

**SAUGATUCK TOWNSHIP BOARD
SPECIAL MEETING**

**WEDNESDAY, DECEMBER 19, 2007, 7:00 p.m.
SAUGATUCK HIGH SCHOOL CAFETERIA
401 ELIZABETH ST, SAUGATUCK, MICHIGAN 49453**

MINUTES

At 7:00 p.m., Supervisor Wester called to order the special meeting to consider a proposed Settlement Agreement between Saugatuck Township and Saugatuck, LLC concerning the former Denison Property (the "Property").

Members Present: Supervisor Bill Wester, Clerk Jane Wright, Treasurer Pat Knikelbine, Trustee Chris Roerig and Trustee Damien Jarzembowski.

Members Absent: None.

Also Present: Township Attorney Ron Bultje.

Wester recognized for public comment those who had specifically requested time, as well as a representative from each row of seated individuals and from each group of standing individuals at the meeting.

Dayle Harrison stated that the Township needs to protect sensitive environmental areas. He stated that the one year standstill period proposed by the Settlement Agreement is a hoax. He said that even during that one year standstill period, the Property owner would be able to go to the Circuit Court after the Planning Commission and the Zoning Board of Appeals have completed their deliberations on a proposed development plan from the owner. He urged the Township Board to reject the Settlement Agreement.

David Swan of the Saugatuck Dunes Coastal Alliance introduced Scott Howard, an attorney from Traverse City. Mr. Howard advised that the new owner of the Property, Mr. Audrey McClendon (the "Owner"), was a very sophisticated buyer. Mr. Howard advised the Owner was certainly aware of the R-4 zoning before the Property was purchased. Therefore, he said the Owner's claim that there was no notice has no merit. Mr. Howard noted that the Owner has 21 days to contest the zoning decision and failed to take action within that time frame. Mr. Howard stated that the tax tribunal claim is invalid because the Owner set the market for the value of the Property when he purchased the Property. Mr. Howard said there has been no regulatory taking of the Property because even with the R-4 zoning, some 80 dwelling units could be constructed on the Property. He said this is a substantial use that would still be allowed and therefore there would be no regulatory taking, subjecting the Township to liability. Mr. Howard stated his belief that the proposed Settlement Agreement is an unlawful document because it limits the right of the Township Board to rezone the Property for a year, and he stated that is a right the Township Board cannot give up. Mr. Howard stated that zoning decisions should not be made in court, but rather accomplished according to the procedure required by law. Mr. Howard urged the Township Board to reject the proposed Settlement Agreement and to further evaluate the situation. He stated that the community has the Township's back on this issue.

Marsha Perry urged the Township Board to table this matter until all issues have been resolved.

Stephen Neumer, representing Saugatuck, LLC, stated that the purpose of the proposed Settlement Agreement is to pull back from an adversarial situation. He stated that during the second quarter of 2008, the Owner would present a proposed planned unit development ("PUD") to the Saugatuck Township Planning Commission. He stated that the development of the Property would look like Saugatuck. He said it would not be like Bay Harbor, nor would it be like Miami Beach. He stated that the PUD plan would be only for the north parcel. He said the south parcel is still too complicated. He said the Owner intends to let it set for the time being. He stated the south parcel would be leased to the City of Saugatuck at the cost to care for it. Mr. Neumer advised that the PUD plan for the north parcel would have less than 80 dwelling units. He indicated that the Owner would drop the 2007 tax tribunal claims which are currently pending. Mr. Neumer advised that the Owner did not know about the R-4 zoning when he signed a purchase agreement for the Property in 2004 or 2005. Mr. Neumer further stated that the R-4 zoning actually applies only to this Property, and he stated he does not believe that is allowed under the law. Mr. Neumer advised that a conservation set aside of a portion of the Property would include a material amount of the Property and would benefit both the Owner and the community. He stated that by going back to the prior zoning of the Property, before the R-4 zoning was adopted, the Property would have greater economic value which would be more of a reason for the Owner to give it away.

Frederick "Fritz" Royce stated that the people in the community are in favor of the R-4 zoning of the Property. He stated that lawyers would be provided to help the Township defend its position. He stated that the proposed Settlement Agreement gives away a lot.

Mike Mormon from Caledonia urged the Township Board to maintain the R-4 zoning of the Property. He suggested that the Township Board have a referendum of the people.

Allison Swan stated that the Owner outbid the people, and that there is no reason now to trust that Owner.

Tracey Shafroth stated that the Owner is very rich. She said he plays aggressively. She stated he knew the zoning of the land when he purchased it, but simply assumed he could bully the Township.

Phil Miller stated that his group of potential buyers offered \$37.5 million for the Property. He stated that his group could not offer more or less than the appraised value. However, he stated that the Denison Estate could not get out of the Option Agreement it had already signed with the Owner. Mr. Miller stated that the Owner needs to respect the Township's Zoning Ordinance. He urged the Township Board to maintain the R-4 zoning of the Property. He stated that he hopes the Owner will sell the south parcel because it is landlocked.

R.J. Peterson stated that the Owner has the dollars to improve the Saugatuck Harbor and to build bike paths. Mr. Peterson stated that the current zoning of the Property is not the important issue at this point.

Jim Schipper stated that he is an attorney representing Mr. Kenelm Denison. He reaffirmed that Mr. Denison and the Denison Trust did not receive the required notice when the property was rezoned to the R-4 District. Mr. Schipper read a letter from Mr. Denison. The letter indicated that the Property had to be sold to the highest bidder, and that the proceeds from the sale helped numerous local charities. Mr. Schipper advised that the community should welcome the Owner and review his plans for development.

Lisa Lenzo stated that 80 homes on the Property would be an insult. She stated that 270 homes on the Property would be obscene. She urged the Township Board to maintain the R-4 zoning.

Mike O'Brien urged the Township Board to table the proposed Settlement Agreement and wait for the Owner to submit a development proposal.

Frank Lynn of Grand Rapids stated that development of the Property would change the dunes. He asked if the Owner does not already have enough money. He stated that the proposed Settlement Agreement gives too much away.

Steve McKown stated that if the Purchase Agreement by which the Owner purchased the Property did not include a contingency clause for zoning, then it was left out on purpose. Mr. McKown noted that nothing in the proposed Settlement Agreement would preclude the Owner from challenging the property taxes in 2008. Mr. McKown stated that according to the proposed Settlement Agreement, the R-4 zoning would be set aside entirely, not just for the Property. He stated that Norman Deam supports the R-4 zoning, and that Mr. Deam's property is included in the R-4 Zone. Mr. McKown stated that the Owner does not have standing to file a defective notice lawsuit. He indicated that even if the Owner did, the Township Board could simply readopt the R-4 zoning and eliminate the issue. Mr. McKown stated that if the Circuit Court would refuse to accept the proposed Settlement Agreement, then the Township would have admitted the Complaint attached as an exhibit to the proposed Settlement Agreement. Mr. McKown stated that if the Township would reject the Owner's proposed PUD for the Property, the Owner could appeal that rejection to the Saugatuck Township Zoning Board of Appeals and then to the Allegan County Circuit Court, even during the one year standstill period.

Jon Helmrich urged the Township Board to enforce the R-4 zoning and to reject the proposed Settlement Agreement.

Roy McIlwain stated that the Owner has first filed a lawsuit and then wants the Township to cooperate in order to get rid of the R-4 zoning. Mr. McIlwain stated he is opposed to the Township Board changing the R-4 zoning of the Property without following the rezoning process. He said the proposed Settlement Agreement is a complicated document and that the Township Board should take its time.

Bonnie Greydanus urged the Township Board to maintain the R-4 zoning of the Property and to reject the proposed Settlement Agreement. She urged the Township Board to not give in to bullies.

Karen Sue Meade stated she is opposed to the proposed Settlement Agreement. She said there is a housing surplus in the area already, and that no more houses are needed.

Terry Burns stated that no one has seen the Owner. Mr. Burns stated that the Owner should do his own work and appear personally in front of the people in this area. He urged the Township Board to reject the proposed Settlement Agreement and to try to negotiate a resolution.

Cynthia McKean urged the Township Board to maintain the R-4 zoning of the Property.

Sandra Randolph read a letter from Barrett Randolph, who opposes the proposed Settlement Agreement. She urged the Township Board to maintain the R-4 zoning of the Property.

Dave Edwards stated he is opposed to development of the Property.

Michael Higgins read a letter from his teacher, Mike Shaw, urging the Township Board to maintain the R-4 zoning of the Property.

Andrew Leach stated that the United States is a republic, not a democracy. He stated his concern that the people are not well informed. He stated that the Township Board should decide this matter.

David Mauger stated that the Township Board is elected by the people. He said the Township Board has a moral obligation to listen to the people.

Patti Birkholtz stated that changing the zoning of the Property would change its essence. She urged the Township Board to not cave in and to maintain the R-4 zoning.

Alex Fink urged the Township Board to not rezone the Property.

Steve McNeil stated he is not convinced there is a threat from the Owner. He stated that he simply perceives a need to eliminate the R-4 zoning in order to maximize the value of the Property so that it can be donated for the maximum tax benefits.

Melissa Haas urged the Township Board to not sell its soul to the devil. She asked why the Owner is purchasing more land if he only wants to construct 80 dwelling units.

Ted Swoboda stated that he had been employed as the caretaker of the Property. He stated that it was always assumed that the north portion of the Property would be developed. He urged the Township Board to approve the proposed Settlement Agreement and use the cooling off period. He stated that the Township would lose nothing with the proposed Settlement Agreement. He urged the Township Board to give the Owner a chance. He stated that the Township should not be belligerent to the Owner, since the Owner has property rights as well.

Dave Pavletich stated that there is already pressure from too many people in the Saugatuck area. He stated that the Township Board is being threatened and that it should stand firm.

Peter Wiley stated that he would rather die than to allow this beautiful Property to be developed. He urged the Township Board to avoid making a rash decision.

At the request of Supervisor Wester, Mr. Bultje presented his opinion to the Township Board. He indicated that the Owner has claimed that the R-4 zoning is standing in the way of properly developing the Property, because the R-4 zoning is interfering with the Owner's intention to donate a substantial portion of the Property. Mr. Bultje stated that the purpose of the proposed Settlement Agreement is to essentially call the Owner's bluff on those claims. If the R-4 zoning is frustrating the Owner's ability to submit a reasonable development plan for the Property, because the R-4 zoning devalued the Property and thereby would interfere with the donation of a substantial portion of the Property, then the purpose of the proposed Settlement Agreement is to eliminate the R-4 zoning for a year to allow the Owner to submit a reasonable development plan for the Property as well as a reasonable plan to conserve the Property. Mr. Bultje indicated that Mr. Neumer, on behalf of Saugatuck, LLC, indicated that even if the R-4 zoning is removed pursuant to the Settlement Agreement, the plan for development of the Property would not include more than 80 dwellings. Mr. Bultje advised that if the parties are unable to work out an acceptable compromise during the one year standstill period pursuant to the proposed Settlement Agreement, then the Township could promptly take action to restore the R-4 zoning. The Township and the Owner could then litigate the reasonableness of the R-4 zoning, if they so desired. However, the purpose of the proposed Settlement Agreement is to give the parties an opportunity to resolve this matter without engaging in litigation. Mr. Bultje advised that the proposed Settlement Agreement states that

the Property cannot be developed without a PUD, and that the Owner cannot initiate litigation against the Township during the one year standstill period, no matter what the Township does with any PUD proposal the Owner submits. Mr. Bultje advised that to the extent attorneys have argued that during the one year standstill period, the Owner could appeal a PUD denial to the Zoning Board of Appeals and then to the Circuit Court, they are simply wrong; the proposed Settlement Agreement would not allow the Circuit Court appeal. Mr. Bultje stated that according to the United States Supreme Court, even if property was rezoned before the current owner purchased it, the current owner can still challenge the reasonableness of the rezoning. Mr. Bultje further noted that the 21 days to challenge a zoning decision does not apply to the rezoning of property. Mr. Bultje noted that it is not clear that allowing 80 homes on the Property would without a doubt establish a reasonable use of the Property. He indicated that depending upon the amount of property and the location of the property, 80 homes may be way too many to allow, or it may be way too few to allow. He indicated that the reason to pursue the proposed Settlement Agreement is to avoid an argument about that issue, if the Township and the Owner can come to an agreement during the one year standstill period about the reasonable use of the Property and the conservation of the Property. Mr. Bultje advised that it is permissible for a township board to limit its right to rezone property for a defined period of time. He indicated that courts of law have generally recognized zoning moratoria as a legitimate zoning tool. Mr. Bultje advised that while the Michigan Zoning Enabling Act does establish a procedure to be followed for the rezoning of property, that does not preclude the fact that some property can be designated as belonging in a particular zoning district pursuant to a court order. Mr. Bultje recommended that the Township Board approve the proposed Settlement Agreement.

Trustee Roerig presented a December 19, 2007 memorandum to the Township Board, explaining why he would not vote in favor of the proposed Settlement Agreement. He urged the Township Board to take more time, at least waiting until a meeting in January.

Trustee Jarzembowski stated that he agreed with Roerig. He stated that the R-4 zoning should remain in place. He stated that the Owner of the Property can afford to pay his taxes and does not need relief from the R-4 zoning to reduce his tax obligation. He stated that he is inclined to listen to the people and will not vote against the public. He also stated that the Owner should meet personally with Township officials.

Treasurer Knikelbine stated she does not want a lawsuit. She noted that the last time the Township was promised that it would not have to pay legal fees because the residents would support the Township, the money did not come in as promised. However, she stated she would not vote on the proposed Settlement Agreement at that night's meeting.

Wester moved to approve the proposed Settlement Agreement. There was no second.

Knikelbine moved to table the matter. Roerig seconded the motion, which passed 4 to 1 with Wester dissenting.

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Jane Wright, CMC, Saugatuck Township Clerk