



REBA Land Use and Zoning, Litigation, New Lawyers, and Environmental and Renewable Energy Law Sections' Webinar on November 21st

Introduction on the Law of Standing Under c. 40A and c. 240, §14A, and for Certiorari Appeals

The burden of proving standing rests with the Plaintiff and requires a showing of harm caused by governmental action. Standing is jurisdictional and cannot be waived. Standing is a fact question to be determined by the judge. As a generalized comparison of the criteria for showing subject matter jurisdiction (standing) in various land use appeals:

	Zoning Appeal (c. 40A)	Zoning Validity Challenge (c. 240)	Cert. Appeal (c. 249)
Overview / Summary	The plaintiff must rely on credible evidence to plausibly demonstrate a measurable injury, that is special and different to such plaintiff, to a private legal interest that will likely flow from the decision.	The plaintiff must be a land owner inquiring about rights and limitations on that land, which may experience a direct and adverse affect even in an instance when there is no immediate controversy.	The plaintiff must have no remaining remedies available to it and show a substantial injury or manifest injustice that is different in nature or magnitude than the general public.
Prior Administrative Process	Completed the administrative process and appeal commenced within 20 days	No requirement to exhaust administrative remedies	Completed a judicial or quasi-judicial with no other reasonably adequate remedy available
Plaintiff Description	“Person Aggrieved”	“owner of a freehold estate in possession in land ...”	A participant in a prior judicial or quasi-judicial proceeding
Property Interest	A private right, a private property interest, or a private legal interest that is within the interests protected by the applicable zoning scheme and has a relationship to the challenged zoning relief.	Landowner or neighbor whose lands will receive a direct effect from the zoning amendment or interpretation.	Injury arises out of the proceeding under review.
Measure of Harm	A real, substantial, and directly caused by the zoning decision or nonaction that is being challenged; more than de minimis	The challenged use (when challenging the use on another lot) of such other land pursuant to the zoning amendment “directly and adversely affects the permitted use of his land.”	The plaintiff must show a substantial injury or manifest injustice that results from challenged action
Possibility of Harm	Cannot be based upon speculation, “conjecture, personal opinion, [or] hypothesis,”	Hypotheticals can be sufficient: “A landowner is entitled to a decision on the applicability of zoning provisions on her land without regard to the existence of a controversy or the right otherwise to declaratory relief”	Plaintiff must demonstrate that their “allegations are [more than] speculative and the damage alleged is [more than] generalized.”
Uniqueness of Harm	An injury particular to the plaintiffs, as opposed to the neighborhood in general; the “special and different” test.	Does not need to demonstrate an injury that is special and different from that experienced by the general community	An injury different in nature or magnitude from that of the general public