

SUPREME COURT OF OHIO

08-0306

B.J. ALAN COMPANY, DBA  
PHANTOM FIREWORKS, et al.,

Plaintiffs-Appellees,

v.

CONGRESS TOWNSHIP BOARD  
OF ZONING APPEALS, et al.,

Defendant-Appellants.

ON APPEAL FROM THE  
WAYNE COUNTY COURT OF  
APPEALS, NINTH APPELLATE  
DISTRICT

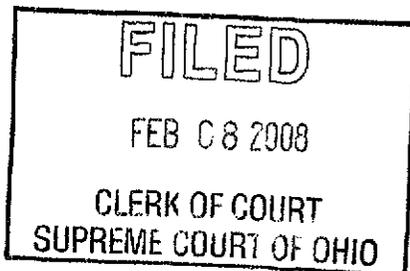
COURT OF APPEALS  
C. A. NO. 07CA0051

MEMORANDUM IN SUPPORT OF JURISDICTION

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**I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

This case involves two issues of substantial public and great general interest. First, Congress Township specifically, and Wayne County generally, are among Ohio's rural townships and counties struggling to maintain their agricultural heritage and preserve their farm land. The Constitution of the State of Ohio clearly states that the preservation of farmland and other lands devoted to agriculture "are proper public purposes of the state and local governmental entities and are necessary and appropriate means to improve the quality of life and the general economic-well being of the people of [Ohio]."<sup>1</sup> Like many governmental entities throughout the state whose economic well-being depends upon the preservation of valuable agricultural land, Congress Township has elected to adopt agricultural zoning in an effort to control the growth of incompatible land uses, such as the fireworks store and warehouse which seeks approval in this case to occupy what, until now, has been farmland.

Congress Township is a small community. Its farmlands are the basis of its economy and the heart of its rural lifestyle. That is particularly true of the simple and quiet existence of its significant Amish population.

The failure to recognize the importance of the preservation of agricultural lands and the lifestyles associated with it as a valid public purpose has implications for rural communities throughout the State of Ohio. Standing alone, this issue justifies the Supreme Court taking jurisdiction over this matter.

The second issue of great public and general interest involves the statutory requirement that a township zoning resolution be prepared, "in accordance with a

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<sup>1</sup> Article 8, Section 020(A).

comprehensive plan.” R.C. §519.02. The Ohio Revised Code does not define what a comprehensive plan is, nor have Ohio courts been able to uniformly interpret what “in accordance with” actually means. As a result, Ohio case law varies on the standards to be applied in determining whether a comprehensive plan exists, as well as how to analyze whether township zoning was adopted “in accordance with” such a plan. This is especially true in Ohio’s rural townships that largely rely on county comprehensive plans and are struggling to maintain their agricultural heritage in the face of rapid growth and development.

In late 1992, Congress Township formed the Congress Township Rural Zoning Commission in order to create a zoning resolution for the unincorporated areas of the Township. The Zoning Commission relied upon the Wayne County Comprehensive Plan in drafting its zoning resolution, which became effective November 23, 1994. Congress Township relied upon the Wayne County Comprehensive Plan because it wanted to “follow suit in their planning of an agricultural county for agricultural use.”<sup>2</sup> While the Zoning Resolution provided for two zoning districts, A, Agricultural and B, Business/Industry, the zoning map, consistent with the overwhelming use of land throughout the Township at the time it was created, and which still exists today, designated all land in the unincorporated areas of the Township as Agricultural.

This controversy arose when the Appellees B.J. Alan Company, Zolden Family Ohio Ltd. Partnership, and Phantom Fireworks (collectively “Phantom”) purchased land in Congress Township in order to relocate its large commercial fireworks operation from another location within Congress Township, with knowledge that the land was zoned Agricultural. Phantom applied for a zoning certificate, which was denied by the zoning

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<sup>2</sup> Tr. at 75, Testimony of Bill Cletzer.

inspector, and subsequently filed an appeal and request for a use variance with the Board of Zoning Appeals (“BZA”). After a full hearing, the BZA denied Phantom’s appeal and request for a use variance. The BZA’s decision was affirmed by the Court of Common Pleas. The Court of Appeals, however, reversed the BZA’s decision on the sole ground that it found that the Zoning Resolution was an invalid exercise of the Township’s authority under R.C. §519.02.<sup>3</sup> The Court of Appeals evaluated the sufficiency and detail of the Wayne County Comprehensive Plan, and found that the Congress Township Zoning Resolution was not created “in accordance with a comprehensive plan” because the Wayne County Comprehensive Plan did not identify goals and recommendations specific to Congress Township. The Court remanded the case back to the Court of Common Pleas “for further proceedings consistent with” the decision.

In determining whether the Congress Township Zoning Resolution was made “in accordance with a comprehensive plan,” the Court of Appeals improperly engaged in an independent analysis to determine the sufficiency of the comprehensive plan upon which Congress Township relied. This calls into question the role of the judiciary in deciding whether a township’s zoning was lawfully created. Moreover, some Ohio courts recognize that what constitutes a valid comprehensive plan varies, depending on whether the community in question is urban or rural in nature. Certainly a township such as Congress Township, with a population of approximately 4,400, is not required to have a comprehensive plan as elaborate or detailed as, for example, Hamilton County’s Colerain Township, which has a population of over 60,000.

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<sup>3</sup> *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, Wayne Co. App. No. 07CA0051, 2007-Ohio-7023, at ¶16.

The lack of a clear definition of “comprehensive plan” and interpretation of “in accordance with” has led to inconsistent decisions from Ohio courts. Some courts have held that a plan separate from the zoning resolution need not be independently adopted, while others, including the court below, have looked to an independent document to substantiate the zoning requirements in the township’s zoning resolution. Additionally, what constitutes a valid comprehensive plan to validate a township’s zoning must be a flexible concept. The adequacy of the plan must depend on the type of community (urban versus rural) for which the plan is prepared.

These issues remain unresolved in Ohio, and therefore acceptance of this appeal by this Court will provide necessary guidance to townships and courts across the state.

## **II. STATEMENT OF THE CASE AND FACTS**

Phantom filed an application for a zoning certificate on September 19, 2006 in order to construct and operate a commercial fireworks business approximately a quarter mile off of I-71 in Congress Township, Ohio. Because the location was zoned A-Agricultural, and does not allow such an operation as a principally permitted use, Phantom’s application was denied. Phantom filed an appeal and/or request for use variance with the Congress Township Board of Zoning Appeals (“BZA”) as provided for in Congress Township’s Zoning Resolution. The BZA held an evidentiary hearing on November 20, 2006. After hearing testimony from the applicant, the Township Zoning Inspector, a Township Trustee who had served as chairman of the Congress Township Rural Zoning Commission when the zoning resolution was drafted, and several neighboring residential property owners, the BZA denied Phantom’s appeal and application.

Phantom appealed the BZA's decision to the Court of Common Pleas pursuant to Chapter 2506 of the Ohio Revised Code. The Common Pleas Court affirmed the BZA's decision and Phantom appealed to the Ninth District Court of Appeals. In that appeal, Phantom advanced the following arguments:

- The Township's zoning resolution is invalid because it creates a Business "B" zoning classification but does not designate any land under the "B" zoning district and therefore was not adopted "in accordance with a comprehensive plan;"
- The Township's enforcement of the zoning resolution was arbitrary, capricious, and unreasonable under R.C. §2506.04;
- The Township's decision was preempted by state law because it wrongfully prohibits the lawful sale of commercial fireworks which are regulated by the state fire marshal; and
- The Township's zoning resolution is unconstitutional, invalid, and unenforceable under Ohio law.

The Court of Appeals issued its decision finding the Congress Township Zoning Resolution invalid because it was not created "in accordance with a comprehensive plan." The Court noted that the Ohio Revised Code does not define "comprehensive plan," and referred to an Ohio planning treatise<sup>4</sup> to extrapolate a definition. The Court then indicated that it reviewed the Wayne County Comprehensive Plan Reports, stating, "[the comprehensive plan reports] are from 1977 and note that Congress Township is one of nine townships in the County which were merely requesting rural zoning at the time. The County Comprehensive Plan does not set forth goals or recommendations specific to Congress Township." Based upon the fact that, in the Court's opinion, because the Wayne County Comprehensive Plan did not meet the very detailed Meck

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<sup>4</sup> Ohio Planning and Zoning Law, Stuart Meck and Kenneth Pearlman, 2007.

and Pearlman definition, the Court found that the Congress Township Zoning Resolution was not created, “in accordance with a comprehensive plan.”

Contrary to the lower court’s decision finding the Wayne County Comprehensive Plan insufficient to support Congress Township’s zoning resolution, the plan, in fact, makes numerous recommendations for all of Wayne County, which, of course, includes Congress Township. Some of the planning tools found in the plan include:

- The Wayne County Comprehensive Plan provides under the title “Proposed Land Use and Development Goals for Wayne County Area” goals and recommendations for preservation of agriculture, urban development, energy, and environmental and natural resources.<sup>5</sup>
- The plan states that the regional planning commission had drafted a model zoning text for the townships in Wayne County to use, which included recommended districts, lot dimensions and administration procedures.<sup>6</sup>
- There is an entire chapter entitled “Regional Development Factors and Goals,” which indicates that the plan serves, “the entire area of Wayne County and all its communities.”<sup>7</sup>
- There is a discussion of the effect of Interstate 71 on Congress Township.<sup>8</sup>
- There are proposed regional land use and development goals for the entire County, which include the preservation of farmlands in the light of urban development; the conservation of energy, and the retention and improvement of environmental and natural resources.<sup>9</sup>

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<sup>5</sup> Wayne County Comprehensive Plan (Part 1) at 27-28.

<sup>6</sup> *Id.* at 34, 41.

<sup>7</sup> Wayne County Comprehensive Plan (Part III) at 1.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.* at 10-26.

- A discussion of the types of land use districts that are envisioned for Wayne County.<sup>10</sup>

In sum, the County Comprehensive Plan, well over 200 pages, discusses repeatedly the ways in which the local communities in Wayne County can implement the goals and recommendations of the plan in their local zoning.

The Court reversed the Common Pleas Court decision and remanded the matter back to the Common Pleas Court “for further proceedings consistent with this decision.” The Court did not indicate whether the matter must be remanded back to Congress Township for rezoning pursuant to *Union Oil Co. v. City of Worthington* (1980), 62 Ohio St.2d 263.

### **III. LAW AND ARGUMENT**

#### **APPELLANT’S PROPOSITION OF LAW NO. 1:**

**The requirement set forth in R.C. §519.02 that a township zoning resolution be created “in accordance with a comprehensive plan,” is met where the township’s zoning resolution relies on a county plan that sets forth the land use and planning goals for the county, which includes the township in the plan.**

Townships in Ohio routinely rely on their county’s comprehensive plan as a guide to establish their zoning regulations.<sup>11</sup> Indeed, a 2006 survey of Ohio Townships found that approximately one-third of the townships that responded to the survey based their zoning regulations on a county comprehensive plan.<sup>12</sup> Several Ohio courts have held that R.C. §519.02 does **not** require that a comprehensive plan be independently adopted

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<sup>10</sup> *Id.* at 27-36.

<sup>11</sup> Evans-Cowley, Jennifer, “Land Use Planning and Zoning in Ohio Townships,” *Journal of Extension*, August 2006, Volume 44, No. 4.

<sup>12</sup> See *Id.*

by a township in order to have a valid zoning resolution. See *Ketchel v. Bainbridge Township* (1992), 79 Ohio App.3d 174; *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals* (Dec. 21, 2001), Portage App. No. 98-P-0131, unreported; *Ryan v. Bd. of Twp. Trustees of Plain Twp.* (Dec. 11, 1990), Franklin App. No. 89AP-1441, unreported; *Reese v. Copley Twp. Bd. of Trustees* (1998), 129 Ohio App.3d 9. Indeed, even the zoning resolution itself can contain the necessary comprehensive plan. See *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals, supra*.

In this case, the Court of Appeals examined the Wayne County Comprehensive Plan and determined that, because the plan, in its view, did not have goals and recommendations specific to Congress Township, it did not meet the requirements of R.C. §519.02 and therefore the zoning adopted by the Township was invalid. However, the Wayne County Comprehensive Plan contains zoning goals and recommendations for the entire County, and even identifies a model zoning resolution that was created in conjunction with the plan by the regional planning commission for use by the Wayne County townships.

The Court of Appeals relied on the Meck and Pearlman treatise in defining “comprehensive plan.” Specifically, the Court stated: “[t]o planners, the terms \*\*\* have a distinct, concrete meaning: they are the local government’s textual statement of goals, objectives, and policies accompanied by maps to guide public and private development within its planning jurisdiction. The comprehensive plan is the chief policy instrument for: (1) the administration of zoning and subdivision regulations; (2) the location and classification of streets and thoroughfares; (3) the location and construction of public and semi-public buildings and related community facilities and infrastructure (water, storm and sanitary sewers, gas, etc.); (4) the acquisition and development of public and

semi-public properties such as parks and open spaces; and (5) the initiation of new programs, such as those in the areas of housing, rehabilitation and economic development, to address pressing community needs. \*\*\* The essential characteristics of a plan are that it is comprehensive, general and long range. 'Comprehensive' means that the plan encompasses all geographical parts of the community and integrates all functional elements. 'General' means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. 'Long range' means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities then to twenty years into the future."<sup>13</sup>

This academic definition, **never adopted in law**, goes far beyond what Ohio courts have found constitutes a valid comprehensive plan. In *Midwest Fireworks Mfg.*, the court stated, "the [zoning resolution] sets forth, among other things, the purpose of the district regulations. It also enumerates the permitted and conditionally permitted uses. In addition, the township clerk maintains the 'Zoning District Map of Deerfield Township,' which indicates the districts or zones and their boundaries. Thus the [zoning resolution] contains a comprehensive plan."<sup>14</sup> The Court in *Howland Twp. Bd. of Trustees v. Dray* (June 30, 2006) Trumbull App. No. 2004-T-0137, 2006-Ohio-3402, at ¶52, defined comprehensive plan as, "a specific plan which sets forth uniform standards in a given district or zone."

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<sup>13</sup> See *B.J. Alan Co.*, *supra*, at ¶13, Stuart Meck and Kenneth Pearlman, Oh. Plan. & Zoning L. Section 4:31 (2007).

<sup>14</sup> *Midwest Fireworks Mfg.*, *supra*, 2001 WL 1647228, at p.3.

The lower court's determination that the Wayne County Comprehensive Plan was insufficient to constitute a comprehensive plan under R.C. §519.02 is plain error. The testimony of Bill Cletzer, Township Trustee and former Chair of the Congress Township Rural Zoning Commission established that the Township engaged in a nearly two-year process to create its zoning resolution, and in doing so, the Township relied on the Wayne County Comprehensive Plan.<sup>15</sup> Moreover, it is difficult to understand how the Appellate Court could conclude that the plan did not contain planning goals and recommendations that Congress Township could have utilized and relied upon in creating its zoning resolution, when the plan proves conclusively the opposite. The lower court's decision is erroneous and must be reversed.

**PROPOSITION OF LAW NO. 2:**

**The requirement set forth in R.C. §519.02 that a township zoning resolution be created "in accordance with a comprehensive plan," is a flexible concept that must be evaluated by looking at the nature of the land to be zoned.**

As discussed above, there are varying standards in Ohio case law as to what constitutes a valid comprehensive plan. The lower court in the case invoked a very high standard regarding what it believed was necessary for Congress Township to have validly enacted its zoning resolution. However, many Ohio courts have properly questioned how to treat this requirement in light of the fact that R.C. §519.02 is applicable to all townships that wish to enact zoning, regardless of their size or the nature of their communities. In *East Fairfield Coal Co. v. Miller Zoning Inspector* (1955), 71 Ohio L. Abs. 490, 502, the court stated, "what might be comprehensive in an agricultural township in Mahoning County would very likely not be comprehensive in

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<sup>15</sup> Tr. at 73-76.

the metropolitan area of Cleveland or Cuyahoga County.” Additionally, one Ohio federal district court made the following observation: “[W]e find that ‘comprehensive plan’ is a flexible term. Whether a particular resolution is comprehensive or not can be determined only by looking at the particular circumstances of the case, in particular and perhaps more important, the nature of the area which is to be zoned. Using this standard, we find that a comprehensive plan for an urban area is necessarily more detailed than one for a rural area that reflects current uses and allows for change as additional needs develop, and that bears a substantial relationship to the public health, safety or welfare, is a comprehensive plan within the meaning of Ohio Rev. Code § 519.05[a similar provision to R.C. 519.02]. \*\*\*\*” *Rumpke Waste, Inc. v. Henderson* (S.D. Ohio 1984), 591 F. Supp. 521, 534.

Congress Township is a small agricultural community. Its zoning resolution is aimed at maintaining its agricultural heritage. The standard that the Court of Appeals set forth in deciding whether the zoning resolution was enacted “in accordance with a comprehensive plan” is simply beyond the reach of small rural communities like Congress Township, that are merely trying to protect itself against sprawl and “the ill effects of urbanization.” *Zeltig Land Dev. Corp. v. Bainbridge Twp. Bd. of Trustees* (1991), 75 Ohio App.3d 302, 308 quoting *Agins v. Tiburon* (1980), 447 U.S. 255, 261. A local government may “properly exercise its zoning authority in an attempt to preserve and protect the character of designated areas” to promote “the overall quality of life.” *Franchise Developers, Inc. v. Cincinnati* (1987), 30 Ohio St.3d 28, 33. “A valid purpose for zoning restrictions is to preserve the character of a neighborhood \*\*\*. Thus, a valid purpose for the Zoning Resolution is to preserve the agricultural character of the township and limit the expansion of commerce and industry onto agriculturally

productive soils. *Castle Manufactured Homes, Inc. v. Tegtmeier* (Sept. 29, 1999), Wayne County App. No. 98CA0065, unreported, 1999 WL 771605.

The Congress Township Zoning Map conforms to the recommendations of the Wayne County Comprehensive Plan to preserve the area's agricultural land uses. Looking to the future, the Congress Township Zoning Resolution provides for the possibility of land to be zoned for commercial purposes, but to date, no commercial zoning districts have been adopted. In this case, although they could have, Phantom elected not to seek a zone change. Instead, Phantom sought to meet the rigorous requirements of the grant of a variance and was unable to do so.

Phantom has relied heavily on *Cassell v. Lexington Township Bd. of Zoning Appeals*, 163 Ohio St. 340 (1955). This case is unlike the half century old *Cassell* case. In *Cassell*, the zoning regulation provided "merely that a section of a township, one square mile in area, shall be zoned for farming, residential, commercial and recreational uses, which does not specify therein which portions of said section may be used for any or all of such purposes, or is it accompanied by a map designating such use areas, is not adopted in accordance with a comprehensive plan." *Cassell*, Syl. 2, 163 Ohio St. 340 at 340. Unlike Lexington Township, Congress Township had a Zoning Map designating the entire unincorporated area of the Township for agricultural uses. Congress adopted its Zoning Resolution in reliance upon the Wayne County Comprehensive Plan, which included Congress Township. In its Resolution, Congress Township merely reserved the ability to zone commercially at some point, as the map identified the voters' intent to remain agriculturally zoned.

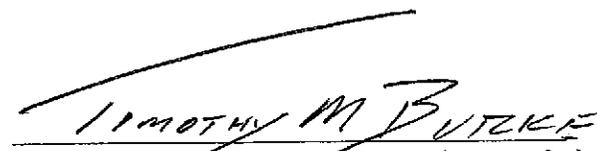
**IV. CONCLUSION**

If the Court of Appeals' decision is allowed to stand, it calls into serious question hundreds of township zoning resolutions all across the state of Ohio which are based on county comprehensive plans. The Court of Appeals' decision is particularly devastating for those smaller, less well off rural townships that can only afford to do zoning when a county-wide comprehensive plan developed in cooperation with the county and the County's other townships is available.

The lower court's decision also casts a cloud over the statewide efforts to preserve agricultural land through zoning and undermines the constitutionally recognized public interest in protecting such important, irreplaceable land resources.

For these reasons, Congress Township respectfully requests the Supreme Court to accept jurisdiction over this case.

Respectfully submitted,

  
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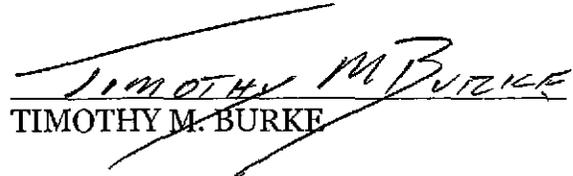
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Memorandum in Support of Jurisdiction is being mailed to all parties entitled to service under Rule 5 of the Ohio Rules of Civil Procedure on the 8th day of February, 2008.

  
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COUNTY OF WAYNE        )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

B. J. ALAN COMPANY,  
DBA PHANTOM FIREWORKS,  
et al.

C. A. No.    07CA0051

Appellants

v.

CONGRESS TOWNSHIP BOARD  
OF ZONING APPEALS, et al.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF WAYNE, OHIO  
CASE No.    06-CV-0821

Appellees

DECISION AND JOURNAL ENTRY

Dated: December 28, 2007

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

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CARR, Judge.

{¶1} Appellants, B. J. Alan Co., Zoldan Family Ohio Ltd. Partnership, and Phantom Fireworks (collectively “Phantom”), appeal the judgment of the Wayne County Court of Common Pleas, which affirmed the decision of appellee, the Congress Township Board of Zoning Appeals (“BZA”). This Court reverses.

I.

{¶2} On July 25, 1994, the Board of Township Trustees of Congress Township adopted a zoning resolution regarding the unincorporated area of the township. Pursuant to the resolution, the township was divided into two districts,

specifically, “A” Agricultural District and “B” Business/Industry District. The township voters approved the resolution in November, 1994, at which time it became effective. Notwithstanding the division of the township into two distinct types of districts, the township zoning inspector Chet Martin testified that all the land in the township falls into the “A” district. Mr. Martin further admitted that, under the current resolution, any property owner who wishes to use property for a business purpose must apply for a use variance.

{¶3} Phantom purchased a 6.815-acre property at the intersection of S.R. 539 and I-71 in the township. Phantom wanted to sell fireworks out of a large state-of-the-art facility it planned to build there. The company was licensed by the state and already selling fireworks in the township out of a smaller, out-dated facility,<sup>1</sup> but wished to relocate to a prime location off the interstate.

{¶4} Phantom applied to the township zoning inspector for a zoning certificate, so it could do business on its purchased land. The zoning inspector refused to issue a zoning certificate because the property is not zoned for business use under the “B” zoning classification. Phantom then appealed to the BZA,

seeking either a zoning certificate or a business use variance. The BZA held a hearing on November 20, 2006. At the conclusion of the hearing, the BZA denied

Phantom's request for a zoning certificate and application for a business use variance.

{¶5} Phantom filed an administrative appeal in the Wayne County Court of Common Pleas, generally arguing that the township's zoning resolution is unconstitutional, unlawful, invalid, arbitrary, capricious and unreasonable. In reliance on this Court's decision in *Castle Manufactured Homes, Inc. v. Tegtmeier* (Sept. 29, 1999), 9th Dist. No. 98CA0065, the trial court found that Phantom failed to demonstrate beyond fair debate that the township's zoning resolution is unconstitutional or otherwise invalid. The trial court overruled Phantom's appeal and affirmed the decision of the BZA.

{¶6} Phantom timely appeals, raising five assignments of error for review. This Court addresses only the first assignment of error as it is dispositive of the appeal.

## II.

### ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO CONCLUDE THAT THE TOWNSHIP’S ZONING RESOLUTION IS INVALID, UNLAWFUL, AND UNENFORCEABLE AGAINST APPELLANTS BECAUSE IT CREATES A BUSINESS ‘B’ ZONING CLASSIFICATION, BUT FAILS TO DESIGNATE ANY LAND FOR

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<sup>1</sup> Phantom's fireworks business was established prior to the adoption of the 1994 zoning resolution and its authority to do business within the township was, therefore, “grandfathered.”

COMMERCIAL/BUSINESS USE UNDER THE ‘B’ ZONING CLASSIFICATION.”

{¶7} Phantom argues that the trial court erred as a matter of law in failing to conclude that the township’s zoning resolution is invalid because it creates a business “B” zoning classification but fails to designate any land for business use under the “B” zoning classification. This Court agrees.

{¶8} This matter came to the trial court as an appeal from the BZA’s decision pursuant to R.C. Chapter 2506. In such an appeal, the common pleas court considers the whole record to determine whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence. *South Park, Ltd. v. Council of the City of Avon*, 9th Dist. No. 05CA008737, 2006-Ohio-2846, at ¶¶5-6. However, “[t]his statute 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 v. Sandusky* (1984), 12 Ohio St.3d 30, 34, at fn. 4.

{¶9} The Ohio Supreme Court has held that a board of zoning appeals’ approval or denial of an application for a variance is presumed to be valid, and the party challenging the board’s determination has the burden of showing its invalidity. *Consol. Mgt., Inc. v. Cleveland* (1983), 6 Ohio St.3d 238, 240, citing *C. Miller Chevrolet, Inc. v. Willoughby Hills* (1974), 38 Ohio St.2d 298, paragraph two of the syllabus. The Supreme Court further held:

“A trial court, within an appeal pursuant to R.C. Chapter 2506, and a court of appeals, would accordingly be obliged to affirm the action taken by the board, absent evidence that the board’s decision was unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable and probative evidence.” *Consol. Mgt., Inc.* (1983), 6 Ohio St.3d at 240.

{¶10} The BZA argues that this Court is restrained by our generally limited scope of review. Because the trial court premised its determination regarding the validity of the zoning resolution upon its interpretation of law, this Court’s standard of review is de novo. See *North Fork Properties v. Bath Twp.*, 9th Dist. No. 21597, 2004-Ohio-116, at ¶9.

{¶11} This Court finds that the trial court erred as a matter of law in affirming the BZA’s decision, because the township’s zoning resolution is an invalid exercise of the township’s authority under R.C. 519.02.

{¶12} Townships, as creatures of statute, have only those powers specifically granted to them or necessarily implied therefrom. *Rua v. Shillman* (1985), 28 Ohio App.3d 63, 64. R.C. 519.02 is the enabling statute which grants townships the authority to regulate by resolution “in accordance with a comprehensive plan, \*\*\* the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township[.]” In the absence of a comprehensive plan, a township zoning resolution is an invalid exercise of the township’s authority under R.C. 519.02.

{¶13} Although the Revised Code does not define the term “comprehensive plan,”

“[t]o planners, the terms \*\*\* have a distinct, concrete meaning: they are the local government’s textual statement of goals, objectives, and policies accompanied by maps to guide public and private development within its planning jurisdiction. The comprehensive plan is the chief policy instrument for: (1) the administration of zoning and subdivision regulations; (2) the location and classification of streets and thoroughfares; (3) the location and construction of public and semi-public buildings and related community facilities and infrastructure (water, storm and sanitary sewers, gas, etc.); (4) the acquisition and development of public and semi-public properties such as parks and open spaces; and (5) the initiation of new programs, such as those in the areas of housing rehabilitation and economic development, to address pressing community needs.

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“The essential characteristics of a plan are that it is comprehensive, general and long range. ‘Comprehensive’ means that the plan encompasses all geographical parts of the community and integrates all functional elements. ‘General’ means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. ‘Long range’ means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities ten to twenty years into the future.” Stuart Meck and Kenneth Pearlman, *Oh. Plan. & Zoning L. Section 4:31* (2007).

{¶14} In this case, township trustee William Cletzer testified that he was involved in the drafting of the current zoning resolution. He admitted that the township did not have its own comprehensive plan, when it drafted the resolution. Rather, Mr. Cletzer testified that the trustees looked to the Wayne County comprehensive plan and “molded or formed” the township resolution “based on that plan.” The Wayne County comprehensive plan reports submitted as part of the record are from 1977 and note that Congress Township is one of nine

townships in the county which were merely requesting rural zoning at the time. The county comprehensive plan does not set forth goals or recommendations specific to Congress Township. Rather, in regard to commercial development, the county comprehensive plan states, “Often, the most fruitful developments in a community or region are the result of local initiative within a general conceptual plan.” No one disputes that Congress Township did not have any general conceptual plan either at the time the resolution was drafted, or today.

{¶15} The Ohio Supreme Court emphasized the requirement set out in R.C. 519.02 that a township board of trustees draft zoning regulations in accordance with a comprehensive plan. See *Cassell v. Lexington Twp. Bd of Zoning Appeals* (1955), 163 Ohio St. 340, at paragraph one of the syllabus. The high court further held that a zoning resolution has not been properly adopted pursuant to the enabling statute where it fails to delineate which specific areas may be used for specific uses, when the township has established various types of districts.

{¶16} Because the zoning resolution does not regulate the use of unincorporated township land in accordance with a comprehensive plan, the resolution is invalid. This Court finds that the trial court erred as a matter of law by upholding the validity of the zoning resolution on the authority of *Castle Manufactured Homes, Inc.*, merely because the resolution is substantially related to governmental interests. The trial court ignored the requirement of R.C. 519.02 that the township resolution be adopted “in accordance with a comprehensive

plan.” The failure of the township to have a comprehensive plan renders the zoning resolution invalid. Phantom’s first assignment of error is sustained.

**ASSIGNMENT OF ERROR II**

“THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO CONCLUDE THAT THE TOWNSHIP’S ENFORCEMENT OF THE 1994 ZONING RESOLUTION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE UNDER R.C. 2506.04.”

**ASSIGNMENT OF ERROR III**

“THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO CONCLUDE THAT THE TOWNSHIP’S ZONING RESOLUTION, AS APPLIED TO APPELLANTS, IS UNLAWFUL AND PREEMPTED BY STATE LAW BECAUSE IT WRONGFULLY PROHIBITS THE LAWFUL SALE OF COMMERCIAL FIREWORKS THAT ARE REGULATED AND LICENSED BY THE STATE FIRE MARSHALL UNDER STATE LAW.”

**ASSIGNMENT OF ERROR IV**

“THE TRIAL COURT ERRED AS A MATTER OF LAW IN REJECTING APPELLANTS’ LEGAL ARGUMENTS AND IN FINDING THAT THE TOWNSHIP’S ZONING RESOLUTION WAS NOT UNCONSTITUTIONAL, INVALID, AND UNENFORCEABLE UNDER OHIO LAW.”

**ASSIGNMENT OF ERROR V**

“THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO REVERSE THE ADMINISTRATIVE ACTIONS OF THE BOARD OF ZONING APPEALS AND THE ZONING INSPECTOR AND IN FAILING TO REMAND WITH INSTRUCTIONS TO ALLOW THE LAWFUL CONSTRUCTION AND OPERATION OF THIS STATE-LICENSED FIREWORKS STORE TO PROCEED IN ACCORDANCE WITH STATE LAW.”

{¶17} As this Court's resolution of the first assignment of error is dispositive of the appeal, we decline to address the remaining assignments of error as moot. See App.R. 12(A)(1)(c).

### III.

{¶18} Phantom's first assignment of error is sustained. This Court declines to address the remaining assignments of error. The judgment of the Wayne County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this decision.

Judgment reversed,  
and cause remanded.

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The Court finds that 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 Wayne, 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(E). 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 appellees.

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DONNA J. CARR  
FOR THE COURT

SLABY, P. J.  
DICKINSON, J.  
CONCUR

APPEARANCES:

STEPHEN W. FUNK and PAUL W. LOMBARDI, Attorneys at Law, for  
appellants.

MARTIN FRANTZ, Prosecuting Attorney, and KATHERINE GALLAGHER,  
Assistant Prosecuting Attorney, for appellees.