

STATE OF MICHIGAN
COURT OF APPEALS

BLUE LAKE FINE ARTS CAMP,

Plaintiff-Appellant,

UNPUBLISHED
February 23, 2010

v

BLUE LAKE TOWNSHIP ZONING BOARD OF
APPEALS, FORREST J HARRIS TRUST, and
WAYNE HARRIS,

No. 282799
Muskegon Circuit Court
LC No. 2007-045600-AV

Defendants-Appellees.

Before: Beckering, P.J., and Wilder and Davis, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order dismissing plaintiff's appeal from the Blue Lake Township Zoning Board of Appeals (the ZBA) to the circuit court. We affirm.

This case arises out of a dispute between plaintiff and defendants the Forrest J. Harris Trust and Wayne Harris (the Harris parties) over the Harris parties' intentions to construct residences on four non-contiguous lots around Blue Lake, near plaintiff's property. The parcels are zoned forest recreational-institutional (FR-I), which prohibits residential uses unrelated to the operation of a camp. The ZBA granted variances to the Harris parties on several occasions, but each time this Court reversed and remanded. This appeal arises out of the ZBA granting variances again after a second remand. On plaintiff's appeal to the circuit court, the Harris parties contended that plaintiff lacked standing to challenge the variances. We agree.

We review de novo as a matter of law whether a party has standing. *Michigan Citizens for Water Conservation v Nestlé Waters North America, Inc*, 479 Mich 280, 291; 737 NW2d 447 (2007). A party can raise the issue of standing at any time. *Michigan Chiropractic Council v Comm'r of the Office of Financial and Ins Services*, 475 Mich 363, 371-372; 716 NW2d 561 (2006). Under the *Nestlé Waters* standard, a party must, among other things, show a concrete and particularized injury. *Nestlé Waters, supra* at 291, 294-295. Generally, a plaintiff must therefore demonstrate that it has suffered a "special injury," meaning the defendant's complained-of action has caused the plaintiff some kind of harm "not common to other property owners similarly situated." *Unger v Forest Home Twp*, 65 Mich App 614, 617; 237 NW2d 582 (1975).

Significantly in this case, standing requires a plaintiff to prove, not merely allege, harm. See *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 630-631; 684 NW2d 800 (2004). As our Supreme Court has explained, this does not put the cart before the horse – a plaintiff is only obligated to provide facts in support during trial or, if standing is challenged, at a hearing. *Kallman v Sunseekers Property Owners Ass'n, LLC*, 480 Mich 1099; 745 NW2d 122 (2008). In this case, standing *was* challenged, and a requisite hearing was held. But plaintiff has simply not presented any evidence beyond, at the most, an unsigned letter from an unknown source that was given to the Zoning Board. There is no indication that plaintiff was denied a meaningful opportunity to present actual evidence, whether in the form of sworn testimony, an affidavit, or anything else. Rather, plaintiff simply did not do so. Because plaintiff has not proven the harm it alleges for the purpose of demonstrating that it has standing, the trial court properly concluded that plaintiff lacked standing to contest the granting to the Harris parties of use variances for their Blue Lake properties.

Affirmed.

/s/ Jane M. Beckering
/s/ Kurtis T. Wilder
/s/ Alton T. Davis