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July 14, 2006

Planning Commission
Covert Township
P.O. Box 35
Covert, MI 49043

Dear Commissioners:

I am writing to offer our comments on the recent revision to the new Zoning Ordinance. We appreciate very much the revisions that were made after the public hearing; they more accurately reflect your intentions and the desires of citizens and property owners. However, we have a few other suggested revisions to bring to your attention.

1. Residential development of the shoreline area of Covert began over 100 years ago. The manner in which shoreline communities have developed is varied. As a result the character, layout, lot sizes, densities, etc. vary widely.

Applying the zoning requirements appropriate to the fire lanes to Linden Hills, Thunder Mountain, and Palisades Park will not make these areas like the fire lanes, but will require variances for almost all construction projects.

Allowing lesser setbacks, and smaller, narrower lots in the fire lanes will destroy what makes these areas unique and attractive to current residents, and will lead to impairment of this unique natural resource.

Neither of these options is attractive. The less unattractive is the former, the one selected for the current revision of the ordinance. However, it seems to us that it only makes sense to have two different zoning districts for shoreline residential areas: one for the fire lanes, which have narrow and deep lots extending from the Blue Star Highway to Lake Michigan; another for those communities with a mix of lakeside and interior development with smaller lots and shared recreation/open space.

We request that the Planning Commission create another low-density residential district appropriate to these areas, and if necessary, confer with the respective owners' associations in setting requirements.

2. We have tried to create a single list the most important regulations controlling development in the LD-1 district. It begins on the next page. Note that most of the items are already in either the existing or the current version of the revised ordinance. *Italicized* entries are additions or revisions.

These assume that a "Water Front Property" in LD-1 is "*Any zoning lot adjacent to Lake Michigan or to a common beach area that is adjacent to Lake Michigan.*"¹ Front and rear yards are defined as for any parcel.

We believe the following regulations are appropriate, fair, and will maintain the current and desirable character for the fire lanes:

¹ Another definition or an expansion of this one is needed for other, smaller bodies of water.

- a. Minimum lot area: 5 acres
- b. Minimum lot width: 200 feet
- c. Minimum Front Yard Setback
 - i. On Blue Star Highway: 200 feet from ROW
 - ii. *All other locations: 100 feet from street/road ROW (Currently 200 feet.)*
- d. Minimum Rear Yard Setback: *100 feet except waterfront lots (see below)*
- e. Minimum Side Yard Setback: 30 feet from the side lot line
- f. For all uses permitted in the LD-1 Low Density Single-family Residential District the setbacks shall apply to all structures both above and below ground. (Latest version allows accessory structures inside minimum setback.)
- g. Permitted use should include only detached single-family residences and accessory structures.
- h. *Guesthouses or accommodations and all non-storage accessory uses should be Special Uses and require approval according to procedures for any special use. (Currently permission of ZBA required.)*
- i. Maximum height of primary structure: 25 feet
- j. Maximum height of accessory structure: 15 feet
- k. Maximum lot coverage: 3% (over 6,500 square feet on a minimum lot)
- l. Water Front Lots – Special requirements for waterfront lots at Lake Michigan
 - i. Minimum Rear Yard Setback (Lake Michigan side): *200 feet from the Erosion Hazard Line² established by the Michigan Department of Environmental (MDEQ) Quality (MDEQ) unless a lesser distance is allowed by the MDEQ and all criteria for a grant of variance as specified in Article XXVII are met. (Currently 300 feet from water line.)*
 - ii. Parking areas and detached garages should be only on the street side of the principal use.
 - iii. Accessory uses should be allowed on the street side of the principal use (front yard behind the setback).
 - iv. *Allow accessory uses with limitations in the rear yard (water side). (Current ordinance does not allow.)*
 - v. *Roofed accessory uses in the rear yard (water side) should be limited to two in number and to a total of 600 square feet in area. (None currently allowed.)*
- m. Require a 200-foot natural vegetation buffer at water side and street side, within which only 10% of land can be cleared.
- n. *Any lot with 10 or more acres of developable land that is divided and preserves from development in perpetuity 50 percent or more of the developable land (as mandated by the MZEA) may divide the lot with the following minimum standards providing the density of the property is maximum of 5 acres. (Currently no regulation.)*
 - i. *Minimum lot size: 2 acres*

² Waterfront setbacks for other bodies of water would obviously be measured from the water line and be less than those we are recommending for Lake Michigan water front lots.

- ii. *Minimum lot width: 100 feet*
 - iii. *Minimum lot depth: 400 feet*
 - iv. *Front yard setback: 60 feet*
 - v. *Rear yard setback: 40 feet*
 - vi. *Side yard setback: 20 feet*
 - vii. *Maximum lot coverage: 6 per cent*
3. Environmentally Sensitive Overlay District
- a. For a home and accessory uses, clearing and grading should be limited to 7,500 square feet (excluding the area of shared private drives) per 5 acres. If a parcel is less than 5 acres, limitation is proportionately reduced. (Revision omits ground disturbance.)
 - b. For existing lots less than 5 acres, this area may be increased through a variance issued by the ZBA to a limit of 10% of the lot area. (In current ordinance but omitted from revision.)
 - c. No clear cutting of trees should be permitted within 100 feet of ROW of any public street or road or within the minimum front yard setback whichever is greater.
 - d. The ESO should include all land west of I-196 (as it has since first created in 1989) *plus those areas east of I-196 that are identified as ESO district on the zoning map.*
 - e. *Construction and excavation for any purpose on slopes steeper than 1:3 should be prohibited.* (DEQ enforces this requirement in critical dune areas.)
 - f. *Construction and excavation within 10 feet of the edge of a bluff or crest of a dune should be prohibited.* (DEQ enforces this requirement in CDAs.)
4. Section 27.04 limits the Zoning Administrator authority to issue administrative variances in the LD-1 district. However, a number of sections give the administrator the authority to issue variances to a variety of requirements in LD-1 and the ESO districts.

We continue to maintain that the MZEA places the authority for variances in the ZBA and establishes requirements for notices and hearings.

Our attorney, Catherine Kaufman, and we have made a detailed review of the revised document. We have enclosed a list of comments organized by division and section.

Thank you for your consideration of our suggestions and request.

Sincerely



Charles F. Davis, III
President

Attachment

cc: Wayne Rendell, Covert Township Supervisor

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Page Comment

I - Short Title, Enabling Authority, Preamble and Enacting Clause1.03 *Township Zoning Act (TZA)*

- l-1 All references to the Township Zoning Act should be removed and replaced with references to the Michigan Zoning Enabling Act. The TZA was repealed on July 1, 2006 and replaced with the Michigan Zoning Enabling Act (PA 110 of 2006). Different noticing provision are included under the MZEA.

Updating those provisions now, will ensure that when adopted, the new Covert Township Zoning Ordinance will reflect the current state law.

II - Construction of Language and Definitions2.02 *Definitions*

- ll-1 **Accessory Use** includes “a. Non compensated residential accommodations for servants and/or caretakers and guests occupying the accessory use for less than thirty (30) consecutive days.”

This sentence as structured can have several interpretations. We suggest that it be replaced with “a. Accessory Use Guest House or Accommodation (see below.)”

- ll-1 **Bed and Breakfast:** This definition refers to a B&B as a home occupation. However, the definition of home occupation excepts B&B from regulation as a home occupation. How are B&Bs regulated?

- ll-1 **Home Occupation:** See “Bed and Breakfasts”

- ll-5 **Condominium structure** - definition states that a condominium structure can also be a building envelope. Not sure what this means. The text has been edited but still is not clear. However, we cannot find where it is used; so our confusion might be moot.

- ll-7 **Environmentally sensitive area** - add phrase “and as depicted on the Township Zoning Map as amended from time to time.”

- ll-10 **Land Division** - the last sentence is confusing. All land divisions and subdivisions will be considered PUDs and submitted for approval accordingly? Does this mean that every land division (which is a ministerial function of the Township) has to be processed as a PUD?

Since PUDs are not allowed in the ESO, how can land be divided in the effected districts? If a developer opts to divide land and preserve from development 50% or more of the developable land as he is permitted to do under the MZEA, how can the Township control the development?

- ll-11 **Lot, Waterfront** should be defined to include lots fronting on Lake Michigan, those that front on a common beach area on Lake Michigan and other bodies of water.

- ll-15 **Setback, Waterfront** The definition sets the front yard of waterfront property to be the water side. Due to the confusion and conflicts arising from reversing front and rear yards for water front lots, we recommend that the “front yard” always be the street side and that exceptions to standard regulations for water front parcels be stated as such in Section 18.11.

- ll-15 **Setback, Waterfront** Not withstanding the above, the definition also defines it as beginning at the shoreline. However, Section 18.11 contradicts this definition and establishes the rear yard setback as measured from the *60-year Lake Michigan erosion set back line* (not the “*shoreline*”) and refers to the front yard as the yard between the road right-of-way and the main building.

Then Section 19.02 requires parking to be “located to the rear of the *front of the building line*, that being the building side facing the water.”

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III - Zoning Districts and Map3.00 *Zoning Map*

III-Map Environmental Overlay

Previously all of the land west of I-196 was included in the Environmentally Sensitive Area. In the new version, portions of this area have been deleted.

a. The area around Nadeau Pit has been deleted from the ESO district. The area is still designated a critical dune area by the state. It still has tall steep dunes around the perimeter. The MDEQ-LWMD has designated some areas around the dredge lake to be protected wetlands and has ordered the mining company to preserve them. (See Appendix 2)

b. The land east of Blue Star, for about a mile south and north of Covert Road has also been deleted from the ESO district. Nothing has changed in the area to diminish its environmental sensitivity. The DEQ in its 1996 study of critical dune areas identified it as an area that should have been included in the 1989 Atlas of Critical Dunes. (See Appendix 2.) The Busse Site sand dune mine and its expansion have removed some of the duneland, but special concerns remain:

- (1) The surrounding dunes
- (2) The low elevation of the floor of the mine and its proximity to the water table.

Both of these areas should be included in the ESO District.

III-Map LD Districts

Thunder Mountain, Linden Hills and Palisades Park developments have a very different history than the fire lanes, and consequently have a different character, limitations, advantages and needs. One clear indication is the size of lots. (Thunder Mountain lots average 1/2 acre; houses are separated by from 55 to 25 feet.)

Setbacks and lot sizes that make sense for the fire lanes do not make sense for these areas (and vice versa.)

Applying the zoning requirements appropriate to the fire lanes to these developments creates an unfair burden on property owners by requiring an appeal to do any construction. Applying smaller set backs and narrower lots to the fire lanes will destroy what makes these areas unique and attractive to current residents; and will lead to impairment of this natural resource.

We suggest that a new LD – Low Density Residential district be defined for these communities. Lot sizes and setbacks might be larger than LD-2 requires.

Wilderness Dunes has larger lots (generally either 100 or 200 feet wide, between .8 and 3 acres), but existing *minimum* side yard setbacks are more akin to these developments (about 15 feet) than to the fire lanes. Perhaps it too, could be classified similarly.

III-Map Park Areas

Would it not be appropriate to zone Van Buren State Park and Covert Township Park as Recreation rather than Industrial in the first case and LD-1, Low Density Residential in the other?

III-Map Recreation District includes private as well as public recreation facilities.

Would it not make sense to zone the preserved areas in Thunder Mountain Heights, Linden Hills, Wilderness Dunes and the golf course at Palisades as Recreation?

III-Map Rezoning? It appears that the zoning map is a change from previous versions. Is this a proposed zoning map? Or is this a wholesale rezoning of the township that requires notice and hearing?

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III-Map The southeast corner of the intersection of Covert Road and Blue Star is now residential homes. Why is it designated a Community Commercial district other than it was so designated on the current zoning map.

The northwest corner has had several Neighborhood Commercial establishments in the past. Would that be a more appropriate location for commercial in the future?

VI - LD - Low Density Residential District

6.02 *Principal Permitted Uses*

VI-1 In the previous version, non-storage accessory uses had to have approval of the ZBA. We suggested that guest houses be permitted as a special use with approval of the special use by the Planning Commission. Now a guest house is a permitted use. We strongly oppose this change.

Furthermore, when this is coupled with 18.12 (4), it is possible to have living quarters six feet apart. This is totally out of character with current developments in LD-1 and creates significant life-safety issues due to the remoteness of the district from the fire station. This is further discussed under comments for 18.12.

VI-1 See remarks in Definitions for “Land Division”

IX - ESO – Environmentally Sensitive Overlay District

9.02 *Additional Development Requirements Imposed in this District*

IX-1 3. Only 10% of land can be cleared within the 200 foot natural vegetation buffer at water side and street side. This is good, but can be waived by Zoning Administrator or ZBA. Should only be by ZBA per MZEA.

9.03 *Relationship to Planned Unit Developments*

IX-1 See discussion under Definitions “Land Division”

XV - Schedule of Regulations

15.01 *LD-1 Low Density Single Family Residential*

XV-1 The lot coverage is set at 25%. This is too high for 5 acre lots. We suggest 3% (6,500+ sf).

The maximum lot coverage for accessory structures is 10%. This would be a 20,000 square feet and is much too large. We suggest 1-1.5%.

We believe the intent was to continue the existing setbacks. Given the definition of the “water property front yard,” the front yard setback should be 300’ and the rear yard setback should be 200’.

(The front yard in the existing ZO is the street side. The minimum setback was set at 200’. Now the street side is defined as the rear and the set back is 30’. [Typo 300’ intended?]

The rear yard in the existing ZO is the water side along the lake front. The minimum setback was set at 300’. The water side has been defined as the front yard and the setback is set at 200’.)

As stated above, we suggest going back to a standard definition and define the street side as the front yard, and make special provisions/exceptions in 18.11.

XV-2 Footnote 4 - front building line of principal permitted use shall be 200 back from median high water line established by the MDEQ. “Median high water line” is not a term defined by the MDEQ.

Also this apparently contradicts Section 18.11, which states that the setback is the rear [*sic* should be “front”] yard setback measured landward of the top of the bluff or the MDEQ 60-year Lake

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Michigan sand dune erosion setback line.

XV-2 The current zoning ordinance states “For **all uses** permitted in the SR Shorelands One-family Residential District, the setback shall apply to **all structures** both above and below ground.” [Emphasis added.]

This prohibits all construction within the minimum setback for all yards. This requirement has been modified in the revised proposed amended ordinance to refer only to *principal uses*. This is not acceptable. See comments on 18.12 (4). For safety and to maintain the desired existing character, no structures (including accessory uses) should be allowed inside the minimum setbacks.

15.02 *Schedule of Regulations*

XV-2 Add further requirements to regulate property divided under MZEA or a PUD

For LD-1:

The minimum lot size in a PUD or as a result of a land division under MZEA provisions in LD-1 District shall be two acres (2) acres. Minimum lot width shall be 100 feet. Minimum lot depth: 400 feet. Maximum lot coverage: 6%. Minimum setbacks shall be: front 60 feet; rear 40 feet; and side 20 feet. Setbacks for the waterside of water front lots are as specified under 18.11.

Only single-family detached residences are allowed in LD-1.

For LD-2:

The minimum lot size in a PUD in LD-2 District shall be 9,000. Minimum lot width shall be 75 feet. Minimum setbacks shall be: front 30 feet; rear 20 feet; and side 10 feet. Setbacks for the waterside of water front lots are as specified under 18.11.

Only single-family detached residences are allowed in LD-2.

AG might be similar to LD-1.

Standards should be established for PUDs in RR, MD and HD districts as well.

XVI - Planned Unit Development Overlay District

16.07 *Supplementary Development Standards & Regulations*

XVI-3 Last sentence should read: “This setback distance shall comply with the front, side or rear setback requirements of the district in which the property is located except as specified below under ‘H. Site Design, Layout and Density Criteria.’”

XVI-4 E. Open Space (Farmland) regulations

PUD Traditional - requirement that open space be for the use and enjoyment of PUD residents - is noncontiguous open space allowed? If open space is left in active farming, how do residents use and enjoy it?

Buildings, parking lots allowed in open space, if necessary to functions. - should there be some limit to types of buildings (i.e., indoor bowling alley vs. tennis courts)

Open space shall be conveniently located and accessible to principal uses in PUD - proximity and accessibility of non contiguous open space?

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XVI-4 E. Open Space (farmland) Regulations

“Keyholing” at Lake Michigan should be prohibited or strictly regulated.

If a PUD preserves a lake front parcel as non-contiguous open space for a remote cluster PUD, the number of dwelling units thus having access to the lake frontage should be limited to 1 per 40 feet of lake frontage.

XVI-4 E. Open Space (farmland) Regulations

Typo: “2. PUD - Cluster Development and PUD - Transfer of Development Rights” should be numbered “b.” instead of “2.”

XVI-5 H. Site Design, Layout, and Density Criteria

Density on gross area basis - except for water area. This is in conflict with the definition of density, which uses *developable* area.

As the definition for density recognizes, regulated wetlands, steep slopes in critical dune areas, are not be developable because of state regulations. Since these areas cannot be developed, the developer should not be awarded credit for not developing them.

XVI-6 J. Project Phasing - Need to clarify that each phase of project can stand on its own, as paragraph 2 suggests. Do not allow transfer of development rights or incentive bonuses between phases. Each phase should be reviewed, analyzed and evaluated independently.

16.08 *Standards for Review*

XVI-6 D. Common open space shall be planned so as to be part of unified plan. Will noncontiguous open space do this?

XVII - Condominium Approval Requirements

17.02 *Initial Project Information*

XVII-1 Add requirement for identification of regulated wetlands or critical dunes areas.

17.12 *Amended Zoning Condominium Units*

XVII-3 Why not just apply setback standards of underlying zoning district? If intent is to treat condos as similar to platted subdivisions? Here, requiring that residential dwelling units be separated by 70 feet from center of unit (what is the center of a unit) to another unit. What is purpose of this separation. Also, references four (4) foot side yards. The intent and consequence of this section is not clear. Seems to need further explanation.

XVIII - General Provisions

18.07 *Yard regulations May be Varied by the Zoning Board of Appeals*

XVIII-1 This conflicts with Section 27.04, Administrative Variances. This section (18.07) is better; it requires that the ZBA approve dimensional variances.

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18.11 *Lots Having Water Frontage*

XVIII-2 The front yard has now been defined in the revised proposed ZO as the water side extending from the shoreline to the facing wall of the principal structure. Where does the front yard begin for a lot that fronts on a common beach area?

Given this definition (and the converse that the street side is now the rear):

- Parking should be located in the rear yard (street side of primary structure; see comments on 19.02) for lots fronting on Lake Michigan.
- The second paragraph should permit the listed accessory uses to be located in the “front yard” not the “rear yard” as the revised proposed ZO now reads. This probably applies only to lots fronting on Lake Michigan.
- *But* a maximum of two roof covered accessory structures should be allowed in the front yard. Accessory structures in the front yard of a water front property should be small. We suggest 225 square feet or 300 square feet at most.
- Setback from Lake Michigan should be 200 feet measured from the Erosion Hazard Line as determined by the MDEQ.
- Setback from other bodies of water should be measured from the water line. The distance must be determined.

18.12 *Regulations for accessory structures*

XVIII-2 3. Accessory structure shall cover no more than 25% of a rear yard. Could be huge! What about coverage in a water side yard? What is maximum accessory structure coverage there? Should have special limitation since there should be a maximum area and maximum number. In such situation, a 200’ vegetative area is to be maintained with only 10% of vegetation removed.

The maximum size of an accessory building should reference the Schedule of Regulations.

XVIII-2 4. Accessory structure can be located within 3 feet of property line. This is a life safety problem - very close to property line and some accessory structures are used as guest houses. In the LD-1 district, a fire could easily jump from building to building before the firefighters could get to the site.

This will also dramatically, and undesirably, alter the character of the Fire Lanes, something that current residents do not want.

This is also open to abuse. If the house that a property owner wants to build is too large for the site, he can just add an accessory use guest house and effectively extend his house to within 3 feet of the property line.

This would not be an issue, if note 5 in 15.02 had the same meaning that the current ZO has.

XVIII-2 5. Maximum height at 15 feet (one story), but can exceed the height requirement upon approval of the Zoning Administrator. If the accessory building is located within 3 feet of the property line, and exceeds fifteen feet in height, it can be of enormous impact on the adjoining property. 3 feet seems close in all districts except for MD and HD.

Again, problem with Zoning Administrator being able to waive a zoning ordinance requirement. This should be restricted to the ZBA, with appropriate notice and hearing provisions.

Why is a minimum 8’ wall height specified?

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XVIII-2 8.(deleted) Non-storage use in a residential district no longer needs approval by the Board of Appeals.

Since it is a "use" issue, it should be approved by the Planning Commission.

18.15 *Temporary Construction ... & Exterior Lighting*

XVIII-3 Section number used twice.

18.28 *Plant Materials*

XVIII-10 A. Must require planting of landscape materials prior to Certificate of Occupancy issuance, or (if weather does not permit) require posting of performance guarantee to insure planting.

XVIII-11 C. Trees not permitted. Add Black Locust, female Ginkgo, fertile varieties of Cottonwood.

XVIII-11 D. Suggested Plant Materials

e. 4. Black Locust (remove from list. It is not native and very invasive.)

e. 5. Cottonwood (questionable. It is native but very invasive. Might consider sterile varieties).

XIX - Off Street Parking and Loading

19.02 *Location of Offstreet Parking*

XIX-1 Definitions now clarify that the front yard of a water front lot is the water side. Thus the front of the house is the water side. The rear yard is the area between the rear setback (minimum distance of a structure from the road right-of-way) and the principal structure. Parking should be located in the rear yard on a water front parcel.

XX - Sign Regulations

20.02 *G. Signs in the Commercial and Industrial Districts*

XX-1 Do not allow signs within 150 feet of I-196 in a Recreation District.

XXII - Environmentally Sensitive Land Regulations

22.02 *Environmentally Sensitive Areas Regulated by the Terms of this Section*

XXII-1 B. Steep Slopes. The second requirement indicates that the Building Inspector may require five (5) to ten (10) foot contour maps at and near any proposed structures. The DEQ often requires 1' contours. With computer software, producing such a topographic site plan is simple and easily done. Since it is not at all burdensome, we ask that the vertical interval be reduced to 1' or 2' at the most.

Furthermore, paragraph 27.05 B.1 allows zoning administrator to require 2' vertical interval for any project. Here, where protection of steep slopes is important, the same requirement should be the same or reduced to a 1' vertical interval.

22.07 *Pre May 12, 1988 - Rights for preexisting Conditions*

XXII-3 Again, Zoning Administrator should not give variance from this requirement.

XXII-3 For parcel of land recorded prior to the May 12, 1988 the proposed ordinance allows the Zoning Administrator to issue a Zoning Compliance Permit that would exceed the specified clear cutting/ground disturbance ratio (7,500 square feet per 5 acres), requiring only that it be the minimum to provide for a home site and accessory uses similar in nature as those allowed on larger parcel of land.

It is unrealistic to expect that a quarter acre lot could accommodate a house similar (in size) to a five acre lot, or for a 100' wide lot to accommodate a house of similar size and similar design to a 200'

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wide lot. Smaller lots can only accommodate smaller houses.

We believe that such a variation from the requirements is significant enough that the ZBA should be the entity to give such permission, not the Zoning Administrator.

The current ordinance limits the area that may be cleared or disturbed to 10% of the parcel. That limitation should be included again. However, in no case, should the cleared area on a substandard lot be greater than 7,500 square feet.

22.10 Special Requirements for Development in Environmentally Sensitive Areas

XXII-3 B. Steep Slopes. Steep dunes outside a critical dune area (CDA) are just as sensitive to disturbance as those within a CDA. The environmental sensitive area extends beyond the CDA.

Furthermore, in 1996 the DEQ made a study of CDAs and determined that in Covert Township that they should be extended in many areas to the east of I-196 — even beyond Covert's ESO District (see Appendix 1).

To afford the same protection, we request that

- a. Construction and excavation for any purpose on slopes steeper than 1:3 be prohibited
- b. Construction and excavation of within 10 feet of the edge of a bluff or crest of a dune be prohibited.

22.11 Environmental Impact Statement Required for Developments of 3 Acres or More

XXII-4 Last paragraph. Typo "fo:" should read "for".

XXIV - Special Uses**24.02 Authority to Grant Special Use Approvals**

XXIV-1 Township board shall grant special uses. This conflicts with 18.26 where ZBA approves special uses for home occupations. 18.26 should be revised to be processed as all other special uses.

XXVII - Administration, Fees and Enforcement**27.04 Administrative Variances**

XXVII-1 We don't believe there is authority under the repealed Township Zoning Act or under the new Michigan Zoning Enabling Act (MCL 125.3101 et seq) for a zoning administrator to grant variances. The statutes specifies a Zoning Board of Appeals as granting variances. (see MCL 125.3604)

Section 18.07 assigns responsibility for dimensional variances to the ZBA. Having an administrative variance eliminates due process afforded by notice and a hearing.

XXVIII - Zoning Board of Appeals**28.06 Appeals Procedure**

XXVIII-4 This section gives ZBA authority to give variances on decisions made by the Planning Commission and the Township Board as well as the Zoning Administrator.

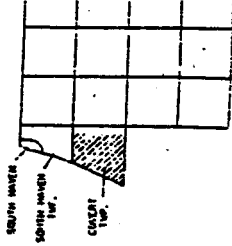
As we commented previously on section 28.09: "It is atypical to allow appeals from the Planning Commission to be taken to the ZBA, unless it is a specific appeal of a special use or PUD decision. Even in this case, the provision for appeal to the ZBA must be contained elsewhere in the Zoning Ordinance.....Someone aggrieved with a decision of the Township Board on a rezoning cannot appeal that decision to the ZBA. The only appeal would be to the Circuit Court." This issue was corrected in the revisions to section 28.09 but overlooked in our previous review and in the revisions.

APPENDIX I

Map of Covert showing proposed additions to Critical Dune Area made as part of *Report of the Sand Dune Review Committee* which evaluated designated Critical Dune Areas in Michigan prepared under contract to the MDEQ by the Center for Remote Sensing at Michigan State University in 1997.

COVERT TOWNSHIP CRITICAL DUNE AREAS

VAN BUREN COUNTY



LEGEND

POLITICAL JURISDICTION
BOROUGH OF COVERT, VAN BUREN
AND INCORPORATED CITIES AND
VILLAGES OF TWP.



PUBLIC LANDS
NATIONAL FOREST, NATIONAL MONUMENT,
NATIONAL WILDLIFE REFUGE, NATIONAL
BUREAU OF LAND MANAGEMENT, PUBLIC LANDS AND
CONSERVATION SERVICE

CRITICAL DUNE AREAS



BARRIER DUNES
BOROUGH OF COVERT, VAN BUREN
COUNTY, VAN BUREN COUNTY



DUNE AREA
AREAS ARE INCLUDED IN THE NATIONAL
BUREAU OF LAND MANAGEMENT, PUBLIC LANDS AND
CONSERVATION SERVICE, PUBLIC LANDS AND
CONSERVATION SERVICE



DUNE AREA
AREAS ARE INCLUDED IN THE NATIONAL
BUREAU OF LAND MANAGEMENT, PUBLIC LANDS AND
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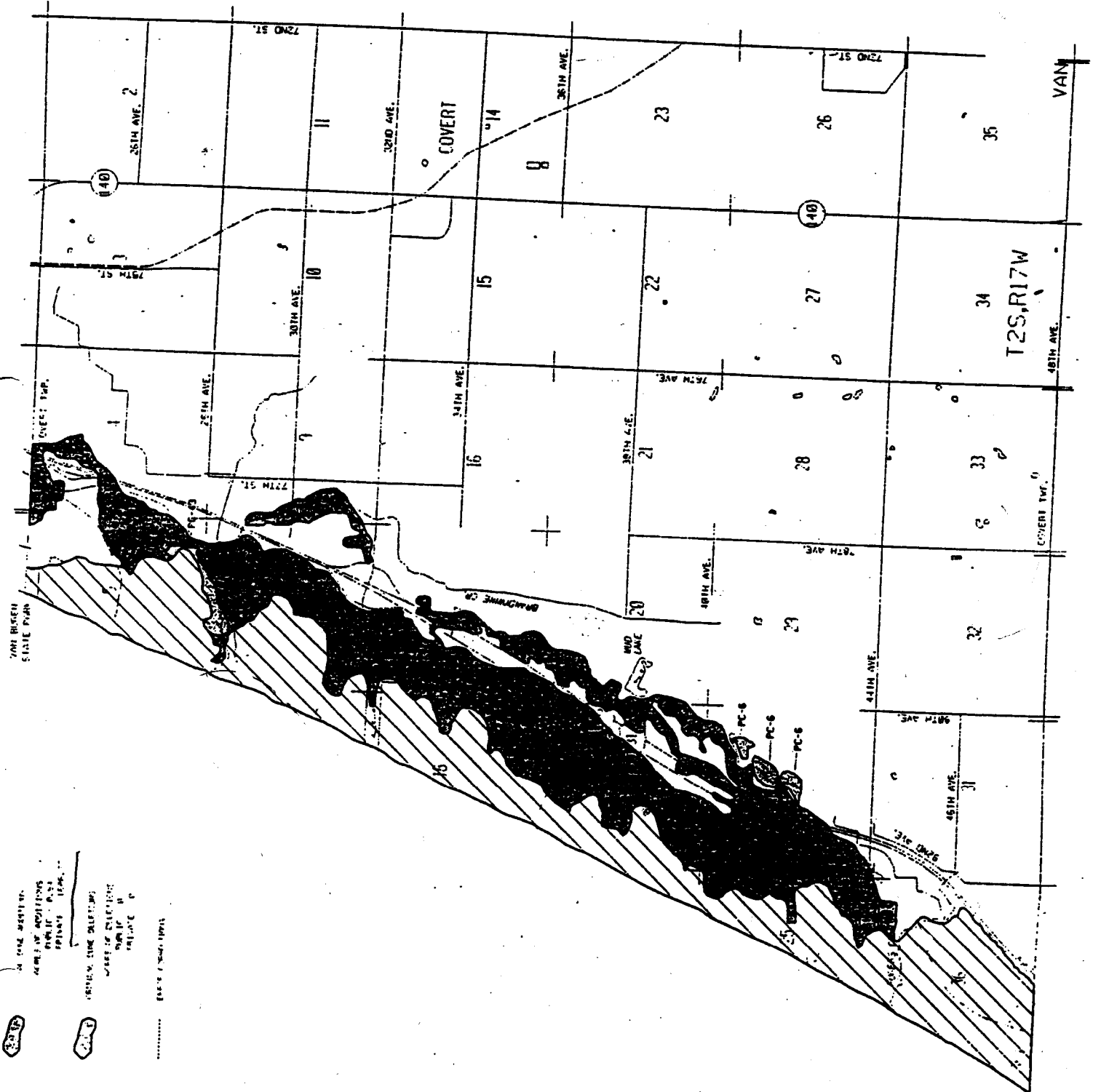
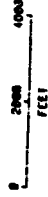
INFORMATION

NATIONAL DEPARTMENT OF NATURAL RESOURCES
LAND AND WATER MANAGEMENT DIVISION
P.O. BOX 20023
LANSING, MI 48909
616-315-1119



NOT TO BE USED FOR ANY OTHER PURPOSES
WITHOUT THE WRITTEN PERMISSION OF THE
LAND AND WATER MANAGEMENT DIVISION

2-11-81



IN THE BUREAU OF LAND MANAGEMENT
AREAS OF ADDITIONAL
PUBLIC LANDS
PRIVATE LANDS...

CRITICAL DUNE DELETIONS
AREAS OF ADDITIONAL
PUBLIC LANDS
PRIVATE LANDS...

DATE: 2-11-81

APPENDIX 2

Copy of dredging permit issued by MDEQ in 1999 under Parts 301 and 303 of the Natural Resources and Environmental Protection Act 451, PA 1994. Note highlighted paragraph on second page requiring maintenance of wetland area. This area has been expanded since this permit was issued.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMIT

*Tea Sand
Nadreau Pit
Permit Correspondence*

TechniSand Inc
4830 Livingston Road
Midgman, MI 49106

Permit No. 98-12-0018
Issued April 1, 1999
Extended
Revised
Expires April 1, 2004

Under the provisions of the Natural Resources and Environmental Protection Act 451, PA 1994 and specifically:

RECEIVED

JUN 21 1999

GEOLOGICAL SURVEY DIV.
ENVIRONMENTAL QUALITY

- Part 301 Inland Lakes and Streams.
- Part 325 Great Lakes Submerged Lands
- Part 303 Wetland Protection
- Part 31 Floodplain/Water Resources Protection.
- Part 315 Dam Safety.

Permission is hereby granted, based on permittee assurance of adherence to State requirements and permit conditions to:

Permit Activity

Hydraulic and mechanical dredge sand material to expand an existing lake to an approximate surface area of 36 acres, and to a maximum depth of 35 feet. Place dredged material on adjacent upland for de-watering. The material will be trucked off site for further processing and sale once dewatered. All work shall be completed in accordance with attached modified plans dated March 22, 1999.

Water Course Affected: unnamed lake
Property Location: Covert Twp. County, Van Buren, Section 36
Subdivision, Lot Town 2S Range 17W

Authority granted by this permit is subject to the following limitations:

- A. Initiation of any work on the permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of this permit.
- B. The permittee in exercising the authority granted by this permit shall not cause unlawful pollution as defined by Act 245 of the Public Acts of 1929, as amended.
- C. This permit shall be kept at the site of the work and available for inspection at all times during the duration of the project or until its date of expiration.
- D. All work shall be completed in accordance with the plans and the specifications submitted with the application and/or plans and specifications attached hereto.
- E. No attempt shall be made by the permittee to forbid the full and free use by the public of public waters at or adjacent to the structure or work approved herein.
- F. It is made a requirement of this permit that the permittee give notice to public utilities in accordance with Act 53 of the Public Act of 1974 and comply with each of the requirements of that act.
- G. This permit does not convey property rights in either real estate or material, nor does it authorize any injury to private property or invasion of public or private rights, nor does it waive the necessity of seeking federal assent, all local permits or complying with other state statutes.
- H. This permit does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his rights.
- I. Permittee shall notify the Department of Environmental Quality within one week after the completion of the activity authorized by this permit, by completing and forwarding the attached, pre-addressed post card to the office addressed thereon.
- J. This permit shall not be assigned or transferred without the written approval of the Department of Environmental Quality.
- K. Failure to comply with conditions of this permit may subject the permittee to revocation of permit and criminal and/or civil action as cited by the specific State Act, Federal Act and/or Rule under which this permit is granted.

Work to be done under authority of this permit is further subject to the following special instructions and specifications:

Issuance of this permit does not obviate the need to obtain other approval(s) from any local, state or federal agencies as may be required by law.

There shall be a minimal of 500 feet between Rogers Creek and any portion of the constructed lake.

The lake shall have 1:6 side slopes from the top of the bank to a water depth of six feet. Below this depth the slope shall be the natural angle of repose.

The permittee shall submit an annual monitoring well report. Static water levels shall be measured within existing monitoring wells, three times per year: 1) Taken just prior to resumption of mining/pumping. 2) At the end of July. 3) At the conclusion of sand mining season, just prior to shut down of the pumps.

The surface water elevations of Rogers Creek and Nadeau Lake shall be taken at the same time as the measurements from the monitoring wells.

The permittee agrees to modify plans/or operations should monitoring well data show conclusive evidence the mining operation is having an adverse impact on Rogers Creek.

Permittee agrees to replace existing residential wells, if monitoring well data shows conclusive evidence the mining operation has impacted these wells.

A 1.05 acre wetland on the south end of the lake shall be part of the final feature of the completed lake.

Permittee covenants not to sue the State of Michigan, or any of its departments, boards, commissions, officers, employees, or agents for any claim, whether legal or equitable, arising under or in any manner related to the privileges granted in this Permit. Permittee hereby releases, waives, and discharges the State of Michigan and all of its departments, boards, commissions, officers, employees, and agents from any and all liability to permittee arising under or in any manner related to the privileges granted under this Permit.

Permittee agrees to indemnify the State of Michigan and all of its departments, agencies, boards, commissions, officers, employees, and agents from any and all liability arising under or in any manner related to the issuance of the Permit or the privileges granted under this Permit.

This permit shall become effective on the date of signature by a Department of Environmental Quality officer. Upon signing by the permittee, this permit must be returned to Land & Water Management Division, Department of Environmental Quality, 621 North 10th Street, Plainwell, MI 49080, for final execution.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

Robert Ledyard 3/30/99
Permittee signature date
Robert Ledyard
Plant Manager

Russell J. Harding, Director
Department of Environmental Quality

By [Signature]
Kameron J. Jordan
Land and Water Management Division

- cc: Van Buren CEA
- Covert Twp.
- Charles Davis
- ASTI
- Harrington Engineering
- MDNR, D-12, Fisheries Division
- D. Fongers, LWMD
- J. Piggush, Office of Atty. General
- LWMD; PCU
- LWMD, Plainwell Dist.