[Cite as *Rickard v. Trumbull Twp. Bd. of Zoning Appeals*, 2009-Ohio-2619.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

LAWRENCE RICKARD,	:	**O P I N I O N**
Appellee,	:	
- vs -	:	**CASE NOS. 2008-A-0024, 2008-A-0025, 2008-A-0026, 2008-A-0027, and 2008-A-0028**
TRUMBULL TOWNSHIP ZONING BOARD OF APPEALS,	:	
Appellant,	:	
CHARLES LOYA, et al.,		
Intervenors-Appellants.		

Administrative Appeals from the Ashtabula County Court of Common Pleas, Case No. 2006 CV 653, 1998 CV 12, 1998 CV 53, 1998 CV 88, and 1998 CV 376.

Judgment: Affirmed.

Dale H. Markowitz and *Jaredd J. Flynn,* Thrasher, Dinsmore & Dolan, 100 Seventh Avenue, #150, Chardon, OH 44024 (For Appellee).

Thomas L. Sartini, Ashtabula County Prosecutor, and *Catherine R. Colgan,* Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Appellant).

William V. Valis, Reminger & Reminger Co., L.P.A., 1400 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115 (For Appellant Charles Loya).

Terence E. Scanlon, 101 Clemson Court, Elyria, OH 44035 (For Appellant Margaret Shymanski).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Charles Loya, Margaret Shymanski, and the Trumbull Township Board of Zoning Appeals ("BZA"), appeal the judgment of the Ashtabula County Court of Common Pleas affirming the issuance of a conditional use permit for a medieval fair by the BZA to appellee, Lawrence Rickard; finding certain conditions in that permit to be invalid; finding the BZA's denial of another conditional use permit to Rickard for a Halloween fair to be improper; and finding the BZA lacked authority to reconsider the conditional use permit for the medieval fair. For the reasons that follow, we affirm.

{¶2} This matter has been the subject of litigation for 12 years, and has involved a prior appeal to this court in *Rickard v. Knopsnider* (2001), 142 Ohio App.3d 235 ("*Rickard I*").

{¶3} Because the present appeal addresses this court's remand in *Rickard I*, a brief history is in order. In November 1996, Rickard purchased 180 acres of real property located at 3033 State Route 534, Trumbull Township, Ashtabula County, Ohio. The property had previously been used as a Girl Scout camp and is zoned residential.

{¶4} For several years before purchasing the property, Rickard conducted two separate fairs on the property, the Great Lakes Medieval Faire ("the Medieval Faire") and Halloween Knights. The Medieval Faire is conducted weekends in July and consists of a 13th Century theatre; live entertainment, including jousting, music, and magic acts; arts and crafts; and foods. Halloween Knights offers a haunted house, hayrides, and children's activities, and is conducted weekends in October.

{¶5} In 1997, the Trumbull Township Board of Trustees revised its zoning resolution to address Rickard's fairs. The revision made temporary fairs conditionally permitted uses in the township. In general conditionally permitted uses are uses that are permitted in the township as long as the conditions for such uses as set forth in the township zoning resolution are met by the property owner. Sec. 530(27) of the zoning resolution provides that a conditional use permit is required for all temporary fairs, and requires compliance with eight conditions, including that: (a) they take place no more than three days at a time and no more than seven times per year; (b) the expected attendance is more than 500 people per day; and (c) the event shall only operate between 8:00 a.m. and 10:00 p.m.

{¶6} Thereafter, in 1997, Rickard filed two applications for two conditional use permits, one to conduct the Medieval Faire and another to conduct Halloween Knights.

{¶7} On December 16, 1997, the BZA held a hearing regarding the Medieval Faire. Rickard presented evidence that he had been holding the fair without incident for many years before the zoning resolution was changed. A number of local residents complained about excessive traffic, noise, and garbage. Following the hearing, the BZA issued to Rickard a conditional use permit for the Medieval Faire. After finding that Rickard met the eight conditions set forth in the zoning resolution applicable to temporary fairs, the BZA added ten additional conditions to the permit. Further, the permit was to be effective indefinitely as long as its conditions were met.

{¶8} On October 9, 1997, the BZA held a hearing on Rickard's request for a conditional use permit for Halloween Knights. After the evidence was presented, the BZA found that Rickard met all conditions for temporary fairs in the zoning resolution for

Halloween Knights, and granted Rickard a conditional use permit for this event as well. However, on January 13, 1998, the BZA held a second hearing regarding Halloween Knights, which it referred to as a "continuance hearing," due to an issue regarding notice of the first hearing. Following testimony presented at this hearing, the BZA changed its decision and denied Rickard's request for a conditional use permit for Halloween Knights. The BZA changed its decision due to Section 552 of the zoning resolution, which the BZA interpreted as allowing the BZA to issue only one conditional use permit per property. The BZA found that since it had already issued a conditional use permit for the Medieval Faire, it could not issue a second conditional use permit for Halloween Knights.

{¶9} A few township residents, including David Knopsnider and Loya, appealed the BZA's issuance of the conditional use permit for the Medieval Faire to the trial court in Case No. 98-CV-53 (2008-A-0026) and filed a declaratory judgment action challenging the Trumbull Township Zoning Resolution as unconstitutional in Case No. 98-CV-376 (2008-A-0028). Rickard appealed the ten additional conditions attached to his conditional use permit for the Medieval Faire to the trial court in Case No. 98-CV-12 (2008-A-0025). He also appealed the BZA's denial of his request for a conditional use permit for Halloween Knights in Case No. 98-CV-88 (2008-A-0027). These cases were consolidated in the trial court.

{¶10} The trial court conducted hearings on June 22, 1998 and April 9, 1999. On June 11, 1999, the court found that (1) the BZA properly granted Rickard a conditional use permit for the Medieval Faire; (2) some of the ten conditions imposed by the BZA were appropriate, some required the BZA to conduct further hearings, and some should

be addressed through a "special use permit," rather than a conditional use permit; and (3) the denial of the Halloween Knights permit was improper, but should be addressed through a special use permit. The trial court also denied the claim for declaratory relief.

{¶11} Of the ten additional conditions imposed by the BZA on the Medieval Faire, the trial court found that condition 9 was reasonable, but ordered the BZA to conduct further hearings to clarify conditions 4 and 10. It also determined that conditions 1, 2, 3, 5, 6, 7, and 8 should be addressed through the use of a special use permit for the Medieval Faire. Thereafter, these residents appealed the trial court's decision to this court.

{¶12} In 2001, in *Rickard I*, this court affirmed the decision of the trial court regarding the BZA's issuance of the conditional use permit for the Medieval Faire. However, this court reversed in part the trial court's decision and remanded the matter to the trial court for further proceedings on two issues. First, because the zoning resolution does not distinguish between a special use permit and a conditional use permit, this court remanded the case to the trial court to determine whether conditions 1, 2, 3, 4, 5, 6, 7, 8, and 10 were reasonable with regard to the conditional use permit for the Medieval Faire. Second, this court reversed and remanded for the trial court to determine whether the BZA's denial of a conditional use permit for Halloween Knights was proper.

{¶13} While these cases were on remand in the trial court, in June 2005, William Weaver, a vendor at the Medieval Faire, filed an application for a zoning certificate to allow him to build a platform at the fairgrounds. The Zoning Administrator issued the

permit on June 9, 2005, and Loya and Shymanski appealed this decision to the BZA. A hearing was scheduled for July 21, 2005.

{¶14} One day prior to the hearing, on July 20, 2005, Rickard sent a letter to the Zoning Administrator and the BZA chairman notifying them that, as owner of the property, he was withdrawing the application for a zoning certificate. He said that the request was made without his consent and that the platform would not be constructed. He said that as a result of this withdrawal, a hearing would not be necessary on Loya and Shymanski's appeal.

{¶15} At the July 21, 2005 hearing, the BZA acknowledged the request had been withdrawn, but decided to proceed with the hearing anyway because notice for the hearing had been published in the local newspaper. The BZA chairman told those in attendance that the BZA's attorney, the Ashtabula County Prosecutor, had advised him that if the hearing proceeded, any decision the BZA made would be "irrelevant" and "wouldn't stand up in court." The chairman said, "But we're here just to hear what you, the township citizens *** feel, even though *** it can't go anywhere. I mean, any decision we make can't be upheld ***." He said, "what we can do is hear what you *** have to say about what was going to be done but now is not going to be done."

{¶16} Despite this announcement, the BZA conducted hearings on Loya and Shymanski's appeal regarding the platform on July 21, 2005, August 10, 2005, October 11, 2005 and December 28, 2005. On May 4, 2006, the BZA issued its decision, finding that the "permit for the platform *** was properly withdrawn and is considered moot and not pending." However, in its decision, the BZA also "found and directed" the Medieval Faire to apply for a special events permit from the zoning administrator on an annual

basis. The BZA found that "a Special Events Permit must be applied for annually and approved before operations can commence. The present Conditional Use Permit is inadequate as it relates to operations." The BZA thus reconsidered Rickard's conditional use permit for the Medieval Faire after it found the only issue before it, i.e., Shymanski and Loya's appeal from the zoning inspector's issuance of a zoning certificate to build a platform, had been withdrawn and was moot.

{¶17} On June 5, 2006, Rickard appealed the BZA's decision to the trial court in Case No. 2006 CV 653 (2008-A-0024), arguing the BZA lacked authority to rule on Loya and Shymanski's appeal since the BZA found the appeal to be moot and not pending. Although Loya and Shymanski did not appeal the BZA's decision, they filed a motion to intervene, which the trial court granted.

{¶18} On March 25, 2008, the trial court issued its judgment on (1) Rickard's 2006 appeal and (2) the remand of this court in the earlier appeals. The trial court ruled that since the BZA found Loya and Shymanski's appeal to be moot and not pending on Rickard's withdrawal of the request to build a platform, the BZA had no authority to find and direct Rickard to apply for a special events permit each year before operating the Medieval Faire. The trial court found the BZA's decision to be illegal, arbitrary, and unreasonable and reversed its decision.

{¶19} The trial court next addressed this court's remand. The trial court considered whether the additional conditions in the 1997 conditional use permit for the Medieval Fair were reasonable. These conditions are as follows:

{¶20} "1. *** [T]he road entering the faire will be paved upto [sic] the entrance ***.

{¶21} "2. The street light at the entrance to the faire will be removed.

{¶22} "3. The *** area near the entry way will be fenced by an 8 foot chain link fence.

{¶23} "4. The rest of the area will be fenced prior to the 1999 season.

{¶24} "5. The faire will be held a maximum of 6 weekends.

{¶25} "6. All people to be off the property by *** 10 PM.

{¶26} "7. There will be no camping by anyone on the premises.

{¶27} "8. Starting one week before and each week during the faire, a meeting will be held by the Rickards and their neighbors to discuss any problems that have arisen. A mediator will be present to direct the meeting.

{¶28} "9. All signs advertising the faire must be in compliance with *** zoning ***.

{¶29} "10. Prior to the opening of the 1999 season an access road off route 166 shall be constructed to eliminate any problem areas in regards to traffic flow."

{¶30} The trial court found conditions 1 and 9 were reasonable, but that conditions 2, 3, 4, 5, 6, 7, 8, and 10 were arbitrary and unreasonable and vacated them.

{¶31} Further, with respect to the BZA's denial of a conditional use permit for Halloween Knights, the trial court found the BZA erred in interpreting Section 552 of the zoning resolution to mean the BZA can only issue one conditional use permit per property. The court reversed the BZA's decision; found Halloween Knights to be an event separate from the Medieval Faire requiring a separate conditional use permit; and ordered the BZA to issue a conditional use permit for Halloween Knights.

{¶32} On April 24, 2008, the BZA appealed the trial court's March 25, 2008 judgment. On that date, Loya and Shymanski also appealed the trial court's judgment. On May 8, 2008, this court, sua sponte, consolidated the previous cases with the BZA, Loya, and Shymanski's appeal of the trial court's March 25, 2008 judgment.

{¶33} On June 19, 2008, Rickard filed a motion to dismiss the BZA's appeal on the ground that the BZA lacks standing to bring an appeal from the trial court's reversal of its decision.

{¶34} Before addressing the merits of this case, we determine Rickard's motion to dismiss the BZA's appeal. The issue of standing is dispositive of the BZA's appeal because a finding that the BZA does not have standing to appeal necessitates its dismissal.

{¶35} "A person lacking any right or interest to protect may not invoke the jurisdiction of a court." *Travelers Indemn. Co. v. R.L. Smith Co*. (Apr. 13, 2001), 11th Dist. No. 2000-L-014, 2001 Ohio App. LEXIS 1750, *10, citing *State ex rel. Dallman v. Court of Common Pleas* (1973), 35 Ohio St.2d 176, 178. Thus, standing is an element of the court's jurisdiction and thus cannot be waived and can be raised at any time. *New Boston Coke Corp. v. Tyler* (1987), 32 Ohio St.3d 216, 218.

{¶36} The Ohio Supreme Court has held that a township board of zoning appeals does not "have a right to appeal from the judgment of a court, rendered on appeal from a decision of such board and reversing and vacating that decision." *A. DiCillo & Sons, Inc. v. Chester Zoning Bd. of Appeals* (1952), 158 Ohio St. 302, syllabus.

{¶37} In *Genesis Outdoor Adver., Inc. v. Troy Twp. Bd. Of Zoning Appeals*, 11th Dist. No. 2001-G-2399, 2003-Ohio-3692, this court held a township board of zoning appeals does not become a party when one of its decisions is questioned on an appeal to a reviewing court. Id. at ¶23, citing *A. DiCillo & Sons, Inc.*

{¶38} Likewise, in *Board of Zoning Appeals for Harrison Township v. The Resident Home Assn.* (Mar. 6, 1981), 2d Dist. No. 6894, 1981 Ohio App. LEXIS 12008, the Second Appellate District held: "a township board of zoning appeals is not a person adversely affected by an order of the common pleas court reversing one of its decisions, and thus may not institute an appeal to the court of appeals in which the order of reversal of the common pleas court is challenged." Id. at *6.

{¶39} The BZA in its appeal has challenged the trial court's March 25, 2008 judgment (1) reversing the BZA's decision requiring Rickard to file an annual special events permit request for the Medieval Faire; (2) vacating certain conditions the BZA attached to Rickard's conditional use permit for the Medieval Faire; and (3) reversing the BZA's denial of a conditional use permit for Halloween Knights. Thus, the issues presented by the BZA's appeal concern whether the trial court erred in vacating the various decisions of the BZA. Because the BZA does not having standing to challenge the rulings of the trial court concerning the BZA's decisions, this court does not have jurisdiction over the BZA's appeal.

{¶40} The BZA's reliance on *Genesis Outdoor Adver.,* supra, in support of its opposition to Rickard's motion is misplaced. In *Genesis*, the landowner-appellant named the BZA as the sole appellee in its administrative appeal. While the action was pending in the trial court, the BZA moved to dismiss the appeal on the ground that the

BZA was not a proper party. The landowner-appellant in that case never attempted to cure the failure to name the correct party by filing a motion to amend in the trial court. This court held the trial court did not err by dismissing the case because the appellant named only the BZA and once it was dismissed, the entire case was dismissed.

{¶41} In the case sub judice, the BZA appealed from the decision of the trial court. The BZA argues that it filed its appeal in its own capacity due to a "clerical error," and that the township trustees should have been named as the appellant. However, there is nothing in the record to support this contention. The BZA is an entity separate from the board of township trustees or the zoning administrator, either one of whom would have been a proper party to appeal on behalf of the township. *Genesis Outdoor Adver.*, supra, at ¶22. For all we know, the trustees decided not to appeal, and the BZA took this action on its own initiative.

{¶42} Further, the BZA concedes that this error would require an amendment and it has moved this court for leave to amend its notice of appeal to substitute the township trustees for the BZA. However, the time to perfect an appeal had passed before the BZA moved to amend its notice of appeal. While App.R. 3(F) provides for the amendment of "a timely filed notice of appeal," unlike Civ.R. 15, App.R. 3(F) does not allow for the relation back of amendments. Thus, on July 3, 2008, when the BZA moved to amend its notice of appeal to name the trustees, the time to file an appeal from the trial court's judgment, dated March 25, 2008, had already run.

{¶43} Therefore, because the BZA does not have standing to appeal the rulings of the trial court, this court does not have jurisdiction to consider its appeal. Richards motion to dismiss is well taken and the same is hereby granted. We do note, however,

that virtually the same assignments of error advanced by the BZA are asserted by Shymanski in her appellate brief, so that we reach the substance of the BZA's arguments in the course of our review of Shymanski's assigned errors.

{¶44} Based upon the foregoing analysis, we herewith dismiss the BZA's appeal.

{¶45} We turn now to the merits of the appeal filed by Loya and Shymanski. As a preliminary matter, we note that Loya did not file a brief in support of his notice of appeal. We therefore dismiss his appeal. App.R. 18(C). Thus, we consider only Shymanski's appeal. She asserts three assignments of error. For clarity of analysis, we consider them out of order. For her second assignment of error, she contends:

{¶46} "THE TRIAL COURT ERRED IN ELIMINATING CONDITIONS ATTACHED TO THE CONDITIONAL USE PERMIT FOR THE APPELLEES' [SIC] OPERATION OF THE MEDIEVAL FAIRE."

{¶47} Administrative appeals taken from a township board of zoning appeals are governed by R.C. Chapter 2506. See R.C. 2506.01. The appeal is first addressed to the court of common pleas of that county. Id. The common pleas court's standard of review is set forth in R.C. 2506.04: "[T]he court may find that the order *** or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. ***"

{¶48} R.C. 2506.04 grants a court of appeals reviewing the decisions of administrative agencies limited powers to review the judgment of the court of common pleas only on "questions of law." *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34, fn. 4. It does not include the same extensive power to weigh "the preponderance of substantial,

reliable and probative evidence," as is granted to the common pleas court in its review of such decisions. Id. The appellate standard of review of such "questions of law" is whether the court of common pleas abused its discretion. Id. An "abuse of discretion" connotes more than an error of law or judgment; it implies the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶49} Shymanski argues that, instead of vacating the additional conditions imposed on Rickard in the conditional use permit, the trial court should have modified them. However, Shymanski fails to cite any authority for the proposition that the trial court was required to modify the BZA's conditions once if found them to be unreasonable and arbitrary. For this reason alone, her argument is not well taken. App.R. 16(A)(7). In any event, the trial court's action was authorized by R.C. 2506.04, which provides: "*** Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision ***." Thus, pursuant to this section, the trial court was equally authorized to vacate *or* modify the BZA's decision.

{¶50} In support of her argument, Shymanski relies on the complaints of various neighbors about port-a-potties, "wandering crafters," noise, and traffic. However, as noted supra, this court reviews the decision of the trial court under an abuse of discretion standard, and is not permitted to weigh the evidence.

{¶51} In any event, we note that the neighbors' complaints are merely subjective and speculative comments and unsubstantiated opinions, and do not rise to the level of the reliable, probative, and substantial evidence required under *Kisil,* supra. *Adelman Real Estate Co. v Gabanic* (1996), 109 Ohio App.3d 689, 694. This court has held that

the objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a zoning permit. *Pinnacle Woods Survival Games, Inc. v. Hambden Township Zoning Inspector* (1986), 33 Ohio App.3d 139, 140. As such, even if we were permitted to weigh the evidence, the neighbors' complaints and feelings referenced by Shymanski would not have supported a modification of these conditions.

{¶52} Shymanski challenges the trial court's decision to vacate conditions 3 and 4, which required Rickard to enclose his entire 180-acre parcel with a permanent 8 foot chain link fence. The trial court found there was no evidence such permanent fencing was necessary since the Medieval Faire is a temporary event. Shymanski states that even if these conditions were unreasonable, "what about modifying the fencing requirement" to "something less than heavy-duty fence, or something less than fencing the entire 180 acres?" However, as noted supra, although the trial court may have been authorized to modify these conditions, it was not required to do so.

{¶53} Next, while her position is far from clear, Shymanski appears to challenge the trial court's finding that condition 5, which limits the Medieval Faire to six weekends, was unreasonable. However, as the trial court correctly noted, section 530(27)(a) of the zoning resolution permits a temporary faire to last for up to seven weekends. Further, the record is devoid of any evidence that the BZA limited the operation of the Medieval Faire to six weekends per year due to any conditions existing at the Medieval Faire. Finally, we note that, contrary to Shymanski's argument, Rickard did not limit his request in his application to authority to operate the Medieval Faire to six weekends. His brochure for the 1998 season, on which Shymanski relies, merely indicated that the schedule for that year included six weekends.

{¶54} Shymanski next challenges the trial court's finding that condition 6, which required all persons to be off Rickard's property by 10:00 p.m., was unreasonable. The trial court noted this condition was overbroad in that it would apply to Rickard and his family, who live on the property. Shymanski argues the condition did not apply to the Rickard family; however, there is no evidence in the record to support this argument. Shymanski also argues Rickard's application for the Medieval Faire states it would only operate until 7:00 p.m., so that the 10:00 p.m. limitation was reasonable. However, Rickard's application does not so provide. His brochure for the Medieval Faire merely indicated it would be open until 7:00 p.m. during the 1998 season. As the trial court correctly noted, the zoning resolution provides that temporary fairs may "operate" until 10:00 p.m. The trial court found that since this limitation necessarily contemplated that certain people, such as Rickard, the vendors, and security would remain on the property for some time after closing, this condition, which requires all persons to be off the property by 10:00 p.m., was inconsistent with the zoning resolution.

{¶55} Shymanski next challenges the trial court's finding regarding condition 7, which prohibits camping by anyone on the property. The trial court found this condition to be arbitrary in light of the nature of a fair, which includes vendors and performers, and the former use of the property as a campground. While Shymanski notes problems with noise, traffic, people driving their cars late at night and throwing beer cans and cigarette butts out of cars, none of this was attributed to camping. And, even if the evidence demonstrated a nexus between these problems and camping, the trial court provided sound reasons for its decision.

{¶56} Shymanski next challenges the trial court's finding that condition 8, which requires seven weekly mediations involving Rickard and his neighbors, was arbitrary and unreasonable. The basis for Shymanski's challenge is that the court did not provide specific reasons for its decision. However, she has failed to direct our attention to any authority for the proposition that the BZA has the power to order parties to submit to alternative dispute resolution. R.C. 519.14, which outlines the powers of a BZA, does not include among the board's powers, the power to order mediation. Manifestly, a board of zoning appeals is a creature of statute and has no inherent power. Instead, it has only those powers expressly authorized or necessarily implied from the expressed grant of statutory power. This rubric of township law is well settled and of long standing in Ohio. *American Sand & Gravel, Inc. v. Fuller* (Mar. 16, 1987), 5th Dist. Nos. CA-6952, and CA-7067, 1987 Ohio App. LEXIS 6147, *3, citing *Hopple v. Brown Township* (1862), 13 Ohio St. 311.

{¶57} Finally, Shymanski states she "is not inclined to complain that *** condition [10, requiring Rickard to construct an additional access road] was struck down." As a result, she fails to properly challenge the trial court's finding that this condition was arbitrary and unreasonable. In any event, the trial court noted no traffic studies had been done and the evidence did not establish traffic was so excessive that an additional access road was necessary.

{¶58} Since the trial court provided sound reasons for its determination, we cannot say the court abused its discretion in finding conditions 3, 4, 5, 6, 7, 8, and 10 to be unreasonable and arbitrary and vacating them.

{¶59} Appellant's second assignment of error is not well taken.

{¶60} For her third assignment of error, Shymanski asserts:

{¶61} "THE TRIAL COURT ERRED IN ORDERING THE BOARD OF ZONING APPEALS TO GRANT A CONDITIONAL USE PERMIT FOR HALLOWEEN KNIGHTS."

{¶62} Shymanski asserts three issues. First, she argues the trial court erred in finding Section 552 of the zoning resolution does not limit a parcel to one conditional use. This section provides:

{¶63} "A conditional use permit shall be deemed to authorize only one particular conditional use, and said permit shall automatically expire if such conditionally permitted use has not been instituted or utilized within one (1) year of the date on which the permit was issued, or if for any reason such use shall cease for more than one (1) year. ***"

{¶64} The BZA found that, pursuant to this section, only one conditional use permit can be issued per property. Shymanski argues that because the BZA issued a conditional use permit to Rickard for the Medieval Faire, he was not entitled to another permit for Halloween Knights. We do not agree.

{¶65} Shymanksi cites no authority and offers no analysis in support of the BZA's interpretation of this section. For this reason alone, her argument is not well taken. App.R. 16(A)(7). However, even if the issue was properly before us, it would lack merit.

{¶66} This court reviews the interpretation and application of a statute or zoning resolution under a de novo standard of appellate review. *State v. Phillips*, 11th Dist. No. 2008-T-0036, 2008-Ohio-6562, at ¶11-13; *Akron v. Frazier* (2001), 142 Ohio App.3d 718, 721, citing *State v. Sufronko* (1995), 105 Ohio App.3d 504, 506. "The principles of statutory construction require courts to first look at the specific language contained in

the statute, and, if unambiguous, to then apply the clear meaning of the words used." *Roxane Laboratories, Inc. v. Tracy,* 75 Ohio St.3d 125, 127, 1996-Ohio-257.

{¶67} In *Ravenna Township Trustees v. City of Ravenna* (1996), 117 Ohio App.3d 152, this court held: "if it is reasonably possible, courts should construe statutes so as to avoid ridiculous or absurd results because it is presumed that the legislature did not intend such results." Id. at 155, citing *State ex rel. Haines v. Rhodes* (1958), 168 Ohio St. 165, at paragraph two of the syllabus.

{¶68} A reviewing court need only give deference to an administrative agency's interpretation of its own rules if such interpretation is consistent with the plain language of the rule itself. *Jones Metal Products Co. v. Walker* (1972), 29 Ohio St.2d 173, 181; Clark v. Ohio Dept. of Mental Retardation & Developmental Disabilities (1988), 55 Ohio App. 3d 40,42.

{¶69} We note the title of Section 552 is "Expiration of Conditional Use Permit." This section provides that a conditional use permit will expire in two circumstances: (1) if the use has not been instituted within one year of the date the permit was issued, or if (2) the property owner abandons the use for more than one year. This section thus addresses the expiration of a conditional use permit; it does *not* address the number of conditional uses that may be permitted per property.

{¶70} We further note the clear and unambiguous meaning of the introductory sentence to Section 552 is that each conditional use permit authorizes only one particular use. This section does *not* limit a property to one conditional use. Thus, Section 552 does not prevent a property owner from utilizing more than one conditionally permitted use on his property if he applies for a separate conditional use

permit for each use and meets the conditions for each as set forth in the zoning resolution.

{¶71} For example, riding stables, a recreation building, and off-premises signs are three separate conditional uses in Trumbull Township. If a business wanted to establish all three uses on its property, Section 552 would not prevent it from obtaining a conditional use permit for each as long as it filed a separate application for each use and met the conditions for each as set forth in the zoning resolution.

{¶72} Finally, if we were to adopt the interpretation of Section 552 urged by Shymanski, the effect would be to unreasonably limit a property owner's right to use his property. Under this interpretation, once the business in the above example obtained a conditional use permit for riding stables, it would be prevented from using its property for such related uses as recreational buildings or off-premises signs. We presume the trustees did not intend such an absurd or ridiculous result. *City of Ravenna*, supra.

{¶73} Shymanski also argues that the trial court's interpretation results in a violation of Section 530(27)(a) of the zoning resolution. This section prohibits a property owner from operating a temporary fair for more than seven weekends per year. She argues that both fairs represent the same event, and that because the Medieval Faire lasts for six weeks, Halloween Knights could only operate for one weekend each year.

{¶74} However, the record reveals that appellant filed two separate applications for conditional use permits for each fair. Moreover, the Medieval Faire takes place in July of each year, while Halloween Knights takes place in October. Further, the activities and themes of each fair are different. The Medieval Faire offers a 13th Century theatre, jousting, crafts, rides, and foods, while Halloween Knights offers hay rides and

a haunted house. The trial court did not abuse its discretion in finding the two fairs represented two separate conditional uses requiring two separate permits. Thus, each fair could last for up to seven weekends. We note Shymanski did not assign as error this finding of the trial court. In view of the foregoing analysis, we hold the issuance of a conditional use permit for Halloween Knights did not violate Section 530(27)(a).

{¶75} For her second issue, Shymanski argues that even if the BZA incorrectly interpreted Section 552, there was evidence in the record to support the denial of a conditional use permit for Halloween Knights. She argues that instead of ordering the BZA to issue a permit to Rickard, the trial court should have remanded the matter to the BZA for a third hearing so it could exercise its discretion in determining whether Rickard was entitled to a conditional use permit for Halloween Knights. However, while this case was in the trial court following our remand to that court in *Rickard I*, Shymanski failed to make this argument. The argument is therefore waived and cannot be asserted for the first time on appeal. See *Shover v. Cordis Corp*. (1991), 61 Ohio St.3d 213, 220.

{¶76} Moreover, as noted supra, on October 9, 1997 and January 13, 1998, the BZA conducted hearings on Rickard's application for a conditional use permit for Halloween Knights. The record establishes that Halloween Knights met all the zoning requirements for a conditional use permit. Several neighbors attended and offered their opinions and "feelings" in favor of or in opposition to this fair. The testimony presented at both hearings was presented by virtually the same witnesses and was substantially the same.

{¶77} The testimony referenced by Shymanski reflects the neighbors' complaints and public opinion about traffic, noise, dust, flashing lights, and garbage, which, as noted in our analysis of Shymanski's second assignment of error, in this case do not rise to the level of substantial, reliable, and probative evidence. Further, it is unclear from the neighbors' testimony at both hearings whether the problems mentioned emanated from Halloween Knights as opposed to the Medieval Faire, exiting patrons, or other sources. The neighbors expressly attributed many of these problems to the Medieval Faire as opposed to Halloween Knights. In fact, Shymanski argues in her reply brief that the neighbors' testimony at the October 9, 1997 hearing related to the Medieval Faire.

{¶78} Shymanski cites extensively the "testimony" presented at the October 9, 1997 hearing. It does not escape our attention that *after* the evidence was presented at that hearing, the BZA noted it could not allow the neighbors' "public opinion" to influence its decision; found that Rickard met all township criteria for a conditional use permit for Halloween Knights; and granted him a conditional use permit for this event. Thus, the testimony cited by Shymanski did not prevent the BZA from granting Rickard a permit for Halloween Knights. Contrary to Shymanski's argument, the BZA exercised its discretion in finding Rickard met all township requirements for a conditional use permit before granting him a permit for Halloween Knights. Since the BZA made this determination after the October 9, 1997 hearing and the information presented at the January 13, 1998 hearing was substantially the same, Shymanski can hardly claim prejudice by the trial court's decision not to remand the matter to the BZA for yet a third hearing.

{¶79} As the appellant, Shymanski had the duty to support her argument by reference to evidence in the record opposing the issuance of the permit. *Columbus v. Hodge* (1987), 37 Ohio App.3d 68. Since she has failed to refer this court to any evidence that Halloween Knights was not entitled to a conditional use permit, we are required to presume the regularity of the trial court's order requiring the BZA to issue a conditional use permit and affirm. *State v. Yankora* (Mar. 16, 2001), 11th Dist. No. 2000-A-0033, 2001 Ohio App. LEXIS 1230, 4.

{¶80} In view of the foregoing analysis, we cannot say the trial court abused its discretion by ordering the BZA to issue a conditional use permit to Rickard for Halloween Knights.

{¶81} Shymanski's third assignment of error is not well taken.

{¶82} For Shymanski's first assignment of error, she alleges:

{¶83} "THE TRIAL COURT ERRED IN REVERSING THE DECISION OF THE TRUMBULL TOWNSHIP BOARD OF ZONING APPEALS RENDERED ON MAY 4, 2006."

{¶84} Shymanski argues that even if her appeal from the decision of the zoning administrator granting a zoning certificate to build a platform became moot when Rickard withdrew this request, the BZA somehow retained jurisdiction to reconsider Rickard's conditional use permit for the Medieval Faire. However, the only matter before the BZA at the time was Shymanski's appeal from the zoning administrator's issuance of the zoning certificate for a platform. Once the BZA approved Rickard's withdrawal of this request, the matter became moot.

{¶85} It is well settled that the power to hear and decide a case on the merits is limited to justiciable matters. *Hirsch v. TRW Inc*., 8th Dist. No. 83204, 2004-Ohio-1125, at ¶ 9. For a cause to be justiciable, there must exist a real controversy with issues that are ripe for judicial resolution and will have a direct and immediate impact on the parties. Id. at ¶10; *Burger Brewing Co. v. Liquor Control Comm*. (1973), 34 Ohio St.2d 93, 97-98. If what were once justiciable issues have been resolved to the point where they become moot, a judicial tribunal no longer has jurisdiction to hear the case. *Hirsch,* supra. Therefore, once the BZA accepted Rickard's withdrawal of the request, the BZA did not have subject matter jurisdiction to reconsider Rickard's conditional use permit.

{¶86} Shymanski argues that because Rickard had increased the number of buildings on his property, "[i]t would have been within the power of the board to revoke [the conditional use permit] altogether." We note that Shymanski stated in her brief filed in the trial court that the BZA's action constituted the revocation of Rickard's conditional use permit for the Medieval Faire.

{¶87} However, neither the zoning resolution nor the conditional use permit for the Medieval Faire states that Rickard may not have more than any particular number of buildings on the 180-acre parcel. Moreover, the BZA never initiated proceedings to revoke Rickard's conditional use permit by issuing a "notice to revoke" as required by R.C. 519.14. In order for a BZA to revoke a conditional use permit, the board must give to the property owner his procedural due process rights, i.e., notice of intent to revoke due to an alleged violation of a condition in the permit, a hearing, and an opportunity to respond to the charge. *Sea Lakes Inc. v. Lipstreu* (Jan. 24, 1997), 11th Dist. No. 95-P-0084, 1997 Ohio App. LEXIS 241, *9. No such notice was ever given to Rickard.

{¶88} In any event, once the BZA found Shymanski's appeal from the issuance of a zoning certificate to build a platform to be moot, the BZA lacked jurisdiction to reconsider Rickard's conditional use permit for the Medieval Faire and to impose the additional, onerous requirement that Rickard obtain a new permit for this fair every year.

{¶89} We hold the trial court did not abuse its discretion in finding the BZA lacked authority to require Rickard to apply for a permit for the Medieval Faire on an annual basis.

{¶90} Appellant's first assignment of error is not well taken.

{¶91} For the reasons stated in the Opinion of this court, the assignments of error are without merit. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs with Concurring Opinion.

COLLEEN MARY O'TOOLE, J., concurs with Concurring Opinion.

{¶92} I concur with the result ultimately reached by the majority, but would reach it by a different path. Since the Medieval Faire was an annual event before passage of Sec. 530(27) of the Trumbull Township Zoning Resolution in February 1997, I would hold it to be a prior, nonconforming use of the subject property, exempt from terms of Sec. 530(27). R.C. 519.19.

{¶93} The first Halloween Knights was not held until October 1997, so that event cannot be a prior, nonconforming use. However, I note that the giving of hayrides is presumptively an agricultural use of property. See, e.g., *Columbia Twp. Bd. of Zoning Appeals v. Otis* (1995), 104 Ohio App.3d 756, 759. To transform the giving of hayrides into a nonagricultural use requires a showing that the hayrides have become encumbered with sufficient additional activities so as to interfere with the neighbors' use of their own properties. Cf. id. at 757, 759. As no such showing was made in this case regarding the Halloween Knights, I would hold that event constitutes an agricultural use of the Rickard property, totally exempt from the Trumbull Township Zoning Resolution. R.C. 519.21.

{¶94} I respectfully concur.