

Saugatuck Township  
Special Meeting Zoning Board of Appeals  
September 11, 2023  
Minutes

1. Call to Order: Chair Stewart called the meeting to order at 5:30pm

Osman explained protocol for meeting.

Roll Call read by Kerr: Dritsas, Felker, Stewart, Webster, Kerr

Also Present: Zoning Administrator Cindy Osman, Attorney James Straub, Attorney James Semonin, Township Manager Daniel DeFranco, Recording Secretary Arens, Court Reporter Norma Manheimer

2. Approval of Agenda for this Meeting

A **Motion** was made by Dritsas to approve the agenda as presented. Support by Webster. Motion carried by unanimous voice vote.

3. Approval of Minutes of the August ZBA meeting

A **Motion** was made by Dritsas to approve the minutes of the ZBA meeting of August 2<sup>nd</sup>, 2023 as presented. Support by Webster. Motion carried by unanimous voice vote.

4. Court Reporter – Official Minutes

A **Motion** was made by Webster to accept the court reporter's record of these proceedings in supplement to as part of the regular minutes of the meeting subject to review of the Board at its next meeting. Support by Felker. Motion carried by unanimous voice vote.

5. Public Comment on Items Not Scheduled for Public Hearing / Unrelated Matters

No public comment.

6. Unfinished Business.

No unfinished business.

7. New Business - Request for Appeal of Planning Commission's Preliminary Approval of

PUD/Site Condo and SAU Approval for North Shores of Saugatuck, LLC.

- a. Reading of the Order of Remand from Judge Roberts Kengis of the Allegan County Circuit Court

Stewart read Order of Remand from Judge Kengis of the Allegan County Circuit Court into the record.

- b. Limitations on Public Comment

Chairperson Stewart established reasonable conditions for persons wishing to speak during the public hearing portion of the meeting per Section 2.3 of Rules of Procedure of the Saugatuck Township Zoning Board of Appeals.

- c. Opening of Public Hearing:

A **Motion** was made by Felker to open the public hearing portion of the meeting. Support by Dritsas. Motion carried by unanimous voice vote.

- i. SDCA Attorney Howard gave presentation to Board on file with Township.
- ii. North Shores Attorney Gabrielse gave presentation to Board on file with Township.
- iii. SDCA Attorney Howard gave rebuttal to North Shores Attorney remarks.
- iv. General public comments (3 minutes per speaker)\*  
*\*Detailed remarks from public comment are recorded in court reporter transcript*

- a. Holly Engel
- b. Lana Pollack
- c. Elizabeth Engel
- d. Matthew Bussler
- e. Lakota Hobia
- f. Christopher Dean
- g. Fran Poposki Van Howe
- h. David Swan
- i. Hunter Engel
- j. Dayle Harrison
- k. Scott Bosgraaf
- l. Mary Hill
- m. Nicholas Wallace

d. Closing of Public Hearing

A **Motion** was made by Felker to close the public hearing portion of the meeting. Support by Dritsas. Motion carried by unanimous voice vote.

8. Motion to Adjourn.

A **Motion** was made by Webster to take the materials presented under advisement and move to adjourn the present meeting of the Zoning Board of Appeals. Support by Felker. Motion carried by unanimous voice vote.

Meeting adjourned at 7:19 p.m. September 11<sup>th</sup>, 2023.

## **Motions**

1. A **Motion** was made by Dritsas to approve the agenda as presented. Support by Webster. Motion carried by unanimous voice vote.
  
2. A **Motion** was made by Dritsas to approve the minutes of the ZBA meeting of August 2<sup>nd</sup>, 2023 as presented. Support by Webster. Motion carried by unanimous voice vote.
  
3. A **Motion** was made by Webster to accept the court reporter's record of these proceedings in supplement to as part of the regular minutes of the meeting subject to review of the Board at its next meeting. Support by Felker. Motion carried by unanimous voice vote.
  
4. A **Motion** was made by Felker to open the public hearing portion of the meeting. Support by Dritsas. Motion carried by unanimous voice vote.
  
5. A **Motion** was made by Felker to close the public hearing portion of the meeting. Support by Dritsas. Motion carried by unanimous voice vote.
  
6. A **Motion** was made by Webster to take the materials presented under advisement and move to adjourn the present meeting of the Zoning Board of Appeals. Support by Felker. Motion carried by unanimous voice vote.

Respectfully submitted,

Daniel DeFranco  
Saugatuck Township Manager

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1 SAUGATUCK TOWNSHIP  
2 ZONING BOARD OF APPEALS  
3 SPECIAL MEETING  
4  
5 Saugatuck Township Offices  
6  
7 3461 Blue Star Highway, Saugatuck, Michigan  
8  
9 Monday, September 11, 2023, 5:30 p.m.  
10  
11 ZONING BOARD: PATRICK STEWART, CHAIR  
12 Catherine Dritsas  
13 Rex Felker  
14 Tammy Kerr  
15 ~~Cindy Osman~~  
16 Denise Webster  
17  
18 RECORDED BY: Norma Manheimer, CER 9573  
19 Certified Electronic Recorder  
20 Esquire Deposition Solutions  
21 Firm Registration Number 8053  
22  
23  
24  
25

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1 APPEARANCES:  
2 For the Zoning Board: JAMES M. STRAUB, ESQ. (P21083)  
3 and  
4 JAMES GRANT SEMONIN, ESQ. (P86855)  
5 Straub Seaman & Allen PC  
6 1014 Main Street  
7 PO Box 318  
8 Saint Joseph, Michigan 49085  
9 (269) 982-1600  
10 jstraub@lawssa.com  
11 For the Saugatuck SCOTT W. HOWARD, ESQ. (P52028)  
12 Dunes Coastal Alliance: Olson Bzdok & Howard PC  
13 420 East Front Street  
14 Traverse City, Michigan 49686  
15 (231) 946-0044  
16 scott@envlaw.com  
17  
18 For the North Shores CARL J. GABRIELSE, ESQ. (P67512)  
19 of Saugatuck, LLC: Gabrielse Law PLC  
20 240 East 8th Street  
21 Holland, Michigan 49423  
22 (616) 403-0374  
23 carl@gabrielselaw.com  
24 Also present: Morgan Arens  
25 *David DeFranco*  
*Cindy Osman*

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1 Saugatuck, Michigan  
2 Monday, September 11, 2023 - 5:29 p.m.  
3 MR. STEWART: The Chair calls to order the  
4 Saugatuck Township Zoning Board of Appeals meeting,  
5 September 11th, 2023. And Cindy's got some things to say.  
6 MS. OSMAN: We're going to proceed as we're  
7 expected to proceed and intended to proceed in an orderly  
8 manner. Cooperation of all in attendance is anticipated and  
9 will be appreciated. People in attendance are invited to be  
10 heard on any petition that they may be interested in  
11 regardless of where they may live. All presentations,  
12 questions and comments and replies are to be directed to the  
13 Chairperson. No person shall address the ZBA or otherwise  
14 question or comment upon any matter without first being  
15 recognized by the Chair. Once recognized by the Chairperson  
16 each person shall give the person's name and address before  
17 addressing the Chair or otherwise questioning or commenting  
18 on any matter. Once we open the public hearing we are going  
19 to alternate between audience members and Zoom  
20 participate -- participants in order to make sure everybody  
21 has a fair opportunity to speak. If you're going to speak  
22 from the audience, please take a moment to -- when we get  
23 there. We're not there yet. We have to do our business  
24 first, but when we do open the public hearing the podium  
25 will be open to all. And if you form a line of three or

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1 four people at the podium, we will call you in the order  
2 that you are available. Are there any questions on that  
3 part? Okay. Tammy.  
4 MS. KERR: Roll call.  
5 MR. STEWART: Can everybody hear me? Okay. As to  
6 the approval of the agenda for this meeting --  
7 MS. OSMAN: We've got to call the roll.  
8 MR. STEWART: I'm sorry. I got to call the roll.  
9 MR. STRAUB: We have to call the role of everybody  
10 before we start.  
11 MR. STEWART: Okay. Sorry, Tammy.  
12 MS. KERR: Roll call. Dritsas?  
13 MS. DRITSAS: Here.  
14 MS. KERR: Felker?  
15 MR. FELKER: Here.  
16 MS. KERR: Kerr? Here. Stewart?  
17 MR. STEWART: Here.  
18 MS. KERR: And Webster?  
19 MS. WEBSTER: Here.  
20 MS. KERR: Thank you. We're all here.  
21 MR. STEWART: Okay. Approval of the agenda for  
22 this meeting. The Chair will entertain a motion and a  
23 second from the Board to approve the agenda for this  
24 meeting.  
25 MS. DRITSAS: So moved.

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1 MR. STEWART: Second?  
2 MS. WEBSTER: Support.  
3 MS. OSMAN: Dritsas and Webster; Dritsas.  
4 MR. STEWART: So excuse me. It has been moved by  
5 Catherine Dritsas and seconded by Denise Webster that the  
6 agenda for the meeting of the Zoning Board of Appeals is  
7 approved September 11, 2023.  
8 MS. OSMAN: Voice vote.  
9 MR. STEWART: Voice vote. Aye?  
10 MEMBERS: Aye.  
11 MR. STEWART: Nay? The motion is carried.  
12 MS. OSMAN: Minutes.  
13 MR. STEWART: Approval of the minutes of the  
14 meeting of August 2nd, 2023. The Chair will entertain a  
15 motion and second for the Board to approve the minutes of  
16 the meeting of the Zoning Board of Appeals held on August  
17 2nd, 2023.  
18 MS. DRITSAS: So moved.  
19 MR. STEWART: Second?  
20 MS. WEBSTER: Sure, I'll second.  
21 MR. STEWART: Okay. We have -- it has been moved  
22 by Catherine Dritsas and seconded by Denise Webster. The  
23 Zoning Board of Appeal approves minutes of the last meeting  
24 of the Board which took place on the 2nd of August, 2023.  
25 The motion carries.

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1 MR. STRAUB: No, you have to have a voice vote.  
2 MR. STEWART: Excuse me? We have a voice vote?  
3 MR. STRAUB: Voice vote.  
4 MR. STEWART: I'm sorry. All opposed? All -- all  
5 for?  
6 MEMBERS: Aye.  
7 MR. STEWART: All opposed? The motion is carried.  
8 I notice that the Chair that the -- the court reporter is  
9 present to transcribe all verbal comments and statements  
10 made during this meeting. This is not the normal procedure  
11 for taking the minutes of the Board's meetings. As a  
12 result, the Chair would entertain a motion and second to  
13 accept the court reporter's record of these proceedings in  
14 supplement to and as part of the regular minutes of the  
15 meeting subject to review of the Board at its next meeting.  
16 MS. WEBSTER: So moved.  
17 MS. FELKER: Second.  
18 MR. STEWART: And that was --  
19 MS. WEBSTER: Yes, Webster.  
20 MR. STEWART: -- moved by --  
21 MS. OSMAN: Webster.  
22 MR. STEWART: By Denise Webster and --  
23 MS. OSMAN: Felker.  
24 MR. STEWART: -- seconded by who?  
25 MS. OSMAN: Rex Felker.

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1 MR. STEWART: Rex Felter (sic). Voice vote?  
2 All -- vote? All for?  
3 MEMBERS: Aye.  
4 MR. STEWART: All opposed? The motion is carried.  
5 As to the public comment on unrelated matters, at this time  
6 the Board will -- the Board will hear public comment on any  
7 matter not related to the case of Saugatuck's Dunes Coastal  
8 Alliance, the Saugatuck Township and North Shores of  
9 Saugatuck, LLC pending in Allegan Court -- Allegan County  
10 Court Case Numbers 1758936-AA and 118-59598-AA. To clarify,  
11 the Board requests that public reserve comment on any  
12 matters dealing with the Coastal Alliance and North Shores  
13 development at this time. Those matters will be addressed  
14 very soon at the public hearing of this meeting. Anyone  
15 offering public comment on these matters unrelated to the  
16 matter between the SD -- SDCA and North Shores shall have  
17 three minutes to speak. Please state your name and address  
18 before speaking. Anybody? Is there anybody on the Zoom  
19 that has comments? We'll assume not.  
20 As to unfinished business, the Board's not aware  
21 of any unfinished business.  
22 New business. Saugatuck Dunes Coastal Alliance  
23 requests the appeal of the Planning Commission's preliminary  
24 approval of the PUD/Site Condo and SAU Approval of North  
25 Shores of Saugatuck, LLC. As to the Order of Remand from

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1 the Circuit Court of Allegan County I will now read that.  
2 The court conducted a hearing on April 24th, 2023 regarding  
3 the appellate's motion to strike at which all parties were  
4 in attendance. In lieu of issuing a decision regarding the  
5 appellate's motion to strike the court hereby remands the  
6 case to the Saugatuck Township Zoning Board of Appeals  
7 pursuant to MCL 125.36062 and the Michigan Supreme Court's  
8 decision in Saugatuck Dunes Coastal Alliance v. Saugatuck  
9 Township 509 Michigan 561 in 2022. This court for reasons  
10 stated on the record determines that the record is  
11 inadequate to make the review required by MCL 125.36005 and  
12 MCL 125.30606(1) and finds that additional material evidence  
13 exists that with good reason was not presented to the ZBA.  
14 The ZBA is instructed to decide if Saugatuck Dunes Coastal  
15 Alliance has standing to appeal the decision of the Planning  
16 Commission based upon the test announced in the above-cited  
17 Supreme Court decision. The ZBA is also instructed to  
18 consider the evidence submitted to it previously and also  
19 additional material evidence that with good reason was not  
20 presented previously for the purposes of analyzing standing  
21 and to follow the procedure outlined in MCL 125.30606(2).  
22 As to limitations of public comment. According to Section  
23 2.3 of Rules of Procedure of the Saugatuck Township Zoning  
24 Board of Appeals the Chairperson has the authority to  
25 establish reasonable conditions for persons wishing to speak

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1 during the public hearing portion of this meeting. Due to  
2 the number of persons present and the complexity of the  
3 issues presented to the Board of Appeals the following  
4 conditions shall apply to those making public comment on the  
5 matter between SDCA and North Shores. Counsel representing  
6 the Coastal Alliance and North Shores will be called upon  
7 first to present respective positions of their clients. By  
8 agreement the counsel will be restricted -- restricted in  
9 their presentations to the issues of what material evidence  
10 exists regarding standing that with good reason was not  
11 presented to the Zoning Board of Appeals at it -- on its  
12 meetings October 11, 2017 and April 9th, 2018. Comments by  
13 counsel will be limited to 30 minutes. The SDCA counsel may  
14 reserve time for rebuttal. Second, after completion of the  
15 presentation by counsel the Board will accept comments from  
16 the public limited to three minutes. Please identify  
17 yourself by name, state and whether you reside in this  
18 Saugatuck Township. The Chair and the attorneys for the  
19 council -- Coastal Alliance and North Shores request that  
20 you limit your comments at this meeting to the issue of what  
21 documents submitted to this Board by either Coastal Alliance  
22 or North Shores are material to whether the SC -- SDCA has  
23 standing and whether there is good reason for the parties'  
24 failure to submit the documents for consideration by this  
25 Board at the meetings held on October 11th, 2017 and April

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1 9th, 2018. There will be an opportunity for counsel and the  
2 public to comment at a later date on the issue of whether  
3 the SDCA has standing based on the materials submitted to  
4 the S -- ZBA previously and additional materials evidence  
5 with good reason was not presented at the October 17th or  
6 the April 18th meetings and the test announced by the  
7 Michigan Supreme Court in the Dunes -- Coastal Dunes  
8 Alliance versus Saugatuck Township and North Shores of  
9 Saugatuck, 509 Michigan 561 in 2022. Is there any objection  
10 to these -- these terms? Okay.  
11 The Chair will now entertain a motion from the  
12 Board to open public hearing portion of this meeting. The  
13 Board is move -- is moved by.  
14 MR. FELKER: So moved.  
15 MS. DRITSAS: Second.  
16 MR. STEWART: The motion has been moved by Rex  
17 Felker and seconded by Catherine Dritisas, and the public  
18 comment portion of the Zoning Board of Appeals Meeting,  
19 September 11, 2003 (sic) be opened. All in favor?  
20 MEMBERS: Aye.  
21 MR. STEWART: All opposed? The Board meeting is  
22 open to the public -- to the -- to the counsel.  
23 MR. STRAUB: The public hearing portion of the  
24 meeting is open. Right.  
25 MR. STEWART: Yeah. The public hearing portion's

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1 open. We'll hear from the counsel for the parties.  
2 MR. STRAUB: And, Scott, so that you understand  
3 each counsel has 30 minutes. You can reserve a portion of  
4 your comments for rebuttal but you still get 30 minutes  
5 only.  
6 MR. HOWARD: Thank you. I appreciate that and I  
7 would like to reserve five minutes.  
8 MR. STRAUB: We'll advise you.  
9 MR. HOWARD: Thank you. All right. Good evening.  
10 Scott Howard, 420 East Front Street, Traverse City, Michigan  
11 with the law firm of Olson Bzdok & Howard, and I'm here on  
12 behalf of the Saugatuck Dunes Coastal Alliance.  
13 I like to start off this type of presentation with  
14 a little bit of a road map to figure out where we're going  
15 and how we're going to get there. So the key issue in this  
16 remand case is whether or not the Coastal Alliance has  
17 standing to file an appeal, and as my kids say, "spoiler  
18 alert," it does. And we're going to discuss that with you  
19 over tonight's meeting and at subsequent meetings, but I  
20 want to start off with the proposition of why we are here  
21 before the ZBA. I want to talk to you a little bit about  
22 your zoning ordinance and why it brings us to you. I also  
23 want to talk about what does this kind of goofy term  
24 "standing" mean. Us lawyers throw it around a lot but what  
25 does it -- what does it mean in sort of a plain English

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1 context. The third thing I want to do is talk a little bit  
2 about the history of the case and the appeal, how we got  
3 here. And I will give you what I would call the Cliff Note  
4 -- my Cliff Notes on the information that you need to read  
5 from the lower court filings and that is just a couple of  
6 documents so we'll talk about that. The fourth thing I want  
7 to talk about is the process the decision's going to take.  
8 And then the fifth thing is really the meat of the decision  
9 or the vegetable protein of the decision as it is called in  
10 my house. What evidence should be admitted for the standing  
11 analysis and for you to consider. That's the smoothest use  
12 of a clicker that's ever happened to me. So thanks, Dan,  
13 for setting it up so well.  
14 Why are we here? The Township -- now normally I  
15 would expect this Zoning Board of Appeals has to deal with  
16 questions about variances and things of the like, and it  
17 doesn't see a lot of appeals from the decision of the  
18 Planning Commission. But your table -- in Section 40-1046  
19 the Table of Uses for -- included in your zoning ordinance  
20 clearly requires a special use permit for marinas in R-2  
21 district and that's the district that applies to North  
22 Shores. There's also specific regulations about what you  
23 can do with waterfront property and access to it. In  
24 particular 40 -- section 40-910(h) says, "In no event shall  
25 a canal or channel be excavated for the purpose of

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1 increasing the water frontage required by this section. In  
2 no event shall this canal or channel be excavated."  
3 Unfortunately, the Planning Commission approved a project  
4 that does just that and that's why we want to get to an  
5 appeal. Unfortunately, we haven't been able to do that  
6 since 2017. So what was the reason for that? That is we've  
7 been caught up in this determination of whether or not the  
8 Coastal Alliance has standing to appeal. And standing means  
9 an individual or organization or entity has the legal right  
10 to initiate a zoning appeal. So that entity must -- or  
11 person must have a sufficient interest in the appeal that  
12 will -- "will be detrimentally affected in a manner  
13 different in kind and more significant in degree than the  
14 effects on others in the local community." Let me say that  
15 one more time. It's from the Supreme Court and I'll say it  
16 more smoothly, "will be detrimentally affected in a manner  
17 differently in kind or more significant in degree than  
18 effects on others in the local community." That's that  
19 new -- part of that new standing test that we will be  
20 talking about throughout this process. So that's what we're  
21 talking about when we discuss standing. Standing's  
22 historically been described as a gatekeeping function. So  
23 that you have -- you make sure that you have the right  
24 property -- the right parties in the room to have an actual  
25 dispute. It's not intended to be an adjudication on the

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1 merits. It's not intended to have a decision that relies on  
2 a preponderance of the evidence standard or no reasonable  
3 doubt standard. It is a threshold determination to make  
4 sure that the right parties are in the room. Now, I  
5 mentioned we are going to talk a little bit about the  
6 history of the matter and I'd give you that shortcut so here  
7 it is. In 2017 and 2018 there are two Zoning Board of  
8 Appeals determinations that the Coastal Alliance did not  
9 have standing, that those decisions were appealed to the  
10 circuit court and the court of appeals and ultimately up to  
11 the Michigan Supreme Court. And the Michigan Supreme Court  
12 said in essence the wrong test was used and the wrong  
13 analysis was done in this case. And then it remanded the  
14 case back to the -- back to ultimately the trial court,  
15 Judge Kengis in this case. And then Judge Kengis, as you  
16 heard in the order that was read by the Chair earlier,  
17 turned around and remanded the case back to you. So here we  
18 are with -- here we are with what I would tell you are two  
19 very important documents and a lot of documents that I think  
20 would make for some good reading if you're -- if you have  
21 insomnia late at night. But otherwise I would say that you  
22 could short circuit that extra credit reading and just pay  
23 attention to two things. One is the order that we were just  
24 talking about of remand 'cause that tells you what evidence  
25 you're supposed to be looking for in this particular hearing

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1 tonight. And two is the copy of the Michigan Supreme  
2 Court's opinion. That's number 30, I believe, in the  
3 township's -- your township legal counsel's submission to  
4 you. So number 30 is that document that comes from the  
5 Michigan Supreme Court. And I won't belabor it -- you with  
6 reading from it just yet 'cause we'll spend a lot of time on  
7 that in a subsequent meeting, but I would tell you that if  
8 you pay particular attention to pages 27 and 28 of that  
9 opinion, that's going to provide you with some substantial  
10 guidance. And I will tell you that you don't really need to  
11 read us -- the documents that us lawyers submitted to the  
12 various courts below explaining what our arguments over and  
13 over again. And the Michigan Supreme Court really starts  
14 the conversation here because it can -- it developed that  
15 new test that it said is what you need to be looking at as -  
16 - when you review this as the Zoning Board of Appeals.  
17 So here we are in the process. There's really  
18 three steps in my opinion in this process. One is to review  
19 the old and new evidence. Two is to evaluate standing and  
20 three is to consider the merits. And as the Chair  
21 indicated, we are on box number 1 and that's where we'll  
22 stay tonight and that's what I will continue to address in  
23 my comments going forward. Judge Kengis' order talked about  
24 material evidence and evidence that is -- evidence that is  
25 both material and evidence that had -- there was good reason

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1 that it was not included in the original submission to the  
2 Zoning Board of Appeals back in 2017. So those three words  
3 are really critical here so let's talk about each of them or  
4 one -- actually it's one word and a phrase but either way  
5 we'll talk about both of them.  
6 First is what makes evidence material. When we  
7 talk about material evidence what does that mean? Evidence  
8 is material if it relate -- if it's related to the matters  
9 in controversy, and here new evidence is material if it  
10 relates to the interests potentially impacted by the  
11 proposed project that the Coastal Alliance members have  
12 identified. How about an example, though, 'cause that's  
13 probably just maybe a little bit more definition giving and  
14 isn't quite as concrete as an example. So the Bily family  
15 is a mem- -- are members of the Coastal Alliance and have  
16 been very concerned about the esthetic impacts among other  
17 things on their property of this proposed project. So what  
18 type of -- what type of evidence is material to the Bily's  
19 concerns? Well, for example, photographs showing what  
20 their viewshed looks like, what it looks like to look at the  
21 North Shores property from their own property. That would  
22 be material evidence that relates to that concern that they  
23 have expressed.  
24 Now, let's go on to the next -- the second part of  
25 that -- this inquiry and talk about good reason. Good



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1 reason has been defined by courts to mean new evidence that  
2 may be considered when evidence did not exist at the time of  
3 determination and was not discovered until much later. New  
4 evidence also may be considered when the decider makes an  
5 initial decision based on a misunderstanding or incomplete  
6 evidence. So those two I think are fairly easy to follow,  
7 and the most logical reason why and the most prevalent  
8 reason why something is going to -- was what would be --  
9 would have not been presented in 2017 is that it just didn't  
10 exist at that time, and now you have material evidence that  
11 does exist.

12       Going back to our example of the Bily property  
13 you'll see some photographs later on in some of our slides  
14 and those are some of the documents that we think are  
15 material and would like to include in the evidence you  
16 consider. Those photographs didn't exist in 2017, and part  
17 of the reason that they didn't exist in 2017 is because  
18 there hadn't been development activity by North Shores at  
19 that point. We'll look at -- take a look at sort of a  
20 before and after view of some of the development activities  
21 and that helps you and helps us understand what we talk  
22 about when we're talking about material evidence that  
23 relates to those concerns that the Bily's have expressed.  
24 And those concerns take us back to the standing inquiry and  
25 help us establish standing on behalf of the Bily family and

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1 the Coastal Alliance. So that's what we talk -- that's what  
2 we mean when we talk about good reason.

3       So let's talk a little bit about some of the  
4 evidence that we presented to you and we put it in this blue  
5 binder for you to consider and keep track of. And another  
6 example of material evidence that wasn't presented to the  
7 Zoning Board of Appeals in 2017 for good reason is studies  
8 and information from scientists that have -- that have been  
9 developed and have occurred since 2017 in the interim.  
10 There's been a number of these studies and those are the  
11 types of studies that certainly are material to the extent  
12 that they relate back to those concerns expressed to give  
13 the Coastal Alliance standing. And then for good -- they  
14 were not produced for good reason because they didn't exist  
15 at the time.

16       One of the critical discussion points in this  
17 particular appeal and discussion of standing is the impact  
18 that this project will have or will likely have on some  
19 globally rare imperiled interdunal wetlands. And I want to  
20 pause for a minute just to consider the importance of that  
21 descriptor. They are globally rare. In other words, they  
22 don't really exist anyplace else in the world, and we're  
23 doing something that's going to impact those interdunal  
24 wetlands. Is that material to the concerns of the Coastal  
25 Alliance? It sure is. You have folks within -- that are

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1 members of the Coastal Alliance that have been studying  
2 those dunal -- those interdunal wetland systems for their  
3 entire professional career. You have folks who use and  
4 enjoy the property around those interdunal wetlands and love  
5 to go look at them 'cause they can't find them anyplace  
6 else. And they -- you have folks that enjoy the wildlife  
7 habitat and the natural features that surround those  
8 interdunal wetlands that are at risk here, and are  
9 potentially going to be impacted. And you have scientists  
10 who are telling you that these impacts are going to happen.  
11 So is that material? You bet. Is there good reason for not  
12 producing it in 2017? You bet, because it didn't exist.

13       Another important piece of evidence that you will  
14 find in the blue binder is information related to the Army  
15 Corps of Engineers findings on impacts of the proposed  
16 marina project. And one of the important things that is at  
17 issue here is I suspect your suggestions from North Shores  
18 Council that there -- there will be no substantive impact on  
19 the Coastal Alliance members because they're either too far  
20 away or too remote from the project; not true. When you  
21 look at what the Army Corps of Engineers says, and the zone  
22 of audible influence and visual influence that the Army  
23 Corps has identified in this particular area, you will see  
24 clearly a relationship between this particular project and  
25 the concerns that the Coastal Alliance members have

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1 expressed about those exact auditory and visual concerns.

2       We talked already a little bit about scientific  
3 studies and opinions. Here's just a list of some of these  
4 now. You have -- each of these are dated later than the  
5 2017 hearing on -- original hearing of the Zoning Board of  
6 Appeals. As you can see, there's been substantial work  
7 on the scientific side of things. Sorry, these are all kind  
8 of coming up one at a time but that was supposed to  
9 transition from one list of events. But in any event you  
10 see that those started in 2018. Earliest one was 2017, I  
11 believe, actually after the ZBA -- the original ZBA decision  
12 and then go all the way up to present day. We talked a  
13 little bit a little while ago about photos of the area and  
14 the Bily property.

15       Now, here's a -- here is a visual for you to --  
16 that shows the Bily property on September 9th, 2017 before  
17 any excavation or cutting -- cutting of trees in the laydown  
18 area. Here are your after photo. And that what I best call  
19 the bald patch up at the top of the hill is the laydown area  
20 where North Shores is planning to stack up their sand for  
21 the dredging activities for the marina. And as you can see  
22 there in the little box, that's the Bily property just below  
23 the ridge down past where the laydown area is going to be.  
24 Here's a view of what it looks like now that they cut the  
25 trees up on the ridge. You can see the blue sky coming

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1 through where it used to be thick trees.  
2 The red shipping container in the middle of this  
3 photograph is a piece of material that's on the North Shores  
4 property. So here's a photograph that's from the Bily  
5 property looking directly at the North Shores project. And  
6 here's a photograph that helps you understand where the Bily  
7 cottage is in relationship to that site line directly to the  
8 North Shores project. Again, all of which are pieces of  
9 information that help you understand the actual potential  
10 impact on the Bily's if this project goes forward. And I  
11 will -- we'll certainly hear that the Bily's are too far away  
12 and won't be able to see a thing and they're in a crowded  
13 forested area but that's just not true and the photographs  
14 show that's the case.  
15 Finally, here's an aerial view of the  
16 excavated -- excavation and wetlands to contrast with --  
17 excavation and emergent wetlands to contrast with that green  
18 picture that you saw from 2017. Again, material and is  
19 there good reason? Absolutely 'cause the -- these  
20 activities hadn't happened as of the first date in 2017. So  
21 it would be impossible to provide you those until after that  
22 first date. The Bily's also have the unfortunate  
23 circumstance of finding trails cam -- trail cameras pointed  
24 at their property. No trespassing signs. They are  
25 activities by North Shores that are not only what we suggest

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1 are unneighborly but also provide a unique impact on the  
2 Bily property that is not shared by others in the community.  
3 Finally, you have affidavits from the Coastal  
4 Alliance members that you have been presented with your  
5 materials, and those affidavits are either from folks who  
6 did -- did not have an opportunity to testify before the  
7 Zoning Board of Appeals the last time around, or who had the  
8 opportunity, did speak and did provide information but are  
9 providing further information for you or further detail for  
10 you in their -- for purposes of your consideration. And why  
11 is that sort of further detail okay? It only makes sense in  
12 light of the fact that the Supreme Court has changed the  
13 standards and the analysis that you have to do in order to  
14 determine whether or not standing exists. And providing you  
15 with further information that is specifically tailored and  
16 uniquely situated to address those exact concerns that the  
17 Supreme Court addressed in its opinion are exactly the types  
18 of materials that we talked about in that sort of second  
19 standard for good cause or good reason and that is you  
20 didn't have the right information previously because you  
21 were analyzing this case under the wrong standard. Here's  
22 some people that are helping explain to you what is -- what  
23 their interests are and how they relate to that Supreme  
24 Court opinion.  
25 Finally, I mention that you have -- one of the

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1 affiant is Nick Wallace who was a minor at the time in 2017  
2 who is now of age and is on the Coastal Alliance Board, is a  
3 member of the Coastal Alliance and serves on the board and  
4 is, quite honestly, a fantastic public speaker and I suspect  
5 you'll hear from him at some point during this process. But  
6 he is an example of somebody who could not provide an  
7 affidavit for you because he was not of age but he did  
8 participate through his family and now is of age and is  
9 providing his own information for you.  
10 Now you have a couple of very different  
11 submissions in this case and for consideration tonight. We  
12 specifically tailored our presentation to address only the  
13 issue of what evidence is material and wasn't presented to  
14 the ZBA for good reasons. North Shores doesn't discuss that  
15 particular question but does discuss a lot of the substance  
16 of the appeal, and does discuss a lot of the substance of  
17 the standing determination. And we respectfully request  
18 that you leave -- you put those portions of their submission  
19 aside and wait 'til the right time to consider those at  
20 which time we certainly will have our response to their  
21 allegations. But right now is not the -- honestly is -- per  
22 our agreement with the Township, now is not the time to be  
23 considering the substance of an appeal. Now is not the time  
24 to be considering the substance of standing. Now is the  
25 time to be considering what evidence are you going to

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1 consider when you determine whether or not standing exists.  
2 So I'll wrap it up by saying those words -- those  
3 three words again. The evidence that's provided you in  
4 those blue binders is material and it relates directly to  
5 the controversy at issue and whether or not standings exist  
6 for the Coastal Alliance. And there's good reason that  
7 those documents were not presented to the Zoning Board of  
8 Appeals back in 2017. The majority of them were documents  
9 that didn't exist and after -- and if they did exist or  
10 somebody did testify -- you keep -- the remaining documents  
11 are documents that help clarify for you the inquiry that the  
12 Supreme Court has laid out for you. The only other item  
13 that I do have is that there have been some additional  
14 documents that have -- have literally come in to our  
15 possession since the submission of the binder. And while I  
16 recognize that this is -- I would rather have those ahead of  
17 time for you. They didn't -- one document is a letter that  
18 just came out. The other document is a document that  
19 relates to the cultural analysis of these properties, and  
20 the third document is an affidavit from an affiant who did  
21 not present an affidavit back in 2017 but would like to now  
22 and we just got a signature for that, and I would ask the  
23 Chair if the Zoning Board of Appeals would allow us to  
24 submit those additional documents as three supplemental  
25 pieces of information for our blue binder.

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1 MR. STRAUB: If you wish to submit them, go ahead  
2 and submit them.  
3 MR. HOWARD: Thank you. We'll pass those out  
4 here. If it's okay with counsel, I'm going to have Dan take  
5 those to -- pass those out to everybody and we'll just give  
6 them to him. Is that okay?  
7 MR. STRAUB: Yeah, sure. Give them to Dan you  
8 mean?  
9 MR. HOWARD: Yes; yes.  
10 MR. STRAUB: And according to my watch you have  
11 five minutes left.  
12 MR. HOWARD: Thank you.  
13 MR. STEWART: The Chair recognizes the counsel for  
14 Padnos (phonetic).  
15 MR. GABRIELSE: Members of the Zoning Board of  
16 Appeals, my name's Carl Gabrielse and I represent North  
17 Shores of Saugatuck. We appreciate your time tonight and  
18 perhaps the unusual effort that you've put in or are going  
19 to put in making sense of all of this on a decision that  
20 perhaps is a little out of the ordinary for what this board  
21 does so we appreciate that.  
22 Before jumping in I guess I want to address a  
23 comment right at the end there that disappointed me a little  
24 bit about us missing the mark in submitting something that  
25 didn't answer some questions. So this is how this played

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1 out. The meeting was scheduled and your attorney asked for  
2 submissions seven days before that meeting and we submitted  
3 ours seven days before the meeting and the Coastal Alliance  
4 didn't. And then we started having discussions with your  
5 attorney about how to separate this out into a couple  
6 different steps of having a question about materials and  
7 what's in and then the substance. And that was all after  
8 it. So this was not ignoring any sort of guidance or  
9 anything like that. It was simply that we had followed the  
10 handshake agreement that we had made and the request from  
11 the Township's attorney that we submit documents well in  
12 advance of the meeting which was now almost a month ago when  
13 we submitted those.  
14 The focus of tonight's meeting is on the materials  
15 that have been submitted. And the place to start with that  
16 determination is to look at the order of the circuit court.  
17 It says that the court determines that the record is  
18 inadequate to make the aggrieved party review, and that the  
19 court finds that additional material evidence exists that  
20 with good cause was not presented to the ZBA. Perhaps this  
21 body would have appreciated if the judge would have given  
22 you a little more guidance on what it had considered to be  
23 that material evidence or what it considered to be the good  
24 cause for why things should be admitted now. But perhaps I  
25 can fill in the blank there a little bit by looking at what

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1 happened the last time this was in front of the circuit  
2 court.  
3 See, the last time around the court let additional  
4 evidence come in at the court level. So the court accepted  
5 evidence that hadn't been presented to the ZBA. And the  
6 court considered that evidence and, in fact, the court based  
7 its decision on that evidence. Here's from the transcript  
8 from the court's hearing back in 2018. First comment right  
9 below the Zoom call header there, especially -- this is the  
10 court speaking, "Especially in light of the evidence that  
11 has been presented to support that this is an  
12 environmentally friendly project." The court's referring to  
13 evidence that North Shore represented and that it found  
14 persuasive that this was in fact an environmentally friendly  
15 project. The judge made comments about the number of boats  
16 and boat slips that are docked in the area in the Kalamazoo  
17 harbor. Again, reference to the materials that North Shore  
18 had submitted that were relevant and material and convincing  
19 to the court and which is the same type of evidence that we  
20 have now submitted to you again. Another one referring to  
21 the number of boats that use the cove or affectionately  
22 referred to as "party cove" near this property. Again  
23 evidence -- material evidence submitted by North Shore. And  
24 finally, I get my own personal call-out here "to evidence  
25 submitted by Mr. Gabrielse" -- myself -- "regarding the

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1 development and what it could be zoned as as of right."  
2 So it's reasonable for you to conclude that when  
3 the court this time around says there's material evidence  
4 that should be included here so I can make an informed  
5 decision, that this is what he's referring to. Because this  
6 is what he relied on last time when he made the  
7 determination, as did this board, that the Coastal Alliance  
8 did not have standings. Now, as I'm sure all of you know by  
9 now, not just anyone can challenge a planning commission's  
10 decision and that makes good sense. It's only someone that  
11 meets the legal requirement of an aggrieved party that can  
12 challenge a decision. If someone can meet that standard of  
13 we have had our legal rights infringed on by this decision,  
14 they are the parties that can appeal a planning commission  
15 decision.  
16 So there's no doubt that the Coastal Alliance is  
17 opposed to the development of this property. They would  
18 like North Shores private property to stay in its current  
19 state forever. Maybe some of you all wish you didn't have a  
20 neighbor. Maybe some of you all wish that your neighbor  
21 hadn't cut down a tree or two or ten that you like, but  
22 that's not standing. That's not being legally aggrieved  
23 just because you don't like what your neighbor's doing. And  
24 you might see a house that's constructed on your neighbor's  
25 property. But what you have here in this situation is the

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1 Coastal Alliance is trying to manufacture standing so that  
2 they can obstruct the development of this private property.  
3 And so you have these claims that just run the gamut and  
4 I've tried to list those that I can but as you can see, they  
5 are numerous. It really does epitomize the kitchen sink  
6 approach. Let's throw every negative allegation that we can  
7 against the wall and see what sticks. That in a nutshell is  
8 why you have so many pages of submissions from North Shores.  
9 Because the Coastal Alliance allegations cover just about  
10 every topic imaginable. It's easy to make an allegation.  
11 The boat basin will destroy the nearby wetlands. Then North  
12 Shore hires a hydrologist, dewatering experts, wetlands  
13 experts, you name it, to debunk those claims. The  
14 allegations take a few words. The scientific reports  
15 rebutting them take hundreds of pages and that takes time.  
16 Scientific reports obviously are not generated overnight.  
17 So let's talk about the good cause of why these  
18 materials should be admitted. So first of all, there are a  
19 lot of materials in what's submitted by North Shore that are  
20 already part of the record. In the interest of convenience  
21 as is quite common when writing briefs in a court, we  
22 compiled all of that information in an appendix with  
23 numbered pages so that when you're reading our memo you can  
24 reference it all in the same place. You don't have to  
25 reference three different binders all over. So a lot of the

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1 material is already part of record. Some of the material  
2 did not exist at the time. Reports were not done yet as we  
3 were trying to respond to these allegations. Some materials  
4 we did not have, or you could say maybe we didn't even know  
5 they existed, or because a claim had not been fleshed out of  
6 what exactly the allegation was of standing or how bugs or  
7 deer or frogs or grass was going to be affected in the  
8 Coastal Alliance's opinion. We didn't know exactly what we  
9 needed to compile to respond. But I can tell you that all  
10 the materials submitted are submitted to respond to that  
11 huge list of allegations that are -- have been made so they  
12 are material, and there's good cause why they should be  
13 acknowledged.  
14 And I would just mention and you certainly will  
15 have the time to discuss and get counsel from your counsel  
16 about the due process procedure of someone -- in this case  
17 the Coastal Alliance -- making claims that they have  
18 standing. And if you would make the decision not to allow  
19 North Shore to submit documents that respond to those  
20 allegations, that is an appealable issue waiting to happen.  
21 And so we would submit to you that the documents submitted  
22 by North Shore should be accepted. They are material. They  
23 are relevant. There's good cause and they are responsive to  
24 the documents that have been submitted by the Coastal  
25 Alliance.

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1 Now, as you make this decision on what materials  
2 to accept it's good to ultimately understand the decision  
3 you have to make and I have few comments about that. I'm  
4 not going to put up photos and make substantive arguments.  
5 I'm going to stick to simply addressing some overarching  
6 suggestions on how this should be handled. We'll wait to  
7 discuss the issues and the claims and yes, I'm itching to  
8 respond to some of the substance that was put upon the  
9 screens already, but we'll wait 'til next time to do that.  
10 So here's my first suggestion in addressing this  
11 focus is you need to focus on the approval; focus on the  
12 approval. You'll need to ask yourself what did the Planning  
13 Commission approve? And do the a lot -- the alleged harms  
14 relate to that approval? Or is the opposition and the  
15 frustration really that this property is zoned R-2 which  
16 gives certain rights which we'll talk about in a second. So  
17 here's what I mean and I've got something on the screen if  
18 you're able to see these. So let's say you're on a vacant  
19 piece of land that's got some trees on it and it's zoned  
20 R-2. The owner of that land is entitled to develop that  
21 land in accordance with R-2 regulations. So there might be  
22 some houses on it. If it's waterfront, maybe there's some  
23 boats or some boat slips. The density and configuration  
24 would be determined by R-2 zoning depending on how many  
25 homes would fit, the minimum lot size, the required

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1 setbacks, et cetera and you guys know all that sort of  
2 thing. And this could be done without Planning Commission  
3 approval. This is what's referred to often as development  
4 by right. Somebody that owns a property that's zoned a  
5 certain way has the right baked into the fact that they own  
6 real estate that they can develop it in accordance with the  
7 zoning regulations.  
8 Let's say an owner decided that instead of this  
9 configuration they thought a different configuration was  
10 more preferable. They thought let's consolidate the houses  
11 into a smaller area, smaller setbacks and everything and  
12 that will allow us to preserve a larger contiguous area in  
13 its natural state. It's not more houses. It's not more  
14 boats. It's just a different configuration. And your  
15 township has an ordinance that allows for just that.  
16 Sometime read the preamble to the PUD section. It says  
17 exactly that. Under some instances a different  
18 configuration makes sense. That does require planning  
19 commission approval, not of the right to put houses or boats  
20 or boat slips on your property in R-2, but of the  
21 configuration. So I would suggest that you focus on the  
22 appeal. Determine whether the alleged harms relate to the  
23 different configuration on the right side there on the  
24 screen, or whether they really relate to the fact that  
25 there's going to be something other than trees on the

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1 property. Put another way, is the objection really that  
2 this was zoned R-2 a number of years ago? We'll talk about  
3 that next time.

4 My next suggestion to you is to stay in your lane.  
5 Now, when somebody says that there can often be some  
6 negative connotations to that, but I don't mean that in this  
7 instance. Instead I see this as permission for you to not  
8 be an expert on everything. It's permission to do well the  
9 specific tasks that are in front of you as a Zoning Board of  
10 Appeals, as an appellate body of the planning commission,  
11 and to let other agencies and organizations do the same.  
12 Here's what I mean. The Planning Commission and by  
13 extension the ZBA is responsible for applying zoning  
14 ordinances, approving variances and there might be a number  
15 of other tasks but those are the two that really relate to  
16 the instance here.

17 At the same time in a different lane, if you will,  
18 there are any number of agencies that are responsible for  
19 other matters related to development. You may know, you may  
20 know not know all the acronyms of the agencies up there.  
21 The first one, USACE, is the United States Army Corps of  
22 Engineers. Then you've got the Michigan Department of  
23 Environment, Great Lakes, and Energy, the Allegan County  
24 Health Department, the Michigan State Historic Preservation  
25 Office, we could continue. But the point is that they all

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1 have roles and responsibilities, strengths as does this  
2 Board and does the Planning Commission. Next time we'll  
3 talk about how the Planning Commission recognized that  
4 distinction, recognized its lane, its role and very  
5 intentionally stayed in it by what they put in the approvals  
6 and so we'll talk about that. So we ask that you stay in  
7 the lane. There are certain things that are the purview of  
8 the Army Corps, EGLE, the Health Department and SHPO, and we  
9 would request that you honor those.

10 Third suggestion is to remember that fear does not  
11 equal fact. Just because someone expresses concern about  
12 something does not mean that concern is warranted. For  
13 example, if I say, "I am concerned that the roof is going to  
14 fall." Great remodel job but if were to say that, does that  
15 mean that there's -- the roof is unsafe just 'cause I said  
16 I'm concerned about it? No. What if I worded it  
17 differently and I want to convey to you the significance of  
18 how strongly I feel about this and so I say I'm going to act  
19 differently and I say something like, "If the roof is not  
20 replaced, I won't come in the building." A little stronger.  
21 I've told you I'll act on that belief of mine. Still does  
22 that make the roof unsafe? No. Fear does not equal fact.  
23 Just because somebody says it doesn't make it true. The  
24 suggestion is to keep that in mind as you're reviewing  
25 statements in this case.

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1 Fourth suggestion is to remember that nothing has  
2 changed since the last time this board determined the  
3 Coastal Alliance does not have standing. Nothing has  
4 changed that would require a different result. Contrary to  
5 what the Coastal Alliance wants you to think, the courts did  
6 not rewrite the law. In its opinion the Supreme Court uses  
7 words like "limited -- to the limited extent," and "modest  
8 clarification to the law." That's the Supreme Court's own  
9 words, and I'm going to show you what the Supreme Court did.  
10 So this is a paragraph from the Olsen case. Don't bother  
11 trying to read it all right now 'cause we're not going to  
12 get into the details, but I've underlined a phrase in there  
13 "other property owners similarly situated." The Supreme  
14 Court changed this phrase and instead of "other property  
15 owners similarly situated," the Supreme Court instead said  
16 "others in the local community."

17 Stated another way, here's a simplified form of  
18 the central question in this case related to aggrieved  
19 party. "Have members of the Coastal Alliance suffered harm  
20 that is different from" blank? The Court of Appeals  
21 previously had put in there "other property owners similarly  
22 situated." And the Supreme Court said, "We're going to  
23 clarify that and it's going to be 'others in the local  
24 community.'" We'll get into the details of how that's  
25 applied, but just wanted to touch base on this. This again

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1 is why the Supreme Court used words like "limited extent"  
2 and "modest clarification of the law." This body has  
3 already determined twice that the Coastal Alliance is not an  
4 aggrieved party. Nothing has changed that would require a  
5 different result.

6 So those are my four suggestions that I have for  
7 you as you're thinking about the bigger picture of aggrieved  
8 party standards, and more in the context of tonight of what  
9 materials should be allowed in. That is all I have unless  
10 any of you have any questions for me. Thank you.

11 MR. STEWART: Thank you.

12 MR. STRAUB: If you want to -- what?

13 MR. STEWART: Should we give -- should we give  
14 five minutes for rebuttal?

15 MR. STRAUB: Oh, yes. I'm sorry.

16 MR. HOWARD: Thank you. Scott Howard again. I  
17 promise I will take less than five minutes. I want to maybe  
18 start at the end of the discussion where counsel left off,  
19 and that is I think we have a fundamental difference of  
20 opinion about what the Supreme Court said, and at the end of  
21 the day you all will have to make some decisions based on  
22 that but I'd ask you to take a good hard read of that case.  
23 We referenced it in the discussion earlier and again those  
24 -- the last few pages of the opinion are pretty clear to me  
25 especially when the court says instead, "We vacate part four

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1 of the Court of Appeals opinion, vacate to Allegan Circuit  
2 Court's judgment regarding standing, and remand both cases  
3 to the circuit court for further reconsideration of  
4 appellant's arguments."  
5       So to me that is not status quo. That is  
6 not nothing has changed. That is take a look at this in  
7 light of what we have done here and in clarifying -- if you  
8 want to call it a clarification or if you want to call it a  
9 change, it really is a distinction without a difference  
10 because the Supreme Court was very clear about what sort of  
11 considerations need to be taken into account and those  
12 weren't, in the court's opinion, properly addressed in the  
13 previous rulings. Otherwise it would've said, "We affirm  
14 part four of the Court of Appeals opinion and we affirm the  
15 Circuit Court's decision." I think that there is actually  
16 some agreement among the parties about that the evidence  
17 needs to be material, and there needs to be a good reason as  
18 to why that evidence wasn't submitted the first time around.  
19 I think the difference is we did our best to provide you  
20 with exactly that information about exactly the documents  
21 that we put together in the binder. And I still don't know  
22 exactly which of North Shores' documents are for which good  
23 cause, and which ones are material and which ones are not.  
24       So my suggestion is that at some point that needs  
25 to be sifted out and we need to make sure that we're

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1 complying with the Circuit Court's order to remand the case  
2 for purposes of determining what was material evidence that  
3 was not provided the first time around for good reason. And  
4 again, those words have meaning and they're important to  
5 stick to in this case.  
6       I want to talk about everybody's lane here and I  
7 think that the -- to use the reference and I think that the  
8 lane -- it's important to understand that you have -- within  
9 the context of zoning and other regulations you have  
10 multiple overlapping jurisdictions, and there are plenty of  
11 times where zoning considerations need be decided along with  
12 a permit from EGLE for example, or a permit from the Army  
13 Corps, or a permit from the county. That happens all the  
14 time and in fact lots of times you'll see in decisions by  
15 the Planning Commission or a zoning administrator a  
16 condition that's attached to those permits that say, "You  
17 have to go get your permit from the county health  
18 department" or "you have to go get your permit from EGLE as  
19 a part of this. We have concurrent jurisdiction. We make a  
20 decision as does this other body." So to suggest that you  
21 don't have any role in the regulation of marinas is just in  
22 fact not true, and that was that first -- or I guess that  
23 would be on the second slide that we showed you earlier  
24 tonight. It's very clear that marinas are something that  
25 need to be approved by the Planning Commission as a special

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1 use and that means there is concurrent jurisdiction between  
2 you and any other body that -- of state or federal  
3 government that also approves (inaudible) --  
4       MS. ARENS: One minute warning.  
5       MR. HOWARD: Thanks. I told you that I would not  
6 take five minutes and I'm going live up to promise and say  
7 thank you for your attention tonight. I'm happy to answer  
8 any questions either now or throughout the process.  
9       MR. STEWART: Thank you to both of you. Do we  
10 need a bio break anybody? Okay. Let's keep going. Can we  
11 have a motion to open public comment?  
12       MR. STRAUB: No. That's already been open. Yeah,  
13 just move on to --  
14       MR. STEWART: Let's move on to the members of Zoom  
15 and the members of the public. The first spot is available  
16 to members here.  
17       MS. ENGEL: Hello, my name is Holly Engel and I  
18 live at 3171 Lighthouse Way in Saugatuck Township. I serve  
19 as a member of the Kalamazoo Lake Harbor Authority. I  
20 captain at Best Chance charter fishing which is our family's  
21 fourth generation of business here in the community. I also  
22 work as a local mortgage broker but tonight I'm speaking on  
23 behalf of the Saugatuck Dunes Coastal Alliance members and  
24 our supporters. First, I want to thank the ZBA members and  
25 alternatives for your service. The Alliance appreciates the

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1 time and attention you're giving this and future hearings,  
2 and all the work that you will do to prepare for them. We  
3 promise to do what we can do to be clear and substantive in  
4 our communications and respectful of this process and your  
5 time. In that spirit rather than asking all or many of our  
6 supporters to speak this evening, I'm asking those in the  
7 room and those on Zoom to raise your hands so you can see  
8 us. A few individuals may decide to make their own comments  
9 which is permitted under the Opens (sic) Meeting Act but I'm  
10 speaking for the general membership of our Alliance.  
11       So on behalf of the Coastal Alliance I would like  
12 to make two key points. First, we believe we strongly have  
13 the criteria for standing but that's a topic for another  
14 meeting. Second, we believe the evidence submitted by our  
15 legal team which for a good reason was not available when we  
16 originally made our case to the Planning Commission in 2017  
17 and 2018 will be very useful in your decision making. This  
18 evidence is material to your decision. We hope you decide  
19 to accept this evidence in your decision that you will be  
20 making. Again, on behalf of the Coastal Alliance we thank  
21 you.  
22       MR. STEWART: Thank you. Do we have anybody in  
23 the Zoom?  
24       MS. ARENS: Lana Pollack.  
25       MS. POLLACK: Yes. Can you hear me? Is that too

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1 loud?  
2 MR. STEWART: No.  
3 MS. POLLACK: That good? Okay. Thank you and  
4 thank you for giving me these three minutes to express my  
5 concern with this -- with this project. My name is Lana  
6 Pollack. I live at 414 North Main Street in Ann Arbor,  
7 Michigan. In 19-- in 2009 I was the chair of the -- of  
8 the Natural Resources Trust Fund Board. That is a  
9 constitutionally recognized board in Michigan that uses  
10 public dollars to purchase and preserve natural areas. I'm  
11 also a Coastal Alliance supporter of many years. When the  
12 decision was made to -- to recommend to the legislature the  
13 10.5 million dollars for the acquisition of the Saugatuck  
14 harbor natural areas, it was the largest sum of money every  
15 appropriated by that trust fund which was then I'm thinking  
16 30 years old and it's still one of the largest  
17 contributions. Now, that was based on an understanding but  
18 based on actually the unique natural value of the Saugatuck  
19 area, the natural resources plus the history of the  
20 Saugatuck community and area in protecting that natural  
21 area. Unfortunately, a proposed marina would definitely  
22 have a material impact on the values that the public dollars  
23 were set out to support. So we -- we understood that then,  
24 we understand that more clearly today with the submission of  
25 several of documents from the Potawatomi Nations, the

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1 Natural Historic -- the National Register of Historic  
2 Places, the Army Corps of Engineers and several others. So  
3 it is the addition of that information that reinforces the  
4 value of the natural areas in this essential connectedness  
5 of the area that public dollars were spent to protect and  
6 the areas that are now threatened. I ask that you consider  
7 this and I trust that you are and can see that you are a  
8 considerate body and you listen carefully. And I thank you  
9 for your respect for hearing me.  
10 MR. STEWART: Thank you.  
11 MS. POLLACK: Sure.  
12 MR. STEWART: Is there anybody in the audience?  
13 MS. ENGEL: Hi, my name is Elizabeth Engel. I  
14 live at 3041 Indian Point Road in Saugatuck Township. I  
15 have submitted an affidavit but I also am here on behalf of  
16 my husband David Engel who was not able to be here, my  
17 family of charter fishing captains and myself, of course, as  
18 a senior real estate broker, and we are all lifelong  
19 residents of the tri community. I have a few main points  
20 I'd like to reiterate: 1. The likely dangers to navigation.  
21 If a boat is coming from the lake and taking a left into the  
22 proposed marina, consider the possibilities of the backing  
23 up of the channel boats as well as those in the river coming  
24 from downtown, the endangering of the small crafts like  
25 kayaks, canoes or smaller fishing vessels, and the present

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1 congestion at the base of a safe harbor and a boating  
2 destination. To proceed with a marina at this point --  
3 already congested point in the river is clearly poor  
4 planning and will likely result in a marine tragedy. I was  
5 surprised tonight to hear the counsel to tell you to say in  
6 your own lane with that comment, that this shouldn't affect  
7 you, that this shouldn't when personally many of you have a  
8 boat and you do travel that -- that course. I do hope that  
9 you do, in fact, concern yourself with this and many of you  
10 boating members will personally be affected by -- if you  
11 take his advice.  
12 Secondly, the disruption of the fishing grounds.  
13 The DNR plants over 100,000 fingerling salmon every year --  
14 every other year which has proven to be a -- lucrative to  
15 both Michigan's residential recreation and tourism industry.  
16 Third, I've submitted my own affidavit regarding my concerns  
17 as a real estate broker. Above all, my clients need to be  
18 assured that zoning laws are stable and enforced especially  
19 those that are written to protect the area's natural  
20 resources which in turn drive property values. I'm very  
21 concerned that the Planning Commission's preliminary  
22 approval of marina and boat basin in clear violation of  
23 local zoning and tri community master plan will disrupt  
24 Saugatuck's (inaudible) state industry. Thank you for  
25 hearing me tonight.

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1 MR. STEWART: Thank you. Now that I see the hands  
2 up.  
3 MS. ARENS: Yup. Matthew.  
4 MR. STEWART: Next Zoom.  
5 MS. ARENS: Matthew.  
6 MR. BUSSLER: Yes. (Speaking in Neshnabémwen). My  
7 name is Matthew Bussler and I'm the Tribal Historic  
8 Preservation Officer of the Pokagon Band of Potawatomi  
9 Indians. We're based out of Dowagiac, Michigan and we have  
10 a ten county service area in southwest Michigan and northern  
11 Indiana. I'm here to speak on the anticipated negative  
12 impacts and damages to the Potawatomi community that would  
13 result from the development of the proposed marina basin by  
14 the North Shores of Saugatuck, LLC. Within the Saugatuck  
15 traditional cultural property which has been deemed eligible  
16 for the listing by the keeper of the National Register of  
17 Historic Places in 2020 after the initial EGLE permit was  
18 approved in 2017. Allegan County and the areas adjacent to  
19 the Kalamazoo River, including the location of the proposed  
20 marina basin represent areas that are crucially important to  
21 the Pokagon Band because of our ancestral ties to the region  
22 and our desire to protect our homelands. This is including  
23 the Kalamazoo River Mouth TCP the next seven generations.  
24 Multiple tribes including the Pokagon Band, Match-e-be-nash-  
25 she-wish Band, the Nottawaseppi Huron Band, Potawatomi have

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1 affirmed the historical use of the area that includes the  
2 project. Leopold Pokagon is the namesake of the Pokagon  
3 Band. Leopold Pokagon is directly associated with the  
4 Kalamazoo River mouth through his utilization and settlement  
5 of the Odawa and Potawatomi Village, Zagitek. Leopold's  
6 Potawatomi name Zakiwnik means man of the outlet of the  
7 river. The name Saugatuck comes from the word Zagitek which  
8 means mouth of the outlet of the river. This demonstrates  
9 the strong connection our community has with the area and  
10 how the area is represented with the term that was derived  
11 from our traditional language. This property contains  
12 multiple significant cultural resources that are important  
13 to indigenous communities including the Potawatomi and  
14 contribute to the significance of the mouth of the Kalamazoo  
15 River. The property includes nme (lake sturgeon), suckers,  
16 mnoomin which is wild rice, black and other ash trees,  
17 birch, maple, reeds, cattails and other various plants, and  
18 also animals that are culturally significant elements that  
19 are known and understood through tribal stories, oral  
20 histories, clan relationships and ongoing cultural  
21 practices. This cultural landscape's historic and current  
22 functions include but are not limited to seasonal village  
23 sites, camps, a site for offerings, prayers, ceremony,  
24 culture and language revitalization, hunting, fishing,  
25 trapping, harvesting, inter- and intratribal group

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1 gatherings, spiritual and mental health associations, the  
2 burials and graves of our ancestors, viewshed, interdunal  
3 forest, wetlands, rivers, lakes, creeks and marshes.  
4 The Kalamazoo River Mouth TCP and resources within  
5 would most definitely be adversely affected by the proposed  
6 development activities. Therefore, the Pokagon Band is  
7 strongly opposed to the construction of the marina basin of  
8 the Kalamazoo River. In conclusion, to appropriately  
9 steward the Kalamazoo River Mouth TCP and its environmental,  
10 cultural and historical significance, and to avoid severe  
11 damages, the well-being of many indigenous communities,  
12 cultural and traditional life ways all measures should be  
13 taken to avoid the permitting and approval of this  
14 developmental project. Ktthe Migwetth great thanks for your  
15 time and consideration of our concerns.  
16 MR. STEWART: Thank you.  
17 MS. HOBIA: (Speaking in Neshnabémwen). Good  
18 evening, everyone. My name is Lakota Hobia. I serve as the  
19 Tribal Historic Preservation Officer for the Match-e-be-  
20 nash-she-wish Band of Potawatomi Indians and I'm an enrolled  
21 member of the Citizen Potawatomi Nation located down in  
22 Oklahoma. And so -- and also I'm here in a professional  
23 capacity as the THPO for the Match-e-be-nash-she-wish Band,  
24 and their address is 2872 Mission Drive, Shelbyville,  
25 Michigan. And so the Match-e-be-nash-she-wish Band has been

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1 a member of the Saugatuck Dunes Coastal Alliance and been  
2 partnering with the Coastal Alliance since 2018. And in  
3 addition to the various reviews that have been ongoing for  
4 this proposed marina, we've also worked on other projects  
5 with the Coastal Alliance, and this is because so much of  
6 the area that the Coastal Alliance is looking to protect  
7 includes what my (inaudible) Matthew Bussler identified as  
8 the cultural -- or the Kalamazoo River Mouth Traditional  
9 Cultural Property.  
10 And so there's a lot of overlap in kind of  
11 thinking about the preservation and protection of that area.  
12 For the last several centuries the thought has always been  
13 destroy these places, destroy these natural places and we  
14 won't come back to them. As a descendant of a tribe that  
15 was removed from this place, from these places, we still  
16 have stories about these places. We still come back to  
17 these places that we tell our younger generations. In  
18 particular, I can speak from personal experience of my  
19 grandfather specifically bringing us to Michigan, to these  
20 places, to the Kalamazoo River to talk about what these  
21 places meant to us to make sure that that history and that  
22 knowledge was never forgotten.  
23 So with that when the Township Board had reviewed  
24 this project previously there was at that point little to no  
25 communication with the tribes about what was going on and

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1 what was being proposed for this project. We were primarily  
2 notified through the state and federal permitting processes.  
3 And so at that point the tribes began trying to kind of  
4 understand, you know, what this would all entail because  
5 despite understanding that this place has always been  
6 historically and culturally significant, it's also how do  
7 you make your case to a body that may not even understand  
8 our concerns. And so with that throughout that process --  
9 as was passed out by the Coastal Alliance's legal counsel  
10 they provided the ethnographic report that our tribe had  
11 developed.  
12 And so, one, I also just want to make a note, this  
13 report documents some of our most cherished knowledge, and  
14 so I -- I hope that all of you treat it as such. It's also  
15 a document that we treat as highly confidential. It's not  
16 something that we share lightly and with that, you know, I  
17 would ask that, you know, outside of the Board and the  
18 individuals that received the report tonight that you not  
19 share that outside of yourselves. And if an individual  
20 requests a copy, please direct them to our office. And so  
21 with that, you know, this is just one example of the  
22 evidence that has come up since 2018 -- 2017, 2018 that has  
23 been ongoing in this permit review process. And in addition  
24 to that there's some other supplemental materials that have  
25 been determined that have been referenced by the Coastal



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1 Alliance such as various findings by the Army Corps of  
2 Engineers. Also recommendations from the Advisory --  
3 Advisory Council on Historic Preservation, and also the  
4 Michigan State Historic Preservation Office. So with that,  
5 you know, I'm happy to provide any materials that are  
6 requested. It's all part of the public record as those  
7 various permitting processes and reviews continue.  
8 Also I would like to extend an invite, you know,  
9 to a representative or a staff member. We are actually  
10 having our first coordinated joint agency government meeting  
11 regarding the various permits, and kind of the extent of  
12 what each of those reviews include and that meeting is this  
13 Friday at the Match-e-be-nash-she-wish Band's campus. And  
14 so, you know, I can provide my business card but if folks  
15 would like to better understand kind of what's going on at  
16 the state review level, what's going on at the federal  
17 review level, and also what's occurring --  
18 MS. ARENS: Time.  
19 MS. HOBIA: Okay. Thank you very much.  
20 MR. STEWART: Thank you. Zoom.  
21 MS. ARENS: If anyone on Zoom would like to speak,  
22 please raise your hand.  
23 MR. DEAN: I would like to speak. I don't know  
24 how to raise my hand but can you hear me?  
25 MS. ARENS: Can you identify yourself, please?

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1 MR. STEWART: Jim Anderson?  
2 MR. DEAN: My name is Christopher Dean and I live  
3 in Mill Valley, California but I spend my summers at our  
4 family home in Saugatuck, which is the site of the old  
5 lighthouse on the old harbor. We've been on that property  
6 for 88 years and my family has been instrumental in  
7 preserving the natural environment of the area, and we have  
8 fought several lawsuits to keep the area in the natural  
9 south of the -- the river mouth. And so I'm very acutely  
10 aware of what it takes to preserve such a special area and  
11 an endangered area such as a fresh water interdunal  
12 ecosystem. What I'm very concerned about and I think the  
13 ZBA should consider is as an architect it's unfathomable to  
14 me that a ruling was made that so blatantly goes against  
15 the -- the zoning regulations. Honestly, I -- I wish I  
16 could get away with that, but it -- I've -- I've never seen  
17 something like this so egregious. And what's -- what's  
18 especially concerning is that the North Shore has used  
19 language and studies in their application that are clearly  
20 brainwashing. They talk about clustering development where  
21 you look at the lots on the -- on the lakeshore and they're  
22 equally spaced out. You look at the other lots and they --  
23 around the harbor that they -- those that are equally spaced  
24 out. So, you know, we've got to look at what words mean and  
25 look at the track record of what these people are doing, and

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1 it does not appear to me that we can trust them at their  
2 word. For example, when they say the character of the river  
3 mouth is boating, boating is an activity. It's not a  
4 character. The character of the area obviously is one of  
5 pristine dune land. So let's -- let's look at the facts  
6 again as both sides are -- are recommending. I'm also  
7 personally -- our property is the very first residence south  
8 of the river mouth, and so we will be very directly impacted  
9 by the light pollution, the noise pollution, as well as the  
10 unintended circum- -- unintended consequences of changing  
11 the hydrological flow of the river. We don't know what's  
12 going to happen across the way, directly across at the  
13 basin. Whether --  
14 MS. ARENS: Time.  
15 MR. DEAN: -- that will completely erode, whether  
16 it will affect the marshland that we are --  
17 MR. STEWART: I'm sorry but your -- but your time  
18 is out. Thank you very much.  
19 MR. DEAN: Okay.  
20 MS. VAN HOWE: Hello, my name is Fran Poposki Van  
21 Howe and with my husband I own Sweetwater Sailing charters.  
22 What we do is we give people an experience to have a chance  
23 to go out and view the beautiful dune lands and the  
24 environment in Saugatuck. I think I can say something that  
25 almost everybody will agree with and that is that Saugatuck

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1 has been amazingly busy this summer and that goes for the  
2 water as well, the waterfront, the river. It's more  
3 populated with boats than ever before in our 30 years of  
4 being on the river and watching it almost daily and using  
5 it. And initially and from the beginning our concern has  
6 been the development of a marina at the mouth of the river.  
7 Because the channel is very small, it's narrow, and then  
8 when you enter there the turning basin is small and on a  
9 curve of the river. The site line is not straight. Plus  
10 there are new -- what's changed since '17 and '18 is more  
11 boats -- more people, more boats who live here and have  
12 boats or have started charter businesses. There's a large  
13 schooner called the Serenity and several other smaller  
14 sailing charters and those along with the -- the really neat  
15 little electric boats that ply the river are all using the  
16 river and it's getting much more use than -- than it ever  
17 has in the past. Thank you very much.  
18 MR. STEWART: Thank you. Do we have anybody at  
19 Zoom?  
20 MS. ARENS: Is there anyone else on Zoom that  
21 would like to speak? Nope.  
22 MR. STEWART: I guess not.  
23 MR. SWAN: Good evening. I'm David Swan, a  
24 founding board member of the Alliance. I own a cabin at 876  
25 Park Street in Saugatuck. The affidavit I wrote and signed

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1 is tab 17 in your blue binder. A few years ago my family  
2 purchased the Gage cottage, a small 90-year-old cabin  
3 situated within the designated critical dune area. It is an  
4 inholding surrounded by Mount Baldhead Park and within about  
5 400 feet of the Ox Bow School of Art. Most of you have  
6 likely passed it while out hiking the Fishtown Trail area.  
7 A few points I'd like to emphasize. My affidavit is new  
8 because my family and I did not own our home in 2017. My  
9 affidavit is material in this case now that I am a property  
10 owner within the designated critical dune area. Out of the  
11 1,581 households in our tri community, our cabin is one of  
12 only 175 homes within the designated critical dune area. I  
13 was going to talk about how I meet the three criteria but I  
14 know that that is for the next meeting, and I just wanted to  
15 address some of my concerns about the new evidence and what  
16 the North Shore -- Shore of Saugatuck attorney stated.  
17 Mr. Grabielse stated that not much has changed in  
18 the past six years. However, North Shore has changed their  
19 dewatering and construction plan significantly three times,  
20 so many times that the state permit expired. US Army Corps  
21 of Engineers usually takes three months on average to review  
22 a permit. They're now in year number seven.  
23 MS. ARENS: One minute warning.  
24 MR. SWAN: That is primarily because of new  
25 evidence, the ethnographic report and especially the US Army

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1 Corps of Engineer memorandum per record. Mr. Gabrielse's  
2 word salad that you -- that he showed on the screen, Coastal  
3 Alliance claims, there were eight words that also appear in  
4 the US Army Corps Engineer memorandum for record. Lake  
5 sturgeon appears 100 times; habitat appears --  
6 MS. ARENS: 30 seconds.  
7 MR. SWAN: -- 41 times; dune appears 34 times;  
8 wetlands appears 12 times; vibration appears two times; boat  
9 traffic appears 14 times; water quality appears 24 times.  
10 This underscores the importance of new evidence which you  
11 will see in tab 18 in the very organized blue binders.  
12 Thank you for your time.  
13 MR. STEWART: Thank you.  
14 MR. SWAN: I appreciate it.  
15 MR. STEWART: Well, we don't have Zoom. Is there  
16 anybody else? Yes.  
17 MR. ENGEL: Good evening, my name's Hunter Engel.  
18 I live at 3 -- 3171 Lighthouse Way. I am a fourth  
19 generation member of the Engel -- Engel here at this -- in  
20 this area, third generation charter fishing captain.  
21 Fishing Lake Michigan and navigating the river is how I make  
22 my living. And it's all -- and it's all I've really ever  
23 known. And I'm very concerned about the sa- -- the safety  
24 concerns that this new harbor would have. Very, very  
25 congested harbor and as was stated earlier, there's a lot of

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1 navigation but also the biggest thing that I'm also worried  
2 about is the impact that it would have on the fisheries.  
3 The local fishery is over a million dollar industry in  
4 Saugatuck Township, the City of Saugatuck and the City of  
5 Douglas combined. Michigan Sea Grant conducted a study in  
6 Saugatuck recognizing Michigan ranked as second most popular  
7 destination for out of state anglers, first being Florida.  
8 Roughly 74 percent of customers who travel to fish on  
9 charter boats list charter fishing as their primary reason  
10 for their trip to Saugatuck. These are the tourists who  
11 come for fishing. They buy hotels, they dine at the  
12 restaurants and they shop at the local area. The marina  
13 pro- -- poses a threat for the river -- the mouth of the  
14 river where the water diversion -- and to the chinook  
15 salmon, the coho salmon and the rainbow trout. As they  
16 return to their nat- -- to the rivers, to their natural  
17 spawning grounds that are upstream, maintaining the local  
18 fishery is very imperative to sustain our community. And  
19 thank you very much.  
20 MR. STEWART: Thank you. Is somebody -- someone  
21 back? Yes, sir.  
22 MR. HARRISON: Good evening, members of the ZBA,  
23 counsel -- both counsels, my name is Dayle Harrison. I also  
24 happen to be an attorney. Paying my dues anyway. I'm going  
25 to get right into the meat of this. My address is 3108 62nd

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1 Street. First, I want to address this issue of nothing has  
2 changed. Think about that. The Supreme Court stepped in,  
3 the law of the land stepped in and said, "We have a new  
4 standard. The standard you used, the former ZBA, is crap.  
5 It doesn't -- it's not -- it doesn't have any merit under  
6 current law so I would recommend that you move to that new  
7 direction." Counsel for North Shores also indicated to some  
8 extent that the Saugatuck Dunes Coastal Alliance has not  
9 suffered any harm different than others in the community.  
10 Well, let's focus on what they are about as far as I  
11 understand it. They're an ecological, environmental  
12 organization concerned about historical and cultural issues.  
13 At the planning stage a lot of these issues were brought up  
14 as concerns, but the Planning Commission dropped the ball on  
15 this. They didn't look at the ordinance where there's a  
16 pure prohibition about building a basin. So they didn't do  
17 any EIS. They didn't do an adequate cultural investigation.  
18 The historical documentation was not looked at. All these  
19 things the Planning Commission didn't look at. So what's  
20 the harm now looking at the new information to help provide  
21 some clarification of a lot of the issues that were  
22 overlooked back in the earlier part of the process? I see  
23 no harm quite frankly. It's important that we address the  
24 remand situation that was caused by the Township with all  
25 the litigation. And Steve Kushion, for example, the former

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1 zoning administrator, should never have allowed the  
2 application that North Shores brought was --  
3 MS. ARENS: One minute warning.  
4 MR. HARRISON: -- (inaudible) to the surface. Can  
5 I have one minute?  
6 MS. ARENS: Yeah.  
7 MR. STEWART: You have one minute.  
8 MR. HARRISON: Thank you. So Steve Kushion, the  
9 former zoning administrator, didn't fulfill his obligation  
10 in this process because he forwarded the application even  
11 though he knew -- did not match it with the zoning to the  
12 Planning Commission. The Planning Commission then as the --  
13 under the advice of Mr. Smith at that time believed that the  
14 DNR and the Corps of Engineers would take care of the marina  
15 issues, not to worry about the zoning.  
16 MS. ARENS: 30 seconds.  
17 MR. HARRISON: So that's -- there's been so many  
18 oversights and now we have a chance to bring more data in,  
19 to clarify the situation and get a little more harmony in  
20 protecting the integrity of our ordinance that we so value  
21 so much in all our lives. Thank you very much.  
22 MR. STEWART: Thank you. Do we have anyone else?  
23 MR. BOSGRAAF: Scott Bosgraaf both of Holland and  
24 Saugatuck; 148 South River and also 355 Dugout Road in  
25 Saugatuck here and then eventually 6766 Saugatuck Beach

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1 Road. So tonight we have Saugatuck Dunes Coastal Alliance  
2 claiming to be an aggrieved party -- this ultimately would  
3 be the question before you. New information -- and I'll try  
4 to stay on new information today -- the courts historically  
5 have been pretty clear about what information can be  
6 considered in an appeal. I consistently heard, "If they're  
7 not in the record on appeal, they are not to be considered  
8 by the court." There's nothing that has been done. There  
9 was nothing that was done by the original ZBA to prevent the  
10 applicants, the Coastal Dune Alliance, from submitting this  
11 information prior to the 2017, '18 ZBA meetings; nothing.  
12 In fact, they could have hired their own experts, included  
13 previous authored dissertations, included the affidavits  
14 presented tonight at the correct and the proper time. This  
15 would -- what one would typically expect to happen. I know  
16 historically you would not have gotten an argument from Mr.  
17 Straub or Mr. Grabielse, but here we are saddled with the  
18 instruction from Judge Robert Kengis that defines there's  
19 additional evidence that was for good reason not submitted  
20 and you guys need to find it. Saugatuck Coastal Dune  
21 Alliance, I'm here to tell you that nothing additional  
22 submitted by the Saugatuck Coastal Dune Alliance should be  
23 considered. Anything different would be a mistake.  
24 Allowing the Coastal Dune Alliance to expand the record  
25 tonight to include new affidavits, new experts, new

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1 dissertations, and the largely inappropriate last page of  
2 their submittal that says, "We have future evidence and we  
3 want to reserve the right to supplement" --  
4 MS. ARENS: One minute.  
5 MR. BOSGRAAF: -- would only expand the scope of  
6 the original affidavits. Allowing the Coastal Dune Alliance  
7 to add additional items that were not present in the  
8 original record would in turn require North Shore as allowed  
9 by the Court Rules to supplement the record once again.  
10 Anything different would best be described as like a hamster  
11 wheel, or what I commonly refer to as a moving target.  
12 North Shores, what we've presented for your consideration  
13 and why it should be considered -- North Shores expert  
14 surveys responses are detrimental.  
15 MS. ARENS: 30 seconds.  
16 MR. STRAUB: 30 seconds.  
17 MR. BOSGRAAF: Oh. They allow decision maker to  
18 make an important decision based on allegation in the  
19 original affidavits. So why has North Shore not presented  
20 them at the original ZBA meeting? 'Cause they didn't exist.  
21 It took years to create these reports and to respond to  
22 these things. A life lesson. I'm not an attorney. I don't  
23 expect and pretend to be one, but I can tell you from an  
24 October 25, '18 hearing that I attended in Judge Kengis'  
25 courtroom --

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1 MS. ARENS: Time.  
2 MR. BOSGRAAF: Can my wife give me time just to  
3 finish this? Use her time? Would it be possible? But I  
4 don't know who the Chair -- Chair.  
5 MR. STEWART: I'm the Chair.  
6 MR. BOSGRAAF: All right. Could I get my wife's  
7 three minutes and just finish this? Thank you. I'm not an  
8 attorney and I don't pretend to be one. I can, however,  
9 tell you that I understand from a motion hearing that I  
10 attended in Allegan County on October 25, 2018 -- I attended  
11 a motion hearing in Judge Robert Kengis' courtroom. This is  
12 the day that the court finds that the Coastal Dune Alliance  
13 is not an aggrieved party. The Coastal Dune Alliance at the  
14 beginning of the proceedings began with Scott Howard, an  
15 attorney for the Coastal Dune Alliance, trying to introduce  
16 new information on the record. The Township's attorney Mr.  
17 Straub was present and North Shores' attorney Mr. Grabielse  
18 was present, both objected. Judge Kengis heard arguments  
19 and ruled not to allow this new information supplied by the  
20 Coastal Dune Alliance to be added to the record. Judge  
21 Kengis limits that -- limited the information then and you  
22 should limit it now.  
23 MR. STEWART: And you're getting close to being  
24 done?  
25 MR. BOSGRAAF: Yes, one more paragraph.

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1 MR. STEWART: All right.  
2 MR. BOSGRAAF: North Shores -- during the same  
3 October 25, 2018 hearing, North Shore presented and had  
4 included in its motion additional expert evidence that was  
5 allowed and was ultimately included in this decision. North  
6 Shores' experts, surveys and responses needed to be  
7 presented to allow the decision maker to make an informed  
8 decision based on the allegations of the original  
9 affidavits. North Shores' additional information is really  
10 a response to death by a thousand cuts. It's a box of Band  
11 Aids. Its information is appropriate and it's appropriate  
12 to the items that are outlined in the original affidavits.  
13 Thank you for your time.  
14 MR. STEWART: Thank you. And do we have anybody  
15 else?  
16 MS. ARENS: There's one on Zoom.  
17 MR. STEWART: There's one on Zoom. Okay. Let's  
18 take the Zoom.  
19 MS. HILL: Hi, there. Thank you very much for  
20 taking my comments. My name is Mary Hill. I am located  
21 actually in Colorado, but I grew up in Saugatuck (inaudible)  
22 and come back there regularly to vacation. And I really  
23 just had one point to make that the -- when considering  
24 impact of -- of the construction there's -- the amount --  
25 one thing I noticed in an earlier hearing was that the

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1 amount of sediment to be removed and placed in the cleared  
2 area that we saw a picture of, if you just take the volume  
3 of that material and divide it by the area, that's 20 --  
4 that's 28 feet high over that whole area. It doesn't seem  
5 like that gets mentioned very much. But also for erosion  
6 purposes it wouldn't just be 28 feet high, it would have to  
7 be much higher in some parts of it to try to avoid slopes  
8 that would erode very easily. So the -- so I would -- I  
9 would -- also I am associated with the Dune Alliance and it  
10 is I think an important organization for the community to be  
11 coordinated with and for us to have a voice in this table I  
12 think is extremely important to have. That all I have to  
13 say. Thank you so much.  
14 MR. STEWART: Thank you.  
15 MR. WALLACE: Hello, everybody. My name is  
16 Nicholas Wallace and my address is 3524 Dugout Road, and  
17 tonight I'll be speaking on behalf of my family Diane Bily,  
18 Katherine Bily-Wallace and Michael Bily. Thank you to the  
19 ZBA for the opportunity to speak tonight and thank you all  
20 in the audience for attending and participating in this  
21 incredibly important concern within our state and our local  
22 community. I urge the ZBA to consider my affidavit as new  
23 evidence since I wasn't 18 years old yet in September of  
24 2017. My family and I are likely to be more severely  
25 impacted than others in the community due to the proximity

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1 of the (inaudible) land, marina basin and laydown area. The  
2 marina will be visible from our dock and I regularly utilize  
3 the mouth of the Kalamazoo River via kayak, canoe as well as  
4 on land through the Patty Birkholz natural area and the  
5 Saugatuck Harbor natural area. As an adjacent riparian I'd  
6 like to have a conversation about my riparian rights. If  
7 the fundamental layout of the cove were to change and  
8 introduce several dozen large yachts trying to navigate an  
9 already heavily trafficked area, the proximity of the  
10 laydown area to my family cottage will impact our property  
11 rights due to construction noise and disturbance to the  
12 otherwise serene landscape surrounding us not to mention the  
13 likelihood of erosion as previously mentioned on the Dugout  
14 Road. It's impossible to quantify a pecuniary interest on  
15 this property, one I planned on always keeping in the  
16 family. However, my special interest property rights and  
17 riparian rights will certainly be impacted. The proposed  
18 marina and laydown area surely will devalue the time I spend  
19 and the experiences I make at this cottage, and it will  
20 permanently transform the way in which I utilize my time  
21 here. I'm from Chicago. It will undo the very reason I  
22 wish to call this cottage my home someday. What exists at  
23 the mouth -- the river mouth currently is a cultural,  
24 ecological, and historical trifecta of resources that we  
25 cannot afford to let slip away. Assigning a dollar value to

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1 the resources we are trying to protect negates --  
2 MS. ARENS: One minute.  
3 MR. WALLACE: Thank you -- negates the reality  
4 that what would be lost for my family and for those in the  
5 community who utilize this river mouth would be priceless.  
6 Considering what is explicitly stated in Article 12, the  
7 Tri-Community Master Plan, Inland Lakes and Streams Act, as  
8 well as a handful of other state and federal laws regarding  
9 waterways and wetlands, it is clear to myself and many  
10 others in the community that this marina violates local  
11 zoning and my property rights riparian. Thank you all.  
12 MR. STEWART: Thank you.  
13 MS. ARENS: Anyone else on Zoom? No.  
14 MR. STEWART: Anyone else here? Well, it appears  
15 we -- we're done with the open meetings part of this thing.  
16 MR. STRAUB: Public meeting.  
17 MR. STEWART: Public meetings part of this thing.  
18 I move to -- can I have a motion to close the open meetings?  
19 MR. STRAUB: Close the public portion of  
20 the meeting.  
21 MR. STEWART: Public portion of the open meeting.  
22 MR. FELKER: So moved.  
23 MS. DRITSAS: Second.  
24 MR. STEWART: It's been moved by -- I'm sorry.  
25 Which one of you moved?

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1 MR. FELKER: Rex.  
2 MR. STEWART: Rex Volker (sic) and seconded by  
3 Denise Webs- -- or by Catherine Dritsas that we close the  
4 public comments portion of the meeting. All for the meet --  
5 motion?  
6 MEMBERS: Aye.  
7 MR. STEWART: All opposed? The motion is carried.  
8 Seems that we're done so --  
9 MS. OSMAN: A motion.  
10 MR. STEWART: Yup. A motion to -- let's take a  
11 look at this. I'm sorry.  
12 MS. OSMAN: This part. Take the matter under  
13 advisement.  
14 MR. STEWART: Yes. A motion to take the -- this  
15 material under advisement. I've recommended a different  
16 date. Do we have a motion?  
17 MS. DRITSAS: So moved. I'm confused what he's  
18 asking.  
19 MR. STEWART: Yeah. That's why I'm looking.  
20 MR. STRAUB: What we're -- what you want to do is  
21 to take the material under advisement and move to adjourn --  
22 MR. STEWART: Adjourn the meeting.  
23 MR. STRAUB: -- the meeting presently.  
24 MR. STEWART: Okay.  
25 MR. STRAUB: And then announce another -- a new

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1 date will be announced in the future very soon.  
2 MR. STEWART: Soon.  
3 MS. DRITSAS: Okay. So the motion is to --  
4 MR. STEWART: The motion --  
5 ~~MS. DRITSAS~~ <sup>webs</sup> MS. DRITSAS: -- accept the material presented and  
6 move for an adjournment.  
7 MR. STEWART: Yup. What she said. Do I have a  
8 motion?  
9 MR. STRAUB: You have a second.  
10 MS. DRITSAS: That's the motion.  
11 MR. STEWART: So a second?  
12 MS. DRITSAS: You need a second. Rex?  
13 MR. FELKER: I second.  
14 MR. STRAUB: Take a vote.  
15 MR. STEWART: Take a vote. Aye all -- all for?  
16 MEMBERS: Aye.  
17 MR. STEWART: All opposed? There aren't any.  
18 We're closed. The meeting's closed.  
19 (Meeting adjourned at 7:19 p.m.)  
20  
21  
22  
23  
24  
25

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CERTIFICATE

1  
2  
3  
4 I, Norma Manheimer, a Certified Electronic Recorder and  
5 Notary Public within and for the State of Michigan, do  
6 hereby certify:  
7 That this transcript, consisting of 66 pages, is a  
8 complete, true, and correct record of the Saugatuck Township  
9 Zoning Board of Appeals special meeting taken in this case  
10 on September 11, 2023.  
11 I further certify that I am not related to any of the  
12 parties to this action by blood or marriage; and that I am  
13 not interested in the outcome of this matter, financial or  
14 otherwise.  
15 IN WITNESS THEREOF, I have hereunto set my hand this  
16 20th day of September, 2023.  
17  
18  
19 *Norma Manheimer*  
20  
21 Norma Manheimer, CER 9573  
22 Notary Public, State of Michigan  
23 County of Kent  
24 My commission expires: 06/03/2026  
25