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Saugatuck Township Regular Planning Commission Meeting October 23, 2017

APPROVED MINUTES

The Saugatuck Township Planning Commission met on October 23, 2017 at the township hall on Blue Star Highway, Saugatuck, Michigan,

Present: Prietz, Conklin, Rudich, Lozano, Miller Cook
Absent: Welk & Rowe
Also Present: ZA Kushion & Attorney Nick Curcio

At 7:00 pm Chairperson Conklin called the meeting to order.

Pledge of Allegiance

Review and Adopt October 23, 2017 Meeting Agenda: Rudich motioned to approve the agenda as amended, Lozano seconded. Motion approved unanimously.

Review of August 28, 2017 meeting minutes: On page 2, second paragraph from the bottom, change 1.800 sq ft addition to 1,800 sq ft addition. On page 4, Motion #4, change 1.800 sq ft addition to 1,800 sq ft addition. Rudich motioned to approve the minutes as amended, Prietz seconded. Motion approved unanimously.

Public Hearing-Request for Special Approval Use to erect an 88 ft antenna for internet service for Bayou Point Condo Association residents at the Bayou Trail common area (east of 62nd and south of Old Allegan Rd), Parcel number 03-20-050-000-00.

Conklin opened the Public Hearing. Prietz recused himself because he is a resident of the association.

ZA Kushion explained that the association would like to put up an antenna to be used for internet service. He stated that it meets all of the standards for special approval use. Discussion regarding the low height of antenna and the antenna will be hidden from sight.

Mark Epstein, 6158 Bayou Trail, Mr. Epstein states that because the internet speed is so slow at his house, he has needed to rent space outside of his house just to be able to have good internet speed. He would like the township to look into getting a better provider for internet service rather than Frontier which is the current provider.

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Rudich stated that the township manager has talked to Comcast and other providers about extending their internet lines to provide better internet service to the township.

Conklin closed the Public Hearing.

Rudich motioned to approve the Special Approval Use to erect an 88 ft antenna for internet service, Miller Cook seconded. Motion approved unanimously.

Public Hearing-Request for Special Approval Use to remove 125,000 cubic yards of sand and create a 4.94 acre pond at approximately 6400 133rd Ave (133rd Ave and Old Allegan Rd), Top Grade Aggregate LLC, Parcel number 03-20-012-005-20.

Conklin opened the Public Hearing. Rudich recused himself because he is a neighboring property owner.

Ross Veltema, owner of Top Grade Aggregate LLC and RJ Prospects who is the owner of the property. Mr. Veltema explained the history of the property which was originally owned by Ravines golf course. The property was used for a past sand operation because they needed fill in their property for their development. There has been no restoration of the large hole that remains. His intention with the property is to sell some lots off of it. He understands that there are some challenges with water in this part of the township, particularly as it pertains to wells, and so thought that having less development would be better for the area. He feels that creating a five acre lake is the best way to maximize the property value of the lots so that he can minimize the number of lots that need to be developed. A well driller was hired to come to the property and drill some test wells. He is proposing to extract the sand down to the clay level where the proposed pond would be. He would then move some of the clay to create a clay liner for the pond. He is planning that rain water and water runoff would fill the pond after it's been lined with clay. He is anticipating that, depending on the timing of the permit approval, the removal of the sand could be completed by the end of this winter. He would build the pond first and then possibly sell the parcel to someone who would develop it.

ZA Kushion talked to the Allegan Road Commission and was told that they were not concerned with the truck traffic that would be associated with this operation. He also talked to the Allegan County Health Department and the health department feels that there should be some type of ground water impact study done. ZA Kushion recommends tabling the request until that study is completed. He stated that sand extraction is a special approval use in all of the zoning districts in the township. He suggested that the Planning Commission might want to consider a separate ordinance for sand extraction because of how it alters the area.

Prietz asked about the depth of the pond. Mr. Veltema responded that the hole would be dug out 28 feet more than it is now to reach the clay layer. The depth of the pond when completed would be around 40 feet. Conklin asked if making this part of the property a pond was because of the previous sand extraction that had gone on. Mr. Veltema responded that the previous sand extraction, the location of the clay layer and that he didn't know what else to do with the hole that is currently there was the reason for the choice of the pond location.

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Lozano asked if the test wells that were drilled provided water. Mr. Veltema responded that two of the borings hit the actual water table according to the well driller. The borings along 133rd Ave hit the water table but the borings to the north would need a bigger rig than what the well driller had in order to get past the clay level to the water table. Conklin asked if a well would be used to fill the pond if rain water and run off weren't enough to fill it. Mr. Veltema responded that he has had success lining ponds with clay and having rain water and run off fill it without using a well. Discussion regarding the impact of the number of trucks needed to extract that much sand. Miller Cook asked why there was a difference in the length of time needed for sand extraction between the narrative presented and what Mr. Veltema stated during his presentation. Mr. Veltema responded that the five year approval request was a worst case scenario and that he anticipated with the current economy, the project would only take two years.

Dayle Harrison, 3108 62nd St, Mr. Harrison stated that he is appearing on behalf of a neighboring property owner. He feels there is a need for a hydrologic survey because there are a lot of groundwater issues in the area. He feels that the pond idea was an afterthought and that the project is really about sand mining.

Daniel DeFranco, 6122 Old Allegan Road, Mr. DeFranco stated that the current hole is directly on Old Allegan Road in the front of the property. He is concerned about the noise associated with the project and the water issue since he has already had one well dry up. He also wonders about the value of his home if he needs to sell it while this project is going on.

Dustin Tyler, 6122 Old Allegan Road, Mr. Tyler stated that he grew up around a sand mining operation. He spoke to the amount of noise associated with sand mining and feels that this project is only about mining sand and not about improving or developing the parcel.

Larry Dickie, 6108 Old Allegan Road, Mr. Dickie is concerned about the change in the area as it has become more developed since he moved here. He pointed out the many bikers, walkers and joggers would have to share the road with numerous trucks. He spoke to the Michigan DEQ and the Allegan Drain Commission. Because the proposed pond is within 500 feet of the ash drain which is located alongside 133rd Avenue, the agencies are concerned that the project would need a DEQ permit.

Jane Dickie, 6108 Old Allegan Road, Ms. Dickie feels that this is basically a sand mining operation. She related the opinion of someone she contacted from Hope College. He doesn't think the pond will meet the 1 to 4 ratio that is required for safety because of the size of the pond compared to the small area in which it will be built. She thinks that the 4.94 acre size of the pond is to avoid having to get a permit for a lake which is 5 acres and above. Ms. Dickie states that in typical sand mining operations, it is not economically feasible to move with empty trucks. Therefore fill is brought in from other sites and dumped on the property that is being sand mined. If this is done in this proposed sand mining operation, she wonders if the fill will be contaminated and who will be checking on the possible contaminants. She states that the DEQ considers the worst kind of pond to be one which is filled with runoff instead of ground water. She hopes that the Planning Commission sees this project for what she thinks it is, an application to sand mine in a beautiful residential area and will deny the application.

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Patrick Monroe, 6074 133rd Avenue, Mr. Monroe is concerned about the safety of his family with a large number of trucks going up and down his road. Mr Monroe referenced the sand mine on 63rd Street and would not want anything like that in his neighborhood.

Terry Breen, 6093 133rd Avenue, Mr. Breen stated that he and his wife own property adjacent to the parcel under discussion. He is concerned about the noise and air pollution and the length of time the sand mining might take. He estimates that if the applicant uses his largest dump trucks, it would take over 3,000 truckloads to get out the amount of sand the applicant is proposing. He wonders if there will be any noise barriers or improvement to the visual appearance. He asks if there is a plan for the routing of the large number of trucks that will be using 133rd Avenue and Old Allegan Road. He thinks that there would be issues with water supply, the safety of those around the property would be compromised and there would be a negative impact on the surrounding habitat.

Gene Adamczyk, 6045 133rd Avenue, Mr. Adamczyk states that he would have no problem with a housing development on the property. He feels that this application would be a big mistake and hopes that the Planning Commission chooses wisely and supports the community.

Marcia Perry, 6248 Blue Star Highway, Ms. Perry states that she lives within a mile of the sand mine on 63rd Street. She says that she lives on a highway with three neighboring trucking companies and lots of traffic. She states that the noise from the J-brakes of the gravel pit trucks are louder and more intrusive than any of those. She notes that sand mining is basically an industrial use and so should not be located in a residential area.

Dayle Harrison, 3108 62nd St, Mr. Harrison went over the basis for determining a sand mining operation using the standards of Section 40-693 of the ordinance. He finds that the operation would not meet three of the four standards. The project would not be harmonious with the surrounding area, the operation would change the character of the area and the operation would be detrimental to the surrounding property owners. He stated that the five year length of the operation, the noise and traffic associated with the operation and loss of property value because of the neighboring sand mining operation all mean that the special approval use should be denied.

Conklin commented on the difficulties of being on the Planning Commission board. She personally feels that the board is doing all that they can legally to protect land owners rights. She feels that the residents coming forward to make public comments are taking their anger out on the Planning Commission members. She was angered by someone who is present at tonight's meeting because they went in front of the cameras and suggested that the Planning Commission members are making so much money. She pointed out that the Planning Commission members make fifty dollars per meeting and wondered how much David Swan makes.

Mr. Veltema stated that he could put seven homes on the property with seven wells which would also impact the water table. He feels that with the revenue he will receive from mining the sand, he will be able to improve the aesthetics of the property by putting a pond in where there is now a big hole.

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Mr. Veltema also stated that the reason he is keeping the pond under five acres is because the permit for DEQ approval is very expensive. If the DEQ permit is determined to be required, that will force him to expand the size of the project because he will need to recoup the expenses associated with DEQ approval.

Miller Cook motioned to table the special approval request until the results of the water impact study suggested by ZA Kushion are received and it is determined if a DEQ permit is required for the project and to also hold another Public Hearing at that time, Lozano seconded. Motion approved unanimously.

Public Comments & Correspondence Relating to Remaining Items on the Agenda.

Attorney Curcio explained the reason behind moving the Public Comment section usually held at the beginning of the meeting. He encouraged the public to make comments about the remaining items on the agenda at this time but to keep the comments respectful and avoid the back and forth that went on during the previous public hearing.

Dayle Harrison, 3108 62nd St, Mr. Harrison feels that the Public Hearing cannot go forward until the appeals that were filed by the Saugatuck Dunes Coastal Alliance are heard by the court.

Fritz Royce, 144 Lakeshore Drive, Mr. Royce feels that the Planning Commission should abide by the provision in Ordinance 40-910h which states that in no event shall a canal or channel be excavated for the purpose of increasing the water frontage. He feels that the project does not meet any of the general standards.

Sarah Hurley, 144 Lakeshore Drive, Ms. Hurley feels that the current and past Planning Commission boards have made poor choices. She is angry that because the Planning Commission told the developer that a sand mining permit was not needed, the DEQ can no longer protect the environment.

Fran Van Howe, 2378 Lakeshore Drive, Ms. Van Howe related her experiences with the traffic on the river due to her charter boat business. She referenced a letter from the township attorney stating that, since the boat basin needs to be approved by state and federal governments and has not yet gotten those approvals, the final plan should not be approved by the Planning Commission. She doesn't feel that excavating a boat basin is allowed on under current township zoning.

Laurie Goshorn, 3512 64th St, Ms. Goshorn read the general standards of the ordinance and doesn't think that this project meets any of them.

Liz Engel, 3041 Indian Point Rd, Ms. Engel feels that the marina will create a bottleneck at the mouth of the channel to Lake Michigan and will be detrimental to the charter boat business in the area. She presented letters from the Star of Saugatuck, Best Chance Charters, Coral Gables and Sweetwater Sailing who are also worried about the increase in traffic in the channel if this marina is approved.

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Patty Birkholz, 3413 64th St, Ms. Birkholz stated that additional boat traffic and dangerous conditions at the channel are specific to the proposed boat basin. She also doesn't feel that the boat basin meets any of the required standards listed in section #40-779 which are the general standards necessary for any modifications permissible under section #40-910i. She stated that the developer also does not have the required permits from the federal and state governments that are required for the boat basin and so the final approval should be denied. She feels the development would be very detrimental to the history, health and future of the area.

Jon Helmrich, 3522 64th St, Mr. Helmrich was disappointed not to see the Planning Commission members at the meeting with the Michigan DEQ. He is totally perplexed that this item is on the agenda since the project is predicated on having a boat basin present in the development. He wonders why and who is pushing the rush job to put this item on the agenda to vote for final approval.

Kathy Floch, 50 E 30th St, Ms. Floch has a deep attachment to this unique area. She was a camper and worked at the Presbyterian camp. She has taken her children and grandchildren to the Saugatuck Dunes state park and uses the park year round. She feels that everything associated with the marina which includes noise, light, diesel fumes, loss of animal habitat and ruined scenery will irrevocably affect the state park.

Debby Topliff, 730 N Maple St, Ms. Topliff would like the Planning Commission to consider the balance between privilege of ownership versus the value of thinking of the common good. She does not want anyone's right to be stepped on. She would have hoped that the Padnos' family would use their wealth to bless people.

Londa Post, 6138 Blue Sky Dr, Ms. Post doesn't feel the Planning Commission should give final approval because of the pending legal issues that remain. She is puzzled why Mr. Padnos hasn't been at any of the meetings discussing his project. She feels that the development will create hazards to adjacent property and will involve uses, activities, materials or equipment that will be detrimental to persons or property. She feels that every development increases the likelihood of litter, runoff from yard waste, water and ground pollution, gas and oil from boats and human waste pollution.

August Post, 6138 Blue Sky Dr, Mr. Post thinks that the Planning Commission will have to answer for the decision that they make.

Laura Judge, 6510 Oakwood Lane, Ms. Judge is very befuddled as to why the Planning Commission is trying to rush the approval of this project. She asked if conditions were added to provide for a performance bond and if not, encourages the Planning Commission to make sure that is considered. She feels that the beach nourishment that is being planned would mean that the public right of way along the lake would be blocked.

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Cynthia McKean, 1000 Mason St, Ms. McKean thinks that the Planning Commission is supporting an illegal procedure. She feels that the project would have a devastating and irreversible impact on the habitat.

Marcia Perry, 624 Blue Star Hwy, Ms. Perry is perplexed as to why a decision is being considered before the court cases are settled. She compared the length of talking about this project to the project that originally created the channel itself which took six years. She feels that this project creates new problems rather than serving the public interest. She wonders where the conservation easement document is that is required as part of the conditions of approval.

Laurie Goshorn, 3512 64th St, Ms. Goshorn wondered why the findings and recommendations of the outside planner haven't been presented.

Dayle Harrison, 3108 62nd St, Mr. Harrison stated that there is an issue with endangered species on this piece of property.

Fran Van Howe, 2378 Lakeshore Dr, Ms. Van Howe related her experiences with another development located near her house that was built by Cottage Homes and the issues with the road that was built for the development.

Joe Milauckas, 2887 Lakeshore Dr, Mr. Milauckas asked the Planning Commission to explain the changes being considered in Item #10

Conklin closed Public Comment.

Attorney Curcio answered some of the questions brought up by the Public Comments. He explained the provisions for giving final approval for a project that has pending litigation. He stated that giving final approval means making sure that this application conforms to the preliminary plan and that any modifications conform to the standards of the PUD ordinance.

Rebecca Harvey of McKenna Associates presented her review of the North Shores of Saugatuck LLC Proposed Planned Unit Development (PUD) and Site condominium application. She explained that that the scope of her review was the detailed site plan that was submitted after preliminary approval was given. She quoted a township ordinance that states 'after receiving approval from the Planning Commission on a preliminary plan, a detailed site plan shall be prepared and submitted to the Planning Commission'. The Planning Commission would then be considering three things which are also the three things she reviewed: (1) Does the detailed site plan comply with the preliminary site plan, (2) Has the detailed site plan incorporated all of the conditions of approval, (3) Does the detailed site plan comply with the site plan review criteria which are set forth in the township ordinances. She suggested adding several conditions to the detailed site plan: apply the lighting requirements set forth in the township ordinances to the proposed lighting in the detailed site plan and to include some type of pedestrian walkway system in the PUD.

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Carl Gabrielse representing North Shores of Saugatuck LLC, Mr. Gabrielse stated that the Michigan DEQ and the Army Corps of Engineers are thoroughly vetting this project as it applies to the protection of dunes, protection of endangered species (animal, plant and bird) and the interaction of the proposed boat basin and navigable waters which include the Kalamazoo River and lake Michigan. He highlighted the changes that were made between the preliminary plan approved earlier this year and the detailed site plan that will be the final approval. The changes include: boat slip ownership & boat residency requirements, restrictions on powered vehicles (ATV, etc.) on walkways and common areas, lighting requirements, maintenance requirements, restrictions on changing the amount of open space, construction document updates, changes to emergency easements, added renderings of common buildings, changes to location of common buildings, parking changes, correcting setback lines, revegetation plan that is required by the DEQ, storm water language, well and septic language and a rendering of the dimensions of the PUD with measurements. Mr. Gabrielse commented on the walkway proposed by the planner. He suggested that a possible walkway system could be provided by using the existing shoulder of the roadway.

Discussion regarding a possible walkway system. Rudich asked about putting the conservation area into a trust. Mr Gabrielse responded that it is the developer's intention to put the conservation area that is located outside of the PUD into a conservation easement but the IRS needs to be consulted before that is done. Miller Cook asked why a condition could not be placed requiring the conservation area be put into an easement before final approval is granted. Mr. Gabrielse responded that the preliminary approval stated that this approval process only pertains to the PUD and doesn't pertain to areas outside of the PUD. Rudich asked about the sand that would be removed for the project. Mr. Gabrielse stated that the Michigan DEQ will be administering that portion of the project. Rudich asked Attorney Curcio about the performance bond question. Attorney Curcio stated that a performance bond is usually issued referencing a portion of the project that would be detrimental to the entire project if it wasn't completed. Attorney Gabrielse thought that the condition of approval which referenced not being able to construct fifteen boat slips until five residences are built could ensure that the project would not need a performance bond. Miller Cook felt that a performance bond is in the best interests of the township in case the project is not completed as planned, especially since it is such a large project located in critical dunes. Attorney Gabrielse stated that this project has been pending since January and that it's time to make a decision. He stated that the township ordinance states that the final approval is supposed to be held fairly quickly after preliminary approval has been given. Rudich suggested that an irrevocable letter of credit could be required instead of a performance bond. Ms. Harvey suggested asking the developer what the estimated amount for which to issue a performance bond would be. Miller Cook stated that she is uncomfortable giving final approval to a plan that still needs approvals from other governmental agencies. Conklin asked about the likelihood of the Michigan DEQ or Army Corps of Engineers having any changes to the plan. Attorney Curcio stated that minor changes to the plan might be able to be approved administratively by the Zoning Administrator and that major changes to the plan would come back to the Planning Commission. Rudich asked Attorney Curcio if he would suggest any additional conditions to the document.

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Attorney Curcio suggested changing condition #13 to 'Provide a walkway system, to be reviewed and subject to the Zoning Administrator, to facilitate connectivity, inserting (the Singapore Dunes settlement) at the end of paragraph C, item #4, sub item (i) in the resolution and changing paragraph C, item #5 to 'Construct the project, including the marina, in a single phase.' in the resolution. An additional condition might also be added stating the requirement of a performance bond or irrevocable letter of credit for the restoration of the boat basin.

Prietz motioned to approve the resolution to the final site condominium project and detailed site plan as laid out in the draft resolution with the following modifications: changing paragraph C, item #4, sub item (i) to read 'the terms of any applicable settlement agreements and/or court judgments between the Township and the prior owners of the subject land Singapore Dunes, LLC (the Singapore Dunes settlement), changing paragraph C, item #5 to read 'Construct the project, including the marina, in a single phase.', deleting paragraph C, item #13 in its entirety, adding at the end of paragraph C, item #16 'subject to any modifications in the Singapore Dunes settlement' and adding paragraph C, item #17 'Provides a performance bond or irrevocable letter of credit for the restoration of the excavated basin, if left incomplete, in a form acceptable to the township attorney and in an amount to be determined by the Planning Commission at a later date', Rudich seconded. Roll call vote: Rudich-yes, Lozano-yes, Conklin-yes, Prietz-yes, Miller Cook-no. Motion approved four to one.

Rudich motioned to adjourn and table the rest of the agenda items due to the late hour, Miller Cook seconded. Motion approved unanimously.

Meeting adjourned at 11:04 pm.

Next Planning Commission Meeting: The next Planning Commission meeting will be on November 27, 2017.

Janna Rudich, Recording Secretary

1. Motion to approve the agenda of the October 23, 2017 Planning Commission meeting. Rudich motioned, Lozano seconded. Motion approved unanimously.
2. Motion to approve the amended minutes of the August 28, 2017 Planning Commission meeting. Rudich motioned, Prietz seconded. Motion approved unanimously.
3. Motion to approve a Request for Special Approval Use to erect an 88 ft antenna for internet service for Bayou Point Condo Association residents at the Bayou Trail common area (east of 62nd and south of Old Allegan Rd), Parcel number 03-20-050-000-00. Rudich motioned, Miller Cook seconded. Motion approved unanimously.
4. Motion to table the Special Approval Use to remove 125,000 cubic yards of sand and create a 4.94 acre pond at approximately 6400 133rd Ave (133rd Ave and Old Allegan Rd), Top Grade Aggregate LLC, Parcel number 03-20-012-005-20 until the results of the water impact study suggested by ZA Kushion are received and it is determined if a DEQ permit is required for the project and to also hold another Public Hearing at that time. Miller Cook motioned, Lozano seconded. Motion approved unanimously.

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5. Motion to approve the resolution to the final site condominium project and detailed site plan as laid out in the draft resolution with the following modifications: changing paragraph C, item #4, sub item (i) to read 'the terms of any applicable settlement agreements and/or court judgments between the Township and the prior owners of the subject land Singapore Dunes, LLC (the Singapore Dunes settlement), changing paragraph C item #5 to read 'Construct the project, including the marina, in a single phase.', deleting paragraph C, item #13 in its entirety, adding at the end of paragraph C, item #16 'subject to any modifications in the Singapore Dunes settlement' and adding paragraph C, item #17 'Provides a performance bond or irrevocable letter of credit for the restoration of the excavated basin, if left incomplete, in a form acceptable to the township attorney and in an amount to be determined by the Planning Commission at a later date'. Prietz motioned, Rudich seconded. Roll call vote: Rudich-yes, Lozano-yes, Conklin-yes, Prietz-yes, Miller Cook-no. Motion approved four to one.

6. Motion to adjourn and table the rest of the agenda items due to the late hour. Rudich motioned, Miller Cook seconded. Motion approved unanimously.