SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court. In the interest of brevity, portions of an opinion may not have been summarized.)

Cherokee LCP Land, LLC v. City of Linden Planning Board (A-82-16) (079146)

Argued February 26, 2018 -- Decided August 2, 2018

SOLOMON, J., writing for the Court.

This appeal tests the limits of the definition of "interested party" within the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-4, as applied to the holder of a tax sale certificate -- a tax lienholder -- under New Jersey's Tax Sale Law. Specifically, the Court considers whether a tax lienholder has standing to challenge a planning board's approval of a land use application for a neighboring property.

Defendant Goodman North American Partnership Holdings, LLC (Goodman) purchased a parcel of land in Linden, New Jersey (the Property). In 2013, after several transfers, bankruptcy proceedings, and abandonment, ownership of the adjacent parcel (the Neighboring Property), a superfund site, was purportedly transferred by quitclaim deed to Cherokee LCP Land, LLC (Cherokee), a plaintiff in this matter. That same year, non-party Cherokee Equities, LLC (Equities), purchased three tax sale certificates on the Neighboring Property from the City of Linden and initiated tax foreclosure proceedings. After filing the foreclosure complaint, Equities assigned the tax sale certificates to Linden 587, LLC (Linden 587), and Linden 587 was substituted as plaintiff in the foreclosure proceedings.

Goodman submitted a site plan application for development of the Property to the City of Linden Planning Board (the Board). Seventeen days before Equities assigned the tax sale certificates to Linden 587, the Board held a public hearing on Goodman's application. Cherokee attended as an objector. Neither Equities nor Linden 587 attended the hearing. In part, Cherokee challenged the proposed project's elimination of certain points of access to the Neighboring Property, its interference with an existing easement on the Property, and substantial modifications to storm water management on the Property. The Board unanimously approved the application with qualifications. Thereafter, Cherokee's principal offered to sell the Neighboring Property to Goodman for 2% of the project to avoid litigation.

Plaintiffs Cherokee and Linden 587 filed a complaint challenging the Board's approval of Goodman's application. Defendants filed motions to dismiss or for summary judgment, arguing, in part, that Cherokee and Linden 587 lacked standing.

The trial court dismissed plaintiffs' complaint with prejudice, concluding that "Linden 587 does not have a present interest in the Neighboring Property as its ownership rights . . . are conditioned upon its right of redemption which it has failed to exercise." The

trial court found "that until redemption and entry of foreclosure, the holder of a tax sale certificate does not have any vested ownership or present possessory interest in a property that is subject to the tax sale certificate." As a result, the trial court determined that Linden 587 "cannot be deemed an interested party" based on its status as a tax lienholder and that, as a consequence, dismissal was warranted. Additionally, the court noted that the plaintiffs' motive was not to redevelop the Neighboring Property, but to "extract value from the Project through the sale of the Neighboring Property . . . to Goodman." The Appellate Division affirmed, and the Court granted plaintiffs' petition for certification. 230 N.J. 500 (2017).

HELD: Pursuant to N.J.S.A. 40:55D-4, a tax lienholder who can show that its "right to use, acquire or enjoy property is or may be affected" if the application is granted is an interested party and therefore may have standing to challenge a planning board's approval of a land use application.

1. The sale of tax certificates allows a municipality to transform a non-performing asset into cash without raising taxes. However, the holder of a tax sale certificate does not have title to the land. The holder's purchase of the certificate at a tax sale does not divest the delinquent owner of his title to the land. Instead, the purchaser of a tax sale certificate acquires a lien formerly held by the municipality's taxing authority, derived from the property owner's obligation to pay real estate taxes. The lien purchaser obtains an inchoate interest that consists of three rights: the right to receive the sum paid for the certificate with interest at the redemption rate for which the property was sold; the right to redeem from the holder a subsequently issued tax sale certificate; and the right to acquire title by foreclosing the equity of redemption of all outstanding interests, including that of the property owner. By virtue of foreclosure, the purchaser of the tax sale certificate may become the owner of the property in fee simple. (pp. 13-15)

2. The "right to acquire title" is therefore significant in resolving standing under the MLUL. Indeed, the MLUL explains standing as follows: "[a]ny interested party may appeal to the governing body any final decision of a board of adjustment approving an application for development." N.J.S.A. 40:55D-17(a). An "interested party" is defined as: "any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under [this act], or whose rights to use, acquire, or enjoy property under [this act], or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under [this act]." N.J.S.A. 40:55D-4 (emphases added). New Jersey's courts have long taken a liberal approach to standing in zoning cases and thus have broadly construed the MLUL's definition of "interested party." (pp. 15-16)

3. Although a tax lienholder does not have title to the subject property and has, at best, a limited possessory interest in it, the absence of title or possession is not determinative of standing. Indeed, the MLUL clearly and unambiguously provides that standing may be afforded to those with a "right to use, acquire, or enjoy property." N.J.S.A. 40:55D-4. The purchaser of the tax sale certificate has the right to acquire title to the property and the right to use the property in a limited manner "in order to make repairs, or abate, remove or correct any

condition harmful to the public health, safety and welfare, or any condition that is materially reducing the value of the property." N.J.S.A. 54:5-86(c). Therefore, the trial court erred in dismissing the complaint based on its legal conclusion that holders of tax sale certificates who have not foreclosed upon the subject property cannot have standing. (pp. 16-18)

4. That conclusion, however, is not in and of itself determinative of standing: to have standing pursuant to the MLUL, a tax lienholder must show that its "right to use, acquire, or enjoy property is or may be affected" by the action. N.J.S.A. 40:55D-4. Therefore, standing must be considered on a case-by-case basis. In this case, plaintiffs have alleged principally that the proposed project would eliminate certain points of access to the Neighboring Property, interfere with an existing easement on the Property, and substantially modify storm water management on the Property. Those representations -- which defendants have not contested -- suggest that plaintiffs' limited present possessory interest in the Neighboring Property pursuant to N.J.S.A. 54:5-86(c) may be affected, and that Linden 587 therefore may have standing. Consequently, the trial court erred in dismissing plaintiffs' complaint for lack of standing. (pp. 18-19)

5. The Court adds the following guidance. If the Legislature had intended for only parties required to be notified to have standing, it would have restricted the standing requirements accordingly. Standing does not depend upon ownership or proximity, but rather on the definition of an "interested party." Linden 587's motive in obtaining the certificates and challenging the Board's decision is not pertinent to the determination here of standing under the MLUL. Nor is it conclusive that Linden 587 was assigned the tax sale certificates after the Board hearing; the date of acquisition is not determinative of a party's standing. (pp. 19-20)

6. The Court stresses that it makes no findings regarding Linden 587's acquisition of the certificates; whether Cherokee did hold title to the Neighboring Property; the relationship among Cherokee, Equities, and Linden 587; whether the Neighboring Property was "abandoned," thus providing a limited possessory interest under N.J.S.A. 54:5-86(c); the extent to which plaintiffs' right to acquire or limited possessory interest "may be affected"; or the merits of plaintiffs' objections in general. The record is lacking on these matters and, to the extent relevant, they should be considered and a record developed on remand. (pp. 20-21)

REVERSED.

TIMPONE, J., dissenting, disagrees that the holder of a tax sale certificate has the "right to acquire" property within the meaning of the MLUL. Even if a speculative, contingent interest like a tax lien could be deemed a "right to acquire" property, according to Justice Timpone, that right is not affected unless the acquisition itself is or may be affected by the Board's decision. Justice Timpone stresses that Linden 587 failed to properly plead or defend standing and expresses concern about the impact of the majority's decision.

JUSTICES LaVECCHIA, ALBIN, PATTERSON, and FERNANDEZ-VINA join in JUSTICE SOLOMON's opinion. JUSTICE TIMPONE filed a dissent, in which CHIEF JUSTICE RABNER joins.

SUPREME COURT OF NEW JERSEY
A-82 September Term 2016
079146

CHEROKEE LCP LAND, LLC and
LINDEN 587, LLC,

Plaintiffs-Appellants,

v.

CITY OF LINDEN PLANNING
BOARD, GOODMAN NORTH AMERICAN
PARTNERSHIP HOLDINGS, LLC,
and LINDEN PROPERTY HOLDINGS,
LLC,

Defendants-Respondents.

Argued February 26, 2018 – Decided August 2, 2018

On certification to the Superior Court,
Appellate Division.

Keith A. Bonchi argued the cause for
appellants Cherokee LCP Land, LLC and Linden
587, LLC (Goldenberg, Mackler, Sayegh,
Mintz, Pfeffer, Bonchi & Gill, attorneys;
Keith A. Bonchi, of counsel and on the
briefs, and Elliot J. Almanza, on the
briefs).

Paul H. Schafhauser argued the cause for
respondent Linden Property Holdings, LLC
(Chiesa Shahinian & Giantomasi, attorneys;
Paul H. Schafhauser, of counsel and on the
briefs).

Anthony D. Rinaldo, Jr., argued the cause
for respondent City of Linden Planning Board
(Law Offices of Anthony D. Rinaldo, Jr.,
attorneys; Anthony D. Rinaldo, Jr., on the
brief).

Adam D. Greenberg argued the cause for amicus curiae National Tax Lien Association, Inc. (Honig & Greenberg and Taylor and Keyser, attorneys; Adam D. Greenberg and Robert W. Keyser, on the brief).

JUSTICE SOLOMON delivered the opinion of the Court.

The Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-17(a), recognizes that development on one parcel of land can have consequences for others. The MLUL thus provides that "[a]ny interested party may appeal to the governing body any final decision of a board of adjustment approving an application for development," N.J.S.A. 40:55D-17(a), and defines "interested party" broadly to include "any person . . . whose right to use, acquire, or enjoy property is or may be affected by any action taken under [the MLUL]," N.J.S.A. 40:55D-4.

This appeal tests the limits of that definition as applied to the holder of a tax sale certificate -- a tax lienholder -- under New Jersey's Tax Sale Law (Tax Sale Law), N.J.S.A. 54:5-1 to -137. Specifically, we consider whether a tax lienholder has standing to challenge a planning board's approval of a land use application for a neighboring property.

We conclude that, pursuant to N.J.S.A. 40:55D-4, a tax lienholder who can show that its "right to use, acquire or enjoy property is or may be affected" if the application is granted is

an interested party and therefore may have standing to challenge a planning board's approval of a land use application.

Accordingly, we reverse the judgment of the Appellate Division affirming the trial court's dismissal with prejudice of plaintiffs' complaint in lieu of prerogative writs pursuant to Rule 4:6-2(e), and remand for further proceedings. The record is deficient with respect to a number of factual issues, as noted throughout the opinion; to the extent that those matters are pertinent to standing or the substantive merits of this case, they should be considered and a record developed on remand.

I.

A.

We glean the following relevant facts from the motion proceedings before the trial court.

A predecessor of GAF Corporation (GAF) acquired and subsequently subdivided a property in Linden, New Jersey, into two parcels of land. GAF retained ownership of one parcel, now known as Block 587, Lots 1 and 2.01, on Linden's official tax map (the Property), and sold the other, now known as Block 587, Lots 3.01, 3.02, and 3.03, on the Linden tax map (the Neighboring Property) to Linden Chlorine Products, Inc.

GAF transferred the Property to Linden Property Holdings, LLC (LPH), which entered into a purchase and sale agreement with

Goodman North American Partnership Holdings, LLC (Goodman). The purchase and sale agreement was contingent upon Goodman procuring approval to undertake redevelopment projects on the Property.

In 2013, after several transfers, bankruptcy proceedings, and abandonment, ownership of the Neighboring Property, a superfund site, was purportedly transferred by quitclaim deed to Cherokee LCP Land, LLC (Cherokee), a plaintiff in this matter. That same year, non-party Cherokee Equities, LLC (Equities), purchased three tax sale certificates on the Neighboring Property from the City of Linden and initiated tax foreclosure proceedings. After filing the foreclosure complaint, Equities assigned the tax sale certificates to Linden 587, LLC (Linden 587), and Linden 587 was substituted as plaintiff in the foreclosure proceedings.[1] According to the record, those proceedings are still pending.[2]

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[1] Plaintiffs claim before this Court that Cherokee, rather than Equities, transferred the tax liens to Linden 587. They further contend that Cherokee was the party that foreclosed upon the Neighboring Property. However, the record indicates that Equities was the entity that purchased the tax liens from the City of Linden and transferred them to Linden 587. Additionally, Equities is named as the original plaintiff in the foreclosure proceedings. We make no findings regarding Linden 587's acquisition of the tax sale certificates.

[2] During oral argument, counsel for plaintiffs represented that one tax lien had been foreclosed upon but not the remaining two.

In May 2014, Goodman submitted a site plan application for development of industrial, warehouse and distribution space on the Property to the City of Linden Planning Board (the Board). Following the submission of those plans, Goodman served notice of its application to interested parties and property owners within 200 feet of the Property, as identified by the City of Linden, including Cherokee.

Seventeen days before Equities assigned the tax sale certificates to Linden 587, the Board held a public hearing on Goodman's application. Cherokee attended the hearing as an objector,[3] based on its status as owner of the Neighboring Property. Neither Equities nor Linden 587 attended the hearing.

In part, Cherokee challenged the proposed project's elimination of certain points of access to the Neighboring Property, its interference with an existing easement on the Property, and substantial modifications to storm water

[3] In their complaint, plaintiffs asserted that they "appeared through counsel to oppose the application of Goodman" at the public hearing held in June 2014. In oral argument before this Court, plaintiffs appeared to suggest -- and defendants to dispute -- that the attorney for Cherokee also represented the entity that held the tax certificates. The record is undeveloped on this point, and the Court makes no findings as to whether counsel for Cherokee appeared at the Board hearing on behalf of Equities and/or Linden 587.

management on the Property. Counsel for Cherokee cross-examined Goodman's witnesses and presented its engineer as a witness.

Following the hearing, the Board unanimously approved the application with qualifications.[4] Thereafter, Cherokee's principal, Jay Wolfkind, emailed Goodman offering to sell the Neighboring Property to Goodman as a means of avoiding litigation in exchange for "just TWO (2%) PERCENT of the project."[5] The bottom of Wolfkind's email states, "[Cherokee] and Linden 587 . . . are separate legal entities from each other, and from every other Cherokee entity."[6]

In October 2014, plaintiffs Cherokee and Linden 587 filed a complaint in lieu of prerogative writs with the Chancery Division of the Superior Court, challenging the Board's approval of Goodman's application. The complaint named Goodman, LPH, and the Board as defendants. In response, defendants Goodman and LPH filed motions to dismiss plaintiffs' complaint or,

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[4] In its resolution, the Board noted that Goodman agreed to construct a thirty-five-foot roadway to allow access to the Neighboring Property.

[5] At oral argument, plaintiffs represented that the email should never have been included in the record under the rules of evidence that preclude consideration of settlement offers. The record is undeveloped on this point, and the Court makes no findings as to the admission of the email.

[6] The record is not conclusive as to the relationship among Cherokee, Equities, and Linden 587, and the Court makes no findings on that subject.

alternatively, for summary judgment, and submitted a statement of material facts in support of their motion. They argued, in part, that Cherokee and Linden 587 lacked standing. The Board joined in those motions.

Following oral argument, the trial court noted that plaintiffs "either admitted or failed to substantively respond" to defendants' statement of material facts. The trial court thus considered the facts to be uncontested for the purposes of ruling on the motion to dismiss. The trial court granted the motion pursuant to Rule 4:6-2(e) and dismissed plaintiffs' complaint with prejudice.

In its Statement of Reasons, the court stated that both Cherokee and Linden 587 lacked standing to challenge the Board's approval. Based on that finding, the court did "not [need to] reach the merits of the summary judgment motion." In determining that Linden 587 lacked standing, the court noted that neither "Linden 587's affiliated status with Cherokee" nor its "status as a holder of three liens on the Neighboring Property" conferred standing.

In discussing Linden 587's affiliated status with Cherokee, the court noted that "plaintiffs have not provided any information to this court showing the nature of the relationship between the entities," adding that, as noted at the bottom of Wolfkind's email offering to sell the Neighboring Property to

Goodman, the "record . . . suggests that the plaintiffs are separate legal entities." The court stated that "the injury of one separate legal corporate entity cannot be imputed to another" and reasoned that, even if imputation was permissible, it would not be appropriate because "Cherokee does not have an interest in the Neighboring Property."[7]

The court concluded that "Linden 587 does not have a present interest in the Neighboring Property as its ownership rights, which include the use and enjoyment of the property, are conditioned upon its right of redemption which it has failed to exercise." Citing Township of Jefferson v. Block 447A, Lot 10, 228 N.J. Super. 1, 4 (App. Div. 1988), the trial court found "that until redemption and entry of foreclosure, the holder of a tax sale certificate does not have any vested ownership or present possessory interest in a property that is subject to the tax sale certificate." As a result, the trial court determined that Linden 587 "cannot be deemed an interested party" based on its status as a tax lienholder and that, as a consequence, dismissal was warranted.

[7] Plaintiffs do not challenge the Appellate Division's conclusion that Cherokee was not the titled owner of the Neighboring Property. Because the issue of Cherokee's standing is not before this Court, our discussion of the Appellate Division's judgment is limited to Linden 587's standing. We make no findings as to whether Cherokee did, in fact, hold title to the Neighboring Property.

Additionally, the court noted that the plaintiffs' motive was not to redevelop the Neighboring Property, but to "extract value from the Project through the sale of the Neighboring Property . . . to Goodman."

Plaintiffs appealed. The Appellate Division "affirm[ed] the dismissal of plaintiffs' complaint" and did "not reach the merits of the challenge to the Board's approval." In affirming the Chancery Division's determination, the panel found that Linden 587 lacked standing because "Linden 587 [did not] appear[] before the Board nor file[] any objection with the Board."[8] The appellate panel also determined that Linden 587 had not foreclosed upon the Neighboring Property or redeemed the tax sale certificates before filing its complaint in lieu of prerogative writs. Hence, the panel concluded that "Linden 587 did not have an existing property interest in the Neighboring Property." The panel noted that "the holder of a tax sale certificate is not always an 'interested party' with standing to be heard concerning all matters affecting the property."

The Appellate Division also determined that the trial court correctly considered plaintiffs' motive because "courts need not, and should not, ignore such facts," but found motive to be

[8] The Appellate Division opinion indicates that Linden 587 did not acquire the tax liens until after the Board hearing.

"ancillary" to its analysis of plaintiffs' standing in the matter.

This Court granted plaintiffs' petition for certification. 230 N.J. 500 (2017). We granted leave to appear as amicus curiae to the National Tax Lien Association, Inc. (NTLA).

II.

A.

Plaintiffs assert "the strong merit of their substantive case" and ask this Court to reverse and remand the matter.

They maintain that Linden 587, as the holder of tax sale certificates and as plaintiff in the foreclosure proceedings upon the Neighboring Property, has standing as an "interested party" pursuant to N.J.S.A. 40:55D-4 "because its right to acquire or use the [Neighboring Property] has been destroyed by the Board's approval of the Goodman plan."

Plaintiffs also claim that the Appellate Division analyzed legally irrelevant factors in determining standing. First, it was inappropriate to consider the fact that Linden 587 was not assigned the tax sale certificates until after the Board hearing because, as "a Cherokee-related affiliate," "Linden 587 stood in the shoes of its assignor for all intents and purposes." Second, plaintiffs contend that it was irrelevant that Linden 587 "had not obtained or sought final judgment of tax foreclosure." Lastly, plaintiffs assert that motive "is

irrelevant to the real and justiciable issues that are presented to this Court" -- whether Linden 587 had standing to contest the Board's approval.

B.

Defendants LPH, Goodman, and the Board urge this Court to affirm the Appellate Division's determination that Linden 587 lacks standing. They claim support for their argument in the MLUL's requirement that notice of a public hearing need only be given to "the owners of all real property as shown on the current tax duplicates, located in the State and within 200 feet in all directions of the property." N.J.S.A. 40:55D-12(b). Defendants assert that the statutory notice requirement bears upon who qualifies as an "interested party" to challenge a planning board's action.

Defendants contend that standing must be considered on a case-by-case basis and agree with the Appellate Division that Linden 587 is not an "interested party" under the MLUL because it does not hold title to or a possessory interest in the Neighboring Property. Defendants note that the Board's approval of the Goodman project may change Linden 587's desire to acquire the Neighboring Property, but stress that its "right to acquire" is unaffected.

C.

Aligning with plaintiffs, amicus curiae NTLA "submits that New Jersey's traditionally liberal view of standing should apply to permit a tax lienholder's concerns to be heard." The NTLA contends that, in rendering their decisions, "the lower courts were unaware of all of the rights held by a tax lienholder and[] improperly entertained factors such as 'motive' to assess standing."

The NTLA avers that the trial court and Appellate Division overlooked that Linden 587 has the "right to pay or redeem subsequent municipal liens, and 'most importantly, the right to acquire title by foreclosing the equity of redemption of all outstanding interests, including the owner's.'" (quoting Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 336 (App. Div. 2004)). In addition to those rights, the NTLA contends that the Legislature granted tax lienholders the right "to enter onto a property to address conditions that endanger the health, safety and welfare of the public, as well as to add the costs of repair to the amount to redeem, and even to foreclose immediately or in rem." (citing N.J.S.A. 54:5-86(b), (c), and (d)). Accordingly, the NTLA concludes that "a tax lienholder [has] a possessory right, albeit limited, in a property."

III.

As indicated above, the procedural posture and inconclusive record of this case confine our inquiry to a narrow legal question -- whether a tax lienholder has standing to challenge a land use application for a neighboring property. The answer to that question will determine whether plaintiffs' complaint was properly dismissed for lack of standing.

Whether a party has standing to pursue a claim is a question of law subject to de novo review. People For Open Gov't v. Roberts, 397 N.J. Super. 502, 508 (App. Div. 2008) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("The issue of standing is a matter of law as to which we exercise de novo review.")). We therefore accord no "special deference" to the "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, 140 N.J. at 378.

IV.

A.

Under the Tax Sale Law, "a municipality that is owed real estate taxes [receives] 'a continuous lien on the land' for the delinquent amount as well as for 'all subsequent taxes, interest, penalties and costs of collection.'" In re Princeton Office Park, L.P. v. Plymouth Park Tax Servs., LLC, 218 N.J. 52, 61-62 (2014) (quoting Simon v. Cronecker, 189 N.J. 304, 318 (2007)). "[T]he municipality may enforce the lien by selling

the property as prescribed by [N.J.S.A. 54:5-19]." Varsolona v. Breen Capital Servs. Corp., 180 N.J. 605, 617 (2004) (quoting Savage v. Weissman, 355 N.J. Super. 429, 436 (App. Div. 2002)).

> The Tax Sale Law sets forth the procedure by which tax sale certificates are generated, purchased, and sold. The certificate . . . verifies "the taxes, assessments or other municipal liens or charges, levied or assessed against the property described in the application" as of the certificate's effective date. After providing notice to the public and the property owner as required by N.J.S.A. 54:5-26 and -27, the municipality may sell the certificate at a public auction.
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> [Princeton Office Park, 218 N.J. at 62 (footnote omitted) (quoting N.J.S.A. 54:5-12).]

In this way, the sale of tax certificates allows a municipality to "transform a non-performing asset into cash without raising taxes." Ibid. (quoting Varsolona, 180 N.J. at 610).

However, "[t]he holder of a tax sale certificate does not have title to the land. The holder's purchase of the certificate at a tax sale does not divest the delinquent owner of his title to the land." Township of Jefferson, 228 N.J. Super. at 4. "Instead, the sale operates as 'a conditional conveyance of the property to the purchaser, subject to a person with an interest in the property having the right to redeem the certificate, as prescribed by statute.'" Princeton Office Park, 218 N.J. at 63 (quoting Simon, 189 N.J. at 318). "The purchaser of a tax sale certificate thus acquires a lien formerly held by

the municipality's taxing authority, derived from the property owner's obligation to pay real estate taxes." Id. at 67. The lien purchaser obtains an

> inchoate interest [that] consists of three rights: the right to receive the sum paid for the certificate with interest at the redemption rate for which the property was sold; the right to redeem from the holder a subsequently issued tax sale certificate; and the right to acquire title by foreclosing the equity of redemption of all outstanding interests, including that of the property owner.
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> [Id. at 63 (alteration in original) (emphasis added) (quoting Varsolona, 180 N.J. at 618).]

The tax sale certificate holder's "right to acquire title by foreclosure is asserted in the Superior Court, which may enter [a] final judgment." Ibid. "[B]y virtue of foreclosure, the purchaser of the tax sale certificate may become 'the owner of the property in fee simple.'" Id. at 63-64 (quoting Simon, 189 N.J. at 318). The "right to acquire title" is therefore significant in resolving standing under the MLUL.

Indeed, the MLUL explains standing as follows: "[a]ny interested party may appeal to the governing body any final decision of a board of adjustment approving an application for development." N.J.S.A. 40:55D-17(a). Under N.J.S.A. 40:55D-4, an "[i]nterested party" includes anyone with a "right to use, acquire, or enjoy property" "affected" by a land use application. In whole, an "interested party" is defined as:

> any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under [this act], or whose rights to use, acquire, or enjoy property under [this act], or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under [this act].
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> [N.J.S.A. 40:55D-4 (emphases added).]

"New Jersey's courts have long taken a liberal approach to standing in zoning cases and . . . [thus] have broadly construed the MLUL's definition of 'interested party.'" DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 161, 172 (App. Div. 2004). Nevertheless, standing requires that, in addition to establishing its "right to use, acquire, or enjoy property," a party must establish that that right "is or may be affected." N.J.S.A. 40:55D-4.

B.

In this appeal, the trial court found that only a party with an "ownership or possessory interest" could have standing to maintain an action challenging a municipal planning board's approval. The trial court dismissed plaintiffs' complaint, finding that "the holder of a tax sale certificate cannot be deemed an 'interested party'" without an "ownership or possessory interest," which did not exist here. We disagree and conclude that a tax lienholder may have standing to challenge a planning board's actions.

Although a tax lienholder does not have title to the subject property, Township of Jefferson, 228 N.J. Super. at 4, and has, at best, a limited possessory interest in it pursuant to N.J.S.A. 54:5-86 (c),[9] the absence of title or possession is not determinative of standing. Indeed, the MLUL clearly and unambiguously provides that standing may be afforded to those with a "right to use, acquire, or enjoy property." N.J.S.A. 40:55D-4. The purchaser of the tax sale certificate has the "right to acquire title" to the property, Princeton Office Park, 218 N.J. at 63, and "the right to use" the property in a limited manner "in order to make repairs, or abate, remove or correct

[9] N.J.S.A. 54:5-86 allows tax certificate holders to access an "abandoned property." Specifically, subsection (c) states:

> Any person holding a tax sale certificate on a property that meets the definition of abandoned property as set forth in L. 2003, c. 210 ([N.J.S.A.] 55:19-78 et al.), either at the time of the tax sale or thereafter, may enter upon that property at any time after written notice to the owner by certified mail return receipt requested in order to make repairs, or abate, remove or correct any condition harmful to the public health, safety and welfare, or any condition that is materially reducing the value of the property.
>
> [N.J.S.A. 54:5-86(c).]

The record reveals that the Neighboring Property was previously abandoned. However, the record does not reveal whether the Neighboring Property satisfies the requirements for "abandonment" under N.J.S.A. 55:19-81.

any condition harmful to the public health, safety and welfare, or any condition that is materially reducing the value of the property," N.J.S.A. 54:5-86(c). We therefore find that the trial court erred in dismissing the complaint based on its legal conclusion that holders of tax sale certificates who have not foreclosed upon the subject property cannot have standing.

C.

That conclusion, however, is not in and of itself determinative of standing: to have standing pursuant to the MLUL, a tax lienholder must show that its "right to use, acquire, or enjoy property is or may be affected" by the action. N.J.S.A. 40:55D-4. Therefore, not every tax lienholder has standing to challenge a land use application. We thus agree with defendants that standing must be considered on a case-by-case basis.

In this case, plaintiffs have alleged principally that the proposed project would eliminate certain points of access to the Neighboring Property, interfere with an existing easement on the Property, and substantially modify storm water management on the Property. Those representations -- which defendants have not contested -- suggest that plaintiffs' limited present possessory interest in the Neighboring Property pursuant to N.J.S.A. 54:5-86(c) -- the right to enter onto the property to address certain conditions -- may be affected by the elimination of certain

points of access to the Neighboring Property, the interference with an existing easement on the Property, and the modification of storm water management on the Property.

Linden 587 therefore may have standing as the holder of tax sale certificates for the Neighboring Property whose "right to use . . . [the] property . . . may be affected" if the application is granted. See Black's Law Dictionary 1541 (6th ed. 1990) (defining "use," in pertinent part, as "[t]o make use of; to convert one's service; to employ; to avail oneself of"). Consequently, we determine that the trial court erred in dismissing plaintiffs' complaint for lack of standing.

D.

We add the following guidance. It is true that the MLUL requires notice of a public hearing only to "the owners of all real property as shown on the current tax duplicates, located in the State and within 200 feet in all directions of the property." N.J.S.A. 40:55D-12(b). However, we reject defendants' assertion that the MLUL's statutory notice requirement bears upon who qualifies as an "interested party" to challenge a planning board's action. If the Legislature had intended for only parties required to be notified to have standing, it would have said so and restricted the standing requirements accordingly. Instead, the Legislature allows any "interested party" to appeal a board action, which is discrete

from a noticed party under the MLUL. Standing does not depend upon ownership or proximity, but rather on meeting the definition of an "interested party."

In addition, Linden 587's motive in obtaining the tax sale certificates and challenging the Board's decision is not pertinent to our determination here of standing under the MLUL.[10] Plaintiffs have sufficiently alleged that their "right to use, acquire, or enjoy [the neighboring] property . . . may be affected" to establish standing.

Nor is it conclusive that Linden 587 was assigned the tax sale certificates after the Board hearing; the date of acquisition is not determinative of a party's standing. See Domanske v. Rapid-Am. Corp., 330 N.J. Super. 241, 248 (App. Div. 2000) (observing that successor in interest "retains the same rights as the original owner, with no change in substance" (quoting Black's Law Dictionary 1445 (7th ed. 1999)).

Finally, we stress once more that we make no findings regarding Linden 587's acquisition of the tax sale certificates; whether Cherokee did, in fact, hold title to the Neighboring

[10] In their briefing, plaintiffs contend that in Bron v. Weintraub, 42 N.J. 87, 91 (1964), this Court issued a "commandment . . . that courts not express hostility towards certificate-holders." However, Bron does not conclude that motive is irrelevant. Because motive is not relevant under the facts before us, we decline to determine whether and under what circumstances it might be relevant.

Property; the relationship among Cherokee, Equities, and Linden 587; whether the Neighboring Property was "abandoned" under N.J.S.A 55:19-81, thus providing plaintiffs with a limited possessory interest under N.J.S.A. 54:5-86(c); the extent to which plaintiffs' "right . . . to acquire" or limited possessory interest in the Neighboring Property "may be affected"; or the merits of plaintiffs' objections in general. The record is lacking on these matters and, to the extent they are relevant, they should be considered and a record developed on remand.

V.

For the reasons set forth above, we reverse the Appellate Division's judgment and remand to the trial court for further proceedings consistent with this opinion.

JUSTICES LaVECCHIA, ALBIN, PATTERSON, and FERNANDEZ-VINA join in JUSTICE SOLOMON's opinion. JUSTICE TIMPONE filed a dissent, in which CHIEF JUSTICE RABNER joins.

SUPREME COURT OF NEW JERSEY
A-82 September Term 2016
079146

CHEROKEE LCP LAND, LLC and LINDEN 587, LLC,

Plaintiffs-Appellants,

v.

CITY OF LINDEN PLANNING BOARD, GOODMAN NORTH AMERICAN PARTNERSHIP HOLDINGS, LLC, and LINDEN PROPERTY HOLDINGS, LLC,

Defendants-Respondents.

JUSTICE TIMPONE, dissenting.

Liberality in standing should not be confused with automatic standing. In the context of land use disputes, the standing requirement protects the ability to develop property in accordance with the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -112, without interference by third parties who lack any cognizable interest. The majority's decision -- that tax lienholders who have not yet foreclosed on, and may never obtain a possessory interest in, a property have standing to challenge development on adjacent land -- crosses the generous line drawn by the MLUL's liberal standing requirement and opens the courthouse door to claimants with other similarly attenuated interests. Mindful that the difference in standards commands a difference in result in this matter, and of the profound impact

today's decision will have on future land use cases, I respectfully dissent.

I.

I adopt the majority's statement of facts and highlight pertinent portions from the record. Plaintiffs Cherokee LPC Land, LLC (Cherokee) and Linden 587, LLC (Linden 587) (collectively, the LLCs) dispute and challenge the City of Linden Planning Board's (the Board) grant of approval to Goodman North American Partnership Holdings, LLC, and Linden Property Holdings, LLC (collectively, Goodman) to redevelop heavy-industrial-zone property into an industrial campus with warehouses, office space, and distribution facilities. The LLCs claim unique interests in a nearby property -- a long-unremediated Superfund site (the Neighboring Property): Cherokee, as a one-dollar quitclaim deed holder, and Linden 587, as the assignee of tax sale certificates on the Neighboring Property.

Pursuant to the MLUL, the Board held a public hearing on Goodman's application. Cherokee attended the hearing and objected to Goodman's proposed development project, asserting ownership in the Neighboring Property. Cherokee sought an agreement from Goodman that its development would "provide appropriate access to their property" by means of preserving an existing easement. Cherokee also raised concerns regarding the

development's impact on the Neighboring Property's Environmental Protection Agency (EPA) remediation and susceptibility to stormwater run-off.

The Board permitted Cherokee to present witnesses and considered Cherokee's objections. Ultimately, the Board unanimously approved Goodman's application, noting that Goodman agreed to build a thirty-five-foot roadway that would protect the Neighboring Property's easement to a nearby road. The Board also conditioned Goodman's application, in part, on receiving a hardship waiver from the New Jersey Department of Environmental Protection (DEP) for stormwater quality and other DEP and EPA approvals.

Neither Linden 587 nor the assignor of its tax sale certificates, Cherokee Equities, LLC (Equities), attended the hearing. Instead, Linden 587 and Cherokee filed a complaint in lieu of prerogative writs in the Chancery Division, challenging the Board's resolution. Goodman filed a motion to dismiss the LLCs' complaint and, in the alternative, a motion for summary judgment. Highlighting the Neighboring Property's tortuous ownership history leading to Cherokee's purported quitclaim deed and Linden 587's assignment of tax liens for nominal value, Goodman argued that the LLCs lacked standing to file suit.

The trial court agreed. In its thorough and well-reasoned Statement of Reasons, the court concluded that Cherokee did not

have an ownership interest in the Neighboring Property because the company that conveyed its quitclaim deed did not itself have a valid ownership interest. So, it dismissed Cherokee for lack of standing.

Linden 587 suffered a similar fate. Its only connection to the Neighboring Property is an inchoate ownership interest in unredeemed tax sale certificates for which it paid ten dollars and "other valuable consideration." Relying on this Court's precedent, the trial court carefully explained the rights of a tax sale certificate owner, including "the right to acquire title," and stressed that those rights are "subordinate to the property owner's right of redemption." (quoting Simon v. Cronecker, 189 N.J. 304, 319-20 (2007)). The court noted that Linden 587 had no present possessory interest in the Neighboring Property through which it could obtain "interested party" status because it had not foreclosed on the property owner's right to redeem. For those reasons, the court concluded that Linden 587 also lacked standing and dismissed the LLCs' complaint with prejudice. For substantially the same reasons as the trial court, the Appellate Division affirmed.

II.

Standing is a "threshold issue" that "neither depends on nor determines the merits of a plaintiff's claim." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417 (1991). Our

courts "will not render advisory opinions or function in the abstract or entertain proceedings by plaintiffs who do not have sufficient legal standing to maintain their actions." Al Walker, Inc. v. Borough of Stanhope, 23 N.J. 657, 660 (1957) (citation omitted). We also will not "entertain proceedings by plaintiffs who are 'mere intermeddlers,' or are merely interlopers or strangers to the dispute." Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971) (citations omitted). A litigant has standing only if the litigant demonstrates "a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision." Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 645 (2009) (first alteration in original) (quoting In re Adoption of Baby T., 160 N.J. 332, 340 (1999)).

The court must determine standing before resolving the merits of a plaintiff's claim. Watkins, 124 N.J. at 418. See also Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 224-25 (App. Div. 2011) (finding that a plaintiff must have standing at the time of filing a complaint); see also Davis v. FEC, 554 U.S. 724, 734 (2008) ("While the proof required to establish standing increases as the suit proceeds, the standing inquiry remains focused on whether the party invoking

jurisdiction had the requisite stake in the outcome when the suit was filed.").

For land use disputes, the MLUL permits "[a]ny interested party [to] appeal to the governing body any final decision of a board of adjustment approving an application for development." N.J.S.A. 40:55D-17(a). The MLUL defines "interested party," in relevant part, as "any person . . . whose right to use, acquire, or enjoy property is or may be affected by any action taken under [the MLUL]." N.J.S.A. 40:55D-4.

I agree with the majority that the "right to acquire" is significant in resolving standing under the MLUL. But I depart from my colleagues in their approach to that significant issue in two critical respects. First, I disagree that the holder of a tax sale certificate has the "right to acquire" property within the meaning of the MLUL. Second, even if a speculative, contingent interest like a tax lien could be deemed a "right to acquire" property, that right is not affected unless the acquisition itself -- not the post-acquisition use or enjoyment of the property -- is or may be affected by the Board's action.

A.

The purpose behind the municipal sale of tax certificates is twofold. First, the sale of outstanding tax debt generates revenue for a municipality by providing "a mechanism to transform a non-performing asset into cash without raising

taxes." In re Princeton Office Park, L.P. v. Plymouth Park Tax Servs., LLC, 218 N.J. 52, 62 (2014) (quoting Varsolona v. Breen Capital Servs. Corp., 180 N.J. 605, 610 (2004)). Second, it gives "the property owner the opportunity to redeem the certificate and reclaim his land." Simon, 189 N.J. at 319.

The New Jersey Tax Sale Law, N.J.S.A. 54:5-1 to -137, "sets forth the procedure by which tax sale certificates are generated, purchased, and sold." Princeton Office Park, 218 N.J. at 62. For purchasers, tax sale certificates constitute an investment -- an "inchoate interest" -- in the burdened property comprised of three rights:

> [1] the right to receive the sum paid for the certificate with interest at the redemption rate for which the property was sold; [2] the right to redeem from the holder a subsequently issued tax sale certificate; and [3] the right to acquire title by foreclosing the equity of redemption of all outstanding interests, including that of the property owner.
>
> [Id. at 63 (quoting Varsolona, 180 N.J. at 618).]

Significantly, "[a]lthough the property is 'sold' as evidenced by a tax sale certificate, N.J.S.A. 54:5-46, a tax sale certificate is not an outright conveyance, and the certificate holder does not have title to the land." Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 336 (App. Div. 2004) (emphasis added). Rather, a tax sale certificate holder

has a conditional right to acquire title. Princeton Office Park, 218 N.J. at 63.

Forces beyond the control of the lienholder determine whether a tax lienholder can eventually acquire title. First and foremost, the conditional right to acquire is subject to the property owner's failure to redeem the certificate, ibid., and the entry of final judgment of the Superior Court foreclosing redemption, N.J.S.A. 54:5-86(a), -87. Property owners may exercise their right of redemption at any time until entry of that final judgment. R. 4:64-6(b); Simon, 189 N.J. at 319. And, during the court-determined redemption period, "others with an interest in the land (an heir, a prior tax certificate holder, a mortgagee, or an occupant)" may also redeem. Simon, 189 N.J. at 319; accord N.J.S.A. 54:5-54. Until the tax sale certificate holder receives and records a final judgment, the holder's right to acquire title remains subordinated to any interested party's right to redeem. See N.J.S.A. 54:5-86(a), -104.65; Simon, 189 N.J. at 318.

A tax sale certificate holder's right to acquire title is also subject to the priority of liens. Municipal liens are "paramount" to all other liens on encumbered land except subsequent municipal liens. N.J.S.A. 54:5-9. For tax liens, "[a] subsequent tax sale certificate . . . has priority over an earlier certificate, and the foreclosure of the later

certificate can extinguish the earlier certificate." Lato v. Rockaway Township, 16 N.J. Tax 355, 363 (Tax 1997) (citation omitted); see also Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 165-66 (App. Div. 2005) (suggesting that to protect its inchoate interest in property, a prior tax lienholder must redeem a later tax sale certificate before the subsequent holder obtains a judgment in foreclosure). So, even the earliest tax lienholder must remain vigilant and perhaps purchase later tax certificates and any other municipal liens to retain its potential to acquire title.

Like any other investment, the purchase of a tax sale certificate carries risks. The Tax Sale Law, while affording the tax lienholder certain rights, does not protect the holder from those risks. The Tax Sale Law neither promises the holder that she will acquire title to the subject property nor assures the holder that, after receiving authorization to exercise her right to foreclose, she will receive a favorable return on her investment. The statute is intended "to promote the sale of tax sale certificates as a source of municipal revenue," Princeton Office Park, 218 N.J. at 56 (emphasis added), not to shield lienholders from uncertainties natural to a tax sale certificate investment. Risks like the need to purchase subsequent liens to preserve a priority interest, a decline in property value or worthless property, repair costs after foreclosure, and

municipal fines and condemnation are inherent in a tax sale certificate investment. Development on adjacent property is no different. A tax sale certificate confers a right to acquire title that is packaged with -- not separate from -- those risks.

I am not persuaded, based on the foregoing, that Linden 587 has the right to acquire title to the Neighboring Property. The MLUL speaks only to the right to acquire and not a contingent right to acquire title to property. Here, the record reflects that Linden 587 had not obtained and recorded a final judgment foreclosing the title holder's right to redeem the Neighboring Property before filing suit. Cf. N.J.S.A. 54:5-86(a), -87. Counsel's representation at oral argument that Linden 587 has foreclosed on one of its three tax sale certificates is inconsequential. Standing is an issue that "must be resolved before a court proceeds to determine the merits of a suit." Watkins, 124 N.J. at 418; see also Mitchell, 422 N.J. Super. at 224-25 (suggesting that any post-complaint foreclosure cannot retroactively confer standing).

Obtaining a final judgment before filing a complaint is imperative because it cuts off the title holder's right to redeem, N.J.S.A. 54:5-86(a), and it prevents subsequent lienholders from acquiring a priority interest, which would complicate Linden 587's future right to foreclose, Town of Phillipsburg, 380 N.J. Super. at 165. Without that final order,

Linden 587's ability to acquire is entirely dependent on the absence of intervening forces that may compromise its interest in the Neighboring Property. When it filed its complaint, Linden 587 had no right to acquire title to the Neighboring Property, or even to exercise its right to acquire the Neighboring Property. Whether that right will be realized remains speculative. And it is certainly apparent that it has no present rights to use and enjoy that property.

B.

Even if I agreed with the majority that the MLUL could be read to confer interested-party status on persons with a contingent right to acquire title, I would not agree with its determination that Linden 587 has standing. Linden 587's right to acquire the Neighboring Property has not been -- nor could it be -- affected by the challenged Board action.

An interested party is one whose right to acquire property "is or may be affected by any action taken under [the MLUL]." N.J.S.A. 40:55D-4. Here, Linden 587 challenges the Board's decision to grant Goodman's application for development. It logically flows that Goodman's development project on the Property must, at the very least, have the potential to affect Linden 587's right to acquire the Neighboring Property. It does not. Linden 587's right to foreclose on the Neighboring Property owner's right to redeem and later acquire title through

that foreclosure is in no way affected by development projects on adjacent land.

To be sure, Linden 587 may decide not to exercise its right to acquire the Neighboring Property as a result of the Goodman project, but it still has the ability to assert that right. Simply put, Linden 587 can exercise its right to acquire the Neighboring Property whether or not the Board approves the Goodman project. Whether the Neighboring Property is affected by Goodman's development is a risk Linden 587, as an investor without present title to the property, assumed. Because Linden 587's conditional right to acquire is not and could not be affected by the Board's approval, Linden 587 cannot be an interested party under the MLUL.

The essence of the LLCs' complaint is not that the Goodman project will compromise their putative right to acquire, but rather that -- assuming they can exercise that right -- the project will infringe on their ability to use and enjoy the Neighboring Property. In accepting that argument, the majority applies a two-level analysis to the MLUL's one-level definition of "interested party" as a person "whose right to use, acquire, or enjoy property is or may be affected by any action taken under [the MLUL]." Ibid. In other words, the majority's decision requires the following analysis: (1) Is there a right to acquire property?; and (2) If so and if that right is

exercised, will development on adjacent land affect the future rights to use and enjoy the property?

I reject the majority's two-step analysis. A plain reading of N.J.S.A. 40:55D-4 suggests that future or speculative rights do not satisfy the interested-party requirement. The statute requires that a person's "right to use, acquire, or enjoy property" "is or may be affected by any action taken" under the MLUL. A person need not have a present injury; it suffices that the asserted right "may be affected." But that contingency arises only if the person has a present property right to assert at the outset. To interpret the statute to include speculative or future rights renders the statute superfluous, conferring interested-party status and standing to anyone that might have a protected property right that might be affected sometime in the future. But, the statute plainly requires a party to have a present -- not future -- right to use, acquire, or enjoy property, and without it, the party does not have standing.

The three protectable property interests set forth in N.J.S.A. 40:55D-4 are distinct, as evidenced by the statute's use of the word "or." The two other bases for standing listed in the statute are the right to use and the right to enjoy. Did the plaintiffs' tax sale certificate give them the right to use the property? No. Did it give them the right to enjoy the property? No. It is the claimant's present rights -- not

speculative future rights -- that are necessary to satisfy the interested-party requirement.

The majority's theory of standing appears to rest on Linden 587's right to use the Neighboring Property -- its "limited" "right to enter onto the property to address certain conditions." That theory, in turn, rests on a slender reed: N.J.S.A. 54:5-86(c). N.J.S.A. 54:5-86(c) permits a tax sale certificate holder of abandoned property to enter that property "to make repairs, or abate, remove or correct any condition harmful to the public health, safety and welfare, or any condition that is materially reducing the value of the property." Put otherwise, tax sale certificate holders do not have a right to enter property that is not abandoned. And, even if the property "meets the definition of abandoned," the holder may not enter until it provides "written notice to the owner by certified mail return receipt requested." N.J.S.A. 54:5-86(c).

Here, the record is devoid of any evidence that the Neighboring Property was abandoned, as the majority concedes. Nothing in the record shows that the Neighboring Property meets the definition of abandoned under N.J.S.A. 55:19-81. Section 86 therefore does not provide a basis for standing in this case. And, even if the Neighboring Property were statutorily abandoned, I question whether a limited right to abate a public safety concern or material reduction in property value can be

equated with the "right to use" property under N.J.S.A. 40:55D-4. Regardless, we need not determine whether the neighboring property is abandoned under the statutory definition. The parties did not raise abandonment under N.J.S.A. 54:5-86(c) to our Court or the courts below in their briefs or during oral arguments.

Linden 587 had neither the right to use nor the right to enjoy the Neighboring Property when it filed suit. See Michael G. Pellegrino & Ralph P. Allocca, Tax Certificates: A Review of the Tax Sale Law, 26 Seton Hall L. Rev. 1607, 1620 (1996) ("A tax certificate represents only a lien; no immediate possessory rights are transferred until foreclosure is completed. Thus, a private certificate holder is not entitled to enter upon the underlying property to analyze, manage or protect it." (footnotes omitted)). So, whether Linden 587 has standing hinges on whether its claimed right to acquire is or may be affected by the Board's action. It follows that, because Linden 587's inchoate, contingent right to acquire the Neighboring Property was not and could not be affected by the Board's action, Linden 587 did not have standing.

New Jersey courts often liberally construe the standing requirements to grant standing. Crescent Park Tenants Ass'n, 58 N.J. at 107-12; Spinnaker Condo. Corp. v. Zoning Bd. of Sea Isle City, 357 N.J. Super. 105, 110-11 (App. Div. 2003). But the

majority's decision takes liberality a step too far. Instead of relying on the MLUL's plain language to arrive at the most logical conclusion, the majority has transformed a list of present rights into a fusion of present and future rights to confer standing on a class of third parties never envisioned by the Legislature. Standing should only be accorded to true stakeholders and, in my mind, according to the facts of this case, Linden 587 is not one of them.

We should not graft upon the statute additional rights not intended by the Legislature or met by Linden 587. Nor should we afford plaintiff a fresh opportunity to establish standing by remanding to the trial court for further proceedings. The nature of the hearing on remand will be novel in light of our traditional recognition of standing as a "threshold" issue that a court must determine at the outset of a lawsuit. Watkins, 124 N.J. at 417-18. Addressing the standing inquiry at the first stage of a plaintiff's claim is crucial because the answer determines whether the court has "power to hear the case." Id. 418. Linden 587 had the opportunity to demonstrate its standing in its bare-bones, four-page complaint, its brief in response to the motion to dismiss its complaint, and during oral argument at the motion hearing. It failed to do so. Failure of Linden 587 to properly plead under the requisite statutes or properly defend in motion practice or in oral argument are not a cause

for remand. Linden 587's failures are of its own design and may be causes for its lack of standing. For those reasons, I depart from my colleagues in the majority that a remand is warranted here.

III.

To me, the fact that this land use standing issue -- in 2018 -- is an issue of first impression suggests tax sale certificate holders have not previously sought to use our courts to thwart development projects related to neighboring properties of land they may or may not acquire. No longer. Going forward, I predict an onslaught of new land use disputes in our Superior Court that will stall development projects and encourage other attenuated interested parties to follow suit. For all of those reasons, I respectfully dissent.