

**OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT, LUCAS
COUNTY**

Women of the Old West End, Inc. v. Toledo City Council, et al.

Women of the Old W. End, Inc. v. Toledo City Council, 2021 Ohio 3267 (Ohio Ct. App. 2021) · No. L-20-1181 ·
Decided September 17, 2021

SUMMARY

The Ohio Sixth District Court of Appeals reviewed the dismissal of an R.C. 2506 administrative appeal concerning the Warren Commons major site plan in Toledo. The court held that Women of the Old West End lacked standing to bring an R.C. 2506 appeal on behalf of its members, but concluded that it made a prima facie showing of standing under Toledo Municipal Code 1111.0811. The judgment was affirmed in part and reversed in part.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District, Lucas County
WRITING FOR THE COURT	Thomas J. Osowik; Myron C. Duhart; Christine E. Mayle
JURISDICTION	Ohio
DECIDED	September 17, 2021
DOCKET	L-20-1181
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the Lucas County Common Pleas Court's dismissal of an R.C. Chapter 2506 administrative appeal challenging the denial of a hearing concerning a major site plan review.
STANDARD OF REVIEW	The court reviewed the Civ.R. 12(B)(1) dismissal for lack of subject-matter jurisdiction de novo, the Civ.R. 12(B)(6) dismissal de novo while accepting factual allegations as true and construing reasonable inferences in the nonmoving party's favor, and standing de novo as a question of law.
PRECEDENTIAL VALUE	published Ohio appellate opinion
PARTIES	Women of the Old West End, Inc. v. Toledo City Council, Toledo City Plan Commission, City of Toledo

TOPICS

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QUESTIONS PRESENTED

1. Whether WOVE had standing to pursue an administrative appeal under R.C. Chapter 2506 on behalf of members who allegedly had individual standing.
2. Whether WOVE made a prima facie showing of standing as an aggrieved person or association under Toledo Municipal Code 1111.0811(A), entitling it to a major site plan review appeal hearing before Toledo City Council.
3. Whether WOVE was required to exhaust administrative remedies before the board of zoning appeals before seeking review under R.C. Chapter 2506.

HOLDINGS

1. WOVE, acting as a nonprofit corporation or unincorporated association, lacked standing under R.C. Chapter 2506 to bring an administrative appeal on behalf of members who might have standing to sue individually. The court affirmed the dismissal of the R.C. Chapter 2506 appeal on that ground, although it did not adopt the lower court's exhaustion rationale.
2. WOVE made a prima facie showing that it was an aggrieved person, including in an associational capacity, under Toledo Municipal Code 1111.0811(A). It was therefore entitled to a major site plan review appeal hearing before Toledo City Council under Toledo Municipal Code 1111.0812.
3. Although standing is required to invoke a court's jurisdiction over a particular action, lack of standing does not eliminate the court's subject-matter jurisdiction.

KEY QUOTATIONS

“Except as otherwise provided in [R.C. 2506.05 to 2506.08], and except as modified by this section and [R.C. 2506.02 to 2506.04], 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.” (¶ 19)

“Appeal lies only on behalf of a party aggrieved by the final order appealed from. Appeals are not allowed for the purpose of settling abstract questions, but only to correct errors injuriously affecting the appellant.” (¶ 21)

“Whether or not appellant is ultimately successful in its major site plan review appeal hearing in front of appellee Toledo City Council, we find appellant made a prima facie showing of standing for the purposes of Toledo Municipal Code 1111.0811(A), and appellant’s major site plan review appeal should be held before appellee Toledo City Council pursuant to Toledo Municipal Code 1111.0812.” (¶ 45)

FACTUAL BACKGROUND

The Toledo City Plan Commission approved a major site plan for Warren Commons, a 46-unit apartment development. WOVE filed notices of appeal under Toledo Municipal Code 1111.0811, asserting procedural and substantive defects and claiming that members lived or conducted business near the proposed development. Before allowing the appeal hearing, the Plan Commission required WOVE to establish that it was a person aggrieved; after receiving two member affidavits, it denied WOVE a hearing for lack of standing. The affidavits alleged, among other things, lack of notice, loss of a neighborhood playground, and other injuries associated with the development.

PROCEDURAL HISTORY

The Toledo City Plan Commission approved the Warren Commons major site plan and denied WOVE an appeal hearing after determining that WOVE was not a person aggrieved with standing. WOVE appealed under R.C. Chapters 2505 and 2506 to the Lucas County Common Pleas Court. The common pleas court dismissed the appeal under Civ.R. 12(B)(1) and (B)(6), concluding that WOVE failed to exhaust administrative remedies before the board of zoning appeals. The Sixth District affirmed the dismissal in part, on the ground that WOVE lacked standing to pursue the R.C. 2506 appeal, but reversed in part and remanded for a hearing before Toledo City Council under Toledo Municipal Code 1111.0811.

DISPOSITION

other

REMAND INSTRUCTIONS

The matter is remanded to Toledo City Council to act on WOVE's major site plan review notice of appeal submitted under Toledo Municipal Code 1111.0811 and to conduct a major site plan review appeal hearing consistent with the decision.

CASES CITED

- State ex rel. Bush v. Spurlock, 42 Ohio St.3d 77, 537 N.E.2d 641 (1989)
- Mt. Pilgrim Baptist Church, Inc. v. Bishop, 2015-Ohio-5161, 56 N.E.3d 245, ¶ 34 (6th Dist.)
- Alford v. Collins-McGregor Operating Co., 152 Ohio St.3d 303, 2018-Ohio-8, 95 N.E.3d 382, ¶ 10
- Image Group of Toledo, Inc. v. Holland-Springfield Twp. Joint Economic Dev. Zone, 6th Dist. No. L-16-1058, 2017-Ohio-4470, 93 N.E.3d 343
- Women of Old W. End, Inc. v. Toledo, 6th Dist. Lucas No. L-97-1204, 1998 WL 334188, *4 (June 5, 1998)
- Northern Woods Civic Ass'n v. City of Columbus Graphics Comm'n, 31 Ohio App.3d 46, 508 N.E.2d 676 (10th Dist. 1986)
- Neuendorff v. Gibbons, 6th Dist. Lucas No. L-17-1238, 2018-Ohio-2980
- Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals, 91 Ohio St.3d 174, 743 N.E.2d 894 (2001)
- Roper v. Bd. of Zoning Appeals, Richfield Twp., Summit Cty., 173 Ohio St. 168, 180 N.E.2d 591 (1962)

- Myers v. Clinebell, 6th Dist. Sandusky No. S-98-048, 1999 WL 300620, *5 (May 14, 1999)
- Willoughby Hills v. C. C. Bar's Sahara, Inc., 64 Ohio St.3d 24, 591 N.E.2d 1203 (1992)
- Medcorp, Inc. v. Ohio Dep't of Job & Family Servs., 121 Ohio St.3d 622, 2009-Ohio-2058, 906 N.E.2d 1125, ¶ 9
- Westgate Shopping Village v. Toledo, 93 Ohio App.3d 507, 639 N.E.2d 126 (6th Dist. 1994)
- State ex rel. Walgate v. Kasich, 147 Ohio St.3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, ¶ 26
- Alexis Entertainment, L.L.C. v. Toledo, 6th Dist. Lucas No. L-13-1028, 2013-Ohio-3946
- Kraus v. Put-In-Bay Twp. Bd. of Zoning & Appeals, 6th Dist. Ottawa No. OT-04-011, 2004-Ohio-4678
- Parker v. Swancreek Twp. Bd. of Zoning Appeals, 6th Dist. Fulton No. F-04-035, 2005-Ohio-538
- Concerned Citizens of Spring Valley v. Spring Valley Twp. Bd. of Zoning Appeals, 2d Dist. Greene No. 01 CA 0059, 2002 WL 191575, *9 (Feb. 8, 2002)
- Gowdy v. Cuyahoga Cty. Dep't of Children & Family Servs., 8th Dist. Cuyahoga No. 95956, 2011-Ohio-2156, ¶ 15
- Karches v. City of Cincinnati, 38 Ohio St.3d 12, 526 N.E.2d 1350 (1988)
- Driscoll v. Austintown Assoc., 42 Ohio St.2d 263, 328 N.E.2d 395 (1975)
- Noe Bixby Rd. Neighbors v. Columbus City Council, 150 Ohio App.3d 305, 2002-Ohio-6453, 780 N.E.2d 1046, ¶ 4 (10th Dist.)
- Safest Neighborhood Ass'n v. Athens Bd. of Zoning Appeals, 4th Dist. No. 12CA32, 2013-Ohio-5610, 5 N.E.3d 694, ¶ 29 n.2
- Bank of Am., N.A. v. Kuchta, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040
- Shelly Materials, Inc. v. City of Streetsboro Planning & Zoning Comm'n, 158 Ohio St.3d 476, 2019-Ohio-4499, 145 N.E.3d 246, ¶ 25
- Neuendorff v. Gibbons, 6th Dist. Lucas No. L-17-1238, 2018-Ohio-2980, ¶ 7
- Ohio Pyro, Inc. v. Ohio Dep't of Commerce, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27
- State ex rel. Dallman v. Court of Common Pleas, Franklin Cty., 35 Ohio St.2d 176, 298 N.E.2d 515 (1973)
- Talbut v. Perrysburg, 72 Ohio App.3d 475, 594 N.E.2d 1046 (6th Dist. 1991)
- Image Group of Toledo, Inc. v. Holland-Springfield Twp. Joint Economic Dev. Zone, 2017-Ohio-4470, 93 N.E.3d 343, ¶ 9
- Moore v. Middletown, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 47
- Cleveland Clinic Found. v. Cleveland Bd. of Zoning Appeals, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 35
- Glass City Academy, Inc. v. Toledo, 179 Ohio App.3d 796, 2008-Ohio-6391, 903 N.E.2d 1236, ¶ 18 (6th Dist.)
- Kasper v. Coury, 51 Ohio St.3d 185, 555 N.E.2d 310 (1990)
- Ohio Contract Carriers Ass'n v. Pub. Utils. Comm'n, 140 Ohio St. 160, 42 N.E.2d 758 (1942)
- Schomaeker v. First Nat'l Bank of Ottawa, 66 Ohio St.2d 304, 421 N.E.2d 530 (1981)

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