STATE OF NORTH CAROLINA COUNTY OF WAKE RALEIGH COUNTRY CLUB, LLC; Petitioner, v. CITY OF RALEIGH, a municipal corporation; and MARK A. THOMPSON, Respondents.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 25 CVS ___ 25CV000799-910 **PETITION FOR WRIT OF CERTIORARI**

NOW COMES Raleigh Country Club, LLC (herein "RCC" or "Petitioner") and petitions the Superior Court of Wake County, North Carolina, pursuant to N.C.G.S. §160D-1402, to review a decision of the Respondent City of Raleigh's planning and zoning board of adjustment ("BOA") as hereinafter set out, by proceedings in the nature of certiorari, and in support thereof shows unto the Court as follows:

1. Petitioner, Raleigh Country Club, LLC ("RCC") is a North Carolina limited liability company with its principal place of business located in Wake County, North Carolina. RCC owns the Raleigh Country Club, a high-end golf club business ("Club") immediately adjoining the subject property described below in paragraph 4.

2. Respondent City of Raleigh ("City") is a municipal corporation organized and existing under the laws of the State of North Carolina and is governed by or is subject to N.C.G.S. Chapter 160D in the exercise of its zoning authority.

3. The BOA is an administrative agency of the City organized pursuant to law that is authorized by the City's zoning ordinance to, among other things, hear appeals of aggrieved parties from rulings of the City's zoning or code enforcement officers.

4. Mark A. Thompson ("Thompson" or "Developer") is the owner of property located at 2501 Poole Road immediately adjacent to the Club. ("Thompson Property"). The Thompson Property is identified by Parcel Identification Number: 1713-76-9914 and consists of approximately 2.13 acres.

5. The Club occupies the real estate located at 400 Donald Ross Drive within the City's corporate limits with the following Parcel Identification Number:

1713-98-1008 and consisting of approximately 134.23 acres.

6. On May 22, 2024, the Developer received administrative approval from the City ("City Approval") for a townhome development project consisting of sixteen (16) total dwelling units within eight (8) residential structures, an outdoor amenity area, associated infrastructure, off-street parking, parking lot and street trees (the "Project").

7. On June 19, 2024, RCC timely appealed the City Approval to the BOA ("Appeal").

8. RCC, as the owner of the Club, possesses a long-term renewable lease with Raleigh Country Club Acquisition, LLC ("RCCA"), the entity that holds title to the real estate occupied by the Club. RCC owns 100% of RCCA. RCCA is merely a holding company that was set up for the convenience of RCC for accounting and tax purposes.

9. Mark Thompson filed a motion with the BOA to dismiss the Appeal based on the standing of Petitioner, which motion was joined by the City.

10. The City has adopted zoning regulations applicable to its entire political limits and territorial jurisdiction known as "The Unified Development Ordinance" ("UDO"). The Thompson Property is zoned R-4 and is in the King Charles neighborhood of the City, which area has clear zoning restrictions in the form of a Neighborhood Conservation District ("NCOD"), called the King Charles Neighborhood Overlay. The King Charles Neighborhood Overlay, which applies to the Club property and the Thompson Property, establishes a minimum lot size requirement of 33,541 square feet. (UDO, Section 5.4.3F6ai).

11. The Project plan erroneously treats the minimum lot size requirement of 33,541 as a site requirement. As a result, the Project has substantially more density than what is allowed in the areas falling within the King Charles Neighborhood Overlay.

12. An NCOD regulation like that for the King Charles Neighborhood Overlay prevails over conflicts with a Frequent Transit Development Option standard, which is cited by the City as a basis for the City Approval. (UDO, Sec. 2.7). The area in question, including the Site, has not been mapped as a Frequent Transit Area by an amendment to a zoning map or by ordinance of any type.

13. If the Project plan is intended to allow multiple "buildings" on one lot, then such development is not allowed as a Townhouse development. (UDO, Sec. 1.4.1C, describing individual TH units on individual lots or one "entire building" on a single lot.").

14. The City Approval was erroneously issued in violation of the City's UDO.

15. Thompson's motion to dismiss came before the BOA for a hearing on November 13, 2024 ("BOA Hearing").

16. After closing the public hearing, the BOA, by a 4-0 vote, decided to grant Thompson's motion to dismiss the Appeal.

17. On December 9, 2024, the BOA, by and through its chairperson, issued a written decision, a copy of which is attached as Exhibit "A" and incorporated herein by reference (the "Order"). On December 17, 2024, the Order was served on Petitioner. In the Order, the BOA concluded (albeit erroneously) that the Petitioner "did not meet its burden of demonstrating that it has standing because it would suffer special damages as a result of the decision being appealed."

18. Petitioner has standing to appeal the BOA's Order as the "applicant before the decision-making board whose decision is being appealed." N.C.G.S. §160D-1402(c)(1)c. Moreover, Petitioner has standing to challenge the City Approval and to appeal the BOA's Order since it will suffer special damages distinct from the public or community at large because of the Project in the form of noise, odor, and litter pollution, trespassing from Project users, and diminution in the value of the Club property, its leasehold interest and business assets.

19. Petitioner has timely appealed the Order to Wake County Superior Court pursuant to N.C.G.S. §§160D-1402 and 160D-1405(d).

Count One
Errors of Law

20. Petitioner incorporates by reference the allegations contained in paragraphs 1-19 above.

21. The City Approval was erroneously issued since it does not conform to the City's UDO and specifically, the standards of the King Charles Neighborhood Overlay.

22. The issue of standing presents a question of law that is reviewable *de novo* by the courts. *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644 (2008). *Mangum* is the controlling case for determining standing of neighbors challenging a zoning development approval in the context of an appeal to a board of adjustment or standing to appeal to the courts from a decision of a board of adjustment in accordance with N.C.G.S. §160D-405(b) and N.C.G.S. §160D-1402(c)(2). N.C.G.S. §160D-1402(c)(2) states that the following party has standing: "Any other person who will suffer special damages as a result of the decision being appealed."

23. In its Order, the BOA erred as a matter of law in the following ways:

a. Placing a burden of proof on RCC to demonstrate standing that conflicts with *Mangum's* mandate in applying N.C.G.S. §160D-1402(c)(2). *See Holmes v. Moore*, 384 N.C. 426, 434 (2023) (whether a tribunal correctly applied a "burden of proof" is a question of law). Under *Mangum*, the "burden" to show standing is one of production only; meaning, once an appellant produces competent and substantial evidence of "immediate or threatened injury" from the enabled development, in this case the Project, that satisfies the standing threshold to move on to the substance or merits of the appeal;

b. Failing to consider the standing allegations of RCC as being true and reviewing the supporting record in the light most favorable to RCC as required by *Mangum*;

c. Rejecting RCC's production of competent and substantial evidence of "immediate or threatened injury" in the form of written affidavits and oral testimony from Christian Anastasiadis, RCC's Chief Operating Officer in the context of RCC's ownership and operations of the Club and Jordan Petersen, a licensed landscape architect. Evidence presented demonstrated likely adverse effects of the Project on the Club and its golf course operations and concerns over noise and odor pollution, littering, injury to the existing tree buffer on the Club's golf course adjoining the Thompson Property, and diminution in the value of the Club property (i.e., its leasehold interest and related Club assets);

d. Not allowing RCCA to join in the Appeal even though RCC owns 100% of RCCA and Christian Anastasiadis testified without objection that RCCA consents to RCC's appeal and to joining the appeal;

e. Reciting in the Order testimony as "findings of fact" (i.e., denominated "Findings of Fact", paragraphs 10-22) without making actual factual findings. *See Welter v. Rowan County Bd. of Comm'rs*, 160 N.C. App. 358, 365-66 (2003); *Harrison v. Gemma Power Sys., LLC*, 369 N.C. 572, 583-84 (2017). The court's review is *de novo* and the record is complete;

f. Reciting in the Order the testimony of Nicholas D. Kirkland as providing an "appraisal report", which he did not, and Mr. Kirkland's contention that the Project would not have a negative impact on the value of the "Donald Ross Property", when he performed no study supported by any factual data or knowledge of the Club itself other than showing that

other golf courses have townhouses that were developed in close proximity *after* the courses were developed;

g. Reciting in the Order the testimony of Nicholas D. Kirkland, who offered no rebuttal evidence to the value impacts to the Club, including its golf course, as testified to by RCC's Chief Operating Officer;

h. Failing to conclude that a tenant can have standing in North Carolina in this context of an appeal of a zoning approval of a project that will cause the tenant to suffer special damages distinct from the public or community at large, and in this case, that RCC showed such standing;

i. Mischaracterizing the testimony of RCC's witnesses and Jordan Petersen's report based on the administrative record (including the transcript of the proceedings), which record speaks for itself, including their testimony describing the Project's adverse impacts and the repeated reference in the Order to the "Donald Ross Property" as the underlying dirt of the Club rather than the Club business itself, including the golf course, which is the property of RCC and what RCC's witnesses testified about;

j. Finding and concluding that RCC did not "meet its burden of demonstrating that it would suffer special damages as a result of the decision being appealed"; and

k. Granting the motion to dismiss.

24. As a result of the above errors of law, the BOA's Order should be reversed and the matter remanded to the BOA to consider the merits of the Appeal.

Count Two
Arbitrary and Capricious, Findings and Decision Not Supported by Record

25. Petitioner incorporates by reference the allegations contained in paragraphs 1-24 above.

26. The BOA's Order is not supported by competent, material and substantial evidence and is therefore arbitrary and capricious in that the uncontroverted evidence in the record is that the Petitioner has standing under *Mangum* to bring the Appeal. Moreover, the Board's Order lacks findings of fact that support its conclusions of law.

27. The deliberations of BOA members can be considered by the reviewing court in determining whether a decision was supported by substantial evidence or

was arbitrary and capricious. *Sanchez v. Town of Beaufort*, 211 N.C. App. 574, 581 (2011). During the BOA Hearing, the BOA Chairman, who made the motion to dismiss the Appeal, contended that the negative impacts testified to by RCC's witnesses were not "unique to this property" and therefore were not "special", even though RCC's witnesses directed the impacts to the Club and golf course property only and there was no testimony that the asserted negative impacts would also be suffered by the public or community at large. The Chairman also stated there was "no proof that [the Project] is going to diminish property", even though the uncontroverted evidence from Christian Anastasiadis was that the value of the Club, including the golf course, would be negatively impacted. Notwithstanding, according to *Mangum*, testimony directly about property values is not a standing requirement. The Chairman also rejected the "threat" of injury testified to by RCC's witnesses, which is the standard employed by *Mangum*. Additionally, the Chairman claimed that the "threat of harm" was not even shown, even though there was no one to rebut the testimony of RCC's witnesses and each testified of the likely impacts from the Project in terms of noise, odor and litter pollution, trespassing, and diminution in the value of the Club property.

28. The BOA members in their deliberations and the BOA in its Order failed to follow *Mangum* and its holding to "view the allegations [of Petitioner] as true and the supporting record in the light most favorable [to Petitioner]."

29. The BOA was presented a copy of a judgment in the *Bennett et al.* appeal of a challenge to the administrative approval of a 908 Williamson project in the Hayes Barton neighborhood that proceeded to Superior Court on the issue of standing. The BOA had found standing in that case, the City appealed, and the Superior Court affirmed in reliance on *Mangum* and its standard of a *"threatened injury"*. The BOA acted arbitrarily or capriciously in this case by discriminating against the Petitioner when it rejected the forecast of similarly expressed concerns or "threatened injury" from noise pollution and diminution in property values that it had accepted in the *Bennett, et al.* appeal.

30. The BOA erred as a matter of law and acted arbitrarily and capriciously by disregarding "facts or law without determining principle." *Sanchez*, 211 N.C. App. at 580. *Mangum* provides the law of standing and the BOA completely disregarded its holding or failed to put forth in the record a rational explanation for its decision that runs counter to *Mangum* and the evidence presented in the record. The BOA members allowed their personal preferences control over the correct application of the rule of law.

31. The Petitioner contends that the following denoted "Findings" are not supported by competent and substantial evidence in the record:

Finding of Fact No. 4 to the extent that it mischaracterizes the Application. RCC is the owner of the Club and golf course located on the parcel as described in the Application pursuant to a leasehold interest in the land. The Application form does not discern ownership versus tenant interests. RCC owns a leasehold interest along with its business assets, which are forms of property in North Carolina.

Findings of Fact Nos. 9, 10 and 13 to the extent that they mischaracterize RCC's property interests. While it is true that RCC does not own the dirt occupied by the Club, it does own the Club and owns 100% of the holding company that holds title to the dirt. Mr. Peterson (sic)'s written report focused on likely damage to the owner of the Club, including the golf course, which is RCC.

Findings of Fact Nos. 14-16 to the extent that they mischaracterize the testimony and evidence. For example, rather than testifying that impacts could occur, Mr. Petersen testified that impacts were likely to occur based on the plans submitted and approved by the City.

Finding of Fact No. 18 to the extent that it mischaracterizes ownership of the various entities. Mr. Anastasiadis testified that RCCA was owned by RCC and that RCC was owned by McConnell Golf.

Findings of Fact Nos. 19-20 to the extent that they mischaracterize the testimony and evidence. Mr. Anastasiadis testified that the impacts to the golf course in terms of noise, littering and trespass would happen based on his experiences with similar developments. He also testified about diminution in the value of the Club property, which the Order omits altogether.

Findings of Fact Nos. 21-22 to the extent that they mischaracterize the testimony and evidence. Mr. Kirkland did not testify as to property value impacts to the Club itself or its business. He did not provide an "appraisal report". He did testify that for the townhome Developer, the Project would benefit from being next to a golf course; but again, no appraisal or value study on the golf course itself.

Findings of Fact Nos. 26-28, which are conclusions of law (and made in error as noted above).

32. As a result of the above, the BOA's Order should be reversed and the matter remanded to the BOA to consider the merits of the Appeal.

WHEREFORE, the Petitioner prays the Court as follows:

1. That a Writ of Certiorari ("Writ") be issued to the Respondent, City of Raleigh, by which the City shall certify to this Court within sixty (60) days from the date of the Writ the complete record of the proceedings, including the BOA Hearing transcript, any exhibits, minutes, stenographic recordings, and audio tapes concerning the zoning board's decision as set forth in this Petition that is the subject matter of this appeal.

2. That the Court, for any and all reasons enumerated above, reverses the decision of the Respondent City's BOA, and remand the matter to said agency to consider the merits of the Appeal.

3. That the costs of this action be taxed to the Respondents.

4. For attorney's fees incurred by Petitioner in defense of the City's actions pursuant to N.C.G.S. §6-21.7 since the City, through its staff and BOA, violated clear limits on appeal authority in the context of standing as established by *Mangum*.

5. For such further relief this Court deems just and proper.

This the 8th day of January 2025.

VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A.

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BEFORE THE CITY OF RALEIGH BOARD OF ADJUSTMENT
WAKE COUNTY, NORTH CAROLINA
BOA Case No. 0042-2024

In re: Raleigh Country Club, LLC Appeal of May 22, 2024 Administrative Development Approval at 2501 Poole Road, Raleigh, North Carolina	ORDER ON MOTION TO DISMISS APPEAL OF RALEIGH COUNTRY CLUB, LLC

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Raleigh Board of Adjustment ("BOA") on November 13, 2024 for a hearing on the Motion of Mark Thompson, owner of 2501 Poole Road, to dismiss the appeal filed by Raleigh Country Club, LLC from the May 22, 2024 Administrative Development Approval for 2501 Poole Road (the "Appeal"). The City of Raleigh joined in support of the Motion to Dismiss. Based upon the Record, the testimony presented and other related documents and materials in evidence at the November 13, 2024 hearing, the BOA finds that the Motion to Dismiss the Appeal should be granted and in support thereof, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The property at issue is located at 2501 Poole Road in Raleigh, Wake County, North Carolina (the "Property"). The Property is owned by Mark Thompson (the "Property Owner").

2. On May 22, 2024, Property Owner received an Administrative Development Approval for 2501 Poole Road, which includes 16 total dwelling units and 8 residential structures, an outdoor amenity area,

associated infrastructure, off-street parking, parking lot and street trees (the "Project").

3. On June 19, 2024, Raleigh County Club, LLC ("RCC") submitted an Appeal of Administrative Decision Application.

4. The Appeal of Administrative Decision Application identified RCC as the owner of a 134.23 acre parcel, PIN 1713981008, street address: 400 Donald Ross Drive, Raleigh, North Carolina ("Donald Ross Property").

5. On or around September 9, 2024, Property Owner moved to dismiss the Appeal filed by RCC for lack of standing.

6. A hearing on the Motion to Dismiss Appeal was originally scheduled for October 14, 2024. Upon agreement of all parties, due to the impact of Hurricane Helene on counsel for RCC, the hearing was moved to November 13, 2024.

7. At the November 13 hearing, Jeffrey L. Roether of Morningstar Law Group appeared as counsel for Mark Thompson, Property Owner. Robin Tatum of Fox Rothschild, LLP represented City of Raleigh. Craig D. Justus of Van Winkle, Buck, Wall, Starnes & Davis, P.A. represented Raleigh Country Club, LLC.

8. Raleigh Country Club, LLC and Raleigh Country Club Acquisition, LLC are separate North Carolina limited liability companies.

9. The Donald Ross Property is not owned by Raleigh Country Club, LLC. The Wake County Registry shows the property owner of the Donald Ross Property is Raleigh Country Club Acquisition, LLC.

10. By affidavit and by testimony, Christian Anastasiadis, Chief Operations Officer of McConnell Golf, identified RCC as the owner and

operator of a private golf club and business known as Raleigh Country Club located on the Donald Ross Property. He acknowledged that RCC does not own the Donald Ross Property.

11. A Commercial Lease Agreement made and entered into on the 1st day of January, 2024 by and between Raleigh Country Club Acquisition, LLC as landlord and Raleigh Country Club, LLC as tenant of the Donald Ross Drive Property was introduced into evidence ("Lease"). The stated term of the Lease is one year ending on December 31, 2024 with an automatic renewal for successive additional one-year terms up to a total of 99 years. The Lease provides that either party may give written notice to the other of an intent not to renew 30 days prior to the expiration of the then current term. The annual rent for the premises is $1.00.

12. Jordan Peterson of Bolton & Menk, Inc. testified as an expert witness in landscape architecture and land development. The Board of Adjustment received his testimony and an affidavit with exhibits.

13. Mr. Peterson's written report identified the property owner of the Donald Ross Property as RCC not RCCA. Its focus is on possible damages to be suffered by the owner of the Donald Ross Property.

14. Mr. Peterson opined that the trees on the Donald Ross Property could be damaged by the Project.

15. Mr. Peterson opined that noise from the solid waste staging area could occur.

16. Mr. Peterson opined that removal of the fence on the Thompson Property could impact the Donald Ross Property. He acknowledged the fence could be removed with or without the Project.

17. Christian Anastasiadis testified and provided an affidavit with exhibits. His testimony and these materials were received into evidence by the Board.

18. Christian Anastasiadis testified that the owner of the Donald Ross Property and the Appellant are both owned by McConnell Golf, a single owner entity.

19. He testified that he was concerned about noise in the area of three tee boxes.

20. He also testified that he was concerned about trespass onto the Donald Ross Property.

21. Nicholas D. Kirkland, Kirkland Appraisals, OSC, testified as an expert witness in residential and commercial appraisals and provided an appraisal report.

22. Mr. Kirkland testified that Property Owner's proposed use of his Property for townhomes is compatible with country club use and that the proposed use will not have a negative impact on the value of the Donald Ross Property.

23. N.C.G.S. §160D-1402(c) states that a petition for review may be filed only by a petitioner who has standing to challenge the decision being appealed and sets forth the criteria for standing.

24. The criterion applicable to RCC's claim of standing is N.C.G.S. §160D-1402(c)(2): "any other person who will suffer special damages as the result of the decision being appealed."

25. Standing is jurisdictional. In the absence of standing, the BOA does not have jurisdiction over the appeal.

26. The party alleging standing has the burden of demonstrating it.

27. Even if there are circumstances where a tenant can demonstrate special damages as a result of the decision appealed sufficient to confer standing, the evidence presented on behalf of RCC was insufficient to demonstrate that it would suffer special damages as a result of the decision being appealed.

28. Because RCC did not meet its burden of demonstrating that it would suffer special damages as a result of the decision being appealed, it has not met its burden of proof it has standing, and the motion to dismiss must be granted.

CONCLUSIONS OF LAW

Pursuant to the foregoing findings of fact, the BOA makes the following conclusions of law:

1. The Appellant, Raleigh Country Club, LLC, did not meet its burden of demonstrating that it has standing because it would suffer special damages as a result of the decision being appealed.

2. Mark Thompson's Motion to Dismiss Appeal should be granted.

3. No other issues were properly before the BOA for consideration.

ACCORDINGLY, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the BOA hereby dismisses Appellant's Appeal as set forth above.

This 9th day of December, 2024.

Rodney Swink

Rodney Swink, BOA Chair

13762\01\p\007Final BOA Order on Motion to Dismiss Appeal