

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS GUASTELLO,

Plaintiff-Appellant,

v

TRANS INNS MANAGEMENT, INC., and
CITY OF UTICA,

Defendants-Appellees.

UNPUBLISHED

July 18, 1997

No. 191296

Macomb Circuit Court

LC No. 95-003221 CE

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant City of Utica in this action challenging the Utica city council's decision to approve the application of defendant Trans Inns Management's for a conditional use permit to construct a hotel. We affirm.

Plaintiff, the owner of a Comfort Inn located in Utica, Michigan, sought to prevent Trans Inns from constructing a hotel on undeveloped property located near his motel. In order to provide utilities necessary to develop an adjacent parcel owned by Utica Park Place Limited Partnership, the City requested that plaintiff grant an easement over his property. In consideration for granting the easement to the City, the partnership agreed not to build a budget hotel on its property. Plaintiff alleges that the City assured him that a hotel would not be built on nearby property owned by Samir and Mary Jane Danou, which also benefited from the easement.

In August of 1994, the Danous commenced an action for a declaratory ruling that their property was not burdened by a restrictive covenant prohibiting the construction of a hotel. The Danous also entered into a purchase agreement with Trans Inns, and Trans Inns applied for a conditional use permit to construct a Marriott Courtyard Hotel on the property. At a hearing held on June 6, 1995, the City planning commission recommended that the City council approve the application. The council approved the application and granted the conditional use permit at a special council meeting held later that evening. Plaintiff then commenced the instant action in which he asserted both a claim of appeal from the council's decision and a cause of action for breach of contract. Two weeks later, the trial court in the

declaratory judgment action, granted the Danous' motion for summary disposition and entered a permanent injunction against plaintiff prohibiting him from interfering with the construction of a hotel on the Danous' property.¹ The trial court in the case at bar subsequently granted the City's motion for summary disposition.

Plaintiff contends that the trial court erred in granting the City's motion for summary disposition because he had standing to challenge the grant of a conditional use permit to a neighboring landowner and there exist factual questions that preclude summary disposition. Although the trial court improperly considered a motion for summary disposition in this case, we decline to remand for further proceedings because we are satisfied that plaintiff does not have standing to appeal from the City council's decision.

The proper means of challenging a final decision to grant or deny a special or conditional use permit, whether made by the zoning board of appeals or another local body, is to file a claim of appeal in the circuit court. *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200-201; 550 NW2d 867 (1996); *Krohn v City of Saginaw*, 175 Mich App 193, 195-196; 437 NW2d 260 (1988). In this case, plaintiff filed a complaint that included both an appeal and a claim for breach of contract that fell within the circuit court's original jurisdiction.² Defendant did not argue that plaintiff's filing of a complaint did not constitute a claim of appeal, but instead moved for summary disposition. The trial court improperly considered the motion with respect to plaintiff's appeal because the court was sitting as a court of appellate jurisdiction, not a court of original jurisdiction. *Macenas v Village of Michiana*, 433 Mich 380, 387-388; 446 NW2d 102 (1989); *Carleton, supra* at 201-203. Ordinarily, this Court would remand this case to the circuit court for disposition of plaintiff's appeal under the appropriate standard of review, but we decline to do so under the circumstances of this case because plaintiff does not have standing to challenge the city council's decision to grant Trans Inns a conditional use permit. See *Carleton, supra* at 203-204.

A person's right to appellate review of a zoning board's decision is similarly granted by statute. *Western Michigan Univ Bd of Trustees v Brink*, 81 Mich App 99, 102; 265 NW2d 56 (1978). In this case, plaintiff's right to appeal is governed by MCL 125.585(11); MSA 5.2935(11) because the City council, as the final decision-maker with regard to conditional use permits, possesses the authority of the zoning board of appeals. *Krohn, supra* at 196.³ The statute provides that "a person having an interest affected by the zoning ordinance may appeal to the circuit court." MCL 125.585(11); MSA 5.2935(11).

Plaintiff argues that he has standing because he is the owner of an existing motel that will be affected by the construction of a nearby motel that the market allegedly cannot support. We disagree. Plaintiff's status as a non-abutting land owner is of no consequence, and the essential question is whether he can legitimately claim or has alleged special damages. *Brown v East Lansing Zoning Bd of Appeals*, 109 Mich App 688, 700-701; 311 NW2d 828 (1981). Special damages are those that are not common to similarly situated property owners and relate to a person's beneficial use and enjoyment of his own land. *Village of Franklin v Southfield*, 101 Mich App 554, 557; 300 NW2d 634 (1980); *Brink, supra* at 105. Plaintiff's concern about "economic blight" and over-development is common to similarly situated property owners and, thus, does not establish special damages. *Village of Franklin, supra* at 557. While couched in terms of a concern for the community, plaintiff's interest is

merely a desire to thwart development and to prevent neighboring landowners from competing with his motel. We agree with other jurisdictions that have held that such an anti-competitive interest is insufficient to confer standing to appeal from a zoning decision. E.g. *Sun-Brite Car Wash, Inc. v Bd of Zoning Appeals*, 515 NYS2d 418; 508 NE2d 130, 134-135 (1987); *Swain v County of Winnebago*; 111 Ill App 2d 458; 250 NE2d 439, 444 (1969). Accordingly, we affirm the trial court's dismissal of plaintiff's complaint because plaintiff does not have standing to appeal from the City council's grant of a conditional use permit to Trans Inns.⁴

Affirmed.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad

¹ In *Danou v Comfort Inn*, unpublished per curiam opinion (Docket No. 188377, issued October 8, 1996), we affirmed the grant of summary disposition in the declaratory action.

² Plaintiff has not challenged the trial court's grant of summary disposition with respect to his breach of contract claim on appeal.

³ Cf. *Carleton, supra* at 198-201 (holding that the circuit court reviews decisions of a township board of trustees with regard to special use permits under Const, 1963, art 6, § 28, not the statutory provision applicable to appeals from a township zoning board of appeals, MCL 125.293a; MSA 5.2963[23a]).

⁴ The trial court properly denied plaintiff's request to amend his pleading to assert a claim for superintending control or writ of mandamus because amendment would have been futile. *Blue Water Fabricators, Inc v New Apex Co*, 205 Mich App 295, 299; 517 NW2d 319 (1994). A direct appeal to the circuit court is the proper procedure for challenging a zoning decision. *Carlton, supra* at 200-201.