

STATE OF MICHIGAN  
IN THE SUPREME COURT

SAUGATUCK DUNES COASTAL  
ALLIANCE,

Appellant/Plaintiff,

v

SAUGATUCK TOWNSHIP;  
SAUGATUCK TOWNSHIP ZONING  
BOARD OF APPEALS; and NORTH  
SHORES OF SAUGATUCK, LLC,

Appellees/Defendants.

Supreme Court No. 160358  
Court of Appeals Nos. 342588, 346677  
Lower Court Case Nos. 2018-059598-AA,  
2017-058936-AA

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**APPELLANT SAUGATUCK DUNES COASTAL ALLIANCE'S  
REPLY IN RESPONSE TO APPELLEE TOWNSHIP'S SUPPLEMENTAL BRIEF**

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Appellant Saugatuck Dunes Coastal Alliance submits the following Reply to Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals’ (“Appellee Township”) Supplemental Brief.

**1. *Pulver v Dundee Cement and Ford Motor Co v City of Woodhaven* Provide a Useful Roadmap in this Case**

Citing *Pulver v Dundee Cement Co*, 778 Mich 68, 75; 515 NW2d 728 (1994), the Township asserts that “[w]here 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.” The Township’s recitation of the rule is incomplete. The court will interpret the statute as employing the common law definition, but only where the term “has acquired a peculiar meaning under the law.”<sup>1</sup> Thus, in this case, the Court must first determine that “party aggrieved” or “person aggrieved” has taken on a specific meaning in the law.

While there are a number of cases from this Court interpreting the term “aggrieved” along with “party” or “person,” none of them support the restrictive zoning test advocated for by the Township and embraced by the Court of Appeals.<sup>2</sup> Instead, these cases support the idea that a “litigant may have standing in this context if the litigant has a special injury or right, or substantial

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<sup>1</sup> *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 439; 716 NW2d 247 (2006).

<sup>2</sup> *In re Critchell's Estate*, 361 Mich 432, 450; 105 NW2d 417, 426 (1960) (Person not aggrieved when she “has no interest therein *either pecuniary or otherwise* and cannot be said to have been aggrieved by the order of the probate court”) (emphasis added); *In re Trankla's Estate*, 321 Mich 478, 482–83; 32 NW2d 715, 717–18 (1948), quoting *In re More's Estate*, 179 Mich 237, 244; 146 NW 319, 322 (1914) (“In legal acceptance a party is aggrieved by a judgment or a decree when it operates on his rights in property *or bears directly upon his interest*”) (emphasis added); *In re Snyder*, 328 Mich 277, 281; 43 NW2d 849, 850 (1950) (Aggrieved status is not limited only to those with a pecuniary interest in the outcome of a matter, where adopting parents were found to be aggrieved “since the order would terminate their parental rights under the adoption proceedings”); *In re Draime*, 356 Mich 368, 371–72; 97 NW2d 115, 117 (1959) (Petitioners were aggrieved parties under the statute where they “were adversely affected by the denial of the adoption order by the probate court”).

interest” in the matter.<sup>3</sup> There is no requirement to compare one’s interest to others that are “similarly situated” as advocated by the Township. To the contrary, these cases indicate that the terms “party aggrieved” or “person aggrieved” had not taken on a particular meaning beyond establishing that the person or party must establish some sort of unique harm or damage that they will suffer as a result of the zoning decision.

The MZEA was codified in 2006. At that time, this Court viewed “aggrieved party” as synonymous with the requirement to establish standing generally. The opinion in *Federated Ins Co v Oakland Co Rd Comm* explained that

standing refers to the right of a party plaintiff *initially* to invoke the power of the court to adjudicate a claimed injury in fact. In such a situation it is usually the case that the defendant, by contrast, has no injury in fact but is compelled to become a party by the plaintiff’s filing of a lawsuit. In appeals, however, a similar interest is vindicated by the requirement that the party seeking appellate relief be an ‘aggrieved party’ under MCR 7.203(A) and our case law.<sup>4</sup>

The decision in *Federated* was based on *Lee v Macomb Co Bd of Comm'rs* and the prior line of cases establishing a constitutional basis for standing.<sup>5</sup> While those cases were subsequently overruled by *Lansing Schools*,<sup>6</sup> They are relevant to understanding whether “party aggrieved” had developed an established meaning at the time of the MZEA’s adoption. None of the cases decided between *Lee* and *Lansing Schools* required a comparison of “similarly situated property owners” in order to establish standing as an aggrieved party. However, at least one did find that standing existed in a very similar situation to the case at hand. In *National Wildlife Federation v Cleveland Cliffs Iron Co*, the Court explained that standing was established where

Plaintiffs here provided affidavits from three individuals, members of their

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<sup>3</sup> *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686, 699 (2010).

<sup>4</sup> *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290–92; 715 NW2d 846, 850 (2006).

<sup>5</sup> *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 729; 629 NW2d 900, 902 (2001); *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004).

<sup>6</sup> *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich at 378.

organizations who reside near the mine, who alleged they bird-watched, canoed, bicycled, hiked, skied, fished, and farmed in the area, they plan to continue to do so as long as the area remains unspoiled, and they are ‘concerned’ that the mine expansion will irreparably harm their recreational and aesthetic enjoyment of the area. One affiant also alleged that his well, on property adjacent to the mine, was almost dry and he had to construct a new, deeper well due to the local aquifer dropping too low. He alleged this was because of defendants' mining activities.<sup>7</sup>

Just as in the *Cleveland Cliffs* case, the Costal Alliance provided statements from members who would suffer similar impacts to their recreational aesthetic, and economic interests.

In *Pulver v Dundee Cement Co*, cited by Appellee Township in support of its contention that the MZEA adopted the common law construction of “aggrieved party,” this Court’s task was decide what constitutes “good and reasonable cause” under the workers’ compensation act, justifying an employment.<sup>8</sup> The Court first determined that the statutory term “good and reasonable cause” was analogous to the common law requirement of “good faith or reasonableness” and that the language was too similar to have been a coincidence.<sup>9</sup> The Court reasoned that the Legislature therefore did not intend to change the common law developed around the concepts of favored work and reasonableness of an injured worker’s refusal to return to his job after a qualifying injury.<sup>10</sup> After embarking on an examination of that common law, the Court noted that “[i]n determining whether a refusal of reasonable employment is for good and reasonable cause, the dispositive questions are questions of fact, not law.”<sup>11</sup> Wisely, Justice Cavanagh declined to formulate a test by which compliance with the statute would be measured: “We do not attempt to define what ‘good and reasonable cause’ is. What is reasonable in one situation may not be in another. Therefore no exhaustive definition could ever be formed to

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<sup>7</sup> 471 Mich at 630.

<sup>8</sup> 445 Mich 68, 70; 515 NW2d 728 (1994).

<sup>9</sup> *Id.* at 75.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 81.

encompass the varied nuances of such a deceptively simple legal principle as ‘good and reasonable cause.’”<sup>12</sup>

The opinion goes on to enumerate factors used to weigh the reasonableness of the employee’s actions, but cautions:

We provide these factors merely as examples. Not every personal consideration will constitute good and reasonable cause entitling an employee to continued benefits after a refusal of an offer of reasonable employment. It is left to the sound discretion of the factfinder to carefully examine the facts and circumstances of each case to determine what is good and reasonable cause in any given situation.

*Pulver v Dundee* thus bestows two important lessons instructive to the issues presently before the Court: first, the imprudence of attempting to fashion a hard-and-fast test for fact-bound “deceptively simple legal principle[s]”<sup>13</sup>; and second, in highly-fact dependent inquiries such as standing to pursue a zoning appeal, or the reasonableness of an employee’s rejection of favored work, the outcome may depend on myriad factors, which in any given case may or may not suffice to confer standing or constitute a reasonable basis for a refusal to return to work.<sup>14</sup> Drawing on *Pulver v Dundee*, this Court should reject the Court of Appeals’ attempt to set in stone the standing

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<sup>12</sup> *Id.* at 80.

<sup>13</sup> Such an endeavor would be constrained by the Court’s lack of authority to add words or conditions to a statute, further complicating any effort to articulate a definition capable of applying in all likely scenarios and yielding a correct outcome. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 214 n 10; 731 NW2d 41, 52 (2007) (citations omitted). This limitation on judicial power emanates from constitutional separation of powers and the rule that courts may not “rewrite the plain statutory language and substitute our own policy decisions for those already made by the Legislature.” *Id.* citing *DiBenedetto v West Shore Hosp*, 461 Mich 394, 405; 605 NW2d 300 (2000). As Appellant has argued, the prohibition against judicial legislating operates in this case to invalidate the courts’ addition of the property owner requirement into the aggrieved party standard. See Appellant’s supplemental brief at 14-15.

<sup>14</sup> In particular, Appellant has argued that in the zoning context, recreational, aesthetic, or economic interests may bear on a person’s standing (see Appellant’s supplemental brief at 36-37 (citing *Kallman v Sunseekers Property Owners Ass’n*, 480 Mich 1099; 745 NW2d 122 (2008)) and that while property ownership is certainly a relevant factor, prior to *Olsen*, it was never considered mandatory in order for a party to possess standing (see Appellant’s supplemental brief at 18-19).

requirements in zoning appeals and instead recognize that these cases turn on their specific facts, which must be examined in each instance.

More important is the breadth of the cases consulted by the Court and held to be a part of the common law definition imported into the statutory definition examined in *Ford Motor Co v City of Woodhaven*.<sup>15</sup> At issue was the proper interpretation of a provision of the General Property Tax Act providing for the recovery of overpayment of taxes resulting from a “mutual mistake of fact.”<sup>16</sup> Chief Justice Cavanagh, again writing for the Court, specifically rejected the Court of Appeals majority and the MTT’s position “that contract law, *or any other area of the law for that matter*, has no place in our duty to ascertain the Legislature’s intent and give effect to the common-law term ‘mutual mistake of fact.’”<sup>17</sup> Accordingly, *any* common law interpreting person or party “aggrieved” is relevant to the issues currently before this Court, including *Lansing Schools* and pre-2006 standing decisions other than Appellees’ favored *Joseph-Unger-Brink-Franklin* cases.

## **2. The Township’s Argument is Contradicted by the Plain Meaning of “Aggrieved Party.”**

The Township principally argues that MCL 125.3604 and 125.3605 should be interpreted to incorporate “similarly situated property owner” into the term “aggrieved party” or “aggrieved person” because the legislature implicitly adopted that common law language when enacting the MZEA. However, this argument is inconsistent with the plain language in the statute.

As indicated by the Township, the first step in statutory construction is “to focus on the language of the statute itself.”<sup>18</sup> The Legislature chose “person aggrieved” and “party aggrieved,”

<sup>15</sup> 475 Mich 425; 716 NW2d 247 (2006).

<sup>16</sup> *Id.* at 438-39.

<sup>17</sup> *Id.* at 440 (emphasis added).

<sup>18</sup> Township’s supplemental brief at 16; see also *People v Harris*, 499 Mich 332, 345; 885 NW2d 832, 837–38 (2016); *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 214; 731 NW2d 41, 52 (2007).

both terms that are regularly used within Michigan law. A survey of statutes using “aggrieved” does not turn up any requiring a comparison to other similarly situated property owners.

Further, the Black’s Law definition of “aggrieved party” quoted by the Township in its brief states that an aggrieved party is “*a party entitled to a remedy,*” and especially “*a party whose personal, pecuniary or property rights have been adversely affected...*”<sup>19</sup> This definition supports the argument that the “special damages” required to establish standing are not limited to only those which might distinguish a party from “similarly situated property owners.”

The Township takes issue with the argument that *Lansing Schools* should apply and the standard for aggrieved party should be different than “if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large”<sup>20</sup> because the Legislature used the terms “party aggrieved” and “persons aggrieved.” The Township’s argument is that these terms in the statute mean something different than the construction of standing described in *Lansing Schools*. However, as detailed in the Coastal Alliance’s supplemental brief, the unambiguous language of the MZEA is consistent with the test provided for in *Lansing Schools*. The Township’s suggestion to the contrary is not supported either by the language of the statute or the case law from this Court interpreting the meaning of “aggrieved” in a variety of contexts. As such, “the statutory scheme implies that the Legislature intended to confer standing on the litigant” consistent with the test outlined in *Lansing Schools*.

As a matter of statutory construction, statutes are to be harmonized to the extent possible.<sup>21</sup>

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<sup>19</sup> *Id.* at 17. The term “aggrieved” is defined as “[h]aving suffered loss or injury; damnified; injured.” The term “party aggrieved” is defined by Black’s as “the term that is applied to the person who feels he has been treated wrongly in a court action with their legal rights damaged.”

<sup>20</sup> 487 Mich 349, 372.

<sup>21</sup> *Int’l Bus Machines Corp v Dept of Treasury*, 496 Mich 642, 652–53; 852 NW2d 865, 872 (2014).

Harmonizing the language in the MZEA with that of other statutes using the terms “person aggrieved” or “party aggrieved” is consistent with this rule. It also is important to harmonize the standing inquiry to the extent possible, as it provides consistency and predictability for litigants and the judiciary. This is especially the case when the Legislature continues to use the same words without a particular definition.<sup>22</sup>

### 3. Appellee Township’s Reliance on Neighboring States’ Law Misses the Point

The first question posed by this Court as it ordered supplemental briefing asked “whether the ‘party aggrieved’ standard of MCL 125.3605 requires a party to show some special damages not common to other property owners similarly situated.” Appellee Township sidesteps this query, largely ignoring the key phrase at issue – “other *property owners* similarly situated” (emphasis added). Appellant Coastal Alliance has contended that the property ownership aspect of the standing rule as articulated by the Court of Appeals in *Olsen* is not only impermissible judicial legislating, but that it also places Michigan into a small minority of states that would require a person to own property in order to possess standing to pursue a zoning appeal. Appellee Township’s lengthy discussion of *Liberty Landowners Ass’n v Porter Co Comm’rs*, 913 NE2d 1245 (Ind App, 2009), *Ohio Contract Carriers Ass’n, Inc v Public Utility Comm*, 140 Ohio St 160; 42 NE2d 758 (1942), and the statutory definition in Wis Stat 68.06, is therefore of little utility in answering the Court’s first question. Nevertheless, a few observations are worth pointing out.

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<sup>22</sup> Of course, that doesn’t mean the Legislature can’t provide a definition of “aggrieved” for purposes of standing under the statute. See UCC section 1201: “Aggrieved party” means a party entitled to resort to a remedy. MCL 440.1201. For an example of a case involving legislation that does define aggrieved person, see *People v Warner*, 401 Mich 186, 202; 258 NW2d 385, 391 (1977) (Section 2510(11) reads “‘aggrieved person’ means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed”).

First, the court’s recitation of the Indiana standard in *Liberty Landowners* (it is “well settled that standing to challenge a rezoning ordinance requires a property right or some other personal right and a pecuniary injury not common to the community as a whole”)<sup>23</sup> actually supports two of Appellant Coastal Alliance’s main contentions: that a property right is not required in every case, and the plaintiff’s asserted interest should be compared with that of the public or community at large. Moreover, the *Liberty Landowners* result appears to have been dictated by Indiana’s longstanding rule that “landowner associations lack standing to challenge zoning decisions” rather than any real analysis of Liberty Landowners’ interest.<sup>24</sup> No such rule exists in Michigan.<sup>25</sup>

Second, in *Bagnall v Town of Beverly Shores*, 726 NE2d 782 (Ind, 2000), cited by the court in *Liberty Landowners* and relied on by Appellee Township, the Indiana Supreme Court confirmed that “a sufficient legal interest [under the aggrieved person standard] is present in zoning cases if the petitioner owns property that is ‘adjacent’ to or ‘surrounding’ the subject property” but does not require that the properties actually touch or adjoin one another.<sup>26</sup> Contrary to the Township’s supposition that the Indiana and Michigan rules are similar, under the Indiana rule described in *Bagnall*, as members of the Coastal Alliance, the Bily family, adjacent landowners to North Shores, likely would have demonstrated standing.

Appellee Township asserts that the “aggrieved party” definition in Ohio is “one whose interest in the subject matter of the litigation is ‘immediate and pecuniary, and not a remote

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<sup>23</sup> 913 NE2d 1245, 1250.

<sup>24</sup> *Id.* at 1250 (string cite omitted).

<sup>25</sup> See, e.g., *Kallman v Sunseekers Property Owners Ass’n*, 480 Mich 1099; *Deer Lake Property Owners Ass’n v Independence Charter Twp*, unpublished per curiam opinion of the Court of Appeals, issued October 10, 2019 (Docket No. 343965) (Appellant’s Appx 0135a).

<sup>26</sup> 726 NE2d 782, 786.

consequence of the judgment.”<sup>27</sup> In fact, the Supreme Court of Ohio was not announcing a holding with that statement, but merely quoting from the legal encyclopedia American Jurisprudence. Moreover, *Ohio Contract Carriers* is not a zoning case. Recent Ohio zoning appeal cases fall more in line with Appellant Coastal Alliance’s construction of the aggrieved party standard, and while many cases speak of a property owner’s ability to demonstrate standing, property ownership has not been explicitly adopted as a strict requirement.<sup>28</sup>

Lastly, Appellee Township’s purpose in referring to Wis Stat 68.06 is unclear as it obviously embraces a broad class of individuals having standing, and is, as the Township admits, more akin to the former TZEA definition of person aggrieved. Interestingly, the definition’s placement within the Municipal Administrative Procedure code demonstrates that a more general “aggrieved party” standard can be employed across multiple contexts. But Wisconsin, like many

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<sup>27</sup> Appellee Township supplemental brief at 29, citing *Ohio Contract Carriers Ass’n, Inc.*, 140 Ohio St 160, 161.

<sup>28</sup> See, e.g., *Safest Neighborhood Ass’n v Athens Bd of Zoning Appeals*, 2013-Ohio-5610, ¶ 26; 5 NE3d 694 (Ohio App, 2013) (“A party is directly affected by an administrative decision, as distinguished from the public at large, when he or she can demonstrate a unique harm. *Midwest Fireworks Mfg Co v Deerfield Twp Bd of Zoning Appeals*, 91 Ohio St 3d 174, 179–180; 743 NE2d 894 (2001) (Cook, J., dissenting), citing *Willoughby Hills v CC Bar’s Sahara, Inc.*, 64 Ohio St 3d 24, 27; 591 NE2d 1203 (1992). Thus, a court “must look beyond physical proximity to demonstrate if the order constitutes a determination of the rights, duties, privileges, benefits or legal relationships of a specified person.” *Jenkins v Gallipolis*, 128 Ohio App 3d 376, 382; 715 NE2d 196 (1998), quoting *Am Aggregates Corp v Columbus*, 66 Ohio App 3d 318, 322; 584 NE2d 26 (1990). Generally, concerns about increased traffic are shared equally by the public at large and, therefore, are not adequate grounds to confer standing under R.C. 2506.01. *Jenkins* at 382, 715 NE2d 196. However, evidence that the appealing party’s property value may decrease due to an administrative decision “constitutes a direct effect sufficient to confer standing.” *Id.*); *Schomaeker v First Nat Bank of Ottawa*, 66 Ohio St 2d 304, 311-312; 421 NE2d 530 (1981) (“In order to bring an R.C. Chapter 2506 direct appeal of an administrative order, plaintiff must be a person affected by the decision of the planning commission. Since that order affected and determined plaintiff’s rights as a property owner, and she had previously indicated her interest, both by a prior challenge to the grant of a certificate of occupancy and by her presence with counsel at the hearing on the variance, plaintiff is properly within that class of persons with standing to bring a direct appeal pursuant to R.C. Chapter 2506.”).

others, has concluded that property ownership, while relevant, is not always necessary or sufficient to demonstrate standing.<sup>29</sup>

#### 4. The ZBA and Court of Appeals Erred in Dismissing the Appeal

The Township's brief gives the actual application of the tests discussed in the briefing short shrift. While it has one section dedicated to whether there was error in the Court of Appeals' decision, the majority of that section is spent discussing legal arguments with a single conclusory statement that "SDCA fails to establish any damage to the corporate entity different from damages that would be suffered by the general public."

The Coastal Alliance's brief discusses the factual underpinnings for standing whether using the *Lansing Schools* test for standing or the "similarly situated" standard. In that context, it is worth noting this Court's recent opinion in *Mays v Governor of Michigan*, which addressed the phrase "similarly situated" in the context of the Flint water crisis. This Court held that those "similarly situated" to plaintiffs were municipal water users generally and not Flint water users more specifically.<sup>30</sup> To the extent that this Court is inclined to retain the "similarly situated" version of party or person aggrieved, the Coastal Alliance would urge a similarly broad reading of who is "similarly situated" – i.e., those property owners with frontage on the Kalamazoo river, or those who recreate on the river and dunes. And, like in the *Mays* case, the Coastal Alliance submits that it has provided substantial evidence of harms that are different in kind and degree than the generalized group of similar property owners and individuals.

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<sup>29</sup> Compare *State ex rel. Brookside Poultry Farms, Inc v Jefferson Co Bd of Adjustment*, 125 Wis 2d 387, 390; 373 NW2d 450 (App, 1985), aff'd, 131 Wis 2d 101; 388 NW2d 593 (1986), with *Cook v Town of Spider Lake Zoning Bd of Appeals*, 372 Wis 2d 834, ¶ 9; 890 NW2d 49 (2016).

<sup>30</sup> *Mays v Governor of Michigan*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (2020) (Docket No. 157335).

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