

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN
48TH JUDICIAL CIRCUIT

SAUGATUCK DUNES COASTAL ALLIANCE,

Appellant/ Plaintiff

Court Address and Phone:
Allegan County Building
113 Chestnut Street
Allegan, MI 49010
(269) 673-0300

Assigned to Visiting Judge
Wesley J. Nykamp P18370

v.

SAUGATUCK TOWNSHIP ;

SAUGATUCK TOWNSHIP ZONING
BOARD OF APPEALS;
and

NORTH SHORES OF SAUGATUCK, LLC

Appellees/Defendants

Case No. 17-58936-AA

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OPINION AND ORDER

This appeal is not the first time the subject matter of this case has been before this Court. Case No. 17-58275-AA was an appeal of the Saugatuck Township Planning Commission's decision granting North Shores request for a planned unit development and special use permit to construct site condominiums and a private boat canal off the Kalamazoo River. On November 3, 2016, the Hon. Kevin Cronin dismissed the appeal "Pursuant to MCL 125.3604(1). Appellants have failed to exhaust their administrative remedies prior to imitating (sic) an appeal before this Court."

Appellants simultaneously brought this appeal following the Zoning Board of Appeals denial of their appeal.

Prior to the foregoing companion cases, the related case of Saugatuck Dunes Coastal Alliance, a Michigan non-profit corporation; Appellee and/or Cross-Appellant vs Michigan Department of Environmental Quality, a Department in the Executive Branch of the State of Michigan, and Dan Wyant, Director of the Michigan Department of Environmental Quality; Appellee, and Singapore Dunes, LLC a Michigan Limited liability Company, Intervening Appellant and/or Cross Appellant/Appellee. Allegan County Circuit Court case No. 14-053883-AA. As is obvious from the case name that case was brought by the same Appellants as the current Appellants in this case: Saugatuck Dunes Coastal Alliance (hereinafter referred to as the SDCA). That action was brought to stop the Department of Environmental Quality from approving the canal which is integral to the Township approved development of Saugatuck Dunes, LLC, in this case. "Singapore Dunes, LLC" was the predecessor in title to Saugatuck Dunes.

On February 6, 2015, exactly three years prior to this judge drafting this opinion and order, Judge Cronin issued his OPINION AND ORDER ON TIMELY FILING AND STANDING. A copy of that opinion and order is attached to and made a part of this opinion as this Judge concurs in Judge Cronin's opinion as to the issue of standing. The gravamen of that issue is the provision set forth by MCL 324.35305(1) which gives special exception to an owner of property "immediately adjacent to the proposed use" "aggrieved" by the project.

SDCA put forth the Bily property in that action as having a special exception as they have in this case. In this case we do not have the immediate adjacent exception consideration but focusing on the "aggrieved party" standard determined that Bily property 1000 feet away from the canal would not bolster SDCA standing.

Judge Cronin recognized that under the current standing rule in Michigan a litigant may have standing 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. *Lansing Schools Educ. Assoc v Lansing Board of Education*, 487 Mich 349, 372; 792 NW2d 686 (2010). Both Appellant and Appellee have acknowledged and argued that *Lansing* is the leading case on standing.

The exhibits submitted in this appeal confirm Judge Cronin's observation that the Bily property is at least 1000 feet away from the lagoon/canal being developed under the DEQ permit. The Opinion concluded that the Bily were not an "aggrieved" party in that "aggrieved" is by definition: "has suffered loss or injury; damnified; injured" "substantial grievance, denial of some pecuniary or property right, or imposition upon a party of a burden or obligation." Cronin's

Opinion. Paragraph 10. Clearly “aggrieved” is no different from ‘a special injury or right or substantial interest that will be detrimentally affected in a manner different from the citizenry at large.’ *Lansing, supra*, p 372.

SDCA argued that Appellee’s Hydrology report established a lowering of the adjacent water table in the wetland area. Appellee points out that the slight lowering of the table would be caused by the lagoon if no clay liner was employed however North Shores has adopted the recommendation by the hydrology report submitted to the DEQ and will construct the lagoon with a clay liner which will result in “0” lowering of the water table.

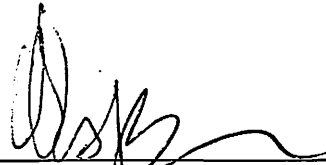
SDCA members contend they will suffer impacts substantially more extreme than suffered by the community at large because of their unique interests. These unique interests include: the Bilys whose cottage is 1000 feet from the development. The dredging of the boat basin was clearly under scrutiny and permitted by the DEQ. Somehow affecting the enjoyment or view of the state Park and the river and being adjacent to the Patty Birkhold Natural Area, clearly is not different from the community at large. Recreational activity: the waters of Lake Michigan and the Kalamazoo River is shared by the community at large and not a special interest. Property values and taxes and public services: It seems ludicrous to argue that development of high end condominiums with water, dock frontage would affect property values in the community and increase taxes because of public services; and is a factor considered by the planning commission on behalf of the community at large in every request or a zoning decision and is in no way unique to this project.

Business interests: Because Johnson's restaurant and marina owner up river, Mark Van Howe's commercial sailing, and Dave Engle, a charter boat operator, operate their business on the river have a special interest discrete from the community at large is beyond reason and common sense.

In short, SDCA members share the interests in common with the public generally which the Saugatuck Planning Commission, the Township of Saugatuck and the Department of Environmental Quality are charged to represent and protect.

THEREFORE, it is the Opinion of this Court that applying the standards for standing, the Appellee's Motion to Dismiss is granted and it is ordered that the Appeal from the Saugatuck Township Board of Appeals is dismissed.

Date: February 6, 2018

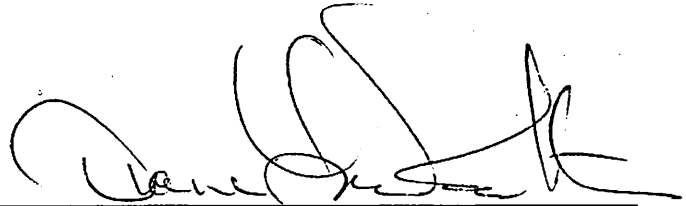


Wesley J. Nykamp, Visiting Circuit Judge

PROOF OF SERVICE

I certify that on this date the above parties were personally served, or mailed by ordinary mail, a copy of this FINAL ORDER.

02-8-2018
Date



Signature

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN
48TH JUDICIAL CIRCUIT

SAUGATUCK DUNES COASTAL
ALLIANCE, a Michigan non-profit
corporation,

Appellee and/or Cross-Appellee/Appellant,

vs.

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, a
Department in the Executive Branch of the
Ste of Michigan, and DAN WYANT,
Director of the Michigan Department of
Environmental Quality

Appellees,

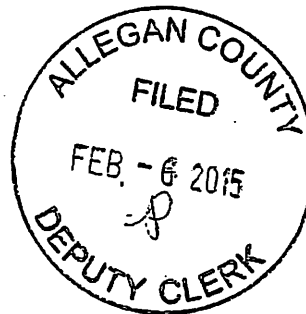
and

SINGAPORE DUNES, LLC, A Michigan
limited liability company

Intervening Appellant and/or Cross-
Appellant/Appellee.

Court Address and Phone:
Allegan County Building
113 Chestnut Street
Allegan, MI 49010
(269) 673-0300

Assigned to Circuit Judge
Hon. Kevin W. Cronin
P38915
Case No. **14-053883-AA**



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ALLEGAN, MICHIGAN

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OPINION AND ORDER ON TIMELY FILING AND STANDING

County Building in the City and County
Of Allegan, State of Michigan, on the
6th day of FEBRU 2015

Present: The Honorable Kevin Cronin, Circuit Judge.

This Court, after a hearing on January 13, 2014, and having reviewed the court file, finds and
ORDERS the following:

- 1) Arguments were held in this Court on January 13, 2015. There are two primary issues that were heard.
 - a. The Saugatuck Dunes Coastal Alliance (SDCA) is seeking to challenge ALJ Pulter's Opinion and Order dated July 1, 2014 dismissing the SDCA's petition regarding a DEQ

wetland asses. ment under MCL 324.30321(3)-(4). This dismissal occurred in part because SDCA's application was untimely pursuant to the Administrative Procedures Act MCL 24.201 *et seq.*, and administrative rule R 324.21(2).

- b. Singapore Dunes separately sought dismissal of SDCA's second petition regarding critical dues on the basis that neither the SDCA nor its members satisfied the statutory requirements for standing to file such a petition. On August 21, 2014 ALJ Pulter refused to dismiss the SDCA's complaint, and issued an Opinion and Order which stated two members of the SDCA – the Bilys – *satisfied* the statutory standing requirements under MCL 324.35305 (1).
- 2) **TIMELINESS** of wetland assessment appeal. As noted above, the July 1, 2014 petition was for a wetland assessment under MCL 324.30321(3)-(4). Part 303 provides a judicial and statutory standing requirement which states that, "If a person is aggrieved by any action or inaction of the department, the person may request a formal hearing on the matter involved." MCL 324.30319.
- 3) MCL 324.30321(3)-(4) allows a person who owns or leases a parcel of property to request that the Department of Environmental Quality (DEQ) to perform a wetlands assessment of their property, and establishes the parameters for the assessment. There are no notice provisions in accordance with this statute for when the DEQ performs an assessment, and it is not this Court's place to question the Legislature's motives for leaving it out. This Court does, however, view the DEQ's filing of their July 17, 2013 Wetland Identification Report pursuant to this statute as an "action" which satisfies the requirement of MCL 324.30319.
- 4) Administrative rule R 324.21(2) states that, "Unless otherwise stated in a statute, a petition shall be filed within 60 days from the date of the department's decision to be considered timely." This Court finds that "the department's decision" was the issuance of the Wetland Identification Report. SDCA filed on January 17, 2014, 180 days after the MDEQ issued its July 17, 2013 Wetland Identification Report. This Court is not influenced by nor persuaded by the case of *Jeffrey A. King and Marrocco Enterprises, Inc. v DEQ* (Macomb Co Cir Ct No. 2002-1025, August 23, 2002). Administrative rule R 324.21(2) was promulgated one year after the *King* case, so this Court also finds that the *King* case is irrelevant. No arguments or case law were brought to this Court's attention indicating that rule R 324.21(2) is unenforced. **THEREFORE** this Court finds and **ORDERS** that the SDCA's petition must comply with R 324.21(2), and because it was filed on January 17, 2014, 180 days after the MDEQ issued its July 17, 2013 Wetland Identification Report, this Court finds and **ORDERS** that the petition was **UNTIMELY**.
- 5) **STANDING**. Michigan's current standing doctrine states that a litigant may have standing, "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 Schools Educ. Ass'n v. Lansing Bd. of Education*, 487 Mich. 349, 372; 792 NW2d 686 (2010).
- 6) The statutory scheme in the case at bar is that set forth by MCL 324.35305 (1), which states that "if an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved." Of particular interest to this Court are the words "immediately adjacent to the proposed use" and "aggrieved."
- 7) The Bilys' property abuts a lot that is owned by Singapore Dunes. This lot is contiguously owned by Singapore Dunes with the lots that are subject to the part 353 application for the construction of a road on Singapore Dunes' property. The Bilys' property line is over 1000 feet

away from the lots that are the subject to the part 353 application and road construction. MCL 323.35305 (1) does not provide for a specified distance for a property owner to qualify as "immediately adjacent to the proposed use."

- 8) It is possible that a large land owner such as Singapore Dues, which own approximately 300 contiguous acres, could subdivide their property in such a way so as to frustrate the standing requirements for a neighboring property owner pursuant to this statute. Theoretically they could parcel off a narrow strip of land running the length of the neighbor's property line, and then the neighbor would no longer be immediately adjacent to the property where proposed uses are occurring. Although that is not what happened in the case at bar, this Court does recognize that as a possibility, and as such this Court will apply the doctrine of non-segmentation.
- 9) This doctrine holds that when evaluating the effect of a regulation on a parcel of property, the effect of the regulation must be viewed with respect to the parcel as a whole. Courts should not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. Instead, the court must examine the effect of the regulation on the entire parcel, rather than just the affected portion of the parcel. *Merkur Steel Supply Inc v City of Detroit*, 261 Mich App 116, 133; 680 NW2d 485 (2004). **THEREFORE**, based on the doctrine of non-segmentation this Court finds and **ORDERS** that the Bilyls and the SDCA **MEET** this portion of the MCL 323.35305 (1) standing test.
- 10) The next prong of the MCL 323.35305 (1) standing test states that one must be aggrieved. No definition of "aggrieved" is provided. "When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate." *Title Office, Inc. v. Van Buren Co. Treasurer*, 469 Mich. 516, 522, 676 N.W.2d 207 (2004). Black's Law Dictionary (6th ed) defines "aggrieved" to mean, "Having suffered loss or injury; damnified; injured." An "aggrieved party" is defined as follows:
 - a. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment.... The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.
 - b. See also, *Maxwell v Dept of Emtl Quality*, 264 Mich App 567, 571-72; 692 NW2d 68 (2004).
- 11) Other statutes use an aggrieved party standard for purposes for standing, one of which is the standing requirement of the *Michigan Zoning Enabling Act* MCL 125.3607, for which there are voluminous opinions interpreting what an aggrieved party is. The Court finds that this analysis is analogous to the statutes at bar. Courts have consistently ruled that to have standing parties must have special damages not incurred by other property owners similarly situated. *Unger v. Forest Home Twp.*, 65 Mich.App 614; 237 N.W.2d 582 (1975); *Brown v. East Lansing Zoning Bd. of Appeals*, 109 Mich.App 688; 311 N.W.2d 828 (1981). In *Village of Franklin v. City of Southfield*, the court determined that it was not enough to merely allege that there would be special damages. 101 Mich.App 554; 300 N.W.2d 634 (1980).
- 12) SCDA asks this Court to follow the analysis of the court in *Brown v. East Lansing Zoning Bd. of Appeals*, 109 Mich.App 688; 311 N.W.2d 828 (1981) where the plaintiffs were found to have standing. However, the "aggrieved party" standard is a stricter standard than that considered before the Court of Appeals in *Brown*. At that time of *Brown* the zoning statute used a "person having an interest affected" standard; this language went into effect on March 1, 1979. The previous year, February 1978, the court decided *Western Michigan University Bd. of Trustees v. Brink*, 81 Mich.App 99; 265 N.W. 2d 56 (1979) for which the statute used an "aggrieved party" standard. The *Brown* court interpreted this legislative change as a backlash against the *WMU v. Brink* decision, and so the *Brown* court loosened the standing requirement. 109 Mich.App 688, 698-700; 311 N.W.2d 828 (1981). As of July 1, 2006, MCL 125.3607 –

which is the successo the statute decided in *Brown* - now u: an "aggrieved party" standard.

- 13) In the case at bar, the SDCA claims that their special damages include loss of property value, congestion, loss of natural resources, and loss of the natural wildlife habitats. They also claimed that the new road would be visible from their property. These allegations are not considered special damages. *Joseph Grand Blank Twp.*, 5 Mich.App. 566, 571; 147 N.W.2d 458 (1967).
- 14) **THEREFORE**, the Court finds and **ORDERS** that the Appellee and/or Cross-Appellee/ Appellant - SDCA - **FAILED** to demonstrate that it would suffer special damages adequate to support its status as an aggrieved party under MCL 324.35305 (1), or that it has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large.

IT IS SO ORDERED AND ADJUDGED.

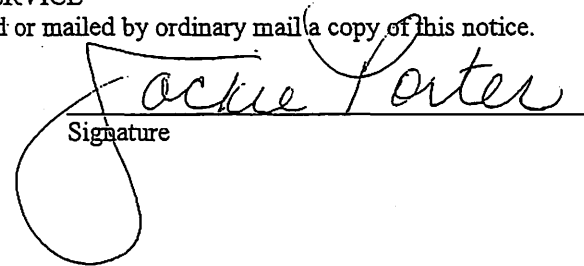


Kevin Cronin, Circuit Judge.

PROOF OF SERVICE

I certify that on this date, the above parties were personally served or mailed by ordinary mail a copy of this notice.

2/6/15
Date



Signature