The "Party Aggrieved" Requirement:

How Courts Evaluate Standing for Purposes of a Zoning Appeal

By: Grant Semonin

Background

Standing is a familiar concept to any litigator. Generally, the term "standing" refers to a party's right initially to invoke the power of a trial court to adjudicate a claimed injury.[i] But unique standards apply when it comes to challenging a zoning decision by a Michigan city, village, or township. Under the Michigan Zoning Enabling Act ("MZEA"), any "party aggrieved" by a zoning board of appeals ("ZBA") decision may appeal to the circuit court for the county in which the property is located.[ii] But what does it mean to be a "party aggrieved" by a ZBA decision?

For years, Michigan courts struggled to answer this question with sufficient clarity. Until recently, Michigan courts interpreted the party-aggrieved standard as requiring an appealing party to own real property and to demonstrate special damages only by comparison to other real-property owners similarly situated. [iii]That changed, however, with the Michigan Supreme Court's decision in *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*.[iv]

Saugatuck Dunes Coastal Alliance v Saugatuck Township: A Change in the Law?

In Saugatuck Dunes, the plaintiff, a non-profit corporation, sought to challenge the local planning commission's decision to approve a residential site condominium project that would include a marina and boat basin, located on approximately 300 acres of land with frontage on the north shores of the Kalamazoo River and on Lake Michigan. Relying on longstanding Michigan case law, the ZBA rejected the challenge and concluded that the plaintiff lacked standing or "party aggrieved" status because it had not demonstrated any special damages—environmental, economic, or otherwise—that would be different from those sustained by the general public as a result of the proposed development. Both the Circuit Court and Court of Appeals later affirmed on similar grounds.

The Michigan Supreme Court reversed, however, overruling these prior cases "to the limited extent that they require (1) real-property ownership as a prerequisite to being 'aggrieved' by a zoning decision under the MZEA and (2) special damages to be shown only by comparison to other real-property owners similarly situated."[v] The Court also provided clarifying guidance regarding how to determine whether a party is "aggrieved" and thus has standing for purposes of a zoning appeal in circuit court. To be a "party aggrieved" under the MZEA, the appellant must meet three criteria:

- First, the appellant must have participated in the challenged proceedings by taking a position on the contested proposal or decision.
- Second, the appellant must claim some protected interest or protected personal, pecuniary, or property right that will be or is likely to be affected by the challenged decision.
- Third, the appellant must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community. Id. at 595 (emphasis added).

The Court clarified that the phrase "others in the local community" refers to persons or entities in the community who suffer no injury or whose injury is merely an incidental inconvenience. Id. Factors that can be relevant to this final element of special damages include, but are not limited to: (1) the type and scope of the change or activity proposed, approved, or denied; (2) the nature and importance of the protected right or interest asserted; (3) the immediacy and degree of the alleged injury or burden and its connection to the challenged decision as compared to others in the local community; and (4) if the complaining party is a real-property owner or lessee, the proximity of the property to the site of the proposed development or approval and the nature and degree of the alleged effect on that real property. Id. at 596.

Notwithstanding this change in the law, the Court reaffirmed several well-established principles that are relevant to the standing analysis. First, mere ownership of real property that is adjacent to a proposed development or that is entitled to statutory notice, without a showing of special damages, is not enough to show that a party is aggrieved. Id. Second, generalized concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision. Id. However, the Court cautioned "against an overbroad construction of allegations as mere generalizations to avoid addressing the merits of an appeal. While generalized concerns are not sufficient, a specific change or exception to local zoning restrictions might burden certain properties or individuals' rights more heavily than others. A party who can present some evidence of such disproportionate burdens likely will have standing to appeal under MCL 125.3605 and MCL 125.3606."[vi]

The majority characterized its decision as a "modest clarification of the law," while the dissent suggested that this decision would cause confusion and "upend[] decades of stability in Michigan zoning law."[vii]

The Court remanded for further proceedings in light of this change.

Post-Saugatuck Dunes Case Law: A Trend Towards a Broader Interpretation of the Party-Aggrieved Standard

Several cases have applied these principles since Saugatuck Dunes. These cases have suggested that Saugatuck Dunes lowered the bar to establish party-aggrieved status.

For example, in *Tuscola Area Airport Auth v Mich Aero Comm'n*, an airport authority argued it was an aggrieved party with respect to the issuance, over its objection, of a "tall structure" permit for a windmill.[viii] As evidence of the injury, the airport submitted Michigan Department of Transportation ("MDOT") reports to establish that "the average visitor to the airport spends $262," and contended that the loss of even one visit would establish a pecuniary interest.[ix] The Michigan Court of Appeals had reasoned, because the number of visitors to the airport varies yearly, it was speculative to attribute any harm from the loss of visitors to the installation of wind turbines.[x] The Michigan Supreme Court reversed, however, ruling that the airport authority provided sufficient evidence in support of a concrete and particularized injury—that the turbines will result in a pecuniary loss to the airport.

In *Beverly Hills Racquet & Health Club, Ltd v Vill of Beverly Hills Zoning Bd of Appeals*, the appellant was a childcare facility that sought to oppose a mixed-use development, which would include retail space and another childcare facility directly across the street.[xi] The appellant argued that the proposed development violated local ordinances, and the proximity of the childcare facility would harm its economic interests. The appellant further argued that the appellant lacked standing to pursue the zoning variances. The local ZBA granted variances to the competing childcare facility, and a circuit court appeal ensued. The circuit court determined that the appellant lacked standing to appeal the ZBA's decision.

The Michigan Court of Appeals reversed, concluding that the appellant had standing to appeal the ZBA's decision. The court noted that "[t]he third prong of the Saugatuck test—special damages—is the focal point of this dispute." The appellant asserted that it had standing as an aggrieved party because the opening of a childcare facility across the street from its childcare facility would cause it to lose money. The court viewed Tuscola as controlling, "and the takeaway from Tuscola is that the Saugatuck Dunes test is a low bar." Applying the principles enunciated in *Saugatuck Dunes*, the court in *Beverly Hills* concluded that "it is reasonable to infer that the presence of a facility across the street offering the same services as [appellant's] facility would cause people who would otherwise patronize [appellant] to instead patronize the business across the street. The Tuscola decision suggests that even one parent dropping their kids across the street who would otherwise have used [appellant] is enough to establish special damages."

In *Posa v Charter Twp of Northville*, the plaintiffs resided in three homes abutting a neighboring golf course.[xii] The golf course applied for a special land use approval to construct a new maintenance facility, and the plaintiffs opposed, citing concerns about noise, hours of operation, safety, aesthetics of the building, and disruption of the neighborhood's character. The local planning commission approved the application, and an appeal ensued. The ZBA denied the appeal, finding that the plaintiffs were not aggrieved parties, in part because they were not adjacent to the building site. The circuit court affirmed. Applying *Saugatuck Dunes*, the Michigan Court of Appeals concluded that plaintiffs had taken a position in a contested decision opposing the special land use approval through public comment and through their attorney at every stage of the decision, and that Plaintiffs had claimed protected property rights involving the use of their residential properties will "likely be affected" by approval of the project. Because plaintiffs cited increased noise, particularly early morning noise, from the tractor-trailers and maintenance equipment as likely burdens and presented evidence to support that this noise would be brought close to their homes by the construction of the maintenance building adjacent to their small neighborhood, the court concluded that these concerns were not "mere generalizations." Therefore, the plaintiffs had standing to challenge the decision in circuit court.

Takeaways

Whether you represent a Michigan municipality or a property owner, it is important to know the unique standards that apply in the zoning appeal context. Following Saugatuck Dunes, Michigan case law indicates a trend towards a broader interpretation of the party-aggrieved standard. Nevertheless, it remains to be seen whether the Saugatuck Dunes decision will prove to be just a "modest clarification of the law," or "upend decades of stability in Michigan zoning law."

Grant Semonin is an associate attorney at Bodman PLC in Grand Rapids where he represents clients in a variety of complex commercial litigation matters. Mr. Semonin obtained his B.A. from the University of Illinois at Urbana-Champaign (2019) and J.D. from the University of Notre Dame Law School (2022).

[i] *Olsen v Chikaming Twp*, 325 Mich App 170, 180; 924 NW2d 889 (2018).
[ii] MCL 125.3605; MCL 125.3606(1).
[iii] See, e.g., Olsen v Chikaming Twp, 325 Mich App 170; 924 NW2d 889 (2018); see also Olsen v Jude & Reed, LLC, 503 Mich 1018; 925 NW2d 850 (2019); Joseph v Grand Blanc Twp, 5 Mich App 566; 147 NW2d 458 (1967).
[iv] *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561; 983 NW2d 798 (2022).
[v] Id. at 569, 600 (emphasis in original).
[vi] Id. (emphasis in original).
[vii] Id. at 597.
[viii] *Tuscola Area Airport Auth v Mich Aero Comm'n*, 511 Mich 1024; 991 NW2d 581 (2023).

[ix] *Tuscola Area Airport Zoning Bd of Appeals v Mich Aero Comm'n*, 340 Mich App 760, 779; 987 NW2d 898 (2022).
[x] Id. at 782.
[xi] *Beverly Hills Racquet & Health Club, Ltd v Vill of Beverly Hills Zoning Bd of Appeals*, No 361202, 2024 Mich App LEXIS 5048 (June 27, 2024),
[xii] *Posa v Charter Twp of Northville*, No 364349, 2024 Mich App LEXIS 2994 (Apr 18, 2024),