FRIENDS OF LACKAWANNA; JOSEPH JAMES and MARY MAY; EDWARD and BEVERLY MIZANTY; And KATHERINE and TODD SPANISH Appellants	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
v.	:	CIVIL ACTION - LAW
DUNMORE BOROUGH ZONING HEARING BOARD Appellee	:	2011-CV-4742
And	:	
DUNMORE BOROUGH; KEYSTONE SANITARY LANDFILL, INC.; F&L REALTY, INC.; KEYSTONE COMPANY and KEYSTONE LANDFILL, INC. Intervenors	:	

MEMORANDUM AND ORDER

ZITO, S.J.

I. FACTUAL AND PROCEDURAL HISTORY

Presently before this Court is Intervenors', Keystone Sanitary Landfill, Inc., and affiliated companies, (hereinafter, Keystone or "KSL"), Motion to Dismiss or Strike/Quash the Land Use Appeal filed by Appellants Friends of Lackawanna (hereinafter "Friends") and Individual Citizens Joseph and Mary May, Edward and Beverly Mizanty, and Katherine and Todd Spanish (hereinafter "Citizens). For the following reasons, the Motion is GRANTED.

By way of background, Appellants are "Citizens" Friends of Lackawanna, Joseph James and Mari May, Edward and Beverly Mizanty, and Katharine and Todd Spanish filed a Notice of Land Use Appeal regarding a September 28, 2015, Decision of the Dunmore Borough Zoning Hearing Board. The Citizens are residents of Dunmore and members of Friends of Lackawanna, a group of which Ms. Spanish is also a board member. Friends of Lackawanna is a registered non-profit that does not own or lease property in the Borough of Dunmore or the County.

According to the Decision of the Dunmore Zoning Hearing Board, Keystone owns and operates a sanitary landfill within an M-1 Zone in the Borough of Dunmore. In 2014, Keystone submitted an application to the DEP to utilize a portion of land within its preexisting permit as disposal area. That application was known as the "Phase III Major Permit Modification" or "Phase III"). The Phase III plan includes an upward expansion of the existing landfill. On November 26, 2014, Keystone made a written request for an opinion under Section 916.2 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10101, 53 P.S. § 10916.2.

On December 22, 2014, the Borough Zoning Officer responded to the request for an opinion and issued a preliminary opinion under MPC Section 916.2 and also stated that the proposed KSL expansion is not subject to a fifty (50) foot height limit applicable to the M-1 District and that the proposed expansion otherwise complies with the specific sections of the Zoning Ordinance. Legal Notice of the favorable preliminary opinion was published on December 23, 2014. Thereafter, on January 20, 2015, the Appellants filed an appeal of the Zoning Officer's decision to the Dunmore Borough Zoning Board (Zoning Board). The Dunmore Borough intervened. Hearings were held on March 19, 2015, March 26, 2015, April 30, 2015, May 14, 2015, June 11, 2015, and August 27, 2015. Parties submitted proposed findings of fact and conclusions of law.

On September 28, 2015, the Dunmore Borough Zoning Hearing Board issued its Decision. The Zoning Board opined, based on the statements of the parties before the Board, that the main issue is whether the height limitation under a Dunmore Borough Zoning Ordinance applies to KSL. The Board concluded that the Appellants have not established either collectively or in their own right that they are aggrieved within the scope of the MPC. As such, there was no standing. The Board further concluded that the landfill is not a "building" within the definitions of the

Dunmore Borough Zoning Ordinance subject to the height limitation. Therefore, the appeal to the Zoning Board was denied and dismissed.

As such, Appellants filed a Notice of Appeal on October 28, 2015. Thereafter Keystone filed a Notice of Intervention on November 13, 2015. On November 24, 2015, Dunmore Borough also filed a Notice of Intervention.

On March 17, 2016, Intervenor Keystone filed an Answer to the Land Use Appeal and a Motion to Dismiss or Strike Objectors' appeal on the bases that (1) Objectors lack standing and (2) Objectors failed to comply with Section 1003-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11003-A, by failing to set forth the grounds of their appeal in a concise manner.

On March 27, 2016, Oral Argument was presented before this Court. No additional evidence was taken.

II. DISCUSSION

As noted above, this Court did not take additional evidence, as such its review of the zoning board decision "is limited to determining whether the [ZBA] committed a manifest abuse of discretion or an error of law." **Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637, 639 (1983). See also, Rapaport v. Zoning Hearing Board of the City of Allentown, 687 A.2d 29 (Pa. Cmwlth. 1996).** The ZBA will be found to have "abused its discretion only if its findings are not supported by substantial evidence[,] ... mean[ing] such relevant evidence [that] a reasonable mind might accept as adequate to support a conclusion." **Id. at 640.**

First this Court will address Intervernors' issue regarding the form of Appellant's Notice of Appeal. Intervenors' argument is that Appellants' failed to file a concise statement of grounds for their appeal in compliance with the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 110003-A because the 53 page, 377 paragraph appeal was incoherent, redundant, and

extravagant. Appellants argued that nothing in the MPC or case law interpreting the MPC prevent the Appellant from including too much factual detail in a notice of appeal.

Although Appellants' Notice of Appeal is voluminous, it is distillable. Moreover, although there is precedent for dismissing an insufficient or vague notice of appeal, there has been no authority presented supporting dismissal of a zoning appeal for too detailed a notice. As such, this Court will not dismiss the Appeal on those grounds.

Next, this Court will address the issue of standing. For an appellant to have standing to appeal a determination of a zoning board, the appellant must demonstrate that they are an "aggrieved person." **Armstead v. Zoning Board of Adjustment of City of Philadelphia, 115 A.3d 390, 396 (Pa. Cmwlth. 2015) citing Spahn v. Zoning Board of Adjustment, 977 A.2d 1132, 1149 (Pa. 2009).** To be "aggrieved", a party must show that that they have a direct, substantial and immediate interest. **Id.; See also, William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 280 (Pa. 1975); Laughman v. Zoning Hearing Board of Newberry Twp., 964 A.2d 19 (Pa. Cmwlth. 2009).** A party demonstrates a "direct" interest by establishing some causation or harm to his or her interest. **Armstead**. Absent a direct injury such as pecuniary harm, properties that abut or are adjacent to the zoning area in question or that are in close proximity have been held to have standing. **Laughman, 964 A.2d at 22–23; See also, In re Broad Mountain Development Co., LLC, 17 A.3d 434m 440 (Pa. Cmwlth. 2011)** (properties within half mile of new proposed development site have standing); **Society Created to Reduce Urban Blight (SCRUB) v. Zoning Hearing Board of Adjustment of the City of Philadelphia, 951 A.2d 398 (Pa.Cmwlth.2008)** (properties one half mile to one mile are not in close proximity for standing purposes); **Armstead, *supra*** (property within one and half blocks not in close proximity for standing purposes to challenge change to existing permitted use). For

an interest to be immediate, "there must be a causal connection between the action complained of and the injury to the person challenging it." **Id. quoting Spahn.** And for an interest to be substantial, the party must show "some interest other than the abstract interest all citizens have in the outcome of [the] proceedings." **Id. at 396, citing Spahn at 1151;** ***see also*** **William Penn, 346 A.2d at 280–81** (noting that "it is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law"). Aesthetic concerns are not enough to create a substantial interest to confer standing. **In re Broad Mountain Development Co., LLC, 17 A.3d 434m 440 (Pa. Cmwlth. 2011) citing Miller v. Upper Allent Twp. Zoning Hearing Bd., 535 A.2d 1195 (Pa. Cmwlth. 1987).** "Therefore, to meet the three requirements for an aggrieved party, the party must demonstrate that the challenged action personally harms his or her interest in a way that is greater than that of another citizen." **Armstead, at 396.**

Moreover, it is important to note that an organization's purpose alone is not enough to confer standing. To have standing, an association or organization must show an interest beyond the common interest that all citizens have in "procuring obedience to the law." **Society Created to Reduce Urban Blight (SCRUB) v. Zoning Hearing Board of Adjustment of City of Philadelphia, 951 A.2d 398, 402 (Pa.Cmwlth.2008)** ("neither **Society Hill** ... nor **Pittsburgh Trust** stands for the proposition that a civic group must be granted standing in any zoning litigation involving the mission of that group, no matter how remote the impact."); **See Scenic Philadelphia v. Philadelphia Zoning Board of Adjustment, 2015 WL 5446866 at *5 (Pa. Cmwlth. 2015).** An association or organization can establish derivative standing through the standing of its members, if the member has a direct, immediate and substantial harm. **Armstead,**

115 A.3d at 400, citing Pittsburg Trust for Cultural Resources v. Zoning Board of Adjustment of City of Pittsburg, 604 A.2d 298 (Pa. Cmwlth. 1992).

After careful review of the record and consideration of the argument presented by the parties, this Court agrees with the Dunmore Borough Zoning Board Decision that the Appellants lack standing, as they have failed to establish that they are "aggrieved" parties with direct, immediate, and substantial harm.

Appellant Organization, Friends of Lackawanna, is a nonprofit organization specifically formed to oppose Intervenor Keystone's Phase III expansion. **See Notice of Appeal at ¶ 107-108.** As discussed above, a civic group is not granted standing solely based on its purpose. **See Scenic Philadelphia, 2015 WL 5446866 at *5 (Pa. Cmwlth. 2015) citing Society Created to Reduce Urban Blight (SCRUB), *supra*.** As all parties conceded, Appellant Organization does not own or lease property in the Borough of Dunmore, nor as it made any financial investment in the Borough. As such, Appellant Organization cannot be deemed in close proximity to the proposed expansion site, nor has it established any pecuniary harm. Appellant Friends of Lackawanna have not demonstrated any interest aside from the abstract interest generally shared by a community group formed for this purpose. Thus, Appellant Friends of Lackawanna's standing is dependent upon the standing of the Appellant Individual Citizens. Appellant Individual Citizens residences are also not in close proximity to the proposed expansion site on Keystone's Property, as there is at least half a mile between the nearest property and the site and the properties are separated by a converging network of interstate highways and ramps consisting of Interstate 81 and interchange ramps of Interstate Routes 81, 84 and 380 (**N.T. May 14, 2015, at p. 12**)[1]. The Individual Appellants have not demonstrated any pecuniary interest. Individual

[1] The Dunmore Borough Zoning Board determined the properties owned by the Individual Appellants are between 3,110 and 4,473 feet from the expansion area. See Decision of Dunmore Borough Zoning Hearing Board, para. 11.

Citizens Joseph and Mari May's main complaints are of odors, dust, and bird droppings. **Notice of Appeal at ¶ 19, 20, and 44.** Edward and Beverly Mizanty's complaint is also odors. **Notice of Appeal at ¶ 63.** Individual Citizens Katharine and Todd Spanish additionally complained of odors. **Notice of Appeal at ¶ 83.**

This Court finds this case factually similar to the recent decision of the Commonwealth Court in **Armstead v. Zoning Board of Adjustment of the City of Philadelphia, 115 A.3d 390 (Pa, Cmwlth. 2015).** In **Armstead**, like in the instant matter, the Objectors were both individual residents and an organization formed in the 1980s to oppose illegal billboards and improve the quality of life in Philadelphia. There, the Commonwealth Court affirmed the trial court's determination that the Appellants did not have standing to challenge the zoning board's granting of a variance to modify the nature of an existing permitted billboard. **See Armstead, 115 A.3d at 397-398, 400.** There, the nearest objector lived 1.5 blocks from the proposed sign and the Court found that was not sufficient proximity to confer standing. **Id. at 397.** Here, the Appellants live at a minimum over a half mile away and the neighborhood is separated from the proposed expansion area by a major highway interchange. Similar to this matter, none of the Objectors in Armstead have demonstrated a particular harm aside from aesthetic concerns. **Id.** As such, the objectors in Armstead failed to demonstrate a direct, immediate, and substantial interest and did not have standing to pursue the appeal. **Id. at 398.** This matter is distinguishable from the case relied upon by Appellants, **In re Broad Mountain Development Co., LLC, 17 A.3d 434 (Pa. Cmwlth. 2011).** In **Broad Mountain**, a development company appealed an order of the township's zoning board revoking a permit to develop a 20-28 wind turbine project across eleven (11) acres of a property. **17 A.3d at 436-437.** There the Commonwealth Court upheld the board's finding that intervenor objectors had standing where some objectors lived within 1,300 feet of the proposed

project and the board found the testimony regarding their concerns credible. **Id. at 44—441.** There, the zoning board found the objectors had standing in challenging the development of a new industrial site, but here, the Appellee Zoning Hearing Board determined that the Appellants did not establish a direct, immediate and substantial harm regarding the proposes change to an already existing and functioning landfill which the Zoning Hearing Board determined was in compliance with the Zoning Ordinance. This Court finds no error or law or abuse of discretion in Appellee's determination regarding the credibility of the harm asserted for standing purposes.

After six (6) days of hearings over several months and a multitude of witnesses, the Appellee Dunmore Zoning Hearing Board determined that the Appellants did not establish that they were aggrieved by the proposed expansion. This Court fails to see how Appellant's concerns are more than aesthetic issues or otherwise discernible from the abstract interests of all citizens in having others comply with the law. Because the Appellant Individual Citizens have not demonstrated a direct, immediate and substantial impact to establish standing, Appellant Friends of Lackawanna cannot derive standing through its members.

As such, this Court finds that the Appellee Dunmore Borough Zoning Hearing Board did not abuse its discretion nor commit an error of law. The record supports the determination that the Appellants lack standing to pursue the remedy that they seek, as they have failed to demonstrate a direct, immediate, and substantial harm. As such, the Appellant's Notice of Appeal is DISMISSED. An appropriate order follows.

BY THE COURT:

LEONARD N. ZITO, S.J.

CC: Notice of the entry of the foregoing Order has been provided to each party pursuant to Pennsylvania Rule of Civil Procedure 236(a)(2) by mailing time-stamped copies to the following individuals:

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ORDER

AND NOW, this 24 day of April, 2017, upon consideration of Intervenors' Motion to Dismiss or Strike Appeal, the Responses thereto, the corresponding Briefs, and Oral Argument held upon the matter, it is HEREBY ORDERED and DECREED that Appellant's Appeal of the September 28, 2015, Decision of the Dunmore Borough Zoning Board is DISMISSED.

BY THE COURT:

LEONARD N. ZITO, S.J.

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