

SUPREME COURT OF NORTH CAROLINA

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER,

Plaintiffs/Appellees,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS,
LLC,

Defendants/Appellants.

FROM ROCKINGHAM COUNTY
23 CVS 2013

FROM COURT OF APPEALS
No. COA24-666

DEFENDANT-APPELLANTS ROCKINGHAM COUNTY, JULIE J. SANDERS,
ELLEN J. WHITESELL, LINDA J. CARMICHAEL, SUSAN J. MURRAY f/k/a
SUSAN J. JONES' JOINT NEW BRIEF

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QUESTION PRESENTED

- I. WHETHER THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT'S DISMISSAL OF THE PLAINTIFFS' DECLARATORY JUDGMENT COMPLAINT BECAUSE THE PLAINTIFFS DID NOT HAVE STANDING TO BRING THE ACTION.

STATEMENT OF THE CASE

On 18 October 2023, plaintiffs commenced this action under the Declaratory Judgment Act to challenge defendant Rockingham County's (the "County") recent zoning legislation. (R p 5) (App. 1-33). On 15 December 2023, the County Answered and moved to dismiss. (R pp 193-194). On 8 January 2024, the remaining defendants moved to dismiss. (R pp 207-211).

On 18 March 2024, the Honorable Clayton D. Somers, Superior Court Judge presiding, heard defendants' motions to dismiss in Superior Court, Rockingham County (R pp 460-461). On 21 March 2024, Judge Somers entered an Order dismissing plaintiffs' Complaint for lack of subject matter jurisdiction grounds related to standing. (Id.) Plaintiffs filed and served a notice of appeal on 19 April 2024. (R p 462).

On 16 July 2025, the Court of Appeals reversed the Trial Court's dismissal of Plaintiffs' Complaint. On 19 June 2026, this Court granted Defendant Rockingham County's Petition for Discretionary Review. ¹

GROUND FOR APPELLATE REVIEW

This case is properly before the Court pursuant to N.C. Gen. Stat. § 7A-31 with this Court granting Defendant Rockingham County's Petition for Discretionary Review.

¹ Defendant NC Development Holdings, LLC allowed its option to purchase the property at issue to expire and therefore, no longer has a property interest at stake in this matter. Thus, it has not joined in this briefing.

STATEMENT OF THE FACTS

A. The Map Amendment.

On June 9, 2023, NC Development Holdings, LLC submitted an application requesting that a 192.74 acre parcel (the “Property”) be rezoned from Residential Agricultural to Highway Commercial (the “Map Amendment”). (R p 7, 38-43). The Map Amendment application was submitted with the consent and at the request of property owners Julie J. Sanders, Susan J. Murray, Linda J. Carmichael, and Ellen J. Whitsell. Eventually, on August 21, 2023, and after a well-attended public hearing, the Commissioners voted unanimously in favor of approving the Map Amendment. (R pp 9-10). At the hearing, Chairman Richardson addressed the County’s need to grow and adapt to keep pace with the growth throughout the state, saying:

It’s our job to manage change and I will tell you this, it’s a difficult job on occasion. Some of you have heard me talk about growing up in the 50’s [in Rockingham County] enjoying playing in my Grandfather’s yard for sometimes two hours and not seeing a single vehicle going by except maybe a tractor. At that time there were 2,000,000 people in the State, there are almost 11,000,000 now. There are accommodations [we have to make as we grow] and when we get more crowded more accommodations are required.

(R S p 688). Well before the Map Amendment, the County decided that “the vision for the US 220 Corridor . . .” includes “[e]ncouraging a mix of commercial and mixed uses . . . to ensure that southern Rockingham County does not become predominately a bedroom community.” (R p 61). This plan for the Highway 220 Corridor is reflected in the Rockingham Vision Plan 2040, which was adopted on March 21, 2022. (R p 11). It is up to the County Commissioners to ensure this vision is carried out, including through rezoning suitable properties to accommodate growth.

The Property at issue has over 1,000 feet of frontage on Highway 220. (*See* R S pp 623-625). The Highway 220 Corridor has long been designated a business development area and future interstate. (R S pp 687-688). As Commissioner Hall noted at the hearing, “[t]he taxpayers in this County have spent many millions to upgrade the roads, to upgrade the designation [of Highway 220] to I-73, and to run water and sewer as well . . . to let potential investors, potential buyers and existing property owners know that [commercial development] would be favorable.” (R S p 688). When viewed in light of the plans for economic development in southwestern Rockingham County, all of Plaintiffs’ alleged harms can be seen as opposition to County decisions made years ago to target the area for growth. The reality Plaintiffs seem unwilling to face is that regardless of the outcome of this litigation, the area will remain a target for growth because the increase in development and related interstate traffic will not be stopped by this lawsuit.

B. Plaintiffs’ Concerns of Potential Negative
Impacts Caused by the Map Amendment.

Plaintiffs are “owners of the properties that surround, abut, or are in close proximity to the Property...” (R p 15). Attached to the Complaint are annotated tax maps showing the location of each of the Plaintiffs’ properties. As illustrated by Plaintiffs’ annotated tax maps:

- Plaintiffs Camp Carefree (R p 91), Dohm (R p 123), Scott (R p 134), and Anderson (R p 148) own property immediately adjacent to the Property. There are around a dozen other properties that are also immediately adjacent to the Property. (R p 643).
- Plaintiffs Dohm (R p 123), Scott (R p 134), and Forbes (R pp 129 & 167) own single-family homes north of the Property. These Plaintiffs’ homes

are part of a residential subdivision consisting of approximately 40 homes. (R S p 643).

- Plaintiff Micris' property is located on the other side of US Highway 220 and further separated from the Property by one parcel. (R p 156).
- Plaintiff Leebricks' property is separated from the Property by Camp Carefree. (R pp 102 & 118).
- Plaintiff Meier's property does not border the Property, is separated from the Property by several large parcels, and abuts a different highway. (R p 142).²

All of the Plaintiffs, except Micris, rely upon, and incorporate by reference, a real estate appraiser's report ("Appraiser Opinion"). (R pp 12 (Camp Carefree), 13 (Leebricks, Dohm, Forbes), 14 (Anderson, Scott), & 15 (Meier)). The Appraiser Opinion addresses the potential impacts that would be shared by all of the surrounding properties, not just Plaintiffs' properties. (*See generally* R pp 66-67). Plaintiffs set out individual concerns via their Affidavits. (R pp 73-167; or see R. pp. 11-16). Plaintiffs' individual concerns are summarized and then compared against the general concerns found in the Appraiser Opinion as follows:

² For convenience, the Court may also refer to R S p 643, which is a compilation of Plaintiffs' maps.

Concerns	Concerned Plaintiffs (R pp 7-16)	Appraiser Opinion (R pp 66-67)
Property values	All Plaintiffs are concerned about a negative effect on property values, namely, “the negative impact the Map Amendment would have on [property] value.” (R pp 12 (Camp Carefree, Micris), 13 (Leebricks), 70 (Dohm, Forbes), 14 (Anderson, Scott), 14-15 (Meier)).	All surrounding properties may experience an “adverse impact on [] fair market value...” (R p 67).
Noise and light	All Plaintiffs, except Micris, whose property is located across the highway, are concerned about increased noise and light trespass. (R pp 12 (Camp Carefree), 13 (Leebrick, Dohm, Forbes), 14 (Anderson, Scott, Meier)).	All surrounding properties may experience “noise” and “light” concerns. (R p 67).
Visual Intrusiveness	Plaintiffs Dohm, Forbes, Anderson, Scott, and Meier are concerned about an undefined detrimental impact related to “visual intrusiveness.” (R pp 13 (Dohm, Forbes), 14 (Anderson, Scott, Meier)). Presumably, they are concerned with trespass by “light” and “glare”. Also, Plaintiffs Dohm, Forbes, and Scott live in a residential subdivision consisting of over 40 similarly situated homes.	All surrounding properties may experience “light,” “glare,” and similar “trespass” concerns. (R p 67).
Traffic	Plaintiffs Micris, Anderson, and Meier are concerned about increased traffic and/or added exposure to accidents. (R pp 12 (Micris), 14 (Anderson, Scott)).	All surrounding properties may experience “traffic” and “parking” concerns. (R p 67).

Concerns	Concerned Plaintiffs (R pp 7-16)	Appraiser Opinion (R pp 66-67)
Enjoyment of property	Plaintiffs Dohm and Forbes are concerned about “the use and enjoyment of their property for residential purpose.” (R p 13). Again, plaintiffs Dohm and Forbes (and Scott) live in a residential subdivision consisting of over 40 similarly situated homes who presumably also include families.	All surrounding properties may experience “noise, odor, light, glare, trespass, litter, traffic, parking, and security concerns...” (R p 67).
Privacy	Plaintiffs Scott and Meier are concerned about “loss of privacy.” (R p 14).	In general, HC zoning “provides areas for more intensive regional highway-oriented business, office, service and civic uses...” (R p 66). In other words, all surrounding properties will experience increased business activity.

(See R pp 11-16; pp 66-67; pp 73-167).

In summary, Plaintiffs collective concerns are as follows:

Collectively, Plaintiffs . . . will suffer imminent and irreparable harm, including an adverse impact on the fair market value of the property, caused by the approval of the Map Amendment due to: (a) ... lack [of] compatibility (b) the potential of water pollution ... (c) increased traffic and safety issues ... (d) the potential for increased criminal activity ... (e) increased noise, odor, glare, light trespass, litter, parking and security concerns...

(R p 15).

C. The Text Amendment.

The County initiated a text amendment, that allows all uses licensed by the State of North Carolina and State entitles to operate by right in the County's Highway Commercial districts (the "Text Amendment"). (R p 8). The County Commissioners unanimously approved the Text Amendment on June 19, 2023. (*Id.*) None of the Plaintiffs, nor anyone else, spoke at the public hearing on the Text Amendment. (*See R S p 694*).

As an amendment to the UDO, the Text Amendment is applicable county-wide in all Highway Commercial districts. (*See R S p 694*). While the Text Amendment has an impact on the Property, it also affects land previously zoned Highway Commercial in close proximity to Plaintiffs' properties (R S p 623 (showing eight parcels in the vicinity of the Property that were zoned Highway Commercial prior to the Map Amendment)) and hundreds of other parcels throughout the County.

Plaintiffs have not individually or collectively alleged any basis for standing to challenge the Text Amendment but rely on the same collectively pled allegations supporting their bid for standing to challenge the Map Amendment. (R pp 11-16). To the extent any of these harms are legitimate and non-speculative, they would apply to every neighbor of any property zoned Highway Commercial throughout the County.

STANDARD OF REVIEW

Standing is a subject matter jurisdiction issue. *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 881 S.E.2d 32 (2022). Appellate courts apply a *de novo* standard of review to subject matter jurisdiction issues

regardless of whether the complaint is dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or Rule 12(b)(6). *Id.*

On a motion to dismiss for lack of subject matter jurisdiction, the Court “view[s] the allegations as true and the supporting record in the light most favorable to the nonmoving party...” *Id.* A court reviewing subject matter jurisdiction “may consider information outside the scope of the pleadings in addition to the allegations set out in the complaint.” *Id.*

ARGUMENT

This Court should reverse the Court of Appeals’ decision reversing the Trial Court’s dismissal of Plaintiffs’ challenges to the Map and Text Amendments. The Court of Appeals in this case, relying on its decision in *Gardner v. Richmond County*, 297 N.C. App. 751, 911 S.E.2d 761 (2025), held that the plaintiffs, who were challenging legislative zoning decisions by the Rockingham County Commissioners in passing the Map Amendment and Text Amendment, were not required to allege or show special damages in order to have standing to challenge these legislative zoning decisions. *See Camp Carefree, Inc. v. Rockingham County*, 300 N.C. App. 9, 16, 920 S.E.2d 221, 223 (2025), *disc. rev. allowed*, ____N.C.____, 930 S.E.2d 216 (2026).

I. *TAYLOR V. RALEIGH* INTRODUCED A GENERAL TEST, WHICH WAS SUBSEQUENTLY CLARIFIED BY THE COURT OF APPEALS AND LEFT STANDING BY THIS COURT.

This Court discussed the standard for determining standing in a legislative zoning challenge in *Taylor v. Raleigh*, 290 N.C. 608, 227 S.E.2d 576 (1976). In *Taylor*, property owners brought an action challenging rezoning and annexation ordinance

and seeking to enjoin the City from proceeding to condemn sewer easements across the property.

The Court considered whether the plaintiffs had standing to attack the rezoning ordinance under the Declaratory Judgment Act. *Id.* at 620, 227 S.E.2d at 583. The Court stated: “However, this may be done only when challenged by a person who has a specific personal and legal interest in the subject matter affected by the zoning ordinance and who is directly and adversely affected thereby.” *Id.* (citations omitted).

This Court in analyzing the plaintiffs’ objection to the zoning ordinance noted that the impact on any of the plaintiffs was minimal and stated:

Furthermore we note that the portion of the Raleigh Code relating to zoning, Ch. 24, s 24-7 thereof, then provided that the following uses, among others, were permitted in a Residential 4 District: ‘(b) A dwelling, on its own lot, fronting on a public street, consisting of a single-family dwelling unit and one utility apartment; provided that the utility apartment shall have no more gross floor area than one-third (1/3) of the gross floor area of the single-family dwelling unit. Townhouse developments and unit-ownership developments when approved as planned unit developments of fifty (50) acres or more under Chapter 20 of this Code’ (Our italics). Thus, the 1970 amendment to the zoning ordinance did not, for the first time, authorize multi-family dwellings in the area, it merely increased the permissible types of unit of dwellings.

...

On this record we would be unwilling to hold that plaintiffs have established that they are persons aggrieved by the rezoning ordinance. However, in the circumstances here involved, we do not base decision solely on the ground plaintiffs are not sufficiently directly and adversely affected by the rezoning ordinance to entitle them to attack it. Rather, we treat plaintiffs’ tenuous standing as a circumstance in considering whether plaintiffs’ belated attack on the rezoning ordinance is barred by laches.

Id. at 621, 227 S.E.2d at 583-84 (citation omitted). ³

Prior to *Taylor*, this Court in *Jackson v. Guilford County Board of Adjustment, Inc.*, 275 N.C. 155, 166 S.E.2d 78 (1969), determined in order to challenge a governmental unit's exercise of zoning authority, the owner of the other property must be specially damaged as a result of the zoning decision, at 82-83, 166 S.E.2d at 161. This Court stated in its holding: "The mere fact that one's proposed lawful use of his own land will diminish the value of adjoining or nearby lands of another does not give to such other person a standing to maintain an action, or other legal proceeding, to prevent such use." *Id.* at 161, 166 S.E.2d at 82. See also *Morgan v. Raleigh Board of Adjustment, PRS Partners, LLC*, 362 N.C. 640, 689 S.E.2d 279 (2008) (quoting *Jackson, supra*).

Far from a bright-line rule rejecting special damages, the Supreme Court in *Taylor* generally held that a party has standing "when challenged by a person who has a specific personal and legal interest in the subject matter affected by the zoning ordinance and who is directly and adversely affected thereby." *Taylor*, 290 N.C. at

³ Following the decision in *Taylor*, this Court noted the holding in *Taylor* in footnote 4 of *County of Lancaster, S.C. v. Mecklenburg Cnty.*, 334 N.C. 496, 434 S.E.2d 604 (1993); the court stated the following:

Only those persons "who [have] a specific personal and legal interest in the subject matter by the zoning ordinance and who [are] directly and adversely affected thereby" have standing to challenge a legislative zoning decision.

(Quoting *Taylor, supra* and referring to *Davis v. City of Archdale*, 81 N.C. App. 505, 344 S.E.2d 369 (1986) requiring "special damage distinct from the rest of the community to confer standing to challenge a rezoning").

620, 227 S.E.2d at 583. As is the case with other general tests from a state's high court, *Taylor's* language (e.g., "adversely affected") needed clarification from subsequent appellate decisions such as the Court of Appeals' cases discussed below.

Taylor did not reject "special damages" as a requirement for standing. In fact, it would have been unnecessary for the *Taylor* court to discuss "special damages" to reject the plaintiffs' standing given that the plaintiffs' standing was so clearly "tenuous": (1) the nearest-residing plaintiff was one-half mile away from the rezoned property (*id.* at 620, 227 S.E.2d at 583); and (2) the Court expressly stated that their decision was also based on the plaintiffs' severe delay in filing suit, i.e., laches (*id.* at 626, 227 S.E.2d at 586).

Although the *Taylor* court did not use the term "special damages," the Court of Appeals has since interpreted—not contradicted or overruled—*Taylor's* holding to be analogous to the standing required in a certiorari review of a quasi-judicial decision, which requires showing special damages. *Cherry Cmty. Org. v. City of Charlotte*, 371 N.C. App. 579, 257 N.C. App. 579, 583, 809 S.E.2d 397, 400, *disc. rev. denied*, 371 N.C. 114, 812 S.E.2d 850 (2018).

Finally, in making analogous determinations, the Court of Appeals has interpreted the DJA to require special damages in similar land use cases—even when the statute itself does not specify "special damages." *See, e.g., Cox v. Town of Oriental*, 234 N.C. App. 675, 679, 759 S.E.2d 388, 390 (2014) (interpreting "person aggrieved" to mean "some special damage, distinct from the rest of the community").

A. The Map and Text Amendments were legislative decisions, which are afforded great deference by reviewing Courts.

“Zoning decisions are typically characterized as being in one of four different categories—legislative, advisory, quasi-judicial, and administrative.” *County of Lancaster, S.C. v. Mecklenburg Cnty.*, 334 N.C. 496, 507, 434 S.E.2d 604, 612 (1993). As relevant here, “legislative decision” is defined as the “adoption, amendment, or repeal of a regulation under [Chapter 160D].” N.C. Gen. Stat. § 160D-102(19). Quasi-judicial decisions involve the local government’s application of legislative decisions to specific situations, such as with special use permits or variances. *Id.* § 160D-406.

Another relevant difference between these categories is the mechanism for relief: legislative decisions can be brought to courts under the North Carolina Declaratory Judgment Act (the “DJA”), while quasi-judicial decisions are appealed in the nature of certiorari. *Id.* §§ 160D-1401 (declaratory judgments), 160D-1402 (certiorari).

Here, Plaintiffs challenged two legislative zoning decisions, brought under Section 160D-1401, which are afforded great deference by reviewing courts. *See Musi v. Town of Shallotte*, 200 N.C. App. 379, 384-85, 684 S.E.2d 892, 896 (2009).

Determining who is affected by a zoning regulation is not necessarily straightforward. A reality of land use is that what happens on one property will affect other properties. This creates inherent tension between the property rights of a landowner to use the land as he sees fit, the property rights of the neighbors to use their land as they see fit, and the public’s interest in an orderly community. Any reviewing court must weigh these competing interests in every land use decision while affording

deference to the governmental body statutorily authorized to make such determinations—here, the County Commissioners.

B. The special damages requirement elucidates *Taylor v. Raleigh*.

This Court’s role in determining standing is to interpret the statutory cause of action, giving due weight to the zoning context and legislative intent. Challenges of legislative decisions may be brought pursuant to the DJA. The DJA grants courts the “power to declare rights, status, and other legal relations” for a person “whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance.” N.C. Gen. Stat § 1-253 to 254. In the context of legislative zoning, the Court’s role is to interpret what it means to have rights or other legal interest “affected by” the legislative action taken.⁴ The Court may do this by viewing the DJA in harmony with similar statutes. *See generally In re Hayes*, 199 N.C. App. 69, 78–79, 681 S.E.2d 395, 401 (2009) (“[S]tatutes dealing with the same subject matter must be construed *in pari materia* and harmonized, if possible, to give effect to each.”), *disc. review denied*, 363 N.C. 803, 690 S.E.2d 694 (2010). Properly understood, Taylor requires a plaintiff challenging a legislative zoning decision to show special damages, as the Court of Appeals originally recognized.

⁴ In the opposition to the Petition for Discretionary Review, the Plaintiffs cited the cases of *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972), *Good Neighbors of South Davidson v. Town of Denton*, 355 N.C. 254, 559 S.E.2d (2002), and *Chrisman v. Guilford County*, 322 N.C. 611, 370 S.E.2d 579 (1988), for the proposition that special damages are not necessary for standing to challenge a legislative zoning decision. None of these cases discuss or decide what is necessary to show standing to challenge a legislative zoning decision.

C. Plaintiffs should be required to establish that they will suffer special damages as a result of the Map and Text Amendments that are distinct from the rest of the community.

Since *Taylor*, the North Carolina Court of Appeals has consistently required a person seeking to challenge a legislative zoning decision in an action for a declaratory judgment to show “suffer special damages distinct from those to the public at large.” *Violette v. Town of Cornelius*, 803 S.E.2d 606 (NC 2023), 283 N.C. App. 565, 569, 874 S.E.2d 717, 221 (2022), *disc. rev. denied*, ____N.C.____, 883 S.E.2d 606 (2023); *Davis v. City of Archdale*, 81 N.C. App. 505, 508, 344 S.E.2d 369, 371 (1986) (“To have standing, an adjacent or nearby landowner must allege and show special damages distinct from the rest of the community.”); *Cherry Cmty. Org.*, 257 N.C. App. at 583, 809 S.E.2d at 400 (“[T]he standing requirement for an action for declaratory judgment is analogous to the requirement that a party seeking review of a municipal decision by writ of certiorari suffer damages that are ‘distinct from the rest of the community.’”); *Mitchell v. Orange Cnty*, 283 N.C. App. 470, 871 S.E.2d 878, No. COA21-394, 2022 WL 1549164, at *2 (N.C. Ct. App. May 17, 2022) (unpublished), *disc. rev. denied*, ____N.C.____, 881 S.E.2d 295 (2022) (“In such a case, a landowner must show that (s)he will suffer ‘special damages distinct from the rest of the community.’”); *Hoag v. County of Pitt*, 270 N.C. App. 820, 839 S.E.2d 875, No. COA19-826, 2020 WL 1685601, at *2 (N.C. Ct. App. Apr. 7, 2020) (unpublished). Although Court of Appeals’ decisions are not binding on this Court, they were left undisturbed by this Court and show a consistent requirement that special damages be shown to

provide standing to contest a legislative zoning decision as far back as the holding in *Davis, supra*.

This case begins and ends with the special and distinct damages requirement, which is well-established by the Court of Appeals and has remained untouched by this Court—even in the face of petitions for discretionary review based on Plaintiffs’ same arguments advanced here. *See Violette v. Town of Cornelius*, ____N.C.____ 883 S.E.2d 606 (2023); *Mitchell v. Orange Cnty.*, ____N.C.____, 881 S.E.2d 295 (2022). Over time, the Court of Appeals has clarified what constitutes sufficient special damages. “[T]oday, general allegations that a property use will impair property values in the general area will not confer standing” and “mere proximity to the site of the zoning action is insufficient to establish special damages.” *Violette*, 283 N.C. App. at 569, 874 S.E.2d at 221 (cleaned up). Plaintiffs who elect to press their claims collectively “do not enjoy a relaxed requirement to plead factual allegations of special damages distinct from the community at large.” *Hoag*, 2020 WL 1685601 at *4.

In *Hoag*, the Court disregarded the plaintiffs’ conclusory allegation that the “damages suffered by the Plaintiffs are distinct from the rest of the community at large.” The Court noted that the other allegations found in the complaint undermined this claim. *Id.* at *3. *See also Davis*, 81 N.C. App. at 508, 344 S.E.2d at 371; *Lloyd v. Town of Chapel Hill*, 127 N.C. App. 347, 351, 489 S.E.2d 898, 900 (1997) (holding that adverse impacts by all owners “in the immediate vicinity” were not “special damages distinct from the rest of the community”).

This Court should reverse the Court of Appeals' decision as the law in North Carolina has been consistent for a number of years since this Court's decision in *Taylor, supra*, requiring a showing of special damages to challenge a legislative zoning decision. Holding to the contrary would significantly increase litigation involving legislative rezoning by permitting anyone in the vicinity of the questioned property, without alleging special damages, to file a complaint under the Declaratory Judgment Act to contest any legislative rezoning decision. Such a result will hamper the ability of local governments to make such zoning decisions, delay the ability to enforce such zoning decisions and impede the ability of landowners to have free use of their land.

Moreover, the Court of Appeals' holding is contrary to the legal principle that courts give great deference to legislative rezoning decisions. If there is a legislative zoning decision to permit schools, community centers or other public use buildings, should any person resisting the change be entitled to bring suit under the DJA? Permitting such suits, without showing special damages, would inevitably entangle such legislative actions in the courts because the neighboring property owners want things to stay the same, preventing the property owner's full use of his land and burdening the courts with excessive litigation.

D. Forest does not overturn precedent on legislative zoning.

Recently this Court held in *Committee to Elect Dan Forest v. Employees Political Action Committee* (EMPAC), 376 N.C. 558, 853 S.E.2d 698 (2021), that in order to have standing under the Declaratory Judgment Act, a plaintiff must

demonstrate: 1) a statute confers a cause of action; and 2) the plaintiff has satisfied and sufficiently alleged the statutory requirements. *Id.* at 599, 853 S.E.2d at 727.

The *Forest* plaintiffs brought suit under a now-repealed “Stand By Your Ad” law (referred to as the “Disclosure Statute”) which required, in pertinent part, that a television ad by a political action committee have an unobscured, full screen picture of the disclosing individual. *Id.* at 562, 853 S.E.2d at 704 (2021). The Disclosure Statute created a private cause of action providing that: “a candidate for an elective office who complied with [the Disclosure Statute] . . . shall have a monetary remedy in a civil action against (i) an opposing candidate . . . whose television or radio advertisement violates [the Disclosure Statute].” *Id.* at 560, 853 S.E.2d at 702-03. Based on the Disclosure Statute alone, the “direct injury” was very clear and the applicable population was narrowly-defined: a political candidate who follows the rules for television ads can sue an opponent who did not follow such rules.⁵

The “question of first impression” was whether the political action committee needed to show “injury in fact, even where an Act [] expressly confers standing to sue on a party as it did in [the Disclosure Statute] (now repealed).” *Id.* at 558, 853 S.E.2d at 702 (internal quotations omitted). The trial court ruled that the committee lacked standing because it had failed to forecast anything more than speculative damages. *Id.* at 561, 853 S.E.2d at 703. However, when the appeal reached the Supreme Court,

⁵ In contrast, the DJA, which broadly and vaguely states that any person “affected by” an action, e.g., legislative zoning, can seek declaratory relief. Thus, the case law discussed herein has been developed to guide parties and the courts in understanding what it means to be “affected by” a legislative rezoning.

that Court reasoned that, unlike under federal law, “[w]hen a person alleges the infringement of a legal right directly under a cause of action at common law, a statute, or the North Carolina Constitution . . . the legal injury itself gives rise to standing.” *Id.* at 609, 853 S.E.2d at 734. In other words, “where a purely statutory or common law right is at issue . . . a showing of direct injury beyond the impairment of the common law or statutory right is not required.” *Id.* at 600, 853 S.E.2d at 728. Thus, unlike in federal court, jurisdiction in North Carolina is not constrained by a constitutional “injury-in-fact” standing requirement.

To be sure, *Forest* clarifies North Carolina jurisprudence as it relates to constitutional standing. It does not suggest that anyone may sue for any speculative grievance in North Carolina courts. *Forest* is clear that “[s]howing a party falls within the class of persons on whom the statute confers a cause of action may require a showing of some special injury depending on the statutory terms.” *Id.* at 608 n.51, 853 S.E.2d at 733 (emphasis added). The DJA’s statutory terms, as interpreted by North Carolina courts, require such a special showing in legislative zoning cases by limiting access to the courts to a person who is “affected by” the legislative action taken. In the context of legislative zoning action, our courts have clarified that a person who is “affected by” a rezoning is a person who has suffered “special damages.” As discussed above, our courts have also laid out guidance in a series of cases following *Taylor* as to how a plaintiff bringing a DJA action can satisfy this requirement. Because the DJA’s “statutory terms” require such a showing of special

damages, and because *Forest* does not address legislative zoning at all, *Forest* should not be read to abrogate the well-established line of cases on standing in this context.

The special damages requirement does not originate from a constitutional injury-in-fact requirement; rather, that requirement stems from the enabling statute. When bringing an action under the DJA, the “plaintiff is still required to demonstrate that it has sustained a legal or factual injury arising from defendants’ actions as a prerequisite for maintaining the present declaratory judgment action.” *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 629, 881 S.E.2d 32, 46-47 (2022). This makes sense, as the DJA provides a mechanism to establish legal rights—it does not, however, stand as a cause of action by itself. Therefore, the courts must still interpret what the legislature intended. In this case, the question is whether the legislature intended to create a public right—for everyone, everywhere—to challenge legislative zoning decisions. Defendants think not.

Additionally, *Forest* does not expressly apply to zoning. It certainly does not overturn any requirement to show special damages as part of a challenge to a legislative zoning decision. In briefing before the Court of Appeals, Plaintiffs previously inferred that the absence of explicit language requiring “special damages” in the DJA voids any such requirement. However, in the footnote Plaintiffs previously relied on, *Forest* stated:

[W]e did not impose a constitutional requirement of “injury-in-fact” in *Mangum*; rather, we held only that, where a petitioner files an action in the nature of certiorari to challenge a quasi-judicial decision under a zoning ordinance based on standing conferred under . . . N.C.G.S. § 160D-1402(c)(2)) . . . the petitioner must have alleged “special damages” to maintain the action and

the allegations of the petitioner there were sufficient in that regard. The requirement for special damages to have standing to sue in such cases arises from the requirements of the statute which creates and confers the cause of action on certain persons, not the constitution.

Forest, 376 N.C. at 602 n.45, 853 S.E.2d at 730 (internal citations removed).

Footnote 45 merely summarizes what is already clear: quasi-judicial decisions require special damages. No inferences for the legislative zoning context beyond that should be drawn. As made clear above, *Taylor* and its progeny simply interpret the DJA as applied in the context of legislative zoning.

Consistent with that understanding, the Supreme Court has recently declined to hear two petitions for discretionary review based on the argument that *Forest* reshaped standing for legislative zoning. *Violette*, ____N.C.____ 883 S.E.2d 606; *Mitchell*, ____N.C.____ 881 S.E.2d 295.

Finally, the Court of Appeals' holding that Plaintiffs were not required to show special damages to challenge a legislative zoning decision would overwhelm courts and local governments around the state. Requiring special damages to challenge legislative zoning action is good public policy. The Court of Appeals has explained the rationale behind an appropriately high bar for third-party challenges:

Typically, landowners may use their property as they wish, free from the interference of the government. However, our Supreme Court has held that lawful zoning ordinances are an exercise of the State's police powers. The interference by the State, by exercising its police powers, is the pinnacle of intrusion on private property rights by the government. Accordingly, our Courts appropriately have set a high bar for third parties to establish standing to bring actions relating to the exercise of police powers between the State and its citizens.

Cherry Cmty. Org, 257 N.C. App. at 581-82, 809 S.E.2d at 400 (internal citations omitted).

In contrast, lowering the bar would allow any person to challenge such a decision, even after it goes through the statutorily designated process that allows for citizen input. *See, e.g. Jackson*, 275 N.C. at 161, 166 S.E.2d, at 82 (“The mere fact that one’s proposed lawful use of his own land will diminish the value of adjoining or nearby lands of another does not give to such other person a standing to maintain an action, or other legal proceeding, to prevent such use.”); *Nicholson v. State Educ. Assistance Auth.*, 275 N.C. 439, 447, 168 S.E.2d 401, 406 (1969) (reasoning taxpayer does not have standing to sue if they disagree with legislative decision).

The Court of Appeals’ holding in this case adds additional roadblocks, beyond the exercise of the State’s police powers via the zoning process, that would make it more difficult for these property owners, and all others, to use their property as they wish—this goes beyond the “pinnacle of intrusion on private property rights.” *See again, Cherry Cnty. Org*, 257 N.C. App. at 581-82, 809 S.E.2d at 400. Therefore, this Court should reverse the Court of Appeals’ decision that the Plaintiffs were not required to allege and show special damages to contest Rockingham County’s legislative decision in this case.

E. This Court and the General Assembly implicitly ratified the special damages requirement.

This Court and the state legislature have implicitly ratified the special damages requirement. As mentioned above, this Court has consistently refused to review and overturn the line of cases requiring special damages. *See, e.g., Violette*,

____N.C. ____, 883 S.E.2d 606 (2023) (denying review); *Mitchell v. Orange Cnty.*, ____N.C.____, 881 S.E.2d 295 (2022) (same); *Hoag v. Cnty. of Pitt*, 375 N.C. 494, 847 S.E.2d 421 (2020) (same); *Cherry Cnty. Org. v. City of Charlotte*, 371 N.C. 114, 812 S.E.2d 850 (2018) (same).

The legislature has likewise not made changes to the statutory requirements despite the opportunity to do so. In recent years, the legislature completely revamped the General Statutes regarding zoning and land use. After a series of smaller revisions that clarified and simplified the law without making major policy changes, some of the state’s most well-respected municipal land use attorneys drafted and advocated for the adoption of Chapter 160D. The initial proposal was completed in October 2014. After substantial revision and feedback by local governments and legislators, proposed legislation was introduced and modified several times before finally passing—nearly unanimously—in 2019. In the process of drafting and debating Chapter 160D, the drafters and legislature certainly knew about the Court of Appeals’ application of the special damage requirement for legislative zoning and chose to maintain the same language that has been interpreted to include such a requirement without a need for further clarification. The legislature’s implicit approval is persuasive evidence that it intended such a requirement. See *A & F Trademark, Inc. v. Tolson*, 167 N.C. App. 150, 156, 605 S.E.2d 187, 192 (2004), *cert. denied*, 546 U.S. 821, 126 S. Ct. 353, 163 L. Ed. 2d 62 (2005) (“[t]he legislature is always presumed to act with full knowledge of prior and existing law. Thus, when a statute is interpreted and the legislature acquiesces in that interpretation by failing

to amend the statutory provision, our courts assume the legislature is satisfied with that interpretation and accord it great weight in arriving at the statute's meaning.") (citation omitted). See also *State v. Benton*, 276 N.C. 641, 659, 134 S.E.2d 793, 804 (1970).⁶

II. PLAINTIFFS' BROAD ALLEGATIONS OF DAMAGES FALLING WITHIN GENERAL CATEGORIES OF CONCERN FAIL TO ALLEGE SPECIAL DAMAGES NECESSARY FOR STANDING TO CHALLENGE THE MAP AMENDMENT.

"It has become difficult for a neighboring property owner to establish that they have standing to challenge a zoning decision." *Violette*, 283 N.C. App at 569, 874 S.E.2d at 220. It is especially difficult for plaintiffs to establish standing to challenge legislative decisions in an action for declaratory judgment, following a straight rezoning as opposed to a rezoning where specific conditions are included. See e.g., *Cherry Cmty. Org.*, 257 N.C. App. 579, 809 S.E.2d 397 (plaintiff failed to establish standing to challenge a rezoning from general-use districts to mixed-use development districts). See also *Violette*, 283 N.C. App. at 569, 874 S.E.2d at 220 (plaintiff failed to establish standing to challenge a rezoning from RP to RP-CZ), *review denied*, 883 S.E.2d 606 (N.C. 2023). Here, Plaintiffs fall far short of the necessary standing to maintain this action.

⁶ Regarding the Text Amendment, the legislature passed amended 160D-601(d) stating that Down-zoning required the consent of all property owners affected by the restricted uses to provide written consent to the restrictions on use. No such change was made by the legislature to require consent by property owners affected by the permitting of additional uses. Thus, bolstering the argument that special damages should be necessary to contest the Text Amendment permitting additional uses.

Plaintiffs' grievances are neither special nor distinct to the Plaintiffs, let alone particularized to each individual plaintiff. Rather, Plaintiffs' collective and generalized allegations are similar to those harms alleged, and held not to create standing in *Hoag* and the cases it cites. Plaintiffs' speculation about potential and vague harms is not only shared between the Plaintiffs, but is common to every owner of property that is adjacent to or located in the vicinity of property zoned Highway Commercial in the entire County (see Appraiser Opinion).

There is nothing remarkable or special about where the Plaintiffs' properties are located, or otherwise situated, in relation to the Property. For example, over a dozen properties are immediately adjacent to the Property, and over a dozen properties also abut U.S. Highway 220 in the immediate area alone. None of the Plaintiffs' properties are geographically positioned to be unique in relation to the Property.

All Plaintiffs, except Micris, rely upon the Appraiser Opinion. (R p 66-67). However, the Appraiser Opinion opines on the potential negative impacts that would be shared by all of the surrounding properties, i.e., "noise, odor, light, glare, trespass, litter, traffic, parking, and security concerns, would tend to have an adverse impact on the fair market value of surrounding property uses and may not be compatible with the surrounding land uses or be harmonious with the similar land uses surrounding the property." (R p 67) (emphasis added).

Further, Plaintiffs' "individual concerns" in the body of the Complaint not only mirror the general concerns raised in the Appraiser's Opinion, but also overlap with

one another (and nonparty affidavits). For example, all of the Plaintiffs are concerned about a loss of property value; all of the Plaintiffs—except Micris—are concerned about noise and light; five of the Plaintiffs are concerned about visual intrusiveness; three of the Plaintiffs are concerned about traffic; etc. In sum, a review of each of the allegations shows that there is no alleged harm distinct to each individual plaintiff.

The only concern that may appear to be special, or distinct, is Camp Carefree's concern that the Map Amendment negatively impacts the "physical and mental wellbeing of its campers." (R p 12). However, Plaintiffs admit that this concern is rooted in the general concern of potential "loud noise, light trespass and over stimulation." (R p 12). The potential negative impacts that concern Camp Carefree are a variation on those shared by the community at large.

Plaintiffs' generalized allegations of harm from rezoning to Highway Commercial are further undercut by the fact that many of the alleged injuries might be present from uses that were already allowed on the Property when it was zoned Residential Agricultural. The Map Amendment does not create the alleged harms because the potential for those harms already exists.

The packet submitted during the rezoning hearing contains a list of 78 uses permitted in the Residential Agricultural zoning district. (R S p 630). Many of these uses would result in the same type harms alleged here by Plaintiffs. For example, lumber yards and poultry breeding facilities are already permitted by-right on the Property. These uses are regularly challenged on the basis of "[i]ncreased noise, odor, glare, light trespass, [and] litter . . . concerns" that Plaintiffs allege give them

standing against a rezoning to Highway Commercial. (R pp 15-16). Similarly, with a special use permit, airports and landfills could be sited on the Property, potentially resulting in the same alleged “loud noises, light, and over stimulation” and “[e]nvironmental impacts” alleged by Plaintiffs. (R pp 15-16). Plaintiffs’ damages cannot be special and distinct if they were already a possibility.

A. Plaintiffs’ allegations also fail to establish the standing necessary to challenge the Text Amendment.

Plaintiffs’ have similar, if not greater, difficulty establishing standing to challenge the Text Amendment for many of the same reasons as the Map Amendment. The Text Amendment modifies the UDO to allow additional uses in certain districts and alter whether the electronic gaming use requires a special use permit in Highway Commercial. The UDO, and amendments to it, universally apply to all property zoned within a particular district. Thus, the standing “difficulty” outlined in *Violette* and illustrated in *Hoag* is compounded by the generalized nature of text amendments.

Virtually all of the allegations in the Complaint are focused on the Map Amendment, with an occasional conclusory coupling of the Map and Text Amendments. (R pp 11-16; Plaintiffs’ Court of Appeals Appellant Br. at 7-14). There are no allegations specific to the Text Amendment. Thus, the Complaint fails to establish how Plaintiffs have “a specific personal and legal interest in the subject matter affected by the zoning ordinance” to challenge the adoption of a county-wide change to the UDO. *See Taylor*, 290 N.C. at 620, 227 S.E.2d at 583.. Plaintiffs’ Text Amendment allegations could be shared by any property owners within the County

that are in the vicinity of any property zoned Highway Commercial.⁷ Other property owners are identically situated to Plaintiffs given they own land that, at the time of adoption of the Text Amendment, was (and still is) in the vicinity of several Highway Commercial properties. Plaintiffs' own allegations disclose that the alleged damages are not individualized.

While the DJA provides that persons properly affected may have the courts determine their rights, "[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." N.C. Gen. Stat § 1-257. A refusal to enter a decree pursuant to Section 1-257 is a jurisdictional issue. *Augur v. Augur*, 356 N.C. 582, 585, 573 S.E.2d 125, 128 (2002) ("When the trial court issued its order [refusing to issue the requested declaration], it effectively declined to exercise its jurisdiction."). Thus, to be in the class of persons on whom the DJA confers a right of action, a person must both be "affected by" a municipal ordinance and demonstrate that that declaratory relief will redress the harm.

Here, the Text Amendment did not create or expand the Highway Commercial district. It merely expanded the uses allowed in the Highway Commercial district. Critically, the harms alleged by the Plaintiffs are harms that would exist even under the old usages allowed in the Highway Commercial district. Therefore, if the Text

⁷ Basing standing on proximity alone would be especially problematic. If proximity was sufficient to challenge the Text Amendment, for example, every landowner near property zoned Highway Commercial would have standing. Such a dramatic shift would overwhelm the courts.

Amendment were reversed, the remaining Highway Commercial uses could still bring an increase in light, traffic, and noise—and Plaintiffs’ alleged harm would remain.

The alleged harm was present without the Text Amendment and will remain regardless of the outcome. Whether due to a failure to allege they were “affected” by the change or because a favorable declaration will not provide redress from the asserted harm, Plaintiffs lack standing to attack the Text Amendment

The Plaintiffs have not met the requirement of special and distinct damages necessary to dispute the validity of the Map and Text Amendments.

III. THE COURT OF APPEALS’ RELIANCE ON *GARDNER* WAS MISPLACED BECAUSE *GARDNER* MISINTERPRETED *FOREST*.

A. *Gardner* cannot justify the basis for reversal below because it erroneously departed from *Taylor* by misinterpreting *Forest*.

The Court of Appeals’ determination that “Defendants argument . . . is precluded by this Court’s opinion in *Gardner*, and the North Carolina Supreme Court decisions relied on and synthesized therein . . .” erroneously supplied the principal basis for reversing the trial court. *Gardner* was wrongly decided for the same reasons that the Court of Appeals’ decision in this case should be reversed, because both decisions interpreted *Forest* to relax the standing requirement, determining that plaintiffs may merely be “affected by” the rezoning to establish standing.⁸ But, for the reasons explained above, the Court of Appeals’ pre-*Gardner* decisions are the proper interpretation of *Taylor*, which was unaltered by *Forest*: For a person to challenge a

⁸ Notably, two of the three judges (Judge Stroud and Judge Zachary) that reversed the trial court in the present case also served on the *Gardner* panel.

legislative zoning decision in an action for a declaratory judgment, a plaintiff must “suffer special damages distinct from those to the public at large.” *Violette*, 283 N.C. App. at 569, 874 S.E.2d at 221; *see also Davis*, 81 N.C. App. at 508, 344 S.E.2d at 371; *Cherry Cmty. Org.*, 257 N.C. App. at 583, 809 S.E.2d at 400; *Mitchell*, 283 N.C. App. 470, 871 S.E.2d 878, No. COA21-394, 2022 WL 1549164, at *2 , *review denied*, ____N.C.____, 881 S.E.2d 295; *Hoag*, 270 N.C. App. 820, 839 S.E.2d 875, No. COA19-826, 2020 WL 1685601, at *2.

According to the Court of Appeals, *Forest* altered the relevant jurisprudence because its elimination of the constitutional “injury-in-fact” standing requirement also changed the standing requirement that must be satisfied in order to challenge a legislative zoning action, effectively allowing anyone affected by such actions to sue. However, as explained above, *Taylor* and its progeny have articulated the DJA’s statutory terms to require a special showing of injury in a manner consistent with *Forest*’s determination that “[s]howing a party falls within the class of persons on whom the statute confers a cause of action may require a showing of some special injury depending on the statutory terms.” *See Forest*, 376 N.C. at 608 n.51, 853 S.E.2d at 733 (emphasis added). The Court of Appeals in *Gardner* and this case extended *Forest* beyond its intended scope, opening the door to a flood of zoning challenges that would burden North Carolina courts and local governments.

B. Even under the erroneous *Gardner* standard, Plaintiffs fail to allege sufficient standing.

The underlying factual situations in the present case and in *Gardner* are as far apart as the sometimes-confused City of Rockingham and County of Rockingham. In

this Rockingham County case, there are long-running and very public infrastructure projects (future I-73 and associated water and sewer lines) which are already driving changes to the uses for other parcels in the southwestern part of the County, whereas in *Gardner* the rezoning was a single private industrial matter. And, in the present case, the statutorily required and publicly adopted comprehensive land use plan identified this area as a target location for the exact type of rezoning requested; thus, the location of a Highway Commercial district on the Property was a direct and foreseeable consequence of the pre-existing highway and other properties already zoned Highway Commercial in the area. *See* N.C. Gen. Stat. § 160D-501 (2025).

While Plaintiffs may feel the increased development in the growth area is unfortunate, the arrival of another Highway Commercial property in the area is profoundly less surprising than the announcement of the biochar facility at issue in *Gardner*. The expressly stated intended use of the *Gardner* rezoning was for a “biochar production facility” which would “cook untreated lumber and creosote-treated railroad ties through a pyrolysis process to produce charcoal.” *Gardner*, 297 N.C. App. at 753, 911 S.E.2d at 763 (cleaned up). As a result of this biochar process, various types of environmental pollutants would be discharged. *Id.* The type of decades-long project present here, centered around the future I-73 as a major regional infrastructure project, is in marked contrast to the type of single-use industrial facility at issue in *Gardner*.

Similarly, the generic adverse effects alleged here are easily distinguishable from the inevitable specific pollution in *Gardner*. The Plaintiffs here allege they will

suffer adverse impact on the fair market value of their property, caused by the approval of the Map Amendment due to harms that are possible with any change of use from empty farmland rather than the allegations of specific and identified harms resulting directly from the biochar facility. In fact, the harms alleged by Plaintiffs here are possible without any change in zoning because of the wide variety of uses currently allowed in a Residential Agricultural district. (R S p 630; see also N.C. Gen. Stat. § 106-701 (Right to Farm defense) and N.C. Gen. Stat. §160D-903(a) (broadly defining agriculture and agritourism uses)).

Just as in *Taylor* (and unlike in *Gardner*), the rezoning here would not wholly change the property uses in the greater area but would merely increase the amount of land where already permissible and existing uses in the area can be further developed. The Plaintiffs here have not challenged those previous rezonings nor alleged any harm which has actually occurred from those previous Highway Commercial rezonings or the uses on those properties.⁹ This is the fatal flaw in Plaintiffs' argument: The alleged harms are not attributable to this rezoning because they could arise from uses already permitted on the Property and nearby parcels. As

⁹ Maps showing the various parcels reveal the spatial relationships between the parcels. (R S 623; 706). There are eight properties currently zoned Highway Commercial in the immediate area of the subject parcel. *Id.* Four of these properties are located on the same side of Highway 220 as the subject Property and four are located on the opposite side. *Id.* Plaintiff Anderson already borders an existing Highway Commercial property, as does Plaintiff Micris, LLC. (R S 623, 643). Plaintiff Camp Carefree is separated from two existing Highway Commercial and two Light Industrial properties by a side road and one parcel. *Id.* Plaintiff Micris, LLC is already zoned Light Industrial (rather than residential or agricultural) and there are six total Light Industrial parcels in the area. (R S 706).

a result, under either standard, Plaintiffs fail to allege a sufficient effect attributable to this rezoning.

CONCLUSION

For the foregoing reasons, these Defendant-Appellants request this Court reverse the Court of Appeals and reinstate the trial court's dismissal of Plaintiffs' challenge to the Map and Text Amendments for lack of standing.

Respectfully submitted this the 17th day of July, 2026.

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I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing was served upon all other parties in the above-cited actions via email and by United States Postal Service, properly addressed to attorney(s) of record for all other parties as follows:

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This the 17th day of July, 2026.

By: /s/William L. Hill

No. 209PA25

TWENTY-SECOND DISTRICT

SUPREME COURT OF NORTH CAROLINA

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER,

Plaintiffs/Appellees,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS,
LLC,

Defendants/Appellants.

FROM ROCKINGHAM COUNTY
23 CVS 2013

FROM COURT OF APPEALS
No. COA24-666

ADDENDUM OF UNPUBLISHED OPINIONS

ADDENDUM INDEX

Exhibit A: *Hoag v. Cnty. of Pitt*, 270 N.C. App. 820, 839 S.E.2d 875 (2020)

Exhibit B: *Mitchell v. Orange Cnty.*, 283 N.C. App. 470, 871 S.E.2d 878 (2022)

EXHIBIT A

270 N.C.App. 820

Unpublished Disposition

NOTE: THIS OPINION WILL NOT APPEAR
IN A PRINTED VOLUME. THE DISPOSITION
WILL APPEAR IN THE REPORTER.

An unpublished opinion of the North Carolina Court
of Appeals does not constitute controlling legal
authority. Citation is disfavored, but may be permitted
in accordance with the provisions of Rule 30(e)(3)
of the North Carolina Rules of Appellate Procedure.
Court of Appeals of North Carolina.

Ronald HOAG and Holly Hoag; Jeremy Gonzalez
and Kristen Gonzalez; William Harrell and Kathryn
Harrell; Eric Finical and Sally Finical; James Lawless
and Lisa Lawless; Sandra Hardee; Diane Semer; Joe
McDowell and Lynell McDowell; Scott Pritchard and
Donna Pritchard; Vincent Fischer and Patricia Fischer;
Michael Bowman and Josie Bowman; John Lowe and
Nelda Lowe; Beech Cove Subdivision Homeowners
Association, Inc.; Holly Ridge Homeowner's Association;
and Moss Bend Homeowners Association, Inc., Plaintiffs,
v.

COUNTY OF PITT; Bill Clark Homes of Greenville,
LLC; and Umberto G. Fontana, Defendants.

No. COA 19-826

|

Filed: April 7, 2020

Appeal by Plaintiffs from order entered 30 April 2019 by
Judge G. Bryan Collins, Jr. in Pitt County Superior Court.
Heard in the Court of Appeals 18 February 2020. Pitt County,
No. 18 CVS 1976

Attorneys and Law Firms

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Appellants.

Sumrell Sugg, P.A., by Scott C. Hart, for Defendant-Appellee
County of Pitt.

Ward and Smith, P.A., by E. Bradley Evans, for Defendant-
Appellee Bill Clark Homes of Greenville, LLC.

No brief filed by Defendant-Appellee Umberto G. Fontana.

Opinion

INMAN, Judge.

****1** Plaintiffs appeal from an order dismissing their
complaint challenging a rezoning decision by Defendant
County of Pitt (the “County”) in favor of Defendant Bill Clark
Homes of Greenville, LLC (“Clark Homes”). On appeal,
Plaintiffs argue that their complaint adequately alleged
special damages sufficient to survive a motion to dismiss
under Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules
of Civil Procedure. After careful review, we affirm the trial
court's order dismissing Plaintiffs’ complaint.

I. FACTUAL AND PROCEDURAL HISTORY

The record below discloses the following:

Defendant Umberto G. Fontana owned a 67.5 acre tract of
land (the “Property”) in Pitt County which, by February
2018, Mr. Fontana had contracted to sell to Clark Homes.¹
That month, Mr. Fontana and Clark Homes filed with the
County a rezoning application requesting that the Property be
rezoned from Rural Residential to Suburban Residential. The
individual plaintiffs own property adjacent to or neighboring
the Property. Several but not all of the individual plaintiffs
opposed the rezoning and attended a County Planning Board
meeting to speak in opposition. At that meeting, those
opposed argued that the rezoning would be contrary to the
County's comprehensive land use plan, would negatively
impact traffic congestion, and would create unsafe traffic
conditions. They also provided a petition to the County
Planning Board, in which they asserted the rezoning would:
(1) result in development that would be inconsistent with the
character of the surrounding area; (2) result in diminution
of property values nearby, including those tracts owned
by Plaintiffs; (3) be detrimental to the floodplain, nearby
streams, and the Tar River; (4) cause adverse impacts to local
infrastructure, including NC Highway 33 E; and (5) increase
traffic congestion and lead to unsafe traffic conditions in
the area. The County Planning Board ultimately voted to
recommend that the County Board of Commissioners deny
the rezoning application.

The rezoning application, along with the Planning Board's
recommendation, came before the Commissioners in a public
meeting on 23 April 2018. Some of the Plaintiffs again
spoke in opposition. The Commissioners voted to delay a

determination on the application until a later meeting. The Commissioners next considered the matter on 7 May 2018 in another public meeting, and several of the Plaintiffs again spoke in opposition. The Commissioners voted to approve the rezoning application.

Plaintiffs filed a declaratory judgment action in Pitt County Superior Court challenging the rezoning. Plaintiffs' complaint reiterated the objections to the rezoning raised in their petition and hearing before the County Planning Board. They further alleged that:

****2** 40. Plaintiffs are aggrieved parties who own real property immediately adjacent to and/or in close proximity to the Fontana Property.

41. Plaintiffs, as a result of the Rezoning and development permitted by the Rezoning, have suffered and will continue to suffer special damages in the form of increased stormwater run-off, increased risk of flooding, diminution in the value of their property, increase in traffic, increase in traffic congestion and less safe traffic conditions, increase in noise, and loss of neighborhood character.

42. Plaintiffs have specific personal and legal interests adversely affected by the County's approval of the Rezoning and development permitted by the Rezoning.

43. The damages suffered by the Plaintiffs are distinct from the rest of the community at large.

Clark Homes filed a combined answer and motion to dismiss under Rules 12(b)(1) and 12(b)(6). The County filed a motion to dismiss under Rule 12(b)(6) in lieu of an answer. Both motions asserted that the Plaintiffs lacked standing.

The motions were heard by the trial court on 13 November 2018. The trial court took the matter under advisement.

On 30 April 2019, the trial court entered an order dismissing Plaintiffs' complaint. The order concluded that "Plaintiffs have not sufficiently alleged special damages arising from the zoning decision at issue" and the three homeowner's association plaintiffs "have not alleged that either the associations themselves or all members of the associations have a specific legal interest directly and adversely affected by the rezoning in question." Plaintiffs now appeal.²

II. ANALYSIS

A. Standard of Review

Standing may be challenged by a motion to dismiss under either Rule 12(b)(1) or 12(b)(6). *Farfield Harbour Property Owners Ass'n, Inc. v. Midsouth Golf, LLC*, 215 N.C. App. 66, 72, 715 S.E.2d 273, 280 (2011). "The standard of review on a motion to dismiss under Rule 12(b)(1) is *de novo*. The standard of review on a motion to dismiss under Rule 12(b)(6) is whether, if all the plaintiff's allegations are taken as true, the plaintiff is entitled to recover under some legal theory." *Rowlette v. State*, 188 N.C. App. 712, 714, 656 S.E.2d 619, 621 (2008) (internal citations and quotations omitted). "In our *de novo* review of a motion to dismiss for lack of standing, we view the allegations as true and the supporting record in the light most favorable to the non-moving party." *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644, 669 S.E.2d 279, 283 (2008). "[T]he [C]ourt is not, however, required to accept mere conclusory allegations, unwarranted deductions of fact, or unreasonable inferences as true." *Estate of Vaughn v. Pike Elec., LLC*, 230 N.C. App. 485, 493, 751 S.E.2d 227, 233 (2013) (citations omitted).

B. Plaintiffs' Complaint

A party challenging a local government's decision to rezone another's real property "must allege and show special damages distinct from the rest of the community." *Davis v. City of Archdale*, 81 N.C. App. 505, 508, 344 S.E.2d 369, 371 (1986) (citation omitted). "Examples of adequate pleadings include allegations that the rezoning would cut off the light and air to the petitioner's property, increase the danger of fire, increase the traffic congestion and increase the noise level." *Kentallen, Inc. v. Town of Hillsborough*, 110 N.C. App. 767, 769-70, 431 S.E.2d 231, 232 (1993). The plaintiff must provide a "factual basis to support the argument that he is an aggrieved person[.]" *Cox v. Town of Oriental*, 234 N.C. App. 675, 680, 759 S.E.2d 388, 391 (2014); *see also Kentallen*, 110 N.C. App. at 769, 431 S.E.2d at 232 (observing that a party challenging a land use decision "must also allege the *facts* on which [the] claim of aggrievement is based" (citations and quotations omitted) (alteration in original) (emphasis added)).

****3** Plaintiffs argue that their complaint adequately alleges special damages, because it generally follows the language employed by the plaintiff in *Cherry Community Organization v. City of Charlotte*, 257 N.C. App. 579, 809 S.E.2d 397 (2018). In that case, the authoring judge of this Court quoted

the plaintiff's complaint and stated that "it is clear that [the plaintiff] met the minimum pleading requirements of standing to survive a motion to dismiss in accordance with Rule 12(b) (6) ... in generally alleging special damages." *Id.* at 584, 809 S.E.2d at 401. *Cherry Community* is of limited precedential and persuasive value because the opinion failed to garner a clear majority; one judge concurred in the result only, while the other member of the panel concurred by separate opinion and wrote "separately to concur in the result only." *Id.* at 587, 809 S.E.2d at 403. *Cherry Community* is inapposite because it reviewed the trial court's entry of a summary judgment order, not a motion to dismiss. The Court's analysis that the complaint would have survived a motion to dismiss is non-binding *dicta*.

We recognize that Plaintiffs' allegations in paragraphs 40-41 of their complaint assert general categories of damages that could, if particularized to each plaintiff, constitute special damages sufficient to confer standing. *See, e.g., Jackson v. Guilford Cty. Bd. Of Adjustment*, 275 N.C. 155, 161, 166 S.E.2d 78, 82 (1969) (holding "the owner of adjoining or nearby lands, who will sustain special damage from the proposed use through a reduction in the value of his own property, does have standing"); *Kentallen, Inc.*, 110 N.C. App. at 769-70, 431 S.E.2d at 232. But broad allegations of damages falling within those general categories does not, without more, suffice. *See Davis*, 81 N.C. App. at 508, 344 S.E.2d at 371 ("Plaintiffs alleged in their complaint that they have sustained ... a diminution in the value of their property due to increased traffic on roads ... and ... increased demands upon already overburdened public utilities. We do not think these damages are special damages distinct from those of the rest of the community."); *Lloyd v. Town of Chapel Hill*, 127 N.C. App. 347, 351, 489 S.E.2d 898, 900-01 (1997) (holding general allegations of adverse effects on property values by owners "in the immediate vicinity" were insufficient to establish standing because they did not amount to allegations of "special damages distinct from the rest of the community" (citations omitted)). The complaint's allegation that Plaintiffs, as nearby landowners, will suffer "increased stormwater run-off, increased risk of flooding, diminution in the value of their property, increase in traffic, increase in traffic congestion and less safe traffic conditions, [and] increase in noise," without additional factual allegations showing the distinctiveness of these injuries to the Plaintiffs themselves, does not demonstrate standing. *See, e.g., Cherry v. Wiesner*, 245 N.C. App. 339, 351, 781 S.E.2d 871, 880 (2016) (holding a homeowner who alleged new home construction across the street was incongruous with historic

character of neighborhood and would reduce property values and impair enjoyment of the neighborhood lacked standing to challenge a certificate of appropriateness approving the construction because she did not allege "special damages *distinct to respondent*" (emphasis in original)).

The allegation in the complaint that the "damages suffered by the Plaintiffs are distinct from the rest of the community at large" is insufficient to meet this distinctiveness requirement, particularly given the factual allegations made elsewhere in the complaint. First, as admitted by Plaintiffs' counsel at the hearing before the trial court, this allegation is merely a conclusion. Conclusory allegations are not considered as true. *Estate of Vaughn*, 230 N.C. App. at 493, 751 S.E.2d at 233. Second, Plaintiffs' factual allegations as to the nature of these damages disclose that they are not distinct to Plaintiffs. In Paragraph 31, Plaintiffs allege:

- **4 a. that the Rezoning allowed development that is *not in character with the surrounding area*;
- b. that the Rezoning would result in the diminution of the value of *nearby properties (including those owned by Plaintiffs)*;
- c. that the Rezoning would result in development that adversely *impacts the floodplain, streams and the Tar River*;
- d. that the Rezoning would result in development that adversely impacts the *surrounding transportation infrastructure*, including NC Highway 33 E; and
- e. that the Rezoning would significantly increase traffic congestion and unsafe traffic conditions *in the area*.

(emphasis added). The language emphasized above discloses that the damages complained of are not individualized. Given that these are the only *factual* allegations of special damages, they are insufficient to support the conclusory allegation of distinctive injury.

We emphasize that we do not reach this holding because Plaintiffs decided to press their claims collectively. Landowners who elect to pool their resources and bring suit together with their neighbors are not subject to stricter pleading standards than a lone plaintiff. But those landowners do not enjoy a relaxed requirement to plead factual allegations of special damages distinct from the community at large. Here, Plaintiffs' joint complaint could have contained specific, individualized factual allegations demonstrating

the distinctiveness of each injury suffered by each of the Plaintiffs. *See, e.g., Mangum*, 362 N.C. at 644, 669 S.E.2d 283 (2008) (holding a group of plaintiffs adequately alleged special damages where each landowner identified specific injuries distinct to their individual properties at a board of adjustment hearing and those “allegations were reiterated in the petition filed in the superior court”). Those particularized allegations are simply missing from Plaintiffs’ complaint.³

III. CONCLUSION

Plaintiffs lack standing to challenge the County’s rezoning decision because their complaint fails to allege special

damages distinct from the rest of the community. We affirm the trial court’s order dismissing Plaintiffs’ complaint.

***876 AFFIRMED.**

Report per Rule 30(e).

Judges STROUD and YOUNG concur.

All Citations

270 N.C.App. 820, 839 S.E.2d 875 (Table), 2020 WL 1685601

Footnotes

- 1 By the time the order dismissing Plaintiff’s suit was filed, Fontana no longer had an interest in the Property. Because he has not filed a brief in this appeal, and the remaining parties do not discuss Mr. Fontana in their briefs, we limit our discussion of Mr. Fontana to our recitation of the underlying factual and procedural history.
- 2 Plaintiffs’ appeal is limited to the trial court’s determination on special damages. Because they do not address the trial court’s separate basis for dismissing the homeowner’s associations’ claims, we address only whether the individual property owners adequately alleged special damages necessary to confer standing.
- 3 Some of the plaintiffs in this case did, per the complaint, testify before the County Planning Board and the County Board of Commissioners. However, the complaint references that testimony only generally, and no transcript was attached to the complaint as part of the pleadings to be considered at the motion to dismiss stage.

EXHIBIT B

283 N.C.App. 470

Unpublished Disposition

NOTE: THIS OPINION WILL NOT APPEAR
IN A PRINTED VOLUME. THE DISPOSITION
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in accordance with the provisions of Rule 30(e)(3)
of the North Carolina Rules of Appellate Procedure.

Court of Appeals of North Carolina.

Matthew MITCHELL, Kaila Mitchell, Franklin
Garland, Betty Garland, James Garland, Isabel
Garland, Rick Summers, Myra Gwin-Summers,
Julian Hall, Benita Wicker Hall, Justin Mitchell,
Gerald Scaralett, Brandon Sneed, Angela Sneed,
Joshua Ham, Dustin Williams, David Barlow, and
Rhonda Barlow, and Rhonda Barlow, Plaintiffs,

v.

ORANGE COUNTY, Orange County Board of
Commissioners, and Terra Equity, Inc., Defendants.

No. COA21-394

|

Filed May 17, 2022

Appeal by Plaintiffs from order entered 8 March 2021 by
Judge Allen Baddour in Orange County Superior Court.
Heard in the Court of Appeals 12 January 2022. Orange
County, No. 20-CVS-1359

Attorneys and Law Firms

Ellis & Winters LLP, by Michelle A. Liguori, for the
Plaintiffs-Appellants.

Fox Rothschild LLP, by Matthew Nis Leerberg, Kip D.
Nelson, and Manning, Fulton & Skinner, P.A., by Judson A.
Welborn, and James Bryan, for the Defendants-Appellees.

Opinion

DILLON, Judge.

*1 ¶ 1 This matter involves the rezoning of a tract of land
approved by Orange County. This appeal concerns whether
Plaintiffs, who own various tracts near the rezoned tract,
have standing to collaterally attack the rezoning decision. We

affirm the trial court's order dismissing the matter based on
Plaintiffs' lack of standing.

I. Background

¶ 2 Orange County adopted an ordinance (the "Ordinance")
rezoning a 12-acre tract of land (the "Property") owned by
Defendant Terra Equity, Inc., from "Rural-Residential," to
a more development-friendly designation of "Master Plan
Development" ("MPD-CZ"). The Property is adjacent to
approximately 150 acres of land already zoned as MPD-CZ
and also owned by Terra Equity. Terra Equity sought the
rezoning of the Property so that it could combine it with its
adjacent 150 acres for a warehouse project.

¶ 3 Plaintiffs are owners of various tracts near the Property.
They filed this present action against Orange County, alleging
that the Ordinance constituted illegal spot-zoning and was
otherwise arbitrary and capricious. Terra Equity was allowed
to intervene and moved to dismiss for lack of standing and for
failure to state a claim. The trial court granted the motion to
dismiss with prejudice for lack of standing. Plaintiffs timely
appealed.

II. Standard of Review

¶ 4 "In our de novo review of a motion to dismiss for lack of
standing, we view the allegations as true and the supporting
record in the light most favorable to the non-moving party."
Mangum v. Raleigh Bd. of Adjustment, 362 N.C. 640, 644,
669 S.E.2d 279, 283 (2008).

III. Analysis

¶ 5 "The General Assembly has delegated to the legislative
body of cities and incorporated towns the power to adopt
zoning regulations and from time to time, to amend or repeal
such regulations." *Taylor v. Raleigh*, 290 N.C. 608, 618, 227
S.E.2d 576, 582 (1976) (quotation omitted).

¶ 6 "Zoning decisions are typically characterized as being
in one of four different categories – legislative, advisory,
quasi-judicial, and administrative." *County of Lancaster v.
Mecklenburg County*, 334 N.C. 496, 507, 434 S.E.2d 604, 612
(1993).

¶ 7 In this present matter, the passage of the Ordinance to rezone the Property by the County was legislative in nature. *See id.* at 513, 434 S.E.2d at 615 (passage of an ordinance to change zoning is a “legislative” act).

¶ 8 “[T]he validity of a municipal zoning ordinance ... may be determined in a properly constituted action under our Declaratory Judgment Act.” *Taylor*, 290 N.C. at 620, 227 S.E.2d at 583. However, “[o]nly those persons who [have] a specific personal and legal interest in the subject matter affected by the zoning ordinance and who are directly and adversely affected thereby have standing to challenge a legislative zoning decision.” *Lancaster*, 334 N.C. at 503 n.4, 434 S.E.2d at 610 n. 4 (internal marks and citations omitted).

¶ 9 While the diminution of one's property value might be sufficient to establish standing from a *non-legislative* decision regarding the use of a nearby tract, our jurisprudence suggests that to challenge a legislative decision to rezone a nearby tract, a plaintiff must show more. *See id.* at 503 n.4, 434 S.E.2d at 610 n. 4; *see also Jackson v. Guilford Cty. Bd. of Adjust.*, 275 N.C. 155, 161; 166 S.E.2d 78, 82 (1969) (landowner has no standing to challenge the change of zoning to a nearby tract based solely on an allegation that the rezoning of the nearby tract will reduce the value of his land).

*2 ¶ 10 In such a case, a landowner must show that (s)he will suffer “special damages distinct from the rest of the community.” *Lancaster*, 334 N.C. at 503 n.4, 434 S.E.2d at 610 n. 4; *Cherry Cmty. Org. v. City of Charlotte*, 257 N.C. App. 579, 583, 809 S.E.2d 397, 400 (2018) (landowner only has standing to challenge a zoning ordinance if (s)he alleges “special damages distinct from the rest of the community”).

¶ 11 Here, the complaint alleges that all but one of the nearby tracts represented by Plaintiffs do not share any border with

the rezoned Property. And the one tract which does border the Property also borders the 150 acres which is already zoned MPD-CZ. Plaintiffs, otherwise, allege that the rezoning of the Property “has caused and will continue to cause diminution in the value of their property, will cause adverse secondary effect to their property due to noise, traffic, pollution, destruction of the rural character of the surrounding area, and will impair the use and enjoyment of their property.”

¶ 12 We have carefully reviewed these and the other allegations in the complaint and conclude that Plaintiffs have failed to show how the rezoning of this 12-acre Property, especially where the prior rezoning of the 150 acres adjacent to the Property is not being challenged, causes damages that is distinct from other nearby properties.

IV. Conclusion

¶ 13 We hold that the allegations in Plaintiffs’ complaint fail to establish standing sufficient to challenge the legislative act of the County to enact the Ordinance. We, therefore, affirm Judge Baddour's order dismissing this action.

AFFIRMED.

Report per Rule 30(e).

Judges CARPENTER and WOOD concur.

All Citations

283 N.C.App. 470, 871 S.E.2d 878 (Table), 2022 WL 1549164, 2022-NCCOA-362