

## SAUGATUCK TOWNSHIP PLANNING COMMISSION

October 17, 2012

The Saugatuck Township Planning Commission held a special meeting on October 17, 2012, at St. Peter's Hall, 100 St. Peter's Drive, Douglas, Michigan 49406..

Present: Conklin, Hanson, Harrison, Milauckas, Rausch and Rowe

Absent: Welk

Also present: Atty Bultje; Planner Sisson; Z.A. Ellingsen; James Bruinsma, Hank Byma and Stephen Neumer for Saugatuck Dunes LLC; members of the general public and of the press.

At 7:04 P.M. Zoning Administrator Al Ellingsen welcomed those in attendance to the meeting, invited Hank Byma to introduce those representing Saugatuck Dunes LLC, introduced the Planning Commission members and staff, and read the rules of procedure for the public hearing.

Chair Conklin called the meeting to order at 7:09 P.M. Hanson made a motion to adopt the agenda as presented, except with public comment right before the issue of recusal and with the issue of Harrison's recusal before that of Rowe. Rausch seconded and the motion carried.

Minutes of the August 27, 2012, meeting were approved as presented (Milauckas/Rowe).

**Public Comment:** Steve Darpel, 2863 63<sup>rd</sup>. St., Fennville, and Cynthia McKean, 3498 Riverside Dr. read letters and James Cook 3507 64th St , Roy McIlwaine, 3466 Riverside Dr., and Larry Dickie, 6108 Old Allegan, spoke in opposition to Harrison's recusal. Warren Stern, 42 Union, Douglas, questioned whether the application should be on the agenda. Replying that the agenda has already been approved, Conklin closed the public comment period.

At the request of the Chair, Atty Bruinsma addressed his request for Harrison's recusal by referring to his letter of September 28 (enclosed in the record).

Harrison said he had just received the packet for this meeting on Monday and had not had time to review it. He asked that the meeting be adjourned. He refused to recuse himself and quoted from the Statute regarding the removal of a planning commission member for malfeasance, etc. by a legislative body upon written charges and after a public hearing {Sec. 125.3815(9)}. Atty Bultje replied that this Statute pertains to a "legislative body," such as the Township Board, and applies to the removal of the commissioner from the planning commission, which is different from removal from the review of a particular application. This commission is not a legislative body. Hanson read the Planning Commission Rules on recusal. Harrison contended his situation does not fit the description in those rules of one needing to be recused, and he insisted he did not know this would be on the agenda. Referring to his letter of October 17, he stated that he felt

he could deal fairly with the application now presented under a “different set of rules,” meaning the reversion to previous zoning of the property in question.

At the request of Milauckas, Bruinsma reviewed the reasons for requesting recusal, quoting Harrison’s statement this evening,” Here we have an applicant with an axe to grind,” indicating that he has made a judgment and could not give a fair and impartial decision on the application. Atty Bultje said he thought Harrison failed the impartial test because of his association in 2007 with Saugatuck Dunes Coastal Alliance, which had a strategy to keep the Denison property in its natural state and to eliminate development there. Bultje said he thought a decision made on this application with Harrison’s participation on the commission could be challenged in court. Bruinsma added that the Kalamazoo River Protection Association, of which Harrison is president, and the Saugatuck Dunes Coastal Alliance jointly filed with the court saying that Saugatuck Dunes LLC was attempting through the consent agreement to illegally rezone its property.

Hanson made a motion to recuse Harrison, seconded by Rausch. Roll call vote: Rausch, yes; Hanson, yes; Rowe, yes; Milauckas, yes; and Conklin, yes. Bultje stated that the absent member (Welk) represented a No vote. Motion carried 5-1.

On the question of Rowe’s possible recusal because of his participation on the ZBA discussion of Saugatuck Dunes LLC’s other application, Bultje said he did not legally need to be recused. However, he added that if a decision by the Planning Commission in which Rowe participated is appealed to the ZBA, he would have to recuse himself from that discussion.

After a brief recess, the meeting reconvened at 9:52 P.M. without Harrison on the Commission panel. Conklin read the duties of the Planning Commission. Secretary Rausch read the notice published in the Commercial Record September 20, announcing the public hearing for an application by Saugatuck Dunes LLC to build a residential community on 236 acres north of the Kalamazoo River mouth. The application describes a condominium of 129 single-family detached and duplex units with Lake Michigan beach access and possible private boat docks along the river. It will be evaluated as though zoned R-1, R-2 and R-3B under Articles XIII, VIII and/or IX.

Conklin opened the public hearing and invited the representative of Saugatuck Dunes LLC to explain the plan. James Bruinsma explained that this is a site condominium plan to show the maximum build-out of the property and a first step toward making the property salable, showing how the infrastructure would be developed. He added that this is a flexible method of land division which allows for addition or subtraction of property and redrawing of unit boundaries without the administrative oversight of platted subdivision. He mentioned that the 2-acre parcels in R-3B bordering on Lake Michigan would remain the same under both this plan and the one submitted to the ZBA.

Hank Byma presented a slide show of the different views of the property as it might look when developed by this plan, pointing out the natural features and the drive entrance

from 135<sup>th</sup> Ave. He said the wagon trail would be the road to be developed because it lies between the dunes. He said they do not intend to develop regulated dune areas. Building envelopes are indicated for the home sites scattered over the R-1, R-2 and R-3B zones of the property. Special care was given to following the Zoning Ordinances and the chart regarding public utilities for each zone, Byma added. There is no hotel or marina on this plan.

Hanson asked where there is an over-lap between this plan and the one submitted to the ZBA, and Bruinsma answered that the 2-acre parcels in R-3B on Lake Michigan are the same as to size and number in both plans, and that is the first phase, including developing the road and electric utilities to service those lakefront parcels. This won't "bump up against" any further plans for the rest of the property, he assured the commission. There was some discussion about adjustments which would allow for clustering and varied densities that might make for more open space and a more creative development under a PUD. Hanson asked if the ZBA plan goes away, would there be any variances needed for this plan, and the answer was not with a site condo. Sisson asked about the marina, described in the documents as second phase, and what else was contemplated after some sales take place. The reply was that adjoining property owners could join the condo. As far as waterfront structures besides the marina, Bruinsma said there might be a boardwalk along the river. Discussion followed regarding the differences in interpretation of Sec. 40-337 vis a vis the PUD ordinance as to allowable lot sizes. Milauckas asked if the other lots would have access to Lake Michigan, and Byma said they would via easements described in the documents.

Conklin opened the hearing to public comment and Shawn Seymour, LSL Planning in Grand Rapids, representing the Saugatuck Dunes Coastal Alliance, said he thought Saugatuck Dunes LLC was trying to persuade the commission that this is what they could do with the property if the ZBA plan fails. He reviewed his hand-out, making the points that there have been no applications to other regulating authorities or to the school board, duplexes are not allowed in R-2, boat slips not located on the property of the home owner require special approval as marina, Sec. 40-568 requires alternative access to the property, building envelopes include crest of critical dune and wet lands, tree survey does not say how many to be preserved, and the narrative is not specific about sewer and water utilities and other uses.

David Swan, 345 Griffith, Saugatuck, also representing the Saugatuck Dunes Coastal Alliance, recalled the environmental and ecological concerns regarding the property in question, pointing out the studies of these breeding areas of certain endangered species, and asked that the application be withdrawn until the Department of Environmental Quality and Natural Resources have been able to review the effects of development on this area.

Laurence Stern, 42 Union St., Douglas, voiced the concern that with this method of starting with the ZBA and then coming to the Planning Commission with different plans, the township may end up with a plan that is not appropriate for the property. He said what is needed is an environmental mediator and a plan with "teeth."

Dick Waskin, Heron Bay Road, said he would like to see more open space and a more creative plan, but the Planning Commission must be objective about what's before them.

Jane Dickie, 6108 Old Allegan Rd., advocated a more open-spaced plan and encouraged the Planning Commission not to give up on achieving that.

Dayle Harrison, 3108 62<sup>nd</sup> St., commented on Sec. 40-337 and PUD development, called for the regulating authorities to get involved, and pointed out that the environmental report did not include the warblers' habitat.

Dave Burdick, Douglas, said he was confused about whether this is a plan or an idea about how to start infrastructure.

Hanson made a motion, supported by Rowe, to close the public portion of the hearing, and the motion carried.

Bruinsma, allowed to reply to some of the objections, said duplexes are not allowed in R-2 in the chart in Sec. 40-1046, but in the text in Sec. 40-272(1) they are; alternate access roads are prohibited by the court settlement, and there is no intention to change the 100-foot set-back in the critical dunes.

Sisson reminded the commission that this is a 2-step process, this being the preliminary plan. It is a by-right plan and if there are changes, they must come back to the planning commission. Even if it is approved, the applicant could come up with another plan.

Conklin asked how to make this review manageable, and Rowe suggested consulting Sisson's memo.

Milauckas listed questions he had for the planner and attorney: (1.) Does Sec. 40-337 only apply to R-3B? there is no specific language about critical dunes in R-1 or R-2. (2.) Sec. 40-337 refers to a permit authorized by the Planning Commission for a PUD and to procedures being the same as for PUD ordinance, is it only the procedures or the standards also? (3.) Duplexes in R-2 not allowed in chart, but referred to only in Sec. 40-272 as two-family residences; Sec. 40-275 refers only to single-family residences in lot areas required; and Milauckas said he remembered amending the section to disallow duplexes in R-2. (4.) Can lots for building units be clustered on lots less than 2 acres in size in critical dunes designated area of R-3B to preserve more open space pursuant to PUD application?

Rowe made a motion to table this discussion to the next meeting. Rausch supported and the motion carried.

Hanson made a motion to extend the deadline for the Kingfisher Cove development for two years to August, 2014, so the proposed storage building can be built at the same time as the final phase of the development. Rowe seconded and the motion carried.

Meeting adjourned at 10:47 P.M. Next meeting to be announced.

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Betty A. White, Recording Secretary

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Sandra Rausch, Secretary

### **MOTIONS**

1. Motion by Hanson/Rausch to revise agenda and adopt.
2. Motion by Milauckas/Rowe to approve minutes of August 27, 2012, as presented.
3. Motion by Hanson/Rausch to recuse Harrison from discussion and voting on application by Saugatuck Dunes LLC.
4. Motion by Hanson/Rowe to close public portion of hearing.
5. Motion by Rowe/Rausch to table discussion of application by Saugatuck Dunes LLC to next meeting.
6. Motion by Hanson/Rowe to extend Kingfisher Cove development plan approval two years to August, 2014.