

SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

THURSDAY, March 28, 2013 5:00 p.m.
LAKETOWN TOWNSHIP HALL
4338 BEELINE ROAD, HOLLAND, MI 49423

MINUTES

Chairman Shawn Powers called the meeting to order at 5:05 p.m.

Members present: Shawn Powers, Marcia Tucker & Mark Putnam.

Also present: Zoning Administrator Al Ellingsen, Saugatuck Township Attorney Ron Bultje, Singapore Dunes Attorney James Bruinsma, Saugatuck Dunes Alliance and the Bily Family Attorney Katherine Redman and various members of the general public.

Approval of minutes: **Motion by Putnam, seconded by Tucker to approve the minutes of November 29, 2012.** Unanimously approved.

Chairperson Powers read the notice from the paper.

One hearing was scheduled:

A request from Olson Bzdok & Howard, 420 East Front St., Traverse City, MI 49686, acting as agent for the Saugatuck Dunes Coastal Alliance and Kathy Wallace and Diane Bily, to overturn the decision of the Saugatuck Township Planning Commission, which granted preliminary approval to Singapore Dunes, LLC for Phase I of a Site Condominium project on 17 December 2012. Prior to scheduling a hearing for adjudication of the above matter at a later date, the ZBA must first determine if the group and/or the individuals requesting the deliberation has "standing" (the term for the ability of a party to demonstrate sufficient connection to and harm from the law or action challenged to support that party's participation in the action) in order to present the request to overturn a decision of the Planning Commission.

The land subject to the appeal and the standing challenge is located generally east of Lake Michigan and North of the Kalamazoo River. A diagram of the property and its various legal descriptions are available at the Saugatuck Township Hall, 3461 Blue Star Highway, Saugatuck, MI 49453. The property includes the following tax parcel identification numbers:

0320-004-007-00, 0320-004-006-00, 0320-004-002-00, 0320-004-001-00, 0320-003-054-00, 0320-003-050-50, 0320-003-052-00, 0320-004-005-00, 0320-004-003-20, 0320-003-051-00, 0320-003-051-10, 0320-003-051-20, 0320-003-050-00, 0320-003-050-60, 0320-003-049-00, 0320-003-049-10, 0320-003-048-00, 0320-003-045-10, 0320-003-047-00, & 0320-003-049-20.

Attorney Kate Redman asked the ZBA to look at the zoning ordinance and determine whether the Bily family, Saugatuck Dunes Coastal Alliance and their members are going to be affected by the Planning Commission decision.

Attorney Redman pointed out that the word “standing” is a legal doctrine that courts apply to determine if a party to a lawsuit is properly before the court. The ZBA is an administrative body and not a court. The ZBA’s authority is defined by the Michigan Zoning Enabling Act. The Enabling Act allows a township to determine who has the right to appeal a decision to the ZBA.

Attorney Redman stated that the Bily’s cottage view would overlook the proposed 25 homes and that the natural area would be gone. The development would increase the noise level due to the boats.

Attorney Redman stated that the Coastal Alliance would be affected also by the development. The Coastal Alliance is to protect and preserve the natural geography, historical heritage, and rural character of the Saugatuck Dunes coastal region in the Kalamazoo River Watershed, beginning with the Saugatuck Dunes.

Attorney Redman stated that the Planning Commission had been incorrectly advised regarding the open space.

Attorney Redman stated that the ZBA must hear appeals from parties who are either affected by or aggrieved by a zoning decision by the Planning Commission. An “aggrieved party” is considered a party that will suffer “special damages”. Such as the project blocking a neighbor’s lake view, character of the neighborhood, wetland being disturbed, damage to plant or wildlife that is subject to observation or study.

Letters and Affidavits received from individuals that are concerned about the development:

1. Marcia Perry, 6248 Blue Star Hwy, Laketown Township
2. Ann Luft, 5851 141st. Ave, Holland
3. Russ Harris, 3481 64th St, Saugatuck Township
4. Suzanne Dixon, 797 Center St, Douglas
5. Wendell Garvelink, 3513 Keppel Lane, Saugatuck Township
6. Mike Johnson, 399 Park Street, Saugatuck City
7. Kathy Roper, 2932 Peach Creek Court, Saugatuck Township
8. Keith Charak, 938 Center Street, Douglas
9. David Swan, 345 Griffith Street, Saugatuck City
10. Liz Engel, 3041 Indian Point Road, Saugatuck Township
11. James Cook, 3507 64th Street, Saugatuck Township
12. Rick Brigham, 393 Fremont Street, Douglas
13. Lissa Leege, Professor of Biology & Director, Center for Sustainability, 301 S. Edgwood Dr. Statesboro, GA 30458
14. Diane Bily, 3524 Dugout Rd, Saugatuck Township
15. Kathi Bily-Wallace, 3524 Dugout Rd, Saugatuck Township
16. Kristin A. Sherfinski, 411 W Park Ave. Waukesha, WI 53186
17. Peter G. Murphy, Professor Emeritus, East Lansing
18. William J. Cook, Associate General Counsel,
19. Shawn Seymour, LSL Planning, Inc
20. Scott Howard, Olson Bzdok & Howard
21. Kate Redman, Olson Bzdok & Howard

Attorney James Bruinsma stated that there are only 2 parcels involved in the development (0320-004-007-00 & 0320-004-006-00) and that they are the furthest parcels from the appellant’s parcel, The Bily’s.

Attorney Bruinsma mentioned he just received materials this afternoon from the appellant. He briefly looked at the new materials.

Attorney Bruinsma stated that the Planning Commission gave preliminary approval for a site condominium for up to 25 single-family homes on more than 80 acres of land. The circulation road that will be the extension to a private road to connect to 135th Ave is still up for review from the DEQ. The approval does not authorize the construction of any houses or buildings. Bruinsma stated that this preliminary approval has not caused any special damages to anyone.

Attorney Bruinsma stated that the 2 parcels in question are at least 2500 ft. from the Bily's home, and there are other homes much closer than that. Bruinsma mentioned that the Bily's view west of their home is a natural area which they are looking at and is private property owned by Mr. McClendon.

Attorney Bruinsma stated that a General Law Township, which follows the Zoning Enabling Act, specifies in a section the appellant's rights and limits standing to parties that are aggrieved. Only a party aggrieved may appeal to the ZBA.

Attorney Bruinsma is asking the ZBA to find the appellant's appeal do not have standing, nor do they meet the statutory test as an aggrieved person.

Public Comment:

Larry Dickie, 6108 Old Allegan Rd. Saugatuck Township, representing the Kalamazoo River Preservation Association. The association works to protect alongside the Kalamazoo River.

Dayle Harrison, 3108 62nd St. Saugatuck Township, brought up related appeals regarding adjoining municipalities, referring to the Swing Bridge Development in Douglas and Harbor Condominium Project and also a law suit that was filed from the Ravines project and submitted a letter regarding that.

Lesla Werme, 671 Spear St. Saugatuck, stated she was against the development.

Joe Milauckas, 2887 Lakeshore Dr., Saugatuck Township, if the Planning Commission made a mistake by approving the development, who would have the ability to take a second look at it?

Kathy Roper, 2932 Peach Creek, Saugatuck Township, feels the Bily's have a right to appeal because they adjacent owners.

David Swan, 345 Griffith St. Saugatuck, feels property owners will be negatively impacted by this development. Feels it will have an impact on the global wetlands.

Chairperson Powers closed the public portion of the hearing at 6:10 p.m.

The Board asked for legal counsel from Attorney Ron Bultje.

Attorney Ron Bultje stated that the Zoning Enabling Act, Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. Bultje mentioned several cases related to "party aggrieved".

Attorney Ron Bultje stated he had issues with the appellant as not being accurate. The zoning ordinance refers to aggrieved parties not persons who may appeal to the ZBA. Other option is to take it to Circuit Court whether the appellant has “standing”.

Attorney Ron Bultje cited the Unger case which illustrates the type of injury that is not a basis for an appeal. The Circuit Court held that Unger’s claimed injuries were inadequate to meet the test of an “aggrieved” party and dismissed Unger’s challenge.

Attorney Ron Bultje stated that normally property owners within the 300 feet of the subject parcel are notified, which would only been the Denison’s. For this hearing the property owners within 300 feet adjacent to the entire parent track were.

Attorney Ron Bultje believes that the appellant’s do not have standing, referring to the federal constitutional standing test. That test required that a plaintiff show an injury—in-fact, meaning the “invasion of a legally protected interest such as nuisance or trespass, etc. He believes the appellant’s had no special damages and cannot pinpoint one thing that applies. It appears that they do not want any development.

Attorney Ron Bultje stated he felt the courts will likely find Saugatuck Dunes Coastal Alliance and the Bily’s would not have “standing” in the ZBA to challenge the preliminary approval by the Planning Commission.

Milauckas question came up on what is the procedure when the Planning Commission approves something in error. There were interpretations given by attorneys, planner and the zoning administrator for the preliminary site plan and was unanimously adopted. Z. A. Ellingsen stated that the final plan has to reflect the preliminary plan. If there is any changes than it will have to go back for review at the Planning Commission.

Discussion took place from the ZBA and was decided they needed time to look over the material that was given to them from appellant’s attorney.

Discussion took place on the upcoming meeting.

Motion by Putnam, seconded by Tucker to table the applicant’s request. Carried Unanimously.

There being no further business meeting adjourned at 6:55 pm

Lori Babinski, Recording Secretary