

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

SAUGATUCK DUNES COASTAL  
ALLIANCE,

Appellant/Plaintiff,

vs.

Supreme Court No. 160358

COA No. 342588; 346677

LC 2017-058936-AA; 2018-059598-AA

SAUGATUCK TOWNSHIP;  
SAUGATUCK TOWNSHIP ZONING  
BOARD OF APPEALS; and NORTH  
SHORES OF SAUGATUCK, LLC,  
Appellees/Defendants.

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**APPELLEES SAUGATUCK TOWNSHIP AND  
SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS  
SUPPLEMENTAL RESPONSE BRIEF**

**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF JURISDICTION

Appellant Saugatuck Dunes Coastal Alliance filed an Application for Leave to Appeal to this Court from the August 29, 2019, Judgment of the Michigan Court of Appeals in Court of Appeals Case Nos. 342588 and 346677. The Appellant's Application was filed pursuant to MCR 7.305.

This Court issued its Order directing oral argument and filing of supplemental briefs on May 8, 2020.

The jurisdiction of this Court is invoked by MCL §600.215 and MCR 7.303(B)(1).

**STATEMENT OF QUESTIONS PRESENTED  
BY THIS COURT**

**A. Does the party aggrieved standard of MCL 125.3605 require a party to show some special damages not common to other property owners similarly situated?**

The Appellees Township answer: "YES"  
 The Appellee Developer will answer: "YES"  
 The Michigan Court of Appeals answered: "YES"  
 The Appellant answers: "NO"  
 This Court should answer: "YES"

**B. Does the meaning of "person aggrieved" in MCL 125.3604(1) differ from that of "party aggrieved" in MCL 125.3605 and if so what standard applies?**

The Appellees Township answer as to meaning difference "NO"  
 The Appellee Developer will answer as to meaning difference "NO"  
 The Michigan Court of Appeals did not address  
 The Appellant answers as to meaning difference: "YES"  
 This Court should answer to meaning difference: "NO"

The Appellees Township answer aggrieved standard "YES"  
 The Appellee Developer will answer aggrieved standard "YES"  
 The Michigan Court of Appeals answered aggrieved standard "YES"  
 The Appellant answers as to aggrieved standard: "NO"  
 This Court should answer to aggrieved standard: "YES"

**C. Did the Court of Appeals err in affirming the Allegan Circuit Court's dismissal of Appellant's appeals from the decisions of the Saugatuck Township Zoning Board of Appeals?**

The Appellees Township answer: "NO"  
 The Appellee Developer will answer: "NO"  
 The Appellant answers: "YES"  
 This Court should answer: "NO"

## STANDARDS FOR APPLICATION FOR LEAVE

The standards for Application for Leave to Appeal to this Court are enumerated in MCR 7.305(B)(1)-(3). The Township Appellees contend this Court has previously declined to rule on the same issues presented in this dispute when it denied leave to appeal in *Olsen v. Jude and Reed, LLC*. 503 Mich. 1018 (2019).

## I. INTRODUCTION

Appellant, Saugatuck Dunes Coastal Alliance (“SDCA”), filed an appeal with the Saugatuck Zoning Board of Appeals (ZBA) seeking the review of a decision arrived at by the Saugatuck Township Planning Commission on April 26, 2017, granting initial site plan approval for a parcel zoned R-2 under Saugatuck Township’s zoning ordinance. The Planning Commission had granted initial site plan approval for a residential development being advanced by intervening developer, North Shores of Saugatuck, LLC (“North Shores”). The Appellee ZBA scheduled and held a public hearing on the SDCA’s application for appeal to the ZBA on October 11, 2017. The public hearing was bifurcated because the Appellee ZBA was concerned whether the SDCA had standing under the Michigan Zoning Enabling Act to appeal the Planning Commission decision to the ZBA. The first segment of the public hearing was restricted to the determination of whether the SDCA had standing to appeal the PC decision to the ZBA. (**Appellee Township Appendix 0001b – 0004b**). During the public hearing, which lasted about one hour and twenty minutes, oral presentations were made by members of the public and representatives of SDCA and North Shores together along with submission of written documentation by SDCA and North Shores. The ZBA voted that the SDCA did not have standing to appeal the Planning Commission decision (**Appellee Township Appendix 0005b – 0008b**) and the second part of the meeting which was to be devoted to the merits of any SDCA appeal was deemed unnecessary. (**Appellee Township Appendix 0001b - 0004b**). The SDCA appealed the ZBA decision to the Allegan County Circuit Court which denied the appeal. (**Appellee Township Appendix 0009b – 0013b**).

The same procedure was followed by the ZBA when it received a request from the SDCA appealing the October 23, 2017 decision of the Planning Commission granting final site plan approval to North Shores. During the first bifurcated public comment phase of the April 9, 2018

ZBA meeting, it received public input limited to standing, including presentations by the SDCA and North Shores. Again, the Appellee ZBA concluded that the SDCA did not have standing. **(Appellee Township Appendix 0014b – 0018b)**. That decision was appealed by the SDCA to the Allegan County Circuit Court and a different circuit judge denied the appeal. **(Appellee Township Appendix 0019b – 0021b)**.

The SDCA appealed both lower court decisions and the cases were combined for appellate purposes by the Court of Appeals. The Court of Appeals issued an unpublished opinion dated August 29, 2019, affirming the decision of the each of the Circuit Court judges, remanding one of the cases back to the Circuit Court for a decision on matters not pertinent to this instant appeal. **(Appellee Township Appendix 0029b-0034b)**

The SDCA applied for leave to appeal to this Court which resulted in the scheduling the SDCA's application for leave to appeal for oral argument and providing the parties instructions on additional briefing by way of this Court's Order of May 8, 2020.

Saugatuck Township and Saugatuck Township Zoning Board of Appeals submit this brief in compliance with this Court's May 8, 2020 directive.

## I. COUNTER-STATEMENT OF FACTS OF APPELLEES SAUGATUCK

The real estate at issue in this Application for Leave to Appeal is part of an approximately 200 acre tract of land located near the mouth of the Kalamazoo River at Lake Michigan. The property is located within Saugatuck Township and as part of a resolution of prior litigation was zoned Residential (R-2). Approximately four (4) years prior to the commencement of the events leading up to this instant litigation, a prior developer, Singapore Dunes, LLC, sought to develop a portion of the same property. After the Township Planning Commission granted preliminary site plan approval, the Saugatuck Township ZBA denied standing to the SDCA. Later, during the permitting process for the Singapore Dunes project, Allegan County Circuit Court Judge Kevin Cronin issued an Opinion and Order finding that the SDCA lacked standing to appeal a decision of the Michigan Department of Environmental Quality with respect to a proposed road traversing the property, which North Shores now wishes to develop. (**Appellee Township Appendix 0022b – 0025b**).

Subsequently, Intervening Appellee, North Shores, secured interest in the property and submitted a development plan to the Saugatuck Township Planning Commission seeking site plan approval and a special approval use permit. A hearing was held granting the special approval use permit and approving the initial site plan on April 26, 2017. In its application to appeal the Planning Commission initial site plan approval, the Coastal Alliance described itself as “. . . a coalition of individuals and organizations who live, work, and recreate in the Saugatuck area.” (**Appellee Township Appendix 0026b – 0028b**). The SDCA application for appeal to the ZBA was set for public hearing on October 11, 2017. The Township noticed the public hearing in accordance with the provisions of the Michigan Zoning Enabling Act, MCL §125.3103(2). Thus,

property owners within 300 feet of the property involved in the initial site plan approval were provided the appropriate statutory notice.

The minutes of the ZBA meeting indicate that the public hearing portion was bifurcated as described previously in the Introduction to this Brief. The first part of the public hearing was devoted to establishing whether the SDCA had standing to address the ZBA. After approximately one hour and twenty minutes of public hearing, which involved presentations from both the SDCA and the Developer, the public hearing was closed. (**Appellee Township Appendix 0001b – 0004b**). After discussion among the Board members, two of the three Board members voted to support a resolution to deny standing the Saugatuck Dunes Coastal Alliance. (**Appellee Township Appendix 0005b – 0008b**). Among the ZBA’s findings were the following:

- A. Section 604(1) of the Michigan Zoning Enabling Act, MCL 125.3604(1), provides in relevant part: “. . . an appeal to the zoning board of appeals may be taken by a person aggrieved. . .” Courts have interpreted this standard as requiring proof of “some special damages not common to other property owners similarly situated.” *Unger v. Forest Home Township*, 65 Mich. App. 614 (1976). The Zoning Board of Appeals finds that this standard is required by State law, and that any lower standard that might be suggested in the Township’s Zoning Ordinance conflicts with state law and is therefore invalid. *See Id.*
- B. The complaints made by the SDCA through its presentation and affidavits filed with its September 18, 2017, correspondence are complaints which might be true of any lakefront development on the property in question. Any development on the property might lead to additional dwellings, additional residents and visitors, motor vehicles, boats, all of which create additional noise and lights. In general, the complaints voiced by the SDCA in its presentation and affidavits would apply to any development of the property in question which establishes the general, as opposed to specific nature, of the damage that the SDCA is claiming associated with the proposed North Shores PUD and SAU.
- C. SDCA has not been able to explain satisfactorily how the Township Planning Commission would be able to prevent the development as proposed by North Shores with reference to adverse impact on wetlands or critical dune areas located within the property at issue. The SDCA has not been able to articulate how it would suffer any special damage, different

from the damage that would allegedly be sustained by the general public, with reference to the development of the subject real estate.

The resolution adopted by the ZBA majority went on to detail further support for its conclusion that the SDCA did not have proper standing as the ZBA understood it to be in October of 2017. **(Appellee Township Appendix 0005b – 008b)**.

The SDCA appealed the Township's ZBA decision to the Allegan County Circuit Court, Case No. 2017-58936-AA. The Allegan County Circuit Court affirmed the decision of the ZBA. **(Appellee Township Appendix 0009b – 00013b)**. On appeal to the Michigan Court of Appeals (Case No. 342588), the decision of the Circuit Court relating to standing was affirmed. **(Appellee Township Appendix 0029b-0034b)** It is this decision which the Appellant is currently challenging.

While the appeal process was getting underway in reference to the Planning Commission's initial site plan approval, the Township Planning Commission gave its approval to North Shores' final site plan at a commission meeting on October 23, 2017. The SDCA appealed that Commission decision to the Township ZBA and was noticed for public hearing on April 9, 2018. The minutes of the ZBA meeting reflect a similar bifurcation of the public portion of the meeting as afforded in the October 11, 2017 ZBA meeting restricting the first portion of public comment to the standing issue. **(Appellee Township Appendix 0014b – 0015b)**. After deliberation, the ZBA adopted a resolution similar in content to the resolution adopted by the ZBA at the October 11, 2017, meeting. **(Appellee Township Appendix 0016b – 0018b)**. It is noteworthy that the entire makeup of the Township Board of Appeals changed between October 2017, and April 2018, meetings. **(Appellee Township Appendix 005b – 008b; 0016b – 0018b)**.

The SDCA appealed the April 9, 2018, decision of the Township ZBA to the Allegan County Circuit Court, Case No. 2018-059598-AA. The appeal was assigned to a judge different

from the judge that made the decision on the first appeal filed by the SDCA in reference to the October 2017, decision of the ZBA. The Allegan County Circuit Court Judge affirmed the decision of the Township ZBA. (**Appellee Township Appendix 0019b – 0021b**). The SDCA appealed that decision to the Michigan Court of Appeals, Case No. 346677.

After consolidating the two cases on its docket, the Michigan Court of Appeals issued its unanimous decision affirming the decisions of the Township ZBA and the Allegan County Circuit Court Judges in an unpublished opinion dated August 29, 2019. (**Appellee Township Appendix 0029b – 0034b**). Of note is that Judge Michael F. Gadola of the Court of Appeals panel on that appeal was also a member of the panel that decided the case of *Olsen v. Chikaming Township*, 325 Mich. App. 170 (2018).

After Application for Leave to Appeal was made by SDCA and opposed by Developer North Shores and the Township Appellees, this Court issued its May 8, 2020 directive providing for oral argument on the SDCA Application for Leave to Appeal and providing for briefing of specifically enumerated issues.

Saugatuck Township and Saugatuck Township Zoning Board of Appeals submit this brief in response to the May 8, 2020 Order of this Court.

## II. LAW AND ARGUMENT

### A. Does the party aggrieved standard of MCL 125.3605 require a party to show some special damages not common to other property owners similarly situated?

The Appellees Township answer:	“YES”
The Appellee Developer will answer:	“YES”
The Michigan Court of Appeals answered:	“YES”
The Appellant answers:	“NO”
This Court should answer:	“YES”

This section of Township Appellees’ Brief addresses the first of the three issues this Court identified for briefing in its May 8, 2020 directive.

The word “aggrieved” in association with a zoning board of appeals is hard to discern. Prior to zoning becoming widespread, the idea of an adjoining property owner being offended by another’s use of property was typically addressed in a nuisance proceeding. *McMorran v. Fitzgerald*, 106 Mich. 649 (1895). Zoning laws were passed in New York State and the Standard State Zoning Enabling Act was published by the United States Department of Commerce first in 1924 and later revised in 1926 under the then Department Secretary, Herbert Hoover. (**Appellee Township Appendix 0035b – 0043b**). (See also Standing to Appeal Zoning Determinations: The ‘Aggrieved Person’ Requirement, 64 Mich. L. Rev. 1070 (1966). (**Appellee Township Appendix 0044b – 0060b**)).

In the Standard State Zoning Enabling Act, the entity presently known in Michigan as the Zoning Board of Appeals was identified as the “Board of Adjustment”. At Pp. 10 of the Standard Act, (**Appellee Township Appendix 0042**) it provided as follows:

“Appeals to the board of adjustment may be taken by **any person aggrieved** or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer.” [Emphasis supplied]

The decision of the Board of Adjustment could involve the reversing or affirming, wholly or partly, or being able to modify the order of the administrative officer made under the Zoning Act. In appealing to a court of record, the Standard Act provided:

Any person or persons, jointly or severally, **aggrieved** by any decision of the Board of Adjustment, or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified setting forth that such decision is illegal in whole or in part, specifying grounds of the illegality. [Emphasis supplied]

In 1943 the Michigan legislature passed the Township Zoning Act, P.A. 184 of 1943. (**Appellee Township Appendix 0061b – 0078b**). That now repealed legislation provided in MCL 125.290(2) by whom an appeal from a decision of a zoning official or body could be taken to the ZBA.

An appeal may be taken by a **person aggrieved** or by an officer, department, board, or bureau of the township, county or state. [Emphasis supplied] (**Appellee Township Appendix 0073b**).

As far as appealing from the decision of the Zoning Board of Appeals, that process was dictated by the now defunct MCL 125.293(a)(1).

The decision of the board of appeals rendered pursuant to Sec. 23 shall be final. However, a **person having an interest** affected by the zoning ordinance may appeal to the circuit court. [Emphasis supplied] (**Appellee Township Appendix 0074b**)

In 2006, the Michigan legislature passed the Michigan Zoning Enabling Act (MZEA), 2006 PA 110. The MZEA combined (and repealed) three earlier statutes (including P.A. 184 of 1943) which had enabled cities and villages; counties; and townships to adopt, enforce and address zoning ordinances and disputes.

A comparison of the relevant provisions of the Township Zoning Act (**Appellee Township Appendix 0061b – 0078b**) and the MZEA sheds light on the legislative intent in the adoption of the latter act. To effect the intent of the legislature is the primary goal of statutory interpretation.

The first step in ascertaining such legislative intent is to focus on the language of the statute itself. If the language is unambiguous, the legislature is presumed to have intended the meaning expressed in the statute. The words contained in the statute are the most reliable evidence of the legislature's intent and every phrase and clause should be given effect. *Petersen v. Magna Corp.*, 484 Mich. 300, 307, 773 N.W.2d 564, 567 (2009).

The repealed Township Zoning Act, MCL 125.290(2), permitted appeal initially to the ZBA only by a person aggrieved. (**Appellee Township Appendix 0073b**). The legislature continued the "person aggrieved" standard in the MZEA. MCL 125.3604(1) provides:

- (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or local unit of government.

The preservation of the procedural "aggrieved" standard to appeal to the ZBA from a zoning decision made by a zoning official or body from the 1943 to the 2006 statute establishes the deliberate legislative intent to maintain the "aggrieved" standard in the MZEA for initial appeal to the ZBA.

The comparison of the former statute and the MZEA in appeals of ZBA decisions to the circuit court is also revealing. In repealed MCL 125.293(a)(1) "..., a person having an interest affected by the zoning ordinance" was permitted appeal to the court. (**Appellee Township Appendix 0074b**). However, in the MZEA the more expansive "affected by" standard was abandoned in favor of the more stringent "aggrieved" standard. "A party aggrieved by the decision may appeal to the circuit court...". (MCL 125.3605) The legislature intentionally adopted the stricter "aggrieved" standard for appeals from the decision of a ZBA to the circuit court consistent with the "aggrieved" standard to seek initial review by the zoning board of appeals. (MCL 125.3604).

Township Appellees argue that the legislative change from the broader “interest affected by” standard to the more stringent “aggrieved” standard cannot be ignored. Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory. In cases of undefined terms, courts may refer to dictionary definitions. *Koontz v. Ameritech Servs., Inc.*, 466 Mich. 304, 312, 645 N.W.2d 34, 39 (2002).

There is no definition of the term “aggrieved” in the earlier Township Act, nor in the MZEA. Black’s Law Dictionary defines aggrieved party/person as follows:

**Aggrieved party.** (17c) A party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. Also termed *party aggrieved*; *person aggrieved*. PARTY, Black's Law Dictionary (11th ed. 2019)-\*8

Black’s Law Dictionary equates person aggrieved and aggrieved party.<sup>1/</sup>

The term standing is often used to describe the “ticket of admission to the forum in which a party’s rights as against another, \* \* \* are determined.” 4 *Rathkopf’s* The Law of Zoning and Planning, Chapter 63, §63:2. Without the necessary “ticket of admission”, one cannot be a plaintiff in an action at law, in equity, or for declaration of rights, or a petitioner in a proceeding. *Id.* Allegations of damages are necessary in order to qualify one applying for relief to present the controversy for adjudication. Typically, there are two types of standards for standing (ticket of admission). *Id.*

In the case at bar, the Michigan legislature relatively recently reaffirmed the statutory “aggrieved” standard for applicants seeking relief in the ZBA from a zoning official or zoning body decision. MCL 125.3604. The Appellee ZBA received public comment from those arguing

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<sup>1/</sup> The distinction or lack thereof between “person” and “party” is addressed later in this brief.

that the SDCA was a “person aggrieved” and those challenging that claim. It voted on two occasions to find that the SDCA did not have standing. (**Appellee Township Appendix 0005b – 0008b and Appendix 0016b – 0018b**). The ZBA found that the SDCA’s “ticket of admission” was not acceptable. A review of the resolutions adopted by the Appellee ZBAs reveals that the rationale used to reject the SDCA’s appeal was in large measure prescient of the *Olsen* Court panel’s analysis. Notably, *Olsen* was not published until after each of the ZBA decisions.

Township Appellees argue that the Michigan legislature’s adoption of the “person aggrieved” and “party aggrieved” thresholds echoed what was at the time (and continues to be) the state of the law in Michigan concerning zoning board of appeal applications for hearing from decisions made by zoning officials and appeals from zoning board of appeals rulings to the circuit court. In *Unger v. Forest Home Township*, 65 Mich. App. 614, 237 N.W. 2d 582 (1975), the Michigan Court of Appeals addressed the claim of appellant John Unger who had filed an action in the Antrim County Circuit Court challenging the issuance of a building permit for the construction of a 50 unit condominium apartment complex on a lake in which Unger owned real estate. The developer of the apartment complex, Ware Real Estate, joined the action as an intervening party appellee. The circuit court judge granted summary judgment against appellant Unger and he appealed to the Michigan Court of Appeals. The Court of Appeals affirmed and held that Unger was not a proper party to bring the suit and that the circuit court was correct in dismissing the claim brought by Unger. The Court arrived at its determination based upon the prior decision of the Court of Appeals in *Joseph v. Grand Blanc Township*, 5 Mich. App. 566, 147 N.W. 2d 458 (1967). Joseph was an elector in Grand Blanc Township. He appeared at a township board meeting at which the township board passed a zoning ordinance which rezones some property for a commercial building. Relying upon a statutory provision which allowed electors to

vote at the annual township meeting, elector Joseph attempted to vote against the zoning ordinance change. The board did not count Joseph's vote and he filed suit in the trial court. The trial court held Joseph was not entitled to relief since his property was located about one mile from the rezoned property and he did not allege any special damage. *Id.* at 569. In affirming the trial court dismissal of Joseph's challenge to the township board's rezoning decision, the Court of Appeals relied upon its even earlier decision in *Marcus v. Busch*, 1 Mich. App. 134, 136, 134 N.W. 2d 498, 499 (1965). The *Joseph* court stated:

This Court has recently held in *Marcus v. Busch* (1965), 1 Mich.App. 134, 136, 134 N.W.2d 498, 499 that '(t)he consensus of authority throughout the country is that to have any status in court to attack the actions of a zoning board of appeals, the party must be an aggrieved party, and said party must be more than a resident of the city.'

In order to maintain this action, plaintiff, **a non-abutting property owner, must allege and prove that he has suffered a substantial damage which is not common to other property owners similarly situated.** *Victoria Corporation v. Atlanta Merchandise Mart, Inc.* (1960), 101 Ga. App. 163, 112 S.E.2d 793. See comment in 64 MLR 1070, 1079. [Emphasis supplied] *Joseph v. Grand Blanc Twp.*, 5 Mich. App. 566, 570-71, 147 N.W.2d 458, 459-60 (1967)

The *Joseph* panel relied in part upon the decision of *Victoria Corp. v. Atlanta Merchandise Mart, Inc.*, 101 Ga. App. 163, 112 S.E. 2d 793 (1960).<sup>2/</sup> The *Unger* panel went on to find at 617:

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<sup>2/</sup> In *Victoria Corp.*, the Court of Appeals of Georgia held:

In order for a person to have a substantial interest in a decision of the Board of Adjustment, he must show that his property will suffer some special damages as a result of the decision of the board complained of, which is not common to other property owners similarly situated. His interest must be more than merely that of a taxpayer of the municipality seeking 'to have a strict enforcement of zoning regulations for the benefit of the general welfare of the community or general enhancement of property values.' He '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.' \*164 *Blumberg v. Hill, Sup.*, 119 N.Y.S.2d 855, 857. A property owner has no strictly private right in the enforcement of zoning ordinances unless such rights are expressly conferred by statute. *Circle Lounge & Grille, Inc. v.*

Nor is proof of general economic and aesthetic losses sufficient to show special damages, *Joseph v. Grand Blanc Twp., supra*; *City of Greenbelt v. Jaeger*, 237 Md. 456, 206 A.2d 694 (1965); *Downey v. Incorporated Village of Ardsley*, 152 N.Y.S.2d 195 (Sup.Ct., 1956), Aff'd, 3 A.D.2d 663, 158 N.Y.S.2d 306 (1957). Consequently, when the plaintiff alleges facts showing only those type of damages, summary judgment against him is proper, *Joseph v. Grand Blanc Twp., supra*. *Unger v. Forest Home Twp.*, 65 Mich. App. 614, 617, 237 N.W.2d 582, 584 (1975)

As a practical matter appellant Unger alleged that he owned real property in the township bordering on the same property as to be developed. He established no special damages. The court commented that the only inference that one could draw from the facts presented by Unger were the traffic on the lake might increase and that property values in general for lake property might go down. The court concluded that such allegations were insufficient to prevent summary judgment for lack of standing. *Id.* at 618. The *Unger* and *Joseph* decisions of the Court of Appeals were followed by the cases of *Village of Franklin v. City of Southfield*, 101 Mich. App. 554, 300 N.W. 2d 634 (1980) and *Western Michigan University Board of Trustees v. Brink*, 81 Mich. App. 99, 265 N.W. 2d 56 (1978) which favorably relied upon the decisions of the *Unger* and *Joseph* courts. In the case of *Village of Franklin*, a very similar set of facts presented to the Court of Appeals. The Southfield City Council had approved a site plan for a proposed residential and commercial development and authorized the issuance of building permits. The plaintiffs Village of Franklin and Lilyan Victor appealed to the Southfield Board of Zoning Appeals challenging the approval of the Southfield City Council. The zoning board of appeals, acting on the advice of the city attorney that the ZBA lacked jurisdiction, refused to hear the appeal. The plaintiffs then filed in circuit court seeking injunctive relief and an order requiring the board to hear their appeal. The circuit court held that the plaintiffs failed to allege and prove special damages and lacked standing

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*Board of Appeal of Boston*, 324 Mass. 427, 86 N.E.2d 920. *Victoria Corp. v. Atlanta Merch. Mart, Inc.*, 101 Ga. App. 163, 163–64, 112 S.E.2d 793, 795 (1960)

under the Zoning Enabling Act. The court relied upon the decision of *Brink, supra*, because appellant Victor was a landowner adjoining the property which the City of Southfield rezoned.

The court quoted favorably from the *Brink* decision at Pp. 557-558:

“Even if this issue were preserved for review we would be little impressed by plaintiff’s argument. Our research has revealed no Michigan case on point; foreign jurisdictions split on the question. See Comment, Standing to Appeal Zoning Determinations: The ‘Aggrieved Person’ Requirement, 64 Mich. L. Rev. 1070, 1079 (1966), and cases therein cited; 4 Anderson, American Law of Zoning (2d ed.), 25.18, pp. 231-237; 2 Rathkopf, The Law of Zoning and Planning (3d ed.), pp. 63-21 to 63-23. See also 1 Yokley, Zoning Law and Practice (2d ed.), s 172, pp. 427-434. **We see little reason for abandoning the general rule that '(t)hird parties will be permitted to appeal to the courts as persons aggrieved if they can "show that \* \* \* their property will suffer some special damages as a result of the decision of the board complained of, which is not common to other property owners similarly situated"** . Comment, 64 Mich. L. Rev., supra, at 1078-1079. (Footnotes and citation omitted.) If adjoining landowners could suffer such special damages, then they can easily plead them. If the board’s decision does not \*\*636 pose a threat of unique harm to the neighbor, then the courts would be ill-served by a rule allowing his suit.” *Vill. of Franklin v. City of Southfield*, 101 Mich. App. 554, 557–58, 300 N.W.2d 634, 635–36 (1980) [Emphasis supplied]

The decisions of *Joseph, Unger, Brink*, and *Village of Franklin* were the established cases on the issue of “aggrieved” status in 2006 when the Michigan legislature chose to combine the separate zoning enabling acts, into the MZEA, MCL 125.3101 et seq.<sup>3/</sup> The fact that the Michigan legislature chose to reaffirm the aggrieved requirement for contesting matters to the ZBA and adopt it for appealing a ZBA decision to the circuit court is dispositive of the statutory “ticket of

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<sup>3/</sup> Appellant refers to the case of *Brown v. East Lansing Zoning Board of Appeals*, 109 Mich. App. 688, 695-696, 311 N.W. 2d 828 (1981). There, the Court of Appeals noted that after the decision of *WMU v. Brink, supra*, the legislature amended the state Zoning Enabling Acts permitting “. . . a person having an interest affected by the zoning ordinance may appeal to the circuit court.” MCL 325.585(6) *repealed*. Consequently, the decision by the Court of Appeals in *Brown* dealt with the now repealed standard, which did not require aggrieved status. Therefore, since the Court of Appeals was dealing with a different statutory language, *Brown* should not be considered by the Court in making its decision in this instant case.

admission” requirement for zoning appeals. In *Bush v. Shabahang*, 484 Mich. 156, 772 N.W. 2d 272 (2009) at Pp. 167-168 this Court stated:

Moreover, courts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute. Finally, an analysis of a statute's legislative history is an important tool in ascertaining legislative intent.

The reaffirmation of the “aggrieved” standard for appeals to the ZBA and adoption of the same standard for appeals to the circuit court leaves no room for argument regarding legislative intent.

The first major decision after the MZEA was passed involving the “aggrieved” standard came in the case of *Olsen v. Chikaming Township* 325 Mich. App. 170, 924 N.W.2d 889 (July 3, 2018) A review of the *Olsen* analysis is instructive. In 1957 a subdivision was platted in Chikaming Township, Berrien County. The lots were small, less than 10,000 square feet. After platting, the township adopted a zoning ordinance requiring that all lots, to be buildable, would have to have a minimum of 20,000 square feet. The zoning ordinance provided that at the time of the adoption of the zoning ordinance if there were any lots that were nonconforming and were owned by the same entity and had continuous frontage, they would be considered as a single lot. In 1996, Lots 6 and 7 were considered as a combined lot but still failed to meet the 20,000 square and were denied a variance. Lot 7 was foreclosed and sold for nonpayment of taxes in 2011 followed by Lot 6 which met the same fate in 2013. Lot 6 was purchased by Jude & Reed, LLC. It sought a variance to allow it to build on the single Lot 6 even though its area was roughly half of the required 20,000 square foot minimum. The LLC’s argument was that the property would otherwise be of no value and, besides, it had been platted before the zoning ordinance had been passed meaning that it qualifies as a pre-existing, nonconforming lot.

The Appellant LLC appealed to the ZBA which scheduled a public hearing and notified property owners within 300 feet of Lot 6 pursuant to MCL 125.3103. At the public hearing some of the notified owners argued against the ZBA granting any variances. The ZBA voted to approve the variance request. The property owners appealed the ZBA decision to the circuit court which permitted the LLC to intervene. The ZBA, joined by the LLC, moved to dismiss the court action arguing that the proximate property owners lacked standing to challenge the ZBA's decision. They argued that only an "aggrieved" party could appeal the ZBA's decision and that the nearby property owners, were not aggrieved because they were unable to show that they had suffered special damages. The trial court ruled that the nearby property owners had standing to appeal based upon the notice requirements of MCL 125.3103. The trial court judge reversed the decision of the ZBA. The Township appealed to the Court of Appeals which analyzed the "standing"/"aggrieved party" issues.

The Court of Appeals commenced its statutory analysis by differentiating standing from "parties aggrieved by the decision" as provided by the MZEA, MCL 125.3605. The Court of Appeals then referred to a rule regarding the interpretation of statutory language that previously has been interpreted by the courts.

The relevant statutory language provides that a "party aggrieved by the decision [of the ZBA] may appeal to the circuit court ...." MCL 125.3605. We do not assume that language chosen by the Legislature was inadvertent, *Bush v. Shabahang*, 484 Mich. 156, 169, 772 N.W.2d 272 (2009), and **when interpreting statutory language that previously has been subject to judicial interpretation**,<sup>4</sup> we presume that the Legislature used the words in the sense in which they previously have been interpreted, *People v. Wright*, 432 Mich. 84, 92, 437 N.W.2d 603 (1989); *People v. Powell*, 280 Mich. 699, 703, 274 N.W. 372 (1937). [Emphasis supplied]

As previously discussed the party aggrieved language had previously been subject to judicial interpretation.<sup>4/</sup> The Court of Appeals correctly concluded that the legislature chose to amend a provision of the Township Zoning Act to incorporate the then existing aggrieved case law when it changed the threshold of appeal from a ZBA decision to the circuit court from “. . . a person having an interest affected by the zoning ordinance. . .”<sup>5/</sup> to party aggrieved. In general, the prior “aggrieved” decisions provided the guidance that neighboring landowners claiming increased traffic volume, loss of aesthetic value or general economic loss were found to have not established special damages to achieve an aggrieved party status because those generalized concerns are insufficient to demonstrate harm different from that suffered by the people in the community generally. (*Olsen*, at 183).

The core of the *Olsen* “aggrieved” analysis in the context of the timeframe of 2018 is captured in the following appearing at 185:

Given the long and consistent interpretation of the phrase “aggrieved party” in Michigan zoning jurisprudence, we interpret the phrase “aggrieved party” in § 605 of the MZEA consistently with its historical meaning. Therefore, to demonstrate that one is an aggrieved party under MCL 125.3605, a party must “allege and prove that he [or she] has suffered some special damages not common to other property owners similarly situated[.]” *Unger*, 65 Mich. App. at 617, 237 N.W.2d 582. Incidental inconveniences such as increased traffic congestion, general aesthetic and economic losses, population increases, or common environmental changes are insufficient to show that a party is aggrieved. See *id.*; *Joseph*, 5 Mich. App. at 571, 147 N.W.2d 458. Instead, there must be a unique harm, dissimilar from the effect that other similarly situated property owners may experience. See *Brink*, 81 Mich. App. at 103 n. 1, 265 N.W.2d 56. Moreover, mere ownership of an adjoining parcel of land is insufficient to show that a party is aggrieved, *Village of Franklin*, 101 Mich. App. at 557–558, 300 N.W.2d 634, as is the mere entitlement to notice, *Brink*, 81 Mich. App. at 102–103, 265 N.W.2d 56

In the penultimate paragraph of its Opinion, the unanimous Court of Appeals panel stated at 194:

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<sup>4/</sup> See *Unger*, *Village of Franklin*, *Joseph*, and *Brink*.

<sup>5/</sup> MCL 125.293(a) (*repealed*) (**Appellee Township Appendix 0074b**).

But we reiterate that the inquiry here involves not an application of concepts of standing generally, but a specific assessment of whether, under the MZEA, appellees have established their status as aggrieved parties empowered to challenge a final decision of the ZBA. We conclude that appellees are not parties “aggrieved” under MCL 125.3605, having failed to demonstrate special damages different from those of others within the community.

After the Olsen panel reversed the decision of the circuit court, the opposing neighbors sought leave to appeal to this Court which was denied: “. . . because we are not persuaded that the questions presented should be reviewed by this Court.” *Olsen v. Jude & Reed, LLC*, 503 Mich. 1018, 925 N.W. 2d 850 (Mem) (April 30, 2019).

It is against the above analysis that the SDCA in its Application to this Court “. . . suggests that this case involves a legal principle of major significance to the State’s jurisprudence and is a clearly erroneous decision causing material injustice” and requests this Court to “. . . opine on this matter to provide practitioners with guidance and to correct the lower Court’s errors.” The Township Appellees, relying on the unanimous decision of the Court of Appeals in *Olsen*, contend that the “party aggrieved” standard of MCL 125.3605 (as well as the “person aggrieved” standard of MCL 125.3604) require a party (or person) to show some special damages not common to other property owners not similarly situated. The *Olsen* analysis of the law is not clearly erroneous and does not cause a material injustice. The *Olsen* panel abided by the rules of statutory interpretation in performing its analysis. The Appellant contends that there is no justification in the language of the MZEA to artificially limit potential appellants to only landowners. (**Appellant Brief, Pp. 8-9**). The Appellant’s Application for Leave should be denied based on MCR 7.303(B).

The SDCA “. . . respectfully suggests that *Lansing Schools* standard articulated by this Court matches the plain language of the statute [MZEA] and also promotes consistency amount different types of claims that may be made in the zoning context.” (**Appellant Brief, Pp. 11-12**). That argument is flawed. The Appellant’s suggestion for application of the *Lansing* standard to

this case ignores the fact that the Revised School Code at issue in *Lansing* did not provide a standing threshold. In passing the MZEA the Michigan Legislature provided a specific standing requirement of “party aggrieved” (“person aggrieved”). MCL 125.3604; MCL 125.3605. The Township Appellees contend that in order to apply the *Lansing* standard to the implementation of the MZEA, this Court would have to ignore the unambiguous provisions of the MZEA, the case law of this state and the rules of statutory construction.

In *Lansing Schools Education Association v. Lansing Board of Education*, 487 Mich. 349, 792 N.W. 2d 686 (2010) this Court addressed the issue of standing. The issue of the case was whether teachers would have standing to sue a school board when it allegedly failed to comply with its statutory duty to expel students that had allegedly physically assaulted teachers. There were four teachers identified who claimed they were physically assaulted in the classroom with each incident being reported to a school administrator. Each of the students were suspended but not expelled. The teachers relied upon the mandatory duty imposed on the school board under the Revised School Code, MCL 380.1311a(1), to expel students who physically assaulted a teacher. The teachers sought a writ of mandamus and declaratory and injunctive relief. The defendant board of education moved for summary disposition arguing that the plaintiff teachers lacked standing, asserting that the statute in question did not create a private cause of action and because the school district did not abuse its discretionary authority to determine that none of the students had committed an assault as claimed by the teachers. The trial court granted the dismissal of the teachers’ claim. The Court of Appeals affirmed finding that the teachers lacked standing as defined in *Lee v. Macomb County Board of Commissioners*, 464 Mich. 726, 629 N.W. 2d 900 (2001) and later extended in cases such as *National Wildlife Federation v. Cleveland Cliffs Iron Company*, 471 Mich. 608, 684 N.W. 2d 800 (2004). This Court granted the teachers’ application for leave to

appeal and proceeded to analyze the standing issue. This Court concluded that the purpose of the standing doctrine was to assess whether the litigant's interest in the issues being disputed was sufficient to "insure sincere and vigorous advocacy". *Detroit Firefighters Association v. Detroit*, 449 Mich. 629 633, 527 N.W. 2d 436 (1995). The Court commented that the doctrine of standing had deep roots in Michigan law and that prior to the *Lee* decision it remained a limited, prudential doctrine. In reviewing the history of the standing doctrine, this Court stated at Page 359 of its decision:

If a party had a cause of action under law, then standing was not an issue. But **where a cause of action was not provided at law**, the Court, in its discretion, would consider whether a litigant had standing based on a special injury or right or substantial interest that would be detrimentally affected in a manner different from the citizenry at large, or because, in the context of a statutory scheme, the Legislature had intended to confer standing on the litigant. *Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 359, 792 N.W.2d 686, 692 (2010) [Emphasis supplied]

This Court rejected the standing doctrine that it had adopted in *Lee v Macomb County Board of Commissioners*, 464 Mich. 726, 629, N.W. 2d 900 (2001) and extended in *National Wildlife Federation v. Cleveland Cliffs Iron Company*, 471 Mich. 608, 684, N.W. 2d 800 (2004). In rejecting the federal standard adopted by *Lee/Cleveland Cliffs* this Court stated:

"We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. \* \* \* Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing." *Lansing* at 372.

Appellant contends that the standing of the SDCA here should be determined in accordance with the limited prudential doctrine of standing espoused in its *Lansing* decision. Township Appellees disagree. Standing for zoning appeals to a board of appeals and to the circuit court are specifically identified in MZEA MCL 125.3604 and 125.3605. The "cause of action" being pursued by SDCA is governed by the MZEA, which unlike the Revised School Code provides a specific standing

requirement, i.e. “party” (or “person”) aggrieved standard. Nowhere in the *Lansing* decision does this Court endorse the abandonment of the dictates of unambiguous statutory provisions to permit the application of the limited prudential standard. For this Court to rule in that fashion would amount to the Court invading the province of the legislature. The Appellant’s Application for Leave to Appeal should be denied.

Appellant argues that the *Olsen* panel’s application of the “aggrieved” standard places Michigan as an outlier in comparison with other states. Township Appellees posit that the law in the State of Indiana is very consistent with the common law and statutory analysis in *Olsen*. In a case where the facts are eerily similar to those presented in this instant case, the Court of Appeals of Indiana decided the case of *Liberty Landowners Association, Inc. v. Porter County Commissioners*, 913 N.E. 2d 1245 (2009) (**Appellee Township Appendix 0079b – 0086b**). The *Liberty Association* was a voluntary not-for-profit community association that owned no property and paid no taxes. Its stated purpose at the time it was organized in 1983 was to protect and preserve property including its natural and aesthetic values. Its articles of incorporation provided that it was intent on promoting the preservation of the natural state of property, both real and personal, insure the orderly development of the same for the general public. *Id.* at 1248. In 2007, Northwest Health requested an amendment of a zoning classification so that certain land in Liberty Township could be converted from residential to institutional. This would permit Northwest to construct a hospital. Liberty Association argued at the public hearing in Porter County that the conversion of the area in question from residential to institutional zoning would be contrary to the Porter County development ordinances. The Porter County Commissioners approved the amendment and Liberty filed a complaint for declaratory relief in the trial court. Northwest joined in the litigation and filed a motion to dismiss the Liberty complaint for lack of standing. The trial

court determined that Liberty lacked standing to bring the action since it owned no real estate and there was no evidence that the Liberty Landowners group somehow suffered a pecuniary loss. In affirming the decision of the trial court dismissing Liberty’s claim, the Court of Appeals of Indiana quoted liberally from the Indiana Supreme Court decision in *Bagnall v. Town of Beverly Shores*, 726 N.E. 2d 782, 786 (Ind. 2000) wherein the Supreme Court of Indiana stated as follows:

A person must be “aggrieved” by a board of zoning appeals's decision in order to have standing to seek judicial review of that decision. Ind.Code § 36–7–4–1003(a); *see also Union Township Residents Ass'n v. Whitley County Redevelopment Comm'n*, 536 N.E.2d 1044 (Ind.Ct.App.1989). To be aggrieved, the petitioner must experience a “**substantial grievance**, a denial of some personal or property right or the imposition ... of a burden or obligation.” *Id.* at 1045. The board of zoning appeals's decision must infringe upon a legal right of the petitioner that will be “enlarged or diminished by the result of the appeal” **and the petitioner's resulting injury must be pecuniary in nature.** *Id.* “[A] party seeking to petition for certiorari on behalf of a community must show some special injury other than that sustained by the community as a whole.” *Robertson v. Board of Zoning Appeals, Town of Chesterton*, 699 N.E.2d 310, 315 (Ind.Ct.App.1998). *Liberty Landowners Ass'n, Inc. v. Porter Cty. Comm'rs*, 913 N.E.2d 1245, 1250 (Ind. Ct. App. 2009) [Emphasis supplied]

In *Ohio Contract Carriers Association, Inc. v. Public Utility Commission*, 140 Ohio St. 160, 42 N.E. 2d 758 (1942) the Supreme Court of Ohio held an “aggrieved” party is one whose interest in the subject matter of the litigation is “immediate and pecuniary, and not a remote consequence of the judgment.” *Id.* at 161. (**Appellee Township Appendix 0087b – 089b**).

In Wisconsin, the legislature has specifically defined a “person aggrieved” in W.S.A. 68.06. (**Appellee Township Appendix 0090b**) The definition is more akin to the standard for appeal from the decision of a ZBA contained in the now repealed Township Zoning Enabling Act MCL 125.290. (**Appellee Township Appendix 0073b**). Michigan’s “aggrieved” standard is not that out of keeping with its neighboring state to the west. At the time of the adoption of the MZEA in 2006 the Michigan legislature considered and rejected the less restrictive standing that had been previously in effect. MCL 125.290 [repealed] (**Appellee Township Appendix 0073b**)

It falls on this Court to interpret the MZEA and give effect to the intent of the legislature. *Peterson, supra* at 307. A person or party must establish that it or they must have been aggrieved by a decision of a public body, such as the Saugatuck Township Planning Commission or the Saugatuck Township Zoning Board of Appeal in order to seek review of the decision of the public body at the ZBA level and at the circuit court level. MCL §125.3604 and MCL §125.3605. A party aggrieved has been defined by the Michigan case law in the *Unger, Joseph, Brink and Village of Franklin* cases and has been recently reaffirmed by *Olsen*. Two of the three states bordering Michigan have adopted similar standards. The third, Wisconsin, defines a party aggrieved in broader language, specifically rejected by the Michigan legislature with the adoption of the MZEA. Analysis of a statute's legislative history is an important tool in ascertaining legislative intent. *Bush, supra*, at 168. Where there is no clear legislative intent to alter the common law, the court will interpret the statute as having the same meaning as under the common law. *Pulver v. Dundee Cement Co.*, 445 Mich. 68, 75, 515 N.W.2d 728 (1994) cited in *Ford Motor Co. v. City of Woodhaven*, 475 Mich. 425, 439, 716 N.W.2d 247 (2006).

The Appellant's Application for Leave to Appeal should be denied.

**B. Does the meaning of "person aggrieved" in MCL 125.3604(1) differ from that of "party aggrieved" in MCL 125.3605 and if so what standard applies?**

The Appellees Township answer as to meaning difference	"NO"
The Appellee Developer will answer as to meaning difference	"NO"
The Michigan Court of Appeals did not address	
The Appellant answers as to meaning difference:	"YES"
This Court should answer to meaning difference:	"NO"
The Appellees Township answer aggrieved standard	"YES"
The Appellee Developer will answer aggrieved standard	"YES"
The Michigan Court of Appeals answered aggrieved standard	"YES"
The Appellant answers as to aggrieved standard:	"NO"
This Court should answer to aggrieved standard:	"YES"

**In defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme** (citing *Herman v. Berrien County*, 481 Mich. 352, 366, 750 N.W. 2d 570, 579 (2008) quoting *Bailey v. United States*, 516 U.S. 137, 145 (1995)). A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained (citing *Wayne Co. v. Auditor General*, 250 Mich. 227, 229, N.W. 911 (1930)). Finally, the statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme (*Id.*). *Potter v. McLeary*, 484 Mich. 397, 411, 774 N.W.2d 1, 8 (2009) [Emphasis supplied]

For the sake of convenience, the applicable portions of MCL 125.3604 and MCL 125.3605 are repeated.

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. \* \* \* Mich. Comp. Laws Ann. § 125.3604

Sec. 605. The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606. Mich. Comp. Laws Ann. § 125.3605

The second question posed by this Court in its Order of May 8, 2020 contains two parts. Part One inquires whether the meaning of “person aggrieved” differs from that of “party aggrieved”. Part Two inquires that if the the terms differ, what standard (of appeal) applies. In response to part one of this Court’s inquiry, the Township Appellees contend that the terms “person aggrieve” and “party aggrieved” are not substantively different. The Township, noting no substantive difference in the meanings of person and party contend that the “aggrieved” standard applies and that any other interpretation of the Sections 604 and 605 would obviate the intent of the Legislature. Part Two of this Court’s inquiry is unnecessary.

The MZEA defines person as follows at MCL 125.3102(q):

(q) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

There is no definition provided for the terms “party” or “aggrieved”.

The Township Appellees assert that any distinction between the terms “person” and “party” as used in the MZEA is procedural and not substantive. The MZEA defines a person broadly as broad as does Black’s Law Dictionary.

**Person** (13c) **1.** A human being. — Also termed *natural person*.  
PERSON, Black's Law Dictionary (11th ed. 2019)

In *Koontz v. Ameritech Services, Inc.*, 466 Mich. 304, 312, 645 N.W.2d 34, 39 (2002) this Court determined that courts must give effect to every word, phrase, and clause in the statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory. Undefined statutory terms are given their plain and ordinary meanings. In situations where terms are undefined, the court may consult dictionary definitions. (See also, *Oakland Co. Road Commissioners v. Michigan Property & Casualty Guaranty Association*, 456 Mich. 590, 604, 575 N.W.2d 751 (1998)).

In regard to the term “party”, the Black’s Dictionary provides in pertinent part:

**Party** (13c) **1.** Someone who takes part in a transaction <a party to the contract>.  
\* \* \*

**2.** One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment; litigant <a party to the lawsuit>.\* \* \* PARTY,  
Black’s Law Dictionary (11<sup>th</sup> ed. 2019)

The Township Appellees contend that the use of the term “person” in Section 604 of the MZEA is deliberately broader because at that point in time when an application is made to the ZBA for contesting a decision made by a zoning administrator, planning commission or board of trustees in reference to a zoning issue, no determination has been made at that point whether that person truly has been aggrieved. Once a determination is made by the ZBA that the person applying for relief has (standing) i.e., been aggrieved and has the right to have his/its concern addressed by the ZBA, then that person becomes a party or a litigant. That party or litigant then has the right to

appeal to the circuit court if aggrieved by the ZBA's decision. MCL 125.3605. The distinction between "person" and "party" is procedural, not substantive. The procedural, as opposed to substantive, argument is supported by the definition of aggrieved party in Black's Law Dictionary.

**Aggrieved party.** (17c) A party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. — Also termed *party aggrieved*; *person aggrieved*. PARTY, Black's Law Dictionary (11th ed. 2019)

Aggrieved party, party aggrieved and person aggrieved, are synonymous.

The Township Appellees contend that the terms "person" and "party" cannot be separated from the accompanying adjective "aggrieved" in the analysis of sections 604 and 605 of the MZEA. The statute requires that the person be aggrieved to appeal to the ZBA from a decision of a township board or official. Once that aggrieved status is achieved and the ZBA makes a decision, that aggrieved person then becomes an aggrieved party (as well as an aggrieved person) who has a right to appeal to the circuit court pursuant to MZEA Section 605. The word "aggrieved" must be read as an adjective defining and limiting the kind of person or kind of party that is given the right to proceed by the MZEA.

Further supporting the Township Appellees' premise that there is no substantive distinction between person aggrieved and party aggrieved, is the principle that when a statute deals with the same subject matter and uses a common law term and there is no clear legislative intent to alter the common law, the court will interpret the statute as having the same meaning as under the common law. *Pulver, supra* at 75 cited in *Ford Motor Co, supra* at 439. As addressed earlier in this brief, the definition of aggrieved person/party in Michigan common law is established by the appellate decisions in *Unger, Joseph, Brink* and *Village of Franklin*. When viewed in light of the common law definition of aggrieved, the terms person aggrieved and party aggrieved are not substantively distinct.

Part Two of this Court’s question infers that if the terms “person aggrieved” and “party aggrieved” are different then what standard applies. The unambiguous statement of the Legislature in Sections 604 and 605 of the MZEA is the imposition of the required standing threshold of “aggrieved”. The “ticket of admission” is the establishment of the facts to support the “aggrieved” as defined by the *Olsen* court derived from the identified cases and the historical background of zoning in the State of Michigan. The fact that the term “person” is broader in definition than the term “party” is an inconsequential factor. Appellant, SDCA, is unable to establish that it was aggrieved in keeping with the common law definition of that term. *Olsen, supra*

Since the Township Appellees contend that there is no substantive distinction between “person aggrieved” and “party aggrieved” there is no need to address the second part of this Court’s second question.

This Court should affirm the Court of Appeals’ rejection of the SDCA appeal in this case.

**C. Did the Court of Appeals err in affirming the Allegan Circuit Court dismissal of Appellant’s appeals from the decisions of the Saugatuck Township Zoning Board of Appeals?**

The Appellees Township answer:	“NO”
The Appellee Developer will answer:	“NO”
The Appellant answers:	“YES”
This Court should answer:	“NO”

In addressing the controversy in this case the Court of Appeals accurately stated the standard of review when it concluded unanimously that a party’s right to appellate review of a decision by a ZBA does not turn on traditional principles of standing, but instead on whether the party is “aggrieved” by the ZBA’s decision within the meaning of MCL 125.3605. The Court also accurately recited the questions of statutory interpretation reviewed de novo, relying on *Michigan Association of Homebuilders v. City of Troy*, 504 Mich. 204, 934 N.W.2d 713 (2019). The Court of Appeals’ denial of SDCA’s request for relief, it is not surprising that the panel of judges relied

heavily on the recent Court of Appeals’ decision in *Olsen v Chikaming Township, supra*.<sup>6/</sup> In fact, the Appeals Court was obligated to follow the *Olsen* analysis given MCR 7.215(C)(2). In addressing the controversy in this case the Court of Appeals accurately stated the standard of review when it concluded unanimously that a party’s right to appellate review of a decision by a ZBA does not turn on traditional principles of standing, but instead on whether the party is “aggrieved” by the ZBA’s decision within the meaning of MCL 125.3605.

The Court of Appeals in *Olsen, supra* went to considerable lengths to distinguish the facts and law presented in the *Lansing* case from those same factors present in the *Olsen* case. As the Court of Appeals in this instant case determined, the Supreme Court in *Lansing* held that a party may have standing by legislative grant or “if the litigant has a special injury or right or a substantial interest that will be detrimentally affected in manner different from the citizenry at large. *Lansing, supra* at 372; *Olsen, supra* at 192, *Saugatuck Dunes Coastal Alliance v. Saugatuck Township, Saugatuck Township Zoning Board of Appeals, and North Shores of Saugatuck, LLC*, unpublished (August 21, 2019) (**Appellee Township Appendix 0029b – 0034b**). In *Lansing* there was no legislative grant of standing. In *Olsen* and in this case there is a legislative grant of standing—“aggrieved” status.

The *Lansing* case dealt with the Revised School Code provision that required the expulsion of students who assaulted teachers from school. The School Code, however, did not articulate a standing provision. The Supreme Court took the opportunity presented by the circumstances in *Lansing* and used them to reinstate the limited prudential standard for standing. Appellant wishes this Court to hold that the standing prerequisites in *Lansing* be applied to the case at bar. It wishes

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<sup>6/</sup> The Honorable Michael F. Gadola sat on both panels, *Olsen v. Chikaming Township* and this instant case.

this Court to ignore the MZEA enacted standing requirement that a person or party be “aggrieved” before opposition to a decision by a zoning official or a ZBA can be contested. The *Olsen* Court of Appeals panel and the Appeals panel in this instant case correctly referred to the common law of aggrieved party status case law. *Pulver, supra; Ford, supra*. The Appeals Court in this case was aware that this Court refused leave to appeal from the Court of Appeals’ decision because it was “. . . not persuaded that the questions presented should be reviewed by this Court.” *Olsen v. Jude & Reed, LLC*, 503 Mich. 1018 (April 30, 2019).

The Court of Appeals opinion in this instant case followed the *Olsen* analysis when it concluded in reliance upon *Olsen* that: “A party seeking relief from a decision of the ZBA is not required to demonstrate ‘standings’ but instead must demonstrate to the Circuit Court acting in an appellate context that he or she is an ‘aggrieved’ party.” *Olsen*, at 180-181; *Saugatuck Dunes, supra* at Page 4 (**Appellee Township Appendix 32b**).

In its analysis, Appellant attempts to blur the distinction between the limited prudential standard espoused in *Lansing* where there was no statutory standing articulated by the Revised School Code with the case at bar involving the MZEA which does provide a specific prerequisite to challenge the actions taken by a zoning official or the zoning board of appeals.

The SDCA challenges the conclusion reached by the Court of Appeals in *Olsen* and in this instant case that an aggrieved party has to establish special damages distinct from “other property owners similarly situated.” Appellant challenges the “shaky foundation on which the *Olsen*, *Unger*, and *Joseph* line of cases rests. (**Appellant Brief, Pp. 18**). In so doing the Appellant is requesting this Court to ignore the common law upon which the legislature relied to enact the MZEA and instead impose on the MZEA the limited prudential doctrine of standing which applies when legislative standing threshold is lacking. Appellant is requesting this Court to obviate the

MZEA standing provisions by eliminating the “aggrieved” requirement and its common law roots. Appellant is asking this Court to legislate. It is requesting this Court to ignore the principle that when a statute dealing with the same subject uses a common law term (here “aggrieved”) and there is no clear legislative attempt to alter the common law, this Court will interpret the statute as having the same meaning as under common law. *Ford, supra* at 439.

An analysis of the Court of Appeals in the decision it made regarding the SDCA request for review of the Circuit Court decisions reveals that the appellate court correctly followed the precedent set by *Olsen*. Unpublished decisions cited by Appellant in its brief should be disregarded. The decision of the Court of Appeals to deny SDCA leave to appeal should be affirmed.

Lastly, Township Appellees assert that even if this Court were to analyze this litigation under the standard proposed by Appellant/Applicant by allowing access to the ZBA or Circuit Court because the Appellant/Applicant has provided insufficient information that it has suffered damage different from “the public at large” an examination of the alleged damages sustained by the SDCA fails to establish any damage to the corporate entity different from damages that would be suffered by the general public.

The analysis adopted by the Court of Appeals in *Olsen*, and followed in this instant case is consistent with the law of Michigan. The decision of the Court of Appeals should be affirmed.

#### IV. CONCLUSION

Township Appellees assert that the party (and person) aggrieved standard set forth in Sections 604 and 605 of the Michigan Zoning Enabling Act require a party (or person) to show some special damages not common to other property owners similarly situated in order to have access to the zoning board of appeals or to the circuit court for review. The aggrieved standard

has been a fixture of zoning law since the inception of the Standard Act of 1924 and the adoption of the Township Zoning Act in 1943. Fourteen years ago, the Michigan legislature consolidated the Zoning Enabling Acts for each municipality classification into the MZEA which again reaffirmed the aggrieved standard. The aggrieved standard was defined to include that in order to maintain an action an owner must allege and prove a substantial damage which is not common to other property owners similarly situated. *Joseph, supra*, at 570-71. In *Unger*, the Court of Appeals endorsed the *Joseph* analysis and added that proof of general economic and aesthetic losses is not sufficient to show special damages. *Brink* and *Village of Franklin* decisions followed, further supporting the aggrieved standard in establishing Michigan case law interpreting the standard. In 2018 the Court of Appeals affirmed the aggrieved standard. Notably the Michigan legislature in 2006 rejected a more lenient appeal standard with the adoption of aggrieved standard in Section 605. Appellant seeks to have this Court abandon the longstanding aggrieved standard as described in *Joseph, Unger, Brink, and Village of Franklin* and adopt a more lenient standard based upon the limited prudential doctrine discussed by this Court in *Lansing*. Should this Court choose to accept Appellant's premise, it would necessarily foreclose the use of the "aggrieved" standard as defined by Michigan law in the MZEA. This would be contrary to the statutory interpretation rule espoused in *Pulver, supra* and *Ford, supra*.

Township Appellees contend that the distinction between the terms person and party are insignificant given the aggrieved requirement imposed on each. The more general term person applies to a larger population of individuals or entities that upon presentation of evidence that they are qualified as aggrieved, are granted access to the determinations to be made by a zoning board of appeals. (Section 604) Once the broader group qualifies to present their or its claims to the ZBA, they become a party which, if aggrieved by a decision of the ZBA would be entitled to appeal

to the higher court (Section 605). The distinction between person and party is procedural and not substantive. The adjective aggrieved as interpreted by the appellate courts establishes the standing “ticket of admission”<sup>7/</sup> for both person and party.

The decision of the Court of Appeals in this case which affirmed the dismissal of the appeals of the SDCA followed the detailed analysis carried out by the Court of Appeals in *Olsen*. The reversal of the Court of Appeals decision would be contrary to the rules of statutory interpretation. *Pulver, supra; Ford, supra*.

The Appellant has failed to present issues for this Court as required by MCR 7.303(B).

This Court should deny leave to appeal or affirm the decision of the Court of Appeals.

Respectfully submitted,

Dated: August 10, 2020

/s/ James M. Straub  
 James M. Straub (P21083)  
 Attorney for Appellees/Defendants Saugatuck  
 Township and Saugatuck Township Zoning  
 Board of Appeals

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<sup>7/</sup> *4 Rathkopf, supra.*