

SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

**Wednesday, October 11, 2017 4:00 p.m.
Saugatuck Township Hall
3461 Blue Star Hwy, Saugatuck, MI 49453**

MINUTES

Mark Putnam called the meeting to order at 4:00 p.m.

Members present: Rick Brady, Mark Putnam & Catherine Dritsas.

Also present: Zoning Administrator Steve Kushion, Saugatuck Township Litigation Attorney Jim Straub, North Shores of Saugatuck LLC Attorney Carl Gabrielse, Saugatuck Dunes Coastal Alliance Attorney Scott Howard and various members of the general public.

Review and Adopt agenda: Motion by Dritsas seconded by Brady to approve the agenda. Unanimously approved.

Approval of minutes: Motion by Dritsas seconded by Putnam to approve the minutes of June 27, 2017. Unanimously approved.

Request for Appeal of Saugatuck Township Planning Commission preliminary approval of PUD/Site Condo and SAU approval for North Shores of Saugatuck, LLC, Parcels 03-20-004-006-00 and 03-20-004-002-00, Saugatuck Dunes Coastal Alliance.

Chairperson Putnam stated that the meeting will be broken in to two sections. The first part is whether the SDCA has a legal standing on this appeal. If the SDCA does have standing than the ZBA will go to the second portion of the public hearing and deal with their substances issues of their appeal.

Attorney Scott Howard, representing the Saugatuck Dunes Coastal Alliance stated that the SDCA is appealing the decision of the Saugatuck Planning Commission preliminary approval of a PUD/Site Condo and SAU approval for North Shores of Saugatuck, LLC, Parcels 03-20-004-006-00 and 03-20-004-002-00.

Attorney Scott Howard spoke on how the SDCA has standing. He stated that the community does have special interests which than creates special damages and that this piece of land is significant and special to this community. Attorney Howard noted that standing is handled at the court level and is not intended for administrative bodies at a local zoning level. Standing is defined on the court level that it's a gate keeping function and becomes a vigorous advocacy on both sides of this issue. He states that the SDCA has special damages meaning that they have a special interest on this particular development than the general public at large. The difference is that the SDCA have an interest of resources that are at issue; recreational, aesthetic and economic resources which the courts have recognized as creating special damages.

Attorney Scott Howard stated a court case that is similar to this situation. National Wildlife Federation vs Cleveland Cliffs Iron Company. The case was about expanding a mine company and the National Wildlife Federation appealed to the courts that they had standing due to the recreational and aesthetic scenery and wildlife. The Supreme Court did overrule and that the National Wildlife Federation did not have standing.

Attorney Scott Howard had affidavits from Patricia Birkholz, Diane & Kathy Bily, Mort Van Howe, Mike Johnson, Dave Engel, Chris Deam & Liz Engel that have unique interests in this development.

Attorney Carl Gabrielse, representing the owner and developer of North Shores of Saugatuck LLC, stated that the SDCA are opposed of any development. The SDCA contested it at the Planning Commission, ZBA and the Circuit Court. Attorney Gabrielse states that the SDCA are not an aggrieved party which means they would lack standing. Attorney Gabrielse questioned on who can initiate the process of the appeal to the ZBA. In 2013 the same appeal was brought to the Planning Commission for the decision of an approved preliminary PUD on the same property. The Zoning Board of Appeals concluded that SDCA and the Bily family did not have standing to appeal the decision of the Planning Commission. The Zoning Enabling Act states that the appeal must be taken by a person that is aggrieved. In 2015 the appeal for the same property went to Circuit Court and was determined that the SDCA did not have special damages and did not have standing. Attorney Gabrielse stated that the SDCA argues that it is entirely different projects. Attorney Gabrielse pointed out that the negative impacts from the SDCA are not different from either project. Allegations by the SDCA are similar regardless of the differences of the development.

Attorney Howard reiterated that there is standing beyond a reasonable doubt. The SDCA have rights with special interest. Attorney Howard stated that there are differences in the projects. The project now consists of dredging 160,000 tons of sand and a boat basin with river frontage which was not part of the previous development.

Public Comments and Correspondence:

Chairperson Putnam opens the floor up to the public and asked that they state your name, address and if you received a notice in the mail regarding this hearing and that public comment is based only on standing.

1. Patty Birkholz, 3413 64th St. Saugatuck twp, no notice received. Concerned about the channel changing the echo system dramatically.
2. Dave Burdick, 385 Fremont, Douglas, no notice received. Zoning Board of Appeals should have separate powers than from the Planning Commission board.
3. Jon Helmrich, 3522 64th St. Saugatuck twp, no notice received. Channel is very narrow.
4. Suzanne Dixon, 797 Center St. Douglas, no notice received. Concerned on water quality and temperature involving the sturgeons.
5. Dayle Harrison, 3108 62nd St. Saugatuck twp, no notice received. Believes it is not consistent to the Zoning Ordinance. Circuit court should decide if the SDCA has standing.
6. Larry Dickie, 6108 Old Allegan Rd. Saugatuck twp, no notice received. Zoning Board of Appeals made a mistake from the last standing regarding this development.
7. Steve McKown, 2845 Lake Breeze Dr. Saugatuck twp, no notice received. Concerned about environmental issues. Believes Circuit court defines standing differently than the Zoning Board of Appeals. Believes the 2013 decision by the ZBA was a mistake.
8. Laura Judge, 6510 Oakwood Ln. Laketown twp, no notice received. Will have effect on the public trust and the FDCA.
9. Jim Cook, 3507 64th St. Saugatuck twp, no notice received. Feels that every township resident is a co-owner of the state park which is adjacent to the project.
10. Liz Engel, 3041 Indian Point Rd. Saugatuck twp, no notice received. Concerns regarding the dredging and feels her and her husband would be affected by that because of their livelihood.
11. Dave Engel, 3041 Indian Point Rd. Saugatuck twp, no notice received. Charter boat captain and it would have a negative impact on him and his family. His concerns are safety based on the Deep Harbor marina development and also the increase of the traffic on the water.

12. Cynthia McKean, 1000 Mason St. Saugatuck, no notice received. What the Planning Commission did was illegal.

Attorney Gabrielse addressed the public responses that their concerns were not based on standing.

Attorney Howard acknowledges that he was not sure who had standing if the SDCA had not been heard. He stated that there is a threshold when it comes to this level of government and Circuit court. Aesthetic, recreational, commercial interest gives you standing which the SDCA is referring to for their special damages and concerns.

Attorney Straub reaffirmed that there is no case law or statutory citation that says there is no difference between this body and the Circuit court pertaining to standing. Attorney Straub clarified that this Zoning Board of Appeals has the capacity as a quash jurisdiction.

13. Marcia Perry, 6248 Blue Star Hwy. Laketown twp, no notice received. Protecting the SDCA interest.

Close public hearing at 5:20 pm.

Chair Putnam asked ZA Kushion if he thought there were any changes from the 2013 hearing issue. ZA Kushion believed that they are very similar. The Bily parcel is further away from this development than the previous request and believed that the natural area was about the same distant as before.

Katherine Dritsas supports the SDCA standing at the local level. She believes the people have the right to express their issues.

Chair Putnam feels that if we support the SDCA standing, it would mean going against the Circuit court decision in 2013.

Rick Brady stated that looking at the guidelines at today's standpoint would determine that the SDCA would not have legal standing.

Chair Putnam stated he would have a struggle with reversing what had happened in 2013. Concern is that the courts have already upheld it and feels that nothing has changed from before.

Attorney Straub stated that he has a proposed resolution to deny standing and a proposed resolution to grant standing. He stated that the board needs to make a motion and someone to support one of these proposed resolutions.

Dritsas made a motion to grant the standing for the SDCA. No support.

Brady made a motion to deny standing, supported by Putnam.

Attorney Straub read the proposed resolution to deny standing that would be inserted into the minutes.

Attorney Straub stated that the board could make changes to the resolution and then make a formal vote on the resolution.

Motion by Brady, seconded by Putnam to deny standing. Motion passes 2-1.

**Motion by Brady, seconded by Putnam to deny the standing on this appeal as stated in the resolution.
Roll call vote: Brady yes, Putnam yes, Dritsas no.**

Motion by Putnam to adjourn meeting, Dritsas seconded.

There being no further business meeting adjourned at 5:47 pm.

Lori Babinski, Recording Secretary

**SAUGATUCK TOWNSHP
COUNTY OF ALLEGAN, MICHIGAN
ZONING BOARD OF APPEALS**

EXCERPT OF MINUTES

This is an excerpt of minutes from a meeting of the Zoning Board of Appeals of Saugatuck Township (the "Township"), held at the Saugatuck Township Hall, 3461 Blue Star Highway, Saugatuck, Allegan County, MI 49453, on the 11th day of October, 2017, at 4:00 p.m.

Present: Mark Putnam, Rick Brady and Catherine Dritsas

The following Resolution was offered by RICK BRADY and supported by MARK PUTNAM.

**RESOLUTION TO DENYING STANDING TO THE SAUGATUCK
DUNES COASTAL ALLIANCE**

WHEREAS, on April 26, 2017, the Saugatuck Township Planning Commission ("Planning Commission") granted preliminary site plan approval for a planned unit development ("PUD") and also for a special approval use ("SAU") by North Shores of Saugatuck, LLC ("North Shores") for a PUD development condominium project and SAU to develop a boat basin with docking facilities; and

WHEREAS, on July 3, 2017, the Saugatuck Dunes Coastal Alliance ("SDCA"), filed an appeal of the Planning Commission's April 26, 2017 decision; and

WHEREAS, on October 11, 2017, the Saugatuck Township Zoning Board of Appeals ("Zoning Board of Appeals") held a public hearing concerning whether or not the SDCA had standing to appeal the Planning Commission decision to the Zoning Board of Appeals; and

WHEREAS, the Zoning Board of Appeals carefully listened to the comments made at the public hearing on October 11, 2017; carefully considered the written materials submitted on behalf of the SDCA in support of standing; carefully considered the written materials submitted by North Shores against standing; carefully considered the provisions of the Michigan Zoning Enabling Act and the Zoning Chapter of the Township's Code of Ordinances ("Zoning Chapter") relative to standing; and carefully considered written confidential communications from Township counsel concerning this matter; and

WHEREAS, the Zoning Board of Appeals takes note that the Saugatuck Township Zoning Board of Appeals, after a public hearing held on April 4, 2013, denied standing to the SDCA and the Bily family, who own property at 3524 Dugout Road, regarding an appeal from a December 17, 2012 Saugatuck Township Planning Commission decision granting preliminary site plan approval to a condominium development proposed by Singapore Dunes, LLC, on a portion of the property that North Shores LLC now owns; and

WHEREAS, the Zoning Board of Appeals takes note that on February 6, 2015, the Allegan County Circuit Court issued an opinion and order finding that SDCA lacked standing to appeal actions of the Michigan Department of Environmental Quality's ("MDEQ") with respect to the proposed construction of a road traversing the property that North Shores LLC now owns; and

WHEREAS, the Zoning Board of Appeals is aware that the SDCA has filed an appeal of the Planning Commission's April 26, 2017 decision with the Allegan County Circuit Court; and

WHEREAS, the Zoning Board of Appeals is aware that counsel for Saugatuck Township filed a Motion to Dismiss the SDCA appeal to the Circuit Court asserting that the SDCA lacked standing; and

WHEREAS, the Zoning Board of Appeals is aware that oral argument on the Township's Motion to Dismiss took place on August 28, 2017 and that the parties are awaiting the decision of Allegan County Circuit Court Judge, Kevin Cronin;

WHEREFORE, the Zoning Board of Appeals resolves the pending appeal as follows:

1. The Zoning Board of Appeals concludes that the SDCA does not have standing to appeal the April 26, 2017 decisions of the Planning Commission granting initial site plan approval for the PUD and SAU permits sought by North Shores, and therefore dismisses SDCA's appeal of those decisions.
2. In support of its conclusion that the SDCA does not have standing, the Zoning Board of Appeals makes the following findings:
 - A. Section 604(1) of the Michigan Zoning Enabling Act, MCL 125.3604(1), provides in relevant part: ". . . an appeal to the zoning board of appeals may be taken by a person aggrieved. . ." Courts have interpreted this standard as requiring proof of "some special damages not common to other property owners similarly situated." *Unger v Forest Home Township*, 65 Mich App 614 (1976). The Zoning Board of Appeals finds that this standard is required by state law, and that any lower standard that might be suggested in the Township's Zoning Ordinance conflicts with state law and is therefore invalid. *See id.*
 - B. The complaints made by the SDCA through its presentation and affidavits filed with its September 18, 2017 correspondence are complaints which might be true of any lakefront development on the property in question. Any development on the property might lead to additional dwellings, additional residents and visitors, motor vehicles, boats, all of which create additional noise and lights. In general, the complaints voiced by the SDCA in its presentation and affidavits would apply to any development of the property in question which establishes the general, as opposed to specific nature, of the damage that the SDCA is claiming associated with the proposed North Shores PUD and SAU.


- C. SDCA has not been able to explain satisfactorily how the Township Planning Commission would be able to prevent the development as proposed by North Shores with reference to adverse impact on wetlands or critical dune areas located within the property at issue. The SDCA has not been able to articulate how it would suffer any special damage, different from damage that would allegedly be sustained by the general public, with reference to the development of the subject real estate.
 - D. Various details of the proposed development have not been finally approved by the Michigan Department of Environmental Quality.
 - E. The SDCA, in support of its standing argument, provided an affidavit from the Bily family which owns property adjacent to the property owned by North Shores. However, the Bily family property is not adjacent to the property which is going to be developed. Rather, the site of the cottage owned by the Bily family is approximately 1575 feet from the southernmost boundary of North Shores' proposed PUD and approximately 1,071 feet from the easternmost boundary of North Shores' proposed PUD. Further, most of the easternmost portion of North Shores' proposed PUD will remain in open space, meaning that the Bily cottage would be even further than 1,071 feet from the improvements proposed by North Shores.
 - F. Neither the SDCA nor the Bily family articulated any "special damage" that the Bily family would incur as a result of the development of the PUD or the approval of the special approval use.
 - G. To the extent that the SDCA's standing claim relies upon the affidavit of Patricia Birkholz and the fact that the natural area in Saugatuck Dunes State Park is named after her, the ZBA finds that Ms. Birkholz should be congratulated for her work in supporting the creation of a natural area within the State Park. However, the ZBA also concludes that Ms. Birkholz does not maintain an ownership interest in the State park. The State Park and the Patricia Birkholz Nature Area therein is owned by the State of Michigan and managed by the Michigan Department of Natural Resources for the benefit of the general public. Even if North Shores' proposed development had any special impact on the State Park or the natural area contained within the park, the standing to contest the action of the Planning Commission would rest with the State of Michigan through its Department of Natural Resources, not with the SDCA or Ms. Birkholz.
 - H. The remaining affidavits submitted by SDCA allege damages even more remote than those described above, and are therefore insufficient to establish standing.
3. All resolutions in conflict in whole or in part are revoked to the extent of such conflict.

YES: RICK BRADY MARK PUTNAM

NO: CATHERINE DRITSAS

RESOLUTION DECLARED ADOPTED.

Dated: October 11, 2017



Mark Putnam, Chairperson
Saugatuck Township Zoning
Board of Appeals