

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Dakota Resource Council	)	
	)	
Appellant and	)	
Cross-Appellee,	)	
	)	
and	)	
	)	
Neighbors United, Myron and Nancy	)	Supreme Court No. 20110172
Eberts, Neil and Laura Tangen, Brittany	)	Stark County No.: 10-C-00315
Huggins, and Frank and Lucy Hurt	)	
	)	
v.	)	
	)	
Stark County Board of County	)	
Commissioners and Great Northern Project	)	
Development,	)	
	)	
Appellees and	)	
Cross-Appellants.	)	

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**APPEAL FROM THE DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT,  
NORTH DAKOTA,  
THE HONORABLE WICKHAM CORWIN**

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**APPELLEE AND CROSS-APPELLANT STARK COUNTY BOARD OF  
COUNTY COMMISSIONERS' REPLY BRIEF ON CROSS-APPEAL**

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## **I. INTRODUCTION**

1. In support of its cross-appeal, Stark County submits the following response to DRC's *Reply Brief*.

## **II. APPLICABLE LAW AND ARGUMENT**

2. A court may decide the merits of a dispute only if the party seeking relief demonstrates it has standing to litigate the issues before the court. Kjolsrud v. MKB Management Corp., 2003 ND 144, ¶ 13, 669 N.W.2d 82; Rebel v. Nodak Mut. Ins. Co., 1998 ND 194, ¶ 8, 658 N.W.2d 811. For purposes of an appeal of Stark County's zoning decision, standing requires a showing the person or persons appealing have been "aggrieved." N.D.C.C. § 11-33-12. Under this standard, the Court's prior cases can be summarized as follows: standing exists if a party can show a legal interest may be enlarged or diminished, but mere dissatisfaction with the decision or complaints as an elector or taxpayer are insufficient. See Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 9, 778 N.W.2d 813.

3. Although DRC has the burden to establish standing, it relies upon unsupported beliefs and speculation combined with a conclusory affidavit stating its members will be impacted. See Opinion at p. 9 (Apr. 5, 2011) (App. at 14) (discussing standing and noting, "At this point, the factual record is limited and incomplete.") More information has long been required by courts to establish standing when an organization or association asserts standing on behalf of its members. See e.g. Lujan v. Defenders of Wildlife, 504 U.S. 555, 563 (1992) (An organization asserting standing on the basis its members would otherwise have standing to sue in their own right has long been required to "submit affidavits . . .

showing, through specific facts . . . that one or more of [its] members would . . . be ‘directly’ affected”) (emphasis added). Specific facts are required in order to determine if a party is sufficiently affected to insure a justiciable controversy is before the court. Rebel, 1998 ND 194, ¶ 8, 658 N.W.2d 811 (“A person cannot invoke the jurisdiction of the court to enforce private rights or maintain a civil action for the enforcement of those rights unless the person has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy”).

4. This is not an appeal where persons located in or around the area rezoned are appealing Stark County’s action. Rather, only DRC is appealing. Yet, the record contains only minimal, conclusory statements about DRC, leaving one to wonder whether a judicial determination in this matter will resolve a legal interest or is just a furtherance of DRC’s organizational agenda. This is aptly demonstrated by DRC’s argument on appeal challenging only one conditional use at issue, and the unusual posture of this appeal where DRC is claiming Stark County granted broader authority than either Stark County or GNPD assert.

5. DRC has only appealed one conditional use granted by Stark County. As a result, even if DRC prevails, the appropriate remedy would be a remand to Stark County to excise the one conditional use appealed from the *Amendment*. DRC is against a coal mine and therefore disagrees on a philosophical/political level with the County’s decision. The court system’s standing requirements are designed to address justiciable controversies, not philosophical and political disagreements.

DRC has failed to demonstrate it has standing in this case, and as a result, its appeal should be dismissed for lack of standing.

**III. CONCLUSION**

6. Stark County respectfully requests this appeal be dismissed because DRC lacks standing. Regardless, the judgment of the District Court should be affirmed.

Dated this 8<sup>th</sup> day of November, 2011.

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**CERTIFICATE OF SERVICE**

7. I hereby certify that a true and correct copy of the foregoing **APPELLEE AND CROSS-APPELLANT STARK COUNTY BOARD OF COUNTY COMMISSIONERS' REPLY BRIEF ON CROSS APPEAL** was on the 8<sup>th</sup> day of November, 2011, e-mailed to the following:

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