

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Stephen C. Alexander,	:
Appellant	:
	:
v.	:
	:
Zoning Hearing Board of	: No. 1437 C.D. 2007
Mount Joy Township	: Submitted: November 9, 2007

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JAMES GARDNER COLINS, Senior Judge \*  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION  
BY SENIOR JUDGE COLINS**

**FILED: January 22, 2008**

Stephen C. Alexander appeals an order of the Court of Common Pleas of Adams County that denied his appeal from a decision of the Zoning Hearing Board (Board) of Mount Joy Township that denied, based upon its conclusion that Alexander lacked standing, a validity challenge Alexander had filed with the Board.

Alexander lives in a house that is located on Barlow Two-Taverns Road (the Road) which is located, at least in part, in Mt. Joy Township. As suggested in the record, the prospect exists that an unknown entity will begin to develop land located adjacent to the Road and near Alexander's home. Alexander filed an application for a hearing with the Township's zoning hearing board, challenging six separate matters including: the Mount Joy Township Zoning

\*The decision in this case was reached prior to the date that Judge Colins assumed the status of senior judge.

Ordinance, portions of the current zoning ordinance, a chapter of the Mount Joy Township Code, the approval of plans for a proposed residential development called “The Fields at Gettysburg,” approval of a sewer facilities module, and all ordinances upon which certain members of the Township’s Board of Supervisors voted.

The Board conducted a hearing, but concluded that Alexander had failed to offer evidence establishing that these matters imposed any current harm or threatened future harm to the property on which he resides. Based upon that conclusion, the Board held that Alexander lacked standing to pursue his challenges. The Board also rejected Alexander’s claim that the Board had not complied with hearing notice provisions. Further, the Board rejected Alexander’s challenge to the Township Code, approval of plans, and approval of sewer module proposals, noting that the Board of Supervisors, rather than the Zoning Hearing Board, had jurisdiction over such matters. Also, the Board rejected Alexander’s procedural challenge to ordinances based upon the persons who voted, noting that the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§10101-11202, requires objectors to assert procedural challenges within thirty days of the enactment of a zoning ordinance.

The trial court affirmed the Board’s action, noting first that Alexander had essentially waived the issue of proper notice by failing to assert his notice challenge with necessary specificity and further waived the issue by including insufficient argument in his appeal to the trial court such as would enable the court to address the argument. With regard to the standing issue, the trial court rejected Alexander’s claim that the Board improperly failed to admit evidence pertinent to that issue into the record. The trial court concluded that that evidence was

immaterial to the standing issue, and further opined that, even if the evidence had been included, the court would still have agreed with the Board's conclusion that Alexander lacks standing.

In this appeal, Alexander asserts that (1) the Board erred in concluding he lacks standing, and (2) the Board erred by refusing to consider the evidence it rejected. Accordingly, our review is confined to those issues. Initially, we note that Alexander's hearing application noted that the property on which he resides is the subject of his application, and his application --- a challenge to the validity of the ordinance --- arises under Section 916.1 of the MPC, added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10916.1. That section clearly sets forth those persons who have the right to bring a substantive validity challenge:

(a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use of development of land in which he has an interest shall submit the challenge ....

(b) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the zoning hearing board ....

Under subsection (a), Alexander would not have standing as a landowner because the ordinance does not affect the use or development of his land.<sup>1</sup> However, subsection (b) allows persons who do not own the land affected by an ordinance to challenge the ordinance if they are aggrieved by a use or development permitted on the land by virtue of an ordinance.

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<sup>1</sup> As the Board and trial court noted, Alexander has not definitively established that he is a landowner. He asserted that he has an unrecorded interest in the land, but offered no other support for this proposition. The trial court noted that the public records reflect the fact that someone other than Alexander owns the property.

In order for a party to establish that it is aggrieved, the party must show that it has a substantial, direct, and immediate interest in the subject of the litigation that is not remote. *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000). The particular zoning ordinances Alexander seeks to challenge relate to (1) designations of the current district zoning map, specifically those aspects regarding areas zoned RR and AC, and (2) various other zoning-related ordinances such as dimensional requirements, planned golf community, establishment of future right-of-way widths for streets, conservation design development, and optional transfer of development rights (TDR).

However, as the trial court noted, Alexander's zoning challenge consists of and is almost entirely based upon avowed concerns about the impact that future development along the Road will have upon the property on which he resides. The trial court neatly summarized the lack of support for Alexander's claim of standing:

A cursory review of the sections of the Ordinance which Alexander challenges reaffirms the Board's conclusion. For instance, Alexander seeks to challenge the dimensional requirements for zoning districts within the Township. His challenge to the dimensional requirements is not based on the effect of those dimensional requirements upon his property. Rather, he apparently takes issue with the effects of the dimensional provisions on subdivisions with which he has no direct connection other than that generally shared as a member of the Township.

An exhaustive review of the record reveals a paucity of information concerning the proximity of Alexander's property to the proposed developments which he is apparently challenging. His claims of 'massive amount of development right up the road' do little to help this Court address the issue of standing. Moreover, his claim of being 'aggrieved' consists of speculative possible future harm. Since these allegations are insufficient to establish standing, I find no error in the Board's determination.

Trial Court opinion at 5-6.

Finally, with regard to the Board's allegedly improper rejection of evidence, we note that Alexander sought to introduce at the hearing (1) a petition local residents signed seeking to have the Township post signs on Barlow-Two Taverns Road, (2) a report generated by a Township engineer suggesting the location to place signs on the Road warning of curves and suggested speed limits, and (3) a copy of an e-mail relating to the method by which the Adams County Office of Planning and Development predict a projected number of automobile trips on County roads.

Alexander argues that this evidence is relevant to the standing issue. However, we agree with the trial court's conclusion that this evidence is not pertinent to the issue of whether Alexander has a direct and immediate interest in the ordinances he seeks to challenge. Accordingly, we affirm the trial court's conclusion that the omission of the evidence by the Board does not constitute legal error.

Because this Court's review of the record, like the trial court's, affords no insight into details of real direct and immediate harm to Alexander, we affirm the sound decision of the Honorable Michael A. George holding that Alexander has not established his standing to bring his validity challenge.

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JAMES GARDNER COLINS, Senior Judge

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Zoning Hearing Board of  
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No. 1437 C.D. 2007

**ORDER**

AND NOW, this 22<sup>nd</sup> day of January 2008, the order of the Court of  
Common Pleas of Adams County is affirmed.

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JAMES GARDNER COLINS, Senior Judge