

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

KELVIN UNDERWOOD,

Respondent,

v.

ST. JOSEPH BOARD OF ZONING ADJUSTMENT and CITY OF ST. JOSEPH, MISSOURI,

Respondents,

SHARON KENNEDY,

Appellant.

DOCKET NUMBER WD73912

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 6, 2012

APPEAL FROM

The Circuit Court of Buchanan County, Missouri
The Honorable Daniel F. Kellogg, Judge

JUDGES

Division Three: Mitchell, P.J., and Smart and Witt, JJ.

CONCURRING.

ATTORNEYS

George "Scott" Murray, St. Joseph, MO

Attorney for Respondent Underwood,

Lisa M. Robertson, St. Joseph, MO

Attorney for Respondents Board of Zoning
Adjustment and City of St. Joseph, MO,

Edwin H. Smith and Sharon Kennedy, St. Joseph, MO

Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

KELVIN UNDERWOOD,)
)
) **Respondent,**)
)
 v.)
)
 ST. JOSEPH BOARD OF ZONING) **OPINION FILED:**
 ADJUSTMENT and CITY OF) **March 6, 2012**
 ST. JOSEPH, MISSOURI,)
) **Respondents,**)
)
 SHARON KENNEDY,)
) **Appellant.**)

WD73912

Buchanan County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and
James M. Smart, Jr., and Gary D. Witt, Judges

Respondent, Kelvin Underwood, applied for a zoning variance in order to complete construction of a detached garage on his property in excess of the size restrictions currently in place by St. Joseph zoning ordinances. The Board of Zoning Adjustment (BZA) denied Underwood's request, and he sought judicial review in the circuit court, with the city of St. Joseph (City) and the BZA as named respondents. The circuit court reversed the BZA's decision and remanded with instructions that the BZA grant Underwood's requested variance. City chose not to appeal the circuit court's decision. Appellant, Sharon Kennedy, a nearby landowner, filed an appeal from the circuit court's decision to this court.

APPEAL DISMISSED.

Division Three holds:

Kennedy lacks standing to appeal the decision of the circuit court because she was not a named party in the action below. Kennedy made no effort to become a party to the action through a motion to intervene, and City's standing did not automatically transfer to Kennedy once City opted not to appeal the adverse decision. Because section 89.110, which allows any

aggrieved person to seek relief from a city zoning board's decision in the circuit court where the property is located, does not address appellate review following the circuit court's entry of judgment, Supreme Court rules apply. Those rules allow only parties to appeal such decisions. Therefore, we find that Kennedy lacks standing, and we grant Underwood's motion to dismiss this appeal.

Opinion by: Karen King Mitchell, Presiding Judge

March 6, 2012

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.