[Cite as *State ex rel. Armstrong Util. Inc. v. Poland Twp. Bd. of Trustees*, 2025-Ohio-4460.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE EX REL. ARMSTRONG UTILITIES INC.,

Relator

v.

POLAND TOWNSHIP BOARD OF TRUSTEES et al.,

Respondents.

OPINION AND JUDGMENT ENTRY
Case No. 25 MA 0008

Writ of Mandamus

BEFORE:
Carol Ann Robb, Mark A. Hanni, Katelyn Dickey, Judges

JUDGMENT:
Writ Granted.

Atty. Matthew G. Vansuch, Roetzel & Andress LPA, for Relator and

*Atty. Lynn Maro, Mahoning County Prosecutor, Atty. John T. Heino, A*ssistant *Prosecutor*, Office of the Mahoning County Prosecutor and *Atty. John D. Latchney,* Hanna, Campbell & Powell, LLP for Respondents.

Dated: July 21, 2025

PER CURIAM.

{¶1} Relator Armstrong Utilities, Inc. ("Armstrong") has filed a petition for a writ of mandamus requesting this Court to compel Respondents Poland Township Board of Trustees and Township Administrator Mark S. Covell (collectively, "the Township") to reinstate an excavation permit that was issued to Armstrong on April 23, 2024, and subsequently revoked on September 26, 2024. The permit authorized Armstrong to excavate within Township rights-of-way to install fiber optic infrastructure as part of a multi-million-dollar network upgrade undertaken pursuant to Armstrong's state-issued Video Service Authorization. After Armstrong had invested substantial resources and completed more than half of the permitted work, the Township summarily revoked the permit without notice or hearing, citing only its adoption of a new resolution with different technical requirements.

{¶2} Before us is the Township's motion for judgment on the pleadings, which raises two threshold questions: whether Armstrong had an adequate remedy at law by appealing to the Township's Board of Zoning Appeals, and whether a declaratory judgment action would provide sufficient relief. These questions require us to examine the intersection between local authority to regulate excavations in township rights-of-way under R.C. 5571.16 and the state's comprehensive regulatory scheme for video service providers under R.C. Chapter 1332. For the following reasons, we deny the Township's motion and grant the requested writ.

I. STATEMENT OF THE FACTS

{¶3} According to the verified petition and attached exhibits, Relator Armstrong Utilities, Inc. ("Armstrong") provides video service within Poland Township under a Video Service Authorization ("VSA") issued by the Ohio Department of Commerce pursuant to R.C. Chapter 1332. Armstrong is engaged in a multi-million-dollar infrastructure upgrade in the Township to transition its existing network to fiber technology (Verified Pet. ¶ 6–7).

{¶4} Prior to commencing work, Armstrong submitted detailed technical plans to Township officials and, at the Township's request, applied for an excavation permit pursuant to R.C. 5571.16 for portions of the project involving excavation beneath

Township-maintained roads (Verified Pet. ¶ 10–11). Although Armstrong believed that its VSA independently authorized work within public rights-of-way, it applied for the permit as a courtesy and paid a $5,000 fee. The Township issued the permit on April 23, 2024, authorizing excavation activity for a one-year period (Verified Pet. ¶ 11; Ex. 1).

{¶5} Armstrong proceeded with the project in accordance with the approved plans and permit conditions. By September 2024, Armstrong had completed more than 50% of the infrastructure upgrade (Verified Pet. ¶ 9, 12).

{¶6} On June 12, 2024, the Township's Board of Trustees adopted Resolution No. 24-18, establishing new and more stringent standards for excavation within Township roadways and rights-of-way. This resolution replaced the previously governing standards found in Resolution No. 09-10, under which Armstrong's permit had been issued (Verified Pet. ¶ 14).

{¶7} On September 26, 2024, Township Administrator Mark S. Covell sent Armstrong an email stating that its excavation permit was "hereby revoked," that "[a]ll work in said rights-of-ways shall cease immediately," and that any further work must comply with the standards established in Resolution No. 24-18. The email further threatened to notify the Township police if Armstrong failed to "immediately suspend all operations" (Verified Pet. ¶ 13; Ex. 2).

{¶8} Armstrong asserts that it received no prior notice of any alleged violations of the permit or any indication that the Township was considering revocation. It further alleges that it has never been provided any explanation or documentation supporting the Township's decision (Verified Pet. ¶ 15).

{¶9} Post-revocation communications between Armstrong and Township officials identified two areas of potential concern—Burgess Run and Four Seasons Trail—but did not specify any deficiencies or violations. Armstrong reviewed the work performed in those areas and determined that it complied with the specifications in the submitted plans (Verified Pet. ¶ 15).

{¶10} Following the permit revocation, Armstrong contacted Township officials seeking clarification. Administrator Covell declined to discuss the matter and instead directed Armstrong to attend a public meeting of the Board of Trustees (Verified Pet. ¶ 16; Ex. 3).

{¶11} In November 2024, Township representatives further advised Armstrong to review Resolution No. 24-18 and its previously submitted plans, but again failed to identify any specific permit violations (Verified Pet. ¶ 17). Armstrong contends that no evidence supported the revocation and any post hoc justification would be impermissibly retrospective (Verified Pet. ¶ 17).

{¶12} In mid-December 2024, Armstrong contacted Township officials requesting reinstatement of the permit and an extension equal to the number of days it was revoked. Armstrong avers that the permit has not been reinstated and that it has exhausted all reasonable efforts to resolve the matter without litigation (Verified Pet. ¶ 19).

II. STATEMENT OF THE CASE

{¶13} Armstrong filed this petition for a writ of mandamus on February 7, 2025, seeking to compel the Township to reinstate the April 23, 2024 permit under its original terms and conditions, with an extension for the time period during which the permit was wrongfully revoked. The Township initially filed a motion to dismiss for failure to state a claim, arguing that Armstrong had adequate remedies at law. In their reply brief supporting that motion, the Township raised for the first time an argument that Armstrong should have appealed the revocation to the Township's Board of Zoning Appeals.

{¶14} Armstrong moved to strike the reply or, alternatively, for leave to file a sur-reply addressing this new argument. The Township subsequently withdrew their motion to dismiss, filed an answer, and then filed the present motion for judgment on the pleadings. The motion reasserts two primary arguments: (1) Armstrong had an adequate remedy by appealing to the Board of Zoning Appeals under R.C. 519.14(A), and (2) Armstrong could have filed a declaratory judgment action to determine its rights.

III. STANDARD OF REVIEW

{¶15} A motion for judgment on the pleadings under Civ.R. 12(C) presents only questions of law. *State ex rel. McCarley v. Dept. of Rehab. & Correction*, 2024-Ohio-2747, ¶ 11. We must view the allegations and reasonable inferences in the light most favorable to the nonmoving party and grant the motion only when it appears the moving party is entitled to judgment as a matter of law. *State ex rel. Leneghan v. Husted*, 2018-Ohio-3361, ¶ 13.

{¶16} To be entitled to a writ of mandamus, a relator must establish: (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Waters v. Spaeth*, 2012-Ohio-69, ¶ 6. A writ of mandamus will not issue if there is a plain and adequate remedy in the ordinary course of law. R.C. 2731.05; *State ex rel. Ohio Gen. Assembly v. Brunner*, 2007-Ohio-3780, ¶ 23.

IV. ANALYSIS

{¶17} The Township's motion presents two threshold questions regarding the adequacy of alternative remedies. We address each in turn.

A. The Board of Zoning Appeals Lacks Jurisdiction Over Non-Zoning Matters

{¶18} The Township's primary argument rests on a fundamental misunderstanding of the limited statutory authority granted to township boards of zoning appeals. They contend that R.C. 519.14(A) empowers the Board of Zoning Appeals to hear appeals from "any ruling made by a township administrative official," including the Administrator's revocation of an excavation permit issued under R.C. 5571.16. This expansive interpretation finds no support in Ohio law.

{¶19} The statutory text of R.C. 519.14(A) provides that township boards of zoning appeals may: "Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official *in the enforcement of sections 519.02 to 519.25 of the Revised Code*, or of any resolution adopted pursuant thereto." (Emphasis added.) The plain language limits the board's appellate jurisdiction to matters arising under the township's zoning authority.

{¶20} This limitation is not merely semantic. R.C. Chapter 519 governs township zoning, while R.C. Chapter 5571 governs township roads and rights-of-way. These chapters establish distinct regulatory frameworks with separate enforcement mechanisms. R.C. 5571.16 authorizes townships to require permits for excavations in township highways and rights-of-way—a power entirely separate from zoning authority. The penalty for violating Section 5571.16 is found in Section 5571.99, not in the zoning enforcement provisions of Chapter 519.

{¶21} The structure of township government reinforces this distinction. Under R.C. 519.13(A), township trustees cannot even appoint a board of zoning appeals until after they have adopted a zoning resolution. The board's existence is predicated on the township's exercise of zoning powers. As this Court recognized in *Essroc Materials, Inc. v. Poland Twp. Bd. of Zoning Appeals*, 117 Ohio App.3d 456, 460 (7th Dist.1997), Poland Township's BZA was established "pursuant to R.C. 519.14" through the Township's zoning resolutions, and its "authority is derived from the General Assembly, and is therefore limited to that specifically prescribed by zoning resolution."

{¶22} The Township relies heavily on *Soplata v. Endres*, 2013-Ohio-4424 (11th Dist.), for the proposition that a township board of zoning appeals "does have the jurisdiction to consider an appeal from any ruling made by a township administrative official." However, *Soplata* involved a property owner's challenge to the enforcement of zoning laws on his parcels—a quintessential zoning dispute. The Eleventh District's statement must be read in context, as the court immediately followed by noting that "in the context of a zoning dispute, the basic scope of the declaratory judgment action is limited to determining whether the zoning resolution is constitutional as applied to the subject property." *Id*. at ¶ 28.

{¶23} Similarly, the other cases cited by the Township—*Woodstock Solar Project, LLC v. Rush Twp. Bd. of Zoning Appeals*, 2025-Ohio-567 (2d Dist.), and *Genovese v. Beckham*, 2006-Ohio-1174 (9th Dist.)—all involved appeals of zoning-related decisions to boards of zoning appeals. None support the proposition that a BZA has jurisdiction to review non-zoning administrative decisions.

{¶24} The Township's interpretation cannot be reconciled with the statutory structure. Under well-established principles of statutory construction, courts must interpret statutes to avoid unreasonable or illogical results. *AT&T Communications of Ohio, Inc. v. Lynch*, 2012-Ohio-1975, ¶ 18; *State v. White*, 2015-Ohio-492, ¶ 29. If we accepted that the phrase "or of any resolution adopted pursuant thereto" in R.C. 519.14(A) refers to any resolution adopted by township trustees under any statutory authority, then boards of zoning appeals would become super-appellate bodies with jurisdiction over every administrative decision in the township. This would include decisions about road maintenance under Chapter 5571, cemetery management under

Chapter 517, fire protection under Chapter 505, and countless other township functions. Such an interpretation would transform limited quasi-judicial bodies into general administrative courts, a result the General Assembly could not have intended.

{¶25} The proper reading of R.C. 519.14(A), consistent with rules of statutory construction, is that "any resolution adopted pursuant thereto" refers to resolutions adopted pursuant to the zoning authority granted in sections 519.02 to 519.25. The phrase "pursuant to" means "in compliance with" or "in accordance with." *State v. Niesen-Pennycuff*, 2012-Ohio-2730, ¶ 19, quoting *Black's Law Dictionary* 1356 (9th Ed.2009). The adverb "thereto" means "to that," referring back to the immediately preceding statutory sections. *Black's Law Dictionary* (12th ed. 2024). Thus, the board's jurisdiction extends only to appeals from decisions made in enforcement of the zoning code or resolutions adopted under that zoning authority.

{¶26} This interpretation aligns with the legislative intent manifest in the statutory structure. The General Assembly created township boards of "zoning" appeals, not township boards of appeals. It placed these boards within Chapter 519, which is titled "Township Zoning," not within a general administrative appeals chapter. Had the General Assembly intended to create a general administrative appeals body for townships, it would have done so explicitly and placed such provisions in a more appropriate location within the Revised Code.

{¶27} Here, the Administrator revoked a permit issued under R.C. 5571.16, not under the Township's zoning authority. The permit allowed excavations within township rights-of-way for the installation of fiber optic cable—a use specifically authorized by Armstrong's state-issued Video Service Authorization under R.C. Chapter 1332. This is not a zoning matter subject to the Board of Zoning Appeals' jurisdiction. Accordingly, an appeal to the BZA was not an available remedy, adequate or otherwise.

B. Declaratory Judgment Would Not Provide Complete Relief

{¶28} The Township next argues that Armstrong could have filed a declaratory judgment action to determine its rights with respect to the revoked permit. While declaratory judgment is often an adequate alternative to mandamus, it is not adequate when it would not provide complete relief without ancillary extraordinary remedies.

{¶29} The Ohio Supreme Court addressed this precise issue in *State ex rel. Huntington Ins. Agency, Inc. v. Duryee*, 73 Ohio St.3d 530, 537 (1995). The Court held that where declaratory judgment would not be a complete remedy unless coupled with ancillary relief in the nature of a mandatory injunction, the availability of declaratory judgment is not an appropriate basis to deny a writ to which the relator is otherwise entitled. As the Court explained, "A declaratory action, which merely announces the existence of a duty to be performed, has generally not been deemed as adequate as the writ of mandamus, which compels performance." *Id*.

{¶30} This principle was applied in *State ex rel. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Tablack*, 86 Ohio St.3d 293 (1999). There, park commissioners sought mandamus to compel the county auditor and treasurer to continue assessing and collecting taxes after municipalities voted to secede from the park district. The municipalities argued that declaratory judgment was an adequate remedy. The Supreme Court disagreed, holding that the commissioners lacked an adequate legal remedy because they would still need a mandatory injunction to compel the auditor and treasurer not to abide by the challenged ordinances.

{¶31} Similarly, in *State ex rel. Fattlar v. Boyle*, 83 Ohio St.3d 123 (1998), a former city employee sought mandamus to compel his reinstatement after being fired without proper procedures. The Court held that his prior declaratory judgment action was not an adequate remedy because it would not have been complete unless coupled with extraordinary relief in the nature of a mandatory injunction to compel the mayor to reinstate him.

{¶32} Here, Armstrong faces the same predicament. The Township Administrator has revoked Armstrong's permit to excavate within township rights-of-way. A declaratory judgment that the revocation was unlawful would not, by itself, restore Armstrong's ability to complete its infrastructure project. Armstrong would still need either a mandatory injunction compelling reinstatement of the permit or a new permit with the same terms and conditions. Since mandatory injunction is itself an extraordinary remedy not available in the ordinary course of law, declaratory judgment does not constitute an adequate alternative to mandamus.

{¶33} Moreover, the urgency of Armstrong's situation weighs against finding declaratory judgment adequate. Armstrong has already invested millions of dollars in this infrastructure upgrade, completed more than 50% of the work, and faces ongoing harm from the inability to complete the project and serve its customers. Each day of delay prejudices not only Armstrong but also the Township's residents who are denied access to advanced fiber optic services. Under these circumstances, the more direct remedy of mandamus is appropriate.

C.Armstrong Has Established Its Right to Mandamus Relief

{¶34} Having determined that Armstrong lacks an adequate remedy at law, we turn to whether it has established a clear legal right to the requested relief and a corresponding clear legal duty on the Township's part. We find that the Township's actions are preempted by state law, and alternatively, that they violate vested rights and due process principles.

1. The Township's Actions Are Pre-empted by Ohio's Comprehensive Regulatory Scheme for Video Service Providers

{¶35} The primary basis for our decision rests on the principle that local authority must yield when it conflicts with a comprehensive state regulatory scheme. The General Assembly has established such a scheme for video service providers in R.C. Chapter 1332, which explicitly limits local authority over state-authorized video service operations.

{¶36} The legislative intent behind R.C. Chapter 1332 is unmistakable. The General Assembly made explicit findings that bear directly on this case. As stated in R.C. 1332.22(F), "The time-to-market interval is critical for new entrants seeking to compete with incumbents." R.C. 1332.22(G) further recognizes that "Local franchise and other requirements may present inordinate delays for new entrants." These findings demonstrate the legislature's awareness that local interference can frustrate market competition. Additionally, R.C. 1332.22(J) declares that "The continued development of Ohio's video service market and promotion of infrastructure investment are matters of statewide concern and are properly subject to exercises of this state's police power." Even more definitively, R.C. 1332.22(K) declares that "sections 1332.21 to 1332.34 of the Revised Code are intended as a comprehensive legislative enactment operating uniformly throughout this state, setting forth police regulations, and prescribing a rule of

conduct upon citizens generally," citing by analogy *Am. Financial Servs. Assn. v. Cleveland*, 2006-Ohio-6043 (holding that state payday lending statute preempted local ordinances), and *Canton v. State*, 2002-Ohio-2005 (finding comprehensive state regulation of municipal taxation preempted local authority). This declaration of comprehensive state regulation forecloses local interference with the statutory scheme.

{¶37} Political subdivisions, including townships, cannot enact and enforce regulations that are in conflict with the general law of the state, given the requirement of the Ohio Constitution that all general laws have a uniform operation throughout the state. Ohio Const., art. II, § 26; *Willow Grove, Ltd. v. Olmsted Twp.*, 2015-Ohio-2702 (8th Dist.); *Am. Outdoor Advertising Co., L.L.C. v. Franklin Twp. Bd. of Zoning Appeals*, 2008-Ohio-3063, (11th Dist.).

{¶38} Armstrong operates under a Video Service Authorization issued by the Ohio Department of Commerce pursuant to R.C. Chapter 1332. The operative facts before us, which are undisputed, establish that Armstrong's excavation work was undertaken in furtherance of rights granted under this state-issued VSA. This is not merely incidental—the excavations were necessary to install the fiber optic infrastructure required to provide video services to Township residents.

{¶39} R.C. 1332.24(A) explicitly grants video service providers like Armstrong "the authority, subject to sections 1332.21 to 1332.34 of the Revised Code, to provide video service in its video service area; construct and operate a video service network in, along, across, or on public rights-of-way for the provision of video service." This language creates a direct statutory entitlement to access township rights-of-way for network construction. The statute does not make this right contingent upon obtaining additional local permits that could be arbitrarily revoked.

{¶40} The General Assembly's intent to create a uniform statewide system free from local interference is manifest throughout Chapter 1332. "For the purposes of the 'Cable Communications Policy Act of 1984,' Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et seq., a video service authorization shall constitute a franchise under that law, and the director shall be the sole franchising authority under that law for video service authorizations in this state." R.C. 1332.24(A)(2). This centralization of authority reflects

a clear legislative determination that video service regulation should be uniform across the state.

{¶41} Most directly relevant here, R.C. 1332.26 imposes explicit limitations on local authority. Subsection (A) provides that "no political subdivision shall require a video service provider to obtain from it any authority to provide video service within its boundaries." Subsection (B) further prohibits political subdivisions from imposing "any franchise or other requirement on the provision of video service by a video service provider." These provisions leave no room for local governments to impose conditions that effectively prevent or impede state-authorized video service operations.

{¶42} The legislative purpose behind this comprehensive scheme is stated explicitly in R.C. 1332.22(H): to establish "a uniform regulatory framework by which persons can rapidly and expeditiously provide video service to residents of this state regardless of their jurisdictional locations, which framework will promote rapid competitive entry into the video service market and encourage additional, significant infrastructure investment." Read in conjunction with the legislature's findings that "time-to-market interval is critical" (R.C. 1332.22(F)) and that "local franchise and other requirements may present inordinate delays" (R.C. 1332.22(G)), it becomes clear that the General Assembly intended to eliminate precisely the type of local interference that occurred here. The Township's revocation of Armstrong's permit—forcing it to cease work more than halfway through a multi-million-dollar infrastructure upgrade—directly frustrates this statutory purpose and exemplifies the "inordinate delays" the legislature sought to prevent.

{¶43} The Township's attempt to retroactively impose new requirements by revoking a validly issued permit is particularly problematic in light of this statutory scheme. Armstrong obtained the permit, complied with its terms, and was well into construction when the Township adopted new standards and summarily revoked the permit. This action effectively nullifies Armstrong's state-granted right to construct its network in public rights-of-way, substituting local veto power for the General Assembly's uniform regulatory framework.

2. The Revocation Violates Vested Rights and Due Process Principles

{¶44} Even if the Township's actions were not preempted by state law, they would still be unlawful under traditional vested rights and due process principles.

{¶45} The Ohio Supreme Court has long recognized that the issuance of a permit is governed by the law in effect at the time of the application for such permit. *Gibson v. Oberlin*, 171 Ohio St. 1, 7 (1960) (holding that a municipality may not give retroactive effect to such ordinance to deprive property owner of the right to a building permit in accordance with a zoning ordinance in effect at the time of application); *see also Union Oil Co. of California v. City of Worthington*, 62 Ohio St.2d 263, 264 (1980) ("In Ohio, zoning legislation enacted subsequent to the filing of an application for a building permit does not affect the property owner's right to receive the permit."). This principle reflects fundamental notions of due process and fairness.

{¶46} In *Gibson v. Oberlin*, 171 Ohio St. 1 (1960), the Supreme Court established that while property owners have no vested right in the continuance of any particular regulation, "once regulations have been established, and so long as such regulations are in force, the state and its subdivisions are as much bound as the people to abide by such regulations." *Id.* at 8. The Court held that when "a property owner has complied with all the legislative requirements for the procurement of a building permit," he acquires "a right to such permit, and there is a duty on the part of the officer charged therewith to issue it." *Id.* at 8-9. Most critically, the Court concluded that "[s]ubsequent legislation enacted pending applicant's attempted enforcement of such right through administrative or legal channels cannot deprive him of the right. The right became vested, under the law applicable thereto, upon the filing of the application for the permit." *Id.* at 9.

{¶47} These principles apply with equal force here. Armstrong complied with all requirements for obtaining the excavation permit under the Township's existing resolution. Once issued, Armstrong acquired a vested right not only to the permit but to complete the project subject to that permit. *See Warren Cty. Bd. of Commrs. v. Nextel Communications*, 1999 WL 247163, at *6 (12th Dist. Apr. 26, 1999) ("The scope of the applicable vested right encompasses not only the building permit, but also the construction process . . . .").

{¶48} The vested nature of Armstrong's rights is particularly clear given its substantial reliance. Ohio courts recognize that in determining whether a vested right exists, they will "inquire as to whether the owner has changed his position, expended significant time, effort, or money, or incurred significant obligations." *Abdalla Ents. v.*

Liberty Twp. Bd. of Trustees, 2011-Ohio-5085, ¶ 25 (12th Dist.). Armstrong has done all of these things, investing millions of dollars and completing more than half of the permitted work.

{¶49} The Township invokes the common law rule that utilities must bear the cost of relocating their facilities when requested to do so by local authorities. This principle, however, is entirely inapposite to the present case. The Township relies on *City of Mentor v. Cleveland Elec. Illuminating Co.*, 2024-Ohio-399, and also cites *Duke Energy Ohio, Inc. v. Cincinnati*, 2015-Ohio-4844 (1st Dist.), and *E. Ohio Gas Co. v. Youngstown*, 2020-Ohio-731 (7th Dist.), both of which affirm that "when a utility company makes use of the public right of way, the municipality may require the company to relocate its equipment at its own cost when the public welfare so requires." *City of Mentor*, 2024-Ohio-399, at ¶ 18. These cases articulate a two-part rule: (1) utilities must relocate existing facilities when required by local authorities, and (2) utilities must bear the financial burden of such relocation. Neither component of this rule has any application here. Armstrong is not being asked to relocate any existing facilities, nor is it being asked to bear relocation costs. Instead, the Township simply revoked Armstrong's permit mid-construction, preventing it from completing the initial installation of new infrastructure. The Township's reliance on these relocation cases is therefore misplaced. The cases recognize that utilities with existing facilities must sometimes yield to superior public needs, but they provide no support for the proposition that a governmental entity may arbitrarily revoke a permit and halt initial construction without cause.

{¶50} Additionally, the revocation violated basic due process requirements. Armstrong was given no notice that it was allegedly in violation of the permit, no opportunity to cure any alleged deficiencies, and no hearing before the revocation. The Administrator's email simply declared the permit "hereby revoked" and threatened criminal enforcement if work did not cease immediately. This summary deprivation of a property interest without any procedural safeguards violates the Fourteenth Amendment. *See Porter v. Probst*, 2014-Ohio-3789, ¶ 45 (7th Dist.).

{¶51} The Township has failed to identify any lawful basis for the revocation. They have not alleged that Armstrong violated the permit's terms and conditions or deviated from the approved plans. To the contrary, when Armstrong inquired about specific

violations, Township representatives could point to none. Instead, they directed Armstrong to review the newly adopted resolution—confirming that the revocation was based solely on the Township's desire to impose new requirements retroactively.

{¶52} Based on the foregoing analysis, we find that Armstrong has established: (1) a clear legal right to have its validly issued permit honored according to the terms and conditions in effect when it was issued; (2) a clear legal duty on the part of The Township not to interfere with Armstrong's exercise of its state-authorized rights to construct communications and video programming infrastructure in public rights-of-way; and (3) the lack of an adequate remedy in the ordinary course of law. Armstrong is therefore entitled to the requested writ of mandamus.

CONCLUSION

{¶53} The Township's motion for judgment on the pleadings rests on two fundamentally flawed premises: that township boards of zoning appeals have unlimited appellate jurisdiction over all administrative decisions, and that declaratory judgment is always an adequate alternative to mandamus. Neither proposition is correct under Ohio law.

{¶54} The Board of Zoning Appeals lacks jurisdiction to review the Administrator's revocation of a permit issued under R.C. 5571.16. Township boards of zoning appeals are creatures of limited statutory authority, empowered only to review decisions made in the enforcement of township zoning resolutions adopted under R.C. Chapter 519. They have no authority over matters arising under the township's separate road and right-of-way powers.

{¶55} Declaratory judgment would not provide Armstrong complete relief without ancillary extraordinary remedies. Under these circumstances, mandamus is the appropriate remedy to compel the Township to honor the permit upon which Armstrong has substantially relied.

{¶56} Most fundamentally, the Township's actions are preempted by Ohio's comprehensive regulatory scheme for video service providers. The General Assembly has established a uniform statewide framework in R.C. Chapter 1332 that grants video service providers like Armstrong the right to construct and operate networks in public rights-of-way. The statute explicitly prohibits political subdivisions from imposing

requirements that interfere with video service operations. While townships retain general authority to regulate excavations under R.C. 5571.16, this authority cannot be exercised in a manner that frustrates the state's express grant of rights to video service providers or undermines the legislative goal of promoting rapid deployment of advanced communications and video programming infrastructure.

{¶57} Even if preemption did not apply, the Township's retroactive revocation of a valid permit violates fundamental principles of due process and vested rights. Government entities cannot move the goalposts after the game has begun, particularly when private parties have invested substantial resources in reliance on government approvals.

{¶58} In light of these clear violations of law and the absence of adequate alternative remedies, we turn to the extraordinary nature of this proceeding. Original actions in mandamus are extraordinary proceedings by their very nature. This Court's original jurisdiction to issue writs of mandamus derives from Ohio Const., art. IV, § 3(B)(1)(c), which empowers courts of appeals to grant these extraordinary remedies. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967), paragraph one of the syllabus ("Where a public officer or agency is under a clear legal duty to perform an official act, and where there is no plain and adequate remedy in the ordinary course of the law, an action in mandamus will lie originally in the Supreme Court or in the Court of Appeals."). The extraordinary nature of these proceedings, designed to provide expeditious relief when ordinary legal remedies are inadequate, militates in favor of prompt resolution, particularly where, as here, the facts are undisputed and only legal questions remain.

{¶59} We recognize that in typical mandamus proceedings, when a motion to dismiss is denied, the case would proceed to summary judgment. However, as the Ohio Supreme Court recognized in *State ex rel. Fire Rock, Ltd. v. Ohio Dept. of Commerce*, 2021-Ohio-673, ¶ 11-13, courts may proceed directly to the merits when further proceedings would not aid in the disposition of the case. Here, the parties do not dispute the essential facts: Armstrong obtained a valid permit, performed work in compliance with that permit, and the Township revoked the permit based solely on its adoption of a new resolution. The dispute centers entirely on questions of law—whether the Township had

authority to revoke the permit and whether Armstrong has adequate alternative remedies. Under these circumstances, requiring the parties to brief summary judgment motions and submit evidence would serve no purpose and would merely delay resolution of this time-sensitive matter affecting critical infrastructure development. This approach is particularly appropriate given the General Assembly's explicit findings that "time-to-market interval is critical for new entrants seeking to compete with incumbents" (R.C. 1332.22(F)) and that "local franchise and other requirements may present inordinate delays for new entrants" (R.C. 1332.22(G)). Further procedural delays would compound the very harm the legislature sought to prevent.

{¶60} Accordingly, the Township's motion for judgment on the pleadings is DENIED.

{¶61} We GRANT a writ of mandamus to Relator Armstrong Utilities, Inc. and ORDER Respondents Poland Township Board of Trustees and Township Administrator Mark S. Covell to immediately reinstate the excavation permit issued to Armstrong on April 23, 2024, under the same terms and conditions that existed at the time of issuance. Respondents are COMMANDED to extend the permit for a period equal to the number of days between its revocation on September 26, 2024, and its reinstatement, to allow Armstrong to complete the work that was unlawfully interrupted. Writ granted.

{¶62} Costs taxed to Respondents. Final order. The clerk of courts is directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. Civ.R. 58.

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI

JUDGE KATELYN DICKEY