

Board of Directors

Hugh V. Anderson
Georgia Boerma
Bud Botkin
Steve Brickman
Marcy Colclough
Laurie Crane
Charles F. Davis, III
Marshall Eisenberg
Hub Erickson
Bernard Kelley
Stuart Nathan
Susan Pritzker
Larry K. Snider
Mary Stephenson
Gerard Thomas



PRESERVE THE DUNES, INC.

P.O. Box 581
Riverside, MI 49084-0581
269-208-1711 sosdunes@daac.com

October 3, 2006

Covert Township Board
P.O. Box 35
Covert, MI 49043

re: Proposed Zoning Ordinance

Dear Members of the Board:

I am writing on behalf of the board and members of Preserve the Dunes, a grass roots, not for profit, environmental organization dedicated to protecting the unique and fragile dunes of Southwest Michigan. Many of our 1,250 members live or own property in Covert Township.

We appreciate the work of the Planning Commission over the past year or more. Many improvements have been made to the zoning ordinance.

As you are aware, in Covert Township we have some of the most majestic and impressive sand dunes in the state. In 1996, MSU, working jointly with the MDEQ on a reevaluation of the critical dune area of the state, recommended almost doubling the protected area in the township.

We are very concerned that the proposed ordinance and rezoning of the township will eliminate or reduce existing protections of the dunes and other fragile environments. We ask that you will remand the proposed zoning ordinance to the Planning Commission for reconsideration of the issues outlined below.

Article IX: Environmental Sensitive Overlay (ESO) District
Article XXII: Environmentally Sensitive Land Regulations

Several revisions to these articles represent significant reductions in the protection provided.

1. Extent of the District

Since 1989, the ESO district has contained all of the land west of I-196. The new zoning map will alter the ESO district boundaries. On the positive side, the Nature Conservancy's Ross Preserve has been added to the district. On the negative side, two areas that should be protected have been removed.

- a. The first is the land east of the Blue Star Highway from the southern border of the township north to CR376 (44th Ave.). This area includes the wetlands around Rogers Creek, and the Nadeau Pit sand mine, which contains an

MDEQ designated wetland and is surrounded by high steep dunes. The DEQ continues to define this area as a critical dune area (CDA).

- b. The second is land north and south of Covert Road (CR378) east of the Blue Star Highway. A portion of this land was a sand dune strip mine (the Busse Site). All mining has stopped and the site is in the final phases of reclamation. Nearly all of the land was in the area that MSU recommended be added to the CDA and is zoned as Rural Residential.

Both of these areas should remain protected and left in the ESO district.

2. Density increases in the ESO District

The previous draft version of the new ordinance had included a prohibition of all PUDs in the ESO District except for participating in a PUD when the property was designated as “permanently preserved land area.” This was done to protect these fragile areas from impairment and destruction, and in response to overwhelming public support.

This provision has been eliminated probably because there would have been no provision for subdividing land.¹ However, it will also make it possible to increase the density in the ESO District.

- a. The current draft ordinance (§16.07-B) allows up to a 50% increase in density as an incentive to a developer for creating a cluster development or an open space/farmland preservation. The increased density is counter to the purpose of the ESO. No developer needs an incentive to develop a PUD in the ESO. The sites are very attractive. They sell themselves — at ever increasing prices. This bonus should not be available in the ESO District.
- b. Chuck Eckenstahler has provided Catherine Kaufman, our attorney, with a revised Article XVI that eliminates TDR and non-contiguous open space for cluster PUDs. We assume that this revision was made with approval of the Planning Commission and is in the version that you are considering.

The version sent to the Van Buren County Planning Commission for review and subtitled “Recommend by The Township Planning Commission to the Township Board for Adoption” dated August 24, 2006, allows the use of PUD-Transfer of Development Rights (TDR) in the Rural Residential district. A significant portion of what has been considered the environmental sensitive area since 1989 is zoned Rural Residential. This provision could drastically increase the allowable density. This would be a significant threat to these areas.

Incentive density increases, TDRs, and non-contiguous open space for cluster PUDs should not be allowed in the ESO District.

¹ See definition for “land division” Article II, Page 10.

3. Permitting Requirements in the ESO District

The current ordinance requires that an Environmentally Sensitive Land Use Permit be obtained for every project in the ESO district. The revised ordinance exempts single-family residences (§22.04). This makes the designation of environmentally sensitive areas and the regulation of activity within them meaningless because the districts in the ESO district allow only single family residential (LD-1, RR).² Furthermore, this exemption conflicts with §22.08, which specifies how an application for a single-family residence is to be reviewed.

The Environmentally Sensitive Land Use Permit should be required of *all* projects in the ESO district.

4. Limits on clear cutting (§22.06)

The current ordinance limits the area that may be clear-cut for a residence to 7,500 square feet per 5 acres. That ratio may be increased subject to a variance. Under the proposed ordinance, the Zoning Administrator can increase this ratio.³ We believe that this is an important requirement for protecting the dunes and related ecology. It should be varied only by the ZBA, not by an “administrative variance.”

5. Regulations for PUDs in Environmentally Sensitive Areas

For the first time, the proposed zoning ordinance would allow PUDs in the ESO district. Several large parcels have not yet been developed. Regulations governing minimum lot size, setbacks, and lot dimensions are needed for PUDs in the ESO district for the LD-1 and RR districts. Development in environmentally sensitive areas should be somewhat dispersed so that the natural setting is not significantly interrupted by large-scale, dense development.

6. Water and street side yards

Within the ESO, an owner must maintain 200-foot deep area on the waterfront and street side in its natural vegetation and character with no more than 10% cleared. This requirement (§9.02-2 and §9.02-3) may be varied by the Zoning Administrator. We believe it should be varied only by the ZBA.

7. Administrative Variances in the Environmentally Sensitive Overlay District

Administrative variances (§27.04) are precluded from the LD-1 District except for specific conditions (see footnote 3). This prohibition should be extended to the entire ESO district to provide added protection and oversight to development in all of these fragile areas.

² The Palisades Power Plant (Industrial), the Ross Preserve and Southwest Michigan Land Conservancy properties (Recreation) are the exceptions.

³ We question the legality and wisdom of the use of administrative variances (variance issued by the zoning administrator). The practice is open to misuse, and eliminates notice and due process. State law authorizes the Zoning Board of Appeals to issue variances. Aside from these general concerns, we oppose it for the specific conditions that we have identified in this letter.

October 3, 2006

Several other portions of the ordinance affect the coastal zone in the township.

Regulation of Waterfront Properties ¶18.11

In the current zoning ordinance, accessory uses are prohibited from the water-front yards. In order to preserve the beauty of the area, enjoyment of homes and views, and land values, we generally oppose accessory uses on the water-side of the primary structure. As long as the ordinance maintains that they must be located landward of the MDEQ 60-year erosion hazard line or 200 feet (natural setback area) behind the top of the bluff, we do not object.⁴

Accessory Use Structures and Buildings ¶18.12-5

We object again to using an administrative variance to vary requirements. Accessory structures are limited to 15 feet, which may be exceeded “upon approval of the zoning administrator” for projects in residential districts under specific conditions.

We cannot see who benefits from the proposed revisions that reduce protections and the protected area of the Environmentally Sensitive Overlay District — certainly, not current citizens and property owners in the affected areas. There are no evident benefits to other citizens of the township. The only potential beneficiaries are developers who have no stake in the natural beauty of Covert Township, and whose only objective is to maximize the profits from development projects.

Thank you for consideration of our concerns. I hope that this letter will be useful in your review of the proposed zoning ordinance.

Sincerely,



Charles F. Davis, III

⁴ However, we see no reason to locate parking or garages on the water-side of the principal use.