AFFIRMED IN PART, REVERSED IN PART, and Opinion Filed November 8, 2024

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00881-CV

CITY OF MCLENDON-CHISHOLM, Appellant
V.
CITY OF HEATH, DON HOLLOWAY, BART DAVENPORT, BRITTA JO, HENRY BECK, DAVID LARSEN, GORDON HALL, COBBLESTONE FARMS HOMEOWNERS ASSOCIATION, ET AL., Appellees

On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-22-1204

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Carlyle
Opinion by Justice Carlyle

The trial court granted the City of McLendon-Chisholm's plea to the jurisdiction, concluding the City of Heath lacked standing to sue over issues, ordinances, regulations, and agreements pertaining to development, land use, zoning, governance, and related matters involving land within the city limits and extraterritorial jurisdiction of McLendon-Chisholm. The court denied McLendon-Chisholm's plea as to Heath's standing to bring Texas Open Meeting Act claims.

We reverse the trial court's grant of the plea and affirm the denial in this memorandum opinion.[1] TEX. R. APP. P. 47.4.

Heath and McLendon-Chisholm share a border in southern Rockwall County. Rockwall is Texas's smallest county, and is also one of the nation's fastest growing counties.[2] In 2016, McLendon-Chisholm adopted its 2015 Comprehensive Plan, a collection of zoning regulations whose purpose is to promote sound municipal development and "health, safety, and welfare." *See* TEX. LOC. GOV'T CODE §§ 211.004, 213.001. Texas law allows a municipality to adopt its comprehensive plan by ordinance after (1) a hearing at which the public is given the opportunity to give testimony and present written evidence; and (2) review by the municipality's planning commission or department, if one exists. TEX. LOC. GOV'T CODE § 213.003(a). McLendon-Chisholm adopted the 2015 plan by ordinance, as the law requires.

The 2015 plan included a Future Land Use goal and policy statement, to the effect that low density residential single-family developments would have a

[1] One procedural note before we move along: McLendon-Chisholm's opening appellant's brief includes an issue asking us to affirm the grant of the plea and reverse the denial of the plea. As our local rules have instructed for some time, when a party may have a cross-appeal, the order of briefing is as follows: (1) appellant's brief; (2) a combined appellee's and cross-appellant's brief; (3) a combined appellant's reply and cross-appellee's brief; and (4) the cross-appellee's reply brief. 5TH CT. OF APP. LOC. R. 5. Because we can locate no prejudice to Heath by McLendon-Chisholm's failure to observe the due rule of briefing, we will not take further action against McLendon-Chisholm or its counsel save to warn counsel to take better heed of the applicable rules.

[2] *See* U.S. Census Bureau, *Top 10 Counties in Annual Percent Growth: July 1[, 2022], to July 1, 2023*, available at https://www.census.gov/newsroom/press-releases/2024/population-estimates-more-counties-population-gains-2023.html (last visited Nov. 5, 2024).

"maximum residential density of one residential unit for every one and one-half acres of gross land area." This was to protect the "low density housing," "rural residential areas," and "rural character" of McLendon-Chisholm. Certain rural residential areas "shall ensure minimum 2.5 acre lot size." The 2015 plan provided a procedure for changing land use policies inconsistent with the Future Land Use Map, including the 1.5 acre minimum lot size, requiring city council action to amend the comprehensive plan. *See* TEX. LOC. GOV'T CODE § 213.003(b) ("A municipality may establish, in its charter or by ordinance, procedures for adopting and amending a comprehensive plan.").

In October 2021, the McLendon-Chisholm City Council approved a Development Agreement, a contract between it and MC Trilogy Texas, LLC, signed by Trilogy's owner, Phillip Huffines. *See* TEX. LOC. GOV'T CODE § 212.172. Trilogy sought to develop land it owned that was both "in-city" in McLendon-Chisholm and in McLendon-Chisholm's extraterritorial jurisdiction. As relevant here, the Development Agreement provides for minimum lot sizes in the Trilogy property in McLendon-Chisholm's extraterritorial jurisdiction areas to range from 5,000 to 7,000 square feet. It provides for minimum lot sizes of 1 acre in certain in-city lots to be rezoned from agricultural to planned development zoning district. The Development Agreement binds the parties for 45 years, the maximum allowable term. *Id.* § 212.172(d). Heath claims this drastic change in residential density requirements near its border with McLendon-Chisholm will cause it damages.

McLendon-Chisholm's city planner evaluated the Development Agreement under the not-yet-passed 2021 Comprehensive Plan, and noted that the proposed lot sizes conflicted with even that plan's reduced 1 acre lot size requirements. In comments, Trilogy said that "this project will not work with one acre lots."

The McLendon-Chisholm City Council formally approved the density change on December 8, 2021 by adopting ordinances 2021-15—which allowed residential lots in the in-city portion of the Trilogy property with a minimum size of 1 acre—and 2021-14—the 2021–2040 Comprehensive Plan, which includes the formal change to 1 acre lot minimums. Heath complains of the process by which McLendon-Chisholm adopted the 2021 plan to comport with the Development Agreement it had already signed and the failure of the Development Agreement to comport with the 2015 plan, which was in effect when McLendon-Chisholm and Trilogy came to their agreement.

Heath claims damages will result from this development on its border with McLendon-Chisholm, and provided unrebutted expert testimony from five experts. Heath's evidence shows that the development would more than triple the number of single-family homes in McLendon-Chisholm as compared to those allowable under the 2015 plan. Heath's evidence demonstrates a resulting 358% increase in traffic on roads that run from McLendon-Chisholm straight through Heath, and the attendant uptick in public safety personnel that traffic will require. Heath shows the decrease in its property values and resulting tax revenues it claims will result from

the development, as well as disruption with Heath's own development plans in adjacent neighborhoods. Heath also claims future reduced air quality due to increased traffic, and an overall reduction in the health, safety, and welfare of its residents.

Standing

We first address Heath's claim that the trial court erred in granting McLendon-Chisholm's plea to the jurisdiction as to Heath's land use claims for lack of standing.[3] In reviewing the denial of a plea to the jurisdiction, we accept as true all evidence favorable to the nonmovant, indulging every reasonable inference in the nonmovant's favor, and resolving any doubts in the nonmovant's favor. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). If the evidence we consider to evaluate jurisdiction creates a fact question thereon, the plea must be denied and the issues left to the fact-finder to resolve. *See id.*

Standing is a foundational requirement to maintaining a lawsuit. The plaintiff must have an injury in fact, fairly traceable to the challenged act of the defendant, which will likely be redressed by a favorable decision. *Heckman v. Williamson*

[3] To the extent McLendon-Chisholm failed to challenge on appeal any other portion of the court's denial of the plea to the jurisdiction, McLendon-Chisholm has waived appellate consideration of those issues. We address McLendon-Chisholm's properly noted appeal regarding the open meetings act claims below.

To the extent McLendon-Chisholm makes arguments related to Heath's capacity to sue, this is not a jurisdictional complaint and therefore, it is inappropriate for the court to consider at this time. *See Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996).

County, 369 S.W.3d 137, 154–55 (Tex. 2012). We determine these questions by reference to the plaintiff's pleadings; the mere fact that a plaintiff may not ultimately prevail, no matter how clearly telegraphed by the pleadings, does not deprive a plaintiff of standing when the plaintiff has otherwise met the constitutional rigors of that foundational requirement. *Id.* at 150; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 305 (Tex. 2008). We determine standing at the time the plaintiff files the case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 n.9 (Tex. 1993).

McLendon-Chisholm makes strident arguments concerning one municipality's ability to have standing to sue its neighbor for zoning decisions and questioning Heath's reliance on non-Texas case law. McLendon-Chisholm's argument that a municipality may not sue a neighboring municipality incorrectly attempts to focus the standing analysis on the defendant, not on the plaintiff. The standing analysis generally focuses on whether the plaintiff is the right party to bring particular claims, not on whether the plaintiff has sued the right party. *Davis v. Wells Fargo*, 824 F.3d 333, 348 (3d Cir. 2016) (citing *Raines v. Byrd*, 521 U.S. 811, 818 (1997)).

The Texas Supreme Court held that Texas standing requirements "parallel the federal test for Article III standing," allowing Texas courts to use the varied and helpful federal precedents to decide unique questions of standing like this one. *See In re Abbott*, 601 S.W.3d 801, 807–08 (Tex. 2020); *Data Foundry, Inc. v. City of*

Austin, 620 S.W.3d 692, 695 (Tex. 2021) (specifically adopting the standing analysis set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).

The law is clear that a municipality may have standing just as any other person, subject to establishing injury in fact, traceability, and redressability. *See, e.g.*, *Township of River Vale v. Town of Orangetown*, 403 F.2d 685, 686–87 (2d Cir. 1968). In *City of Murphy v. City of Parker*, 932 S.W.2d 479, 480–81 (Tex. 1996), the Supreme Court construed Local Government Code § 43.901, which provided a presumption of "the consent of all appropriate persons" regarding a "municipal ordinance . . . annexing area to a municipality." In dismissing the argument that the municipality was not a "person," the Court relied on the Code Construction Act, which defines "person" as a "corporation, organization, government or government subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." *Id.* at 481 (quoting TEX. GOV'T CODE § 311.005(2)); *see Wende v. Bd. of Adjustment of City of San Antonio*, 27 S.W.3d 162, 167 (Tex. App.—San Antonio 2000), *rev'd on other grounds*, 92 S.W.3d 424 (Tex. 2002) (City of Shavano Park is a "person" with a right to appeal a board of adjustment decision).

In any event, Heath is a Home-Rule Municipality and has adopted and recorded a charter that McLendon-Chisholm has not challenged. In its charter, of which we take judicial notice, Heath reserves the power to "sue and be sued." City of Heath, Texas, CITY CHARTER § 2.02(3) (2008); TEX. LOC. GOV'T CODE § 9.008(b) ("Courts shall take judicial notice of" recorded city charters).

To establish standing, a municipality must allege injuries to its own interests, which can include among other things its tax base; infrastructure, such as roads and bridges; public services, including police and fire protection; and other economic, aesthetic, or natural resources. *See City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004); 8A EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 25:389 (3d ed. July 2024 update) ("a municipality may have standing to challenge a zoning ordinance of another municipality upon a clear showing that it will be substantially, directly, and adversely affected in its corporate capacity"); *see also* 4 ARDEN H. RATHKOPF, ET AL., RATHKOPF'S THE LAW OF ZONING & PLANNING § 63.28 (4th ed. May 2024 update) (noting that the "increasing trend" of "'broadening the categories of injury in support of standing' has increased the number of situations in which a municipality can claim aggrievement." (quoting *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972))).

Injury in fact

We turn to the requirement that a plaintiff have an injury in fact.[4] That injury must be concrete and particularized, actual or imminent, and not hypothetical. *Heckman*, 368 S.W.3d at 155. It must be distinct from an injury to the general public. Heath has provided evidence from a traffic impact expert, which we must credit as

[4] To the extent we do not discuss every injury or basis for injury that Heath alleges, our omission is only to keep our opinion as brief as possible while providing the parties the basic reasons for our decisions. *See* TEX. R. APP. P. 47.4. The parties should not construe our omission as a substantive comment on that alleged injury.

true at this phase, that traffic resulting from McLendon-Chisholm and the Trilogy Development will increase threefold. Heath's expert explains the two major veins for traffic out of McLendon-Chisholm, Rabbit Ridge Road and Horizon Road, will see approximately 70% of the increased traffic from McLendon-Chisholm's Trilogy development. The expert notes that 75% of the traffic on Heath's roads will come from the Trilogy development, and calculates an overall 358% increase in traffic volume.

Pursuant to Heath's low density development plan, Horizon Road is currently made up of 2- and 4-lane sections but will need expansion to 6 lanes. The Horizon Road intersection with Rabbit Ridge Road—currently a 2-lane elbow intersection with no traffic control devices at all—will require a traffic signal. The expert estimated the probable cost at $5.8 million and additional annual maintenance at $30,900, all to be borne by Heath's coffers. These are the types of injuries to a municipality's proprietary interests that the law recognizes as sufficient to confer standing. *See City of Sausalito,* 386 F.3d at 1199.

The Supreme Court has specifically recognized that property value reduction leading to a diminishing municipal tax base is sufficient to confer standing. *See Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 110–11 (1979). Heath's appraisal expert describes the negative impact on its ad valorem tax revenue, noting three subdivisions as well as estate properties along Rabbit Ridge Road will see a 15% decrease in value, or $29,919,836 in lost tax base. The expert also described a

5% decrease to properties in four other "lesser impact" Heath subdivisions with $21,371,311 in value degradation. The expert said these impacts are "driven by the final construction of the lower priced homes and how the area is perceived by the City of Heath residents and potential buyers in Heath." Taken together, the expert forecasts an annual $149,347 loss in Heath's ad valorem tax revenue because of the Trilogy development, assuming the tax rate stays the same.

The Supreme Court has approved municipal standing when cities articulate similar harms. Miami alleged that banks' unlawful predatory lending practices led to a concentration of foreclosures and vacancies in African-American and Latino neighborhoods, hindering the city's efforts to created integrated, stable neighborhoods, and as "highly relevant" here as it was in that case, those actions "reduced property values, diminishing the City's property-tax revenue and increasing demand for municipal services." *Bank of Amer. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 200 (2017).[5]

Finally, Heath's alleged injuries are peculiar and distinguishable from generalized public injuries. *See City of Laredo v. Rio Grande H20 Guardian*, No. 04-10-00872-CV, 2011 WL 3122205, at *9–10 (Tex. App.—San Antonio July 27, 2011, no pet.) (mem. op.) (discussing similarly specific injuries arising from claim

[5] The Court was assessing a form of statutory standing, variously called cause-of-action or prudential standing, pursuant to the Federal Housing Act, but the FHA's standing requirements are as broad as Article III permits. *Bank of Amer. Corp.*, 581 U.S. at 197. Thus, this case presents a helpful analogy.

that city's adoption of comprehensive plan was void for failure to follow Local Government Code § 211.004). To the extent McLendon-Chisholm argues that overlap between a municipality's claims and the general public interest prevents standing, we disagree. *See Fed'l Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998) (noting that injuries can be widely shared and yet still sufficiently concrete as to be injuries-in-fact for standing purposes). The injuries Heath alleges are concrete and particularized, actual and imminent injuries which Heath has clearly articulated and has supported with evidence in its pleadings. *See Heckman*, 369 S.W.3d at 154–55.

Traceability

As we note in articulating Heath's claims and the evidence it has provided thus far, they too satisfy the requirement that the injuries be fairly traceable to McLendon-Chisholm's acts. Heath's experts attribute the outcomes and attendant estimated damages as a result of McLendon-Chisholm's agreement on the Trilogy development and the consequences of the development itself. And Heath sufficiently demonstrates that its injuries arise from McLendon-Chisholm's adoption of the 2021 Comprehensive Plan, decreasing minimum allowable lot size. Whether that adoption was valid or not is a question we do not answer today.

We have noted the existence of a third party, Trilogy, in this matter between Heath and McLendon-Chisholm. Where "a causal relation between injury and challenged action depends on the decision of an independent third party, standing is not precluded, but it is ordinarily substantially more difficult to establish."

California v. Texas, 593 U.S. 659, 675 (2021) (cleaned up). A party may allay this concern by showing that the "third parties will likely react in predictable ways." *Id.* (citing *Dep't of Commerce v. New York*, 588 U.S. 752, 768 (2019)). Though Trilogy is nominally a third party here, Heath's entire complaint exists because of Trilogy's very clear plan of action in its Development Agreement with McLendon-Chisholm. The record provides sufficient basis to conclude that Trilogy will act predictably by developing the land in accordance with the carefully drafted and vetted Development Agreement contract it signed with McLendon-Chisholm. Thus, the problems of speculative third party conduct do not raise the standing bar here. *See id.*

Redressability

Finally, we evaluate whether a favorable decision will redress Heath's alleged injuries. Heath seeks only prospective relief. First, Heath seeks a declaratory judgment invalidating McLendon-Chisholm ordinance 2021-15, which adopted the 2021 Comprehensive Plan, because it violates Local Government Code § 211.004, as well as the 2015 plan and the Future Land Use procedure in that plan, all to the effect that it is void ab initio. Heath seeks a declaratory judgment that the land use regulations in the 45-year Development Agreement violate Texas Local Government Code §§ 213.001 & .002, the 2015 plan, and McLendon-Chisholm's Thoroughfare Plan such that they are void ab initio. Heath also seeks a declaratory judgment that the preliminary plat violates the 2015 plan and thus is void ab initio. Zoning regulations must be adopted in accordance with a municipality's comprehensive plan

if one exists and are void ab initio if the municipality fails to do so. *See Rio Grande H20 Guardian*, 2011 WL 3122205 at *9–10. A favorable ruling declaring the ordinance void ab initio would redress Heath's alleged injuries by preventing the zoning changes that would lead to those injuries.

Heath also seeks declaratory judgment that the Development Agreement violates Texas Local Government Code § 212.172(b-1) and is void pursuant to subsection (b-2). Subsection (b-1) requires certain disclosures a municipality must provide a landowner entering into a Development Agreement.[6] A favorable declaratory judgment would render the Development Agreement void per section (b-2), and that would redress Heath's alleged injuries.

Heath seeks a declaratory judgment that the Development Agreement is a permit, has vested rights, and must comply with the 2015 plan pursuant to Local Government Code chapter 245. This request seems to duplicate the law—Local Government Code § 212.172(g) states that a contract for development agreement is a permit for purposes of Chapter 245. But the fact a remedy mirrors existing law

[6] "At the time a municipality makes an offer to a landowner to enter into an agreement under this subchapter, the municipality must provide the landowner with a written disclosure that includes:

(1) a statement that the landowner is not required to enter into the agreement;

(2) the authority under which the municipality may annex the land with references to relevant law;

(3) a plain-language description of the annexation procedures applicable to the land;

(4) whether the procedures require the landowner's consent; and

(5) a statement regarding the municipality's waiver of immunity to suit."

does not at this phase diminish that such a declaration may assist in redressing Heath's alleged injuries.

Finally, Heath seeks injunctive relief prohibiting McLendon-Chisholm from violating the 2015 plan in its actions with the Trilogy development and cancelling any permits, certificates, plan approvals, certificates of occupancy, or other approvals issued related to the Trilogy development that violated the 2015 plan. The injuries Heath articulates could be reduced or eliminated to some extent by the relief it seeks here. *See Massachusetts v. EPA*, 549 U.S. 497, 526 (2007). We conclude Heath has met its redressability burden.

Having concluded Heath meets the requirements to show it has standing, we conclude the trial court erred by granting McLendon-Chisholm's plea to the jurisdiction regarding Heath's land-use claims.

Political Question Doctrine

For the first time in its cross-appellee's brief, McLendon-Chisholm argues Heath's claims implicate the political question doctrine. Because application of the doctrine is an issue of subject-matter jurisdiction, we may consider it. *See Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 459 (Tex. 2022). We review de novo. *Id.*

The Supreme Court follows the factors set out in *Baker v. Carr*, 369 U.S. 186 (1962), used to determine non-justiciable political questions. *See id.* at 458. The first two tests, generally accepted as the primary two, are: whether there is "a textually

demonstrable constitutional commitment of the issue[s] to a coordinate political department" or "a lack of judicially discoverable and manageable standards for resolving" the issues. *Baker*, 369 U.S. at 217; *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (noting the six tests in *Baker* were "probably listed in descending order of both importance and certainty").

Heath challenges that McLendon-Chisholm failed to follow statutory processes the legislature has set forth for municipalities to follow when taking certain actions. *See* TEX. LOC. GOV'T CODE §§ 211.004; 213.001–.002; 212.172(b-1), (b-2). Determining whether an executive body has properly followed established processes is a classic matter for judicial resolution. *See City of Ingleside v. City of Corpus Christi*, 469 S.W.3d 589, 591–92 (Tex. 2015) (no political question when city sued for declaration regarding meaning of other city's ordinance); *Neeley v. West Orange-Cove Consol. Ind. Sch. Dist.*, 176 S.W.3d 746, 781 (Tex. 2005) ("separation of powers does not preclude the judiciary from determining whether the Legislature has met its constitutional obligation to the people to provide for public education").

The other *Baker* tests include "the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of

embarrassment from multifarious pronouncements by various departments on one question." *Baker*, 369 U.S. at 217; *Vieth*, 541 U.S. at 278.

We consider the case "as it would be tried, including all claims and defenses supported by jurisdictional facts." *Van Dorn Preston*, 642 S.W.3d at 459 (cleaned up). Heath calls on the courts to decide whether McLendon-Chisholm followed established statutory norms in adopting its comprehensive plan and with regard to the development agreement with Trilogy. This matter does not call on us to second-guess McLendon-Chisholm's legislative actions or to intervene in anything other than deciding process-related questions. *See Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 253 (Tex. 2018) (political question doctrine excludes from judicial review controversies that "revolve around policy choices and value determinations" constitutionally committed for resolution to non-judicial government branches). This matter does not involve an impermissible political question.

Texas Open Meetings Act

We turn to McLendon-Chisholm's claim that the trial court erred by finding Heath has standing to raise its TOMA claims. The TOMA provides that "[a]n interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body." TEX. GOV'T CODE § 551.142(a). The majority view in Texas appellate courts, including this one, is that

TOMA "broadly confers standing on any person who shares an injury in common with the general public. . .[because] the interest protected by the Open Meetings Act *is* the interest of the general public." *Burleson v. Collin Co. Community College Dist.*, No. 05-21-00088-CV, 2022 WL 17817965, at *9 (Tex. App.—Dallas Dec. 20, 2022, no pet.) (mem. op.) (cleaned up) (collecting cases).

Heath claims 11 specific TOMA violations and claims that McLendon-Chisholm has a pattern and practice of violating TOMA. Each of them played some part in McLendon-Chisholm adopting the Development Agreement or an outflow from the Trilogy Development, like the municipal utility district decision. McLendon-Chisholm again expresses uncertainty with municipal standing, and again devotes much effort to the merits of Heath's claims.

As we have already recognized Heath's common-law standing based on McLendon-Chisholm's actions with regard to the development agreement and the injuries it has claimed that directly affect it in a manner different from the general public, it follows that Heath has TOMA standing. *See City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App.—Corpus Christi-Edinburg 2005, no pet.) (similarly describing how the city had "an interest more particularized than that of the general public" and that it "shares the general public's interest in ensuring that the protections of the Texas Open Meetings Act are enforced"); *Matagorda County Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.—Corpus Christi-

Edinburg 2001, no pet.) (city had standing to raise TOMA claim requesting injunctive relief).

McLendon-Chisholm points to the Supreme Court's statement that "[b]ut even if a governmental subdivision or agency qualifies as an interested person under TOMA (an issue we need not decide here)," as an indication that this is an open question. *State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 303 (Tex. 2022). In *Shahan*, the distinction was important because the county attorney purported to file suits on the State's behalf—not on behalf of a "governmental subdivision or agency." *Id.* The Supreme Court's recognition that it wasn't deciding an issue not presented in the case is regular grist in the appellate mill: we don't issue advisory opinions. *Shahan* provides us no help.

McLendon-Chisholm also argues, regarding the executive session agenda allegations, that "actions, not executive sessions themselves, are voidable," citing *Rubalcaba v. Raymondville Ind. Sch. Dist.*, No. 13-14-00024-CV, 2016 WL 1274486, at *3 (Tex. App.—Corpus Christi-Edinburg Mar. 31, 2016, no pet.) (mem. op.). From that premise, McLendon-Chisholm argues that "[m]andamus or injunction are the only avenues for relief, not the voiding of executive sessions," citing *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 554 (Tex. 2019). But that portion of *Swanson* was limited to deciding whether a declaratory judgment action was a possible remedy, and there was no mention that "voiding executive sessions" was not a potential subject of injunctive relief. And in *Rubalcaba*, the court was

careful to note that the plaintiff did not seek to have "any specific Board action declared void and did not seek injunctive or other relief [meaning he] did not allege a violation of TOMA that would waive immunity." *Rubalcaba*, 2016 WL 1274486, at *3. Heath has requested such relief. We again find McLendon-Chisholm's arguments to be misguided.

Heath has properly alleged TOMA violations, including a pattern or practice of violating TOMA. *See Burleson*, 2022 WL 17817965, at *10; TEX. R. CIV. P. 47. Heath has requested appropriate relief by way of injunction and has sufficiently alleged standing, at least to support characterizing it as an "interested person." TEX. GOV'T CODE § 551.142. Thus, we affirm the trial court's decision that Heath has adequately pled itself into TOMA's waiver of governmental immunity.

* * *

We affirm the trial court's denial of the plea to the jurisdiction as to Heath's TOMA claims and reverse the grant of the plea as to Heath's land-use claims.[7]

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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[7] Though both parties mentioned matters other than the plea to the jurisdiction in their respective notices of appeal, neither party has raised issues in this interlocutory appeal regarding anything but the plea to the jurisdiction. Accordingly, we have limited the scope of our review to the issues the parties have raised which are properly before the court.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CITY OF MCLENDON-CHISHOLM, Appellant	On Appeal from the 382nd Judicial District Court, Rockwall County, Texas
No. 05-23-00881-CV V.	Trial Court Cause No. 1-22-1204. Opinion delivered by Justice Carlyle.
CITY OF HEATH, DON HOLLOWAY, BART DAVENPORT, BRITTA JO, HENRY BECK, DAVID LARSEN, GORDON HALL, COBBLESTONE FARMS HOMEOWNERS ASSOCIATION, ET AL., Appellees	Justices Partida-Kipness and Pedersen, III participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's judgment granting the City of McLendon-Chisholm's plea to the jurisdiction. In all other respects, the trial court's judgment is **AFFIRMED**. We **REMAND** this cause to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 8th day of November, 2024.