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# SJC upholds dismissal of zoning appeal for lack of standing

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Sander Rikleen
Sherin and Lodgen

Amy Hahn
Sherin and Lodgen

The threshold question in many land use appeals is whether the appealing party has standing to object to the action of the local Building Inspector or Zoning Board. In an unusual step on March 6, the Massachusetts Supreme Judicial Court (SJC) announced the outcome of a zoning appeal, Murchison v. Sherborn Zoning Bd. of Appeals, SJC-12867 (March 6, 2020), prior to issuance of an opinion, and just one day after oral arguments were heard.(1) The SJC reversed an Appeals Court

decision and affirmed the Land Court's dismissal of an abutters' appeal because the abutters lacked standing. The endorsement on the docket reads: "[t]he judgment of the Land Court dated June 5, 2018, dismissing the plaintiffs' complaint for lack of standing, is hereby affirmed. Opinion to follow."

The case arose when Merriann Panarella and David Erichson (the "Defendants") sought to build a home on a vacant 3-acre parcel in Sherborn that met frontage, lot size, and front yard setback requirements. On June 29, 2016, a foundation permit for a single-family home was issued. This permit was appealed by Robert and Alison Murchison (the "Plaintiffs"), who lived across the street from the vacant parcel, based on an alleged violation of the lot width zoning requirement.

The Sherborn Zoning Board of Appeals upheld the foundation permit and Plaintiffs appealed to the Land Court under G.L.c. 40A, §17. Following trial, the Land Court dismissed the case, holding that Plaintiffs lacked standing, and entered judgment for Defendants on June 5, 2018.

Undaunted, Plaintiffs appealed to the Appeals Court. In Murchison v. Zoning Bd. of Appeals of Sherborn, 96 Mass. App. Ct. 158 (Sept. 30, 2019), the Appeals Court accepted Plaintiff's argument that they were aggrieved, and therefore had standing to appeal, because the lot width requirement "protects their interest in preventing the overcrowding of their neighborhood and that this interest would be harmed by the proposed development." The Appeals Court expressed no view on the merits of the case, and remanded to the Land Court for further proceedings, ruling that it was clear error to conclude that the Plaintiffs did not have standing.

Standing is an essential issue in zoning appeals because only persons "aggrieved" have standing to pursue their complaints about a neighbor's project through the courts. Traditionally, Massachusetts Courts have required a perceptible injury in addition to the theoretical violation of a zoning provision to support standing. Kenner v. Zoning Bd. of Appeals of Chatham, 459 Mass. 115, 120 (2011). The Appeals Court's ruling threatened to give standing to parties who merely alleged a zoning violation, which is present in virtually all such cases. See Chilton v. City of Medford Zoning Bd. of Appeals, No. 17 MISC 000623 (RBF) (Mass. Land Ct. Oct. 30, 2019) (asserting plaintiffs had standing per se under Murchison).

The Defendants sought further appellate review by the SJC, which request was supported by the Real Estate Bar Association for Massachusetts, Inc., The Abstract Club, and the Home Builders and Remodelers Association of Massachusetts, Inc.

Further appellate review was granted on December 23, 2019, and the date for oral argument was established almost immediately. At the SJC, NAIOP Massachusetts, the Real Estate Bar Association for Massachusetts, Inc., The Abstract Club, and the Home Builders and Remodelers Association of Massachusetts, Inc. all filed briefs supporting reversal of the Appeals Court decision.

At oral argument on March 5, 2020, the SJC grappled with how the Plaintiffs had a perceptible injury, sufficient to establish standing, from a proposed house on a 3-acre parcel across the street which complied with lot frontage and front yard setback requirements.

The SJC's ruling announced the day after oral argument holds that the Plaintiffs do not have standing to appeal their neighbors' foundation permit. Although the Court's reasoned opinion has not yet been issued, it should be expected that the forthcoming SJC decision will make clear that standing to pursue a zoning appeal requires more than the mere allegation of a zoning violation – there must be evidence of an actual injury to plaintiff affecting one of the values zoning is meant to protect against (often an impact on traffic, noise, or property values), and not merely an alleged violation of a zoning requirement.

As gratifying as the outcome must be to the Defendants, it must be remembered that the foundation permit was issued on June 29, 2016, and the Land Court case was commenced on November 9, 2016, meaning that the project has already been delayed more than three years by a neighbor who was ultimately held to lack standing to object to their project. When faced with a neighbor's challenge to a land use permit, all project proponents should consult with an experienced land use lawyer about the issues raised, and especially whether the objecting neighbor has standing to appeal.

Sander Rikleen is a partner in the litigation department, and Amy Hahn is a law clerk at Sherin and Lodgen, Boston, Mass.

(1.) Although announcing the outcome of a case prior to issuing a decision is not without precedent, see, e.g., In the Matter of a Minor, SJC-12846 (Jan. 8, 2020) (adoption); Recinos v. Escobar, 473 Mass. 734, 736 (2015) (special immigrant juvenile status); Watts v. Commonwealth, 468 Mass. 49, 51 (2014) (criminal jurisdiction over a juvenile); ¬Hodas v. Morin, 442 Mass. 544, 545 n.3 (2004) (parentage of an about to be born baby); Custody of a Minor (No. 1), 391 Mass. 572, 573 n.1 (1984); Commonwealth v. Aldoupolis, 390 Mass. 438, 439 (1983) (empaneling a criminal jury); Commonwealth v. Bianco, 390 Mass. 254, 256 (1983) (challenge to criminal sentence), this is the first case of which the authors are aware in which this practice has been applied in the land use context, indicating that the Court was concerned about the impact of the Appeals Court's holding on other zoning appeals winding their way through the courts.