

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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September 24, 2026

In the Court of Appeals of Georgia

A26A1183. EARNSHAW v. ATLANTA URBAN DESIGN
COMMISSION et al.

HODGES, Judge.

Rebecca Earnshaw challenges the superior court's order dismissing her petition for review from an Atlanta Urban Design Commission ("the UDC") after concluding that she lacked standing. In related enumerations of error, she argues that because the issue of standing was not raised before the administrative body, the UDC and the City of Atlanta are precluded from challenging standing in the superior court. We agree, reverse the trial court's order, and remand for further proceedings.

"When reviewing a trial court's ruling on a motion to dismiss for lack of jurisdiction that has been decided on the basis of written submissions, we are in an equal position with the trial court to determine the facts and therefore examine the

facts under a non-deferential standard.” *Henderson v. James*, 350 Ga. App. 361 (829 SE2d 429) (2019) (punctuation omitted); accord *Cobb County v. Murphy*, 379 Ga. App. 336 (928 SE2d 254) (2026). And when an appeal from the dismissal of a petition for review presents a question of law, “we review the trial court’s decision de novo.” *Dessalines v. Dep’t of Human Servs.*, 356 Ga. App. 826, 827 (849 SE2d 673) (2020).

With that standard in mind, we turn to the facts of the case, which are undisputed. A property owner in Grant Park began construction of a carport on her property and was issued a stop-work order because the carport did not have the required seven-foot yard setback. Earnshaw’s property backs up to the subject property on a shared private alley. The property owner applied to the UDC for a variance to construct her carport. Earnshaw appeared at the application hearing before the UDC, and complained that the structure, which she called tall, large, and “[un]attractive,” had already been built without obtaining the variance, where other property owners had gone through the permitting process and were required to give up yard space to abide by the setback rule. Despite Earnshaw’s protestations, the UDC approved the variance. At no point does the record suggest that the UDC, the

City of Atlanta, or any other person challenged Earnshaw's standing to oppose the variance.

Earnshaw timely petitioned the superior court to review the judgment of the UDC. The City of Atlanta, on behalf of itself and the UDC, filed a motion to dismiss Earnshaw's petition for review, asserting that she lacked standing because she did not suffer "special damages" and failed to join the property owner as an indispensable party. In response, Earnshaw contended that any challenge to standing was waived because it was not raised before the UDC. Earnshaw also filed a motion to supplement the administrative record with the transcript of the hearing before the UDC, and she attached the transcript to her motion.

The superior court granted the motion to dismiss the petition for review, concluding that, based on the administrative record before it, Earnshaw did not have standing because she failed to show that she suffered special damages as a result of the UDC's decision. Notably, the superior court did not address Earnshaw's argument that the UDC had waived its challenge to standing. The superior court's order was silent as to Earnshaw's motion to supplement the record, although the transcript was included in the record transmitted to this Court. Because the superior court dismissed

the petition on standing grounds, it did not consider whether Earnshaw had failed to join an indispensable party. This Court granted Earnshaw's discretionary application to review the superior court's judgment,

Earnshaw now appeals the superior court's judgment, asserting that it erred in the following ways: (1) by dismissing her petition on standing grounds, which she contends is not authorized under the State and Superior Court Appellate Practice Act, OCGA § 5-3-1 et seq; (2) by dismissing her petition for lack of standing when the issue had been waived below; and (3) by applying the "special damage" standing standard rather than the aggrieved person standard. We need only consider her second enumeration because we agree that the issue of standing has been waived.

When a party seeks superior court review of the decision of an administrative body, that is "acting in a quasi-judicial capacity, the trial court is bound by the facts and evidence presented to the administrative body[.]" *York v. Athens College of Ministry*, 348 Ga. App. 58, 59–60 (821 SE2d 120) (2018). In such a case, no new evidence will be permitted at the petition for review stage. *RCG Props., LLC v. City of Atlanta Bd. of Zoning Adjustment*, 260 Ga. App. 355, 362(1) (579 SE2d 782) (2003). This Court has repeatedly found that in such cases "the issue of 'standing' [cannot]

be raised for the first time in the superior court, because the superior court is not the proper forum in which to present evidence and conduct discovery, since the facts of the action are determined at the [UDC] hearing.” *Id.* (punctuation omitted). See also *York*, 348 Ga. App. at 59–60; *Druid Hills Civic Ass’n v. Buckler*, 328 Ga. App. 485, 492–93(3) (760 SE2d 194) (2014), disapproved of in part on other grounds by *Hourin v. State*, 301 Ga. 835, 837(1) n. 2 (804 SE2d 388) (2017). If the petition for review challenges an administrative decision which was legislative in nature, however, the parties may introduce new evidence, and the question of standing can be raised in the superior court for its determination. *York*, 348 Ga. App. at 60; *Druid Hills Civic Ass’n*, 328 Ga. App. at 492–93(3).

Therefore, the only question before this Court is whether the UDC decision was quasi-judicial or legislative in nature. “The test for determining whether official action is quasi-judicial or legislative focuses on the function performed by the decisionmaker.” *York*, 348 Ga. App. at 60 (punctuation omitted).

Generally, a quasi-judicial decision operates to address a specific dispute or determine rights and obligations of a particular party or parties. The resulting decision seeks to establish those rights and obligations or otherwise resolve the dispute, and is immediate in application. A legislative decision, on the other hand, is usually marked by a general

inquiry, often not limited to the facts and circumstances of specific people or properties, which results in a rule of law or course of policy that will apply in the future.

Id. (punctuation omitted), citing *Diversified Holdings v. City of Suwanee*, 302 Ga. 597, 601–02(II) (807 SE2d 876) (2017). Moreover, the General Assembly has set forth by statute when the actions of a local government exercising zoning powers are quasi-judicial or legislative in nature. See OCGA § 36-66-3. According to the statute effective at the time of the UDC decision, a quasi-judicial act includes “hearing and rendering decisions on applications for variances, special administrative permits, special exceptions, conditional use permits, or other similar permits not enumerated herein as a zoning decision[.]” OCGA § 36-66-3(1.1) (2023). Legislative actions, by contrast, only include the grant or denial of a variance when such decision is concurrent and in conjunction with a decision to adopt or deny an amendment to the zoning ordinance to rezone property or an application for a special use of property. OCGA § 36-66-3(4)(F) (2023).

With these standards in mind, it is clear that the UDC's decision was quasi-judicial in nature.¹ Our review of the record shows that the UDC was only addressing a specific dispute regarding a variance, applying facts to a particular dispute. This was a dispute regarding a variance, and there is nothing in the record showing that the dispute was connected to a rezoning decision or a conclusion regarding a special use of property. Therefore, this was a quasi-judicial decision where standing can be waived. See OCGA § 36-66-3(1.2); *Diversified Holdings, LLP*, 302 Ga. at 601–02(II); *RCG Props.*, 260 Ga. App. at 362(1). Notably, the superior court also concluded that the UDC's decision was quasi-judicial in nature, but simply failed to consider waiver.

While *RCG* and its progeny hold that, in cases such as this, standing is waived when not challenged below, 260 Ga. App. at 362(1); *York*, 348 Ga. App. at 59–60; *Druid Hills*, 328 Ga. App. at 492–93(3), the City of Atlanta asks this Court to find such cases inapplicable because a city ordinance purportedly interjects a standing requirement. Assuming, arguendo, that there is such an ordinance,² this Court has

¹ We note that the City of Atlanta does not appear to challenge this conclusion in its appellee's brief.

² No ordinances were made part of the record. We take this opportunity to again remind those practicing before us that appellate courts cannot consider municipal ordinances which are not properly made part of the record. *Whitfield v. City of Atlanta*,

previously considered and rejected this argument. *Druid Hills*, 328 Ga. App. at 493(3) n. 9 (“Although the developers assert that the absence of any standing requirement from the code under consideration in *RCG* distinguishes that case from the one before us, this was an alternative rather than primary ground of our holding. The issue before us is not the content of the standing law, but whether that issue may be waived by failure to raise it before an administrative body.”) (citation omitted). Therefore, because the issue of standing was not raised before the UDC, it is waived.

Because the issue of standing was waived, the superior court erred in considering it and by dismissing Earnshaw’s petition on that ground. Consequently, we reverse the dismissal of the petition on that ground and remand this case for further proceedings, including the consideration of the unaddressed ground for dismissal asserted in the city’s motion to dismiss.

Judgment reversed and case remanded. Barnes, P. J., and Markle, J., concur.

296 Ga. 641, 641–42 (769 SE2d 76) (2015); *Ridley v. Dolgencorp*, 353 Ga. App. 561, 563 n. 1 (839 SE2d 26) (2020).