FOURTH DIVISION
March 30, 2017

No. 1-16-0674

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE FOR A SAFER SOCIETY, STEVEN DOUGHTY, NOREN PAN, JENNY LEE, and CORY HANCE, Plaintiffs-Appellants, v. THE VILLAGE OF NILES and 6143 HOWARD PARTNERS, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 16850 Honorable Franklin Ulysses Valderrama, Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's dismissal of the complaint alleging an "as applied" constitutional challenge to a zoning ordinance: the dismissal with prejudice for lack of standing is affirmed with respect to plaintiffs Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance because they do not allege a specialized injury different than what the general public faces. We reverse the trial court's dismissal under section 2-619 against

People for a Safer Society because it alleged a special harm to one of its members and thus has standing to bring the complaint. We affirm the dismissal pursuant to section 2-615 against People for a Safer Society because the harm pled is too speculative to support a cause of action; therefore, we affirm the dismissal but direct that the court allow plaintiff People for a Safer Society leave to file a second amended complaint.

¶ 2 The Village of Niles enacted an ordinance approving the special use permit application of defendant 6143 Howard Partners, Inc. (Howard Venture)[1] to open a business with firearm sales, indoor firing range, and firearm safety training. Plaintiffs, Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance, in their individual capacities, as well as People for a Safer Society (PFSS), an Illinois not-for-profit, filed a complaint against defendant Village of Niles (Niles) alleging the ordinance was unconstitutional as applied to them. Plaintiffs requested the circuit court grant declaratory and injunctive relief to prevent a violation of their substantive due process rights. The circuit court dismissed the complaint with prejudice pursuant to sections 2-619 and 2-615 for lack of standing and failure to state a cause of action. 735 ILCS 5/2-615, 2-619 (West 2016). For the following reasons we affirm the circuit court's dismissal with prejudice pursuant to section 2-619 for lack of standing against Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance, reverse the dismissal under section 2-619 against PFSS, affirm the dismissal under section 2-615 against PFSS, but reverse the dismissal with prejudice and allow PFSS the opportunity to file a second amended complaint consistent with this order. 735 ILCS 5/2-615, 2-619 (West 2016).

¶ 3 BACKGROUND

¶ 4 In May of 2013, the Board of Trustees of the Village of Niles approved an amendment to its zoning code permitting firearm retailers to establish places of business as a special use in the Niles manufacturing district. Two months later, in July of 2014, Niles enacted an ordinance approving the special use permit application of defendant Howard Venture to open a business

[1] Defendant 6143 Howard Venture, LLC was named as "6143 Howard Partners, Inc." by plaintiffs.

with firearm sales, indoor firing range, and firearms safety training at 6143 Howard Street, Niles, IL (Howard property). The Howard property has been vacant since the prior business occupying the premises closed down in March 2014.

¶ 5 On October 17, 2014, plaintiffs brought an action seeking declaratory judgment and injunctive relief against Niles for deprivation of private property rights and privileges secured by the due process clause of the Illinois Constitution. Steven Doughty, Jenny Lee, and Cory Hance are all Niles residents. Noren Pan lives in Wilmette, but owns a company operating approximately 1000 feet from the Howard property. PFSS is an organization representing members from various Chicago neighborhoods and includes New Hope Academy. New Hope Academy leases the premises in which it operates on Howard Street, only 581 feet from the Howard property. The complaint argued the ordinance is unconstitutional because it is arbitrary, irrational, unreasonable, capricious, and bears no substantial relation to the public health, safety, welfare, or morals. Plaintiffs alleged the harms of reduction in tax revenue for Niles, as well as reduction of property values and commercial activity in Niles.

¶ 6 Plaintiffs further argued that New Hope Academy, a therapeutic school serving students ages 11-21 who have severe/profound emotional disabilities, will suffer severe and negative impact to their business such that they abandoned plans to upgrade to a larger facility and they will be required to relocate away from Niles should Howard Venture be allowed operate a gun shop at the Howard property. Plaintiffs' complaint additionally argued that determining the constitutionality of the ordinance requires an application of the *LaSalle* factors, and that the ordinance fails under this analysis. *LaSalle National Bank of Chicago v. Cook County*, 12 Ill. 2d 40, 47 (1957). Plaintiffs sought relief of declaring the ordinance unconstitutional to prevent the construction and operation of a gun shop on the Howard property, and any other relief the court

would deem just.

¶ 7 The Village of Niles filed a motion to dismiss the initial complaint under section 2-615, and the trial judge dismissed the complaint without prejudice. 735 ILCS 5/2-615 (West 2016). Niles argued that (1) plaintiffs failed to meet their burden under a facial challenge to the constitutionality of a statute, (2) the complaint consisted of conclusory allegations, and (3) that plaintiffs failed to name a necessary party to the suit, Howard Venture. The trial court found that application of the *LaSalle* factors was contingent upon plaintiffs raising an as-applied constitutional challenge, and not a facial challenge. The court concluded plaintiffs raised a facial, rather than an as-applied challenge, because the complaint failed to evaluate the ordinance based on the particular context of the plaintiffs but instead looked to general harms. The court also found that even if it did treat plaintiffs' complaint as an as-applied challenge and used the *LaSalle* factors, plaintiffs still had not alleged specialized harms necessary under the *LaSalle* factors. Finally, the court held that Howard Venture was a necessary party to the suit. The court dismissed the complaint, giving plaintiffs 28 days to file an amended complaint.

¶ 8 Plaintiffs filed an amended complaint that largely copied their original complaint, but added defendant Howard Venture as a party to the suit (albeit incorrectly naming defendant) and plaintiffs allege specifically that they filed an "as-applied" challenge. Defendant Howard Venture filed a motion to dismiss the complaint pursuant to section 2-619 for lack of standing. 735 ILCS 5/2-619 (West 2016). Howard Venture argued a plaintiff only had standing to sue over the zoning of a third party's property if that plaintiff was an adjacent or adjoining property owner, citing *Landmarks Preservation Council of Illinois v. City of Chicago*, 125 Ill. 2d 164, 175 (1988). Defendant Niles also filed a motion to dismiss, under section 2-615, again arguing that plaintiffs failed to properly raise an as-applied challenge to the constitutionality of the ordinance.

735 ILCS 5/2-615 (West 2016). The trial court agreed with Howard Venture that *Landmarks* was controlling, or at least highly persuasive on the standing issue. The trial court found plaintiffs lacked standing to bring the complaint because no plaintiff had a protectable interest to the Howard property: no plaintiff owned the Howard property, nor did any plaintiff own property adjacent to or adjoining the Howard property. The court then addressed the 2-615 motion and noted how plaintiffs failed to amend the complaint to comply with the ruling on the earlier 2-615 motion. Accordingly, the court dismissed the complaint with prejudice under both sections 2-615 and 2-619. 735 ILCS 5/2-615, 2-619 (West 2016).

¶ 9 ANALYSIS

¶ 10 Plaintiffs filed a complaint alleging the zoning ordinance passed by the Village of Niles violates their constitutional due process rights. When a plaintiff alleges a zoning change violated her procedural due process rights, the plaintiff's claim is based on a denial of notice and opportunity to be heard prior to the passage of the zoning change. *Passalino v. City of Zion*, 237 Ill. 2d 118, 124 (2009). In a substantive due process claim, the plaintiff alleges the ordinance was an arbitrary exercise of government power that deprived her of some right. *People v. Pollard*, 2016 IL App (5th) 130514, ¶¶ 31-32. In this case, plaintiffs allege the zoning ordinance at issue interferes with their right to the use and enjoyment of their property and therefore present a substantive due process claim. Plaintiffs do not complain of any violation to their fundamental rights; where plaintiffs do not complain of injury to a fundamental right, courts use rational basis review to determine the constitutionality of the ordinance. *Millenium Maintenance Management, Inc. v. County of Lake*, 384 Ill. App. 3d 638, 642-43 (2008). Under rational basis review, we examine whether passage of the zoning ordinance was reasonably related to public health, safety, and morals. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 318 (2008). In an

as-applied substantive due process challenge to a zoning ordinance, Illinois courts conduct rational basis review by applying the *LaSalle* factors. *Id*. The six *LaSalle* factors are:

> "(1) The existing uses and zoning of nearby property [citations], (2) the extent to which property values are diminished by the particular zoning restrictions [citations], (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public [citations], (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner [citation], (5) the suitability of the subject property for the zoned purposes (in this cause residences on 10,000 square feet) [citations], and (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property. [Citations.]" *LaSalle National Bank of Chicago v. Cook County*, 12 Ill. 2d 40, 46–47 (1957).

¶ 11 Standard of Review

¶ 12 We review *de novo* dismissals pursuant to sections 2-615 and 2-619. *Chicago Motor Club v. Robinson*, 316 Ill. App. 3d 1163, 1171 (2000). "When reviewing a trial court's disposition of a motion to dismiss filed under either section 2–615 or section 2–619, the reviewing court accepts all well-pleaded facts as true and makes all reasonable inferences therefrom [in favor of the plaintiff.] [Citation.]" *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006).

¶ 13 "Under Illinois law, a plaintiff need not allege facts establishing standing. [Citations.]" *International Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 45 (2005). Instead, the burden falls to the defendant to

prove a plaintiff's lack of standing. *Id*. A motion to dismiss for lack of standing asserts an affirmative matter that negates the cause of action completely, and is properly brought under section 2-619. *Id*.; 735 ILCS 5/2-619 (West 2016). For an individual to have standing to sue in their own right, that individual must complain of some injury in fact to a legally cognizable interest. *Greer v. Illinois Housing Development*, 122 Ill. 2d 462, 492 (1988).

¶ 14 "A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle plaintiffs to recover. [Citation.]" *Gouge v. Central Illinois Public Service Co.*, 144 Ill. 2d 535, 542 (1991). "A motion to dismiss under section 2–615 attacks only the legal sufficiency of a complaint. Such a motion does not raise affirmative factual defenses, but alleges only defects appearing on the face of the complaint." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). Though we accept all well-pled facts when reviewing a section 2-615 motion to dismiss, a complaint will not survive this analysis if it consists only of conclusory or speculative allegations. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007).

¶ 15 We note that the complaint states it only brings an as-applied constitutional challenge and not a facial challenge. A party may challenge the constitutionality of a statute in two ways: by either raising a facial or an as-applied challenge. *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 2. While a facial challenge turns on whether there exists any constitutionally permissible application of a statute, an as applied challenge looks to the specific unconstitutional impact to the plaintiff and the remedy sought is tailored to preventing that unconstitutional impact to the plaintiff. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 355 Ill. App. 3d 352, 265 (2005). The complaint in this case contains many allegations that the ordinance was passed to avoid litigation filed by supporters of gun rights, without regard to the

welfare of citizens of Niles and other violations of general harms consistent with a facial challenge. Plaintiffs also requested the entire zoning ordinance be declared invalid, which is relief appropriate for a facial challenge. The trial court indicated as much, noting how the complaint raises a facial challenge and cannot survive dismissal at the pleading stage. We agree, because an ordinance is constitutionally invalid on its face only if there exists no set of circumstances where the ordinance has a possible constitutionally permissible application. *Tomm's Redemption Inc., v. Hamer*, at ¶ 2. Many of plaintiffs' claims of general harms are not legally recognized injuries in an as-applied challenge because they do not deal with the specific circumstances of the particular plaintiff. See *Napleton v. Village of Hinsdale*, 229 Ill. 2d at 306. For an as-applied challenge, plaintiffs must plead particular harms different than those faced by the general public and make the constitutional inquiry relevant to their particular circumstances. See *Garner*, 8 Ill. 2d at 158–59, and *Napleton*, 229 Ill. 2d at 306. Where plaintiffs claimed general harms as injuries to a legally recognized interest, the trial court did not err in recognizing those general harms are only proper in a facial challenge and are not injuries to legally recognized interests.

¶ 16 Requirements for Standing in Zoning Cases

¶ 17 Plaintiffs brought a unique zoning challenge alleging injury not from the rezoning of plaintiffs' property, but injury from the rezoning of a third party's property. We find that the rule articulated in *Garner v. Du Page County*, that to have standing, a party complaining of injury from the rezoning of a third party's property must assert a special harm that differs from the harm suffered by the general public, is directly applicable to the present case:

> "This case is not the normal one where an owner of land is complaining of restrictions placed upon its use, but is the comparatively rare case in which it is

> claimed that corporate authorities have wrongfully permitted a use on the property of someone else. Under such circumstances we have held that for a party to have standing in a court of equity to complain about the use of another's property, he has the burden of proving that he has suffered a special damage by reason of such use which differs from that suffered by the general public." *Garner v. Du Page County*, 8 Ill. 2d 155, 158-59 (1956).

In the present case, the trial court found that plaintiffs lacked standing to bring their complaint because plaintiffs were not adjacent or adjoining property owners and dismissed the case with prejudice, relying on *Landmarks Preservation Council of Illinois v. City of Chicago*, 125 Ill. 2d 164 (1988). However, we find *Landmarks* distinguishable from the present case because it is not necessary for a plaintiff to either own the rezoned property or own the adjacent or adjoining property. *Garner* provides controlling precedent on third party standing concerning such zoning suits.

¶ 18 In zoning suits where plaintiffs are not the owners of the rezoned property, they must articulate harms not suffered by the general public, else they will not have an injury to a legally cognizable interest:

> "The plaintiffs are not the owners of the real estate which was rezoned. To have standing to sue, under the circumstances, they have the burden of alleging facts which show that they have suffered special damage as a result of the ordinance, which differ from that suffered by the general public. [Citations.] The necessity of showing special damage extends generally to the plaintiffs' right to challenge the validity of the zoning ordinance and not to any particular ground on which the validity is challenged. *** The financial or administrative affairs of the county

> are not subject to question by the suit of a taxpayer *** unless he, as opposed to the general public, has some special or distinct interest affected. [Citation.]" *Swain v. Winnebago County*, 111 Ill. App. 2d 458, 463–64 (1969).

Individuals must claim harm to a legally recognized interest to have standing to maintain their suit. *Greer*, 122 Ill. 2d at 492. If this injury is not unique to the individual, but generally faces members of the community, then the injury is not legally cognizable. *Swain*, 111 Ill. App. 2d at 463-64. The purpose behind such a rule for standing is that the law generally does not authorize citizens to act as private attorneys general to vindicate general community grievances:

> "To use the words of *Blumberg v. Hill*, 'As one may not assume the role of champion of a community to challenge public officers to meet him in courts of justice to defend their official acts, *** so one having only a general interest may not adopt the part of an advocate of municipal welfare *** to promote a judicial enforcement or interpretation of zoning regulations.' " *Garner*, 8 Ill. 2d at 160.

Plaintiffs are not private attorneys general; they may complain of specific injuries suffered, but have no standing to bring a claim of general harms to the community. *Id*. For those general injuries plaintiffs' recourse is to the legislature and the ballot box, not to the courts.

¶ 19 This is also consistent with the *Landmarks* holding. *Landmarks* concerned a suit over Chicago rescinding the landmark status of the McCarthy Building, brought by the Landmarks Preservation Council of Illinois, the Chicago Chapter of the American Institute of Architects, and the National Trust for Historic Preservation in the United State. Our supreme court found that the Preservation Council and the American Institute of Architects lacked standing because they did not face injury to a legally recognized interest: they did not own the McCarthy Building and did not own adjacent or adjoining property. *Landmarks*, 125 Ill. 2d at 175. Those two plaintiffs

did not face injury not otherwise suffered by the general public. They may have been able to state a special injury if they were living in the adjacent or adjoining property. This is also consistent with how the court found the National Trust for Historic Preservation had standing because it was an organization expressly formed by Congress to address those types of general injuries faced by the public, even though it did not own the McCarthy Building or the property adjacent to or adjoining the McCarthy Building. *Id*. at 177. The National Trust had a legally recognized interest to carry out its Congressional mandate of preserving sites of national significance. *Id*. at 176. It was not simply an individual acting as a private attorney general, but an organization legislatively authorized to pursue such a claim. Noting how the plaintiffs were not adjacent or adjoining property owners indicates that two of the plaintiffs failed to articulate harm to a legally recognized interest, and that perhaps those plaintiffs could have had such an interest if they were the adjacent or adjoining property owners. That does not then imply that being an adjacent or adjoining property owner is either necessary or sufficient to have standing. A plaintiff does not need to be the owner of adjacent or adjoining property to have standing to sue: "in zoning challenges, standing exists for such parties as lessees under written leases [citations], employees of a business [citation], prospective purchasers of property [citation], persons with a possessory interest in property [citation], and owners *or residents* of single-family houses [citation]." (Emphasis in original.) *Rodriguez v. Henderson*, 217 Ill. App. 3d 1024, 1036–37 (1991). Lack of ownership does not preclude a party from possessing standing to bring a suit challenging the rezoning of a third party's property. Instead, our analysis of whether plaintiffs have standing to bring their complaint turns on whether they alleged special harm different from that suffered by the general public.

¶ 20 We note that plaintiffs included a footnote in their brief indicating Niles amended its

zoning code to prohibit firearm retailers from operating within 1,000 feet of a school, and asked that we take notice of the amendment. Under Illinois law, a court of original jurisdiction is "required to take judicial notice" of "all general ordinances of every municipal corporation within the State." 735 ILCS 5/8-1001 (West 2016). "A trial or reviewing court may take judicial notice of an ordinance despite said ordinance not having been introduced into evidence. [Citation.]" *County of Champaign v. Ramos*, 2013 IL App (4th) 110807, ¶ 50. The Niles zoning ordinance concerning "Firearm Sales and Firearm Training Centers" provides that: "Firearms Sales and Firearms training Centers are only allowed indoors. No firearms sales and/or firearm training centers may be located within 1,000 feet of any educational facility." Village of Niles, Ill., Code of Ordinances, Appendix B § 8.3(H) (Feb. 14, 2017). The ordinance is not retroactive, so it is not at odds with the special use granted to Howard Venture. *Id*. at § 1.4(F). The implication plaintiffs draw from the passage of the amendment is that "Niles itself considers the 581 foot gap between the Gun Shop and New Hope Academy to be too small for future situations," and that the "Court obviously can draw its own conclusions from the amendment." Plaintiffs do not state how the amendment is relevant to our review of whether plaintiffs have standing and whether the complaint is legally sufficient. However, we will take notice of the amendment.

¶ 21 Standing of Plaintiffs Doughty, Pan, Lee, and Hance

¶ 22 Standing is determined by whether plaintiffs claim injury to a legally cognizable interest. *Greer*, 122 Ill. 2d at 492. We find plaintiffs, Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance, did not articulate an injury to a legally cognizable interest because they did not allege any injury different than that suffered by the general public. See *Garner*, 8 Ill. 2d at 158-59. Plaintiffs alleged businesses surrounding the Howard property will suffer, and that they in

particular will feel the harm the general public faces more acutely due to their proximity to the Howard property. Indeed, their only basis for pleading special harms is their proximity to the Howard property. However, plaintiffs never establish how they suffer any of these harms differently than any of the other individuals residing and working within a mile radius of the Howard property. Steven Doughty, Jenny Lee, and Cory Hance all reside over a mile from the Howard property. Plaintiffs' argument that their proximity generates the special damage fails to differentiate that harm from any other member of the general public residing within a two mile radius of the Howard property. Although Doughty alleged he has a grandchild in the Niles public school system, plaintiffs failed to articulate any harm not suffered by the general public from having a child in the public schools or simply residing within a mile and a half of the Howard property. Noren Pan has a place of business 1003 feet from the Howard property, but did not state how his business would be affected by the operation of a firearm retailer any differently from other businesses in the same proximity. As such, Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance have not pled any harm not otherwise suffered by the general public.

¶ 23 Plaintiffs rely on *Truchon v. Streator*, 70 Ill. App. 3d 89 92-93 (1979) to contend that their proximity to the rezoned property alone is sufficient to provide them with an interest extending beyond that of the general public. The *Truchon* court extended our supreme court's decision in *Anundson v. Chicago*, 44 Ill. 2d 491 (1970). The *Truchon* court found that *Anundson* stood for the principle that *adjoining* property owners have standing to sue over the spot-zoning of a third party's property because the adjoining owners had an interest that was adverse to the municipality and the interest would not have been protected other than through judicial action. *Truchon*, 70 Ill. App. 3d at 92. The *Truchon* plaintiffs owned "various parcels of real estate located either adjacent to the [rezoned] property or in the immediate neighborhood surrounding

the property." *Id*. at 91. The court found those plaintiffs had similar interests as the adjoining landowners owners in *Anundson*:

> "the underlying interests of the adjoining landowners are the same. Their proximity to the subject premises provides them with an interest which extends beyond that of the general public, an interest which is entitled to protection by judicial relief. No argument is made that these plaintiffs are too removed from the [rezoned] property to qualify as adjoining landowners ***." *Id*. at 92-93.

While plaintiffs in the present case are correct that being an adjoining landowner is not necessary for standing, they fail to allege a special harm sufficient to have standing. Plaintiffs argue their interests are not being protected because the municipality is trying to appease the gun lobby. However, their brief extensively argues all of the people of Niles will suffer the harms of having a firearm retailer present (i.e. the alleged increased traffic and violent crime). They point to no factor that requires or authorizes them to act as private attorneys general to vindicate general community grievances. Plaintiffs' proximity to the Howard property alone is insufficient for them to have standing. Such a position runs contrary to our supreme court's holding in *Garner*. The *Garner* plaintiffs "were taxpayers, residents of the county, the owners of real estate in and about the city of Naperville ***." *Garner*, 8 Ill. 2d at 157 (1956). As noted above, the plaintiffs in *Garner* faced no harm differing from that of the general public even though they were in the vicinity of the rezoned property, and therefore had no standing to bring their claim. *Id*. at 160. Plaintiffs Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance are in the same position of simply being over a mile from the Howard property.

¶ 24 Plaintiffs further point to *Hughes v. City of Peoria* to establish that their proximity to the Howard property alone is sufficient to grant them standing. *Hughes v. City of Peoria*, 80 Ill.

App. 2d 392 (1967). We disagree. The *Hughes* court was clear that the "plaintiffs have the burden of proving that they will suffer a special damage, by reason of the new use, which will differ from that to be suffered by the general public." *Id*. at 394-95. The *Hughes* court found *Garner* controlling on the matter and came to the conclusion that the plaintiffs had "no basis in Illinois law that this complaint is a recognizable special damage." *Id*. at 397 (1967). Therefore, plaintiffs Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance do not have standing to bring their complaint simply by virtue of their closeness to the Howard property, and we affirm the dismissal of the action with prejudice pursuant to section 2-619. *Illinois Department of Employment Security*, 215 Ill. 2d at 45; 735 ILCS 5/2-619.

¶ 25 Standing of People for a Safer Society

¶ 26 PFSS alleged that one of its members, New Hope Academy, will face special harm if it is not granted declaratory and injunctive relief because it alleged the school would be required to relocate. Because PFSS is one of the named parties to the suit, and not New Hope Academy, PFSS must specifically have standing as an organization to sue on behalf of its members. Our supreme court, consistent with decisions of the United States Supreme Court, adopted the three part *Hunt* test for determining association standing. *International Union*, 215 Ill. 2d at 47.

> " '[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' " *Id*. (quoting *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

PFSS is a not-for-profit corporation formed for the purpose of reducing gun violence and

improving care for the seriously mentally ill. As such, its interests in preventing establishment of a gun shop are germane to its purpose. Additionally, PFSS's claim and requested relief do not require the participation of its individual members – it wishes to prevent the construction and operation of a gun shop at the Howard property. Whether PFSS has standing turns on whether any of its members have standing to sue in their own right. *Id*.

¶ 27 PFSS alleged New Hope Academy will be forced to leave its current location if the gun shop is permitted to open, and the record does not indicate another member of the general public would suffer such injury from the operation of a gun shop at the Howard property. Though New Hope Academy leases the property on which it operates, standing is not limited to property owners. *Rodriguez.* New Hope Academy alleges it faces the unique threat of displacement from its current location. The record has not revealed another plaintiff or resident of Niles who faces displacement due to operation of a firearm retailer. The situation has similarity to *Rodriguez v. Henderson* where plaintiffs alleged they were effectively being displaced by a zoning ordinance to neighboring property because it would increase taxes by raising property values and destroy local job opportunities. *Rodriguez,* 217 Ill. App. 3d at 1026. Those plaintiffs had a particularized injury, and therefore standing to sue even though they complained over the rezoning of neighboring property. *Id*. at 1036. Even though the rest of the community faced an impact from the rezoning of neighboring property, the *Rodriguez* plaintiffs faced the particular injury of displacement. *Id*. Similarly, members of the general public in Niles will feel the impact, whatever it may be for good or ill, of a gun shop at the Howard property. As far as the record reveals, none of those community members will be forced to relocate as a result of defendant operating a gun shop at the Howard property. Therefore, PFSS alleged New Hope Academy will suffer an injury that no other member of the general public will likewise suffer.

Because New Hope Academy is a member of PFSS and has articulated a special harm that differs from the general public, PFSS has standing and we reverse the dismissal under section 2-619 with respect to PFSS. 735 ILCS 5/2-619 (West 2016).

¶ 28 Dismissal Under Section 2-615

¶ 29 We now turn to whether PFSS alleged an injury for which they may be granted relief such that it meets the standards of pleadings under section 2-615. 735 ILCS 5/2-615 (West 2016). PFSS alleged one of its members faces special injury – the application of the statute to New Hope Academy's particular situation will result in New Hope Academy's displacement. Such an injury may be recognized in an as-applied challenge and our analysis turns to whether the allegations of special injury were sufficient under section 2-615. 735 ILCS 5/2-615 (West 2016).

¶ 30 A complaint is deficient under section 2-615 if the injury alleged is merely a conclusory allegation. *Time Savers, Inc.*, 371 Ill. App. 3d at 767. We note that the complaint alleged in detail why the ordinance does not comply with *LaSalle* factors. See *LaSalle National Bank of Chicago v. Cook County*, 12 Ill. 2d 40 (1957). However, as we stated earlier, the *LaSalle* factors are instruments used to evaluate at an evidentiary hearing whether a zoning ordinance is arbitrary or capricious. *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 650 (2009). In this case we are determining whether plaintiffs have standing and whether the complaint is sufficient under the law. PFSS articulated a special injury – displacement of a business – to New Hope Academy, one of its members. PFSS argues New Hope Academy will be forced to move because of the establishment of the gun shop. However, PFSS failed to allege what factor would cause the school to move. We can only speculate that PFSS would allege it is possible parents would not want their children going to school 581 feet from a gun shop. PFSS claims that some

parents voiced concern about New Hope Academy's proximity to a gun shop, and that this may impact enrollment. To say only that any parent would pull their child from a therapeutic school because of the nearby presence of a gun shop is speculative.

¶ 31 PFSS's claimed injury is too speculative and remote to support a claim for either injunctive or declaratory relief. Actions for injunctive relief and actions for declaratory judgment should be dismissed if the violation of rights pled is too speculative. See *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356, 371 (2001); *State Farm Mutual Automobile Insurance Co. v. Morris*, 29 Ill. App. 2d 451, 460 (1961). Speculative infringements of rights do not support actions for declaratory judgment. "If the question of whether the plaintiff will suffer any infringement of its rights is speculative, - if the interests of the plaintiff will be adversely affected only in the event some future possibility occurs or does not occur, - the action for declaratory judgment should be dismissed." *Morris*, 29 Ill. App. 2d at 460. Actions seeking injunctive relief will not be granted if the harms alleged are too speculative:

> "Courts have long adhered to the notion that the right to injunctive relief rests on actual or presently threatened interference with another's rights. Generally, the damage sought to be enjoined must be likely and not merely possible. 'Injunctive relief will not be granted merely to allay the fears and apprehensions or to soothe the anxieties of the parties.' [Citation.]" *Callis, Papa, Jackstadt & Halloran, P.C.*, 195 Ill. 2d at 371.

Though plaintiff alleged a specialized harm will occur to New Hope Academy (displacement), like the plaintiffs in *Rodriguez*, New Hope Academy's injury is distinguishable because the plaintiffs in *Rodriguez* alleged harms which were not too speculative. *Rodriguez*, 217 Ill. App.

3d at 1035. The *Rodriguez* plaintiffs had expert projections to prove they would be displaced and were not required to present further evidence at the pleading stage of the proceedings. *Id.* In a letter to the mayor, which is part of the record made during hearings before the Village of Niles trustees, New Hope Academy indicated that parents and school districts "*may* change their position on students attending or being placed at New Hope Academy." (Emphasis added). New Hope Academy indicated "the business owners of the proposed shop have been more than cooperative meeting with me and hearing my concerns. They have agreed to post a uniformed police officer during dismissal time and to erect a six-foot wooden fence on the west side of their property." The letter continues to note, however, that the uncertainty of what will happen when Howard Venture begins operation is the source of its injury. "Due to the passionate opinions about how it may or may not impact my students and what action parents or districts take, it may severely impact my business." Plaintiffs make the speculative allegation in their complaint that

> "[p]lacement of a gun range near New Hope makes the prospect of sending a child to that school a far less desirable proposition, as well as endangering the current and prospective student body. Because of the decreased desirability, enrollment inevitably will decline which will cause the business to either move to a different location or close down."

This possibility of harm is only a speculative and conclusory allegation, meaning PFSS must articulate more definite harm to withstand a motion to dismiss under section 2-615. *Time Savers, Inc.*, 371 Ill. App. 3d at 767. Such allegations only give rise to a possibility that an injury may occur, but not that injury will be likely to occur. To be consistent with the plaintiffs in *Rodriguez*, PFSS would need to amend its complaint to allege specific facts of how it will be injured in a manner that differs from the general public.

¶ 32 Plaintiffs argue that a threat of injury is not a conclusory allegation. They cite *Trossman v. Trossman* for the proposition that declaratory relief should be liberally construed such that " 'uncertainty or insecurity occasioned by new events may constitute the operative facts entitling a party to declaratory relief.' " *Trossman v. Trossman*, 24 Ill. App. 2d 521, 532 (1960). However, this does not entitle plaintiffs to allege conclusory allegations unsupported by specific facts. See *Time Savers, Inc.*, 371 Ill. App. 3d at 767. In *Trossman* we found the complaint was supported by specific facts and that a concrete controversy existed. *Trossman*, 24 Ill. App. 2d at 532. The reason why we stated there was uncertainty of new events was that the parties in *Trossman* had an antenuptial agreement with a provision that either party would extinguish a right of dower at the request of the other party. The defendant argued the harm was too speculative to allow for declaratory relief. *Id*. at 523. We found the harms were not too speculative, and the controversy needed to be resolved within the lifetimes of the parties, because of the Dead Man's Act (Ill. Rev. Stat. 1959, ch. 51, par. 2). *Id*. at 532. The rights of the parties were affected because the antenuptial contract prevented the plaintiff from creating a comprehensive estate plan. The harm resulting from not being able to create the comprehensive estate plan would only occur when one of the parties died - we were able to render declaratory judgment so that the controversy could be dealt with during the lifetimes of both parties. *Id*. at 532-33. We were clear in *Trossman* that a justiciable " 'controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests.' " *Id*. at 527.

¶ 33 Plaintiffs also cite *Walton Playboy Clubs, Inc. v. City of Chicago* for the proposition that a "plaintiff did not have to sit back and wait for the blow to fall just because the altercation might be decided in an alternative action." *Walton Playboy Clubs, Inc. v. City of Chicago*, 37 Ill. App. 2d 425, 429 (1962). The Playboy Club did not face speculative harm: "It had received from the

Department of Police an official opinion of the City's Department of Law stating its method of doing business was illegal." *Id*. at 428-29. The Playboy Club was investigated by the police and received a formal opinion from the corporation counsel of the city of Chicago that the business was being operated illegally. *Id*. at 428. Given the police investigation and formal opinion by the city's department of law that the club was operating illegally, police action was not merely speculative, but actually likely to occur. *Id*. at 429. On the other hand, New Hope Academy is unsure of the impact (if any) its students will face. In contrast to *Walton Playboy Clubs, Inc.*, we decided in *Wills v. O'Grady* that a complaint of an ordinance being possibly applied in the future to prevent constitutionally protected conduct was too speculative of an injury. *Wills v. O'Grady*, 86 Ill. App. 3d 775, 776 (1980). In *Wills*, the plaintiff alleged that "he face[d] the danger of arrest and conviction for the exercise of his constitutionally protected right to sit in the nude." *Id*. Plaintiff Wills complained that an ordinance prohibiting nudity on public beaches would "be applied to [his] behavior, resulting in his arrest and prosecution." *Id*. at 777. We found this injury was too speculative because plaintiff did not establish there was "an immediate threat of injury. His cause depends on speculative events in the future." *Id*. at 780. Similarly, New Hope Academy speculates that parents will withdraw their children from the school due to the presence of Howard Venture operating at the Howard property but it has not alleged any facts to support that conclusory allegation. A complaint that only makes conclusory allegations unsupported by facts does not withstand a 2-615 motion to dismiss. *Time Savers Inc.*, 371 Ill. App. 3d at 767. Because PFSS simply speculates that New Hope Academy will be injured without supporting this allegation with specific facts, we find that the complaint cannot survive a section 2-615 motion to dismiss. 735 ILCS 5/2-615 (West 2016).

¶ 34 New Hope Academy is a member of PFSS and alleged a special injury, therefore PFSS

has standing to bring this complaint. However, PFSS's claim is too speculative for a court to grant relief and does not survive the standards of section 2-615. 735 ILCS 5/2-615 (West 2016). Dismissal with prejudice is appropriate only when "it clearly appears that no set of facts can be proved under the pleading which would entitle the plaintiff to relief. [Citation.] If, by amendment, a plaintiff can state a cause of action, a case should not be dismissed with prejudice on the pleadings." *Bowe v. Abbott Laboratories, Inc.*, 240 Ill. App. 3d 382, 388–89 (1992). Here we cannot say there is no possibility that PFSS will be unable to allege some facts to support a cause of action, therefore PFSS should be given another opportunity to amend its complaint. Thus, we affirm the trial court's dismissal pursuant to section 2-615, but order the trial court to grant PFSS leave to file a second amended complaint consistent with this ruling.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County dismissing Steven Doughty, Noren Pan, Jenny Lee, and Cory Hance's complaint with prejudice pursuant to Section 2-619. We reverse the dismissal under section 2-619 against People for a Safer Society. We affirm the dismissal under section 2-615 against People for a Safer Society, but reverse the dismissal with prejudice and give People for a Safer Society leave to file a second amended complaint.

¶ 37 Affirmed in part; reversed in part; remanded with leave for People for a Safer Society to file a second amended complaint.