IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

UPPER ARLINGTON CITY SCHOOL DISTRICT BOARD OF EDUCATION,	:	
Appellant,	:	Case No. 20CVF06-4102
vs.	:	Judge Russo
CITY OF UPPER ARLINGTON BUILDING DEPARTMENT, et al.,	:	
Appellees.	:	

DECISION AND ENTRY GRANTING APPELLEE'S, JANE DOE, MOTION TO VACATE SUMMARY JUDGMENT, FILED OCTOBER 15, 2020

ORDER OF REFERENCE AND NOTICE OF ORAL ARGUMENT ON MARCH 9, 2021

RUSSO, J.

This matter is before the Court on Appellee's, Jane Doe, Motion to Vacate Summary Judgment, filed October 15, 2020. Appellant filed a Memorandum in Opposition on October 26, 2020. Jane Doe filed a Reply Memorandum on November 2, 2020. This Motion is now ripe for decision.

I. RELEVANT BACKGROUND FACTS:

This is an administrative appeal of the June 10, 2020 Final Order issued by the Ohio State Board of Building Appeals ("BBA"), in Case No. 20-0051. The matter arises from the design and construction of the Upper Arlington City School District Board of Education's ("School Board") new Windermere Elementary School ("Windermere"), on the School Board's real property located at 4101 Windermere Road, Upper Arlington, Ohio 43221. Part of the design for Windermere calls for single-occupant toilet rooms with floor-to-ceiling walls and solid, full-frame, lockable doors, identified for use by either sex.

On April 13, 2020, the City of Upper Arlington Building Department ("City") issued its Nonconformance (Partial) Approval [1] Adjudication Order No. 20-1220(1). The Adjudication Order provided in Item No. 13 that "where plumbing fixtures are required, separate facilities shall be provided for each sex." The School Board appealed Item No. 13 of the Adjudication Order to the BBA, and requested a variance. The BBA conducted a remote adjudication hearing and denied the variance.

On June 24, 2020, the School Board filed a Notice of Appeal of the Final Order. On July 29, 2020, the School Board and the City filed Stipulations of Fact. *See Stipulation of Fact* (attached to Joint Motion for Summary Judgment). Both the School Board and the City agreed that the School Board and the students would suffer an unnecessary hardship if a variance was denied. *Id.* at ¶24. Both the School Board and the City agreed that the School Board's requested variance was not a public safety issue. *Id.* at ¶31. Further, the parties stipulated and agreed that, pursuant to Upper Arlington City School District Superintendent Dr. Paul Imhoff's testimony before the BBA, the planning and design process for the proposed bathroom layout included extensive discussions with teachers, staff, parents, and the community regarding the safety and well-being of the students. *Id.* at ¶27. He also testified that the community, as well as the elected officials who represent it, *i.e.* the School Board, fully supported the proposed bathroom layout. *Id.* at ¶27.

On July 29, 2020, the School Board and the City filed a Joint Motion for Summary Judgment ("Joint Motion"). In seeking the uncontested and jointly-requested summary judgment, the parties relied upon the Stipulations of Fact and Dr. Imhoff's uncontroverted testimony before the BBA. While the Court was initially perplexed as to why the parties filed a motion for summary judgment (let alone, a "joint motion"), in an administrative

appeal (which deviates from the normal process of an appellate briefing schedule), it relied upon the representations of counsel for both the School Board and the City that such a motion was proper, uncontested, and fully supported by both parties and the community. Because the Joint Motion was uncontested and fully supported, the Court was asked to grant it in the interest of time and judicial economy. On September 15, 2020, the Court granted the School Board and the City's uncontested Joint Motion, for lack of any opposition. The Court remanded the matter to the BBA to issue a variance.

Subsequently, on October 14, 2020, Jane Doe moved to intervene as a party appellee asserting that the Court did not have the "full story" before granting summary judgment, in part, because the School Board's plans for unisex bathrooms at Windermere were not disclosed or discussed in community meetings as referenced in Dr. Imhoff's testimony. Jane Doe asserted that affected members of the community and parents of Windermere students did not have an opportunity to present evidence that a variance was against public interest. This was the first indication of any opposition to the Joint Motion or to the representations made by the School Board and the City. On October 15, 2020, the Court granted Jane Doe's request to intervene, and she promptly filed the present Motion asking the Court to vacate its September 15, 2020 award of summary judgment.

II. DISCUSSION:

A. Jane Doe has Standing to Bring the Present Motion.

The School Board argues that Jane Doe lacks standing to be a party to this action. It argues that absent specific statutory authority, a party cannot appeal an administrative order. The School Board argues there is no statute giving Jane Doe authority to file an

appeal from a BBA ruling and, hence, she lacks standing. In response, Jane Doe argues that she is not appealing an administrative order; rather, she has intervened solely as an appellee, and therefore, has standing to assert arguments as an interested party.

Jane Doe has standing to be a party in this action. Jane Doe did not appeal the BBA's Order denying a variance; rather, she sought to intervene as an appellee, not an appellant. It was the School Board that appealed the BBA Order. As such, Jane Doe has proper standing. *See Wagner v. Miami County Bd. of Zoning Appeals*, 2003-Ohio-4210 (2nd Dist.) (In an administrative appeal, court erred in prematurely denying a motion to intervene without addressing its merits); *see also Riebe Living Trust v. Bd. of Lake County Comm'Rs*, 2013-Ohio-59 (11th Dist.) (In an administrative appeal, court erred by denying a motion to intervene as untimely).

B. <u>The Court's September 15, 2020 Award of Summary Judgment Is Vacated.</u>

Jane Doe argues the Court's September 15, 2020 Entry granting summary judgment should be vacated pursuant to Civ. R. 60(B). She argues that she possesses a meritorious defense, is entitled to relief pursuant to Civ. R. 60(B)(5) and the present Motion was timely filed. In response, the School Board argues "[t]he Ohio Civil Rules do <u>not</u> apply when a procedural statute governs a special statutory proceeding and that statute renders the civil rule issue 'clearly inapplicable.'" *School Board's Memo Opp.* at 3 (emphasis in original). As such, the School Board argues that Civ. R. 60(B) does not apply.[1]

[1]It is ironic that the School Board argues the Civil Rules do not apply when it, along with the City, bypassed normal administrative appeal procedures by filing a motion for summary judgment pursuant to Civ. R. 56, in order to obtain summary judgment in the first place. This irony is not lost on Jane Doe. *See Jane Doe's Reply* at 4.

Without determining whether the Civil Rules apply, the Court finds that its grant of summary judgment was procedurally improper. While the Court was initially surprised that a Joint Motion for Summary Judgment had been filed in an administrative appeal, it relied upon the representations of counsel for both the School Board and the City that such a motion was uncontested and was proper, necessary and appropriate given time constraints and the interests of judicial economy. However, based upon subsequent developments, the Court questions the procedural vehicle used to obtain the desired result (i.e., a joint motion for summary judgment as opposed to the normal administrative appellate briefing schedule).[2] The Court finds that the Joint Motion for Summary Judgment circumvented the normal procedure for administrative appeals and the Court's deviance therefrom was procedurally improper. Instead, the Court should have followed the normal briefing schedule and allowed the record to fully develop before rending a decision. Therefore, the Court's September 15, 2020 Entry granting summary judgment is void *ab initio*.

III. DECISION:

After review and consideration, the Court finds Appellee's, Jane Doe, Motion well-taken, and is hereby **GRANTED,** in accordance with above-decision. The Court's September 15, 2020 Entry granting the School Board summary judgment is a legal nullity and is hereby **VACATED.** This matter shall proceed forward on a normal briefing schedule for an administrative appeal. This schedule is amended as follows:

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[2] In doing so, the Court in no way makes any findings or conclusions regarding the underlying merits of the case, nor does it intend to make any suggestions regarding the veracity of the representations made to the Court. Rather, the Court finds error only in the procedure used—i.e., deviating from the normal procedural process on an administrative appeal and failing to allow each party to file an appellate brief and fully develop the record before rendering a decision. The Court's finding is from a procedural standpoint only and should not be used as an indication or suggestion regarding the underlying merits of the case.

Amended Case Schedule	Latest Time of Occurrence
Filing of Record and any additional evidence of any party pursuant to R.C. 2781.031(D)	December 21, 2020
Filing of Appellant's Brief and/or Amended Brief if additional evidence is added to the record on appeal	January 26, 2021
Filing of Appellees' Briefs	February 16, 2021
Filing of Appellant's Reply Brief	March 2, 2021
Oral Hearing Date	March 9, 2021

Further, pursuant to Civil Rule 53 and Local Rule 99.02, this case is referred to Magistrate Elizabeth Watters for oral hearing/argument on this appeal on **Tuesday, March 9, 2021 at 9:00 a.m., 345 South High Street, Courtroom 5C, Columbus, Ohio**. Counsel shall copy the assigned Magistrate with all future filings that affect the referred matter. Counsel shall confer with the assigned Magistrate regarding any scheduling changes.

IT IS SO ORDERED.

Electronic Notification To:
Counsel of Record

Franklin County Court of Common Pleas

Date: 11-30-2020

Case Title: UPPER ARLINGTON CITY SCHOOL DIST BD OF E -VS- CITY OF UPPER ARLINGTON BUILDING DEPT

Case Number: 20CV004102

Type: ENTRY

It Is So Ordered.

/s/ Judge Gina Russo

Court Disposition

Case Number: 20CV004102

Case Style: UPPER ARLINGTON CITY SCHOOL DIST BD OF E - VS- CITY OF UPPER ARLINGTON BUILDING DEPT

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0041022020-10-1599980000
   Document Title: 10-15-2020-MOTION TO VACATE JUDGMENT - NON-PARTY: JANE DOE
   Disposition: MOTION GRANTED