

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 Nos. 160358, 160359
Court of Appeals Nos. 342588, 346677
Trial Court Case Nos. 2017-058936-AA;
2018-059598-AA

**SUPPLEMENTAL BRIEF OF AMICI CURIAE¹ ENVIRONMENTAL LAW & POLICY
CENTER AND NATIONAL TRUST FOR HISTORIC PRESERVATION IN SUPPORT
OF SAUGATUCK DUNES COASTAL ALLIANCE'S
APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF JURISDICTION

Pursuant to MCR 7.205, Plaintiff-Appellant Saugatuck Dunes Coastal Alliance timely filed on October 10, 2019 an application for leave to appeal from the August 29, 2019 per curiam opinion of the Court of Appeals resolving consolidated appeals in case numbers 342588 and 346677. In case number 342588, the Court of Appeals affirmed the Allegan County Circuit Court's dismissal of Appellant's appeal from the Allegan Township Zoning Board of Appeals and remanded the case for consideration of Appellant's original claims of nuisance *per se* and declaratory action. In case number 346677, the Court of Appeals affirmed the Allegan County Circuit Court's Order Denying Appeal of Saugatuck Dunes Coastal Alliance. This Court ordered supplemental briefing on the application in its Order of May 8, 2020. Consequently, this Court has jurisdiction under MCR 7.303(B)(1).

STATEMENT OF QUESTIONS PRESENTED

1. **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.**

Appellant Saugatuck Dunes Coastal Alliance answers:	No
Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals answer:	Yes
Appellee North Shores of Saugatuck, LLC, answers:	Yes
The Court of Appeals answered:	Yes
Amici Curiae Environmental Law & Policy Center and National Trust for Historic Preservation in the United States answer:	No
This Court should answer:	No

2. **Whether the meaning of “person aggrieved” in MCL 125.3604(1) differs from that of “party aggrieved” in MCL 125.3605.**

Appellant Saugatuck Dunes Coastal Alliance answers:	Yes
Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals answer:	No
Appellee North Shores of Saugatuck, LLC, answers:	No
The Court of Appeals did not answer.	
Amici Curiae Environmental Law & Policy Center and National Trust for Historic Preservation in the United States answer:	Yes
This Court should answer:	Yes

3. **Whether the Court of Appeals erred in affirming the Allegan Circuit Court’s dismissal of appellant’s appeals from the decisions of the Saugatuck Township Zoning Board of Appeals.**

Appellant Saugatuck Dunes Coastal Alliance answers:	Yes
Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals answer:	No
Appellee North Shores of Saugatuck, LLC, answers:	No
The Court of Appeals answered:	No
Amici Curiae Environmental Law & Policy Center and National Trust for Historic Preservation in the United States answer:	Yes
This Court should answer:	Yes

INTRODUCTION

The Michigan Courts of Appeals have been draining the life from challenges to zoning decisions for decades based on anomalous and inconsistent interpretations of Michigan’s law on standing in zoning appeals. A litigant generally has standing based on “a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.” *Lansing Sch. Educ. Ass’n v. Lansing Bd. of Educ.*, 487 Mich. 349, 372 (2010). Nevertheless, the lower courts have often disregarded this analysis in zoning cases, and instead issued increasingly restrictive standing decisions that ignore or discount the interests of non-property owners and parties who raise legitimate concerns about ecological or cultural damage. This case may well be the last nail in the coffin. However, it offers the Michigan Supreme Court an opportunity to undo the lower courts’ inappropriately restrictive interpretations, reviving and harmonizing the zoning statutory scheme with the more expansive and prudential approach to litigants’ access to courts under Michigan jurisprudence. *See id.* at 364 (explaining that Michigan courts’ judicial power to decide controversies is broader than the power of federal courts). This Court should clarify that access to the Michigan courts under Michigan’s zoning laws is equal in scope to that provided under Michigan standing law generally. In so doing, this Court can protect a process necessary for communities to hold their local governments responsible for striking an appropriate balance between development interests and the protection of cultural, historical, and environmental interests.

INTERESTS OF THE AMICI

Amicus Curiae Environmental Law & Policy Center (“ELPC”) is a non-profit public interest environmental legal advocacy and eco-business innovation organization. ELPC works to

improve environmental quality by preserving natural resources, protecting clean water, advocating for cleaner air, and advancing clean renewable energy and energy efficiency resources in Michigan and the Midwest. ELPC has an office located in Grand Rapids, Michigan and has members throughout the state, including Saugatuck Township.

Through public comments, public hearings, legal actions, and other avenues, ELPC regularly supports community engagement in environmental matters. Because of its dedication to preserving natural resources, as well as preventing and combatting pollution, ELPC is committed to enabling people and communities to have a voice in legal processes. For the past decade, ELPC has been involved in protecting the Saugatuck Dunes area. ELPC attorneys have represented the Appellant Saugatuck Dunes Coastal Alliance (“Coastal Alliance”) on comments to a permit application by North Shores of Saugatuck, LLC (“North Shores”) to the Army Corps of Engineers for construction of a deep-water marina near the mouth of the Kalamazoo River, as well as on other related Saugatuck Dunes area development and protection matters.

Amicus Curiae National Trust for Historic Preservation in the United States (“National Trust” or “Trust”) is a federally-chartered charitable and educational organization. Congress established the Trust in 1949 as a private nonprofit organization to further the historic preservation policies of the United States and “to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest.” 54 U.S.C. § 312102.

The Trust works closely with hundreds of independent nonprofit preservation organizations at the state and local levels. The Attorney General, the Secretary of the Interior, and the Director of the National Gallery of Art are statutory ex officio members of the Trust’s Board of Trustees. *Id.* § 312104(a). In turn, the Chair of the National Trust is an ex officio member of the Advisory Council on Historic Preservation, an independent federal agency that “encourage[s] . . .

public interest and participation in historic preservation” and advises the President and Congress on national historic preservation policy. *Id.* § 304102(a).

With more than one million members and supporters nationwide, the National Trust works to protect significant historic sites and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government. The National Trust frequently participates, both as a party and as amicus curiae, in legal proceedings that involve the application and enforcement of laws that promote the preservation of historic places.

The National Trust has advocated for protection of the Saugatuck Dunes for over a decade. The National Trust included this unique cultural site in its 2010 list of *America’s 11 Most Endangered Historic Places*.² In 2012, the National Trust submitted comments to the Saugatuck Zoning Board of Appeals in opposition to an earlier development proposal for the site. Since 2017, the National Trust has participated as a consulting party in connection with the Army Corps of Engineers’ review of North Shores’ permit application for construction of the marina, submitting comments most recently to the Army Corps on October 4, 2019, pursuant to § 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, 36 C.F.R. Part 800.

STATEMENT OF FACTS

Saugatuck Township (the “Township”), an area nestled along the shores of Lake Michigan and surrounding the Kalamazoo River, is home to both ecological and cultural treasures. Michigan law recognizes that the coastal ecosystems of the Township, including the nearby Saugatuck Dunes State Park, contain “critical dunelands” that “are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational,

² *America’s 11 Most Endangered Historic Places—Past Listings*, Nat’l Trust for Historic Preservation, <https://savingplaces.org/11most-past-listings>.

agricultural, and ecological benefits to the people of this state.” MCL § 324.35302; *see Allegan County, Saugatuck Township Critical Dune Areas*, Michigan, https://www.michigan.gov/egle/0,9429,7-135-3311_4114-70207--,00.html (last visited Aug. 25, 2020). Historic and culturally important sites cover the region, spanning time periods “from prehistoric occupation, early settlers, logging, and fishing through the summer resort era that introduced camps and arts instruction.” Kristine M. Kidorf, et al., Saugatuck Dunes Coastal Alliance & Saugatuck-Douglas Hist. Soc’y, *Saugatuck Historical Coastal Survey Report* 4 (Jan. 2010), https://saugatuckdunescoastalalliance.com/wp-content/uploads/2018/06/FINAL_REPORT_MAR-2010.pdf. Protecting these endangered cultural resources from harm requires thoughtful attention to land use.

Under the Michigan Zoning Enabling Act (“MZEA”), the Saugatuck Township Planning Commission (“Planning Commission”) is the primary authority conducting most of the land-use management for these irreplaceable resources. The Planning Commission administers the Township’s zoning ordinance and considers applications for variances from zoning requirements. Saugatuck Twp. Ord. §§ 40-1, 40-691, 40-772. A “person aggrieved” may seek review of Planning Commission decisions with the local zoning board of appeals—here, the Saugatuck Township Zoning Board of Appeals (the “Board”). *See id.* § 40-72; MCL § 125.3604. A “party aggrieved” by a Board decision may appeal to the circuit court. *Id.* §§ 125.3605, 125.3606.

In January 2017, the Planning Commission considered several applications that would have substantial impacts on the ecology and cultural resources of the coastal duneland area. (Appellants Appx. at 0001a). North Shores requested that the Planning Commission approve its plan for condominium units and a private deep-water marina, the development of which would require dredging and permanently altering the Kalamazoo River channel and surrounding critical sand

dunes. *See Saugatuck Dunes Coastal All. v. Saugatuck Twp.*, No. 342588, 2019 WL 4126752, at *1 (Mich. Ct. App. Aug. 29, 2019) (per curiam). Members of the Coastal Alliance—a nonprofit coalition focused on protecting the natural geography, heritage, and rural character of the Saugatuck Dunes coastal region—participated in all three of the Planning Commission’s hearings on the plan and submitted comments. Their concerns were that the proposed developments would hurt the fragile ecology and hydrology of the Saugatuck Dunes coastal region, create maritime traffic hazards along the channel, and violate the Township’s zoning ordinance. Nonetheless, the Planning Commission granted North Shores’ applications.³ *See Saugatuck Dunes Coastal All.*, 2019 WL 4126752, at *1.

When the Coastal Alliance appealed the Planning Commission’s approvals to the Board, the issue of standing was first raised. The Board never considered the merits of the Coastal Alliance’s appeal, instead dismissing the appeal on the grounds that the Coastal Alliance was not a “person aggrieved” under the MZEA. The Board reached this decision in spite of the Coastal Alliance’s written evidence and testimony providing facts showing that its members had “special damages” sufficient to confer standing. Zoning Bd. of Appeals Minutes, Oct. 11, 2017, (Appellants’ Appx. at 0068a, 0071a–0075a). The Coastal Alliance appealed the Board’s decision to the circuit court and alleged an original claim of nuisance *per se* and sought declaratory relief. The circuit court dismissed the appeal, concluding that the Coastal Alliance members did not have

³ North Shores applied for both a Planned Unit Development (“PUD”) and a Special Approval Use (“SAU”) for its condominium and marina project. The Commission first approved the SAU, which resulted in the first appeal to the Board. Later, the Planning Commission granted final approval for the PUD. The Coastal Alliance separately appealed the Planning Commission’s initial decision (the preliminary approval of the PUD and final approval of the SAU) and its later decision (final approval of the PUD). Those appeals have been consolidated and are both presented to the Michigan Supreme Court in this case.

standing. Opinion and Order, *Saugatuck Dunes Coastal All. v. Saugatuck Twp.*, Case No. 17-58936-AA (Allegan Cty. Cir. Ct. Feb. 6, 2018) (Appellants' Appx. at 0082a).

Restrictive readings of the MZEA continued to stymie any merits analysis of the Coastal Alliance's claims. When the Planning Commission gave final approval for the ecologically damaging project, the Coastal Alliance again sought review with the Board. The Board concluded that the Coastal Alliance had not articulated, as required under the MZEA, an injury "different from damage that would allegedly be sustained by the general public." Zoning Bd. of Appeals Minutes, Apr. 9, 2018, Findings at 2(B). (Appellants' Appx. at 0090a). The Coastal Alliance appealed the Board's decision to the Allegan County Circuit Court, which similarly concluded that the Coastal Alliance was not an "aggrieved party" under the MZEA. *See Saugatuck Dunes Coastal All.*, 2019 WL 4126752, at *1; Order Denying Appeal, *Saugatuck Dunes Coastal All. v. Saugatuck Twp.*, No. 18-059598-AA (Allegan Cty. Cir. Ct. Nov. 14, 2018). (Appellants' Appx. at 0095a).

Finally, the Coastal Alliance appealed to the Michigan Court of Appeals, which applied an even narrower "party aggrieved" analysis, holding that the Coastal Alliance could not appeal the Board's decision because it had not shown that its members "will suffer harms distinct from *other property owners similarly situated*." *Saugatuck Dunes Coastal All.*, 2019 WL 4126752, at *4 (emphasis in original). The Court of Appeals emphasized that "some of the affiants are not even actual owners of nearby property; and otherwise all of the articulated concerns are either speculative, broad environmental policy matters, or pertain to harms that could be suffered by any nearby neighbor, business, or tourist." *Id.*

On May 8, 2020, this Court issued an order stating that it is considering the Coastal Alliance's requests for leave to appeal and directing the parties to file supplemental briefs

addressing several specific issues. The Court also specifically invited Amici Curiae to file a brief addressing the issues raised in this case.

ARGUMENT

The Michigan Court of Appeals, superficially relying on outdated and ill-conceived interpretations of the law, has left litigants harmed by zoning board decisions without legal recourse. In this case, the Court of Appeals distorted the phrase “party aggrieved” in MCL 125.3605 to require that the litigant show “some special damages not common to *other property owners similarly situated*.” *Saugatuck Dunes Coastal All.*, 2019 WL 4126752, at *3 (quoting *Olsen v. Chikaming Twp.*, 325 Mich. App. 170, 185; 924 N.W.3d 889 (2018)) (emphasis added). This interpretation, often repeated in the Court of Appeals without analysis, originally derives from a 1960 Georgia Court of Appeals decision—a case that neither aligns with Michigan’s prudential approach to standing nor with contemporary conceptions of injuries litigants experience from zoning board decisions.⁴

Michigan law plainly supports clarifying this standard to conform with accepted principles of Michigan jurisprudence and the construction of similar language used in the vast majority of other states: a party is “aggrieved” if it suffers harm distinct from the harm suffered by the *public at large* and is prejudiced or affected by the reviewing body’s decision on the party’s challenge. First, the lower courts’ comparison of litigants to other property owners similarly situated has no basis in the statutory language. Second, Michigan standing jurisprudence shows that status as a “party aggrieved” or a “person aggrieved” requires only that the litigant show harm that is distinct from harm suffered by the public at large and that is affected by the reviewing body’s decision.

⁴ *Joseph v. Grand Blanc Twp.*, 5 Mich. App. 566, 571; 147 N.W.2d 458 (1967) (citing *Victoria Corp. v. Atlanta Merch. Mart, Inc.*, 112 S.E.2d 793 (Ga. Ct. App. 1960)).

See Attorney Gen. v. Bd. of State Canvassers, 500 Mich. 907, 908 n.6; 887 N.W.2d 786 (2016) (Zahra & Viviano, J.J., concurring in denial of appeal) (relying on *Black's Law Dictionary* to interpret “aggrieved,” which is simply a general term of art for where “a party must demonstrate that it has been harmed in some fashion”); *Aggrieved*, *Black's Law Dictionary* (11th ed. 2019) (defining “aggrieved” as “having legal rights that are adversely affected”); *see also Federated Ins. Co. v. Oakland Cty. Rd. Comm'n*, 475 Mich. 286, 291; 715 N.W.2d 846 (2006); *Matthew R. Abel, P.C. v. Grossman Invs. Co.*, 302 Mich. App. 232, 237–44; 838 N.W.2d 204 (2013). *Third*, Michigan law is clear that environmental damages *can* be “special damages,” or particularized injuries for purposes of determining that a party is “aggrieved” under the MZEA. And *fourth*, most states interpreting identical language in the context of zoning board appeals draw the comparison to the public at large (rather than “other property owners similarly situated”) for standing analyses, providing persuasive precedent that many cases in the Michigan Courts of Appeals have unnecessarily closed courthouse doors to parties that are genuinely injured.

The fact that the MZEA uses “person aggrieved” in discussing appeals to the zoning board of appeals and “party aggrieved” in discussing appeals to a circuit court does not change the prudential approach to standing called for under Michigan law. This subtle change in language reflects only that an aggrieved “person” through the course of appeal becomes a “party,” and under either descriptive label must show a continued interest or participation in the zoning board decision at issue to be able to present a claim to a reviewing court.

The Court of Appeals should have applied a different standing test, and therefore its decision denying the Coastal Alliance’s standing was based on an improper legal standard and should be reversed. The Coastal Alliance need only show that it has a substantial interest that will be affected by the Planning Commission’s zoning decision and the Board’s affirmance. MCL

§§ 125.3604–06; *see also Lansing Sch. Educ. Ass’n*, 487 Mich. at 373 n.21 (“It is not disputed that, under Michigan law, an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest.”). The Coastal Alliance met those criteria.

I. The “party aggrieved” standard of MCL 125.3605 requires only that a party show that it suffers a harm distinct from the harm the public at large suffers, which can include cultural and environmental harms.

A. The plain language of the MZEA does not limit appeals to property owners or require a comparison to “similarly situated property owners.”

The MZEA does not, as the Court of Appeals concluded, give standing only to property owners who suffer harms distinct from “similarly situated property owners.” MCL 125.3605 states simply that a “party aggrieved” may challenge a decision of a zoning board of appeals. MCL § 125.3605. “Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself.” *Robinson v. City of Detroit*, 462 Mich. 439, 459; 613 N.W.2d 307 (2000) (citing *Carr v. Gen. Motors Corp.*, 425 Mich. 313, 317; 389 N.W.2d 686 (1986)). “Where the language of the statute is clear and unambiguous, the Court must follow it.” *Id.* (citing *City of Lansing v. Lansing Twp.*, 356 Mich. 641, 649; 97 N.W.2d 804 (1959)). Logically, then, where no clear and unambiguous language *limits* the construction of a particular term, the Court need not impose a highly restrictive reading. And here, notably absent from the MZEA’s standing language is the term “property owner” or a comparison to other property owners in the area.

The statutory context further supports the conclusion that the restriction of standing based on comparisons to “similarly situated property owners” is an erroneous and unnecessarily narrow construction of the MZEA. Because “the Legislature is presumed to understand the meaning of [its own] language” and “[e]ach word of a statute is presumed to be used for a purpose,” the

judiciary “may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” *Robinson*, 462 Mich. 439 at 459. Statutory language “must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute, construed in the light of history and common sense.” *Sweatt v. Dep’t of Corr.*, 468 Mich. 172, 179; 661 N.W.2d 201 (2003) (quoting *Arrowhead Dev. Co. v. Livingston Cty. Rd. Comm’n*, 413 Mich. 505, 516; 322 N.W.2d 702 (1982)).

Here, interpreting the phrases “aggrieved party” and “aggrieved person” to require property ownership is in tension with other provisions in the statutory scheme and contrary to clear statutory language. Michigan law often specifically identifies property ownership as a requirement, including within the MZEA. Under MCL 125.3103, for example, the local government conducting a zoning hearing must give notice “to the *owners of property* that is the subject of the request.” MCL § 125.3103(2) (emphasis added). Similarly, MCL 125.3401 states that “[t]he legislative body shall grant a hearing on a proposed [zoning] ordinance provision to an interested *property owner* who requests a hearing by certified mail, addressed to the clerk of the legislative body.” *Id.* § 125.3401(4) (emphasis added). And MCL 125.3502 explains that special land use notices must specify that “any *property owner* or the occupant of any structure located within 300 feet of [a] property being considered for a special land use” can seek a public hearing. *Id.* § 125.3502(2) (emphasis added). Had the legislature intended to limit an “aggrieved party” with standing under the MZEA to only property owners, it is clear that it could, and would, have used more precise language to do so. Instead, the MZEA does not explicitly connect an “aggrieved party” with property ownership, confirming that the basis for such a restriction in the Court of Appeals’ decision is based on a misunderstanding of the lower courts and not a result of legislative intent.

The Court of Appeals' current approach has a further flaw: the case law that the standard rests on has little connection to either the current MZEA or general principles of Michigan law. The "property owner similarly situated" originally derives from a 1960 Georgia Court of Appeals decision. In 1967, the Michigan Court of Appeals adopted that language wholesale with little explanation. *Joseph v. Grand Blanc Twp.*, 5 Mich. App. 566, 570–71; 147 N.W.2d 458 (1967) (quoting *Victoria Corp. v. Atlanta Merch. Mart, Inc.*, 112 S.E.2d 793, 795 (Ga. 1960)). The Michigan Court of Appeals failed to articulate why it chose the Georgia standard to import or why property ownership as a requirement made sense in Michigan. With the statutory language supporting no such narrow reading, the Michigan Court of Appeals' use of this outdated and unexplained test should not stand.

B. This Court should harmonize the standing analysis under the MZEA with the prudential approach to standing of *Lansing Schools*.

The plain language of the MZEA directs courts to assess standing based on a comparison of the litigant to the public at large—not just to those who own property—in harmony with general principles of Michigan standing law. In *Lansing Schools Education Ass'n v. Lansing Board of Education*, this Court explained that the purpose of Michigan's standing doctrine, both prudential and statutory, is to ensure "sincere and vigorous advocacy" by litigants. 487 Mich. 349, 372; 792 N.W.2d 686 (2010). A litigant generally has standing based on "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing." *Id.* at 372. To uncover the implications of the "statutory scheme," courts employ general principles of statutory interpretation. Here, statutory interpretation clearly favors an expansive grant of standing under the MZEA.

Because “[t]he words of the statute provide the best evidence of legislative intent and the policy choices made by the Legislature,” this process begins with “examining the words of the statute, which ‘should be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute.’” *People v. Harris*, 499 Mich. 332, 345; 885 N.W.2d 832 (2016) (quoting *People v. Zajackowski*, 439 Mich. 6, 13; 825 N.W.2d 554 (2012)). A person or party “aggrieved” is one who has had one’s “legal rights . . . adversely affected.” *Black’s Law Dictionary*. Michigan has adopted this definition of “aggrieved” in other contexts, explaining that the term is simply a general “term of art” for instances in which “a party must demonstrate that it has been harmed in some fashion.” *Attorney Gen. v. Bd. of State Canvassers*, 500 Mich. 907, 908 n.6; 887 N.W.2d 786 (2016) (Zahra & Viviano, JJ., concurring).

In contrast, the many decisions in the lower courts have interpreted “party aggrieved” to focus on property ownership and comparisons to other property owners, creating tension with Michigan’s standing jurisprudence. “To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody.” *Karrip v. Cannon Twp.*, 115 Mich. App. 726, 733; 321 N.W.2d 690 (1982) (quoting *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 687–88 (1973)). Interpreting the “party aggrieved” standard as invoking a comparison to the citizenry at large, rather than individual property owners, would accomplish the Legislature’s statutory directive while also aligning jurisprudential principles of standing in the zoning context with Michigan’s general standing principles.

C. Environmental and cultural harms can establish that a person or party is “aggrieved” under the MZEA.

The nature of the injury is as crucial to the standing analysis as the identity of the person or party. Just as a party need not be a property owner to suffer a grievance as a result of a zoning

board of appeals decision, the injury itself need not be an injury to property or to a pecuniary interest. An interpretation of the MZEA that acknowledges standing based on likely environmental and cultural harms would ensure consistent interpretations of Michigan law and protect litigants whose interests Michigan law has deemed covered.

Including environmental and cultural injuries as those rendering a party “aggrieved” under the MZEA is consistent with other Michigan court decisions conferring standing on the basis of these types of harms. Michigan courts have long recognized that environmental damages are sufficient to establish standing outside of the zoning context. *See, e.g., Trout Unlimited, Muskegon White River Chapter v. City of White Cloud*, 195 Mich. App. 343, 349; 489 N.W.2d 188 (1992) (concluding that plaintiffs had standing to challenge the construction of a dam because the dam would impact the plaintiffs’ interests in the river’s fish population). Even during the decade when Michigan applied a more restrictive prudential standing test—between *Lee v. Macomb County Board of Commissioners*, 464 Mich. 726; 629 N.W.2d 900 (2001), and *Lansing Schools*—this Court recognized allegations of environmental injuries where plaintiffs “aver[red] that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.” *Nat’l Wildlife Fed’n v. Cleveland Cliffs Iron Co.*, 471 Mich. 608, 629; 684 N.W.2d 800 (2007) (citation omitted) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000)), *overruled on other grounds by Lansing Schools*, 487 Mich. at 371 n.18. For example, an organization’s members had standing where they “alleged [that] they bird-watched, canoed, bicycled, hiked, skied, fished, and farmed in the area, they plan[ned] to continue to do so as long as the area remain[ed] unspoiled, and they [we]re concerned that the [expansion of a mine would] irreparably harm their recreational and aesthetic enjoyment of the area.” *Nat’l Wildlife Fed’n*, 471 Mich. at 630.

Similarly, in *Tobin v. City of Frankfort*, the Court of Appeals recognized “the significant filling of wetlands” and “allegations of flooding” as specific injuries appropriate for consideration in a zoning appeal. *Tobin v. City of Frankfort*, No. 296504, 2012 WL 2126096, at *2 (Mich. Ct. App. June 12, 2012). While the court in *Tobin* concluded that generalized concerns about air pollution were not sufficient injuries, that conclusion did not rest on the principle that environmental harm did not cause injury. After all, the wetlands and flooding allegations clearly involved environmental harm. Rather, *Tobin* concluded that the air pollution concerns were stated with insufficient specificity to be understood as “special damages.” *Id.* In other words, a party, in order to establish standing, must allege an environmental injury that is special or substantial and “which indicate[s] an adverse interest necessitating the sharpening of the issues raised.” *See Lansing Schools*, 487 Mich. at 372 n.20 (quoting *Associated Builders & Contractors v. Dir. of Consumer & Indus. Servs.*, 472 Mich. 117, 126; 643 N.W.2d 374 (2005)).

The Court of Appeals has also held that allegations of environmental harm by “a non-profit organization devoted to protecting the environment” can be “sufficient to confer standing . . . at the pleading stage.” *N. Mich. Envtl. Action Council v. City of Traverse City*, No. 332590, 2017 WL 4798638, at *3 (Mich. Ct. App. Oct. 24, 2017). Key in *North Michigan Environmental Action Council* was that the organization’s members resided in the area affected by the challenged zoning decision and alleged that “the city environment, the Boardman River, the surface and subsurface soils, contamination in the soil, glare, solar power access impairment, bird migration, and airflow would all be ‘impacted and/or degraded’” by that decision. *Id.*; *see also id.* at *2 (recognizing that an individual’s “loss of access airflow, sunlight, or a view could be considered a ‘special injury’” for aggrieved party status).

Acknowledging cultural and environmental harms as creating grievances for zoning appeals would also avoid the absurd result of restricting court access for litigants with the very types of harms expected from zoning actions. For example, community members that have a substantial interest in the protection of a habitat or cultural area—because they own nearby property, belong to a cultural group with ties to that area, or enjoy hiking in or observing species unique to that habitat—will face different and more specific harms from an action damaging that area compared to members of the general public. *See Karrip*, 115 Mich. App. at 732–33 (recognizing that those who use and want to maintain access to a specific lake had standing to intervene in a case concerning an access road, in contrast to members of the general public who do not use that lake). While those aggrieved individuals may not suffer harm that is distinguishable from other similarly-situated property owners, because damage to the lake access and enjoyment has an adverse impact on virtually all nearby property, their harms *are* distinct from the general citizenry and are within the zone of interests protected by statute.

Furthermore, this understanding of grievance harmonizes MZEA standing with the clear policy goals embedded in Michigan law. Michigan’s constitution declares the “[t]he conservation and development of the natural resources of the state” matters “of paramount public concern,” and calls on the Legislature to “provide for the protection of the air, water, and other natural resources of the state from pollution, impairment and destruction.” M.C.L. Const. art. 4, § 52. It would be fundamentally inconsistent to assume that the Legislature set up a scheme for appellate review of zoning decisions in the MZEA that prevented consideration of pollution, impairment, and destruction of natural resources in zoning decisions, when these very interests are enshrined in the Michigan Constitution.

D. The “party aggrieved” standard of MCL 125.3605 should mirror how other states have interpreted similar language in their zoning statutes.

While Michigan’s MZEA mirrors the zoning laws of other states, Michigan Courts of Appeals have frequently applied that law in a uniquely narrow way. Other states’ interpretations of the same language on standing for judicial review of zoning decisions show that many Michigan Courts of Appeals, including the Court of Appeals below in this case, are imposing inappropriately restrictive standing requirements on litigants. The Amici Curiae conducted a nationwide survey of state zoning laws, looking specifically at the requirements for standing in appeals of zoning board decisions, and other state courts’ interpretations of those requirements. This research revealed that most states have statutes with similar, if not identical, language to that of the MZEA. A table representing those states with “aggrieved person” language, and leading state court cases interpreting that language, is below. Over 30 of the 50 states—and virtually all using the “party aggrieved” language”—embrace the more logical comparison of a potential litigant to the public at large. Many states also recognize that environmental and cultural harms are sufficient to establish that a party is aggrieved. Although a full discussion of all the states employing similar analyses would be challenging within the space of this brief,⁵ the restrictive reading of the “party

⁵ For a sample of these cases, see, e.g., *Schoof v. Nesbit*, 316 P.3d 831, 836 (Mont. 2014) (explaining that for a plaintiff to meet the “party aggrieved” standard under state law, he must allege “that he has sustained, or is in immediate danger of sustaining some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally” (quoting *Chovanak v. Matthews*, 188 P.2d 582, 585 (Mont. 1948))); *Bd. of Sumner Cty. Comm’rs v. Bremby*, 189 P.3d 494, 506 (Kan. 2008) (under statute allowing appeals by a “party aggrieved,” environmental association had representational standing based on proximity of the members to a proposed landfill site); *Miss. Mfr. Hous. Ass’n v. Bd. of Alderman*, 870 So. 2d 1189, 1193 (Miss. 2004) (“For standing, the person(s) aggrieved, or members of the association, whether one or more, should allege an adverse effect different from that of the general public.” (quoting *Belhaven Improvement Ass’n Inc. v. City of Jackson*, 507 So. 2d 41, 47 (Miss. 1987))); *Bagnall v. Town of Beverly Shores*, 726 N.E.2d 782, 786 (Ind. 2000) (“A person must be ‘aggrieved’ by a board of zoning appeals’ decision in order to have standing to seek judicial review of that decision” and “must show some special injury other than that sustained by the community as a whole.” (quoting

aggrieved” language applied by the lower courts in Michigan is clearly an outlier among the standing tests for challenges to zoning decisions in the United States.

Looking specifically at the Great Lakes region, it becomes even more obvious that the Michigan courts’ comparison of a party to “similarly situated property owners” in order to determine standing is an extremely restrictive test. For example, in Indiana, although the statutory language does not explicitly limit standing to appeal zoning board of appeals decisions to a “party aggrieved,” the Indiana Supreme Court has explained that “[a] person must be ‘aggrieved’ by a board of zoning appeals’ decision in order to have standing to seek judicial review of that decision.” *Bagnall v. Town of Beverly Shores*, 726 N.E.2d 782, 786 (Ind. 2000) (citing Ind. Code § 36–7–4–1003(a)). Indiana courts compare the complaining party’s injury to the public at large, explaining that “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.” *Id.* (citing *Robertson v. Board of Zoning Appeals*, 699 N.E.2d 310, 315 (Ind. Ct. App. 1998)).⁶

Minnesota provides another important example, as the state’s statutory language allows appeals from decisions of a board of adjustments by “[a]ny person aggrieved,” and, like the other

Robertson v. Bd. of Zoning Appeals, 699 N.E.2d 310, 315 (Ind. Ct. App. 1998)); *Buckelew v. Town of Parker*, 937 P.2d 368, 374 (Ariz. Ct. App. 1996) (construing “persons aggrieved” language under Arizona zoning statute to require a plaintiff to show “damage from an injury peculiar to him or at least more substantial than that suffered by the general public”); *Reynolds v. Dittmer*, 312 N.W.2d 75, 78 (Iowa Ct. App. 1981) (construing state zoning statute to require standing analysis to consider special injuries “in contrast to any effect suffered by the public generally”).

⁶ In the Indiana case cited by the Township in its supplemental brief, *Liberty Landowners Ass’n, Inc. v. Porter County Commissioners*, 913 N.E.2d 1245 (Ind. Ct. App. 2009) (*see* Township Supp. Br. at 28–29), the court denied standing based on a specific rule adopted by the Indiana courts that “landowner associations lacked standing to challenge zoning decisions,” unless the association itself owns property. *Liberty Landowners Ass’n, Inc.*, 913 N.E.2d at 1250 (emphasis). No such principle has been adopted in Michigan. In any event, the *Liberty Landowners* case confirms that, in evaluating the plaintiff’s injury for purposes of standing, the proper comparison is to “the community as a whole,” (*i.e.*, not to other similarly situated property owners). *Id.*

Great Lakes states, Minnesota courts interpret that language broadly. Minn. Stat. Ann. § 462.361. Standing requires an allegation of a “particularized injury” to a personal interest or property right. *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. Ct. App. 2003). Rather than limiting standing to property owners, Minnesota courts acknowledge that “[a]ny particularized injury, regardless if it is shared by the community as a whole” can qualify one as a “person aggrieved.” *Friends of Twin Lakes v. City of Roseville*, A05-1770, 2006 WL 2347879, at *4 (Minn. Ct. App. Aug. 10, 2006). Thus, Minnesota uses a test that allows all injured persons, regardless of a comparison group, to challenge a zoning decision.

New York puts it even more bluntly: “Because the welfare of the entire community is involved when enforcement of a zoning law is at stake there is much to be said for permitting judicial review at the request of any citizen, resident or taxpayer.” *Sun-Brite Car Wash, Inc. v. Bd. of Zoning & Appeals*, 508 N.E.2d 130, 133 (N.Y. 1987). Standing still requires alleging injury, but, in interpreting statutory language granting the right to appeal to “any person . . . aggrieved by any decision of the [zoning] board of appeals,” N.Y. Town § 267(c), New York courts have explained that the relevant comparison to determine injury is to “the community at large,” *Sun-Brite Car Wash*, 508 N.E.2d at 134, or “the public at large,” *Ass’n for a Better Long Island, Inc. v. N.Y. State Dep’t of Envtl. Conservation*, 11 N.E.3d 188, 192 (N.Y. 2014).

Much like the MZEA, Ohio law allows “any person aggrieved” by an administrative zoning decision to appeal that decision to the local Board of Zoning Appeals. Ohio Rev. Code Ann. § 519.15; *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals*, 743 N.E.2d 894, 897 (Ohio 2001).⁷ The Supreme Court of Ohio is satisfied that an appellant is a “person aggrieved”

⁷ The older Ohio case cited by the Township, *Ohio Contract Carriers Ass’n, Inc. v. Public Utility Commission*, 42 N.E.2d 758 (1942) (*see* Township Supp. Br. at 29), was not a zoning case, but the

in a zoning appeal where the appellant’s “position is unique as compared to *others within the general community*.” *Id.* at 898 (emphasis added). Indeed, where the appellant was a property owner, the Supreme Court of Ohio rejected the idea that he should be compared to similarly situated property owners by specifying that the appellant had an interest different from others who did not live across from a factory as he did. *Id.*

Pennsylvania has taken a similarly broad interpretation of language allowing an aggrieved party to appeal zoning board of appeals’ decisions. Pennsylvania courts have suggested that the standard for determining whether a party is “aggrieved” is the same as the commonwealth’s general test for standing. “[A] party is traditionally ‘aggrieved’ when he has an adverse, direct, immediate and substantial interest in a decision, as opposed to a remote and speculative interest.” *Spahn v. Zoning Bd. of Adjustment*, 922 A.2d 24, 31 (Pa. Commw. Ct. 2007), *aff’d*, 977 A.2d 1132 (Pa. 2009). To show a “substantial interest,” the party must show that it “surpasses the common interest of all citizens in procuring obedience to the law.” *Id.*

Wisconsin law states that “any person aggrieved” may appeal to the zoning board of adjustment, Wis. Stat. Ann. § 59.694(4), and seek *certiorari* to appeal from the board’s decision to the Wisconsin courts, *id.* § 62.23(10).⁸ A Wisconsin Court of Appeals explained that “[o]ne is aggrieved” in the context of a challenge to a zoning board of appeals decision “when that decision has a direct effect on his or her legally protected interests.” *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Cty. Bd. of Adjustment*, 373 N.W.2d 450, 452 (Wis. Ct. App. 1985), *aff’d*, 388

general standard articulated by the Ohio Supreme Court in that case was cited in *Midwest Fireworks Manufacturing* as consistent with the court’s conclusion that the requirements for standing in the zoning context had been satisfied.

⁸ The Township makes much of the definition of “person aggrieved” in Wis. Stat. Ann. § 58.06 and the fact that the MZEA does not contain a similar provision. (Twp. Supp. Br. at 29). What the Township elides is that the narrow construction employed by many circuit court cases lacks a statutory basis and is inconsistent with how neighboring states have the person aggrieved standard.

N.W.2d 593 (Wis. 1986). Property ownership is sufficient to show a legally protected interest, and the courts do not require property owners to compare their alleged injuries to similarly situated property owners. *See. id.*

These prevailing interpretations of similar statutory language across the Great Lakes show how anomalous a reading of “party aggrieved” some Michigan Courts of Appeals have embraced. This Court should recognize that the plain language of the MZEA does not restrict “party aggrieved” status to the narrow subset of those whose injuries are different from other similarly situated property owners. In doing so, this Court would bring the interpretation of standing under the MZEA into harmony with the interpretation of other Michigan statutes, and would protect Michigan residents’ ability to seek judicial redress in ways that align with protections already provided in neighboring states.

II. The use of “party aggrieved” rather than “person aggrieved” in MCL 125.3605 matters only insofar as it indicates a continuing involvement and interest in the zoning proceedings.

While there is no Michigan case that directly addresses the issue, interpretations of similar statutory language in other states suggest that a “person aggrieved” is a participant before the initial administrative decisionmaking agency (here, the Planning Commission), and a “party aggrieved” is a participant in the proceedings at the first level of appellate review (here, the Board). In considering whether the meaning of “person aggrieved” in MCL 125.3604(1) differs from that of “party aggrieved” in MCL 125.3605, this Court should recognize that Michigan courts generally have not drawn a substantive distinction between “person aggrieved” and “party aggrieved.” While Michigan Courts recognize that, “[w]hen the Legislature uses different words, the words are generally intended to connote different meanings,” *U.S. Fid. & Guar. Co. v. Mich. Catastrophic*

Claims Ass'n, 484 Mich. 1, 14; 795 N.W.2d 101 (2009), the difference in meaning here is a procedural, rather than a substantive, distinction.

Other states' interpretations of similar statutory language support this approach. In Kansas, for example, whether an entity is a party with standing to challenge a permit issuance depends on "that person's participation in a lawsuit or other action" and whether that person "'participate[d]' in the agency proceedings." *Bd. of Sumner Cty. Comm'rs v. Bremby*, 189 P.3d 494, 502 (Kan. 2008) (emphasis omitted). A "proceeding" need not be a formal zoning board hearing or appeal; instead, the relevant question is whether the entity participated in "the process by which an agency carries out its statutory duties." *Id.* (emphasis omitted). Although that case concerned the application of Kansas administrative law to a landfill permit dispute, the logic applies with equal force to zoning appeals. In Maryland, courts look to whether the litigant was involved in the initial zoning board of appeals proceedings. A litigant may show participation sufficient for "party" status through testimony at zoning hearings, signing letters in protest or opposition to an application, or appearing and being identified at hearings below. *Herr v. Bd. of Mun. & Zoning Appeals*, No. 93, 2019 WL 2296219, at *4 (Md. Ct. Spec. App. May 29, 2019). Similarly, Pennsylvania courts have acknowledged for decades that "[w]hile any Person aggrieved by decision regarding a use of another's land to a zoning hearing board, it is necessary, for an appeal to be brought in our courts, that the appellant had been a party before the zoning hearing board." *Baker v. West Goshen Twp. Zoning Hearing Bd.*, 367 A.2d 819, 821 (Pa. Commw. Ct. 1976). Few, if any, other states have directly addressed the issue. But, as discussed above, the Michigan jurisprudence on standing shows the importance of an interpretation similar to that of these states.

III. The Court of Appeals misinterpreted and misapplied the “party aggrieved” standard, both in comparing the party’s damages to “other property owners similarly situated” and in ignoring crucial standing allegations.

In misinterpreting and misapplying the “party aggrieved” standard under the MZEA, the Court of Appeals’ conclusion that the Coastal Alliance lacked standing was erroneous. The Court of Appeals required the Coastal Alliance to show that its injuries were distinct from other similarly situated property owners, which, as discussed above, is a standard that is both an outlier and lacks support in the statutory language. Furthermore, relying on the false premise that ““common environmental changes’ [have been] deemed inadequate to establish that a party is ‘aggrieved,’” the Court of Appeals dismissed all of the Coastal Alliance’s concerns as “environmental,” without even considering whether they could constitute injuries. *Saugatuck Dunes Coastal All.*, 2019 WL 4126752, at *4 (quoting *Olsen*, 325 Mich. App. at 185). A proper analysis of the Coastal Alliance’s allegations would have found that it was an “aggrieved party” with standing to pursue its appeal.

When the proper test is applied, the conclusion is inescapable that the Coastal Alliance has standing. The Court of Appeals concluded that the Coastal Alliance had “submitted numerous affidavits apparently tending to show that the affiants will suffer harms distinct from the general public.” *Saugatuck Dunes Coastal All.*, 2019 WL 4126752 at *4. That conclusion should have sufficed, based on the appropriate reading of the statutory language discussed above, to give the Coastal Alliance standing under the MZEA. And, in almost any other state using “party aggrieved” in statutory language on standing to challenge zoning board of appeals decisions, it *would have* sufficed. Nonetheless, the Court of Appeals required the Coastal Alliance to show that it “will suffer harms distinct from other property owners similarly situated,” even if those harms are serious or “might differ from the citizenry at large.” *Id.* This mismatch between the Court of Appeals’ standing decision and its conclusion about the harms that the Coastal Alliance had shown demonstrates that the Court of Appeals erred.

Finally, the Court of Appeals’ analysis of the Coastal Alliance’s environmental harms argument was inconsistent both with other Court of Appeals opinions in MZEA cases and with standing principles more broadly. *Olsen*, the case upon which the Court of Appeals relied in dismissing the Coastal Alliance’s appeal, imagined into existence the premise that environmental damages cannot render a party “aggrieved” under the MZEA. *Olsen* purported to rely upon *Unger v. Forest Home Twp.*, 65 Mich. App. 614, 617; 237 N.W.2d 582 (1976), and *Joseph v. Grand Blanc*, 5 Mich. App. 566, 571 (1967), for its discounting of environmental damages. 325 Mich. App. at 185. Yet neither *Unger* nor *Joseph* even mentions, let alone discusses, the viability of alleging environmental harms. Instead, *Joseph* held that an increase in traffic—as well as general economic and aesthetic losses—due to rezoning is not a “special damage.” 5 Mich. App. at 571. In *Unger*, the Court of Appeals rejected as grounds for standing mere property ownership combined with the inference that “traffic might increase” and that “property values in general for lake property might go down.”⁹ 65 Mich. App. at 618. Any intoning of these precedents for the proposition that environmental damages are per se insufficient is thus meritless.

⁹ It is also possible that the Michigan Supreme Court meant that the increased traffic alleged in *Joseph* and *Unger* was too speculative and general, and that more specific allegations about increased traffic and its consequences could have provided an adequate basis for standing. Allegations about increased traffic congestion, resulting in increased dust, noise, and/or air pollution, are generally considered sufficient to establish standing in Michigan and in other states. See, e.g., *Brown v. East Lansing Zoning Bd. of Appeals*, 109 Mich. App. 688, 699–700; 311 N.W.2d 828 (1981) (noting that the allegations about increases in traffic and population went “beyond” those that were inadequate to confer standing in *Joseph*); see also *Ciszek v. Kootenai Cty. Bd. of Comm’rs*, 254 P.3d 24 (Idaho 2011); *Shinnecock Neighbors v. Town of Southampton*, 37 N.Y.S.3d 679, 684 (N.Y.S. Ct. 2016).

TABLE OF STATE ZONING APPEAL STATUTES

The Amici Curiae conducted a thorough survey of the statutory language and standards for zoning decision appeals in the United States.¹⁰ Below is a table with entries for each state that uses similar language in providing a statutory basis for appeals of zoning decisions to the state courts. Illustrative state court construction of that statutory language, when found, is included for each entry.

State	Statutory Language	State Court Interpretation
Alabama	“Any party aggrieved by any final judgment or decision of such board of zoning adjustment may within 15 days thereafter appeal therefrom to the circuit court” Ala. Code 1975 § 11-52-81.	Petitioners need show only that the zoning board decision “‘could have’ an adverse effect upon them,’ such as diminished property value, <i>Ex parte Steadham</i> , 629 So. 2d 647, 648 (Ala. 1993), or increased traffic and urban sprawl, <i>Fort Morgan Civic Ass’n, Inc. v. Baldwin Cty. Comm’n</i> , 890 So. 2d 139, 145 (Ala. Civ. App. 2003). Courts have not required a direct comparison of the alleged injury to those of other property owners to establish standing. <i>See Caton v. City of Thorsby</i> , 855 So. 2d 1057, 1061–62 (Ala. 2003).
Alaska	“The assembly shall provide by ordinance for an appeal by a . . . person aggrieved from a decision of a hearing officer, board of adjustment or other body to the superior court.” Alaska Stat. § 29.40.060(b).	To show standing for zoning appeals the requirement is “only that the property owner produce some evidence supporting a claim of impact on real property.” <i>Griswold v. Homer Bd. of Adjustment</i> , 440 P.3d 248, 253 (Alaska 2019). “An aggrieved property owner is no less aggrieved merely because the neighbors are aggrieved as well.” <i>Id.</i> at 254.
Arizona	“A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property within three hundred feet from the boundary of	A landowner must show that they “suffer[] ‘special damage’ distinct from that common to the public.” <i>Buckelew v. Town of Parker</i> , 937 P.2d 368, 372 (Ariz. App. 1996) (citing <i>Armory Park</i>

¹⁰ The Amici Curiae would like to express their gratitude for the excellent research assistance of their legal interns in developing this list: Jessica Carbonaro, Thomas Jachym, Catherine Perez, Safeeyah Quereshi, and Brian Schaap.

	the immediately adjacent property . . . may file a complaint for special action in the superior court to review the legislative body or board decision.” Ariz. Rev. Stat. § 9-462.06(K).	<i>v. Episcopal Comm. Servs.</i> , 712 P.2d 914 (Ariz. 1985)). He “must suffer ‘damage peculiar to himself’ and [] such damage must be separate and distinct from the damage suffered by the general public.” <i>Id.</i> at 373. Arizona courts of appeals have rejected the argument that the comparison is to similarly situated property owners. <i>See id.</i>
Connecticut	“‘Aggrieved person’ means a person aggrieved by a decision of a board In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, ‘aggrieved person’ includes any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board.” Conn. Gen. Stat. Ann. § 8-8(a)(1).	Aggrievement is either “classical” or “statutory.” <i>Moutinho v. Planning & Zoning Comm’n</i> , 899 A.2d 26, 30 (Conn. 2006). For classical aggrievement, a complainant must show: (1) “a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share” and (2) that “the agency’s decision has specially and injuriously affected that specific personal or legal interest.” <i>Id.</i> (quoting <i>Lewis v. Planning & Zoning Comm’n</i> , 880 A.2d 865, 870 (Conn. 2005)). “Statutory aggrievement exists by legislative fiat” and “grants standing to those who claim injury to an interest protected by that legislation.” <i>Id.</i> at 31 (quoting <i>Lewis</i> , 880 A.2d at 870).
Delaware	“Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer . . . may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality.” 22 Del. Code § 328(a).	<i>Di’s, Inc. v. McKinney</i> , 673 A.2d 1199, 1201 (Del. 1996) (a person had standing because he was an adjoining landowner; his economic interest in the board decision was irrelevant to the question of whether he was “aggrieved” because of his proximity to the land). The courts conduct a four-factor analysis to determine whether a group has standing: “(1) whether the organization is capable of assuming an adversary position in the litigation; (2) whether the size and composition of the organization indicates that it is fairly representative of the

		<p>neighborhood; (3) whether full participating membership in the organization is available to all residents and property owners in the community; and (4) whether the adverse effect of the challenged decision on the group represented by the organization is within the zone of interests sought to be protected by the zoning law.” <i>Vassallo v. Penn Rose Civic Ass’n</i>, 429 A.2d 168, 170 (Del. 1981).</p>
<p>Florida</p>	<p>“As used in this section, the term ‘aggrieved or adversely affected party’ means any person . . . that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.” Fla. Stat. Ann § 163.3215(2). “Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular</p>	<p>“Stranahan and Friends meet the test for standing [because t]he interests alleged are protected by the City’s comprehensive plan, they are greater than the general interest in community well-being, and the interests will be adversely affected by the development.” <i>Stranahan House, Inc. v. City of Fort Lauderdale</i>, 967 So. 2d 427, 434 (Fla. Ct. App. 2007).</p>

	piece of property which is not consistent with the comprehensive plan adopted under this part.” <i>Id.</i> § 163.3215(3).	
Hawaii	<p>“Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term ‘person aggrieved’ shall include an agency that is a party to a contested case proceeding before that agency or another agency.” Haw. Rev. Stat. § 91-14(a).</p>	<p><i>East Diamond Head Ass’n v. Zoning Bd. of Appeals</i>, 479 P.2d 796, 798 (Haw. 1971) (each owner—who had presented evidence of increased noise, traffic, congestion, and change to aesthetic residential character of the neighborhood—of land adjoining property for which a variance had been granted by the zoning board of appeals was a “person aggrieved” and was thus entitled to judicial review of the variance).</p>
Idaho	<p>Appeals are limited to an “affected person,” which means “one having a bona fide interest in real property which may be adversely affected by: (i) The approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter; (ii) The approval of an ordinance first establishing a zoning district upon annexation or the approval or denial of an application to change the zoning district applicable to specific parcels or sites pursuant to section 67-6511, Idaho Code; or (iii) An approval or denial of an application for conditional rezoning pursuant to section 67-6511A,</p>	<p>“To have standing in a land-use case, the petitioner needs to allege, not prove, only that the development could potentially harm his or her real estate interests.” <i>Hawkins v. Bonneville Cty. Bd. of Comm’rs</i>, 254 P.3d 1224, 1227 (Idaho 2011) (citing <i>Evans v. Teton Cty.</i>, 73 P.3d 84, 89 (Idaho 2003)). In order to have standing, a person must claim injury that is “distinct” or “particularized” or is otherwise “fairly traceable to the challenged conduct” if the injury is based on “particular but non-specified spot zoning decisions.” <i>Coal. for Agric.’s Future v. Canyon Cty.</i>, 369 P.3d 920, 924 (Idaho 2016). For an association to have standing, “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are</p>

	<p>Idaho Code.” Idaho Code § 67-6521(1)(a).</p> <p>“An affected person aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.” Idaho Code § 67-6521(1)(d).</p>	<p>germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.” <i>Beach Lateral Water Users Ass’n v. Harrison</i>, 130 P.3d 1138, 1142 (Idaho 2006).</p>
<p>Illinois</p>	<p>“An appeal to the board of appeals may be taken by any person aggrieved” 65 Ill. Comp. Stat. Ann. 5/11-13-12. “All final administrative decisions of the board of appeals under this Division 13 shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto.” <i>Id.</i> 5/11-13-13. “‘Administrative decision’ or ‘decision’ means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.” 735 Ill. Comp. Stat. Ann. ¶ 5/3-101.</p>	<p>Considering a complaint under a statute similar to the zoning statute, an Illinois court concluded that alterations to use and enjoyment of property common to neighbors could show aggrievement for standing. For administrative review of the county superintendent’s order granting a petition for a new road to provide additional access to a residential subdivision, the plaintiffs met the statutory requirements for standing to sue because they appeared at the hearings, objected to the petition introduced in evidence, and alleged that they were legal voters residing within two miles of the proposed road who would be directly and adversely affected by increased traffic and traffic speeds through the subdivision, thus endangering residents and depreciating property values and increasing taxes for construction and maintenance of a road having a negative effect on their quality of life. <i>Novosad v. Mitchell</i>, 621 N.E.2d 960 (Ill. Ct. App. 4th Dist. 1993).</p>
<p>Indiana</p>	<p>“A person aggrieved by the zoning decision who participated in the board hearing that led to the decision, either: (A) by appearing at the hearing in person, by agent, or by attorney and presenting</p>	<p>“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.’” <i>Bagnall v. Town of Beverly Shores</i>, 726 N.E.2d 782, 786</p>

	<p>relevant evidence; or (B) by filing with the board a written statement setting forth any facts or opinions relating to the decision” may appeal a zoning board of appeals decision. A person is “aggrieved” only if “(1) the zoning decision has prejudiced or is likely to prejudice the interests of the person; (2) the person was eligible for an initial notice of a hearing under this chapter, was not notified of the hearing in substantial compliance with this chapter, and did not have actual notice of the hearing before the last date in the hearing that the person could object or otherwise intervene to contest the zoning decision; (3) the person's asserted interests are among those that the board was required to consider when it made the challenged zoning decision; and (4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the zoning decision.” Ind. Code Ann. § 36-7-4-1603(a)(2), (b) (2020).</p>	<p>(Ind. 2000) (alteration in original) (quoting <i>Union Twp. Residents Ass’n, Inc. v. Whitley Cty. Redev. Comm’n</i>, 536 N.E.2d 1044, 1045 (Ind. App. 1989)). “A petitioner must also demonstrate a special injury not common to the community as a whole.” <i>Pflugh v. Indianapolis Historic Pres. Comm’n</i>, 108 N.E.3d 904, 909 (Ind. Ct. App.) (citing <i>Bagnall</i>, 726 N.E.2d at 786), <i>transfer denied</i>, 113 N.E.3d 628 (Ind. 2018).</p>
<p>Iowa</p>	<p>“Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, 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 the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.” Iowa Code Ann. § 414.15.</p>	<p>“Only a person whose specific interest or property rights are specially damaged, in contrast to any effect suffered by the public generally, is entitled to challenge a zoning authority’s decision.” <i>Reynolds v. Dittmer</i>, 312 N.W.2d 75, 78 (Iowa Ct. App. 1981). “Proof that a party is ‘aggrieved’ by agency action is shown by evidence of ‘(1) a specific personal and legal interest in the subject matter of the agency decision and (2) a specific and injurious effect of this interest by the decision.’” <i>Chrischilles v. Arnolds Park Zoning Bd. of Adjustment</i>, 505 N.W.2d 491, 493–94 (Iowa 1993) (quoting <i>Iowa-Illinois Gas</i></p>

		<p><i>& Elec. Co. v. Iowa State Commerce Comm’n</i>, 347 N.W.2d 423, 426 (Iowa 1984)).</p>
Kansas	<p>“Within 30 days of the final decision of the city or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.” Kan. Stat. Ann. § 12-760(a).</p>	<p>“A party is aggrieved whose legal right is invaded by an act complained of or whose pecuniary interest is directly affected by the order. The term refers to substantial grievance, a denial of some personal or property right, or the imposition upon a party of some burden or obligation. In this sense it does not refer to persons who may happen to entertain desires on the subject, but only to those who have rights which may be enforced at law and whose pecuniary interest may be affected.” <i>Tri-County Concerned Citizens, Inc. v. Bd. of Harper Cty. Comm’rs</i>, 95 P.3d 1012, 1017 (Kan. Ct. App. 2014) (quoting <i>Fairfax Drainage Dist. v. City of Kansas City</i>, 374 P.2d 35, 41 (Kan. 1962)). “[A]n environmental association had standing to challenge issuance of a special use permit to a waste disposal company to build a landfill . . . because members of the association lived within 1,000 feet of the proposed landfill they were at risk of suffering ‘a substantial grievance and a loss of pecuniary interest.’” <i>Goldblatt v. Unified Gov’t of Wyandotte Cty.</i>, 396 P.3d 738 (Kan. Ct. App. 2017) (per curiam) (quoting <i>Tri-County Concerned Citizens</i>, 95 P.3d at 1017).</p>
Kentucky	<p>“Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustment shall appeal from the action to the Circuit Court of the county in which the property, which is the subject of the action of the board of</p>	<p>Kentucky courts have recognized that not only neighboring property owner have standing to oppose developer’s proposed zone change, but also other residents because “[t]he entire community is damaged by haphazard zoning.” <i>21st Cent. Dev. Co., LLC v.</i></p>

	adjustment, lies.” Ky. Rev. Stat. Ann. § 100.347(1).	<i>Watts</i> , 958 S.W.2d 25, 28 (Ky. App. 1997) (emphasis omitted) (quoting <i>Fritts v. City of Ashland</i> , 348 S.W.2d 712, 714 (Ky. 1961)). The Supreme Court of Kentucky has also held that property owners whose residences are in the zone or directly confront the site of the proposed conditional use may contest the proposal. <i>Davis v. Richardson</i> , 507 S.W.2d 446, 448–49 (Ky. 1974).
Louisiana	“Any person or persons jointly or severally aggrieved by any decision by the board of adjustment [or] any officer, department, board, or bureau of the municipality, may present to the district court of the parish or city in which the property affected is located a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of illegality.” La. Rev. Stat. § 33:4727(E)(1).	“We interpret the term ‘a person aggrieved’ to require that the person have a proprietary interest in immovable property subject to the zoning ordinance or variance at issue, or in immovable property affected by the ordinance or variance, in order to challenge a decision of the Board of Zoning Adjustment in district court.” <i>Bass Custom Signs, LLC v. Lafayette City-Parish Consol. Gov’t</i> , 149 So. 3d 965, 968 (La. App. 2014), <i>writ denied</i> , 158 So. 3d 820 (La. 2015).
Maryland	“Any of the following persons may file a request for judicial review of a decision of a board of appeals or a zoning action of a legislative body by the circuit court of the count: (1) a person aggrieved by the decision or action; (2) a taxpayer; or (3) an officer or unit of the local jurisdiction.” Md. Code, Land Use § 4-401(a).	“In zoning cases, the rule in this State is that for a person to be aggrieved by an adverse decision of the administrative agency, and thus entitled to appeal to the courts, the decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally.” <i>Superior Outdoor Signs, Inc. v. Eller Media Co.</i> , 822 A.2d 478, 488 (Md. 2003) (quoting <i>Maryland-Nat’l Capital Park & Planning Comm’n v. Smith</i> , 633 A.2d 855 (Md. 1993)) (emphasis and footnote omitted).
Massachusetts	“Any person aggrieved by a decision” in an administrative appeal, special permit, or variance proceeding may appeal such	“A ‘person aggrieved’ is one who ‘suffers some infringement of his legal rights.’ . . . [T]he right or interest asserted by a plaintiff claiming

	<p>decision by filing suit in the appropriate court. Mass. Gen. Laws Ann. ch. 40A, § 17, <i>impliedly repealed on other grounds by</i> Mass. Gen. Laws ch. 185, § 3A.</p>	<p>aggrievement must be one that the Zoning Act is intended to protect, either explicitly or implicitly [Aggrievement] requires that the plaintiff ‘establish—by direct facts and not by speculative personal opinion—that his injury is special and different from the concerns of the rest of the community.’” <i>81 Spooner Rd., LLC v. Zoning Bd. of Appeals</i>, 964 N.E.2d 318, 326-27 (Mass. 2012) (quoting <i>Marashlian v. Zoning Bd. of Appeals</i>, 660 N.E.2d 369, 371 (Mass. 1996), then <i>Kenner v. Zoning Bd. of Appeals</i>, 944 N.E.2d 163, 169 (Mass. 2011), and <i>Standerwick v. Zoning Bd. of Appeals</i>, 849 N.E.2d 197, 208 (Mass. 2006)).</p>
<p>Minnesota</p>	<p>“‘Any person aggrieved’ by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals . . . may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court. . . .” Minn. Stat. Ann. § 462.361(Subdivision 1)</p>	<p>Minnesota courts have imported the construction of “person aggrieved” from other statutes. “Neither the statute nor any published Minnesota case defines the term ‘person aggrieved’ for the purpose of Minn. Stat. § 462.361. The term has, however, been defined in the context of other statutes. In order for an ‘aggrieved party’ to have the right to appeal a decision under the Minnesota Administrative Procedure Act, for example, the person must be ‘injuriously or adversely affected by the judgment or decree when it operates on his rights of property or bears directly upon his personal interest.’” <i>Stansell v. City of Northfield</i>, 618 N.W.2d 814, 818 (Minn. App. 2000) (quoting <i>In re Getsug</i>, 186 N.W.2d 686, 689 (Minn. 1971)).</p>
<p>Mississippi</p>	<p>“Any person aggrieved by a judgment or decision of the board of supervisors of a county, or the governing authority of a municipality, may appeal the judgment or decision to the circuit court of the county in which the board of supervisors is the governing body or in which the</p>	<p>“For standing, the person(s) aggrieved, or members of the association, whether one or more, should allege an adverse effect different from that of the general public.” <i>Belhaven Improvement Ass’n, Inc. v. City of Jackson</i>, 507 So. 2d 41, 47 (Miss. 1987).</p>

	municipality is located.” Miss. Code. Ann. § 11-51-75.	
Missouri	“Any person or persons jointly or severally aggrieved by any decision of the board of adjustment . . . may present to the circuit court of the county or city in which the property affected is located a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality.” Mo. Ann. Stat. § 89.110.	“The plaintiff’s interest must be affected more distinctly and directly than the interest of the public generally.” <i>Bender v. Forest Park Forever, Inc.</i> , 142 S.W.3d 772, 774 (Mo. Ct. App. 2004). A Council that owned no property and had “no pecuniary interest in the case” did not have a “specific and legally cognizable interest in the subject matter of the administrative decision” necessary for standing. <i>State ex rel. Columbus Park Cmty. Council v. Bd. of Zoning Adjustment</i> , 864 S.W.2d 437, 440–41 (Mo. Ct. App. 1993).
Montana	“Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer . . . may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.” Mont. Code Ann. § 76-2-327(1).	“The plain meaning of § 76–2–327, MCA, reveals the legislature’s intent to grant two classes of parties the right to petition the district court concerning alleged illegalities in the Board’s decision. The statute first grants any persons, even those who do not qualify as taxpayers of the municipality, the right to petition for review of the Board’s decision if they have been aggrieved by such decision.” <i>Druffel v. Bd. of Adjustment</i> , 168 P.3d 640, 643 (Mont. 2007).
Nebraska	For cities of the “Primary class,” “[a]ny person or persons, jointly or severally aggrieved by any final administrative or judicial order or decision of the board of zoning appeals, the board of equalization, the city council, or any officer or department or board of a city of the primary class . . . [may] appeal from such order or decision to the district court” according to certain procedural requirements. Neb. Rev. St. § 15-1201. For other cities, standing to petition the district court to review a zoning board of appeals decision granted to “[a]ny	“In order to have standing as an aggrieved person for the purpose of attacking a change of zone, the plaintiff must demonstrate that he suffers a special injury different in kind from that suffered by the general public.” <i>Copple v. City of Lincoln</i> , 315 N.W.2d 628, 630 (Neb. 1982)

	person or persons, jointly or severally aggrieved by any decision of the board of appeals.” Neb. Rev. Stat. Ann. § 14-413.	
Nevada	“Any person who: (a) Has appealed a decision to the governing body . . . and (b) Is aggrieved by the decision of the governing body, may appeal that decision to the district court of the proper county by filing a petition for judicial review.” Nev. Rev. Stat. Ann. § 278.3195(4). “In a county whose population is 700,000 or more, a person shall be deemed to be aggrieved under an ordinance adopted pursuant to this subsection if the person appeared, either in person, through an authorized representative or in writing, before a person or entity described in paragraphs (a) to (d), inclusive, on the matter which is the subject of the decision.” <i>Id.</i> § 278.3195(1)(d).	“[T]he Legislature chose not to define ‘aggrieved’ for appeals in counties with populations of less than 400,000, suggesting that the amendment was not intended to preclude ordinances from also addressing who may appeal from a planning commission decision. Thus, in accordance with NRS 278.3195(1)’s legislative history, the expressed policy to expand who may appeal, and what appears most reasonable, a local ordinance adopted under NRS 278.3195 may validly broaden the definition of who may appeal.” <i>City of N. Las Vegas v. Eighth Judicial Dist. Court ex rel. Cty. of Clark</i> , 147 P.3d 1109, 1115 (Nev. 2006). An individual who does not show “that he has suffered any special damages differing from the general public” lacks standing to appeal to the zoning decision. <i>Jungo Land & Investments, Inc. v. Humboldt Cty. Bd. of Comm’rs</i> , No. 3:10-CV-257-RCJ-VPC, 2011 WL 6131788, at *4 (D. Nev. Dec. 7, 2011), <i>amended</i> , No. 3:10-CV-00257-RCJ, 2012 WL 7009378 (D. Nev. June 12, 2012)
New Hampshire	“Appeals to the board of [zoning] adjustment concerning any matter within the board’s powers as set forth in RSA 674:33 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.” N.H. Rev. Stat. § 676:5(I).	“[A] litigant must have a direct definite interest in the outcome of the proceedings to be considered a person aggrieved.” <i>Johnson v. Town of Wolfboro Planning Bd.</i> , 945 A.2d 13, 17 (N.H. 2008). “[T]he court may consider . . . the proximity of the plaintiff’s property to the site for which approval is sought; the type of change proposed; the immediacy of the injury claimed; and the plaintiff’s participation in the administrative hearings.” <i>Id.</i>
New Mexico	“A person aggrieved by a decision of the zoning authority or any	“[T]he test for standing in New Mexico does not distinguish between zoning

	<p>officer, department, board or bureau of the zoning authority may appeal the decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978.” N. Mex. Stat. Ann. § 3-21-9.</p>	<p>and planning.” <i>Ramirez v. City of Santa Fe</i>, 852 P.2d 690, 694 (N.M. App. 1993). Plaintiffs had standing to challenge a City Council amendment to the General Plan, which changed the classification of a 30-acre tract from residential to industrial and commercial, based on the “threat of aesthetic, quality of life, and property harm alleged by Plaintiffs,” who were also property owners. <i>Id.</i> “[T]o attain standing in a suit arguing the unlawfulness of governmental action, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise.” <i>Hawthorne v. City of Santa Fe</i>, 537 P.2d 1385, 1386 (N.M. 1975) (quoting <i>De Vargas Savings & Loan Ass’n v. Campbell</i>, 535 P.2d 1320 (N.M. 1975)).</p>
New York	<p>“Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules.” N.Y. Town Law § 267-c. “Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the town, may have the decision reviewed by a special term of the supreme court in the manner provided by article seventy-eight of the civil practice law.” N.Y. Town Law § 282.</p>	<p>“Because the welfare of the entire community is involved when enforcement of a zoning law is at stake there is much to be said for permitting judicial review at the request of any citizen, resident or taxpayer; this idea finds support in the provision for public notice of a hearing.” <i>Sun-Brite Car Wash, Inc. v. Bd. of Zoning Appeals</i>, 508 N.E.2d 130, 133 (N.Y. 1987). “In land use matters . . . petitioner ‘must show that it would suffer direct harm, injury that is in some way different from that of the public at large.’” <i>Ass’n for a Better Long Island, Inc. v. N.Y. State Dep’t of Env’tl. Conservation</i>, 11 N.E.3d 188, 192 (N.Y. 2014) (quoting <i>Soc’y of Plastics Indus. v Suffolk Cty.</i>, 573 N.E.2d 1034, 1041 (N.Y. 1991)).</p>
North Dakota	<p>“A decision of the board of adjustment may be appealed to the governing body of the city by either the aggrieved applicant or by any</p>	<p>An aggrieved person “must have some legal interest that may be enlarged or diminished by the decision to be appealed from. In other words, such</p>

	<p>officer, department, board, or bureau of the city.” N.D. Cent. Code Ann. § 40-47-11.</p> <p>“Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, may appeal to the district court in the manner provided in section 28-34-01.” N.D. Cent. Code Ann. § 11-33-12.</p>	<p>party must be injuriously affected by the decision.” <i>Dakota Res. Council v. Stark Cty. Bd. of Cty. Comm’rs</i>, 817 N.W.2d 373, 376 (N.D. 2012) (quoting <i>Hagerott v. Morton Cty. Bd. of Comm’rs</i>, 778 N.W.2d 813, 813 (N.D. 2010)). In <i>Dakota Resource Council</i>, a non-profit group focused on preserving small farms and clean water had standing to appeal a board of county commissioners zoning decision because some members lived close to the facility to be built based on the zoning approval. <i>Id.</i> at 377.</p>
Ohio	<p>“Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer.” Ohio Rev. Code §§ 303.15, 519.15.</p>	<p>“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.” <i>Safest Neighborhood Ass’n v. Athens Bd. of Zoning Appeals</i>, 5 N.E.3d 694, 702 (Ohio Ct. App. 2013).</p>
Oklahoma	<p>Appeals divided between those from municipal and county boards of adjustment. “An appeal from any action, decision, ruling, judgment or order of the board of adjustment may be taken by . . . any person or persons whose property interests are directly affected by such action, decision, ruling, judgment or order of the board of adjustment, or by the governing body of the municipality to the district court in the county in which the situs of the municipality is located.” Okla. Stat. Ann. tit. 11, § 44-110. “An appeal to the district court from any decision, ruling, judgment, or order of said county board of adjustment may be taken by any person or persons . . . aggrieved thereby.” Okla. Stat. Ann. tit. 19, § 865.64.</p>	<p>No cases interpreting the standing requirements.</p>
Oregon	<p>“A party aggrieved by the final determination [of the Land Use</p>	<p>“[A] person is adversely affected by a decision that authorizes a land use . . .</p>

	<p>Board of Appeals] may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.” Or. Rev. Stat. Ann. § 215.422(2).</p> <p>“Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.” Or. Rev. Stat. Ann. § 197.850(1).</p>	<p>when the operation of the allowed land use impinges upon that person’s property or personal interests.” <i>Devin Oil Co., Inc. v. Morrow Cty.</i>, 365 P.3d 1084, 1088 (Or. Ct. App. 2015). “[A] person satisfies the ‘aggravement’ criterion of the [Land Use Board of Appeals] statute for standing to appeal a land use decision to [Land Use Board of Appeals] if (1) the person’s ‘interest in the decision was recognized by the local land use decision-making body,’ (2) the person ‘asserted a position on the merits’ and (3) the local body ‘reached a decision contrary to the position asserted.’” <i>League of Women Voters of Coos Cty. v. Coos Cty.</i>, 712 P.2d 111, 113 (Or. 1985) (quoting <i>Jefferson Landfill Comm. v. Marion Cty.</i>, 686 P.2d 310, 313 (Or. 1984)).</p>
<p>Pennsylvania</p>	<p>“Appeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person’s substantive property rights.” 53 Pa. Stat. Ann. § 11002.1-A(c).</p>	<p>“[A] party is traditionally ‘aggrieved’ when he has an adverse, direct, immediate and substantial interest in a decision, as opposed to a remote and speculative interest. A substantial interest ‘is one that surpasses the common interest of all citizens in procuring obedience to the law.’ A direct interest ‘requires a showing that the matter complained of has caused harm to a party’s interest,’ and an immediate interest ‘involves the nature of the causal connection between the action complained of and the injury to the party challenging it.’” <i>Spahn v. Zoning Bd. of Adjustment</i>, 922 A.2d 24, 31 (Pa. Commw. Ct. 2007), <i>aff’d</i>, 977 A.2d 1132 (Pa. 2009) (citations omitted) (quoting <i>Soc’y Hill Civic Ass’n v. Phila. Bd. of License & Inspection Review</i>, 905 A.2d 579, 586 (Pa. Commw. Ct. 2006)).</p>
<p>Rhode Island</p>	<p>“An aggrieved party, for purposes of this chapter, shall be: (i) any person, or persons, or entity, or entities, who or that can</p>	<p>No cases interpreting the standing requirements.</p>

	<p>demonstrate that his, her, or its property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of a city or town; or (ii) Anyone requiring notice pursuant to this chapter.” R.I. Gen. Laws § 45-24-31(4).</p> <p>“A zoning ordinance adopted pursuant to this chapter shall provide that an appeal from a decision of the zoning board of review may be taken by an aggrieved party to the superior court for the county in which the city or town is situated.” <i>Id.</i> § 45-24-63(b).</p>	
South Carolina	<p>“A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.” S.C. Code § 6-29-820.</p>	No cases interpreting the standing requirements.
South Dakota	<p>“Any person or persons . . . aggrieved by any decision of the board of adjustment may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality.” S.D. Codified Laws § 11-2-61.</p>	<p>“SDCL 11-2-61 limits standing to any person, taxpayer, or entity challenging a zoning decision who is ‘aggrieved by any decision of the board of adjustment[.]’ To be aggrieved by the Board’s decision, [plaintiffs] must plead and prove a unique and personal injury not suffered by taxpayers in general.” <i>Huber v. Hanson Cty. Planning Comm’n</i>, 936 N.W.2d 565, 570–71 (S.D. 2019); <i>see also Cable v. Bd. of Union Cty. Comm’rs</i>, 769 N.W.2d 817, 827 (S.D. 2009).</p>
Tennessee	<p>“Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may</p>	<p>“[T]he concept of ‘aggrievement’ supplies the distinct and palpable injury needed to have standing” to challenge a land use decision. <i>City of</i></p>

	have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.” Tenn. Code Ann. § 27-9-101.	<i>Brentwood v. Metro. Bd. of Zoning Appeals</i> , 149 S.W.3d 49, 58 (Tenn. Ct. App. 2004). “[W]hen visual clutter is the interest sought to be protected, it is unnecessary that injury be uncommon to general public.” <i>Id.</i> at 60.
Texas	“Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality: (1) a person aggrieved by a decision of the board; (2) a taxpayer; or (3) an officer, department, board, or bureau of the municipality.” Tex. Loc. Gov’t Code § 211.011(a).	“A person is ‘aggrieved’ by the board’s decision if the decision adversely affects the person in a manner different from the way in which it affects a member of the general public.” <i>Wende v. Bd. of Adjustment</i> , 27 S.W.3d 162, 167 (Tex. App. 2000), <i>rev’d on other grounds</i> , 92 S.W.3d 424 (Tex. 2002). “[T]he damage or injury need not reach the level of a legal injury.” <i>Galveston Historical Found. v. Zoning Bd. of Adjustment</i> , 17 S.W.3d 414, 417 (Tex. App. 2000).
Virginia	“Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition” Va. Code Ann. § 15.2-2314.	“The word ‘aggrieved’ in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.” <i>Va. Beach Beautification Comm’n v. Bd. of Zoning Appeals</i> , 344 S.E.2d 899, 902–03 (Va. 1986).
Washington	“Standing to bring a land use petition . . . is limited to the following persons: (1) The applicant and the owner of property to which the land use decision is directed; (2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present: (a) The land use decision has prejudiced or is likely to	“To satisfy [the zoning law’s] prejudice requirement, a petitioner must show that he or she would suffer an ‘injury-in-fact’ as a result of the land use decision. ‘To show an injury in fact, the plaintiff must allege specific and perceptible harm.’” <i>Knight v. City of Yelm</i> , 267 P.3d 973, 982 (Wash. 2011) (citations omitted) (quoting <i>Suquamish Indian Tribe v. Kitsap Cty.</i> , 965 P.2d 636, 642 (Wash. Ct. App. 1998)). “To have standing, a petitioner’s interest ‘must be more than simply the abstract interest of the general public in having others comply with the law.’” <i>Thompson v. City of Mercer Island</i> , 375 P.3d 681, 686

	<p>prejudice that person; (b) That person’s asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision; (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.” Wash. Rev. Code Ann. 36.70C.060.</p>	<p>(Wash. Ct. App. 2016) (quoting <i>Chelan Cty. v. Nykreim</i>, 52 P.3d 1, 16 (Wash. 2002)).</p>
West Virginia	<p>An “[a]ggrieved’ or ‘aggrieved person’ means a person who: (1) Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or (2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.” W. Va. Code § 8A-1-2(b). “[A]ny aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari” W. Va. Code § 8A-9-1(b).</p>	<p>“Respondent asserts that petitioner’s complaints about the tower’s ‘perceived health risks,’ unsightliness, etc. are no different than those criticisms commonly made by the general public regarding cell phone towers. We do not accept respondent’s argument because the Ordinance recognizes that property owners who live within 300 feet of a proposed tower site may be uniquely affected by the approval of a tower.” <i>Casto v. Kanawha Cty. Comm’n</i>, No. 14-0683, 2015 WL 1839320, at *2 (W. Va. Apr. 17, 2015) (mem.).</p>
Wisconsin	<p>Appeals to court from county board of adjustment: “A person aggrieved by any decision of the board of adjustment . . . may . . . commence an action seeking the remedy available by certiorari.” Wis. Stat. Ann. § 59.694(10). Appeals to court from city board of adjustment: “Any person or persons, jointly or severally aggrieved by any decision of the</p>	<p>“One is aggrieved by an administrative decision when that decision has a direct effect on his or her legally protected interests.” <i>State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Cty. Bd. of Adjustment</i>, 373 N.W.2d 450, 452 (Wis. Ct. App. 1985), <i>aff’d</i>, 388 N.W.2d 593 (Wis. 1986). Property ownership can be a legally protected interest, but the property owner must show a connection between that</p>

	<p>board of appeals. . . may . . . commence an action seeking the remedy available by certiorari.” Wis. Stat. Ann. § 62.23(7)(e)(10). “A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agency of the municipality, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.” Wis. Stat. Ann. § 68.06.</p>	<p>property interest and the challenged zoning decision. <i>Cook v. Town of Spider Lake Zoning Bd. of Appeals</i>, 890 N.W.2d 49 (Wis. Ct. App. 2017) (per curiam).</p>
<p>Wyoming</p>	<p>“Any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court in the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located.” Wyo. Stat. 1977 § 16-3-114(a).</p>	<p>“An aggrieved or adversely affected person . . . has a legally recognizable interest that is or will be affected by the action of the zoning authority in question . . . [and] must have a definite interest exceeding the general interest in community good shared in common with all citizens.” <i>Moose Hollow Holdings, LLC v. Bd. of Teton Cty. Comm’rs</i>, 396 P.3d 1027, 1033 (Wyo. 2017) (quoting <i>N. Laramie Range Found. v. Bd. of Converse Cty. Comm’rs</i>, 290 P.3d 1063, 1073 (Wyo. 2012)). “[A]n aggrieved or adversely affected person having standing to sue . . . must have a definite interest exceeding the general interest in community good shared in common with all citizens.” <i>Northfork Citizens for Responsible Dev. v. Bd. of Park Cty. Comm’rs</i>, 189 P.3d 260, 263 (Wyo. 2008) (quoting E.C. Yokley, 4 <i>Zoning Law & Practice</i> § 24-3 at 194 (4th ed. 1979)).</p>

CONCLUSION

This Court should grant the Appellants’ request for review and provide clarity that the standing analysis for an “aggrieved party” under the MZEA harmonizes with the standing analysis

used under *Lansing Schools*. By doing so, this Court can strip away the unjust and artificial restrictions that the Court of Appeals applied here, explaining instead that a litigant's interest or injury must be compared, not to other property owners similarly situated, but to the public at large, and that environmental damages can be special damages.

Respectfully submitted,

/s/ Margrethe Kearney
Margrethe Kearney (P80402)
Attorney for Amici Curiae

INDEX TO ATTACHMENTS

Attachment 1: *Tobin v. City of Frankfort*, unpublished per curiam opinion of the Michigan Court of Appeals, issued June 12, 2012.

Attachment 2: *Northern Michigan Environmental Action Council v. City of Traverse City*, unpublished per curiam opinion of the Michigan Court of Appeals, issued October 24, 2017.

Attachment 1: Tobin v. City of Frankfort for
Brief of Amicus Curiae National Trust for
Historic Preservation and the Environmental
Law & Policy Center in Support of Saugatuck
Dunes Coastal Alliance's Application for
Leave to Appeal

2012 WL 2126096

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.UNPUBLISHED
Court of Appeals of Michigan.

[Marshall TOBIN](#), Plaintiff/
Counter–Defendant–Appellee,
v.
CITY OF FRANKFORT, Defendant/
Cross–Defendant–Appellee,
and
[Friends of Betsie Bay, Inc.](#), Intervening
Defendant/CrossPlaintiff–Appellant.

Docket No. 296504.

|
June 12, 2012.

Benzie Circuit Court; LC Nos. 06–007712–CH.

Before: [MARKEY](#), P.J., and [BECKERING](#) and M.J. KELLY,
JJ.**Opinion**

PER CURIAM.

*1 This appeal involves a condominium development planned by plaintiff, Marshall Tobin, on property that he owns in defendant city of Frankfort. Intervening party, Friends of Betsie Bay, Inc. (FOBB or intervenor), consists of owners of residential property near plaintiff’s proposed development who oppose the project. Intervenor appeals by right two orders that the circuit court entered in November 2009: (1) an order revoking FOBB’s standing and right to intervene in two lawsuits that plaintiff filed against the city, and (2) an order entering a consent judgment between plaintiff and the city. We affirm.

We initially consider the dispositive question whether FOBB possessed standing to participate in the underlying litigations that plaintiff commenced against the city. We review de novo the legal question of whether a party has standing. *The Cadle Co v. Kentwood*, 285 Mich.App 240, 253; 776 NW2d 145 (2009).

Pursuant to longstanding Michigan jurisprudence,

a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. *A litigant may have standing in this context 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 or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.* [*Lansing Sch Ed Ass’n v. Lansing Bd of Ed*, 487 Mich. 349, 372; 792 NW2d 686 (2010) (emphasis added).]

A landowner’s interest in the zoning of neighboring property derives solely from statutory authority. *City of Livonia v. Dep’t of Social Servs*, 119 Mich.App 806, 810; 328 NW2d 1 (1982). When the city considered plaintiff’s conditional zoning request in 2005, the City and Village Zoning Act (CVZA), *MCL 125.581 et seq.*, governed the proceedings.¹ *MCL 125.590* provides:

Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, board of appeals, or the legislative body of any city or village, made pursuant to the provisions of section 3a of this act may obtain a review thereof both on the facts and the law, in the circuit court for the county wherein the property involved or some part thereof, is situated.... [Emphasis added.]

Several decisions of this Court have interpreted the extent to which a landowner must be aggrieved by a zoning decision to invest the landowner with standing to challenge a zoning board of appeals decision. This Court has consistently held that to have standing to challenge a zoning decision a party must be “aggrieved” and have “suffered some special

damages not common to other property owners similarly situated.” *Unger v. Forest Home Twp*, 65 Mich.App 614, 617; 237 NW2d 582 (1975), citing *Joseph v. Grand Blanc Twp*, 5 Mich.App 566; 147 NW2d 458 (1967) and *Marcus v. Busch*, 1 Mich.App 134; 134 NW2d 498 (1965).²

*2 In *Joseph*, 5 Mich.App at 571, this Court stated:

Other jurisdictions have held that a mere increase in traffic with its incidental inconvenience did not constitute a substantial damage and, therefore, the plaintiff was not considered to be an aggrieved party....

This Court concurs in this reasoning in deciding that plaintiff did not allege that he had suffered any special damages, which were different in kind from those suffered by the community so as to qualify as an aggrieved party.

Thus, a neighboring landowner merely alleging a likely increase in traffic volume, or a loss of aesthetic value, or a general claim of economic loss, has not alleged special damages sufficiently to become an aggrieved party. *Village of Franklin v. City of Southfield*, 101 Mich.App 554, 557; 300 NW2d 634 (1980); *Unger*, 65 Mich.App at 617.

Intervenor argues that it has established through its members' affidavits that it has standing to intervene and pursue its member's claims. The relevant declarations by FOBB members in their September 2000 affidavits primarily detail concerns about (1) increases in population, traffic, noise levels, lights, air pollution, and property taxes; (2) decreases in home values, aesthetics of the neighborhood, and environmental value caused by tree and vegetation removal attributable to the development; and (3) the potential presence of commercial establishments. The generalized concerns relating to environmental impacts, population increases, aesthetics, and pecuniary harm do not suffice to demonstrate “special damages ... different in kind from those suffered by the community, so as to qualify [intervenor] as an aggrieved party.” *Joseph*, 5 Mich.App at 571. Alternately phrased, development-related aesthetic changes, population increases, environmental impacts, and pecuniary harm will be experienced by other community members to the same extent as affiants.

The affidavit of the Clingmans does allege a specific injury unique to their parcel of property, namely the significant filling of wetlands on both sides of their property. This may

have been the case when they attested to their affidavit in September 2000, the same time that all the FOBB member affidavits were executed. But plaintiff's 2000–vintage development proposal had changed before the 2006 litigation commenced, and again shortly thereafter when plaintiff and the city reached their consent agreement. A copy of the proposed consent judgment that appears in the circuit court file, dated January 11, 2007, contains documentation and terms identical to the consent judgment entered by the circuit court in November 2009. The terms and documentation, including a site-plan drawing, reflect that the final development would take place on only a portion of plaintiff's lots west of M–22 (not on both sides of the Clingmans' property), and that plaintiff would avoid disturbing or encroaching on nearby wetlands.

Although the Clingmans and other FOBB members had knowledge of the proposed consent judgment since the city held meetings in late 2006 to vote on whether to endorse the agreement, and the litigation in both circuit court cases remained ongoing until November 2009, FOBB never submitted any updated allegations of harm by its members, or an explanation of how the project embodied in the consent judgment would cause the members to suffer special damages.³ We conclude that in light of the generalized averments of damages by FOBB members that are common to other local property owners and the Clingmans' **more specific stale allegations of flooding**, the circuit court correctly concluded that FOBB lacked standing to intervene and object to the consent judgment.⁴ FOBB failed to establish that its members would suffer special damages adequate to support its status as an aggrieved party under either **MCL 125.585** or **MCL 125.590**, or that it had a “special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large,” as contemplated in *Lansing Sch Ed Ass'n*, 487 Mich. at 372.

*3 In light of our conclusion that FOBB lacked standing to intervene in this action, it is unnecessary to consider FOBB's remaining issues on appeal.

We affirm. As the prevailing parties, appellees may tax costs pursuant to **MCR 7.219**.

All Citations

Not Reported in N.W.2d, 2012 WL 2126096

Footnotes

- 1 The Legislature enacted the Zoning Enabling Act (ZEA), [MCL 125.3101 et seq.](#), effective July 1, 2006. 2006 PA 110. The ZEA repealed the then existing Michigan zoning statutes, including the CVZA. [MCL 125.3702\(1\)\(a\)](#). Because the city's decision on plaintiff's conditional rezoning request occurred in 2005, the terms of the CVZA continue to apply to this litigation. [MCL 125.3702\(2\)](#). Currently, the ZEA allows an aggrieved party to appeal a decision of the zoning board of appeals to the circuit court. [MCL 125.3605](#); [MCL 125.3606\(1\)](#).
- 2 See also [Village of Franklin v. City of Southfield](#), 101 Mich.App 554, 556; 300 NW2d 634 (1980) ("for a party to have standing in court to attack the actions of a zoning board of appeals, the party must be an aggrieved party, and standing cannot be based solely on the fact that such party is a resident of the city"), and [Western Mich. Univ Bd of Trustees v. Brink](#), 81 Mich.App 99, 102–103 n 1; 265 NW2d 56 (1978) (reaffirming a neighboring landowner must prove special damages to qualify as an aggrieved party).
- 3 In the context of intervenor's intervention argument on appeal, it refers to FOBB members' active participation in hearings before various city entities since 1998 or 1999. But, intervenor cites no authority that such participation at public hearings contributes to its showing of special damages necessary to establish standing.
- 4 FOBB heavily relies on [Brown v. East Lansing Zoning Bd of Appeals](#), 109 Mich.App 688, 698; 311 NW2d 828 (1981), construing then [MCL 125.585\(6\)](#), which stated that "a person having an interest affected by the zoning ordinance may appeal to the circuit court." The *Brown* Court discussed a standing test less demanding than the aggrieved-party standard; however, the Court's discussion was dicta because the Court concluded that the plaintiffs in that case had established "special damages" sufficient for standing as aggrieved parties. [Brown](#), 109 Mich.App at 699–701. Thus, we find the facts of *Brown* distinguishable from those involved in this case, primarily because the *Brown* plaintiffs proved specific damages to their properties. *Id.*

Attachment 2: N. Mich. Env'tl. Action Council
v. City of Traverse City for Brief of Amicus
Curiae National Trust for Historic
Preservation and the Environmental Law &
Policy Center in Support of Saugatuck Dunes
Coastal Alliance's Application for Leave to
Appeal

2017 WL 4798638

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.UNPUBLISHED
Court of Appeals of Michigan.NORTHERN MICHIGAN
ENVIRONMENTAL ACTION COUNCIL
and Priscilla Townsend, Appellees,
v.
CITY OF TRAVERSE CITY, Other Party,
and
Pine Street Development One,
LLC, Intervening Appellant.

No. 332590

|
October 24, 2017

Grand Traverse Circuit Court, LC No. 2015–031341–AA

Before: [Sawyer](#), P.J., and [Murray](#) and [Gleicher](#), JJ.**Opinion**

Per Curiam.

*1 Intervening Appellant Pine Street Development One (“Pine Street”) appeals from an order of the circuit court vacating a special land use permit issued by the City of Traverse City and remanding the matter to the city’s planning commission for further proceedings. We affirm.

Pine Street applied for a special land use permit (SLUP) to construct two 96-foot tall buildings in downtown Traverse City that would include apartments and commercial space. The SLUP was necessary because the building height exceeds 60 feet. Following a public meeting, the planning commission granted the SLUP. Appellees filed suit against the city in circuit court challenging the SLUP. Pine Street intervened because of its interest in the project.

The court delivered an opinion from the bench which focused on Traverse City ordinance standards 1364.02(c) and (d), which require that a special use will be served adequately by existing public facilities and services and shall not create excessive additional requirements at public cost for facilities

and services. The court explained that the city commission incorporated by reference a staff report stating “in conclusory terms that the proposed development will be adequately served by existing public infrastructure and services, but notes that street improvements will be made.” The court opined that “[t]he notion that two 9-story buildings can be constructed with 162 residences and related parking and commercial space and not have any marginal impact on infrastructure, facilities, or services is absurd.” Although the city commission asserted that “[t]he project will bring additional tax revenue which will provide for additional infrastructure, facilities and services, including through TIF¹ and Brownfield² programs[,]” the court held that “[t]he record is bereft of any documents, staff report or commission comment describing the source of the TIF funds, the amounts diverted from general tax revenues annually and the time period the diversion will last.” The court expressed that it was “almost unbelievabl[e]” that the staff report adopted by the city commission referenced TIF funds as a source of revenue offsetting the cost of increased municipal services when TIF funds are local tax dollars diverted for the developer’s benefit. According to the court, the factual finding that the development would bring in additional tax revenue “other than in an undefined and distant future” was “categorically false,” because the tax revenue would be returned to the developer through TIF and Brownfield funds to pay for its costs and to remediate the polluted development site. The court opined that by approving the SLUP, the city commission was either “hopelessly naïve and uninformed” about the source and use of TIF and Brownfield funds, or was “less than candid with the general public.”

*2 The circuit court remanded the matter to the city commission, stating in relevant part:

For all the foregoing reasons, the Court remands this matter to the Traverse City Commission for a cogent analysis of the project’s impact on infrastructure, facilities and services, the source of funds to pay for that impact and an intelligent discussion of the perceived benefits that support justifying such extensive public subsidies on the backs of local taxpayers. If the Commission has this discussion and believes it can justify its decision, it will explain why and

approve this SLUP once more and with a more robust record. Only at that time would the issue of Section 28 [of the Traverse City Charter] become ripe for consideration.

The court entered a written order vacating the SLUP for the reasons stated on the record in its bench opinion; the matter was remanded to the city commission for further proceedings. Pine Street now appeals.

We first address Pine Street's argument that appellees lack standing to bring this action. "Whether a party has standing is a question of law that is reviewed de novo by this Court." *Coldsprings Twp. v. Kalkaska Co. Zoning Bd. of Appeals*, 279 Mich. App. 25, 28; 755 N.W.2d. 553 (2008).

Under Michigan law,

a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. *A litigant may have standing in this context 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 or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.* [*Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.*, 487 Mich. 349, 372; 792 N.W.2d. 686 (2010) (emphasis added).]

Further, to have standing to challenge a zoning decision a party must be "aggrieved" and have "suffered some special damages not common to other property owners similarly situated." *Unger v. Forest Home Twp.*, 65 Mich. App. 614, 617; 237 N.W.2d. 582 (1975), citing *Joseph v. Grand Blanc*

Twp., 5 Mich. App. 566; 147 N.W.2d. 458 (1967) and *Marcus v. Busch*, 1 Mich. App. 134; 134 N.W.2d. 498 (1965).

Turning first to appellee Townsend, we are satisfied, that she has standing to bring this suit. Townsend does assert some grounds in support of her having standing that do not meet the requirement that she show special damages different from that suffered by the public at large. For example, her claim of increased traffic is the same as that suffered by the public at large. The same can be said for her argument that the project would change the character of the neighborhood. But, we are satisfied with her argument that the project would affect the airflow, sunlight and view from the window of her apartment. It is true that Michigan law does not recognize a legally protected interest in receiving airflow, sunlight, or a view. See *Krulikowski v. Tide Water Oil Sales Corp.*, 251 Mich. 684, 687; 232 N.W.2d. 233 (1930) ("An easement for light and air may not be acquired by use or by prescription. An adjoining owner may build up to his lot line, unless restricted from doing so, or unless he intends thereby to injure his neighbor or acquire no advantage or benefit to himself."). Nevertheless, the loss of access airflow, sunlight, or a view could be considered a "special injury" to Townsend, even if she has no legal entitlement to those things. This special injury would also affect Townsend differently from the citizenry at large because it would specifically affect her as the resident a building adjacent to the proposed development. Therefore, this special injury would confer standing on Townsend. *Lansing Sch. Ed. Ass'n.*, 487 Mich. at 372. Indeed, such considerations may, at least in part, be some of the city's reasoning in adopting the ordinance that restricts building heights in the first place; if so, then those considerations would be relevant to the decision whether to grant the SLUP.

*3 NMEAC also may have standing to bring this suit; a decision in that regard is premature at this juncture. "A nonprofit corporation has standing to advocate interests of its members where the members themselves have a sufficient stake or have sufficiently adverse and real interests in the matter being litigated." *Trout Unlimited, Muskegon White River Chapter v. City of White Cloud*, 195 Mich. App. 343, 348; 489 N.W.2d. 188 (1992). Similarly, the United States Supreme Court has declared that "environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Environmental Servs (TOC), Inc.*, 528 U.S. 167, 183; 120 S Ct 693; 145 L.ed. 2d 610 (2000) (citation omitted).³

NMEAC asserted that it is a non-profit organization devoted to protecting the environment and that its members included “individuals who reside in the immediate vicinity of the SLUP that is at issue.” NMEAC's complaint asserted that it or its unnamed members would be “uniquely impacted” by the SLUP for three reasons. First, it contended that the city environment, the Boardman River, the surface and subsurface soils, contamination in the soil, glare, solar power access impairment, bird migration, and airflow would all be “impacted and/or degraded.” Second, it contended that the SLUP and resulting development project would radically change the character of Traverse City. Third, it contended that the NMEAC members that pay city taxes would suffer an “increased burden” because of the “financial requirements imposed on City residents by the SLUP project.” These allegations sufficed to confer standing on NMEAC at the pleading stage. See *Nat'l Wildlife Federation*, 471 Mich. at 631. When a challenge to standing is raised in a motion for summary disposition, the plaintiff has the obligation to support its standing allegation with evidence. *Id.* As this Court recently explained, “standing to sue ... is a fact-bound concept more amenable to proof rather than to pleading.” *Lamkin v. Hamburg Twp. Bd. of Trustees*, 318 Mich. App. 546, 551; 899 N.W.2d. 408 (2017).

Pine Street Development One, LLC first raised the issue of NMEAC's standing in a brief filed in the trial court on March 22, 2016, three days before the trial court conducted oral argument on the merits of the case. The parties did not address the standing issue at the hearing. More significantly, the trial court did not make any findings or a ruling on standing in its March 31, 2016 opinion. When Pine Street claimed an appeal in this Court, its brief included a standing argument. NMEAC attempted to reply by filing with its brief on appeal an affidavit signed by one of its members. This Court struck the affidavit as outside of the record. *NMEAC v. Traverse City*, unpublished order of the Court of Appeals, entered August 15, 2016 (Docket No. 332590). The affidavit was not filed with the trial court because Pine Street's challenge to standing came late in the proceedings and was deemed irrelevant by the circuit court.

*4 NMEAC's standing depends on the resolution of factual questions regarding whether members of NMEAC would have standing. The resolution of those factual questions is the task of the circuit court, if and when this matter returns to that court. We take no further position on this issue.

We now turn to the merits of this case. “This Court reviews de novo a trial court's decision in an appeal from a city's zoning board, while giving great deference to the trial court and zoning board's findings.” *Norman Corp. v. City of East Tawas*, 263 Mich. App. 194, 198; 687 N.W.2d. 861 (2004).

When reviewing a zoning board's decision whether to issue an exception to a zoning ordinance, this Court must review the record and ... [the board's decision] ... to determine whether it (1) comports with the law, (2) was the product of proper procedure, (3) was supported by competent, material, and substantial evidence on the record, and (4) was a proper exercise of reasonable discretion.... [*Whitman v. Galien Twp.*, 288 Mich. App. 672, 678–679; 808 N.W.2d. 9 (2010) (internal quotation marks omitted, alteration in original).]

“ ‘Substantial evidence’ is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance.” *Hughes v. Almena Twp.*, 284 Mich. App. 50, 60; 771 N.W.2d. 453 (2009). This Court reviews the circuit court's determinations regarding the zoning board of appeals findings for clear error, which occurs where this court is “left with the definite and firm conviction that a mistake has been made.” *Hughes*, 284 Mich. App. at 60.

The trial court concluded that the city's determination in granting the SLUP was not supported by competent, material, and substantial evidence. We do not agree in all aspects with the trial court's decision. That is, there are areas in which the trial court determined a lack of support that we conclude were adequately supported. Nonetheless, we do agree in some respects with the trial court's determination and, therefore, with its ultimate conclusion to remand the matter to the city commission with direction that it must provide further support for its decision. Accordingly, we will focus on those areas in which we agree with the trial court that the record was lacking in competent, material, and substantial evidence to support the city's decision.

First, at issue is whether the City Commission's determination that Traverse City Zoning Ordinance 1364.02(c) was met is

supported by competent, substantial, and material evidence. Traverse City Zoning Ordinance 1364.02(c) provides as follows:

Each application for a special land use shall be reviewed for the purpose of determining that the proposed use meets all of the following standards:

* * *

(c) The use shall be served adequately by existing or proposed public infrastructure and services, including but not limited to, streets and highways, police and fire protection, refuse disposal; water, waste water, and storm sewer facilities; electrical service, and schools.

The city commission made the following findings of fact relating to ordinance 1364.02(c):

1. Facts and conclusions in the staff report dated October 29, 2015, with regard to this standard are adopted.

2. Various departments, including the Engineering Department, Police Department, Traverse City Light and Power, and the Fire Department through its Fire Marshal, have found this use to be safe and adequately served by public infrastructure, and services.

*5 3. Street improvements will be made.

4. As pedestrian and bicycle use increases, motorists will regard the area more as a heavily-traversed area by such users, making it safer.

5. The trip generation manual used by the City Planning Department is considered conservative estimate, which means that the number of vehicle trips may actually be less than otherwise anticipated by the Planning Department by its use of such manual.

In turn, the October 29, 2015, staff report adopted by the city commission provided the following analysis and findings relating to zoning ordinance 1364.02(c):

Analysis *The proposed buildings are located on Front and Pine Streets which are both designated as collector streets. Nearby are Division Street and Grandview Parkway which are designated as arterials. Schools should not be significantly impacted by the proposed residential dwellings in this building. There are adequate utilities to serve this building. Overhead electrical lines that run from the Warehouse District across the river south to*

Hannah Park are planned to be buried in Spring of 2016. The developer will work with Traverse City Light and Power and City Engineering for a plan to have a power supply once the undergrounding takes place. A 12-inch water main is located under Front Street. An 8" sanitary sewer is located under Pine Street. The City Engineer has previously stated that the existing utilities to serve the development are adequate. The Police Department has indicated no concerns with the development.

The Fire Department has raised concerns of being able to maneuver the 55-foot ladder truck to be adjacent to the riverfront building's long access as required by the Fire Code. The Fire Marshal will need to review the diagram submitted by the developer on October 28, 2015 that indicates a fire truck of this size and type can be in fact positioned along the riverfront building. The access route for the fire truck would be within the parking structure so this parking structure will need to meet the structural specifications to handle the weight of the ladder truck.

Finding Provided the Fire Marshal finds the access routes to the development meet the Fire Code, the use can be served adequately by existing facilities and services.

Appellees argue that the city commission's determination was not supported by competent, substantial, and material evidence. Appellees contend that the analysis and findings in the staff report relied upon by the City are conclusory and lack supporting data and evidence.

Appellees are correct that aspects of the staff report reach conclusions without offering supporting evidence. For example, ordinance 1364.02(c) requires the City to consider whether the use will be adequately served by existing schools and police protection, but the report states, without explanation or evidence, "Schools should not be significantly impacted by the proposed residential dwellings in this building." Regarding police protection, the staff report simply mentions that "[t]he Police Department has indicated no concerns with the development." These statements are not substantial evidence because a reasonable person would not accept a conclusory statement without explanation or supporting data sufficient to justify the conclusion. Assuming that the City could rely on the opinion of an employee in the police department, there was no indication in the report what department employee found the development would be adequately served by police protection nor what evidence supported that conclusion. In other words, the purported approval by the police department, without naming any

person making the approval or explaining the reason for it, is a mere “scintilla” of evidence.

*6 Next, Ordinance 1364.02(c) requires the City to consider whether the use will be adequately served by existing streets and highways. Appellees are correct that the staff report devotes minimal analysis to this issue because it merely estimates that the development will generate 1,600 vehicle trips per day according to a “Trip Generation Manual,” and minimizes this number by stating that it “may be overly high” because the development is downtown and people might choose to walk, bike, or use public transit. The City commission explicitly agreed, stating that the estimate was “conservative” and that the number of actual vehicle trips might be less than estimated.

Appellees contend that there was no traffic analysis performed or presented as to whether existing streets could accommodate this increase in traffic. Pine Street asserts that a “transportation network functional classification” and traffic count map were submitted below that support the conclusion that existing streets could adequately handle increased traffic. But the “transportation network functional classification” map merely classifies roads in Traverse City by type, i.e., city road, county road, private road, etc., and we are unable to discern what data, if any, the traffic count map provides. A section of the staff report addressing another ordinance subsection concluded that the street system could handle the increase in traffic, but it provided no rationale or data to support that. Thus, the record does not support the conclusion that existing streets and highways could handle additional traffic because the evidence highlighted by Pine Street contains no meaningful data about how the proposed development would affect traffic patterns.

In sum, the conclusion that the development was adequately served by police protection, existing highways and streets, and local schools was not supported competent, material, and substantial evidence because there was a lack of evidence regarding the adequacy of those public services or whether an appropriate city employee made any substantial appraisal of those services.

We now turn to the city commission's determination regarding Traverse City Zoning Ordinance 1364.02(d). Traverse City Zoning Ordinance 1364.02(d) provides:

Each application for a special land use shall be reviewed for the purpose of determining that the proposed use meets all of the following standards:

* * *

(d) The use shall not create excessive additional requirements for infrastructure, facilities, and services provided at public expense.

The City commission made the following findings of fact relating to ordinance 1364.02(d):

1. Facts and conclusions in the staff report dated October 29, 2015, with regard to this standard are adopted.
2. The project will bring additional tax revenue which will provide additional infrastructure, facilities and services, including through TIF and Brownfield programs.

In turn, the October 29, 2015, staff report adopted by the city commission provided the following analysis and findings relating to zoning ordinance 1364.02(d):

Analysis *The current electrical undergrounding along Pine Street and the pedestrian bridge were planned capital project improvements for the district. The sewer main along the alley will eventually need to be relined with or without this proposed development. Tax Increment Financing will pay for half of the streetscape improvements and the developer will pay for all of the pedestrian bump-outs. Additional tax revenues generated by the development will off-set the increase of municipal service costs required for a growing community.*

Finding The building will not create any excessive expenditure with public funds.

*7 Appellees argue that the city commission's determination that zoning ordinance 1364.02(d) was satisfied was not supported by competent, substantial, and material evidence. Appellees contend that the commission did not determine whether the development required additional infrastructure or services that would be excessive and the public cost to provide upgrades to infrastructure and services. Appellees argue that the staff report is devoid of factual analysis and provides only conclusions unsupported by facts or data. Indeed, the staff report's analysis merely mentioned electrical undergrounding that was already planned and sewer relining that would need to be redone with or without the proposed development. The only specific factual analysis in the report was a conclusion that TIF funds would pay for half of streetscape improvements while the developer would pay for pedestrian

“bump-outs.” No other infrastructure improvements were discussed.

Further, appellees point out that the staff report and city commission concluded that the development would provide tax revenue to offset the costs of increased services and infrastructure, but TIF funds would be provided to the developer, which would divert the City's tax revenue from the project to the developer. This got the attention of the circuit court, which suggested (in somewhat contemptuous terms) that it was impossible to believe that the tax revenue generated by the development would offset the increased cost of services and infrastructure requirements when TIF funds diverted the City's tax revenue derived from the project to subsidize the developer's expenses.⁴

The city commission's conclusion that the proposed development would create additional tax revenue that offset the increased cost of infrastructure and services is not supported by substantial evidence. Indeed, the city commission merely adopted the staff report's conclusion and repeated it; there was no factual analysis or data to support that conclusion. A mere conclusion without reasoning or factual analysis to support it is not “evidence that a reasonable person would accept as sufficient to support a conclusion.” *Hughes*, 284 Mich. App. at 60.

Further, as the circuit court explained, the fact that the development would use TIF and Brownfield funds contradicts the finding that the development's tax revenue would offset increased city costs to the extent that those funding sources divert future tax dollars from the City to the developer.⁵ To the extent that only some of the tax revenue generated by the development could go to TIF and Brownfield programs, the relevant section of the staff report contained no data explaining how much, if any, would go to the programs and how much, if any, the City would retain. Thus, the city commission's conclusion was not supported by competent, material, and substantial evidence. Therefore, the circuit court did not clearly err in relation to this determination.

Appellees also assert that the city commission and staff report neglect to analyze evidence relating to increased infrastructure for parking. Appellees criticize the development's inclusion of only 177 parking spaces to accommodate its 162 residential units and commercial space. But as Pine Street points out, that the staff report does address parking is consistent with its assertion that the zoning district does not require the development to provide parking;

nevertheless the plan includes a garage with 177 spaces and bicycle racks.

*8 Appellees assert that the City entered into an option agreement to purchase land across the street from the proposed development to potentially construct a parking structure to accommodate the need for extra parking. The circuit court addressed this issue, holding that constructing a parking garage for Pine Street was “certainly not a public benefit” and that “[n]o portion of this record may be remotely considered as a candid disclosure of the actual public expense let alone an analysis of those costs relative to perceived public benefits.” Indeed, the staff report and the city commission did not address whether the City's tentative plan to build a parking garage to support the development would be an excessive expenditure to improve infrastructure with public funds. Therefore, the circuit court did not clearly err in relation to its determination.

In sum, the conclusion that the development would not create excessive expenditures with public funds was not supported by competent, material, and substantial evidence. The commission concluded that the development would generate tax revenue to offset the cost of city infrastructure and services without providing supporting data or reasoning. Further, the assertion that the development would receive TIF and Brownfield funds contradicted the city commission's findings to the extent that those programs divert tax dollars generated from the development and return them to the City. But in any event, those concerns did not address the central question of zoning ordinance 1364.02(d), which is whether the use would create excessive additional requirements for city services and infrastructure. Finally, the city commission did not address the City's tentative plan to construct a parking garage to support the development and whether that would constitute an excessive infrastructure requirement paid for at the public expense.

We next consider Pine Street's argument that the whole of the circuit court's analysis is faulty because it analyzed the entire development project instead of only the special use, the additional 36 feet of height, that was the subject of Pine Street's special land use request. According to Pine Street, the court should have analyzed zoning ordinances 1364.02(c) and (d) only in relation to the additional height and compare its impact with a building Pine Street could construct by right without a special land use permit. We agree with appellee that this argument is irrelevant in analyzing the trial court's decision inasmuch as we agree that there was a lack of

competent, substantial and material evidence to support the city's decision. But the argument is relevant to how the city should proceed on remand in analyzing this issue.

Traverse City Zoning Ordinance 1364.02 addresses the standards of approval for special land use permits and provides as follows:

Each application for a *special land use* shall be reviewed for the purpose of determining that the proposed *use* meets all of the following standards:

(a) *The use* shall be designed, constructed, operated, and maintained so as to be harmonious and compatible in appearance with the intended character of the vicinity.

(b) *The use* shall not be hazardous nor disturbing to existing or planned uses in the vicinity.

(c) *The use* shall be served adequately by existing or proposed public infrastructure and services, including but not limited to, streets and highways, police and fire protection, refuse disposal; water, waste water, and storm sewer facilities; electrical service, and schools.

(d) *The use* shall not create excessive additional requirements for infrastructure, facilities, and services provided at public expense.

(e) *The use* shall not involve any activities, processes, materials, equipment or conditions of operation that would be detrimental to any person or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, odors or water runoff.

*9 (f) Where possible, *the use* shall preserve, renovate, and restore historic buildings or landmarks affected by the development. If the historic structure must be moved from the site, the relocation shall be subject to the standards of this section.

(g) Elements shall relate to the design characteristics of an individual structure or development to existing or planned developments in a harmonious manner, resulting in a coherent overall development pattern and streetscape.

(h) *The use* shall be consistent with the intent and purposes of the zoning district in which it is proposed. [Emphasis added.]

Appellees contend that the court must evaluate the entire use of land, i.e., the whole development because the ordinance mentions “special land use” in its introductory sentence, but refers only to “the use” instead of “the special land use” in its subsections. Appellees justify this conclusion by raising the legal maxim *expressio unius est. exclusio alterius* (“the express mention in a statute of one thing implies the exclusion of other similar things.” *AFSCME Council 25 v. Detroit*, 267 Mich. App. 255, 260; 704 N.W.2d. 712 (2005)). However, this precept is an aid to statutory interpretation that cannot control if its application would defeat the clear legislative intent. *Id.*

The introductory clause of the ordinance clearly establishes the contextual relationship of the terms “special land use” and “use.” Again, that passage provides:

Each application for a special land use shall be reviewed for the purpose of determining that the proposed use meets all of the following standards:

The passage actually ties the two terms together. The “use” spoken of is function of the property underlying the “special land use” permit. The passage provides that the listed standards will be employed to consider whether the “use” proposed is in keeping with identified land uses encouraged by the ordinance within a given zoning district.

Interpreting the statute in the way appellee suggests would defeat the clear intent of the City. The City explains that the purpose of ordinance chapter 1364 is to “permit and provide for a special review process for unique uses and activities in zoning districts where they would not otherwise be permitted, provided these uses and activities are made compatible with permitted uses in these districts by following the standards in this Chapter.”⁶ The fact that this entire ordinance chapter addresses special uses belies appellee's argument that the phrase “the use” in zoning ordinance 1364.02 necessarily means the general or overall use of the development rather than the particular special land use that the City is reviewing. Further, certain special uses contemplated by the ordinance implicate only partial use for a special purpose, such as for communication antennas under zoning ordinance 1364.01(c) (2).

Nevertheless, in most situations a special land use encompasses all aspects of the proposed land use, e.g., in

the case of a school or correctional facility, which require a SLUP in certain zoning districts under zoning ordinance 1364.01(b)(6) and (11). Likewise, Pine Street's application for a SLUP to build a "Taller building"⁷ in accordance with zoning ordinance 1364.01(b)(13) implicates the entirety of the land use because the land would be occupied by two 96-foot-tall buildings. Thus, in reference to the instant case, the "use" referred to throughout 1364.02 refers to the special land use of constructing a "Taller building," which encompasses the entirety of the land use, not just the extra 36 feet of height requested by Pine Street.

*10 In conclusion, certain aspects of the city commission's decision regarding zoning ordinance 1364.02(c) were not supported by competent, material, and substantial evidence. Likewise, the city commission's decision with respect to zoning ordinance 1364.02(d) was not supported by competent, material, and substantial evidence. Accordingly, we agree with the trial court's determination that this matter must be remanded to the city commission for further action. As for the trial court's determination that section 28 of the city charter might require a public vote on any construction in which public funds are potentially used, that determination is premature. Indeed, the trial court did not actually hold that a public vote was required; rather, it merely observed that it might be. As the trial court determined, the issue is not yet ripe until there is a final resolution of this matter by the city. Any comments made by the trial court are merely dicta and do not constitute a holding. The trial court may determine this issue if and when it becomes ripe for decision.

The decision of the trial court to remand this matter to the city for further proceedings is affirmed. Appellees may tax costs.

[Sawyer](#), P.J. (concurring in part and dissenting in part).

I agree with the majority's decision, except for the conclusion regarding NMEAC's standing.

First, I would acknowledge that it is somewhat irrelevant to determine whether NMEAC has standing inasmuch as we all agree that Townsend does have standing and, therefore, all of the substantive issues are addressed through her claims. Nonetheless, I write separately because I believe that NMEAC has had an adequate opportunity to establish standing and has failed to do so.

Turning to this issue, I see no basis to find that NMEAC has standing to bring this suit. "A nonprofit corporation

has standing to advocate interests of its members where the members themselves have a sufficient stake or have sufficiently adverse and real interests in the matter being litigated." *Trout Unlimited, Muskegon White River Chapter v. City of White Cloud*, 195 Mich. App. 343, 348; 489 N.W.2d. 188 (1992). But the litigant must have a special injury or right that will be affected in a way different from the public at large. *Lansing Sch. Ed. Ass'n. v. Lansing Bd. of Ed.*, 487 Mich. 349, 372; 792 N.W.2d. 686 (2010). NMEAC asserts that it has three bases for standing: environmental concerns, changing the character of the area, and tax concerns. But these are all interests that are presumably shared by the public. Thus, they are not interests capable of conferring standing on the NMEAC members because the interests are not "detrimentally affected in a manner different from the citizenry at large" *Lansing Sch. Ed. Ass'n.*, 487 Mich. at 372. Thus, because the unidentified NMEAC members have not shown that they have standing, NMEAC also lacks standing. *Trout Unlimited*, 195 Mich. App. at 348.

Moreover, even if we were to consider the disputed affidavit of William Scharf, a member of the NMEAC board, we reach the same conclusion. NMEAC contends that it establishes standing for NMEAC because the development will affect bird populations. Scharf avers that he is a professor of biology and studies bird populations, and that the SLUP allowing a nine-story building will endanger birds because they "fail to perceive glass as a barrier" and will suffer injury or death from collisions with the building. While Scharf's professional study of birds distinguishes him from the citizenry at large, it is unclear how the potential effect of the development on birds will personally inflict a special injury on him or affect a substantial interest he has. Indeed, Scharf did not aver that he personally studied birds on or near the proposed development site, or that the development would adversely affect any specific study or activity he carries out in connection with his study of bird populations. Thus, he failed to allege facts conferring standing because he failed to demonstrate a special injury or substantial right detrimentally affected by the SLUP. That is, his affidavit serves more as an expert opinion of the effect of the project on birds than it does to establish his own special injury arising from the project. While this might suggest that the birds have standing, it does not establish Professor Scharf's standing. Because Scharf lacks standing, the NMEAC also lacks standing because as a non-profit organization it has standing only to the extent that its members do. *Trout Unlimited*, 195 Mich. App. at 348.

*11 Accordingly, I would conclude that NMEAC has failed to establish standing.

All Citations

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Footnotes

- 1 TIF stands for “tax increment financing,” which the court explained was “simply the use of the developer’s local property tax dollars to support the developer’s own project in derogation of a contribution to local jurisdictions’ general funds.”
- 2 The Brownfield Redevelopment Financing Act, [MCL 125.2651 et. seq.](#) The court explained that “[t]o the degree that Brownfield funds intercept city and county general fund dollars to eradicate environmental contamination those funds benefit the environment, but not the general fund of the city.” The court also stated that to the extent Brownfield funds were used to combat “so-called blight, they are simply a disguised form of tax increment financing or another vehicle by which developers do not support the general fund, but use their tax revenues to pay for their own project.”
- 3 Michigan’s standing doctrine meaningfully differs from that of the federal courts, in that unlike the United States Constitution, Michigan’s Constitution “does not inherently incorporate the federal case-or-controversy requirement, and, in fact, importing this requirement is inconsistent with this Court’s historical view of its own powers and the scope of the standing doctrine[.]” [Lansing Sch., 487 Mich. at 366](#). That difference is inconsequential in this case. The general standing principles applicable to nonprofit organizations in the federal courts remain helpful in analyzing the standing of nonprofit corporations in Michigan.
- 4 The circuit court made the following remark about the apparently contradictory findings made by the staff report and commission: “One cannot help but recall the Queen’s comment to Alice on the practice of believing impossible things, ‘Why, she said, sometimes I’ve believed as many as six impossible things before breakfast!’ So it must be with City staff.”
- 5 The circuit court explained that TIF and Brownfield funds represent local property tax funds from the development that would have otherwise gone to the City’s general fund but instead pay the developer’s costs.
- 6 This quote is not in a provision of the ordinance, but it is the preamble to Traverse City’s “Special Land Use Regulations” Ordinance Chapter 1364. See < <http://www.traversecitymi.gov/downloads/1364.pdf>> (accessed March 24, 2017).
- 7 Zoning ordinance 1364.08(m) defines “Taller buildings” as those over 60 feet in height, such as the proposed 96-foot-tall development at issue in this case.