

S.O.S. DUNES NEWS



Save Our Sand Dunes

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JUDGE'S RULING IS APPEALED

Berrien County Judge Paul Maloney denied PTD's appeal of the sand dune mining permit renewal for Nadeau Site in Hagar by the DEQ.

We have now made application to the Michigan Court of Appeals for leave to appeal. The application is available on the PTD website at sosdunes.daac.com.

PTD maintains that TechniSand's permit should not have been renewed because the sand dune mining law requires that in considering an application to renew or amend a permit, the DEQ must first determine if the operator qualifies for a permit. TechniSand does not.

The critical dune area was not a part of the mine when TechniSand bought the mine in 1991. In order to qualify for the permit, the company would have had to have owned the adjacent critical dune area prior to July 1989. But the company did not even exist until 1991!

Judge Maloney failed to address this issue in his decision. Our brief for the appeal to the court can be read on the PTD website.

COVERT ZONING REVISED

In October the Covert Township Board adopted a new zoning ordinance and zoning map that had been proposed by the Planning Commission.

Over the summer, PTD provided comments to the Planning Commission as it finalized the draft ordinance. We kept citizens aware of the progress and the issues. As a result, the public hearing and subsequently scheduled meetings of the planning commission were well attended.

A number of ill-advised provisions were strongly opposed at the meetings. In the end most were rewritten or deleted altogether. For example, the transfer of development rights (TDR) provision was deleted. This would have allowed the number of dwelling units that could be built on a remote property to be transferred to a property under

development, say a lake front parcel. The remote parcel would have to remain as farmland or undeveloped. However, this would have led to dramatic increase in density along the lake.

At one point, side yard setbacks for all accessory uses in the lakefront properties were proposed to be reduced from 30 feet to 5 feet. In the final draft the 30 foot distance was maintained.

PTD pressed for improvements in the mineral removal requirements that control sand mining. We searched for and found an ordinance that had stood up to court challenges. Minor edits to accommodate Covert's specific needs were made. This version was then incorporated into the ordinance.

A number of onerous provisions were deleted or revised after the public hearing. But the new ordinance still has some serious flaws. It deletes from the Environmentally Sensitive Area (ESA) several areas that had been protected under the previous ordinance, reduces protections of the dunes, and contains conflicts and contradictions. We will continue to press for improvements.

ENVIRONMENTAL SENSITIVE AREA (ESA) REDUCED
Previously all land west of I-196 had been included in the ESA. Two large areas were deleted in the remap:

- The areas north and south of Covert Road between Blue Star Highway and I-196 were removed from the ESA.
- The Planning Commission proposed that the area east of the Blue Star Highway between CR376 and the southern boundary of the township be eliminated from the ESA. This area includes the critical dune area (CDA) south of Rogers Creek (Nadeau Pit) and the wetlands around the creek. The Township Board did add back the area of the CDA south of Rogers Creek.

Why were these properties deleted? With the exception of the small subdivision just south of

CR376, all of these areas deserve protection; they are in the 1996 proposed additions to the critical dunes or are designated wetlands by the state.

REDUCED PROTECTIONS

The ordinance reduces protections in the environmental sensitive areas and allows significant changes in the character of the shorelands.

- Front yard setbacks are reduced from 300 to 100 feet from Blue Star Highway.
- Most accessory uses can be located on the lake side of the principal use.
- The “zoning administrator” rather than the zoning board of appeals can issue variances for a number of protections in the ESA: for exceeding the area of land that can be cleared or graded; for clearing more than 10% of the required vegetative buffer along Lake Michigan and the Blue Star Highway.
- ESA permits are no longer required for single family residential projects.
- Planned Unit Developments (PUDs) are now permitted in the ESA. While the maximum density west of the Blue Star Highway continues at 1 dwelling unit per 5 acres, a developer of a PUD may be awarded an incentive of up to a 50% increase in density; this results in 1 dwelling per 3.33 acres.

We are puzzled. What are the motivations for reducing these protections? Who will gain from them? Certainly not current land owners and citizens who have stated time and again their desire to preserve these areas. Developers whose goal is to maximize returns will benefit. But what interest is that to the township? Not for taxes. Covert is the only township in the state that has two power plants that are subject to huge property taxes.

ERRORS, CONFLICTS & CONTRADICTIONS

Inconsistencies create confusion and reduce enforceability of the ordinance. A number of errors, conflicts and contradictions remain. We brought many of these to the attention of the Planning Commission, but they have shown no interest in correcting them. Here are a few examples:

- The water side setback is defined as 200 feet behind the “DEQ’s 60-year erosion setback line or the top of the bluff.” One can only assume that this is 200 feet behind the line that the DEQ determines is the 60-year recession distance beyond the erosion hazard line. But it is ambiguous because the DEQ does not establish a “60-year erosion setback line.”
- A “bed and breakfast” is defined as a “home occupation.” But the definition of “home occupation” excludes B&B’s. As a result, B&B’s are in a sort of limbo, without regulations and without permissions.

- On waterside properties, accessory structures can be located on the street side of the principal structure as long as the rear (the area on the opposite side of the house) yard setbacks are maintained. This could be an absurdly ridiculous requirement, or an intent to subvert the intent to maintain the minimum setback from the road, or just an error - confusing front and rear yards on a water front lot.

Why not clarify these and similar ambiguities?

VARIANCES REMANDED

Van Buren County Circuit Court Judge Buhl remanded two variance decisions back to the Covert Zoning Board of Appeals for re-noticing and re-hearing. In doing so, he noted that the board had failed to make a finding of facts. Instead, it took the planning consultant’s statement of facts, which was actually a “statement of conclusions.”

Judge Buhl ordered the board to develop a statement of facts and give specific reasons for awarding or denying the variances as required by the zoning ordinance.

One case is an appeal made by PTD regarding a house that was a second residence on a parcel. The owner demolished a shed and built the new structure under a remodeling permit. The township did order all food preparation facilities and equipment be removed. However, this left the guest house, an accessory use, on the water side of the principal structure, which was not allowed at the time the structure was built.

The other case also involved the construction of an accessory use on the water side of the principal structure.

We understand that the two cases will be brought to the zoning board of appeals again and heard under the new zoning ordinance, which does not allow lake side guest house structures and requires setbacks that would place the structure 200 feet behind its current location.

TV SPECIAL REPORT ON DUNES

WWMT (Kalamazoo Channel 3) ran a two-part special on development in the dunes and competing interests. Charles Davis, president of PTD, was one of those interviewed for the program. He expresses his concern that uncontrolled development is destroying the dunes and their beauty in small, steady steps.

Lynn Jondahl, one of the authors of the original sand dune protection legislation, is surprised by what’s being built. He said “I’m seeing stuff and I’m thinking: Boy, I don’t know how that can happen. That looks new to me and doesn’t look right.”

Stephen Chester, the DEQ Director, admits that due to limited funds there are too few field people to enforce the law.

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 2007 <input type="checkbox"/> Individual (\$6) <input type="checkbox"/> Family (\$10) I have also included a contribution in the amount of \$	Please contact me to work on the following committees: <input type="checkbox"/> Legal Affairs <input type="checkbox"/> Finance/Fund Raising <input type="checkbox"/> Newsletter <input type="checkbox"/> Public Hearings <input type="checkbox"/> 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. <u>Checks should be made payable to Preserve the Dunes, Inc.</u> , which has 501(c)3 status. Contributions are tax deductible.
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The report was entitled “A Line in the Sand.” Each part ran about 5 minutes. They can be viewed on the web by visiting the two following addresses: http://www.wvmt.com/engine.pl?station=wwmt&id=32146&template=breakout_local.html and http://www.wvmt.com/engine.pl?station=wwmt&id=32181&template=breakout_local.html (or just follow the links from the PTD website).

THE FIRST NINE YEARS

PTD has entered its 10th year. As we move forward, it is rewarding to look at our accomplishments. Here is a partial list:

- Our protests dissuaded the DEQ from approving TechniSand’s application to mine at the Knauf property. This land is in the Environmentally Sensitive Area of Covert township, is zoned for recreation, is inaccessible except by driving across the Ross Nature Preserve (a Nature Conservancy property) on a road that would have been built by filling a wetland.
- Our persistent pressure on the DEQ through correspondence and with the support of local legislators led to the first reclamation efforts at the Nadeau Pit after TechniSand bought the mine in 1991, and eventually led to compliance by TechniSand with the conditions of its permit.
- Our careful monitoring of mining activities prevented the removal by TechniSand of a dune that is on land owned by the Thunder Mountain Heights Association.
- Our challenge of the unlawfully issued permit to mine the critical dunes in the Nadeau Site, Hagar township, has brought public attention to the DEQ’s disregard of the law. The appellate court ruled that the permit was unlawful. But subse-

quently, the Michigan Supreme Court in a 4 to 3 decision ruled that the Michigan Environmental Protection Act could not be used to question a permit. (The renewal is now being appealed under the sand dune mining act.)

- We have documented the damage (which we had predicted) to Rogers Creek that resulted from the adjacent sand mining. Copies of our report have been sent to the DEQ Land and Water Management Division. Hopefully, our findings will be used to protect other creeks near future sand mines. (The report is available at the website.)
- PTD has funded programs at Sarett Nature Center that over 100 young people have attended. They have been introduced to dune ecology and have developed an appreciation for this unique, irreplaceable natural resource.
- Appreciation of the dunes by local residents and visitors to the area has been increased by PTD sponsored beachwalks and nature walks in the dunes.
- The residential design awards sponsored by PTD have made architects more aware of the considerations for designing homes in the dunes. Publicity through newspapers and magazines has increased public awareness and sensitivity to building in the dunes.
- Through our recent efforts to influence the re-writing of the Covert township zoning we have helped the township avoid implementing pro-development provisions that would have led to the virtual destruction of the dunes as we know them today.
- Any future sand mining in the township will be less destructive, less of an annoyance, and leave sites in better condition than before the new mining regulations were adopted.

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P. O. Box 581
Riverside, MI 49084-0581

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YOUR SUPPORT NEEDED

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

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

Over 95% of the funds that are donated go directly to programs. We have no staff; just lots of volunteered time. PTD is a 501(c)3 organization.

This means that all contributions are tax deductible.

Our successes to date, have been made possible by the financial donations of our members. Your financial support of these efforts is once again critical.

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



Nadeau Pit. The dredge lake continues to be expanded as sand is removed from below the water table. A 5 year extension of the permit was issued last year.