

SUPERIOR COURT, STATE OF ARIZONA, In and for the County of Cochise

FILED
Amy Hunley
CLERK, SUPERIOR COURT
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BY: TCAMPBELL
DEPUTY

<p>CRYSTAL ANDERSON, an individual, LORENA WEST, an individual, and HEALTH OVER WEALTH BENSON, an Arizona non-profit corporation, Plaintiffs,</p> <p>vs.</p> <p>CITY OF BENSON, a municipal corporation, JENNA DION, in her official capacity as a member of the City of Benson Planning and Zoning Commission, DEANA DONOVAN, in her official capacity as a member of the City of Benson Planning and Zoning Commission, BILL MEHRER, in his official capacity as a member of the City of Benson Planning and Zoning Commission, LONNIE POSEGATE, in his official capacity as a member of the City of Benson Planning and Zoning Commission, BLAINE LEWIS, in his official capacity as a member of the City of Benson Planning and Zoning Commission, Defendants,</p> <p>and</p> <p>ALUMINUM DYNAMICS, INC., an Indiana Corporation (ADI), Defendant/Real Party in Interest.</p>	<p align="center">March 25, 2026</p> <p align="center">Case No. CV202500594</p> <p align="center">UNDER ADVISEMENT ORDER</p>	<p align="center">File stamp only</p>
<p>HONORABLE ANNE M. BOROWIEC DIVISION SIX</p>		<p align="right">By: Dalia Medina Judicial Administrative Assistant</p>

This matter came before the Court on January 26, 2026, for argument on the Motions to Dismiss filed by the City of Benson Defendants and ADI, Defendant/Real Party in Interest, and the Plaintiffs’ objection thereto. The Court, having taken the matter under advisement, has considered the arguments of counsel, the pleadings filed by the parties, applicable Statutes and Arizona case law.

Here, the Plaintiffs, simply put, are challenging the issuance of a conditional use permit (CUP) by the City of Benson Planning and Zoning Commission, which authorizes Defendant ADI to construct buildings over thirty (30) feet in height. The Defendants have moved to dismiss the Plaintiffs’ Complaint for lack of standing.

When ruling on a motion to dismiss, the Court must “consider the facts alleged in the complaint to be true and determine whether the complaint, construed in a light most favorable to the plaintiff, sufficiently sets forth a valid claim.” Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8, 206 Ariz. 344, 346, 78 P.3d 1065, 1067 (App. 2003).

The Court FINDS that Arizona Revised Statutes, §9-462.06(K) applies to decisions of the legislative body such as the Benson Planning and Zoning Commission. To have standing to file a complaint, the Plaintiffs must meet at least one of the criteria set forth therein:

A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed. ARS §9-462.06(K)

Based upon the information provided, neither Plaintiff Crystal Anderson nor Lorena West are taxpayers who own or lease the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property. Nor are these Plaintiffs officers or departments of a municipality affected by the decision of the Board.

Plaintiff Health Over Wealth Benson is an Arizona non-profit corporation. The test for representational standing in Arizona is, given all the circumstances in the case, whether Health Over Wealth Benson has a “legitimate interest in an actual controversy involving its members and whether judicial economy and administration will be promoted by allowing representational appearance.” Armory Park Neighborhood Ass'n v. Episcopal Cmty. Svcs., 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985). The Court must also consider whether the corporation’s members have individual standing. Home Builders Ass'n of Cent. Ariz. v. Kard, 219 Ariz. 374, 377, 199 P.3d 629, 632 (App. 2008). Although the Plaintiffs have identified the Chief Executive Officer as a member of the Corporation, she is neither a taxpayer who owns or leases property adjacent to the site, nor is she an officer of a municipality affected by the decision of the Board. Thus, Plaintiff Health Over Wealth Benson, as well as, Plaintiffs Crystal Anderson and Lorena West must meet the criteria of an “aggrieved person” to have standing.

While Arizona Statues do not define a person aggrieved, the Arizona Court of Appeals has held that to have standing in this type of case, the Plaintiff must “plead damage from an injury peculiar to him or at least more substantial than that suffered” by the community at large. Blanchard v. Show Low Plan. & Zoning Comm'n, 196 Ariz. 114, 118, 993 P.2d 1078, 1082 (App. 1999) *citing* Buckelew v. Town of Parker, 188 Ariz. 446, 452, 937 P.2d 368, 374 (App. 1996). [*See also* Ctr. Bay Gardens, L.L.C. v. City of Tempe City Council, 214 Ariz. 353, 358, 153 P.3d 374, 379 (App. 2007) which states “a plaintiff must satisfy judicially-established requirements to

show (1) particularized harm resulting from the decision (2) an injury in fact, economic or otherwise and (3) the damage alleged [is] peculiar to the plaintiff or at least more substantial than that suffered by the community at large.”]

The Plaintiffs have described the potential impact due to the height of Defendant ADI’s buildings, as well as Defendant ADI’s use of the property including unpleasant odors, traffic on Highway 80, possible groundwater pollution, lack of water in the event of a fire at the site, water use, visual impact and possible light pollution. These issues, however, are not unique to the Plaintiffs. The Plaintiffs state in their Opposition to City’s Motion to Dismiss that “Here, the Residents are aggrieved by a decision of the City acting through the Commission (the legislative body)...” Opposition page 6 at line 2. While “residents” may be upset by the Commissions’ decision to issue the CUP, that upset does not convert to particular injury suffered by the Plaintiffs. According to the Court of Appeals, describing “general economic losses or general concerns regarding aesthetics in the area without a particularized injury to the plaintiff are typically not sufficient to confer standing” Ctr. Bay Gardens, 214 Ariz. at 358-59, 153 P.3d at 379–80.

The Plaintiffs rely upon the findings in Scenic Arizona v. City of Phoenix Bd. of Adjustment, 228 Ariz. 419, 268 P.3d 370, (App. 2011), *as amended* (Feb. 9, 2012), which provides that the language in A.R.S. §9-462.06(K) does not limit standing to adjacent property owners nor does it require those in close proximity to the offending land to prove actual damages to real property. That Court also held that when deciding whether a person is aggrieved requires an “examination of the legal basis of the claimed injury.” *Id.* at 423-424. *Scenic Arizona* involves a claim that an electronic billboard would violate the Arizona Highway Beautification Act which protects the safety and aesthetics of Arizona highways. That Court also stated that Scenic Arizona's allegation of “claimed interference with the proper use and enjoyment of one of the highways of this state, which are interests within the scope of the AHBA, were sufficient to confer standing. *Id.* at 424, 268 P.3d at 375. That Court also stated that “[It] is clear to us that proximity to one’s own property is much less relevant to the question of standing *in the context of a challenge to a billboard along a highway*, which by law may be located only in commercial or industrial areas.” (emphasis added) *Id.* at 426, 268 P.3d at 377. The facts in *Scenic Arizona* are very different from the present case: this is not a challenge regarding a billboard, nor is the alleged harm suffered by the Plaintiffs the same interests that the Arizona Highway Beautification Act (nor any other act) intends to protect. Therefore, the findings regarding an aggrieved party in *Scenic Arizona* are not persuasive in this case.

The Court FINDS that based upon Arizona Statutes and case law, the Plaintiffs in this context, must each plead damage from the issuance of the conditional use permit, or the intended use of the property by ADI, which is an injury peculiar to that Plaintiff or is at least more substantial to that Plaintiff than that suffered by the community at large.

The Court FURTHER FINDS that the Plaintiffs, Crystal Anderson, Lorena West and Health Over Wealth Benson, have failed to plead any damage which is particular to them as a result of the issuance of the CUP and ADI's proposed use of the property.

IT IS THE ORDER OF THE COURT GRANTING the Defendants' Motions to Dismiss the Plaintiffs' Complaint and Amended Complaint for lack of standing pursuant to A.R.S. §9-462.06(K)

IT IS THE FURTHER ORDER OF THE COURT DISMISSING the Complaint and Amended Complaint against Defendants, with prejudice.

Given this finding based upon the discussion above, the Court does not further address the parties' arguments regarding the Motion to Dismiss for Failure to State a Claim.

Defendants' counsel shall submit a form of Judgment consistent with this Court's Order herein.



eSigned by BOROWIEC, ANNE M 03/25/2026 17:14:34 7P3Nd96p

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