

STATE OF OHIO                    )  
  )ss:  
COUNTY OF MEDINA            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

JONATHAN R. MYERS

C.A. No.       22CA0083-M

Appellant

v.

MEDINA COUNTY PLANNING  
COMMISSION, et al.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE No.       22CIV0836

Appellees

DECISION AND JOURNAL ENTRY

Dated: August 28, 2023

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STEVENSON, Judge.

{¶1} Plaintiff-Appellant Jonathan R. Myers (“Mr. Myers”) appeals from the judgment of the Medina County Court of Common Pleas dismissing his administrative appeal. This Court affirms.

I.

{¶2} Valley Investments 2 LTD (“Developer”) applied to Appellee Medina County Planning Commission (“the Commission”) for approval of a proposed subdivision in Liverpool Township called Viola Rose Estates (“the subdivision”). The Commission approved a preliminary plan for the subdivision, with modifications, on October 5, 2022. The approval with modifications required Developer to fulfill specified conditions.

{¶3} Pursuant to R.C. 2506.01 et seq., Mr. Myers filed an administrative appeal with the Medina County Court of Common Pleas on October 14, 2022. Mr. Myers appealed the

Commission’s decision “to approve the Preliminary Plan for the Viola Rose Estates proposed subdivision.” In response to Mr. Myers’ appeal, the Commission filed a motion to dismiss.

{¶4} The trial court granted the Commission’s motion to dismiss and Mr. Myers appealed to this Court, asserting one assignment of error.

## II.

### ASSIGNMENT OF ERROR

**THE TRIAL COURT ERRED, AS A MATTER OF LAW, BY GRANTING THE APPELLEE’S MOTION TO DISMISS ADMINISTRATIVE APPEAL[,] [T]HUS, SUMMARILY DISMISSING THE CASE FOR A PURPORTED LACK OF SUBJECT MATTER JURISDICTION. THE APPELLANT HAS NO OTHER MEANINGFUL COURSE OF ACTION AVAILABLE TO ADJUDICATE HIS CLAIMS. ORDER OF NOVEMBER 18, 2022.**

{¶5} Mr. Myers argues in his assignment of error that the trial court erred, as a matter of law, by granting the Commission’s motion to dismiss his administrative appeal. We disagree.

{¶6} Mr. Myers filed his administrative appeal pursuant to R.C. 2506.01 et seq. R.C. 2506.01(A) states that “every final order, adjudication, or decision of any \* \* \* commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas \* \* \* as provided in Chapter 2505. of the Revised Code.” “[F]inal order, adjudication, or decision’ means an order, adjudication, or decision that determines rights, duties, privileges, benefits or legal relationships of a person[.]” R.C. 2506.01(C).

{¶7} As stated by the Ohio Supreme Court, the standard of review applied by a court of appeals in a R.C. 2506.01 et seq. appeal is “limited in scope.” *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34 (1984). *Accord Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). R.C. 2506.01 et seq. “grants a more limited power to the court of appeals to review the judgment of the common pleas court only on ‘questions of law[.]’” *Kisil* at fn. 4; *Henley* at 147

(the court of appeals reviews the judgment of the common pleas court “only on questions of law.”) “Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so.” *Henley* at 147, quoting *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261 (1988).

{¶8} Mr. Myers appealed the Commission’s preliminary plan approval, with modifications, to the trial court pursuant to R.C. 2506.01 et seq. In response to Mr. Myers’ administrative appeal, the Commission moved to dismiss the appeal, arguing that the preliminary plan from which Mr. Myers appealed was not a final appealable order. The trial court reviewed the Commission’s approval, with modifications, and concluded that pursuant to *State, ex rel. Harpley Builders, Inc. v. Akron*, 62 Ohio St.3d 533, 537 (1992), the Commission’s decision did not constitute a final appealable order and that it did not have jurisdiction “to adjudicate the attempted appeal at this juncture of the process.” Mr. Myers is now appealing the trial court’s order.

{¶9} Mr. Myers appealed an October 5, 2022, decision by the Commission wherein the Commission approved, with modifications, the Developer’s preliminary plan. As established in the record, the preliminary plan is a step in the process of obtaining approval for a subdivision. After the Commission approves a preliminary plan, the next step is for the applicant to submit a final plat for approval. The Commission must approve a final plat before it is filed in the County Recorder’s Office. The final plat is “[t]he final completed map, plan, plat or record of a subdivision[.]”

{¶10} Mr. Myers appealed the Commission’s approval, with modifications, of the Developer’s preliminary plan. As held by the Ohio Supreme Court, “a preliminary approval is just

that, preliminary. It connotes initial, not final, approval, after which the parties can hammer out all of the relevant details for final action.” *Harpley Builders*, 62 Ohio St.3d at 537.

{¶11} The Court recognized in *Harpley* that

[p]reliminary approval is but one step in the approval process. Once preliminary approval is granted, the developer must fulfill the Planning Commission's conditions, and then submit a final plat for approval.

*Id.* Accordingly, the original grant of preliminary approval does not constitute a final, appealable order. *Id.* In accordance with *Harpley*, this Court has recognized that the preliminary approval of a real estate project is not a final appealable order under R.C. 2506.01. *Court Street Dev. v. Stow City Council*, 129 Ohio App.3d 359, 361 (9th Dist.1998).

{¶12} Mr. Myers attempted to appeal the approval of a preliminary plan. The approval of a preliminary plan does not constitute a final appealable order. *Harpley* at 537. Accordingly, we cannot say that the trial court erred as a matter of law when it found that it had no jurisdiction to adjudicate the appeal and it dismissed Mr. Myers’ administrative appeal.

{¶13} An alternative standing argument was also raised before the trial court and on appeal. Considering this Court’s conclusion that the trial court did not err in dismissing Mr. Myers’ administrative appeal, as the approval of a preliminary plan does not constitute a final appealable order, the standing argument is moot. Mr. Myers’ assignment of error is overruled.

### III.

{¶14} For the reasons set forth above, Mr. Myers’ assignment of error is overruled.

Judgment affirmed.

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There were reasonable grounds for this appeal.

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

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

Costs taxed to Appellant.

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SCOT STEVENSON  
FOR THE COURT

HENSAL, P. J.  
FLAGG LANZINGER, J.  
CONCUR.

APPEARANCES:

JONATHAN R. MYERS, pro so, Appellant.

S. FORREST THOMPSON, Prosecuting Attorney, and VINCENT V. VIGLUICCI, Assistant Prosecuting Attorney, for Appellee.