

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-619

JARED KATSIANE

vs.

BOSTON REDEVELOPMENT AUTHORITY.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The issue in this case is whether the plaintiff, Jared Katsiane, has standing to challenge a decision made by the Boston Redevelopment Authority (BRA) concerning the sale of the Harriet Tubman House (house) and the development of new residential and commercial units in an urban renewal area located in Boston's South End.¹ Katsiane sought to reverse the BRA's decision by filing a complaint in the Superior Court seeking a declaratory judgment and a preliminary injunction. The BRA filed a motion to dismiss under Mass. R. Civ. P. 12 (b), 365 Mass. 754 (1974), on the ground, among others, that Katsiane lacked standing to challenge its decision. Following a hearing,

¹ At oral argument, the parties confirmed that the house was sold and subsequently demolished. A new mixed use building is currently under construction.

a judge of the Superior Court concluded that Katsiane did not have standing and allowed the motion. We likewise conclude that Katsiane is without standing and affirm the judgment.

Background. "The BRA is an urban renewal agency and a redevelopment authority that supervises the adoption and administration of urban renewal plans in Boston." St. Botolph Citizens Comm., Inc. v. Boston Redevelopment Auth., 429 Mass. 1, 3 (1999). See also G. L. c. 121B, which provides a comprehensive scheme for the approval and administration of urban renewal plans. The redevelopment project at issue is part of the South End Urban Renewal Plan (plan), which was approved in 1965. The project is a so-called "large project," committed to the BRA under Article 80 of the Boston Zoning Code. The particular parcel in controversy is known as "parcel 17," and is located within both the South End Landmarks District and the plan area. Parcel 17 consists of approximately 23,000 square feet, and, until recently, included the Harriet Tubman House, a three-story building that was constructed in 1975 for a nonprofit entity known as United South End Settlements (USES). Over the years, the house has provided "youth and adult training programs, childcare, senior programs, children's programs, ESL, GED and Literacy courses, and other educational resources" to members of the community. Katsiane alleges that the house also has provided a stable space for the community, historically

comprised of Black families and an ethnically diverse population, to network and gather. In 2018, USES was facing serious financial difficulties and decided to sell the house. Given "the pressing need for housing in the City of Boston" at that time, the BRA "determined that the Project Site should be redeveloped as a mixed-use residential and commercial building." At the time Katsiane brought this action, the BRA had approved the sale of the House to a developer who intended to demolish it and construct a new mixed-use building containing approximately sixty-six residential units, ground floor commercial units, and community spaces.

Katsiane opposed the project. In his complaint, Katsiane alleges that he lives in the neighborhood, has been using the social and other services provided by the house for the past thirty years, and will suffer injury if the redevelopment project goes forward as planned. He further alleges that the BRA improperly modified the plan by permitting residential use of parcel 17, enabling the property to be sold to a "luxury condo developer." Katsiane claims that the modification violated the Land Disposition Agreement (LDA) and deed for parcel 17, both of which provide that, through the end of the plan term, the land may only be used for "the public purpose of

community use."² Katsiane brought this action, seeking a preliminary injunction to "stop the process" of selling the house to the developer.

The BRA opposed Katsiane's motion for a preliminary injunction and moved to dismiss the complaint on three grounds. First, the BRA argued that its approval of the modification of the plan for parcel 17 is a nonbinding recommendation that is not subject to judicial review because the BRA was acting in its role as the City's planning board under Art. 80 of Boston Zoning Code. Second, the BRA asserted that Katsiane, who does not own property within the area that is designated to be taken under eminent domain, has no standing to challenge the validity of a modification to an urban renewal plan. And third, the BRA argued that Katsiane failed to establish the existence of an actual controversy. In a marginal notation, the judge ruled as follows:

"After hearing and careful review of all submissions the request for preliminary injunction must be Denied. Ptff can not meet his burden of demonstrating possibility of success on the merits or irreparable harm. Ptff does not have standing to challenge the Article 80 development process. . . . Ptff remedy lies not at this point in the proceedings but only after conclusion of the process and a decision by Zoning Board. . . . Therefore ptff has failed to state facts that support a recognizable cause of action.

² The LDA provided that the BRA would convey parcel 17 to USES for consideration, subject to (1) the approval of the federal Department of Housing and Urban Development, and (2) USES's agreement to develop the parcel with a community facility.

The request for preliminary injunction is Denied and the complaint is dismissed."

Discussion. Our review of the judge's ruling is de novo. Pishev v. Somerville, 95 Mass. App. Ct. 678, 682 (2019). Katsiane argues that the "controlling legal issue" here is "whether the BRA can terminate the two binding land use [a]greements for Parcel 17, the LDA and the [d]eed, allowing for residential development [of the parcel] without a community center." In Katsiane's view, use of parcel 17 cannot be modified while the plan is in effect. Katsiane further claims that the judge misinterpreted "the fundamental facts of this matter" and erroneously ruled that he has a future opportunity for a remedy, when he does not. As to the BRA's argument that its decision is immune from review, Katsiane contends that he is not seeking review under Art. 80 of the Boston Zoning Code but under G. L. c. 121B.³

The flaw in Katsiane's argument is that he does not have standing under G. L. c. 121B. The Supreme Judicial Court addressed this precise issue in St. Botolph Citizens Comm., Inc., 429 Mass. 1. In that case, like here, the plaintiffs claimed that the BRA improperly modified an urban renewal plan

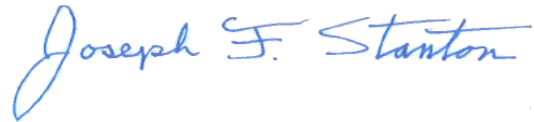
³ Given our conclusion, we do not address the question whether the BRA's decision is a nonbinding recommendation that is not subject to judicial review on the ground that the BRA was acting in its role as the City's planning board under Art. 80 of Boston Zoning Code.

(the Fenway Urban Renewal Plan) so as to permit the development of new residential units. The Court held that because the plaintiffs' claim pertained to a decision made by the BRA solely in its capacity as an urban renewal agency under G. L. c. 121B, they had no standing. As the Court explained, "[g]eneral Laws c. 121B provides no explicit right of appeal to persons allegedly aggrieved by decisions made by the BRA, in its capacity as an urban renewal agency." St. Botolph, supra at 10-11. The Court further noted, "[t]he legislative choice" not to provide a right of appeal from decisions made by the BRA in its capacity as an urban renewal agency is an "intentional one." Id. at 11. See also, Pishev, 95 Mass. App. Ct. at 686 (taxpayer group did not have standing to challenge validity of city of Somerville's Union Square Revitalization Plan under G. L. c. 121B). Thus, while we acknowledge Katsiane's belief that he has been aggrieved based on his longstanding relationship with the Harriet Tubman House, he has no standing to pursue that

grievance by filing suit against the BRA.

Judgment affirmed.

By the Court (Vuono,
Wolohojian & Neyman, JJ.⁴),

A handwritten signature in blue ink that reads "Joseph F. Stanton". The signature is written in a cursive, flowing style.

Clerk.

Entered: July 23, 2021.

⁴ The panelists are listed in order of seniority.