**[Cite as *Clifton v. Blanchester*, 2010-Ohio-2309.]**

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLINTON COUNTY

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|---|---|---|
| RICHARD CLIFTON, | : | |
| Plaintiff-Appellant, | : | CASE NO. CA2009-07-009 |
| | : | O P I N I O N |
| - vs - | | 5/24/2010 |
| | : | |
| VILLAGE OF BLANCHESTER, | : | |
| Defendant-Appellee. | : | |

CIVIL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case No. CVH20060231

William G. Fowler, Gregory J. Demos, 12 West South Street, Lebanon, Ohio 45036-1708, for plaintiff-appellant

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**YOUNG, P.J.**

**{¶1}** Plaintiff-appellant, Richard Clifton, appeals from the Clinton County Court of Common Pleas decision granting summary judgment in favor of defendant-appellee, the village of Blanchester, upon remand from this court in a lawsuit involving a zoning dispute. For the reasons outlined below, we affirm.

**{¶2}** In 1967, Clifton purchased 42 acres of real property located at the

intersection of Collins-Riley Road and Middleboro Road in Blanchester, Ohio. After a number of years, and after he sold off several smaller segments of his property, Clifton now owns and resides on approximately 27 acres of real property located at that intersection.

**{¶3}** In 1993, Clifton purchased an additional 99 acres of farmland adjacent to his property along Middleboro Road. Several years later, in 1997, Clifton sold 2.87 acres of this farmland to J & M Precision Machining, Inc. (J & M). The remaining 97 acres of Clifton's farmland runs adjacent to the property he previously sold to J & M.

**{¶4}** On February 28, 2002, Blanchester rezoned J & M's property from an I-1 classification (Restricted Industrial) to I-2 classification (General Industrial), which permitted J & M to begin running a larger operation. None of Clifton's property, all of which sits just outside Blanchester's jurisdictional boundaries, was zoned by the village.

**{¶5}** On April 3, 2006, Clifton filed a complaint alleging that Blanchester's decision to rezone J & M's property constituted a compensable "taking" of his adjacent property.[1] Blanchester subsequently filed a motion for summary judgment, which the trial court granted. Clifton then appealed, arguing that the trial court improperly awarded summary judgment in Blanchester's favor.

**{¶6}** On appeal, this court agreed with the trial court's decision finding the rezoning of J & M's property did not deprive Clifton of all economic use of his land. *Clifton v. Village of Blanchester*, Clinton App. No. CA2007-09-040, 2008-Ohio-4434, ¶12 (*Clifton I*). However, this court also found that the trial court's overall analysis

1. Clifton filed his original complaint on March 29, 2002, alleging that Blanchester's rezoning of the J & M property was unconstitutional and that the rezoning constituted a "taking." The proceedings related to his March 2002 complaint eventually terminated and are not relevant to this appeal.

was lacking because the court failed to address the possibility of a partial taking pursuant to *Penn Central Transp. Co. v. City of New York* (1978), 438 U.S. 104, 98 S.Ct. 2646. Id. at ¶13. This court, therefore, reversed the grant of summary judgment "insofar as it failed to address the issue of whether the rezoning effected a partial taking of [Clifton's] property under *Penn Central* * * *" and remanded the case for "the limited purpose of addressing that issue." Id. at ¶14.

**{¶7}** On September 12, 2008, Blanchester filed an application for reconsideration claiming, among other things, that the trial court failed to address the issue of standing, something that it had previously raised to the trial court and again to this court on appeal. Finding that it was "appropriate that the trial court consider the standing issue," this court granted Blanchester's application for reconsideration and modified the instructions upon remand as follows:

**{¶8}** "We reverse the grant of summary judgment insofar as it failed to address the issue of whether the rezoning affected a partial taking of appellant's property under *Penn Central*, and remand the case for the purpose of addressing that issue and the issue of standing previously raised by the village in its motion for summary judgment."

**{¶9}** On May 1, 2009, after the matter was remanded to the trial court, Blanchester filed a motion for summary judgment, which the trial court granted. In so holding, the trial court found that Clifton did not have standing to pursue his claim against Blanchester where it "did not rezone any of [his] property." In addition, after conducting a *Penn Central* analysis, the trial court found "no partial taking of [Clifton's] property requiring compensation by [Blanchester]."

**{¶10}** Clifton now appeals from the trial court's decision granting summary

judgment in Blanchester's favor upon remand, raising two assignments of error.

**{¶11}** Assignment of Error No. 1:

**{¶12}** "THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT [CLIFTON] LACKED STANDING TO PURSUE HIS CLAIM OF A PARTIAL REGULATORY TAKING AGAINST [BLANCHESTER]."

**{¶13}** In his first assignment of error, Clifton argues that the trial court erred by finding he lacked standing to pursue his claim against Blanchester. We disagree.

**{¶14}** Generally, before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue. *Ohio Contrs. Assn. v. Bicking*, 71 Ohio St.3d 318, 320, 1994-Ohio-183; *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998-Ohio-275. "Standing" is defined as a "'party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Commrs.*, 124 Ohio St.3d 390, 2010-Ohio-169, ¶19, quoting Black's Law Dictionary (8th Ed.2004) 1442. "[T]he question of standing depends upon whether the party has alleged such a personal stake in the outcome of the controversy * * * as to ensure that the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." (Internal citations and quotations omitted.) *Ohio Pyro, Inc. v. Ohio Dept. of Commerce,* 115 Ohio St.3d 375, 2007-Ohio-5024, ¶27; *Brinkman v. Miami Univ.*, Butler App. No. CA2006-12-313, 2007-Ohio-4372, ¶30. To decide whether one has standing to pursue his claim, "courts must look to the substantive law creating the right being sued upon to see if the action has been instituted by the party possessing the substantive right to relief." *Shealy v. Campbell* (1985), 20 Ohio St.3d 23, 25. Whether undisputed facts confer standing to assert a

claim involves a question of law that this court reviews de novo. *Cuyahoga Cty. Bd. of Commrs. v. State of Ohio,* 112 Ohio St.3d 59, 2006-Ohio-6499, ¶23.

**{¶15}** While the general principles regarding standing are well-established, this case presents the intriguing question of whether a nonresident contiguous property owner has standing to bring an action against an adjacent political subdivision seeking compensation for a rezoning of property located solely within its jurisdictional boundaries. After thoroughly considering this issue of first impression, we find that such an owner does not have standing.

**{¶16}** Neither party provided this court with any relevant case law specifically addressing the issue at hand, nor did our research turn up any case law directly on point. However, while it is certainly a novel concept, a similar question has been addressed by several courts throughout the country. Therefore, we find a brief review of that case law is appropriate.

**{¶17}** In *Creskill Borough v. Dumont Borough* (1953), 15 N.J. 238, which has since been deemed the "leading case" regarding whether a nonresident has standing to contest an adjacent political subdivision's zoning decision, the New Jersey Supreme Court, addressing whether the trial court erred "in considering property in adjoining municipalities" as it relates to their zoning decisions,[2] stated the following:

**{¶18}** "At the very least [the municipality] owes a duty to hear any residents

2. It should be noted that in *Creskill*, the New Jersey Supreme Court *did not* address whether "the individual plaintiffs who reside in other boroughs" were "proper parties" to the action. Id. at 245. Instead, the court determined that it was "unnecessary" because one of the parties "own[ed] property on Block 197, the very area affected by the amendatory ordinance." Id. In turn, based on this finding, the court concluded that it was "*immaterial* whether the * * * remaining individual plaintiffs have adequate status to challenge the ordinance * * *." (Emphasis added.) Id. Therefore, while we certainly understand the insight *Creskill* provides as to whether a municipality should *consider* the effect zoning changes may have on any outlying properties, including those beyond its jurisdictional boundaries, this court is reluctant to grant this decision any further significance.

and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes and to give as much consideration to their rights as they would to those of residents and taxpayers of [the municipality.] To do less would be to make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning." Id. at 247.

**{¶19}** From this decision, the following line of cases arose.

**{¶20}** In *Koppel v. City of Fairway* (1962), 189 Kan. 710, the Supreme Court of Kansas was faced with the question of whether "only those persons within the city * * * may protest the change in the zoning ordinance * * *." In holding that nonresidents were also able to protest the change, the court stated the following:

**{¶21}** "[T]he city which sought to change a tract that bordered on the other city from residential zone to a retail business district classification * * * owed a duty to hear any resident of the adjoining city whose property fronted on such tract and who might be adversely affected by the proposed zoning change, and to give as much consideration to their rights as it would give to those of its own residents." Id. at paragraph one of the syllabus.

**{¶22}** The court then stated that the applicable statute "makes no requirement of residency or location of property" and "clearly appears * * * to protect all designated property affected, whether located within or without the city adopting the changed zoning ordinance." Id. at 713-714. In so holding, the court quoted heavily from the New Jersey Supreme Court's decision in *Creskill* and found that decision to be "analogous." Id. at 714.

**{¶23}** In addition, in *Scott v. City of Indian Wells* (1972), 6 Cal.3d 541, after first noting that "[w]hether a nonresident but obviously affected landowner has

standing to contest a city's zoning * * * has not previously been settled in our state," the Supreme Court of California determined that "adjoining landowners who are not city residents * * * have standing to challenge zoning decisions of the city which affect their property." Id. at 547, 549. In reaching this conclusion, the court found that "[s]tates which have considered the issue have generally held that affected property owners or residents have standing to contest a municipality's zoning even though they are not residents of the municipality." Id. In so holding, the court cited to the "leading case" of *Creskill* and to the Supreme Court of Kansas' decision in *Koppel.*

**{¶24}** While not directly citing to the New Jersey Supreme Court's decision in *Creskill*, other courts have also found contiguous nonresident property owners have standing to contest an adjacent municipality's zoning decision. See *Whittingham v. Village of Woodrige* (1969), 111 Ill. App.2d 147, 150-151 ("invisible corporate limit line" no bar to nonresident property owner to challenge zoning decision of neighboring political subdivision); *Dahman v. City of Ballwin* (Mo.App.1972), 483 S.W.2d 605, 609 ("existence of a corporate boundary line should not deny an adjacent landowner outside the city standing to challenge the validity of a proposed zoning classification"); *Const. Industry Assn. of Sonoma County v. City of Petaluma* (C.A.9, 1975), 522 F.2d 897, 905 (nonresident landowner had standing to challenge adjacent municipality's building plan); *Orange Fibre Mills, Inc. v. City of Middletown* (N.Y.Sp.Ct.1978), 94 Misc.2d 233, 235 (applicable statute did not bar nonresident property owner located outside adjacent municipality from "seeking relief" as a result of its zoning decision); *Miller v. Upper Allen Twp. Zoning Hearing Bd.* (1987), 112 Pa.Cmwlth. 274, 283 (nothing in municipality planning code "suggests that the protections and benefits of zoning are to be limited to residents or property owners

within the municipality which enacted the ordinance"); *Neu v. Planning Bd. of the Twp. of Union* (2002), 352 N.J. Super. 544, 552 (nonresident property owners within "close proximity" to proposed major subdivision have a "sufficient stake to have standing to question [b]oard actions that might impact * * * their property").

**{¶25}** Although these cases are certainly informative, we note that none of these cases specifically dealt with the issue before this court; namely, whether a nonresident contiguous property owner has standing to bring an action against an adjacent political subdivision seeking compensation for rezoning property located solely within its own jurisdictional boundaries. Furthermore, even if these cases were directly on point, this court is not bound to adhere to any of those decisions. See *State v. Steele*, Butler App. No. CA2003-11-276, 2005-Ohio-943, ¶42; *Walker v. Firelands Community Hosp.*, 170 Ohio App.3d 785, 2007-Ohio-871, ¶49; *Roemisch v. Mutual of Omaha Ins. Co.* (1974), 39 Ohio St.2d 119, 125. Therefore, although this court's holding may conflict with the prevailing view across the country, and while some may argue that our decision makes a "fetish out of invisible municipal boundary lines and a mockery of the principles of zoning," we affirm the trial court's decision finding Clifton, a nonresident contiguous property owner, did not have standing to pursue his claim against Blanchester, a neighboring political subdivision, seeking to receive compensation for its zoning decisions on property located solely within its jurisdictional boundaries.

**{¶26}** Turning to the facts of this case, the trial court, in its June 29, 2009 decision granting summary judgment in Blanchester's favor upon remand, determined that Clifton did not have standing to pursue his claim "[b]ecause the Village of Blanchester did not rezone any of [his] property * * *," and, consequently,

that he did not have "a right to seek damages based upon the rezoning of adjacent property." After a thorough review of the record, we find the trial court's reasoning to be sound, and therefore, we affirm the trial court's decision.

**{¶27}** It is undisputed that Blanchester's decision to rezone the J & M property did not constitute a physical invasion of Clifton's property, nor did it interfere with the use of his property. In fact, by merely rezoning property within its own jurisdiction boundaries, Blanchester did not place *any* limitation on Clifton's ability to continue farming the property or to sell it for residential purposes. As a result, because Blanchester's decision to rezone the J & M property did not hinder Clifton's use of his own property in any way, we find Clifton has not alleged such a personal stake in the outcome of the controversy that would entitle him to further pursue his claim.

**{¶28}** Furthermore, within his cause of action, Clifton merely claims that he should be compensated by Blanchester for its partial regulatory taking via inverse condemnation. However, as the Ohio Supreme Court has previously stated, "the powers of local self-government, granted to a municipality by Section 3 of Article XVIII of the Ohio Constitution, do not include the power of eminent domain beyond the geographical limits of the municipality." *Britt v. City of Columbus* (1974), 38 Ohio St.2d 1, paragraph one of the syllabus; see, also, R.C. 163.63 ("any reference in the Revised Code to any authority to acquire real property by 'condemnation' or to take real property pursuant to the power of eminent domain is deemed to be an appropriation of real property pursuant to this chapter and any such taking or acquisition shall be made pursuant to this chapter"). In turn, because his property is located completely outside Blanchester's jurisdictional boundaries, the remedy Clifton seeks, which is essentially a claim for money damages resulting from an alleged

appropriation by inverse condemnation, is unavailable as a matter of law.[3] Therefore, since Clifton has no substantive right to the relief he sought to recover from Blanchester, we find he has no standing to sue.

**{¶29}** Moreover, while not dispositive of our decision in this matter, we find that any decision conferring standing to Clifton, a nonresident property owner seeking to recover from a neighboring political subdivision following its decision to rezone property, would invariably require similarly situated municipalities to endure the costly burden of defending against an infinite number of claims arising from nonresidents sitting just outside their jurisdictional boundaries. While a bright-line rule may not be necessary to eliminate these concerns, we are simply unwilling to trudge down such a slippery slope to open the floodgates on the surge of litigation.

**{¶30}** The dissent, while not explicit, essentially advocates for this court to create a new cause of action not previously available to nonresidents under R.C. Chapter 163. While we certainly understand the concerns the dissent raises, we must not overstep our own judicial limitations, but instead, adhere to the well-established principle that it is up to the Ohio Supreme Court or the General Assembly, and not the appellate courts, to create new causes of action. *Winkle v. Zettler Funeral Homes, Inc.*, 182 Ohio App.3d 195, 2009-Ohio-1724, ¶61. As noted previously, R.C. Chapter 163 simply does not allow for a municipality to appropriate property beyond its jurisdictional boundary. *Britt* at paragraph one of the syllabus; R.C. 163.63. Had the General Assembly intended to expand R.C. Chapter 163 to

3. Clifton's claim, when stripped down to its simplest form, is essentially a claim for money damages. In turn, because Clifton is seeking money damages from Blanchester, a political subdivision, we find that R.C. Chapter 2744, titled "Political Subdivision Tort Liability Act," may be implicated. However, since neither party addressed the effect, if any, that R.C. Chapter 2744 may have on this matter, we will not address that issue here.

accommodate such action, and implicitly confer standing upon those affected nonresident property owners, it would have so provided. See, e.g., *Bricker v. Board of Edn. of Preble Shawnee Local School Dist.*, Preble App. No. CA2007-10-020, 2008-Ohio-4964, ¶16.

**{¶31}** In light of the foregoing, we affirm the trial court's decision finding Clifton, a nonresident contiguous property owner, did not have standing to pursue his claim against Blanchester, an adjacent political subdivision, in an action seeking to receive compensation for its decision to rezone property solely within its own jurisdictional boundaries. Accordingly, appellant's first assignment of error is overruled.

**{¶32}** Having found Clifton lacks standing to pursue his claim against Blanchester, we would ordinarily not address any remaining arguments. See, e.g., *Williams v. McFarland Properties, L.L.C.*, 177 Ohio App.3d 490, 2008-Ohio-3594, ¶29. However, in light of our instructions to the trial court upon remand, which explicitly stated that it was to "address the issue of whether the rezoning affected a partial taking of appellant's property under *Penn Central*," we find further discussion to be necessary and appropriate.

**{¶33}** Assignment of Error No. 2:

**{¶34}** "THE TRIAL COURT ERRED WHEN IT GRANTED [BLANCHESTER'S] MOTION FOR SUMMARY JUDGMENT."

**{¶35}** In his second assignment of error, Clifton argues that the trial court improperly granted summary judgment to Blanchester because he provided evidence "illustrating a substantial loss in the value of his property" after the J & M property was rezoned, thereby justifying his partial taking claim. We disagree.

**{¶36}** Summary judgment is a procedural device used to terminate litigation and avoid a formal trial when there are no issues in a case to try. *Forste v. Oakview Constr., Inc.,* Warren App. No. CA2009-05-054, 2009-Ohio-5516, ¶7. An appellate court's review of a summary judgment decision is de novo. *Creech v. Brock & Assoc. Constr.,* 183 Ohio App.3d 711, 2009-Ohio-3930, ¶9, citing *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 1996-Ohio-336. In applying the de novo standard, a reviewing court is required to "us[e] the same standard that the trial court should have used, and * * * examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Bravard v. Curran,* 155 Ohio App.3d 713, 2004-Ohio-181, ¶9, quoting *Brewer v. Cleveland Bd. of Edn.* (1997), 122 Ohio App.3d 378, 383. In turn, an appellate court must review a trial court's decision to grant or deny summary judgment independently, without any deference to the trial court's judgment. *Bravard,* citing *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 295.

**{¶37}** A trial court may grant summary judgment only when: (1) there is no genuine issue of any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence submitted can only lead reasonable minds to a conclusion which is adverse to the nonmoving party. Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The party moving for summary judgment bears the burden of demonstrating no genuine issue of material fact exists. *Dresher v. Burt,* 75 Ohio St.3d 280, 292-293, 1996-Ohio-107. The nonmoving party must then present evidence to show that there is some issue of material fact yet remaining for the trial court to resolve. Id. at 293. A material fact is one which would affect the outcome of the suit under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505. In deciding whether a

genuine issue of material fact exists, the evidence must be construed in the nonmoving party's favor. *Walters v. Middletown Properties Co.,* Butler App. No. CA2001-10-249, 2002-Ohio-3730, ¶10.

**{¶38}** There are two types of regulatory actions that are considered to be "per se" takings for Fifth Amendment purposes. *Lingle v. Chevron U.S.A., Inc.* (2005), 544 U.S. 528, 538, 125 S.Ct.2074; see, also, *State ex rel. Shelly Materials, Inc. v. Clark Cty. Bd. of Commrs.,* 115 Ohio St.3d 337, 2007-Ohio-5022, ¶18. The first involves governmental regulations that cause an owner to suffer a permanent physical invasion of his property, while the second involves governmental regulations that completely deprive an owner of *all* economically beneficial use of his property. See, e.g., *Loretto v. Teleprompter Manhattan CA TV Corp.* (1982), 458 U.S. 419, 435-40, 102 S.Ct. 3164; *Lucas v. South Carolina Coastal Council* (1992), 505 U.S. 1003, 1019, 112 S.Ct. 2886.

**{¶39}** This court has already determined in *Clifton I* that Blanchester's decision to rezone the J & M property did not amount to a "per se" regulatory taking of Clifton's property under the Fifth and Fourteenth Amendments. See *Clifton I*, 2008-Ohio-4434 at ¶12; see, also, *Lingle v. Chevron U.S.A., Inc.* (2005), 544 U.S. 528, 538, 125 S.Ct.2074; *Shelly Materials,* 2007-Ohio-5022 at ¶18. Therefore, we will not address the "per se" regulatory takings in this opinion.

**{¶40}** However, as this court also discussed in *Clifton I*, apart from these two categories of "per se" regulatory takings, there is a third category for partial takings which is governed by the United States Supreme Court's decision in *Penn Central*. Id. at ¶11. As recently stated by the Ohio Supreme Court, *Penn Central* "recognizes an ad hoc, factual inquiry that requires the examination of the following three factors

to determine whether a regulatory taking occurred in cases in which there is no physical invasion and the regulation deprives the property of less than 100 percent of its economically viable use: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the governmental action." *State ex rel. Gilbert v. City of Cincinnati*, Slip Opinion No. 2010-Ohio-1473, ¶17, quoting *Shelly Materials* at ¶19; *State ex rel. Horvath v. State Teachers Retirement Bd.,* 83 Ohio St.3d 67, 71, 1998-Ohio-424.

**{¶41}** However, while *Penn Central* may require the examination of three factors to determine whether a regulatory taking occurred under certain circumstances, even assuming Clifton actually endured a "substantial loss" in the value of his property by Blanchester's decision to rezone the J & M property, long-standing precedent holds that the mere "diminution in a property's value, however serious, is insufficient to demonstrate a taking." *Concrete Pipe and Products of Ca., Inc. v. Constr. Laborers Pension Trust* (1993), 508 U.S. 602, 604, 113 S.Ct. 2264; *Penn Central*, 438 U.S. at 131, citing *Euclid v. Ambler Realty Co.* (1926), 272 U.S. 365, 47 S.Ct. 114 (75% diminution in value caused by zoning not a taking); *Hadacheck v. Sebastian* (1915), 239 U.S. 394, 36 S.Ct. 143 (87½% diminution in value not a taking). In fact, as stated by the Ohio Supreme Court, "something more than loss of market value or loss of the comfortable enjoyment of the property is needed to constitute a taking." *BSW Dev. Group v. Dayton,* 83 Ohio St.3d 338, 344, 1998-Ohio-287; *Sullivan v. Hamilton Cty. Bd. of Health*, 155 Ohio App.3d 609, 2003-Ohio-6916, ¶36.

**{¶42}** Applying these principles, which we find to be appropriate, we

conclude, as a matter of law, that even if we were to find he had standing to pursue his claim, Blanchester's acts of rezoning the J & M property did not amount to a partial taking requiring Clifton to receive just compensation. In this case, Clifton merely alleged that the rezoning of the J & M property caused his property to suffer a significant diminution in value, and, as noted above, "diminution in a property's value, however serious, is insufficient to demonstrate a taking." *Concrete Pipe*, 508 U.S. 602 at 604; *Penn Central*, 438 U.S. at 131. Therefore, because Blanchester's decision to rezone the J & M property did not amount to a partial taking of Clifton's property, the trial court did not err in granting summary judgment in its favor. Accordingly, Clifton's second assignment of error is overruled.

**{¶43}** Judgment affirmed.

BRESSLER, J., concurs.

HENDRICKSON, J., concurs in part and dissents in part.

**HENDRICKSON, J., concurring in part and dissenting in part.**

**{¶44}** I concur with the majority's disposition of the partial taking issue addressed under Clifton's second assignment of error. In addition to the reasoning espoused by the majority, I note that Clifton "invited" the industrial use which conflicted with his long-term investment plan of residential development when he sold a portion of his acreage to J & M Precision Machining. Any distinct investment-backed expectations Clifton may have had were impacted by his own decision to sell the land adjoining his prospective development to an industrial company. See *Penn Cent. Transp. Co. v. New York City* (1978), 438 U.S. 104, 124, 98 S.Ct. 2646.

**{¶45}** Where I diverge from the majority is on the standing issue raised under Clifton's first assignment of error. The majority surveyed cases from outside the state of Ohio that are relevant to the case at bar. The common holding running through these cases is that nonresident property owners who clearly may be affected have standing to contest a zoning decision made by a neighboring municipality. The majority distinguishes these cases on the basis that none contemplate the precise issue confronted by this court, i.e., whether a nonresident contiguous property owner may pursue a takings claim against an adjacent political subdivision.

**{¶46}** In upholding the trial court's decision, the majority reasoned that Blanchester's rezoning of J & M's property from restricted to general industrial did not impede Clifton's use of his own property in any way. The majority concluded that Clifton failed to allege a sufficient personal stake in the outcome of the controversy so as to confer standing.

**{¶47}** Contrary to the majority opinion, I would find that a party in Clifton's position has standing to pursue a takings claim. In my opinion, those cases cited by the majority finding in favor of standing suggest the more prudent approach. In view of the potential harm suffered by a contiguous nonresident property owner, I find it unjust to summarily deny such a party his day in court by relying upon invisible and somewhat arbitrary geographical limits.

**{¶48}** Certainly, I do not advocate a bright-line rule conveying standing to *any* nonresident landowner who wishes to contest a zoning action taken by a neighboring political subdivision. Rather, zoning challenges posed by nonresidents must be addressed on a case-by-case basis. I agree with the majority that these challenges should be strictly limited to avoid opening the prodigious floodgates of litigation.

**{¶49}** A court scrutinizing whether a nonresident property owner has standing to pursue a claim against an adjoining political subdivision would be required to determine whether the claimant "has alleged a personal stake in the outcome of the controversy * * *." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶27. In the present matter, this entails an examination of the substantive law creating the right being sued upon – takings jurisprudence – to see if Clifton's claim was indeed advanced by a party possessing a substantive right to relief. *Shealy v. Campbell* (1985), 20 Ohio St.3d 23, 25.

**{¶50}** Clifton arguably presented evidence that his property was impacted by Blanchester's rezoning of J & M's property and that the rezoning could have affected a partial regulatory taking. Admittedly, as I indicated in my concurrence, Clifton's takings claim is ultimately without merit. Nonetheless, I would rule that Clifton is still entitled to make his claim and have the trial court scrutinize the merits of his case. *Ohio Pyro* at ¶27.

**{¶51}** For these reasons, I respectfully dissent from the majority's analysis on the first assignment of error and would find that Clifton had standing to assert a takings claim as a result of Blanchester's rezoning of J & M's property.