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IN THE  
COURT OF APPEALS OF INDIANA

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Tracy Williamson, et al., as the  
Cass County Council,

and

David Arnold, et al., as the Cass  
County Redevelopment  
Commission,

*Appellants-Defendants,*

v.

Patricia Razer, et al.,

*Appellees-Plaintiffs.*

March 31, 2022

Court of Appeals Case No.  
21A-PL-1167

Appeal from the Cass Superior  
Court

The Honorable Timothy P. Spahr,  
Special Judge

Trial Court Cause Nos.  
09D01-2009-PL-44  
09D01-2009-PL-45

**Pyle, Judge.**

## Statement of the Case

[1] This interlocutory appeal involves two consolidated causes involving the Cass County Council’s (“the CCC”) and Cass County Redevelopment Commission’s (“the CCRC”) actions to approve bonds and ordinances to fund the production of a zinc oxide manufacturing plant and other public improvements in the county (“the Project”). The plaintiffs below, Patricia Razer, Melissa Harrison, LeRoy Miller, and Robert McDaniel (collectively, “the Plaintiffs”), filed claims alleging Open Door Law violations by the CCC and CCRC (collectively, “Cass County”) in Cass County’s approval of the bonds and ordinances required for the Project. Cass County filed a motion for the Plaintiffs to post a bond pursuant to the Public Lawsuit Statute. The trial court denied the motion to post bond, leading to this interlocutory appeal. Concluding that the trial court erred when it denied the motion to post bond, we reverse the trial court’s order and remand.

[2] We reverse and remand.

## Issue

Whether the trial court erred when it denied Cass County’s motion to post bond.

## Facts

[3] In 2019, Waelz Sustainable Products (“WSP”) planned to construct a zinc oxide manufacturing plant along with several other public improvements in Cass County. Consequently, Cass County began the process necessary to

approve and finance the construction of the Project. In February 2020, the CCRC and WSP negotiated an agreement that outlined how the Project would be financed and constructed. The board of the CCRC approved the agreement in March 2020. On September 16, 2020, the CCRC held an open meeting during which the CCRC approved Resolution 2020-12. On September 18, 2020, the CCC held an open meeting to determine whether to issue the bonds required to fund the Project. The CCC voted to approve the bonds through Ordinances 2020-05 and 2020-06.

[4] Later that month, Lora Redweik (“Redweik”) filed two complaints against Cass County. Both complaints allege Open Door violations against Cass County. Specifically, in Cause No. 09D01-2009-PL-44 (“Cause 44”), Redweik alleged that Cass County violated the Open Door Law during its September 18, 2020 meeting that resulted in the CCC voting to approve Ordinances 2020-05 and 2020-06. In Cause No. 09D01-2009-PL-45 (“Cause 45”), Redweik alleged that Cass County violated the Open Door Law when it drafted and approved Resolution 2020-12.

[5] In October 2020, Redweik was substituted as the plaintiff by the Plaintiffs, and they amended the complaints in both Cause 44 and Cause 45. In the Plaintiffs’ amended complaints, they alleged that Cass County created a secret WSP Incentive Committee (“the WSP Incentive Committee”) that negotiated with WSP certain financial and environmental terms for the construction of the Project, and these negotiated terms were incorporated into the resolution that Cass County passed at the September 16, 2020 meeting. Additionally, Plaintiffs

alleged that the public had not been granted proper access to the CCC's September 18, 2020 meeting where the CCC passed the ordinances required for the construction of the Project. In both amended complaints, the Plaintiffs asked the trial court for a declaratory judgment, seeking to have the trial court declare void the ordinances and resolution for the Project. Cass County filed a motion to consolidate Cause 44 and Cause 45, and in November 2020, the trial court granted the motion to consolidate.

[6] In January 2021, Cass County filed a motion for a hearing to set bond pursuant to the Public Lawsuit Statute, specifically INDIANA CODE § 34-13-5-7(a). The trial court held a three-day hearing to determine whether the Plaintiffs would be required to post bond pursuant to the statute. Testimony during this hearing included the Plaintiffs' concerns about the alleged secret WSP Incentive Committee and the limited access to the September 18 meeting that lead to the passage of the ordinances. Additionally, the Plaintiffs testified about their concerns regarding the environmental impact of the Project on their health and property. At the conclusion of the hearing, the trial court denied Cass County's motion to set bond. The trial court concluded that the consolidated lawsuit met the definition of a public lawsuit. However, the trial court found that the Public Lawsuit Statute did not apply because "the main basis of the consolidated cases at bar [wa]s the protection of the plaintiffs' own private interests." (App. Vol. 3 at 14). Cass County now appeals.

## Decision

- [7] Cass County argues that the trial court erred when it denied its motion to require the Plaintiffs to post bond pursuant to the Public Lawsuit Statute. Specifically, Cass County argues that Plaintiffs’ two complaints allege Open Door Law violations, which fall squarely within the Public Lawsuit Statute and required the Plaintiffs to post a bond pursuant to INDIANA CODE § 34-13-5-7(a).
- [8] Whether an action is a public lawsuit subject to the Public Lawsuit Statute is a legal question that is reviewed de novo. *Tipton Cty. Bd. Comm’rs v. Prather*, 75 N.E.3d 536, 538 (Ind. Ct. App. 2017). The Public Lawsuit Statute “reflects the General Assembly’s recognition that the mere pendency of a lawsuit can frustrate a project even if the claims are eventually found to be without merit.” *Bonney v. Ind. Fin. Auth.*, 849 N.E.2d 473, 478 (Ind. 2006). The Public Lawsuit Statute imposes a number of procedural rules, such as the requirement to post bond, that govern public lawsuits that quickly separate “the legal wheat from the chaff to prevent opponents of a public project from achieving by the passage of time more than the law would give them.” *Id.* at 478-79.
- [9] INDIANA CODE § 34-6-2-124(a) defines a “public lawsuit” as:
- (1) any action in which the validity, location, wisdom, feasibility, extent, or character of construction, financing, or leasing of a public improvement by a municipal corporation is questioned directly or indirectly, including but not limited to suits for declaratory judgments or injunctions to declare invalid or to enjoin the construction, financing, or leasing; and

(2) any action to declare invalid or enjoin the creation, organization, or formation of any municipal corporation.

[10] The Public Lawsuit Statute at issue in this appeal, INDIANA CODE § 34-13-5-7(a), provides “[a]t any time before the final hearing in a public lawsuit, the defendant may petition for an order of the court that the cause be dismissed unless the plaintiff posts a bond with surety to be approved by the court.” If it is established that the lawsuit at issue is a public lawsuit within the scope of the Public Lawsuit Statute, plaintiffs must post a bond, or, to avoid the bond requirement, they must “establish facts that would entitle [them] to a temporary injunction[.]” I.C. § 34-13-5-7(b).

[11] Our review of the record reveals that this consolidated lawsuit, which alleges Open Door Law violations, is a public lawsuit. Specifically, the Plaintiffs alleged in their complaints that Cass County violated the Open Door Law during its September 18, 2020 meeting that resulted in the CCC voting to approve Ordinances 2020-05 and 2020-06 and that Cass County committed Open Door violations when it used the WSP Incentive Committee to negotiate financial and environmental terms with WSP that were incorporated into Resolution 2020-12. Plaintiffs have asked for a declaratory judgment, seeking to have the trial court declare these ordinances and resolution to be void. These alleged Open Door violations directly challenge the validity of the financing of the Project. The result of this consolidated lawsuit would prevent the funding and construction of the Project.

- [12] Cass County also argues that the trial court erred when it concluded that Plaintiffs' claims under the Open Door Law seek to vindicate private rather than public interests. We agree.
- [13] "In interpreting the Public Lawsuit Statute, our supreme court has held that an action by an individual landowner seeking to protect his or her private interest in property does not constitute the basis for a public lawsuit. The controlling factor is whether the plaintiff seeks to protect public or private interests." *Prather*, 75 N.E.3d at 539 (internal quotations and citations omitted). Thus, the Public Lawsuit Statute does not apply where a plaintiff's lawsuit "seeks remedies regarding their personal or property rights." *Pepinsky v. Monroe Cty. Council*, 461 N.E.2d 128, 134 (Ind. 1984). Examples of the private interest exception include a suit challenging a city's construction of drainage on a plaintiff's property allegedly in violation of a property easement and restrictive covenants, *see Dible v. City of Lafayette*, 713 N.E.2d 269, 274-75 (Ind. 1999); a suit challenging the requirement that plaintiffs tie their property to an adjacent sewer system and pay connection fees and monthly charges associated with its use, *see Buse v. Trustees of Luce Twp. Reg'l Sewer Dist.*, 953 N.E.2d 519, 525-26 (Ind. Ct. App. 2011); and a suit brought by a plaintiff challenging a board of zoning appeals' special exception allowing the construction of a jail eighty-nine feet from plaintiff's property which allegedly diminished its value, *see Prather*, 75 N.E.3d at 539-41.
- [14] Here, the Plaintiffs challenge the validity of the passage of certain ordinances and a resolution required for the construction of the Project. Specifically, the

Plaintiffs allege in their amended complaints that Cass County created a secret WSP Incentive Committee that negotiated with WSP certain financial and environmental terms for the construction of the Project, and these negotiated terms were incorporated into the resolution that Cass County passed at the September 16 meeting. Additionally, the Plaintiffs allege that the public was not granted proper access to the September 18, 2020 meeting of the CCC in which the ordinances required for the construction of the project were passed. These claims of Open Door violations do not seek to protect private interests, but, instead, seek to protect the public's interest in accessing the decision making process of its government.

[15] Indeed, the heart of the Plaintiffs' complaints allege Open Door violations. The purpose of the Indiana Open Door Law is to assure that the business of the State of Indiana and its political subdivisions be conducted openly so that the general public may be fully informed. See *Baker v. Town of Middlebury*, 753 N.E.2d 67, 70 (Ind. Ct. App. 2001), *reh'g. denied, trans. denied*. See also I.C. § 5-14-1.5-1. An "action . . . attacking the alleged failure of [a] public body to comply with the open door law . . . is the type of action contemplated by the public lawsuit statutes." *Pepinsky*, 461 N.E.2d at 134.

[16] We recognize that the Plaintiffs, during the bond hearing, expressed concerns of the environmental impact of the Project on their health and land. However, the Plaintiffs' two causes allege Open Door violations, and the remedy the Plaintiffs ultimately seek – the invalidation of the ordinances and the resolution necessary to begin the Project – are public interests. See *Prather*, 75 N.E.3d at



539 (stating that the controlling factor is whether the plaintiff seeks to protect public or private interests). Because the Plaintiffs' two causes alleging Open Door violations are a public lawsuit and the interests the Plaintiffs seek to protect are public interests, we conclude that the trial court erred by denying Cass County's motion for the Plaintiffs to post bond pursuant to INDIANA CODE § 34-13-5-7(a). Accordingly, we reverse and remand this consolidated cause to the trial court for further proceedings, including the setting of a bond as set forth in the Public Lawsuit Statute.

[17] Reversed and remanded.

Bailey, J., and Crone, J., concur.