum Creek had standing to appeal the BZA's decision denying Alum Creek's applications for conditional use permits. We disagree.

{¶10} Generally, "standing" is "the capacity of a party to bring an action, not the subject matter jurisdiction of the court." *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 77 (1998). However, standing is a jurisdictional issue in administrative appeals where the "parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction." *Id.* at fn. 4. In the context of an administrative decision, the right to appeal must be conferred by statute. The party seeking to appeal has the burden of establishing the right to do so. *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001).

{¶11} Appeals to the board of zoning appeals are governed by R.C. 519.15, which states: "[a]ppeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer." R.C. 519.15. Appeals from the board of zoning appeals are governed by R.C. 2506.01, which provides: "every final order, adjudication, or decision \* \* \* may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located[.]" R.C. 2506.01(A).

{¶12} "R.C. 2506.01 does not provide for *who* may appeal from the decision of a board of zoning appeals to a court of common pleas." *Meziane v. Munson Twp. Bd. of Trustees*, 2020-Ohio-5142, ¶ 10 (11th Dist.). The common-law doctrine of standing provides " '[a]ppeal lies only on behalf of a party aggrieved by the final order appealed

from.’ ” *Midwest Fireworks*, 91 Ohio St.3d at 177, quoting *Ohio Contract Carriers Assoc., Inc. v. Pub. Util. Comm.*, 140 Ohio St. 160, syllabus (1942).

{¶13} “An ‘aggrieved’ party is one whose interest in the subject matter of the litigation is “ ‘immediate and pecuniary, and not a remote consequence of the judgment.’ ” \* \* \* A future, contingent, or speculative interest is not sufficient to confer standing to appeal.” (Citations omitted.) *Id.* “Thus, in order to have standing to appeal, a person must be ‘able to demonstrate a present interest in the subject matter of the litigation which has been prejudiced’ by the judgment appealed from.” *Id.*, quoting *Willoughby Hills v. C.C. Bar’s Sahara, Inc.*, 64 Ohio St.3d 24, 26 (1992).

{¶14} The BZA contends Alum Creek “is not an aggrieved party as it has not been deprived of legal rights or claims.” Brief of Appellant at p. 4. The BZA further asserts Alum Creek did not meet the requirements set forth by the Supreme Court of Ohio in *Roper v. Bd. of Zoning Appeals, Twp. Of Richfield*, 173 Ohio St. 168 (1962), explaining Alum Creek “is not the sole owner of record for any of the subject parcels;” therefore, has failed “to satisfy the first, and arguable most important, [*Roper*] factor which is a prerequisite to standing.” *Id.* at p. 5.

{¶15} We find *Roper* is factually distinguishable from the case sub judice, and the BZA’s reliance thereon is misplaced. In *Roper*, the Ohio Supreme Court considered the issue of third party standing in an administrative appeal and determined it would be inappropriate to limit standing in such an appeal to the party denied its application by the agency. *Roper*, supra at 173–174.

{¶16} In *Roper*, the owner of a 50-acre tract of land applied to the Richfield zoning inspector for a permit to construct an oil distribution center thereon. *Id.* at 169. The zoning

inspector refused to grant the permit on the ground the 50-acre tract was zoned R-1, residential. *Id.* The landowner appealed to the Board of Zoning Appeals for a zoning change permitting the construction of the oil distribution center. *Id.* The Board of Zoning Appeals held a public hearing upon the landowner's appeal. *Id.* Notice of this public hearing was published as required by law. *Id.* "Peter Roper, a resident, elector and property owner in the township, appeared with his attorney, in response to a public notice \* \* \* to protest this change in zoning \* \* \* [and] spoke in opposition to the proposed change, and his attorney, representing him, presented both argument and citations of law in opposition to the change." *Id.* at 169-170.

**{¶17}** Before the hearing concluded and a vote taken, Roper advised the board he intended to appeal the matter if the application for a zoning change was granted. *Id.* at 170. At the close of the hearing, the board granted the application. *Id.* Roper filed a notice of appeal to the Summit County Court of Common Pleas, asserting he was a party adversely affected by the decision of the Board of Zoning Appeals. The landowner intervened as a party and filed a motion to dismiss the proceedings on the ground Roper had no right of appeal. *Id.* at 171. The Summit County Court of Common Pleas granted the motion and entered a judgment of dismissal. *Id.* The Ninth District Court of Appeals reversed. *Id.* The Ohio Supreme Court certified a conflict with a case from the Seventh District Court of Appeals. *Id.*

**{¶18}** The Ohio Supreme Court found the order of the Board of Zoning Appeals affected and determined Roper's rights as a property owner; therefore, Roper fell within the class of "specified" persons as referred to in R.C. 2506.01. *Id.* at 174.

**{¶19}** The Ohio Supreme Court held standing to appeal an administrative decision lies in *an applicant for a zoning change as well as*:

A resident, elector and property owner of a township, who appears before a township Board of Zoning Appeals, is represented by an attorney, opposes and protests the changing of a zoned area from residential to commercial, and advises the Board, on the record, that if the decision of the Board is adverse to him, he intends to appeal from the decision to a court, has a right to appeal to the common pleas court if the appeal is properly and timely made pursuant to Sections 519.15 and 2506.01 to 2506.04, inclusive, and Chapter 2505, Revised Code.

*Id.* at syllabus.

**{¶20}** Here, Alum Creek is not a third party. Rather, Alum Creek is the party whose application was denied. Assuming, *arguendo*, *Roper* is applicable, we find the record belies the BZA's assertion Alum Creek did not meet the *Roper* requirements. As the trial court correctly found:

Alum Creek has standing in this case because it is directly affected by, and actively participated in, the BZA's decision. Alum Creek is a property owner in Bowling Green Township, as it is listed as the owner of 10018 Mt. Hope Road, Thornville, Ohio 43076. \* \* \* Thus, as a property owner in Bowling Green Township, Alum Creek is directly affected by the



amendment to the Zoning Resolution. Further, Alum Creek directly participated in the BZA's decision as an attorney representing Alum Creek appeared at the BZA's August 26, 2023 public hearing on Alum Creek's appeal of the rejection of its applications for conditional use and advocated for the Zoning Resolution amendment to be declared invalid.

August 28, 2024 Decision and Order Reversing and Remanding Decision of Bowling Green Denying Appellant's Conditional Use Application at p. 4, unpaginated.

**{¶21}** Based upon the foregoing, we find Alum Creek had standing to bring a direct appeal pursuant to R.C. Chapter 2506. Alum Creek was the party whose applications were denied by the BZA. In addition, the BZA's denial of the conditional use applications affected and determined Alum Creek's rights as a property owner, and Alum Creek previously indicated its interest and was present with counsel at the BZA hearing. Accordingly, we find the trial court did not err in finding Alum Creek had standing.

**{¶22}** The BZA's first assignment of error is overruled.

## II

**{¶23}** In its second assignment of error, the BZA maintains the trial court erred in finding the amendment to the Zoning Resolution removing warehouses as a conditional use was not adopted in compliance with R.C. 519.12 and the Bowling Green Township Zoning Resolution.

**{¶24}** R.C. 519.12 sets forth the statutory framework within which a township must work in order to amend a zoning resolution. "Amendments to a zoning resolution may be

initiated by motion of the township commission,” or “by the passage of a resolution by the board of township trustees.” R.C. 519.12(A)(1). “Upon the adoption of a motion by the township zoning commission [or] the certification of a resolution by the board of township trustees to The Commission \* \* \*, The Commission shall set a date for a public hearing, which date shall not be less than twenty nor more than forty days from the date of the certification of such a resolution [or] the date of adoption of such a motion[.]” R.C. 519.12(A)(2). “Notice of the hearing shall be given by The Commission by one publication at least ten days before the date of the hearing using at least one of the following methods: (a) In the print or digital edition of one or more newspapers of general circulation in the township; (b) On the official public notice web site established under section 125.182 of the Revised Code; (c) On the web site and social media account of the township.” *Id.*

**{¶25}** Pursuant to R.C. 519.12(D), “[i]f the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor’s current tax list, the published notice shall set forth the time, date, and place of the public hearing” as well as all of the following:

- (1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by The Commission.

R.C. 519.12(D).

**{¶26}** The Bowling Green Township Zoning Resolution mirrors the requirements of R.C. 519.12, but further requires the notice set forth the nature of the proposed amendment. Article 6 of the Bowling Green Township Zoning Resolution provides, in relevant part:

#### **Section 6.7 Public Hearing by Zoning Commission**

The Zoning Commission shall schedule a public hearing after the adoption of their motion, transmittal of a resolution from the Board of Township Trustees, or the filing of an application for zoning amendment. Said hearing shall be not less than 20 nor more than 40 days from the date of adoption of such motion, transmittal of such resolution, or the filing of such application.

#### **Section 6.8 Notice of Public Hearing in Newspaper**

Before holding the public hearing as required in Section 6.7, notice of such hearing shall be given by the Zoning Commission by at least one publication in one or more newspapers of general circulation of the township

at least 15 days before the date of said hearing. The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing. This notice shall set forth the time and place of the public hearing, the nature of the proposed amendment, and a statement that after the conclusion of such public hearing the matter will be referred to the Board of Township Trustees for further determination.

Bowling Green Township Zoning Resolution, Article 6, Sections 6.7 6.8, <https://lickingcounty.gov/depts/planning/zoninginfo/bowling.htm> (accessed June 25, 2025).

**{¶27}** On February 26, 2023, the following notice was published in the Newark Advocate and the Newark Advocate Online:

Bowling Green Township Zoning Commission, Licking County Ohio will hold a public hearing on a zoning resolution text amendment on March 9<sup>th</sup> at 7pm. The proposed amendment to the resolution will be available for examination for a period of at least ten (10) days prior to the public hearing by requesting it by email at \* \* \*@yahoo.com. The Bowling Green Township Zoning Commission will, within 30 days after the hearing, refer to the Board of Township Trustees, a recommendation on the proposed amendment.

{¶28} Subsequently, on March 17, 2023, the following notice was published in the Newark Advocate and the Newark Advocate Online:

Bowling Green Township Trustees, Licking County Ohio will hold a public hearing on a zoning resolution text amendment on March 28<sup>th</sup> at 8pm. The proposed amendment to the resolution will be available for examination for a period of at least ten (10) days prior to the public hearing by requesting it by email at \* \* \*@yahoo.com. The Bowling Green Township Trustees will, within 20 days after the hearing, adopt or deny the recommendation of the Zoning Commission or adopt some modification thereof[.]

{¶29} The standard to be applied to procedures of non-legislative bodies involved in the zoning amendment process is “substantial compliance.” *Cherry Lane Dev., L.C.C. v. Walnut, C & DD, L.C.C.*, 2012-Ohio-3559, ¶ 24 (5th Dist.), citing *Kroeger v. Standard Oil Co. of Ohio, Inc.*, 1989 WL 87837 (12th Dist. 1989). We must determine if the notices given by the Commission and the Trustees substantially complied with the requirements of R.C. 519.12 and the Zoning Resolution, and whether any interested party was prejudiced by the defects in the notice. *Id.*, citing *Schlagheck v. Winterfield*, 108 Ohio App. 299, 307–08 (6th Dist. 1958).

{¶30} The trial court found:

Neither the Commission’s, nor the Trustees’, notice of public hearing meets the requirements for notices of public hearings set forth by R.C.

519.12 and the Zoning Resolution. Both notices failed to name the place where the applicable public hearing was to be held, only stating that the Commission and the Trustees would be holding public hearings at the respective dates and times. Further, both notices failed to set forth the nature of the proposed amendment in a manner that would alert parties that could be affected by the amendment. \* \* \* The notices do not contain any reference to the fact that the proposed amendment concerned the elimination of conditional uses in the agricultural district. As such parties that had an interest of applying for conditional uses in the agricultural district, the affected parties, were not adequately notified that the public hearings held by the Commission and Trustees concerned a proposed amendment that would eliminate their ability to apply for those conditional uses in the future. Therefore, the notices published by the Commission and Trustees failed to meet the requirements of R.C. 519.12 and the Zoning Resolution, and the amendment eliminating the conditional uses in the agricultural district is invalid.

August 28, 2024 Decision and Order Reversing and Remanding Decision of Bowling Green Denying Appellant's Conditional Use Application at pp. 5-6, unpaginated.

**{¶31}** We agree with the trial court, and find the Commission and the Trustees failed to substantially comply with the procedural requirements of R.C. 519.12 and the Zoning Resolution. Most importantly, the February 26, 2023, and March 17, 2023 notices

failed to set forth the nature of the proposed amendment as required by Article 6, Section 6.8, of the Bowling Green Township Zoning Resolution. As a result, the notices do not adequately alert parties who could be affected by the amendment. However, we disagree with the trial court's finding, "[t]he BZA thus acted unreasonably and arbitrarily by affirming the decision of the Zoning Inspector that was based **solely** on the invalid amendment to the Zoning Resolution." *Id.* at p. 6, unpaginated.

{¶32} In its September 28, 2024 decision, the BZA stated, "There were many concerning factors that were considered by the board. First and foremost, warehousing is no longer a conditional use in the agricultural district of Bowling Green Township, effective April 28<sup>th</sup>, 2023." September 28, 2024 Decision at p. 1, unpaginated. The BZA continued, "When considering the application and upon research and with information gathered there are multiple concerns." *Id.* The BZA then analyzed Alum Creek's applications in light of the general standards applicable to all conditional uses as set forth in Section 5.21 of the Zoning Resolution. Analyzing the standards the BZA specifically found, inter alia, the nineteen (19) 58,860 square foot warehouses did not meet the objective of the comprehensive plan to keep Bowling Green Township a rural area without sprawling development nor would the warehouses be harmonious with any other property in the vicinity; the black fungus produced from the Angel Share (the amount of distilled spirits lost to evaporation from the barrels to the air as bourbon ages) was not only invasive, but also hazardous to the environment; the effects of black fungus on humans was not known; residents and the Township would be financially impacted by the damage done to property by the black fungus as well as ongoing cleaning to remove the black

fungus; and area fire departments would not be able to adequately handle a catastrophic event involving the warehouses. *Id.* at pp. 1-3, unpaginated.

**{¶33}** In its Appellee's Brief filed below, the BZA asserted, "The denial letter to [Alum Creek] on September 28, 2023, discusses each criterion [applicable to all conditional uses] which [Alum Creek's] applications failed to satisfy." February 15, 2024 Brief of Appellee at p. 9. The BZA explained each criterion and its findings relative thereto. The trial court did not review the BZA's decision denying Alum Creek's applications for conditional use permit in light of this evidence. Although the trial court found the amendment to the Zoning Resolution removing warehouses as a conditional use was invalid, the BZA provided alternative reasons for denying Alum Creek's applications and the trial court should have considered them.

**{¶34}** The BZA's second assignment of error is sustained, in part, and overruled, in part.



**{¶35}** The judgment of the Licking County Court of Common Pleas is affirmed, in part, and reversed, in part, and the matter remanded for further proceedings consistent with this Opinion and the law.

By: Hoffman, J.  
Baldwin, P.J. and  
Popham, J. concur