IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

HONORABLE MICHAEL F. GADOLA, JANE E. MARKEY, AMY RONAYNE KRAUSE

SAUGATUCK DUNES COASTAL ALLIANCE,
Plaintiff/Appellant,

v

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

MSC Nos. 160358; 160359

COA Nos. 342588; 346677

Trial Ct. Nos. 2017-058936-AA; 2018-059598-AA

BRIEF OF APPEAL - APPELLEES SAUGATUCK TOWNSHIP AND SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

* * *

ORAL ARGUMENT REQUESTED

Scott W. Howard (P52028)
Rebecca L. Millican (P80869)
Attorneys for Plaintiff/Appellant
OLSON, BZDOK & HOWARD, P.C.
420 East Front Street
Traverse City, MI 49686

James M. Straub (P21083)
Attorney for Defendants/Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals
STRAUB, SEAMAN & ALLEN, P.C.
1014 Main St., P.O. Box 318
St. Joseph, MI 49085

Carl J. Gabrielse (P67412)
Attorney for Defendant/Appellee North Shores of Saugatuck, LLC
GABRIELSE LAW PLC
240 East 8th Street
Holland, MI 49423

TABLE OF CONTENTS

PAGE

INDEX OF AUTHORITIES

PAGE

Cases

Court Rules

Statutes

Other Authorities

COUNTER-STATEMENT OF JURISDICTION OF APPELLEES SAUGATUCK

Saugatuck Township and Saugatuck Township Zoning Board of Appeals concede that Appellant Saugatuck Dunes Coastal Alliance has filed an Application for Leave to Appeal to this Honorable Court pursuant to MCR 7.303(B)(1) and that this Court thereby has jurisdiction to determine whether leave to appeal should be granted or denied in accord with MCR 7.305.

COUNTER-STATEMENT OF QUESTION PRESENTED OF APPELLEES SAUGATUCK

Did the Michigan Court of Appeals err in its Opinion that the Trial Court properly dismissed the appeals of Saugatuck Dunes Coastal Alliance concluding that the Alliance was not an aggrieved party pursuant to MCL §125.3605?

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

STANDARD FOR APPLICATION FOR LEAVE

Applications for leave to appeal to the Supreme Court are governed by MCR 7.305. Grounds for application for leave from a decision of the Court of Appeals are set forth in MCR 7.305(B)(5). Applicable grounds for this case are: (a) the decision of the Court of Appeals is clearly erroneous and will cause material injustice, or (b) the decision of the Court of Appeals conflicts with a Supreme Court decision or another decision of the Court of Appeals. Interpretation of this MCR 7.305 involves the application of the same rules as this Court would engage when interpreting a statute. *CAM Constr. v. Lake Edgewood Condominium Association*, 465 Mich. 549, 553, 640 N.W.2d 256 (2002). Judicial interpretation of a Court Rule is to give effect to the intent of the authors. *Bio-Magnetic Resonance, Inc. v. Dep't of Public Health*, 234 Mich. App. 225, 229, 593 N.W.2d 641 (1999). If the language of the Court Rule is clear and unambiguous, then no further interpretation is required or permitted. *CAM Constr.*, *supra* at 554.

INTRODUCTION

Appellant/Applicant, Saugatuck Dunes Coastal Alliance (SDCA) appealed to the Saugatuck Township Zoning Board of Appeals a Saugatuck Township Planning Commission decision reached on April 26, 2017. The Planning Commission granted initial site plan approval for a residential development to Intervening Developer, North Shores of Saugatuck, LLC, (North Shores). The Saugatuck Township ZBA held a public hearing on October 11, 2017, to address the SDCA appeal of the preliminary site plan approval. After concluding the public hearing, the Township ZBA adopted a resolution finding that the SDCA did not have standing to appeal relying in its findings reliant upon the Michigan Zoning Enabling Act, MCL §125.3604(1) and *Unger v. Forest Home Township*, 65 Mich. App. 614; 237 N.W.2d 582 (1976).

The SDCA appealed the October 11, 2017, Township ZBA decision to the Allegan County Circuit Court. On February 6, 2018, Allegan County Judge Wesley Nykamp filed an Opinion and Order dismissing the SDCA appeal. (COA Case No. 342588).

On October 23, 2017, the Saugatuck Township Planning Commission approved the final site plan of Developer, North Shores. The SDCA appealed that decision to the Township ZBA which ruled after a public hearing on April 9, 2018, that the SDCA did not have standing. The general basis for the ZBA finding was consistent with the Township ZBA decision of October 11, 2017. The SDCA appealed the April 9, 2018, decision of the Township ZBA to the Allegan County Circuit Court. On October 25, 2018, Allegan County Judge Roberts A. Kengis ruled that the SDCA did not have standing. The SDCA appealed Judge Kengis' Order to the Michigan Court of Appeals. (COA Case No. 346677). The Court of Appeals consolidated the two matters for decision pursuant to an Order dated January 22, 2019.

After briefing and oral argument of the consolidated appeals, the Michigan Court of Appeals issued its Opinion. The opinion affirmed the decisions made by the Circuit Court judges which concluded that the SDCA was not an aggrieved party as required by the MZEA, MCL § 125.3605. In regard to the appeal from the Saugatuck Township Zoning Board of Appeals decision of October 11, 2017, the Court of Appeals affirmed the Circuit Court's dismissal of SDCA's appeal for lack of aggrieved status, but remanded it to the Circuit Court (without retention of jurisdiction) for consideration of other allegations made by the SDCA in its Claim of Appeal.

Appellant/Applicant seeks leave to appeal to this Court under MCR 7.305(B)(5). Appellees Saugatuck Township and Saugatuck Township Zoning Board of Appeals oppose this Court's granting of leave to appeal from the decision of the Court of Appeals.

COUNTER-STATEMENT OF FACTS OF APPELLEES SAUGATUCK TOWNSHIP

The property at issue in this Application for Leave to Appeal is a portion an approximately 200 acre tract of land near the mouth of the Kalamazoo River at Lake Michigan. Prior to control of the property being obtained by North Shores, there was litigation over the same parcel. Resolution of that dispute resulted in the parcel being rezoned to residential (R-2) status as defined by the Saugatuck Township Zoning ordinance.

Under the control of the prior developer, Singapore Dunes, LLC, the Saugatuck Township Planning Commission had granted a preliminary site plan approval for a condominium development on a portion of the property that current Intervening Appellee, North Shores, now controls and which is at issue in this instant case. After a public hearing in April of 2013, the Saugatuck Township ZBA denied standing to the SDCA and to the Bily family which owned property nearby the property to be developed. Almost two years later, in February, 2015, Allegan County Circuit Court Judge Kevin Cronin issued an Opinion and Order finding that the SDCA lacked standing to appeal a decision of the Michigan Department of Environmental Quality with respect to a proposed road traversing the property.

Upon being presented with a preliminary site plan for development of the property by current developer, North Shores, Saugatuck Township Planning Commission granted initial site plan approval and a special approval use permit to North Shores on April 26, 2017. The SDCA appealed the Planning Commission decision to the Township ZBA. The ZBA held a hearing on October 11, 2017. After conclusion of the public hearing portion of the meeting and after discussion by the Board, it voted to adopt a resolution finding that the SDCA did not establish standing or aggrieved status under the Michigan Zoning Enabling Act. (**Appendix 1b**) The SDCA appealed that decision to the Allegan Circuit Court pursuant to MCR 7.122. On February

6, 2018, Allegan County Circuit Court Judge Wesley Nykamp dismissed the claim of appeal of the SDCA finding that the latter lacked standing/aggrieved status. (**Appendix 2b**) The SDCA appealed that decision to the Michigan Court of Appeals which assigned it Case No. 342588.

On October 23, 2017, the Saugatuck Township Planning Commission granted final site plan approval to the North Shores' development plan. The SDCA appealed that decision to the Township ZBA. On April 9, 2018, the Township ZBA held a public hearing on the appeal and received public input regarding standing and aggrieved status. At the end of the public input and after discussion in open session, the Township ZBA adopted a resolution finding that the SDCA did not have standing to appeal the Saugatuck Township Planning Commission decision. (**Appendix 3b**)

The SDCA filed a claim of appeal with the Allegan County Circuit Court. A bench opinion issued by Circuit Court Judge Roberts A. Kengis found that the SDCA did not fulfill the requirements of an aggrieved party. (**Appendix 4b**). The SDCA appealed Judge Kengis' decision to the Court of Appeals which assigned it Case No. 346677. The Court of Appeals consolidated the two cases together under Case No. 346677.

Subsequent to oral argument, the Michigan Court of Appeals issued its Opinion on August 29, 2019, which concluded that in each decision reached by the Trial Court, it properly concluded that the SDCA was not an aggrieved party pursuant to MCL §125.3605. (**Appendix 5b**). In regard to the first appeal (Court of Appeals Case No. 342588) the Court of Appeals found that the Circuit Court failed to rule on SDCA claims filed at the time of the claim of appeal seeking relief under the theories of declaratory judgment and nuisance per se. Without retaining jurisdiction, the Court of Appeals remanded the matter to the Circuit Court for determination of those claims.

Appellee/Applicant's Brief in Support of its Application of Leave to Appeal contains the following statement:

> "Therefore, the **singular issue** before this Court is whether the lower courts erred in denying the Coastal Alliance representational standing to seek review of the planning commission's decision…" (Appellant's Brief in Support of Application for Leave to Appeal P. 10-11). [Emphasis supplied]

Applicant SDCA concedes there is only a single issue presented in its Application for Leave. All other purported issues enumerated in the Application all stem from the question of whether the Applicant has established aggrieved party status necessary to invoke the provisions of the MZEA §§ 604 and 605.

LAW AND ARGUMENT

I. Did the Michigan Court of Appeals err in its Opinion that the Trial Court properly dismissed the appeals of Saugatuck Dunes Coastal Alliance concluding that the Alliance was not an aggrieved party pursuant to MCL §125.3605?

A. The Decision of the Court of Appeals is Not Clearly Erroneous and Will Not Cause Material Injustice

The focus of this appeal is on Sections 604 and 605 of the Michigan Zoning Enabling Act (MZEA), MCL §125.3604 and § 125.3605 *et seq*.

> Sec. 604(1) **An appeal to the zoning board of appeals may be taken by a person aggrieved** or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act, 1980 PA 87, MCL §213.54, and as provided under this Act. The zoning board of appeals shall state the grounds of any determination made by the board. [Emphasis supplied]
>
> Sec. 605. The decision of the zoning board of appeals shall be final. **A party aggrieved** by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606. [Emphasis supplied]

At the public hearings held by the Township ZBA on October 11, 2017, and April 9, 2018, Appellant SDCA was granted an unlimited opportunity to present evidence to support its claimed standing as "a person aggrieved". In the Resolutions adopted by the Township ZBA at each of its hearings the ZBA specifically referenced "a person aggrieved" language of Section 604(1) of the MZEA. The ZBA Resolutions also supported the Board's adoption of the Resolutions with reliance upon the case of *Unger v. Forest Home Township*, 65 Mich. App. 614 (1976). (**Appendix 1b, 3b**) In that case the Michigan Court of Appeals concluded that to be aggrieved, the person or entity must have suffered ". . . some special damages not common to other property owners similarly situated." *Unger, supra*. The ZBA went on to find that in spite of the multiple pages of submissions and public presentations during the meeting, that the ". . .

SDCA has not been able to articulate how it would suffer any special damage, different from damage that would allegedly be sustained by the general public, with reference to the development of the subject real estate." (**Appendix 1b, 3b**).

In its October 11, 2017 Resolution (**Appendix 1b**) the Township ZBA made the following finding.

> The complaints made by the SDCA through its presentation and affidavits filed with its September 18, 2017, correspondence are complaints which might be true of any lakefront development on the property in question. Any development on the property might lead to additional dwellings, additional residents and visitors, motor vehicles, boats, all of which create additional noise and lights. In general, the complaints voiced by the SDCA in its presentation and affidavits would apply to any development of the property in question which establishes the general, as opposed to specific nature, of the damage that the SDCA is claiming associated with the proposed North Shores PUD and SAU.

A similar Resolution was approved by the Township ZBA after the public hearing in April 2018. (**Appendix 3b**) The decisions made by the Township Zoning Board of Appeals were not based on happenstance. The Court of Appeals decision in *Unger* provided the premise that a "party aggrieved" by a zoning decision must have "suffered some special damages not common to other property owners similarly situated. *Unger, supra,* at 617. The *Unger* panel supported its conclusion based upon the prior decision of the Court of Appeals in *Joseph v. Grand Blanc Township*, 5 Mich. App. 566 (1967) as well as a national publication (8A McQuillan, Municipal Corporation (3rd Ed.)) and a learned article (Standing to Appeal Zoning Determinations: The 'Aggrieved Person' Requirement, 64 Mich. L. Rev. 1070 (1966)). The *Unger* decision was also supported by cases from the States of Georgia, Maryland and New York. *Unger, supra* at 617.

The decisions of the Saugatuck Township ZBA predated the Michigan Court of Appeals decision of *Olsen v. Chikaming Township*, 325 Mich. App. 170 (July 3, 2018). The unanimous opinion in *Olsen* was authored by Judge Michael Gadola. In April of this year, this Court denied

leave to appeal in *Olsen.* In its denial order (*Olsen v. Jude & Reed, LLC*, 503 Mich. 1018, 925 N.W.2d 850 (April 30, 2019)) this Court stated:

> **Order**
>
> On order of the Court, the application for leave to appeal the July 3, 2018 judgment of the Court of Appeals is considered, and it is DENIED, **because we are not persuaded that the questions presented should be reviewed by this Court**. [Emphasis supplied]

Seven months ago, this Court was not "persuaded that the questions presented [in *Olsen*] should be reviewed by this Court." There was no finding by this Court in April of this year that the Court of Appeals decision in *Olsen* was clearly erroneous or caused material injustice. MCR 7.305(B)(5)(a). The Township Appellees represent that the very issues that were addressed in the *Olsen* decision are virtually identical to the issues presented in this instant case. This close similarity warrants a more thorough review of the *Olsen* decision.

The dispute in *Olsen* involved a subdivision which had been platted before Chikaming Township had adopted a zoning ordinance. Eventually, the township adopted a zoning ordinance requiring all subdivision lots to have a minimum area of 20,000 square feet in order to be buildable. The ordinance allowed for two non-conforming lots with contiguous frontage under single ownership to be considered as an undivided parcel. In 1998, Lots 6 and 7 of the subject subdivision were contiguous frontage lots and were under the ownership of David Sweet. In 2011 the Berrien County Treasurer foreclosed on Lot 7 for nonpayment of property taxes and an LLC unrelated to the litigation purchased the lot at the tax sale. In 2013 the County Treasurer foreclosed on Lot 6 and Jude & Reed, LLC purchased it. Jude & Reed applied to the Chikaming Township ZBA for a nonuse variance seeking waiver of the 20,000 square foot building requirement. In accordance with the MZEA (MCL 125.3103(2)) notice was provided to property owners within 300 feet of Lot 6. Some of the property owners or occupants of structures within

the 300 foot radius appeared by counsel at the ZBA hearing to argue against the variance request for Lot 6. The ZBA voted to approve the variance. The opponents appealed the ZBA decision to the Circuit Court which permitted Jude & Reed (the developer) to intervene. The Chikaming ZBA and the Jude & Reed, LLC moved to dismiss the Circuit Court action for lack of subject matter jurisdiction. Those entities argued that the property owners within 300 feet lacked the necessary standing to challenge the ZBA's decision to grant the variance. The ZBA and Jude & Reed argued that only an "aggrieved" party could appeal the ZBA's decision pursuant to MCL §125.3604 and § 125.3605 and since the oppositional property owners did not establish that they suffered "special damages" they did not have standing. The Circuit Court Judge disagreed. He determined that the property owners within 300 feet had standing to appeal the ZBA decision, reasoning that since the MZEA provided in the notice provisions of the MZEA (MCL §125.3103) that notice had to be given to all property owners and occupants within 300 feet of the involved property, the legislative implication was that those property owners would qualify as aggrieved parties. The Trial Judge reversed the ZBA's decision denying the variance to Jude & Reed, LLC, finding that it had created its own hardship which disqualified it from obtaining a variance pursuant to the ordinance provisions. Chikaming Township and Jude & Reed were granted leave to appeal to the Michigan Court of Appeals.

In a unanimous opinion authored by Judge Michael Gadola, the Court of Appeals provided a thorough procedural and historical analysis of the aggrieved party status contained in the MZEA. The Court of Appeals noted that the MZEA was created in 2006 through the consolidation of three separate Zoning Enabling Acts. The MZEA grants local units of government the authority to regulate land development and use through zoning. *Olsen v. Chikaming*, 325 Mich. App. at 179. At Page 180-181 of the opinion the Court held:

> Thus, under the MZEA, a party seeking relief from a decision of a ZBA is not required to demonstrate 'standing' but instead must demonstrate to the circuit court acting in appellate context that he or she is an "aggrieved' party." MCL §125.3605.

In supporting a distinction between "standing" and "aggrieved" Judge Gadola relied on the decision of this Court in *Federated Insurance Co. v. Oakland County Road Commission*, 475 Mich. 286 (2006). In that decision this Court articulated the distinction between standing and "aggrieved party". In *Federated* this Court was confronted with the definition of aggrieved party as it appears in the Michigan Court Rules governing appeals. MCR 7.203(A). At P. 290-291 of *Federated* this Court explained and held:

> As we indicated in *Nat'l Wildlife Federation v. Cleveland Cliffs Iron Co.*, 471 Mich. 608, 612, 684 N.W.2d 800 (2004), citing *Lee v. Macomb Co. Bd. of Comm'rs*, 464 Mich. 726, 734, 629 N.W.2d 900 (2001), **standing refers to the right of a party plaintiff *initially* to invoke the power of the court to adjudicate a claimed injury in fact**. In such a situation it is usually the case that the defendant, by contrast, has no injury in fact but is compelled to become a party by the plaintiff's filing of a lawsuit. **In appeals, however, a similar interest is vindicated by the requirement that the party seeking appellate relief be an "aggrieved party"** under MCR 7.203(A) and our case law.[2] This Court has previously stated, "**To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency."** *In re Estate of Trankla*, 321 Mich. 478, 482, 32 N.W.2d 715 (1948), citing *In re Estate of Matt Miller*, 274 Mich. 190, 194, 264 N.W. 338 (1936).[3] An aggrieved party is not one who is merely disappointed over a certain result.[4] Rather, to have standing on appeal, a litigant must have suffered a concrete and particularized injury, as would a party plaintiff initially invoking the court's power. The only difference is a litigant on appeal must demonstrate an injury arising from either the actions of the trial court or the appellate court judgment rather than an injury arising from the underlying facts of the case. [Emphasis supplied]

Judge Gadola went on to frame the issue as not whether the appellees had standing but whether the appellees were parties aggrieved by the decision of the ZBA within the meaning of the MZEA. *Olsen, supra* at 181. After applying the rules of statutory interpretation to the critical MZEA provisions Judge Gadola turned to a review of Michigan case law including *Unger*,

supra; *Joseph v. Grand Blanc Twp*, 5 Mich. App. 566,571, 147 N.W.2d 582(1975); *Village of Franklin v. Southfield* 101 Mich. App. 554, 557, 300 N.W.2d 634 (1980); and *Western Mich. Univ. Bd. of Trustees v. Brink*, 81 Mich. App. 99, 265 N.W.2d 56 (1978), The opinion goes on to distinguish the *Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.*, 487 Mich. 349, 792 N.W.2d 686 (2010) because the applicable facts in that case did not involve the MZEA statutory language of "aggrieved party". *Olsen, supra* at 193. Finally, the unanimous decision held at 194:

> **We conclude that appellees are not parties "aggrieved**" under MCL 125.3605, **having failed to demonstrate special damages different from those of others within the community**. Accordingly, appellees did not have the ability to invoke the jurisdiction of the circuit court, and the circuit court erred by denying the township's and appellant's motion to dismiss the circuit court action. [Emphasis supplied]

With this Court's denial of leave to appeal (*Olsen v. Jude & Reed, LLC*, 503 Mich. 1018, 925 N.W.2d 850 (2019) the Olsen opinion authored by Judge Gadola continues as precedent in this state.

The facts presented in the instant case present the same legal issues as addressed by the Court of Appeals in *Olsen*. In this case the SDCA has been persistent in its contention that its membership and thus the entity qualify for the aggrieved status required by the MZEA. The Township ZBA, the Allegan County Circuit Court and the Michigan Court of Appeals relying on many of the same cases that *Olsen* relied upon have ruled to the contrary.

In SDCA's Application for Leave in this case it admirably attempts to assure this Court that there are other issues to be decided by this Court that somehow were overlooked by this Court in its refusal to grant leave to appeal in *Olsen*. SDCA expands the statement of questions presented to three when, by its own admission, its Application focuses on ". . . the singular issue… whether the lower courts erred in denying the Coastal Alliance representational standing to seek review of the planning commission's decision . ." (Appellant Brief P. 10-11). Applicant

urges this Court to ". . . take a hard look at the language of the MZEA and the standard for 'aggrieved party' that has been adopted by the Court of Appeals." (Appellant Brief P. 11). Basing the Application for Leave to Appeal on a request for this Court to "take a hard look" at the case law and the issue of standing and aggrieved status is not adequate to warrant leave being granted. MCR 7.305(B)(5)(a).

Applicant SDCA urges this Court to compare the aggrieved status required by the MZEA with the doctrine of standing, relying on the decision of this Court in *Lansing School Education Association v. Lansing Board of Education*, 487 Mich. 349; 792 NW2d 686 (2010). (Applicant Brief P. 16). The *Olsen* decision specifically rejected the applicability of the *Lansing* case when the MZEA is applicable. *Olsen, supra* at 193. Even before *Olsen* was decided, this Court has determined that the doctrine of standing is distinct from aggrieved party status. *Federated, supra*. This Court is urged to maintain the existing distinction between standing which refers to the right of a party *initially* to invoke the power of the Court to adjudicate a claimed injury in fact and an aggrieved party determined to be one who must have some interest of a pecuniary nature in the outcome of the case. *Federated Ins., supra*, 290-91; citing *In Re: State of Trankle*, 321 Mich. 478, 482, 32 NW2d 715 (1948). Applicant SDCA's reliance on *Lansing*, is misplaced because that case does not address the specific requirements of aggrieved person status as required by MCL §125.3604 and MCL §125.3605. Judge Gadola authored the unanimous opinion rendered in this case for which the SDCA seeks leave to appeal. He arrived at the decision denying aggrieved status to the SDCA based upon the legal principles that were thoroughly analyzed in *Olsen*. The SDCA has not put forth any substantive argument that *Olsen* and the cases that preceded it (*Unger et al*) were clearly erroneous. Nor does the SDCA establish that the unanimous Court of Appeals decision and opinion authored by Judge Gadola in

this instant case will cause material injustice. MCR 7.305(B)(5)(a). In point of fact the *Olsen* decision and the decision in this instant case do not result in material injustice.

The SDCA refers to a decision in other states that permit the relaxation of the "similarly situated property owner" phrase that was adopted by *Unger*. The relaxation of the "aggrieved party" standard as defined by *Unger* and *Olsen* would upend the intent of the Michigan legislature in requiring the "aggrieved party" status as it was defined at the time of the adoption of the MZEA in 2006. In 2006 when Legislature consolidated the then exiting 3 zoning enabling statutes into the MZEA if it had intended the "aggrieved" standard to be less than what was defined by *Unger* and related cases it would have drafted the standard codified in Sections 604 and 605 of the Act differently. *Dawe v. Dr. Reuven Bar-Levav & Associates, P.C.* 485 Mich. 20,28, 780 N.W. 2d 272 (2010) citing *Wold Architects v. Strat*, 474 Mich. 223, 234, 713 N.W.2d 750.(2006).

The SDCA contends that one of its purported members, "the Bily family" frequently visits and enjoys a cottage on nearby property located in a natural and peaceful setting with a desirable view shed. (Application Brief P. 22). The SDCA claim is made that the family's recreational use of the river would be decreased because of additional boat traffic and safety concerns and that all of the above development would impact the economic value of their property. There was no evidence produced by the Bily family or SDCA that would support a claim of "special damages". The Township Appellees contend that to reduce the threshold of being "aggrieved" to include complaints such as espoused by the Bily family of adverse aesthetic impact, increases in traffic or similar consequences there would result a chilling impact on real estate development. In the case of the Applicant SDCA, whose membership population includes many who reside outside of the immediate development area of the North Shores' project, the

lowering of the "aggrieved" threshold would allow a voice to those who are members and geographically remote from the project to have a disproportionate voice in property development based largely on subjective impressions. Absent a showing that Judge Gadola's opinions in *Olsen* and this instant case are clearly erroneous and the orders consistent with his opinions issued in this case will cause material injustice, the Applicant's Request for Leave to Appeal to this Court should be denied. MCR 7.305(B)(5).

B. The Decision in the Court of Appeals in this Case Does Not Conflict with a Supreme Court Decision or Another Decision of the Court of Appeals.

The second ground for an application for leave to appeal from a decision of the Court of Appeals appears at MCR 7.305(B)(5)(b). Under this ground the SDCA must establish that the decision of the Michigan Court of Appeals in this case conflicts with the Supreme Court decision or another decision of the Court of Appeals. A careful analysis of Applicant's Brief in Support of its Application for Leave to Appeal fails to reveal a conflict with a Supreme Court decision. The SDCA wishes this Court would adopt the definition for standing set forth in the *Lansing* decision. However, as Judge Gadola points out in the *Olsen* opinion, the *Lansing* case involved a standard dissimilar to the statutory requirement imposed on this case by the MZEA. *Olsen, supra*, at 192. There is no direct conflict in the decisions. In *Lansing* this Court returned the issue of standing ". . . to a limited, prudential doctrine. . ." *Lansing, supra*, at 372. In the instant case, the MZEA establishes the "party aggrieved" standard statutorily. The MZEA did not apply in the *Lansing* case.

Further examination of the Applicant's brief fails to uncover any decision issued by the Court of Appeals in conflict with the opinion issued in his case. The Court of Appeals decision by Judge Gadola in *Olsen* and in this instant case are compatible. The decisions are supported by

a long history of cases dating back to *Unger* and later codified in the MZEA by the Legislature establishing the need for a party to be "aggrieved" by a decision of a Zoning Board. Applicant provides no basis pursuant to MCR 7.305(B)(5)(b) to support its Application for Leave to Appeal.

CONCLUSION

This Court addressed similar issue when it denied Application for Leave to Appeal in *Olsen v. Jude & Reed, LLC* of 2019 that would support this Court granting leave to appeal in this case. Furthermore, the provisions of MCR 7.305(B)(5) having not been satisfied by Applicant further justified this Court denying SDCA's Application for Leave to Appeal.

Respectfully submitted,

Dated: November 7, 2019

STRAUB, SEAMAN & ALLEN, P.C.

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

CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of November, 2019, I electronically filed the foregoing document with the Clerk of the Court using the Electronic Case Filing System, which sent notification of such filing to all counsel of record registered to receive the same.

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