

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS



PATRICK KALEN,)
)
 Appellant,)
)
 vs.)
)
)
 FAIRBANKS NORTH STAR BOROUGH,)
)
 Appellee.)
)

Case No. 4FA-13-01921CI

DECISION AND ORDER GRANTING APPELLEE'S
MOTION TO DISMISS FOR LACK OF STANDING

The Appellee, Fairbanks North Star Borough, filed a motion to dismiss appeal for lack of standing arguing that the Appellant, Patrick Kalen, does not meet the "person aggrieved" standing requirement in land use appeals. Because the "person aggrieved" standard applies and because Kalen does not meet that standard, the motion is granted.

I. Facts and Proceedings

The Fairbanks North Star Borough, Department of Land Management submitted an application to the Fairbanks North Star Borough Platting Board requesting approval to subdivide two tracts totaling 4,086 acres into three tracts.¹ If approved, the so-called Polar deLight Subdivision would create tracts of 967, 1622, and 1488 acres.² The

¹ R. 40.

² R. 40.

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1488 acre tract is the subject of a sale between the Fairbanks North Star Borough and the Chena Hot Springs Resort. The Borough would retain the 967 acre and 1622 acre tracts. The properties are located near 55 mile Chena Hot Springs Road.

The subdivision application included a request for a variance relating to access.³ Land Management sought approval to not construct additional road access to Polar deLight.⁴ The rationale for approval was that legal access already existed via Chena Hot Springs Road and section line easements and that the construction of additional roads into Polar deLight is unfeasible and impractical.⁵ On February 20, 2013 the Board approved the subdivision application with the access variance.

Patrick Kalen appealed the decision of the Board to the Planning Commission asserting: (1) 17.60.070 Access (A)(1) calls for existing roads; (2) Roads both north and south of the airstrip have existed for thirty (30) years; (3) Adoption would permanently deny legal access upstream; (4) The road is required and the road exists; and (5) 17.60.070(B) requires dedication.⁶

Kalen testified before the commission in support of his appeal and clarified his objections.⁷ Kalen reasserted his objections related to access to the property and argued that the proposed subdivision

³ R. 43.

⁴ R. 43.

⁵ R. 43.

⁶ R. 26.

⁷ R. 32.

would land-lock the property.⁸ Kalen does not own any property in the area.⁹ The nearest real property owned by Kalen is 59 miles away.¹⁰

Kalen's appeal was denied by a unanimous vote of the Planning Commission. Kalen then filed this appeal.

II. Discussion

The general rules regarding standing are not applicable in land use appeals. Taxpayer-citizen standing has been eliminated. To have standing to appeal a land-use decision of the Planning Commission to the Superior Court, one must be a person aggrieved.

AS 29.40.060 states:

"**Judicial Review.** (a) The assembly shall provide by ordinance for an appeal by a municipal officer or *person aggrieved* from a decision of a hearing officer, board of adjustment, or other body to the superior court." (Emphasis added).

In the context of this statute, the Borough's ordinance states:

"**Appeal from planning commission.** Appeals from the planning commission with respect to this title shall be made to the superior court."¹¹

This ordinance must be read together with the statute. The ordinance does not specify who is entitled to appeal to the Superior Court. But the statute plainly does and it limits appeals to a

⁸ R. 32-33, 101-114.

⁹ R. 32-33, 101-114.

¹⁰ Appellee's Motion to Dismiss for Lack of Standing, pg. 1, May 30, 2013.

¹¹ FNSBO 17.80.050.

"person aggrieved." As the Alaska Supreme Court has noted, this follows the general practice of review in zoning cases.¹²

Thus, in order to appeal to the superior court, Kalen must be a "person aggrieved." To be a "person aggrieved" a person must show proof of the adverse effect the changed status has or could have on the use, enjoyment, or value of real property owned by that person. He or she must be personally and specifically affected in a way different from that suffered by the public generally.¹³

Kalen does not meet this test. The subdivision has no adverse effect on the use, enjoyment, or value of his real property. He owns no real property in the area. He is not personally and specifically affected in a way different from the public generally.¹⁴ Because Kalen is not a "person aggrieved," he lacks standing to bring this appeal.

The motion to dismiss must be granted. Restricting standing in land-use appeals to persons with substantial, direct, and immediate interest in the outcome of the matter prevents excessive litigation and undue delay of the final disposition of land-use decisions.¹⁵ Those policies will be served by dismissal in this case.

¹² See, *Earth Movers of Fairbanks, Inc. v. Fairbanks North Star Borough* 865 P.2d 741 (1993), (Interpretation of a borough standing ordinance is done in the context of the statutes. "The Legislature chose to provide review for those "aggrieved," indicating that it follows the general practice of review in zoning cases.")

¹³ See, *Griswold v. City of Homer*, 252 P. 3d 1020, 1031 (2011) (citing 83 AM.JUR.2D *Zoning and Planning* § 925 (2003)).

¹⁴ Kalen argues that access issues give him standing. But by this reasoning, he is no different than the general public. This sort of grievance is insufficient in land use appeals

¹⁵ See, *Griswold* at 1031 (2011).

III. Conclusion

Applicable Alaska statutes and FNSB ordinances limit land-use appeals to persons aggrieved. A person aggrieved is someone affected in a way different from the general public. Because Kalen does not meet this test, the Motion to Dismiss for Lack of Standing should be granted.

IV. Order

Accordingly,

IT IS HEREBY ORDERED that the Appellee's Motion to Dismiss for Lack of Standing is granted.

DATED this 30th day of May 2014, at Fairbanks, Alaska.



Michael A. MacDonald
Superior Court Judge

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