MUNICIPAL LAW NOTES

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Eminent Domain; Light Rail System; Bridge; Visibility; Just Compensation

City of Charlotte v. Univ. Fin. Props., LLC, ___ N.C. App. ___ (No. COA15-473, Mecklenburg– 4/5/16), *disc. review denied*, ___ N.C. ___ (No. 183P16, 8/18/16)

- ***Holding***– In condemnation action, involving a portion of property owned by University Financial Properties, LLC, in connection with the expansion of City's light rail system, trial court erred in its determination that the construction of an elevated bridge in connection with the light rail extension project "is part of the taking of University Financial's property in this action."

The Court addressed the issue of damages due to loss of visibility. "Here, the trial court concluded that the determination of the fair market value of the remainder of University Financial's property required consideration of the loss of visibility to that property resulting from the Bridge's construction. However, this ruling ignores the fact that (1) University Financial's loss of visibility argument is akin to a property owner's assertion of the right to compensation for a reduction in the flow of traffic past his property — an argument our appellate courts have repeatedly rejected; and (2) the loss of visibility from the Bridge does not 'flow directly from the use to which the land taken is put,' *id.* [Bd. of Transp. v. Bryant, 59 N.C. App. 256, 261-62, 296 S.E.2d 814, 817-18 (1982)], given that the land taken from University Financial is being utilized for road-widening purposes and not as the location of the Bridge."

. . . .

"We are unable to discern a meaningful distinction between (1) the assertion that a landowner is entitled to compensation because its property has diminished in value due to the *reduction in traffic* caused by a municipality's actions; and (2) University Financial's contention here that it is entitled to compensation for the decreased value of its property based on the *reduced visibility to passing traffic* caused by the City's construction of the elevated light rail bridge. Consequently, we hold that the loss in visibility of University Financial's property to passing traffic is not 'part of the taking' and that the trial court's order holding

otherwise must be reversed." (Emphasis in original.)

The Court found Carolina Power & Light Co. v. Creasman, 262 N.C. 390, 137 S.E.2d 497 (1964), instructive. "The same is true here. The property taken from University Financial is being used to widen North Tryon Street. The Bridge that will reduce the visibility of University Financial's remaining property to passing traffic is to be located over the existing roadway (not on the land taken from University Financial) and is likely to similarly reduce the visibility of other neighboring lots on North Tryon Street. As such, University Financial is not entitled to compensation from the City's use of land that is 'not part of the lands taken from [University Financial]' and 'may not be considered as suffering legal damage over and above that suffered by [its] neighbors whose lands were not taken.' *Id.* [at 402-03, 137 S.E.2d 506] (citation and quotation marks omitted). Therefore, for this reason as well, the trial court erred in ruling that University Financial is entitled to present evidence concerning 'all damages resulting from the impact of the construction of the BLE [LYNX Blue Line Extension] Project, including construction of the Bridge, on its remaining property' during the trial on just compensation."

- ***Synopsis***− Appeal by plaintiff-City from December 2014 orders. Reversed and remanded. Opinion by Judge Davis, with Judge Stephens and Judge Stroud concurring. On August 18, 2016, the N.C. Supreme Court denied defendant's petition for discretionary review.

Land Use; Historic District; Certificate of Appropriateness; Standing; Aggrieved Party; Special Damages

Cherry v. Wiesner, ___ N.C. App. ___ (No. COA15-155, Wake− 2/16/16), *disc. review denied*, ___ N.C.___ (No. 103P16, 8/18/16)

- ***Holding***− Respondent-residential landowner, whose property was across from neighbors' property in historic district, was not an aggrieved party, lacking standing to contest Historic District Commission's decision to approve the modernist design of a house, G.S. 160A-400.9(e), as respondent-residential landowner failed to allege special damages.

- ***Key Excerpt***− "[Respondent] lives across the street from the single-family "modernist" design home of [petitioners] in Raleigh's Oakwood neighborhood. Oakwood is a designated historic district, where the design of new construction must be approved by the Raleigh Historic Development Commission ('the Commission'). As required by the rules of the historic district, before building on their vacant lot, petitioners applied for a certificate of appropriateness [G.S. 160A-400.9] to build their new home ('the Cherry-Gordon house'). When the Commission held hearings to consider the application, respondent and others objected to petitioners' proposed modernist design because they considered it incongruous with the other houses in the historic district. After a series of hearings, the Commission approved the design, but then the Raleigh Board of Adjustment ('the Board') rejected the design. Petitioners then appealed the Board's ruling to the Superior Court, which reviews decisions of the Board and the Commission to make sure that their rulings comply with the law. The Superior Court reversed the Board's decision, which meant that the Commission's decision to approve the design was affirmed. This opinion addresses respondent's appeal from the Superior Court's ruling."

The Court initially noted that the Superior Court did not rule on the question of the house's modernist design and the claim of "incongruity" with the historic district but decided that respondent did not have legal standing to challenge the approval of the design. Upon explaining that one who brings a legal action challenging a land use decision must have standing to bring the action, the Court stated, "The applicable statute gives 'standing' only to an 'aggrieved party,' as the law defines that term. Although respondent lives across the street from the Cherry-Gordon house, the location of her home does not automatically give her standing to challenge the issuance of the certificate. A nearby landowner has standing to challenge a land use decision like this one only if the new construction will cause him to suffer some type of 'special damages' distinct from other landowners in the area. Usually, special damages include economic damages such as a decrease in property value and other direct adverse effects on the property of the landowner challenging the proposed land use, such as smoke, light, noise, or vandalism created by the new property use, which are different from the effects on the rest of the neighborhood. Respondent's claims of damages from the Cherry-Gordon house are all essentially aesthetic, since she believes the house does not fit in with the historic neighborhood and is unpleasant for her to see from her home across the street. Even if she is correct in her assessment of the Cherry-Gordon house's design, respondent has failed to show that she is an 'aggrieved party' as the law defines that term, so the Superior Court's order reversing the Board's decision was correct and we affirm it."

"A reduction in value of property may be part of the basis for standing, but diminution in value alone is not sufficient.... The fact that respondent owns property 'immediately adjacent to or in close proximity to the subject property' also bears some weight on the issue of whether the party will suffer special damages, but status as an adjacent landowner alone is insufficient to confer standing. Mangum [v. Raleigh Bd. of Adjust.], 362 N.C. [640] at 644, 669 S.E.2d [279] at 283 [(2008)]…. Vague, general allegations that a property use will impair property values in the general area also will not confer standing…. In these cases [Lloyd v. Town of Chapel Hill, 127 N.C. App. 347, 351, 489 S.E.2d 898, 900 (1997); Davis v. City of Archdale, 81 N.C. App. 505, 508, 344 S.E.2d 369, 371 (1986)], although the challengers to the land use alleged impairment of property values, the allegation was general for the entire neighborhood or area and not specific to a certain parcel of property. *See id.*, 344 S.E.2d at 371; Lloyd, 127 N.C. App. at 351, 489 S.E.2d at 900. And we note that even assuming that respondent's allegations are true and the proposed use will actually adversely affect property values in the general vicinity, because this type of effect is not distinct to the particular landowner who is challenging a land use, this factor alone does not confer standing. *See* Davis, 81 N.C. App. at 508, 344 S.E.2d at 371; Lloyd, 127 N.C. App. at 351, 489 S.E.2d at 900."

The Court found respondent's allegations insufficient to demonstrate special damages. "On appeal, [respondent's] arguments are purely aesthetic or are not distinct to her property…. [T]hese allegations do not demonstrate special damages *distinct to respondent*, other than the view from her front porch; rather, respondent alleges a generalized damage to the overall neighborhood—'reduced property values and impaired enjoyment of the neighborhood.' The mere fact that respondent's home is 'directly across the street' from the Cherry-Gordon house does not constitute special damages. *See* Mangum, 362 N.C. at 644, 669 S.E.2d at 283; Kentallen, 110 N.C. App. at 770, 431 S.E.2d at 233. Respondent's allegation is akin to the allegations in Kentallen, Lloyd, and Davis, where this Court held that the party had failed to allege special damages. *See* Kentallen [Inc. v. Town of Hillsborough], 110 N.C. App. [767] at 770, 431 S.E.2d [231] at 233 [(1993)]; Lloyd, 127 N.C. App. at

351, 489 S.E.2d at 900; Davis, 81 N.C. App. at 508, 344 S.E.2d at 371; Sarda v. City/Cty. of Durham Bd. of Adjust., 156 N.C. App. 213, 215, 575 S.E.2d 829, 831 (2003) ('Petitioners' mere averment that they own land in the immediate vicinity of the property for which the special use permit is sought, absent any allegation of special damages distinct from the rest of the community in their Petition, is insufficient to confer standing upon them.') (citation and quotation marks omitted). Respondent makes no allegation of damages particular to her property like the allegation of potential "vandalism, safety concerns, littering, trespass, and parking overflow" in Mangum or the allegation of the loss of a waterfront view and the resulting reduction of market value of the property in Sanchez. *See* Mangum, 362 N.C. at 645-46, 669 S.E.2d at 283-84; Sanchez [v. Town of Beaufort], 211 N.C. App. [574] at 579, 710 S.E.2d [350] at 353-54 [, *disc. review denied*, 365 N.C. 349, 717 S.E.2d 745 (2011)]. Because respondent has failed to even *allege* special damages, she is not an aggrieved party and thus lacks standing to contest the Committee's decisions. *See* Casper [v. Chatham Cty.], 186 N.C. App. [456] at 458, 651 S.E.2d [299] at 301 [(2007)]; [G.S.] 160A-400.9(e)." (Emphasis in original.)

- ***Synopsis***− Appeal by respondent from September 2014 order. Affirmed. Opinion by Judge Stroud, with Judge Calabria and Judge McCullough concurring. On August 18, 2016, the N.C. Supreme Court denied respondent's petition for discretionary review.

Nota Bene (N.B.)
Other Recent Decision of Note

Land Use; Zoning; Truck Stop Campbell v. City of Statesville, ___ N.C. App. ___ (No. COA15-329, Iredell- 5/3/16) (***unpublished***), *disc. review denied*, ___ N.C. ___ (No. 218P16, 8/18/16) (In petitioners-residents' and business owners' appeal of superior court's order affirming City Board of Adjustment's determination that a "truck stop" is permitted in B-4 Highway Business zoning district, Court of Appeals affirms. "The superior court properly conducted a *de novo* review of the Board's order. In addition, the Board did not err by considering the B-4 zone's purpose in rendering its decision. Furthermore, the Board did not err in approving of the holistic inquiry and comparison that [the Planning Director] conducted pursuant to Section 3.03(F). Finally, the record does not demonstrate that a truck terminal most closely resembles a truck stop under the UDC. We therefore hold that the Board properly approved Love's proposed truck stop as a land use permitted in the City's B-4 Highway Business district." (Appeal by petitioners from November 2014 order. Affirmed. Opinion by Judge Calabria, with Judge Stroud and Judge Inman concurring. On August 18, 2016, the N.C. Supreme Court denied petitioners' petition for discretionary review.)).