

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, DARKE COUNTY

Geoffrey Surber v. Greenville Township Board of Trustees, et al.

2026-Ohio-1305 · No. C.A. Nos. 2025-CA-11; 2025-CA-12 · Decided April 10, 2026

SUMMARY

The Ohio Second District Court of Appeals reviewed a Chapter 2506 administrative appeal concerning zoning permits and agricultural exemptions for three buildings on property in Greenville Township. The court held that the trial court retained subject-matter jurisdiction despite the appellant’s improper designation of the zoning board as the sole appellee, and that the Township had standing to appeal. On the merits, the court reversed the trial court as to Building A and affirmed it as to Buildings B and C.

CASE DETAILS

COURT	Court of Appeals of Ohio, Second Appellate District, Darke County
WRITING FOR THE COURT	Robert G. Hanseman, J.; W. McGregor Lewis, P.J.; Tucker, J.
JURISDICTION	Court of Appeals of Ohio, Second Appellate District, Darke County
DECIDED	April 10, 2026
DOCKET	C.A. Nos. 2025-CA-11; 2025-CA-12
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal and cross-appeal from a judgment of the Darke County Court of Common Pleas in an administrative appeal under Ohio Revised Code Chapter 2506.
STANDARD OF REVIEW	Under R.C. Chapter 2506, the common pleas court must weigh the record and any properly admitted additional evidence to determine whether the administrative decision is supported by a preponderance of reliable, probative, and substantial evidence. The court of appeals reviews the common pleas court's decision on questions of law and may determine whether the common pleas court abused its discretion in deciding whether the administrative order was supported by reliable, probative, and substantial evidence. Abuse of discretion means a decision that is unreasonable, unconscionable, or arbitrary.
PRECEDENTIAL VALUE	Published Ohio appellate opinion
PARTIES	Greenville Township Board of Trustees et al. v. Geoffrey Surber

TOPICS

judicial review of agency action

administrative law

zoning

appellate procedure

harmless error

PRACTICE AREAS

administrative law

zoning and land use

appellate procedure

municipal law

real estate

QUESTIONS PRESENTED

1. Whether Surber's designation of the township board of zoning appeals as the sole appellee in his administrative notice of appeal deprived the common pleas court of subject-matter jurisdiction.
2. Whether the Township had standing to appeal the common pleas court's decision even though Surber did not name the Township in the notice of appeal.
3. Whether the common pleas court abused its discretion by finding that the Board's determination that Building A was not properly permitted was unsupported by a preponderance of reliable, probative, and substantial evidence.
4. Whether Buildings B and C qualified for an agricultural exemption under R.C. 519.21(A).
5. Whether equitable estoppel or laches barred the Township from enforcing its zoning regulations.
6. Whether any error in striking an affidavit was harmless because the common pleas court considered the affidavit's contents.

HOLDINGS

1. The common pleas court retained subject-matter jurisdiction because Surber timely filed a notice of appeal; the failure to identify the proper appellee was a technical defect and not a jurisdictional defect.
2. The Township had standing to appeal the common pleas court's adverse ruling concerning Building A.
3. The common pleas court abused its discretion by reversing the Board's determination that Building A was not properly permitted.
4. Buildings B and C did not qualify for agricultural exemptions under R.C. 519.21(A), and the common pleas court did not abuse its discretion by affirming the Board's decision.
5. Equitable estoppel does not apply to prevent the Township from enforcing its zoning regulations because zoning enforcement is a governmental function of a political subdivision.
6. Laches does not bar enforcement of the Township's zoning regulations.
7. Any error in striking Gary B. Zechar's affidavit was harmless because the common pleas court considered the affidavit's contents and the affidavit would not have affected the outcome.

KEY QUOTATIONS

“Under R.C. 2505.04, the only jurisdictional requirement is the filing of the notice of appeal.” (¶ 8)

“Therefore, we again find that the doctrine of equitable estoppel is “inapplicable against a political subdivision when the political subdivision is engaged in a governmental function.”” (¶ 74)

“Harmless error is “[a]ny error, defect, irregularity, or variance which does not affect substantial rights” and “shall be disregarded.”” (§ 84)

FACTUAL BACKGROUND

Geoffrey Surber owned a 15.2-acre property in an I-1 Industrial Zoning District and erected three buildings. Building A was used as an automotive repair shop; Building B was principally used as a personal farm and property-management office and for storage; and Building C was used by a livestock-feed company that sourced its feed from another farm. A former zoning inspector issued a commercial zoning permit for Building A and agricultural-exemption building notices for all three buildings, but the Township later determined that the buildings did not qualify for agricultural exemptions and issued zoning-violation notices.

PROCEDURAL HISTORY

Surber appealed the Greenville Township Board of Zoning Appeals' determination that he had failed to obtain proper zoning permits for Buildings A, B, and C. The common pleas court reversed the Board as to Building A but affirmed the Board as to Buildings B and C. The Township appealed the ruling concerning Building A, and Surber cross-appealed the rulings concerning Buildings B and C, equitable estoppel, and the exclusion of an affidavit.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Darke County Court of Common Pleas was reversed as to Building A and affirmed as to Buildings B and C. The opinion does not state additional specific remand instructions.

CASES CITED

- Safest Neighborhood Assn. v. Athens Bd. of Zoning Appeals, 2013-Ohio-5610 (4th Dist.)
- A. Di Cillo & Sons, Inc. v. Chester Zoning Bd. of Appeals, 158 Ohio St. 302 (1952)
- Rauch v. Jefferson Twp. Bd. of Zoning Appeals, 2016-Ohio-967 (2d Dist.)
- Parker v. Swancreek Twp. Bd. of Zoning Appeals, 2005-Ohio-538 (6th Dist.)
- Bd. of Zoning Appeals for Harrison Twp. v. Resident Home Assn. for the Mentally Retarded of Greater Dayton, Inc., 1981 WL 2715 (2d Dist. Mar. 6, 1981)
- Sich v. Bd. of Zoning Appeals for the City Middletown, 1984 WL 3386 (12th Dist. July 16, 1984)
- Safety 4th Fireworks, Inc. v. Liberty Twp. Bd. of Trustees & Liberty Twp. Bd. of Zoning Appeals, 2019-Ohio-3435 (12th Dist.)
- AT&T Communications of Ohio, Inc. v. Lynch, 2012-Ohio-1975
- Transamerica Inc. v. Nolan, 72 Ohio St. 3d 320 (1995)
- Broke Ass Phone v. Boardman Twp. Zoning Bd. of Appeals, 2019-Ohio-4918 (7th Dist.)
- Ohio Pyro, Inc. v. Ohio Dept. of Commerce, 2007-Ohio-5024

- Meddock v. Meddock, 2025-Ohio-1087 (2d Dist.)
- Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 2013-Ohio-4627
- Bank of Am., N.A. v. Kuchta, 2014-Ohio-4275
- Gold Coast Realty, Inc. v. Bd. of Zoning Appeals, 26 Ohio St. 2d 37 (1971)
- Dudukovich v. Lorain Metro. Hous. Auth., 58 Ohio St. 2d 202 (1979)
- Siebenthaler Co. v. Beavercreek Twp. Bd. of Zoning Appeals, 2009-Ohio-6595 (2d Dist.)
- Henley v. Youngstown Bd. of Zoning Appeals, 90 Ohio St. 3d 142 (2000)
- Kisil v. Sandusky, 12 Ohio St. 3d 30 (1984)
- Reed v. Rootstown Twp. Bd. of Zoning Appeals, 9 Ohio St. 3d 54 (1984)
- Shelly Materials, Inc. v. City of Streetsboro Planning & Zoning Comm., 2019-Ohio-4499 (11th Dist.)
- Boice v. Ottawa Hills, 2013-Ohio-4769
- State v. Darmond, 2013-Ohio-966
- State v. Adams, 62 Ohio St. 2d 151 (1980)
- AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp., 50 Ohio St. 3d 157 (1990)
- Terry v. Sperry, 2011-Ohio-3364
- Yorkavitz v. Bd. of Columbia Twp. Trustees, 166 Ohio St. 349 (1957)
- Bd. of Bainbridge Twp. Trustees v. Funtime, Inc., 55 Ohio St. 3d 106 (1990)
- Gainer v. Cavanaugh, 2021-Ohio-2173 (5th Dist.)
- State v. Huffman, 20 Ohio App. 2d 263 (3d Dist.)
- State ex rel. Fox v. Orwig, 1995 WL 787459 (11th Dist. Sept. 15, 1995)
- Litchfield Twp. Bd. of Trustees v. Nimer, 2012-Ohio-5431 (9th Dist.)
- Concord Twp. Trustees v. Hazelwood Builders, Inc., 2005-Ohio-1791 (11th Dist.)
- Shalersville Twp. Bd. of Trustees v. Hawkins, 2016-Ohio-2801 (11th Dist.)
- State Farm Mut. Auto. Ins. Co. v. Ingle, 2008-Ohio-6726 (2d Dist.)
- Turner Liquidating Co. v. St. Paul Surplus Lines Ins. Co., 93 Ohio App. 3d 292 (9th Dist. 1994)
- Northridge Local Schools Bd. of Education v. Montgomery Cty. Bd. of Revision, 2022-Ohio-495 (2d Dist.)
- Shampton v. Springboro, 2003-Ohio-1913
- Ohio State Bd. of Pharmacy v. Frantz, 51 Ohio St. 3d 143 (1990)
- Heckler v. Community Health Serv. of Crawford Cty., Inc., 467 U.S. 51 (1984)
- Hortman v. Miamisburg, 2006-Ohio-4251
- Sun Refining & Marketing Co. v. Brennan, 31 Ohio St. 3d 306 (1987)
- State ex rel. Chevalier v. Brown, 17 Ohio St. 3d 61 (1985)
- Colerain Twp. Bd. of Trustees v. Bench Billboard Co., 2020-Ohio-4684 (1st Dist.)
- Ghindia v. Buckeye Land Dev., L.L.C., 2007-Ohio-779 (11th Dist.)
- Petitti v. Plain Twp. Bd. of Zoning Appeals, 2003-Ohio-6849 (5th Dist.)
- State ex rel. Ascani v. Stark Cty. Bd. of Elections, 83 Ohio St. 3d 490 (1998)
- State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections, 74 Ohio St. 3d 143 (1995)

- Blankenship v. Blackwell, 2004-Ohio-5596
- State ex rel. Chavis v. Sycamore City School Dist. Bd. of Edn., 71 Ohio St. 3d 26 (1994)
- Diller v. Miami Valley Hosp., 2017-Ohio-9051 (2d Dist.)
- State v. Haynes, 2004-Ohio-3514 (11th Dist.)
- State v. Brown, 2003-Ohio-5059

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