MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Advisory Plan Commission, Town Council, and Board of Zoning Appeals of the Town of Santa Claus, Indiana; Snowflake Village Holdings, LLC and DCIL, LLC,

Appellant-Respondents,

v.

Dale Hein, William Wampler, Kenneth Neighbors, and Ronald Smith,

Appellee-Petitioners,

February 10, 2022

Court of Appeals Case No. 21A-MI-1783

Appeal from the Spencer Circuit Court

The Honorable Mark R. McConnell, Judge

Trial Court Cause No. 74C01-2010-MI-438

Robb, Judge.

Case Summary and Issues

[1] The town of Santa Claus, Indiana ("Santa Claus") enacted Ordinance 2020-08 which rezoned real property owned by Christmas Lake Golf, LLC ("CLG"). Dale Hein, William Wampler, Kenneth Neighbors, and Ronald Smith (collectively "Petitioners") filed a petition for judicial review of Santa Claus' enactment of Ordinance 2020-08. Santa Claus filed a motion to dismiss claiming the trial court lacked subject matter jurisdiction and Petitioners lacked standing. The trial court issued an order denying Santa Claus' motion to dismiss and concluded Santa Claus' rezoning decision was improper.

[2] Santa Claus now appeals, raising multiple issues for our review, which we consolidate and restate as: (1) whether the trial court erred by denying Santa Claus' motion to dismiss; and (2) whether the trial court erred in declaring Ordinance 2020-08 void.[1] Concluding that the trial court did not err by denying Santa Claus' motion to dismiss or by voiding Ordinance 2020-08, we affirm.

Facts and Procedural History

[3] On July 21, 2020, Santa Claus received an application from Snowflake Village Holdings, LLC ("Snowflake") proposing certain real estate owned by CLG be rezoned. *See* Appendix to Brief of Appellants, Volume 2 at 10-11. On the

[1] Petitioners cross-appeal, raising one issue which we restate as whether Ordinance 2020-08 was invalid for reasons not enumerated by the trial court. However, because we determine herein that the trial court did not err in invalidating the ordinance, we need not address Petitioners' cross-appeal.

application, Snowflake indicated that it was not the owner of the property. It appears that at the time of the application Snowflake had entered into a purchase agreement with CLG with rezoning of the real estate being a contingency to the purchase. *See* Br. of Appellant at 6 n.2. That same day, Santa Claus' zoning administrator and treasurer received an email from Josh Winkler, President and CEO of CLG, stating that CLG "agrees to allow the Buyer application of rezoning." App. of Appellants, Vol. 2 at 12.

[4] Notice of the Santa Claus Advisory Plan Commission's ("APC") intention to hold a public hearing regarding the rezoning application was published in the Spencer County Journal Democrat newspaper. Also, adjoining landowners were given notice by certified mail. On August 24, 2020, the APC conducted a public hearing on the proposed rezoning and issued Rezoning Resolution 2020-01 certifying Snowflake's rezoning request with a favorable recommendation. On September 14, 2020, the Santa Claus Town Council ("Town Council") held a public meeting to consider the rezoning at which the Town Council conducted its first reading of Ordinance 2020-08. Smith was the only Petitioner in attendance.

[5] Ordinance 2020-08 proposed to rezone the CLG property from "Low Density Residential - R-2 and Agricultural - Ag to a classification of Planned Unit Development - PUD." App. of Appellants, Vol. 6 at 22. The ordinance was "expressly conditioned upon [Snowflake] and [CLG] entering into and executing" a commitment limiting the area surrounding a golf course on the property that Snowflake could develop. *Id*. On October 12, 2020, the Town

Council held a second public meeting regarding the rezoning and enacted Ordinance 2020-08.

[6] On October 15, 2020, Petitioners Hein and Wampler filed a petition seeking judicial review of Ordinance 2020-08 pursuant to Indiana Code section 36-7-4-1603. Petitioners alleged, in part, that they had been prejudiced because the "type of 'high density' development [proposed] is bound to adversely affect the valuation of surrounding properties." App. of Appellants, Vol. 8 at 7-8.

[7] Santa Claus filed a motion to dismiss Petitioners' petition, asserting the trial court lacked subject matter jurisdiction and the Petitioners lacked standing, in part because neither Hein nor Wampler "own[ed] any real property in Santa Claus[.]" Appellees Appendix, Volume 2 at 17. Petitioners then filed an amended petition adding Neighbors and Smith to the action, both of whom owned property adjacent to the rezoned area. Santa Claus filed a second motion to dismiss, again asserting that the trial court lacked subject matter jurisdiction and Petitioners lacked standing.

[8] On October 30, 2020, Santa Claus served interrogatories, requests for production, and requests for admissions on each of the Petitioners. The requests for admissions included the following:

- Admit that Santa Claus' adoption of Ordinance 2020-08 does not infringe upon any property or legal right of yours.

- Admit that Santa Claus' adoption of Ordinance 2020-08 did not cause you any special injury.

- Admit that Santa Claus' adoption of Ordinance 2020-08 did not cause you any pecuniary injury or damages.

- Admit that you were not aggrieved or adversely affected by Santa Claus' adoption of Ordinance 2020-08.

- Admit that Santa Claus was not required to consider your asserted interests in adopting Ordinance 2020-08.

See App. of Appellants, Vol. 8 at 16, 22, 27, 33. Subsequently, Santa Claus granted Petitioners an extension of time regarding its discovery requests. On January 13, 2021, Santa Claus served Petitioners a second set of interrogatories and requests for production. None of the Petitioners ever responded to any of Santa Claus' discovery requests.

[9] On July 12, 2021, Santa Claus filed a motion to compel the Petitioners' response to its discovery requests. In response, Petitioners filed a motion for a discovery protection order requesting that the trial court set "a date for discovery compliance at least 30-days from the Order's date[.]" Appellees App., Vol. 2 at 228. But on July 19, 2021, the trial court issued an order denying Santa Claus' motions to dismiss and declaring Rezoning Resolution 2020-01 and Ordinance 2020-08 void. The trial court concluded the rezoning was improper for the following reasons:

> A. The rezoning application was not filed by the property owner as required by statute. . . .

> B. A proper rezoning application was not filed with the [APC] at least ten (10) days before a regularly scheduled meeting of said commission as required by law. A hearing was held on Snowflake's application on August 24, 2020. An application had not been filed by [CLG] by that date, or ever, for that matter.
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> C. A proper rezoning application, accompanied by the required filing fee was not filed prior to the meeting of the [APC].
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> D. No power-of-attorney was provided to support the applicant's assertion that it was acting as power-of-attorney for the owner.
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> E. []Santa Claus could not proceed with a hearing on its own motion because it did not give notice of any kind that a hearing on its own motion would occur. The hearing notice stated that the public hearing would be conducted for the purpose of considering a request by Snowflake.
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> F. Sufficient detail concerning the exact nature of the rezoning was not provided or made available to those who might be adversely affected by the rezoning.
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> G. Public notice was not made in a timely manner so as to proceed with the rezoning matter.

Appealed Order at 1-2. Santa Claus now appeals and Petitioners cross-appeal.

Discussion and Decision

I. Motion to Dismiss

A. Standard of Review

[10] The standard of review for a Trial Rule 12(B)(1) motion to dismiss for lack of subject matter jurisdiction is a function of what occurred in the trial court. *GKN Co. v. Magness,* 744 N.E.2d 397, 401 (Ind. 2001). If the facts before the trial court are not in dispute, then the question of subject matter jurisdiction is purely one of law. *Id.* "Under those circumstances no deference is afforded the trial court's conclusion because appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law." *Id.* (quotation omitted). Here, the facts are not in dispute, so we review the trial court's decision de novo.

[11] A claim of lack of standing is properly treated as a motion to dismiss under Trial Rule 12(B)(6) for failure to state a claim upon which relief can be granted. *Common Council of Mich. City v. Bd. of Zoning Appeals of Mich. City,* 881 N.E.2d 1012, 1014 (Ind. Ct. App. 2008). We review a trial court's decision regarding lack of standing de novo. *Id.* The question of whether a party has standing is purely one of law and does not require deference to the trial court's determination. *Id.*

B. Subject Matter Jurisdiction

[12] Santa Claus argues that "the trial court erred in considering the petition due to its lack of subject matter jurisdiction[.]" Brief of Appellant at 9. Rezoning is a legislative process. *Borsuk v. Town of St. John*, 820 N.E.2d 118, 122 (Ind. 2005).

Under Indiana Code section 36-7-4-1601(b), "[a] legislative act is not subject to judicial review[.]" And there is no other provision for an appeal of a local legislative body's grant or denial of a rezoning request. *See Bd. of Comm'rs of Cnty. of Vanderburgh v. Three I Props.*, 787 N.E.2d 967, 976 (Ind. Ct. App. 2003). However, we have held that the "procedure for review of such legislative action is to bring a suit for declaratory judgment or other similar attack" and a reviewing court may review the "constitutionality, procedural soundness, and whether the decision is arbitrary or capricious." *City of Madison v. Demaree*, 77 N.E.3d 1219, 1221 (Ind. Ct. App. 2017). Accordingly, we conclude that the trial court had subject matter jurisdiction over Petitioners' petition.

C. Standing

[13] Santa Claus also argues that Petitioners lacked standing to bring their petition. It is well settled that standing to challenge a rezoning ordinance requires a property or some other personal right and a pecuniary injury not common to the community as a whole. *Common Council,* 881 N.E.2d at 1015-16. A person must have been "aggrieved" by a zoning decision to have standing to seek judicial review of that decision. *See Bagnall v. Town of Beverly Shores*, 726 N.E.2d 782, 786 (Ind. 2000). To be aggrieved, a petitioner must experience a substantial grievance. *Benton Cnty. Remonstrators v. Bd. of Zoning Appeals of Benton Cnty.*, 905 N.E.2d 1090, 1098 (Ind. Ct. App. 2009).

[14] Santa Claus argues that Petitioners failed to allege a "special injury or pecuniary loss as a result of the passage of Ordinance 2020-08[.]"[2] Br. of Appellant at 11. In *City of New Haven v. Allen Cnty. Bd. of Zoning Appeals*, we stated that an aggrieved party must "demonstrate in its petition" that it has a particular interest not common to the general public. 694 N.E.2d 306, 311 (Ind. Ct. App. 1998), *trans. denied*. In their verified petition, Petitioners claim, in part, that the "type of 'high density' development [proposed] is bound to adversely affect the valuation of surrounding properties[,]" and thus "Petitioners have been prejudiced[.]" App. of Appellants, Vol. 8 at 7-8. Therefore, Petitioners alleged a pecuniary loss.

[15] "It is generally held that the owner of real estate is assumed to possess sufficient acquaintance with it to estimate the value of the property[.]" *Benton Cnty. Remonstrators*, 905 N.E.2d at 1098 (quoting *State v. Hamer,* 199 N.E. 589, 595, 211 Ind. 570, 585 (1936)). Santa Claus concedes that two of the Petitioners own land adjacent to the CLG real estate. *See* Br. of Appellant at 11. We have held that "the opinion of the adjoining landowners as to the devaluation of their own property is sufficient to constitute a special injury and establish pecuniary

[2] Santa Claus also argues that because Petitioners failed to respond to Santa Claus' requests for admissions, they admitted to not being prejudiced and thus had no standing. However, Santa Claus failed to raise this argument in its motion to dismiss. Further, the record is unclear as to exactly how much extended time Santa Claus granted Petitioners to respond to discovery. *See* App. of Appellants, Vol. 8 at 36-37.

harm." *Id*. Therefore, we conclude the Petitioners who were adjoining landowners had standing.[3]

II. Rezoning Application

[16] Review of a rezoning decision is limited to considering constitutionality, procedural soundness, and whether the decision is arbitrary or capricious. *Borsuk*, 820 N.E.2d at 122. A rezoning decision is arbitrary and capricious if the legislative body engaged in willful and unreasonable action without consideration and in disregard of the facts or circumstances of the case. *City of Crown Point v. Misty Woods Props., LLC*, 864 N.E.2d 1069, 1075-76 (Ind. Ct. App. 2007). Further, a reviewing court will not intervene in the local legislative process provided that it is supported by some rational basis. *Id.* at 1076.

[17] Under Indiana Code section 36-7-4-602(c)(1), rezoning may be initiated either:

> (A) by the plan commission; or
>
> (B) by a petition signed by property owners who own at least fifty percent (50%) of the land involved.

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[3] We note that the trial court only listed Neighbors and Smith, the owners of adjoining property, as the individuals seeking judicial review that had been prejudiced. *See* Appealed Order at 2. The record is unclear as to the remaining Petitioners' proximity to the proposed rezoning property; however, we conclude on this record they did not have standing. *See Reed v. Plan Comm'n of Town of Munster*, 810 N.E.2d 1126, 1128 (Ind. Ct. App. 2004) (finding that one-half mile was not close enough in proximity), *trans. denied*; *Benton Cnty. Remonstrators*, 905 N.E.2d at 1098 (holding that individuals who lived in close proximity failed to show "some special injury other than injuries sustained by the community as a whole").

Here, Snowflake filed a rezoning application with Santa Claus while Winkler, the CEO of CLG, emailed Santa Claus' zoning administrator and treasurer stating that CLG "agrees to allow the Buyer application of rezoning."[4] App. of Appellants, Vol. 2 at 12. Santa Claus argues this satisfies Indiana Code section 36-7-4-602(c).

[18] Santa Claus contends that the application "together with the electronic mail from CLG, certainly appears to be a 'proposal, as it represents a suggestion put forth for rezoning for consideration.'" Br. of Appellant at 14-15 (quoting *Rush v. Elkhart Cnty. Plan Comm'n*, 698 N.E.2d 1211, 1215 (Ind. Ct. App. 1998), *trans. denied*). However, the quote Santa Claus pulls from *Rush* addresses whether the plan commission must prepare a "proposal" and have it on file prior to a public hearing and is not relevant to its argument. *See Rush*, 698 N.E.2d at 1215. Santa Claus provides no other support for its contention that a non-owner may file the rezoning application with the plan commission.

[19] Indiana Code section 36-7-4-602(c) is clear and unambiguous that a proposal may be initiated by the plan commission or majority owners of the property. *See Peele v. Gillespie,* 658 N.E.2d 954, 958 (Ind. Ct. App. 1995) (stating "we endeavor to give [statutory] words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise"), *trans. denied*. A potential buyer is

[4] We note that Winkler's email does not mention Snowflake by name as the "Buyer[,]"App. to Appellant's Brief at 12, and due to the Petitioners' suit, Snowflake never purchased the property from CLG, *see* Br. of Appellant at 6 n.2.

not enumerated in the statute as a party able to apply for rezoning and we decline to read it into the statue. *See id.* Therefore, we conclude the trial court did not err in determining that Ordinance 2020-08 failed to comply with procedural requirements.[5]

Conclusion

[20] We conclude that the trial court had subject matter jurisdiction, the Petitioners had standing, and the trial court did not err in voiding Ordinance 2020-08. Therefore, we affirm.

[21] Affirmed.

Riley, J., and Molter, J., concur.

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[5] The trial court also determined that Santa Claus' notice was insufficient, stating that notice was untimely made, notice did not provide sufficient detail of the rezoning, and Santa Claus failed to give notice that a hearing on its own motion would occur. Appealed Order at 2. However, because we have determined that the rezoning application was procedurally defective, we need not address whether Santa Claus failed to comply with the notice requirements of Indiana Code sections 36-7-4-604 and -608.