



Standing to Sue: When May a Property Owner Bring Suit to Restrain Zoning Violations?

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Municipal zoning ordinances are intended to promote the common good and general welfare of a community. They protect property owners, and the community at large, by restricting the manner in which property may be used. It is the responsibility of municipalities to enforce zoning, but sometimes disputes arise when a property owner believes that a municipality is neglecting or refusing to take action on a zoning violation.

While aggrieved property owners may look to the courts for relief, such relief is not freely available. The legal standing of a property owner to seek enforcement of an ordinance is almost always a key issue in such a case.

These issues were recently explored by the Michigan Court of Appeals (the "Court") in the case of *Schall v. City of Williamston*.

THE BACKGROUND FACTS

Plaintiffs William and Melanie Schall sought injunctive relief to compel their neighbors, D&G Equipment, Inc. (owned by co-defendants Elden and Jolene Gustafson) to comply with the City of Williamston's zoning ordinance that allows outdoor display of farm implements for sale, but only if a special use permit is first obtained. The ordinance also provides that in order to be granted a special use permit, a green landscape buffer must be installed to shield a sales display from neighboring properties.

The plaintiffs also sought a writ of mandamus to compel the city and its contract zoning administrator to enforce the ordinance. The trial court ruled in favor of the plaintiffs, granting plaintiffs' motion for summary disposition and denying defendants' motion for summary disposition, finding that defendants' use of their property violated the city's zoning ordinance and ordered the zoning administrator to enforce the ordinance.

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THE APPEAL

The defendants appealed the lower court decision. On appeal, defendants raised a number of arguments – all of which were rejected by the Court – including that the plaintiffs lacked standing.

The Court’s analysis provides insights for Michigan municipalities as to if and when a property owner may be able to bring a cause of action to seek enforcement of a zoning ordinance.

LEGAL STANDING OF A PROPERTY OWNER

Property owners may rely on the protections created by zoning ordinances, but may not seek court enforcement of such regulations without standing.

According to the Court, standing requires that a party have: (i) “a sufficient interest in the outcome of litigation to ensure vigorous advocacy” and (ii) “some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.” A litigant also has standing if he or she “has a special injury or right, or substantial interest,” which “will be detrimentally affected in a manner different from the citizenry at large.”

In this case, the Court found that, as abutting property owners, the plaintiffs “patently have a real interest in the subject matter of the controversy and the outcome of the litigation.” The Court further explained that the Michigan Supreme Court has established that neighboring property owners have the right to seek equitable relief to enforce compliance with local zoning regulations.

Finally, the Court ruled that plaintiffs suffered special damages, distinct and different from those suffered by the public generally. As the only abutting property owners, the plaintiffs were uniquely affected by the alleged zoning violation.

The defendants cited a number of cases that stand for the proposition that property owners have no standing to appeal the administrative actions of zoning officials. However, the Court found such arguments irrelevant in that plaintiffs’ action was not an appeal of administrative zoning action, but rather an independent action for equitable relief.

The defendants further challenged plaintiffs’ standing on the basis that the nuisance that plaintiffs objected to – the selling of farm implements on defendants’ property – was really a public nuisance or nuisance in fact, affecting an interest common to the general public, rather than one specific to the individual plaintiffs.

The Court made clear that the plaintiffs did not allege that defendants’ actions constituted a public nuisance or nuisance in fact, but rather a violation of the zoning ordinance, giving rise to a nuisance per se (which is “an act, occupation, or structure which is a nuisance at all times and under any circumstances”) under applicable statutes.

Since a neighboring property owner can bring an equitable action to enjoin a violation of local zoning that is a nuisance per se, the Court found defendants’ discussion of public nuisance issues to be irrelevant.



For all of these reasons, the Court found that the plaintiffs had standing to bring their action.

CONCLUSION

Finding that a property owner has standing to maintain a private cause of action to restrain a zoning violation requires courts to strike a balance - on the one hand to interpret standing requirements liberally, and on the other to not grant standing in instances where it would lead to interference with municipal management.

In any event, in most instances the best forum to resolve zoning ordinance disputes is not the courtroom. By working with property owners, most problems can be abated and disputes can be resolved. But when a case does go to court, municipalities need to be ready. While challenging a plaintiff's standing to bring suit is often the first line of defense, as in *Schall v. Williamston* there are cases where plaintiffs are granted standing and defendants need to be ready to argue the merits.

Do you have questions about your zoning ordinances? Contact attorney Laura Genovich at lgenovich@fosterswift.com or 616.726.2238.

