

S.O.S. DUNES NEWS



Save Our Sand Dunes

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NEWS UPDATES

APPEAL TO BE HEARD

PTD's appeal to the Circuit Court of the DEQ's renewal of the Nadeau Site sand dune mining permit will be held on August 16 at 1:30 PM in the court of Judge Paul Maloney in the Berrien County Courthouse.

We are hopeful that at or soon after this hearing, the judge will rule on the legal issues we have presented. The brief filed by our attorneys is available on-line at the web site: sosdunes.daac.com.

COVERT ZONING REVISIONS

On Wednesday, August 23, at 6:00 PM the Covert Planning Commission will meet to hear comments on the revised zoning ordinance.

At the previous meeting on May 24, the Covert Planning Commission held a public hearing on the proposed revisions to the zoning ordinance.

About 25 people attended. PTD and others voiced strong opposition to a number of changes that would have opened up the lakeshore to significant development.

PTD provided the commission with a summary and a detailed list of concerns (available at the website sosdunes.daac.com).

Catherine Kaufman, a planner and attorney, had been retained by PTD to review the draft ordinance. She presented a number of additional concerns as well.

It became clear that the com-

mission members did not support the intense development that would have been allowed, and that the threats to the lakeshore were the result of apparently unforeseen interactions of diverse parts of the ordinance.

We have reviewed a further revised version of the ordinance that was prepared in response to the comments of the public hearing and have found that many of our concerns have been addressed — but others remain.

Under the previous version, it would have been possible to "transfer development rights" (TDR) to the area along the lakeshore. That is, a developer could have used the allowable density from a non-contiguous piece of land to increase what would have been allowed on a lake side parcel — provided that provisions were made so that the *remote land* would be left undeveloped or used only for farming in perpetuity.

For example, a 20 acre parcel zoned agricultural would allow subdivision into four 5-acre lots. If this land were protected from development in perpetuity, those 4 dwelling units could have been located on a lakefront parcel.

Another concern was the use of a 50% increase in density as an incentive to induce developers to create Planned Unit Developments. When this bonus in combined with TDR, the 20 acres would have allowed an addition

of 6 units to the lakefront parcel.

PTD also questioned provisions that would allow the zoning administrator to issue certain variances. We believe that the practice would be prone to abuse, since it provides no notice to neighbors and no opportunity for a public hearing.

These provisions, as they apply to the lakefront, have been removed for the most part but not entirely from the latest revision.

Within the Low Density Residential District, LD-1 (the lakefront area), the prior version reduced side yard setbacks from 30' to 15', front yards from 200' to 25' and rear yards (along the waterfront) from 300' to 35'. The original setbacks have been only *partially* reinstated in the current version.

In the first and the current revisions, protection for environmentally sensitive areas has remained only *partially* intact. For example, clearing for a single family house is still limited to 7,500 square feet per 5 acres of lot area, but is subject to a variance by the zoning administrator. Furthermore, part of the area west of I-196 is no longer protected, and the maximum allowable cleared area by variance is not limited.

A new revision is in the works. Prior to the Planning Commission meeting on August 23, we will post a list of remaining concerns on the web site: sosdunes.daac.com.

BEACHWALKING

We are now in the second summer since the Supreme Court issued its opinion in *Glass v Goeckel and Goeckel*. There remains confusion regarding what the ruling meant. Property owners have complained of people arriving by boat and spending the day picnicking on their beach.

The ruling allows walking but not picnicking. There is a link to the full text of the ruling on the PTD website: sosdunes.daac.com.

SOS Dunes News has excerpted the key portions of the opinion below.

The first sentence of the ruling (page 1) reads:

“The issue presented in this case is whether the public has a right to walk along the shores of the Great Lakes where a private landowner ostensibly holds title to the water’s edge.”

On page 4, the Court adopts the Wisconsin Supreme Court’s definition of “ordinary high water mark:

“In this case, the property now owned by defendants was originally conveyed subject to specific public trust rights in Lake Huron and its shores up to the ordinary high water mark. The ordinary high water mark lies, as described by Wisconsin, another Great Lakes state, where ‘the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic.’” *State v Trudeau*, 139 Wis 2d 91, 102; 408 NW2d 337 (1987). Consequently, although defendants retain full rights of ownership in their littoral property, they hold these rights subject to the public trust.”

And then the Court concludes on page 5:

“We hold, therefore, that defendants cannot prevent plaintiff from enjoying the rights preserved by the public trust doctrine. Because walking along the lakeshore is inherent in the exercise of traditionally protected public rights of fishing, hunting, and navigation, our public trust doctrine permits pedestrian use of our Great Lakes, up to and including the land below the ordinary high water mark. Therefore, plaintiff, like any member of the public, enjoys the right to walk along the shore of Lake Huron on land lakeward of the ordinary high water mark.”

YOUR SUPPORT NEEDED

Now that we are back in court, we are again incurring significant legal fees. The need for funds are already being dramatically increased.

Continued monitoring of sand mining activities and maintaining vigilance requires financial resources, as well.

Our successes to date, have been made possible by the financial donations of our members. We estimate that at least \$100,000 will be needed go through the appeals process. Your financial support of these efforts is critical.

Please continue your support. Complete the membership form on page 3 and send it in with your contribution.

RESIDENTIAL DESIGN AWARDS

PTD sponsored a critical dunes residential design awards program. To be eligible, projects had to be built after the Sand Dune Management and Protection Act was enacted and be located in the critical dunes.

Projects were evaluated on the basis of excellence in design, and the degree to which they maximized the advantages of being located in the dunes while minimizing the impacts on the dunes.

Four projects were selected for awards. These are illustrated below with a summary of jury comment. These projects aren’t about “grabbing as much property as possible and then building the biggest house you can. It’s about tiptoeing on the land, enjoying the enormous expanse of natural beauty it provides without claiming the terrain as



Photo: Doug Snower Photography

your own.” (Excerpted from Design Guidelines for Sea Ranch, CA.)

THE HOLABIRD HOUSE, HARBERT, MI

Architect: Kuklinski + Rappe Architects, Chicago, IL

The design made creative reuse of an existing foundation left after a fire destroyed the previous cottage on the site. The design of the new house accommodates a very different set of requirements than the original cottage — it provides separate indoor and outdoor living spaces for an older couple and each of their two adult daughters, as well as collective spaces for the entire family.

Use of the existing foundations without addition made it possible to retain existing large trees very close to the house and under story plants to remain untouched.

The designers used a rich palette of materials and colors: wood, Corten steel panels, vertical silver colored metal standing seam siding on the exterior with interiors of warm wood paneling accented with white trim, and bamboo floors against a backdrop of white and deep red walls.

The jury was disappointed that the street-side yard of the house has become an extensive parking area nearly devoid of any vegetation.

Please return this response form to support the goals of Preserve the Dunes.

We need to tell elected officials and government employees how many residents and property owners support these efforts. This measure of support is critical to successfully protecting the dunes and restricting sand dune mining. Only your name and address are necessary.

Contributions are needed to continue our struggle to preserve the dunes through distribution of information, keeping our governmental officials informed, and ensuring that the laws protecting sand dunes are enforced.

Preserve the Dunes, Inc. — Response Form

Mail the completed form to Preserve the Dunes, Inc., Post Office Box 581, Riverside, MI 49084-0581

I want to preserve the dunes of southwest Michigan and am concerned about the expansion of sand dune mining.

Name(s)		
Home Address		Michigan Address (if different)
City, State, Zip		City, State, Zip
Telephone 1	Telephone 2	Telephone
Fax	eMail	Fax

Annual Membership Form

In addition, enroll me(us) as a member for 2006
 Individual (\$6)
 Family (\$10)
 I have also included a contribution in the amount of \$

Please contact me to work on the following committees:
 Legal Affairs
 Finance/Fund Raising
 Newsletter
 Public Hearings
 Memberships

Membership dues underwrite the expense of keeping members informed about efforts to preserve the dunes and to monitor sand mining activities in Berrien, Van Buren and Allegan counties. Checks should be made payable to Preserve the Dunes, Inc., which has 501(c)3 status. Contributions are tax deductible.



Photo: Lars Hansen



Photo: Barbara Karant — Karant + Associates, Inc.

Structural Engineer: Dickson Senffner
GUEST HOUSE, THUNDER MOUNTAIN, COVERT, MI
Architect: Mikkel Hansen, Black Mountain, NC

The jury felt that this project was a sympathetic addition and deserved the “Light-Touch Award.” The guest house is delicately set on the dune and supported by only eight timber posts. With the existing house, it creates a pleasantly scaled outdoor living space.

Its efficient use of space provides two bedrooms (one with a sleeping loft), and bath within a 366 square foot footprint. Extending the cantilevered decks beyond the drip line of the roof further diminishes the impact on the dune. The sympathetic choice of materials and color complements and contrasts with the natural setting.

Design Team: Dennis D. Reckley, AIA; Mikkel Hansen, AIA
STUDIO, WILDERNESS DUNES, COVERT, MI
Architect: Kathryn Quinn Architects, Ltd., Chicago, IL

The design makes inventive use of sliding barn doors, especially at the front entrance. Careful placement of the studio preserved the setting and trees, and maintains a natural drainage swale.

The finely detailed, all wood interior creates a warm ambience. Natural materials and colors create a sense of the structure belonging to its setting. The stone core anchors the building to the site on a ridge, over which the decks and studio spaces hover. The jury thought the frenetic exterior railing was a weak element in contrast with the calm interior and questioned the use of tropical wood, ipé, for the newels of the railings.

Design Team: Kathryn Quinn, Julie Hausch-Fen
General Contractor: Lakeshore Enterprises
Structural Engineer: Wightman & Associates

Preserve the Dunes, Inc.
P. O. Box 581
Riverside, MI 49084-0581

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Landscape & Garden Design: Beikmann Associates

Landscape Architecture: J.F. New

KOHN HOUSE, WILDERNESS DUNES, COVERT, MI

Architect: by Gelick Associates, Inc., Chicago, IL

This project responds imaginatively to the site; it is not only about architecture but the site as well. Rather than forcing a house onto the steep and easily damaged dunes closest to Lake Michigan, the main residence was placed 500 feet from the lake on the top of the dune.

The jury admired the way in which the site provides a sequence of experiences from the beach via stairs, pavilion, path, bridge, steps, and decks to the house. Each element was sensitively placed respecting contours and trees. The simple floor plan is elegant and rational. The jury's lone criticism of the project was its use of *Vinca*, a non-native species, as a ground cover on the south side of the house.

Bridge Engineering: Continental Bridge, Alexander, MN

Technical Consultant: Phil Johnson

Engineering: Resource Management Group, Inc.

These and other submissions will be used to illustrate design strategies for building in the dunes in a forthcoming book on planning and design for the Michigan dunes. For further information about



Photo: PTD/Charles Davis