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"wrong" has occurred, some tort claims against governmental agencies will inevitably go unremedied.[33] Each grade crossing, like each street or highway crossing, has some inherent danger,[34] but the placement of traffic control devices is a discretionary function of a governmental entity.[35] For the reasons discussed, the district court did not err in concluding that all of the claims which are the subject of these appeals fell within the discretionary function exceptions of the PSTCA and the STCA, and we therefore affirm the judgment in each case.

AFFIRMED.

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[33] *McCormick v. City of Norfolk, supra* note 20.

[34] See *id.*

[35] See *id.* See, also, *Dresser v. Thayer County*, 18 Neb. App. 99, 774 N.W.2d 640 (2009).

FIELD CLUB HOME OWNERS LEAGUE, A NEBRASKA CORPORATION, AND THORNBURG PLACE NEIGHBORHOOD ASSOCIATION, AN UNINCORPORATED ASSOCIATION, APPELLANTS, V. ZONING BOARD OF APPEALS OF OMAHA ET AL., APPELLEES.

814 N.W.2d 102

Filed May 11, 2012. No. S-11-432.

1. **Jurisdiction: Appeal and Error.** An appellate court reviews de novo jurisdictional determinations that do not involve a factual dispute.
2. **Zoning.** A zoning board is an administrative body performing quasi-judicial functions.
3. **Zoning: Standing.** To apply for a variance from a zoning regulation, the applicant must have standing.
4. **Standing: Jurisdiction: Parties.** Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's or tribunal's exercising its jurisdiction and remedial powers on the party's behalf.
5. ____: ____: ____. Standing is a component of jurisdiction; only a party that has standing—a legal or equitable right, title, or interest in the subject matter of the controversy—may invoke the jurisdiction of a court or tribunal.
6. **Claims: Parties.** Generally, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third parties.

7. **Corporations: States: Standing.** A foreign corporation has the right to enter court and defend itself.
8. **Zoning: Standing.** A property owner has standing to seek a variance from a zoning ordinance that, if strictly enforced, would adversely affect the owner's property rights or interests.
9. **Zoning: Standing: Vendor and Vendee: Contracts.** A prospective purchaser under a purchase agreement subject to the grant of a variance or rezoning of the property has standing to seek the change.
10. **Zoning: Standing: Vendor and Vendee: Options to Buy or Sell.** The holder of an option to purchase property has standing to apply for a variance when the holder is bound to purchase the property if the variance is obtained or when the property owner anticipated that the option holder would seek the variance to complete the sale.
11. **Standing: Jurisdiction: Proof.** A party invoking a court's or tribunal's jurisdiction bears the burden of establishing the elements of standing.
12. **Standing.** The stage of the litigation in which a party claims that its opponent lacks standing affects how a court should dispose of the claim.

Appeal from the District Court for Douglas County: MARLON A. POLK, Judge. Reversed and vacated, and cause remanded for further proceedings.

David J. Lanphier, of Broom, Clarkson, Lanphier & Yamamoto, for appellants.

Rosemarie R. Horvath, Assistant Omaha City Attorney, for appellees Zoning Board of Appeals of Omaha and City of Omaha.

Donald J. Kleine, of Pansing, Hogan, Ernst & Bachman, L.L.P., for appellee Volunteers of America, Dakotas.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

SUMMARY

Volunteers of America, Dakotas (VOA), proposed to build an apartment-style building for veterans in Omaha. To construct the building as planned, VOA applied for variances from area and use restrictions under the Omaha Municipal Code (Code). VOA applied to the zoning board of appeals of Omaha (the Board) for the variances. The appellants, Field Club Home Owners League and Thornburg Place Neighborhood

Association (collectively Field Club), opposed the application. The Board granted the variances, concluding that the 1987 Code created an unnecessary hardship because it did not contemplate a project like VOA's.[1] The district court affirmed the Board's decision.

We conclude that the record fails to show that VOA had standing to seek the variances. We therefore reverse and vacate the court's judgment. However, because Field Club raised standing for the first time on appeal to this court, we conclude that the district court must conduct an evidentiary hearing on the issue. We remand the cause with instructions for the court to conduct this further proceeding.

BACKGROUND

VOA requested a number of variances related to setbacks, landscaping, buffer yards, offstreet parking, and population density. At the hearing before the Board, numerous individuals expressed their opinion that because the 1987 Code did not anticipate the type of project envisioned by VOA, its strict application constituted a hardship that justified the Board's granting of these variances.[2] After discussion amongst the various parties and members of the Board, the Board granted the requested variances, subject to specified conditions.

Field Club petitioned the district court to review the Board's decision, arguing that the Board's decision was contrary to law. While the petition was pending, Field Club moved the court to allow additional discovery. Field Club did not, however, specifically challenge VOA's standing to seek the variances or judicial review of the Board's order. The court overruled Field Club's discovery motion and admitted only the bill of exceptions and certain sections of the Code into evidence. In its order, the court explained that it could reverse the Board's decision only if it was illegal or not supported by the evidence, and thus arbitrary, unreasonable, or clearly wrong. After reviewing the evidence, the court concluded that Field Club

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[1] See Neb. Rev. Stat. § 14-411 (Reissue 2007).

[2] See *id.*

had not met that standard. The court affirmed the Board's decision. Field Club appeals.

ASSIGNMENTS OF ERROR

Field Club assigned, renumbered and restated, that the district court erred in

(1) finding that VOA had standing to request variances from the Board;

(2) failing to permit Field Club to conduct discovery or adduce additional evidence; and

(3) affirming the Board's granting of the variances.

STANDARD OF REVIEW

[1] We review de novo jurisdictional determinations that do not involve a factual dispute.[3]

ANALYSIS

Field Club argues that VOA lacked standing to request variances from the Board because (1) it had not obtained a "certificate of authority" pursuant to Neb. Rev. Stat. § 21-20,169 (Reissue 2007) and (2) it did not have a legally cognizable interest in the property.

[2-6] A zoning board is an administrative body performing quasi-judicial functions.[4] To apply for a variance from a zoning regulation, the applicant must have standing.[5] Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's or tribunal's exercising its jurisdiction and remedial powers on the party's behalf.[6] Standing is a

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[3] See, *Trumble v. Sarpy County Board, ante* p. 486, 810 N.W.2d 732 (2012); *Project Extra Mile v. Nebraska Liquor Control Comm., ante* p. 379, 810 N.W.2d 149 (2012).

[4] See, *Eastroads v. Omaha Zoning Bd. of Appeals*, 261 Neb. 969, 628 N.W.2d 677 (2001); *Moulton v. Board of Zoning Appeals*, 251 Neb. 95, 555 N.W.2d 39 (1996).

[5] See, generally, Annot., 89 A.L.R.2d 663 (1963). Compare, *Smith v. City of Papillion*, 270 Neb. 607, 705 N.W.2d 584 (2005); *Hagan v. Upper Republican NRD*, 261 Neb. 312, 622 N.W.2d 627 (2001).

[6] *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

component of jurisdiction; only a party that has standing—a legal or equitable right, title, or interest in the subject matter of the controversy—may invoke the jurisdiction of a court or tribunal.[7] Generally, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third parties.[8]

Relying on § 21-20,169(1), Field Club first argues that VOA lacked standing to request variances from the Board because VOA had not obtained a certificate of authority. That section provides that "[a] foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority."

[7] But § 21-20,169(1) does not apply here. Although VOA is a foreign corporation, it is not "maintaining" a court proceeding. It is Field Club that petitioned the district court and named VOA as a defendant. And a foreign corporation certainly has the right to enter court and defend itself.[9]

Field Club also contends that VOA lacked standing because it had no legally cognizable interest in the property. Field Club argues that the owner of the property was Kiewit Construction Company, not VOA.

[8-10] A property owner obviously has standing to seek a variance from a zoning ordinance that, if strictly enforced, would adversely affect the owner's property rights or interests.[10] And the majority of courts that have considered the issue also hold that a prospective purchaser under a purchase agreement subject to the grant of a variance or rezoning of the

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[7] See *id.* See, also, *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

[8] *Central Neb. Pub. Power Dist., supra* note 7.

[9] See § 21-20,169(5).

[10] See, 8 Eugene McQuillin, The Law of Municipal Corporations § 25:179.33 (rev. 3d ed. 2010); 8A Eugene McQuillin, The Law of Municipal Corporations § 25:321 (rev. 3d ed. 2012); 89 A.L.R.2d, *supra* note 5, § 3 (citing cases); 101A C.J.S. *Zoning and Land Planning* § 319 (2005).

property has standing to seek the change.[11] Similarly, courts have held that the holder of an option to purchase property has standing to apply for a variance when the holder is bound to purchase the property if the variance is obtained or when the property owner anticipated that the option holder would seek the variance to complete the sale.[12] We agree with these holdings. We note that in appeals from administrative decisions, the issue of standing is often raised with the party's right to seek review of the decision in court.[13] But the standing question is the same. If a party has standing to seek judicial review, then it also had standing to request relief from the administrative board.

Here, it is true that the record fails to show that VOA has standing to seek the variances. There was evidence of a lease agreement between VOA and the Department of Veterans Affairs, to take effect once the building was fully constructed. This evidence suggests that VOA has an ownership interest in the property. And VOA also told the Board that it would own the property. But VOA did not show the existence of a purchase agreement that was subject to its ability to obtain variances, an option contract subject to the same conditions, or Kiewit Construction Company's authorization for VOA to seek variances on the company's behalf. On the other hand, Field Club did not specifically challenge VOA's standing until after VOA prevailed with the Board and the district court.

[11,12] A party invoking a court's or tribunal's jurisdiction bears the burden of establishing the elements of standing.[14]

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[11] See, *Robinson v. City of Huntsville*, 622 So. 2d 1309 (Ala. Civ. App. 1993); *Lenette Realty v. City of Chesterfield*, 35 S.W.3d 399 (Mo. App. 2000); *Silverco, Inc. v. Zoning Bd. of Adjustment*, 379 Pa. 497, 109 A.2d 147 (1954). See, also, *Webb v. Fox*, 105 N.M. 723, 737 P.2d 82 (N.M. App. 1987); 8A McQuillin, *supra* note 10, § 25:280; 89 A.L.R.2d, *supra* note 5, § 4[b].

[12] See, *Babitzke v. Village of Harvester*, 32 Ill. App. 2d 289, 177 N.E.2d 644 (1961); *Hatch v. Fiscal Court of Fayette County*, 242 S.W.2d 1018 (Ky. 1951).

[13] See, e.g., *Central Neb. Pub. Power Dist., supra* note 7.

[14] See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

But we have previously explained that the stage of the litigation in which a party claims that its opponent lacks standing affects how a court should dispose of the claim. In *Citizens Opposing Indus. Livestock v. Jefferson Cty.*,[15] a citizens group and a village petitioned the district court to review a board of adjustment's order which granted a special use permit. After the court conducted a trial on the petition, the board moved to dismiss the litigation because the village and citizens group lacked standing. We explained that because the litigation had moved past the pleading stage, the board had raised a factual challenge to the plaintiffs' standing. We held that the court erred in failing to conduct an evidentiary hearing on standing before dismissing the litigation.

We conclude that the same reasoning applies here. At the pleading stage, the standard for determining the sufficiency of a complaint or petition to allege standing is fairly liberal. And we have not previously held what specific factual allegations a plaintiff must allege to show standing to seek variances. So Field Club's standing challenge raised a factual issue on appeal that VOA did not anticipate. In this circumstance, we will not order the trial court to dismiss the litigation based merely on allegations in a complaint or petition. Because this litigation is well past the pleading stage, VOA is entitled to an opportunity to demonstrate standing in an evidentiary hearing.

We therefore reverse and vacate the judgment and remand the cause with directions to the district court to receive additional evidence and determine whether VOA has sufficient interest in the property to seek the variances. We leave to the district court's discretion whether to permit additional discovery on the issue. Given our disposition of the standing issue, we do not reach the merits of Field Club's assigned error that the court improperly granted the variances.

REVERSED AND VACATED, AND CAUSE REMANDED FOR FURTHER PROCEEDINGS.

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[15] *Citizens Opposing Indus. Livestock v. Jefferson Cty.*, 274 Neb. 386, 740 N.W.2d 362 (2007).