ROETZEL

Standing in Quasi-Judicial & Administrative Proceedings

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[This is excerpted, expanded, and updated from Christopher D. Donovan's longer treatise called *Review of Quasi-Judicial Decisions*, which was published in 2020 as Chapter 25 of The Florida Bar's *Florida Appellate Practice* (11th ed. 2020) and can be found on Westlaw and Lexis.]

I. Introduction

Under our tripartite system of government, standing is a threshold matter every court must resolve, if raised, before addressing the dispute's underlying merits. *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). It is the constitutional key unlocking the courthouse door since court's generally cannot give advisory opinions, but rather must ensure that a real controversy exists between parties who have a real interest in the outcome of the court's consideration. *See, e.g.*, *Dep't of Rev. v. Kuhnlein*, 646 So. 2d 717, 720 (Fla. 1994), *as clarified* (Nov. 30, 1994); *Argonaut Ins. Co. v. Commercial Standard Ins. Co.*, 380 So. 2d 1066, 1067 (Fla. 2d DCA 1980).

In its most basic sense, standing is simply having—or representing someone—with "a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Demircan v. Mikhaylov*, 306 So. 3d 142, 145 (Fla. 3d DCA 2020) (cites & quotes omitted). In other words, does the challenger have "a legally cognizable interest" that will be affected by the litigation's outcome? *Nedeau v. Gallagher*, 851 So. 2d 214, 215 (Fla. 1st DCA 2003).

A blanket rule answering this question does not exist. *Whitburn, LLC v. Wells Fargo Bank, N.A.*, 190 So. 3d 1087, 1091 (Fla. 2d DCA 2015). Rather, each case must examine the asserted interest, its causal connection between the injury to that interest and the action complained about, and whether the requested relief will remedy that injury. *Id.*; *DeSantis v. Florida Educ. Ass'n*, 306 So. 3d 1202, 1213 (Fla. 1st DCA 2020), *reh'g denied* (Nov. 30, 2020). But the allegedly damaged interest must be "concrete, distinct and palpable, and actual or imminent." *DeSantis*, 306 So. 3d at 1213 (cites and quotes omitted). Interest that is speculative, hypothetical, or little more than idle curiosity is insufficient. *Nedeau*, 851 So. 2d at 215; *see, e.g.*, *Liebman v. City of Miami*, 279 So. 3d 747, 751 (Fla. 3d DCA 2019) (finding petitioner's claim that "he would consider submitting a bid if the City issues a new request for proposal" was too speculative to

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support standing). And, importantly, the challenge bears the burden of proving standing's requirements. *Int'l Longshoremen's Ass'n v. Fisher*, 800 So. 2d 339, 340 (Fla. 1st DCA 2001).

In the local-government quasi-judicial and administrative context, the standard for determining whether someone has a "legally recognizable interest" giving standing to challenge that action depends on whether the action is controlled by the common law or Florida statutes. As a result, this article is divided into sections along these two fault lines with the first section covering the common-law standard and the second section covering the few statutory standards applicable to municipalities.

For many city attorneys, this will be more of a review with some updates. For others, it will be a brief introduction to the often nuanced world of standing. For everyone, however, standing is a key arrow in the city attorney's quiver to quickly resolve challenges to quasi-judicial and administrative action.

II. Standing to challenge decisions *not* controlled by statute: The *Renard* test

Most local government quasi-judicial and administrative decisions are not controlled by statute. These are typically actions occurring after a noticed hearing at which some level of due process was afforded before the local government applied the law or enforced it to a specific situation, such as a property owner's request to develop something on his or her property. *Lee County v. Sunbelt Equities, II, Limited Partnership*, 619 So. 2d 996, 1000–02 (Fla. 2d DCA 1993) (describing quasi-judicial proceedings). The most notable of these kinds of quasi-judicial decisions are those arising in the land-use and development context, including decisions granting or denying site-specific rezoning; special zoning exceptions; building permits; site-plan reviews and approvals; plat-approval or plat-vacation; and permits for conditional-use, special-use, unusual-use; and variance requests. *See, e.g.*, *id.*; *Board of Cty. Comm'rs of Brevard Cty. v. Snyder*, 627 So. 2d 469 (Fla. 2d DCA 1993); *Broward Cty. V. G.B.V. Int'l, Ltd.*, 787 So. 2d 838 (Fla. 2001).[2]

Generally, these local government decisions are only reviewable by a first-tier certiorari petition in circuit court. *Id.* And when it is the property owner who applied for the government action (i.e., applied for the development action), then standing is fairly self-evident because the government's denial of an application for development does directly affect the property owner. So, the caselaw is fairly clear that the applicant property owner has standing in certiorari proceedings. *Highwoods DLF EOLA, LLC v. Condo Developer, LLC*, 51 So. 3d 570, 572 (Fla. 5th DCA 2010) (finding applicant landowner has standing to intervene in challenges to quasi-judicial decisions approving its requested development and finding cases holding contrary invalidated by subsequent rule changes); *see also Fla. Inst. of Tech., Inc. v. Martin Cty.*, 641 So. 2d 898, 899 (Fla. 4th DCA 1994) (recognizing that property owners' denied development have common-law right to seek certiorari relief). And, of course, the local government has standing to

[2] For a full discussion of when a decision is quasi-judicial, see Christopher D. Donovan, *Review of Quasi-Judicial Decisions*, in The Florida Bar, *Florida Appellate Practice*, §25.8–25.9 (11th ed. 2020).

defend its decisions and is, in fact, indispensable to those challenges. *Zimmerman v. Civil Serv. of City of Boca Raton*, 366 So. 2d 24, 24 (Fla. 1978).

The trickier question is whether someone who is *not* the applicant landowner has standing to challenge quasi-judicial and administrative decisions. Because these decisions must be reached in public meetings, they are often attended by adjoining neighbors, municipal residents, and other members of the public who often advocate for or against an applicant landowner's development request. § 286.011(1), Fla. Stat.; *see, e.g.*, *Carillon Community Residential v. Seminole Cty.*, 45 So. 3d 7 (Fla. 5th DCA 2010).

The seminal case on standing in this nonapplicant context is *Renard v. Dade County*, 261 So. 2d 832, 837 (Fla. 1972), which identifies two differing standards that depend on the nature of the challenge. *Albright v. Hensley*, 492 So. 2d 852, 855 (Fla. 5th DCA 1986). If the nonapplicant is squarely challenging the substantive decision—such as whether the local government correctly applied the land-development code in granting the landowner's development application—then only those suffering special injuries from the decision that differ in kind, rather than degree, from the rest of the community have a legally recognizable interest to support standing. *Renard*, 261 So. 2d at 836–37. But if the challenge is procedural—i.e., that the local government failed to comply with the procedural requirements in issuing the decision, like giving notice—then the nonapplicant need only be an affected resident, citizen, or property owner in the governmental unit in question. *Id.* at 838; *see also Save Brickell Ave., Inc. v. City of Miami*, 395 So. 2d 246, 247 (Fla. 3d DCA 1981) (explaining that in a procedural challenge, a person may "attack how the resolution was enacted, but not what was enacted").

The *Renard* standards are explored further below. The first subsection elaborates on *Renard*'s historical underpinnings and discusses a recent development in the caselaw. The second subsection provides examples in both the procedural and substantive context. The third subsection offers considerations and insights for defeating nonapplicant challenges in certiorari proceedings.

A. *Renard's* historical underpinning and the Second District's recent take.

Although *Renard* honed the "special injury" standard in the quasi-judicial and administrative context, the Florida Supreme Court first applied that standard to that context in *Boucher v. Novotny*, 102 So. 2d 132, 133 (Fla. 1958).[3] In that case, a litigant

[3] Notably, though, the Supreme Court first applied this "special injury" standard almost 40 years earlier in the legislative context in *Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917). That case concerned a taxpayer's standing to challenge legislation as violating the government's taxing and spending powers. *Id.* at 206–07. After reviewing "text-books [sic] and decisions from other jurisdictions," the Supreme Court had found no case where those taxpayer complaints did not show that the taxpayer would suffer a special injury. As a result, the Supreme Court held that a "private person" could only maintain these types of challenges to legislation when they are "threatened with or suffer[ ] some public or special damage to his [or her] individual interests, distinct from that of every other inhabitant...." *Id.* at 207. The *Boucher* decision does not cite *Rickman*, but it does cite a case that cited and applied *Rickman*. *Boucher*, 102 So. 2d at 135 (citing *Henry L. Doherty & Co. v. Joachim*, 200 So. 238, 239 (Fla. 1941), which relied on *Rickman*).

claimed that a development approval violated the setback requirements in the city's zoning ordinance. *Id.* 133. When his standing was challenged because the litigant had failed to allege a special injury, the litigant first argued that the mere violation of a zoning ordinance should be sufficient to support his challenge. *Id.* at 134. Alternatively, the litigant argued that he suffered from a special injury due to his proximity to the property where development was approved and because the violation was a "legal nuisance which depreciates the value of [his] property in that its continued existence destroys the protection of the zoning ordinance…." on which he and others relied when purchasing their property. *Id.* at 134.

The Supreme Court rejected the contention that the "special injury" standard should not apply to the quasi-judicial and administrative context, stating:

> [O]ne seeking redress, either preventive or corrective, against an alleged violation of a municipal zoning ordinance must allege and prove special damages peculiar to himself differing in kind as distinguished from damages differing in degree suffered by the community as a whole.

Id. at 135. In applying that standard, the Court ruled that mere proximity to the approved development was insufficient because it "left to speculation just what the 'special damage' is." *Id.* at 136. As to the depreciation in property value, the Court also found this lacking—particularly as alleged—because the litigant was essentially admitting that everyone in the community would suffer the same loss in value if the setback law was not enforced. *Id.* As a result, the Court affirmed dismissal for lack of standing because the litigant had failed to present facts showing a legally protectable interest. *Id.* at 137.

Almost 15 years later, the Supreme Court in *Renard* revisited the "special injury" standard in the quasi-judicial and administrative context and, according to some, liberalized it in this context. 261 So. 2d at 832. The case concerned an adjoining owner's challenge to a neighboring owner's rezoning approval from industrial to multiple-family residences. *Id.* at 834. The district court had reversed the circuit's finding that the adjoining owner lacked standing because, in the district court's view, the adjoining owner "suffer[ed] a special damage by virtue of the increased setback restriction different in kind from the community generally…." *Id.* Alternatively, the district court held that even without proving a special damage, the adjoining owner had standing by virtue of being a property owner within the area entitled to actual notice under the local code. *Id.* at 834–35. But the district court certified the question as to what standing was necessary, among other things, to enforce a valid zoning ordinance and to attack an ordinance as void for not complying with the enactment procedures, like giving proper notice. *Id.* at 834.

In answering the certified questions, the Supreme Court drew a distinction between these two challenges. When challenging whether a zoning ordinance is void because it was not properly enacted—i.e., failure to comply with the procedures for enacting ordinances, like giving notice—then "[a]ny affected resident, citizen or property owner of the governmental unit in question has standing to challenge such an ordinance" without needing to meet *Boucher*'s special-injury standard. *Id.* at 838; *see also Albright*, 492 So. 2d at 855 (explaining further).

But when challenging the improper enforcement or application of a zoning ordinance—i.e., the merits of *what* was enacted—then *Renard* re-affirmed *Boucher*'s special-injury standard, explaining:

> An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens.

Renard, 261 So. 2d at 837.

The *Renard* Court though said that merely being entitled to notice under the zoning ordinance may be a factor in analyzing the legal sufficiency of a challenger's interest, but it is not a controlling factor because "the notice requirements of the many zoning laws throughout the state vary greatly." *Id.* The Court then highlighted other factors for evaluating an interest's legal sufficiency, including:

- "[T]he proximity of [one's] property to the property to be zoned or rezoned…"
- "[T]he character of the neighborhood, including the existence of common restrictive covenants and set-back requirements…"
- [A]nd the type of change proposed…."

Id. The Court ultimately affirmed the conclusion that standing existed here due to the significantly increased setbacks after the rezoning. *Id.* at 837.

As illustrated in the next section, courts after *Renard* have attempted to faithfully apply the "differing in kind, rather than degree" standard, but consistent application has proven difficult. Its obvious purpose was to stymie the avalanche of litigation that might arise if everyone in the community could seek review of a single zoning violation, which would not only raise expenses to taxpayers, but stifle and chill development. *See Chapman v. Town of Redington Beach*, 282 So. 3d 979, 984–85 (Fla. 2d DCA 2019).

But the test is much easier to say, than to apply because as explained in a separate, but related context, "kind" means a "fundamental nature or quality: essence," while "in degree" means "the extent, measure, or scope of an action, condition, or relation <different in degree but not in kind>." *Nassau County v. Willis*, 41 So. 3d 270, 277 (Fla. 1st DCA 2010). So, for something to differ in "kind, rather than degree" should mean that the relevant interest affected should be of a completely different nature—rather than mere quality or quantity—than the rest of the community, which would be quite rare. Indeed, as explained in section III(A), this is why the legislature abrogated the *Renard* special-injury standard for comprehensive-plan challenges under section 163.3215, Florida Statutes (2021), because otherwise no one would be able to enforce them and local governments could freely disregard them. *Id.* at 276–77.

Two years ago, the Second District struggled with applying this common-law standard in *Chapman v. Town of Redington Beach*, 282 So. 3d 979, 984–85 (Fla. 2d DCA 2019), and may may have liberalized the standard somewhat. The case concerned an adjacent property owner's suit against his neighbor over certain property improvements as violating local zoning ordinances despite their approval by zoning authorities. *Id.* at 981–82. In response to an attack on the adjacent owner's standing for lack of an injury differing in kind from the community, the adjacent owner alleged that the improvements reduced their property's value and one of them created a dangerous condition. *Id.* at 982. The trial court ultimately agreed that this failed to satisfy the special-injury standard. *Id.*

The Second District reversed and found these assertions legally sufficient under the special-injury standard. *Id.* at 988. The court began by acknowledging the general standard in *Boucher* that special injury is only shown when the challenger suffers injuries that differ in kind, rather than degree, from the community as a whole. *Id.* at 983. The court then acknowledged that this standard gets "tricky" when the government action harms both the challenger and others in the community, which a strict application of *Boucher* would require a finding of no special injury and thus no standing. *Id.*

But according to the Second District, the Supreme Court liberalized the *Boucher* special-injury standard by concluding in the *Renard* opinion:

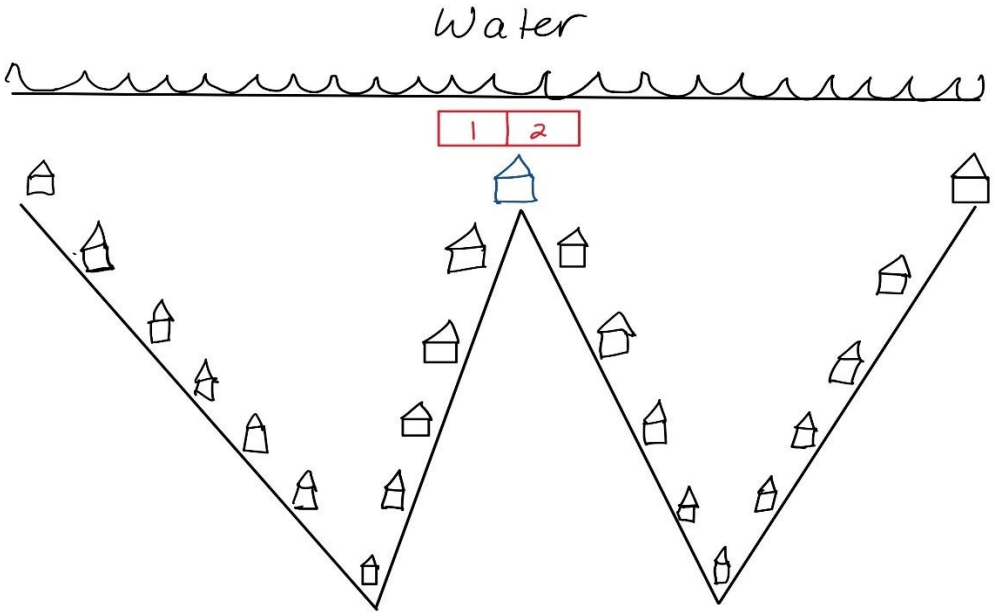
> [I]n the twenty years since the *Boucher* decision, changed conditions, including increased population growth and density, require a more lenient application of that rule. The facts of the *Boucher* case, if presented today, would probably be sufficient to show special damage.

Renard, 261 So. 2d at 837–38; *Chapman*, 282 So. 3d at 983. The Second District read *Renard*'s "lenient application of [the *Boucher*] rule" as suggesting that even if others in the community suffered from the same kind of general harm, this fact would not necessarily preclude standing. *Chapman*, 282 So. 3d at 983. The Second District readily admitted that "neither *Renard* nor the other applicable precedents are clear on how a 'more lenient application' of the special damages rule should resolve any particular case." *Id.*

The Second District then surveyed several cases after *Renard* to ascertain how a "more lenient application" of the special-injury standard would work. *Id.* at 983–986. The court concluded that the rule emerging from these post-*Renard* cases is that:

> [A]n owner of property which is adjacent to or nearby land upon which there is a zoning ordinance violation may, by virtue of proximity, be peculiarly affected by the violation, even if his or her injuries might at some level of generality be described as similar to those of other community members

Id. at 984–85. As an illustration, the court described the following hypothetical community whose houses faced a waterbody in the shape of a "W" like this:



Id. at 985. And in this community, the owners of lots 1 and 2 wish to build a house that is wider and taller than municipal zoning ordinances allow. *Id.* The court explained that while all members of this community will suffer the same injury—i.e., an impairment of their view of the water—the homeowner directly behind the approved construction will, by virtue of the construction's sheer magnitude, have his or her view completely blocked. *Id.* Thus, under *Renard*'s "more lenient application" of the special-injury standard, that homeowner would have standing because even if there is some similarity between his or her injury and the rest of the community's, "only the landowner immediately behind the new house has had his view blocked entirely." *Id.* In other words:

> The difference is so significant as to make any similarity to the injury suffered by other landowners immaterial; it amounts to a difference in kind, and it is directly related to proximity and position with regard to the land on which the zoning violation occurred.

Id.

Suffice to say, *Chapman*'s conclusion sounds less like "differing in kind, rather than degree" and more like simply differing in degree or intensity—which is the statutory standard for comprehensive-plan challenges. *Compare Nassau*, 41 So. 2d at 276–77; *see infra* § III(A). At a minimum, *Chapman* seems to be saying that even if others in the community may also suffer harm to the same legally protected right, there comes a point where the degree or intensity of the harm becomes so great that it essentially becomes different in "kind" from the rest of the community—such as the difference between mere impairment versus absolute destruction. And *Chapman* also seems to be saying that this is more likely to happen for property owners adjacent to the proposed development.

Notably, though, the Second District's not alone in trending towards liberalizing the *Renard* standard and treating it and the statutory standard at section 163.3215(2) similarly. *Alger v. United States*, 300 So. 3d 274, 278 n.5 (Fla. 3d DCA 2019) (saying

that *Renard*'s common-law standard is "[c]onsistent with this standard, under section 163.3215(2), Florida Statutes…" for who can enforce comprehensive plans). So, it will be interesting to see how later cases continue to struggle with *Renard*'s "more lenient application" of the special-injury standard and how they distinguish that standard from the ostensibly more liberalized statutory test for consistency challenges to the comprehensive plan under section 163.3215(2).

B. Examples of when *Renard*'s standards were met and not met.

As explained in the last section, *Renard* has two standards depending on the nature of the challenge to local government action: (1) procedural challenges, in which any "[a]ny affected resident, citizen or property owner of the governmental unit in question has standing to challenge such an ordinance" without needing to show special injury; and (2) substantive challenges, in which only litigants proving a special injury differing in kind, rather than degree, have standing to bring. *Renard*, 261 So. 2d at 838.

Procedural challenges not requiring a showing of special injury include:

- "Failing to give notice…."
- "Making a finding on the basis of no evidence, when required to hold a hearing and consider various factors before taking such action…."
- "An illegal enactment due to a violation of the Sunshine Law…."
- Making a decision by resolution, rather than by ordinance.

Albright, 492 So. 2d at 855; *Save Brickell*, 395 So. 2d at 247; *Upper Keys Citizens Ass'n, Inc. v. Wedel*, 341 So. 2d 1062, 1064 (Fla. 3d DCA 1977); *Miami Beach Homeowners Ass'n, Inc. v. City of Miami Beach*, 579 So. 2d 920 (Fla. 3d DCA 1991); *Bhoola v. City of St. Augustine Beach*, 588 So. 2d 666, 667 (Fla. 5th DCA 1991) (holding that even someone who bought property or became a resident *after* the ordinance's enactment can raise these procedural challenges because these procedural defects render the ordinance void—"as though the ordinance does not exist").

Examples of cases addressing standing to challenge substantive issues under the "special injury" standard in the quasi-judicial and administrative context are:

- Merely being a taxpayer or resident somewhere within the local government's geographic jurisdiction will generally not satisfy the test. *Combs v. City of Naples*, 834 So. 2d 194, 197 (Fla. 2d DCA 2002).
- Alleging only that the proposed development will increase traffic and make parking more difficult are generally insufficient because everyone in the community will suffer from the increased traffic. *Skaggs-Albertson's Props., Inc. v. Michels Belleair Bluffs Pharmacy, Inc.*, 332 So. 2d 113, 116–17 (Fla. 2d DCA 1976).
- A liquor store affected by a zoning decision allowing a competitor to open a nearby liquor store may qualify because of the increased competition. *Rayan Corp. v. Bd. of Cty. Comm'rs of Dade Cty.*, 356 So. 2d 1276, 1277 (Fla. 3d DCA 1978); *ABC Liquors, Inc. v. Skaggs-Albertson's*, 349 So. 2d 657, 660

(Fla. 4th DCA 1977). *But see Michels Belleair*, 332 So. 2d at 116–17 (suggesting loss of business because of increased competition would not support standing).

- Granting a variance to construct and operate a gas station, which would substantially depreciate neighboring property values, may also satisfy the standard. *ABC Liquors*, 349 So. 2d at 660; *Elwyn v. City of Miami*, 113 So. 2d 849 (Fla. 3d DCA 1959); *see also Rinker Materials Corp. v. Metro. Dade Cty.*, 528 So. 2d 904, 906 (Fla. 3d DCA 1987); *Carroll v. City of W. Palm Beach*, 276 So. 2d 491, 493 (Fla. 4th DCA 1973); *Wager v. City of Green Cove Springs*, 261 So. 2d 827, 828 (Fla. 1972).

- Finding neighboring property owners have standing to challenge a variance allowing a laundry matt to be built with seven parking spaces instead of 14 as required by the code (though providing little analysis for this finding). *City of St. Petersburg, Bd. of Adjustment v. Marelli*, 728 So. 2d 1197, 1198 (Fla. 2d DCA 1999); *see also Exchange Inv., Inc. v. Alachua Cty.*, 481 So. 2d 1223 (Fla. 1st DCA 1985) ("[P]roperty owners do have a legal interest in their own off-street parking facilities…." and suggesting that this is particularly true for "affected properties as much as a mile distant").

- Ruling landowner across the street from person who built a two-story cabana in violation of local setback and height restrictions had standing to challenge approval because they shared a private road, thereby causing injuries that differ in kind from the community as a whole. *Kagan v. West*, 677 So. 2d 905, 906, 908 (Fla. 4th DCA 1996).

- Adjacent owner had standing because construction in violation of zoning laws would significantly elevate adjacent land, obstructing his view and increasing the risk of flood. *State ex rel. Gardner v. Sailboat Key, Inc.*, 306 So. 2d 616, 617-18 (Fla. 3d DCA 1974). *But see Messett v. Cohen*, 741 So. 2d 619, 622–23 (Fla. 5th DCA 1999) (finding claim that development would obstruct the challenger's view does not constitute a legally cognizable interest to support standing).

- Property owner had no legally recognizable interest to challenge rezoning by claiming he would be affected by noise, traffic impact, land-value diminution, or any other respects when he lived more than a mile across a bay from the rezoned site under attack. *Pichette v. City of N. Miami*, 642 So. 2d 1165, 1166 (Fla. 3d DCA 1994).

- Although residents live within the City where the rezoning was occurring, they do not have a legally recognizable interest to challenging the rezoning based on noise, traffic impact, land-value diminution, or any other respects because their property is separated by a 57-acre buffer area that spans 3,000 and 2,800 feet respectively. *Id.*

These are just a few examples. In the end, each case must be considered on its own facts as to the interest at stake and the nature of the government action challenged. *Whitburn*, 190 So. 3d at 1091; *DeSantis*, 306 So. 3d at 1213.

C. Defeating nonapplicant challenges early on certiorari.

As noted above, the landowner who applied for development order of some kind and was denied generally has standing to seek review of that denial by certiorari. *Highwoods*, 51 So. 3d at 572 *Fla. Inst.*, 641 So. 2d at 899. The limited exception here is if the applicant loses his interest in the underlying property—such as selling the property—in which case the original applicant-landowner loses standing and the case must be dismissed. *City of Winter Park v. Rich*, 692 So. 2d 986, 986–87 (Fla. 5th DCA 1997). The subsequent owner though would have standing to continue the application and challenge to its denial. *Wollard v. Metro. Dade Cty.*, 234 So. 2d 719, 720 (Fla. 3d DCA 1970). But generally, standing is not worth raising when the applicant seeks review of quasi-judicial and administrative action.

It is worth raising though when the challenge concerns a nonapplicant, such as a resident or adjoining neighbor who is unhappy that the applicant's development request was approved. Indeed, the law has drawn a distinction for purposes of due-process between those who are a "party" to the quasi-judicial proceeding, like the landowner applicant, and those who are only "participants," like the public attendees *Carillon*, 45 So. 3d at 9–10. This important distinction affects the level of due process that local governments must afford. Only parties to quasi-judicial hearings must be given the full panoply of rights—such as the right to cross-examine witnesses—because of a party's direct interest in the proceeding's outcome. *Id.* Participants, on the other hand, have only the general right to speak about the matter subject to the local government's control, which generally limits presentations to only a few minutes for each participant. § 286.0115(2)(b), Fla. Stat.; *see generally Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989) (limiting content and allotting only two to three minutes). Participants are also not required to be sworn or qualified as experts, and they do not have the right to cross-examine witnesses. § 286.0115(2)(b), Fla. Stat.; *Carillon*, 45 So. 3d at 10.

The author has not yet found a case discussing the interplay between standing and the differing levels of due process afforded to parties versus participants, but there is, at some level, a connection. After all, as *Carillon* explained, a party is typically entitled to more due process "by virtue of its *direct interest* that will be affected by official action...." 45 So. 3d at 10 (emphasis supplied). This sounds a lot like *Renard*'s "*definite* interest exceeding the general interest [the] community...." required for standing to review official action. 261 So. 2d at 837 (emphasis supplied). So, a participant who can satisfy *Renard*'s special-interest standard should, in theory, be entitled to intervene as a party (if requested) and to receive all the panoply of due-process rights of a party to a quasi-judicial proceeding. Few local governments have a clear process for participants to intervene as a "party" at the quasi-judicial level. Arguably though, if a participant requests it, proves standing, and is denied, then this might at least support a petition for certiorari review based on the denial of procedural due process.

But regardless of whether the nonapplicant attempts to become a party or simply remains a participant during the quasi-judicial proceeding, he or she must still prove their standing to seek certiorari review of that action in circuit courts. *Int'l Longshoremen's*, 800 So. 2d at 340. As a result, local governments should move to dismiss early in the certiorari action because many participants and their attorneys overlook or struggle with proving standing under *Renard* for two reasons.

First, several cases hold that standing must be first proven through evidence at the quasi-judicial hearing before the local government. *See, e.g.*, *City of Ft. Myers v. Splitt*, 988 So.2d 28 (Fla. 2d DCA 2008); *Battaglia Fruit Co. v. City of Maitland*, 530 So.2d 940 (Fla. 5th DCA 1988). Standing cannot be argued for the first time in a certiorari petition, and the circuit court cannot go outside the appellate record to take additional evidence of standing. *Id.* If there is no evidence supporting standing in the record at the quasi-judicial hearing, the petition for first-tier certiorari relief must be dismissed. *Id.*

Second, as a practical matter, it can be difficult for participants to both make the required special-injury showing *and* make their arguments against the proposed development when they are generally given only three minutes to speak. So, as a practical matter, a static record on certiorari often lacks sufficient evidence showing that the participant has suffered a special injury differing in kind from the rest of the community.

On the other hand, a participant *could* make his objections to the development and preserve his basis for standing under *Renard* by not only speaking at the meeting, but also submitting an affidavit or other document for inclusion in the quasi-judicial proceeding's record. If a local government is faced with that request—i.e., a participant asking to submit his or her evidence of standing by written submission—then a local government should accept it and include it in the record. Otherwise, this too may be deemed a denial of due process that would support certiorari review. While there is not yet a specific case on this point, it's highly unlikely a court will say that a participant can be denied both the ability to submit something in writing for the local government's consideration *and* only limit the participant to three minutes—especially if the participant looks like they may have had standing under *Renard*.

But if a nonapplicant attempts to satisfy *Renard*—whether in writing or in his or her oral presentation—then the local government must challenge that showing at the quasi-judicial level or risk waiving the standing issue in a later certiorari proceeding. This appears to have happened recently in the Third District's decision of *Alger v. United States*, 300 So. 3d 274, 276 (Fla. 3d DCA 2019), which concerned the United States's standing to challenge an applicant's request for a vested-rights determination. In a footnote, the court apparently rejected an argument that the issue was not preserved stating:

> Further, despite the United States' active opposition to the Resolution, no challenge to standing was raised in the initial quasi-judicial tribunal. 'When a party seeks certiorari review ... of a decision of an administrative body acting in a quasi-judicial capacity, the trial court is bound by the facts and evidence presented to the administrative body, and the issue of standing is waived if it was not raised before the administrative body.' "

Id. at 277 at n.3.

In short, since standing is a threshold matter, a city attorney should challenge a nonapplicant's standing at the earliest opportunity possible, either at the quasi-judicial level if the applicant attempts to make a showing or at the certiorari-level if the nonapplicant failed to create a sufficient factual basis in the quasi-judicial proceeding's record to support standing.

III. Standing to challenge decisions covered by a Florida Statute.

As noted in the introductions, most local-government quasi-judicial and administrative decisions are not governed by a Florida Statute. But a few are. The two most common are comprehensive-plan challenges (also known as consistency challenges) and annexation challenges. This section briefly covers standing in these two areas.

A. Comprehensive-Plan Challenges

Courts have described municipal comprehensive plans under section 163.3167(1), Florida Statutes (2021), as akin to a "constitution for all future development within the governmental boundary." *Citrus County v. Halls River Dev., Inc.*, 8 So. 3d 413, 420 (Fla. 5th DCA 2009). Thus, all zoning and development action must be consistent with the comprehensive plan or it is unlawful. *Id.*; *Machado v. Musgrove*, 519 So. 2d 629, 632 (Fla. 3d DCA 1987). And citizen enforcement is the primary mechanism for ensuring that local governments abide by their development "constitutions." *Nassau*, 41 So. 3d at 276.

As a result, in 1985, the Florida Legislature abrogated the *Renard* special-injury standard by stating that " 'an aggrieved or adversely affected party' has standing to challenge the consistency of a development order with a comprehensive plan." *Id.* (quoting § 163.3215(1), Florida Statutes (2021)). Section 163.3215(2) then broadly defines "an aggrieved or adversely affected party" as:

> [A]ny person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

The caselaw indicates that the clear legislative purpose behind adopting this standard was to "liberalize standing in this context." *Save Homosassa River All., Inc. v. Citrus Cty., Fla.*, 2 So. 3d 329, 336 (Fla. 5th DCA 2008); *Parker v. Leon Cty.*, 627 So. 2d 476, 479 (Fla. 1993). And since it is a remedial statute, the caselaw says that it should be liberally construed in favor of enlarging the class of persons entitled to standing. *Save Homosassa*, 2 So. 3d at 336.

This more liberalized standard is evident in two ways. First, unlike the common-law *Renard* standard, one need not have a "legally protectable right." *Id.* at 340. In other words, one need not "own adjacent property, maintain a special business interest, or have some other quantifiable property status to challenge a land use decision as being inconsistent with a comprehensive plan." *Nassau*, 41 So. 3d at 278. Rather, one need only have a some "interest protected or furthered by the . . . comprehensive plan...." § 163.3215(2), Fla. Stat.; *Parker*, 627 So. 2d at 479.

For example, an organization formed to protect the environment and that has continued connection to the environment (such as using the particular area for recreational and educational purposes) will have standing under this statutory standard if the comprehensive plan has environmental protections (which most do). *Putnam Cty. Envtl. Council, Inc. v. Bd. of Cty. Com'rs of Putnam Cty.*, 757 So. 2d 590, 594 (Fla. 5th DCA 2000). But a person generally owning a business within the city—such as a law practice—will not satisfy the statutory standard because those professional interests are generally not protected by comprehensive plans. *Fla. Rock Props. v. Keyser*, 709 So. 2d 175, 177 (Fla. 5th DCA 1998).

Second, unlike *Renard*, the adverse effect to that person or entity's interest need not differ in kind from the rest of the community. *Nassau*, 41 So. 3d at 277. Indeed, the interest need not be unique or different in its nature from the rest of the community. *Id.*; *Homosasso*, 2 So. 3d at 337. In fact, the interest "may be shared in common with other members of the community at large...." § 163.3215(2), Fla. Stat. Instead, the person or entity's adverse interest need only differ in degree—i.e., exceed or be suffered more intensely—than the rest of the community. *Id.*; *Nassau*, 41 So. 3d at 276–77. In other words, "the statutory test is directed to the quality of the interest of the person seeking standing...." *Homosasso*, 2 So. 3d at 340.

So, taking the environmental example above, an organization formed to protect the environment of a particular area of the city has a more particularized interest than a landowner with a general interest in the environment. *Compare Keyser*, 709 So. 2d at 177 (finding no standing because litigant was simply "a citizen with an interest in the environment and nothing more...."); *with Putnam Cty.*, 757 So. 2d at 593–54 (distinguishing *Keyser* and finding environmental organization had more than a general interest in the environment to support standing).

In applying this more liberalized standard, the caselaw has generally recognized that an adjacent property owner would have no problem satisfying the statutory standard. *Homosasso*, 2 So. 3d at 339 (calling this "self-evident"). It's everyone else who must figure out how to differentiate their interest as "greater in degree" from the rest of the community. *Id.*

Here are a few additional examples applying the statutory test:

- Homeowner within three miles of proposed development near a particular river, who received potable water from the local water district, who frequently fished or boated on the river, and other similar activities had "amply" shown an interest greater than the community's general interest. *Homosasso*, 2 So. 3d at 340.
- Litigants had proven an interest greater than the community at large by showing that they are activist concerning the protected land, that they are members of an organization whose primary purpose is to study and protect the land at issue, and that they use the land for canoeing and kayaking and photographing habitat and wildlife. *Nassau*, 41 So. 3d at 277–78.
- Marine industry organization and boat captain had standing to challenge rezoning of riverfront property because it would increase the difficulty of its

members to conduct business along the river by (1) depleting available land sites for marine industrial uses and (2) drive up speculation and land cost for the limited locations along the river resulting in more industrial land being converted to residential/commercial use. *Payne v. City of Miami*, 927 So. 2d 904, 909 (Fla. 3d DCA 2005).

- An organization designed to protect a historical resource within the city had standing to challenge the approval of a new museum because the organization's historical resource was adjacent to the new museum and specifically protected by the comprehensive plan. *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 427, 433-34 (Fla. 4th DCA 2007).

- Finding homeowners had standing to challenge approval of boat-ramp construction on a lake because their interest were specifically protected by the comprehensive plan and because their property fronted the lake being developed, which thus impacts them greater than general community members not owning lake-front property. *Dunlap v. Orange Cty.*, 971 So. 2d 171, 175 (Fla. 5th DCA 2007).

- Although homeowners were not adjacent to the golf club, they had standing to challenge the club's development agreement with the city because they were within the class of owners entitled to notice of a public hearing before the agreement's approval. *Combs v. City of Naples*, 834 So. 2d 194, 197 (Fla. 2d DCA 2002).

Suffice to say, the statutory standard is lower than the common-law special-injury standard. But, as explained above, the Second District's recent *Chapman* decision may have brought the two standards more in alignment than traditionally considered.

B. Annexation or Contraction Challenges

Standing to challenge a municipality's annexation or contraction of property to its boundaries is controlled by the first sentence of section 171.081(1), Florida Statutes (2021), which states:

> Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari.

This must be read in conjunction with the definition of "parties affected" in section 171.031(5), Florida Statutes (2021), which states:

> (5) "Parties affected" means any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area.

So, reading the two together, any landowner or resident in either the city that is annexing or contracting the property or that owns property within a targeted area may challenge that action if they believe that they will suffer material injury….

It's worth highlighting the quoted phrase in section 171.031(5)—"believes that he or she will suffer material injury…."—because the Second District recently interpreted that statute in *Matlacha Civic Ass'n, Inc. v. City of Cape Coral*, 273 So. 3d 243, 246 (Fla. 2d DCA 2019). In that case, a city's residents challenged the city's purchase and then incorporation of land in an unincorporated community. *Id.* at 245–46. The circuit court granted the city's motion to dismiss, finding that the residents lacked standing because they had not shown "a present material injury directly resulting from the annexation…." *Id.* The Second District said that this violated the statute's plain language, which only required residents to "assert[ ] their *belief* that they will suffer *material injury* from the City's unlawful annexation….", which is what they asserted. *Id.* at 246 (emphasis supplied). Thus, nothing more was required to prove standing under the statute. *Id.*; *City of Sunrise v. Broward Cty.*, 473 So. 2d 1387, 1389 (Fla. 4th DCA 1985) (reaching the same conclusion).

Some additional authorities interpreting standing under sections 171.081(1) and 171.031(5) include:

- Property owner who shares a property line with annexed property and who has riparian rights in a lake within the annexed property is *not* an "affected party" under section 171.031(5)'s definition and thus lacks standing. *City of Tallahassee v. J.R.*, 771 So. 2d 587, 588 (Fla. 1st DCA 2000).
- County qualified as an "affected party" to support standing to challenge a city's annexation of 11,000 acres because (1) the county was a governmental unit with jurisdiction over the area annexed and (2) county owned 106.7 acres included in the annexed area. *City of Tampa v. Hillsborough Cty.*, 504 So. 2d 10, 11 (Fla. 2d DCA 1986).
- Property owner who petitions for voluntary annexation, but denied, is an "affected party" and has standing. Op. Att'y Gen. Fla. 2007-38 (2007), 2007 WL 2777155.

IV. Conclusion

Standing is a threshold issue that could provide a local government with a strong shield against attacks to their quasi-judicial and administrative decisions. To determine whether a challenger has standing, the local government must: (1) identify the nature of the government action being challenged; (2) determine whether that action is controlled by statute or common law; and then (3) determine whether the challenger has presented sufficient evidence either under the statute or under *Renard*'s common-law special-injury standard. Many nonapplicant participants who attempt to challenge quasi-judicial or administrative action often fail to satisfy the third prong by building a sufficient record in the quasi-judicial proceeding. Thus, an early motion to dismiss for lack of record evidence supporting standing could quickly resolve such challenges.