

[Cite as *State ex rel. Stone Ridge Maintenance Assn. v. Seven Hills*, 2015-Ohio-530.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102122

**STATE OF OHIO, EX REL.
STONE RIDGE MAINTENANCE ASSN.**

RELATOR

vs.

CITY OF SEVEN HILLS

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Mandamus
Motion No. 480552
Order No. 482068

RELEASE DATE: February 9, 2015

ATTORNEYS FOR RELATOR

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EILEEN T. GALLAGHER, J.:

{¶1} Relator, Stone Ridge Maintenance Association (“Stone Ridge”), has filed a petition for a writ of mandamus directing respondent city of Seven Hills (“the city”) to enforce Seven Hills Codified Ordinances Section 975.07 by requiring Hamilton Health Care, L.L.C., to improve setback areas with earthmounding, walls, fences, and landscape plantings to visually screen the construction and structure of the Biltmore Nursing Home facility and parking lot from Stone Ridge’s property. The city has filed a motion to dismiss, which Stone Ridge has opposed. The motion to dismiss is granted, and the petition is denied for the reasons that follow.

{¶2} The undisputed facts are as follows: On October 10, 2013, respondent’s planning commission approved construction plans for the Biltmore Nursing Home facility in the area of Rockside Road and Pinnacle Park, contingent upon six different items being met. The six items were identified as follows:

1. Closure of the last outstanding item as required by Chapter 941 checklist.
2. The identified variances of the plans are presented and approved by the Zoning Board of Appeals.
3. The diagram of the plans are modified to illustrate the right turn only on to Rockside Road.
4. Consider resident input for the mounding and buffering of any visual screening to the surrounding areas of the property.
5. Factor improvements to the small graveyard on the property in the final landscape plans.
6. The city Engineer approved the calculations for the water retention basin design on the property.

{¶3} The certified copy of the planning commission minutes from the October 10, 2013 meeting reflect that a current member of Stone Ridge’s Board of Directors, Mr. Jaros,¹ attended and participated at the meeting. The certified copy of the planning commission’s report and

recommendations dated October 10, 2013, reflect that applications had been made to the zoning board of appeals seeking variances from the zoning restrictions for building height, yard, setback regulations, and offstreet parking. The zoning board of appeals granted Hamilton Healthcare's applications for variances by allowing the following (1) the construction of a 2-story facility, (2) a 22-foot maximum variance to the 50-foot building setback requirement for Rockside Road Right of Way ("R.O.W."), (3) a 4-foot maximum variance to the 40-foot building setback requirement for Other Street R.O.W., (4) a 30-foot maximum variance to the 50-foot building setback requirement for a residential district, (5) a 50-foot maximum variance to the parking setback requirement for Rockside Road R.O.W., (6) and the zoning board of appeals also granted a variance to allow 82 parking spaces for offstreet parking.

{¶4} Stone Ridge appears to be alleging that visual screening of the Biltmore facility and parking lot are not possible due to certain variances that were granted. The city maintains that landscaping plans have been approved that do comply with the ordinance.

{¶5} Despite the variances to Seven Hills Codified Ordinances Section 975.07 that have been granted, which allegedly preclude compliance with the related visual screening and landscaping requirements, Stone Ridge seeks a writ of mandamus from this court requiring the city to enforce the visual screening and landscaping requirements referenced in Seven Hills Codified Ordinances Section 975.07.

{¶6} Section 975.07 provides as follows:

In the Rockside Road Development District, buildings and offstreet parking shall be designed, constructed, and maintained, in whole or in part, only in accordance with the following schedule:

¹ Relator submitted an affidavit from Mr. Jaros in support of its complaint for mandamus relief.

(a) Rockside Road - South		
	Building Setback (Ft.)	Parking Setback (Ft.)
Rockside Road R.O.W.	100	100*
Other Street R.O.W.	80	50*
Residential District	100**	50**
(b) Rockside Road - North		
	Building Setback (Ft.)	Parking Setback (Ft.)
Rockside Road R.O.W.	50	50*
Other Street R.O.W.	40	15*
Residential District	50**	20**

* The required setback area shall be improved with earthmounding and landscape plantings as determined by the Planning Commission.

** The required setback (yard) area abutting any Residential District shall be improved with earthmounding, walls or fences, and landscape planting as determined by the Planning Commission in order to establish a visual screen between adjoining residential and nonresidential uses.

(Ord. 52-1996. Passed 7-30-96.)

{¶7} The city has moved to dismiss this action and asserts that Stone Ridge is not entitled to a writ of mandamus. The requisites for mandamus are well established: 1) the relator must establish a clear legal right to the requested relief, 2) the respondent must possess a clear legal duty to perform the requested relief, and 3) the relator does not possess nor possessed an adequate remedy at law. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997).

{¶8} The city maintains that Stone Ridge has failed to establish any of the requirements for a writ of mandamus. The city maintains that it has complied with the duties set forth in the ordinance. The city has presented certified copies of proposed landscaping plans, that included the construction of two walls on the Rockside Road North side of the property and the northeastern area of the property. The city further represents that earthmounding is being installed. The planning commission meeting minutes reflect that the developer is required to consider resident input for mounding and buffering of any visual screening. The ordinance provides that the earthmounding, landscape plantings, and visual screening is to be determined by the planning commission. Because the landscaping and visual screening are to be determined by the Planning Commission, and respondent has provided evidence that the Planning Commission is making these determinations, relator has not established the violation of any clear legal duty.

{¶9} The city further argues that Stone Ridge had an adequate remedy at law to obtain the relief it is seeking through an administrative appeal. Stone Ridge generally responds that an administrative appeal of the Planning Commission and City Council's approval of the landscape plan would not have provided an adequate remedy at law because the city's Zoning Board of Appeals was the entity that had approved the variances, which it is contending rendered compliance with the earthmounding and visual screening requirements of the ordinance impossible. However, relator has not addressed or explained why an administrative appeal from the Zoning Board of Appeal's approvals of the subject variances would not have provided an adequate remedy at law.

{¶10} Stone Ridge alleges that it is an aggrieved party as nearby landowners with standing to bring this original action, which the city disputes at least in part. Notwithstanding, if the members of Stone Ridge are property owners that were directly affected by the Zoning Board of Appeals decision to grant the variances as is being alleged, Stone Ridge could have standing to appeal the administrative decision under R.C. 2506.01. *Kurtock v. Cleveland Zoning Bd. of Appeals*, 8th Dist. Cuyahoga No. 100266, 2014-Ohio-1836, ¶ 12 (“the appropriate inquiry for standing [to bring an administrative appeal] is whether the private litigant has complained of ‘harm which is unique to himself[,]’ as opposed to the community at large.”) In *Kurtock*, this court held that third party property owners can establish standing to pursue an administrative appeal pursuant to R.C. 2506.01 from a decision by a municipal Board of Zoning Appeals when a variance has been granted by satisfying the following criteria:

“[A] third party property owner has standing to appeal an administrative agency decision under R.C. 2506.01 when the property owner actively participated at the administrative hearing and has been directly affected by the decision.” *Safest Neighborhood Assn. [v. Athens Bd. of Zoning Appeals]*, 4th Dist. Athens Nos. 12CA32, 12CA33, 12CA34, and 12CA35, 2013-Ohio-5610] at ¶ 24. One is directly affected, as distinguished from the public at large, when the party can demonstrate a unique harm. *Id.* at ¶ 26. For instance, concerns regarding increased traffic alone have generally been regarded as affecting the public at large, while evidence showing a diminution in property value because of an administrative decision has been found to constitute a direct effect sufficient to confer standing. *Id.*

Kurtock, 2014-Ohio-1836, ¶ 11.

{¶11} Although the parties dispute Stone Ridge’s standing to seek enforcement of the visual screening provisions contained in Section 975.07(b) of the city’s codified ordinances,² it is not necessary for us to resolve this issue in an original action. The Ohio Supreme Court has recently clarified that “a particular party’s standing, or lack thereof, does not affect the subject-matter jurisdiction of the court in which the party is attempting to obtain relief.” *Bank of Am. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040. Stone Ridge’s standing to pursue an administrative appeal is properly addressed through an administrative appeal and without affecting the subject matter jurisdiction of the court. Therefore, an administrative appeal would or could have provided an adequate remedy at law.

{¶12} Mandamus is precluded if relator has or had an adequate remedy of law even if relator fails to use it. *State ex rel. Nash v. Fuerst*, 8th Dist. Cuyahoga No. 99027, 2013-Ohio-592, ¶ 6, citing *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997), and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). “It must be emphasized that a writ of mandamus is an extraordinary remedy which is carefully and cautiously granted only when there exists no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Assn.*, 32 Ohio St.3d 327, 512 N.E.2d 1176 (1987).

² The City asserts that Stone Ridge “does not have an interest in any property in an abutting Residential District to which Seven Hills Codified Ordinance 975.02(b)** applies.” Rather, according to the City, Stone Ridge’s interest is in a Cluster Development District rendering only the provisions of Seven Hills Codified Ordinance 975.02(b)* potentially applicable. Without directly addressing the defined terms of the codified ordinance being relied upon by the city (i.e., “Residential District” and “Cluster Development District”), Stone Ridge provides the address of its property and argues that its location does fall within the purview of both 975.02(b)** and 975.02(b)*.

{¶13} For all of the foregoing reasons, respondent's motion to dismiss is granted. Relator to pay costs. The clerk of courts is directed to serve notice of this judgment upon all parties as provided in Civ.R. 58(B).

{¶14} Writ dismissed.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR