



**Planning Commission Special Meeting
December 21, 2022 7:00PM
City Hall
102 Butler Street, Saugatuck, MI**

-
1. **Call to Order/Roll Call:**
 2. **Approval of Agenda:** (Voice Vote)
 3. **Approval of Minutes:** None
 4. **Public Comments on Agenda Items:** (Limit 3 minutes)
 5. **Old Business:** None
 6. **New Business:**
 - A. **383 Dunegrass Cir. – Continued Site Plan Review**
 - B. **Public Hearing Signage**
 - C. **Short Term Rental Discussion to Build a Tentative Schedule, Calendar Planning and Objectives**
 7. **Communication:**
 8. **Reports of Officers and Committees:**
 9. **Public Comment:** (Limit 3 minutes)
 10. **Adjourn**

NOTICE:
Join online by visiting:
<https://us02web.zoom.us/j/2698572603>

Join by phone by dialing:
**(312) 626-6799 -or-
(646) 518-9805**

Then enter "Meeting ID":
2698572603

Please send questions or comments regarding meeting agenda items prior to meeting to:
rcummins@saugatuckcity.com



MEMORANDUM

City of Saugatuck Planning Commission

Memo Date:	December 20, 2022	Meeting Date:	December 21, 2022
Request:	Site Plan Review	Applicant:	JPD Construction
Address:	383 Dunegrass Cir.	Project Name:	Dunegrass Residence
Parcel:	57-077-019-00	Plan Date:	May 20, 2022
Acreage:	.43	Zoning District:	PUD/CRC
Complete:	Yes	Recommendation:	See page 8
Staff:	Ryan Cummins	Consultant:	David M. Jirousek, AICP

Overview

The applicant has applied to construct a three-level single-family residential dwelling within a previously approved Planned Unit Development (PUD). While it is not common for the Planning Commission to review a site plan for a single-family dwelling, it is required per Resolution No. 150610-A (Resolution approving a planned unit development for the property commonly known as 631 Perryman).

The purpose of this memo is to provide a compliance review related to all applicable zoning standards and requirements and to assist the Planning Commission with developing findings of fact related to the request. Further, the proposal must be reviewed against the overall PUD plan last revised on March 11, 2015 (PUD approved June 10, 2015).

Proposal

The proposed home is three levels. The lower level includes the garage, storage areas, and utility space, while the main and upper levels are the primary living spaces. The total conditioned floor area is 3,584 square feet. A driveway is proposed to provide access to Dunegrass Circle, and it is a sweeping design that allows access to a side-loaded garage.

Completeness Review

Site plans must contain the information required by Section 154.061 of the Zoning Ordinance. The application is determined to be complete for review by City Staff and the Planning Commission.

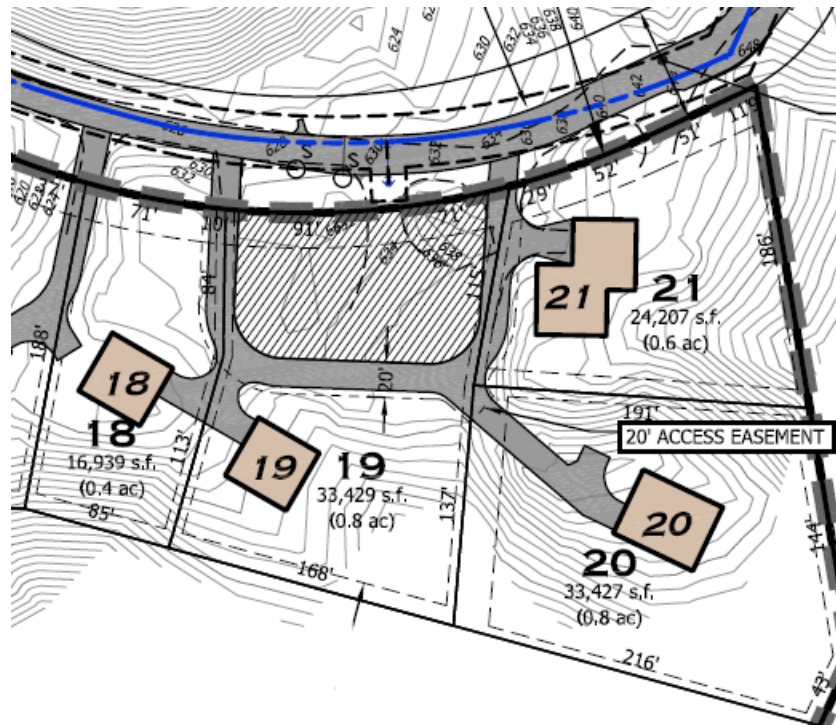


Figure 1 - 2015 PUD Plan Focus Area

Setbacks

The PUD plan indicates that setback modifications were approved as part of the overall PUD process. The proposed building envelope and footprint that are shown on the site plan comply with the setbacks noted on the PUD plan (20' front, 5' side, and 10' rear).

Height

The PUD plan states that “no building shall have a building height exceeding 30 feet as measured from the highest level fire department vehicle access and the eave of the pitched roof.” The applicant has proposed a flat roof, which was not contemplated in the PUD plan. The height requirement was based on Section D105.1 of the International Fire Code (IFC), which states that flat roof measurements are taken at the “top of parapet walls.”

The top of the parapet wall is 132'9", while the garage slab is 98'6". Understanding that the driveway elevation at the garage is the same as the garage slab, the height between the highest level of fire department vehicle access and the top of the parapet is 34'3," which exceeds the PUD requirement by 4'3".

While the Fire Department may have the current ability to respond to emergencies, the referenced height requirement is a zoning requirement through PUD adoption. A PUD amendment would be necessary to exceed the current limitation.

Review of Previously Approved Homes

Using the PUD measurement as specified on page two, six of seven approved homes within the PUD appear to be compliant. Of the compliant six, all have pitched roofs. The only home that does not appear to be compliant with the PUD requirement is 389 Dunegrass, which has a flat roof similar to 383 Dunegrass.

Concerning height measurement per the Zoning Ordinance, it appears that all seven previous cases may comply, although this requirement is not applicable. However, each submittal is different, and "average grade" is not indicated or decipherable on most, if not all, plans. Average grade, especially with walk-out basements, is not always a straightforward measurement. The PUD measurement is much easier to determine.

Zoning Ordinance Section 154.022 (D)- Height limit. In the case of a principal building, the vertical distance measured from the average grade to the highest point of flat roofs, to the deck line of mansard roofs, and the average height between eaves and the ridge of gable, hip and gambrel roofs, shall not exceed 28 feet unless otherwise specified in this chapter. In no case shall the overall peak building height be greater than 32 feet when measured from the natural average grade.

It should be noted that 389 Dunegrass may have complied with the PUD requirement, but it is believed the driveway is too narrow and steep for fire trucks. If a fire truck could reach the home through the "car" driveway, it would comply. However, a separate "fire truck access" drive is wider and less steep and approaches the walk-out basement. It stops short of the basement, a few feet below the lowest elevation of the building. It is assumed the fire truck access was approved by the Fire Department, but it does not comply with the 30-foot maximum per the PUD. As noted earlier, it appears that 389 Dunegrass would have complied with the height maximum if measured by the method noted in the Zoning Ordinance.

Commentary

Typically, we measure from the mid-point of a pitched roof for zoning (28 feet). For the PUD, we measure at the eave of a pitched roof (30 feet). This allows higher buildings within the PUD, as the mid-point could be 34-35 feet, for example. Zoning can also be more restrictive when

there are walk-outs or drive-outs on lower levels, as they are counted against building height (unlike “basements”), and the Zoning Ordinance also restricts peak height at 32 feet.

A flat roof is somewhat penalized using the PUD measurement. The top of a flat roof cannot exceed the eave of a pitched roof (30 feet). A pitched roof ridgeline could be 8-10 feet higher than a flat roof, which is a significant discrepancy. However, as it relates to fire protection, a flat roof and pitched roof eave at the same height allows for equal ladder access to the rooftop. While this is logical from a fire protection standpoint, pitched roof buildings within the PUD may have a greater sense of height, scale, and mass than a flat roof building. However, character and scale do not relate to the current PUD height measurement compliance issue.

Summary

In six previous cases, the homes comply with the PUD height requirement. While 389 Dunegrass may comply with the Zoning Ordinance height requirement, it does not comply with the PUD height requirement. Regardless of the appropriateness or accuracy of approval of 389 Dunegrass, the height of 383 Dunegrass does not comply with the applicable height maximum for the “Dunegrass- The Preserve at the Lakeshore” Planned Unit Development, nor would it apply to Zoning Ordinance Section 154.022 (D) if applied.

Lot Coverage

To assess lot coverage, the following two definitions from the Zoning Ordinance apply to the calculation:

CONDOMINIUM SUBDIVISION. A division of land on the basis of condominium ownership, which is not subject to the provisions of the Land Division Act of 1967, Public Act 288 of 1967, being M.C.L.A. §§ 560.101 et seq., as amended. Any condominium unit or portion thereof, consisting of vacant land shall be equivalent to the term “lot” for the purposes of determining compliance of a condominium subdivision with the provisions of this chapter pertaining to minimum lot size, minimum lot width, and maximum lot coverage.

LOT COVERAGE. The area of a lot, stated in terms of a percentage, that is covered by buildings and/or structures located thereon. This shall include all buildings, roofed porches, arbors, breezeways, decks 24 inches above grade or higher, roofed patios, whether open or fully roofed; but shall not include fences, walls, driveways, sidewalks, hedges used as fences, decks less than 24 inches above grade or detached stairways, ground-floor stairways, wheelchair ramps, patios or in-ground swimming pools. Stairway landings (provided the landing does not exceed the building code minimum area requirement by more than 10%) shall not be considered in determining lot coverage. Lot coverage shall be measured from the wall or foundation of the building or structure.

The 0.43-acre lot is 18,731 square feet, and the building footprint is 1,545 square feet. As such, the lot coverage is 8.2%, which exceeds the 5% required in the underlying Conservation, Recreation, and Camp District (CRC). Lot coverage modification was not specifically requested during the 2015 PUD application.

The original PUD plan shows unit 19 as .80 rather than 0.43 acres. A portion of unit 19 is noted as a limited common element included in the .80 acres. If considered with the limited common element, lot coverage would be compliant. However, unit 19, as surveyed and legally defined, is .43 acres.

The deviation between the PUD plan and the site condo survey appears to have inadvertently resulted in a compliance issue. However, the Planning Commission may have additional background regarding the site condo approval process, the discrepancy, and whether unit 19 and the limited common element were intended to be counted as one for the purpose of this requirement.

Site Plan Standards of Approval

The following standards for site plan review and approval apply to the project per Section 154.063. Findings related to each standard are provided for consideration by the Planning Commission.

- A. *All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of lot, the character of adjoining property and the type and size of the buildings. The site will be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this chapter.*

Comment: The building site and driveway are proposed to be located on the most level portion of the site, and the single-family dwelling is built into the slope giving it the appearance from the north as a two-level building. However, the lower level allows for a drive-out garage and walk-out basement.

- B. *The landscape shall be preserved in its natural state, insofar as practical, by removing only those areas of vegetation or making those alterations to the topography which are reasonably necessary to develop the site in accordance with the requirements of this chapter.*

Comment: The proposed area of disturbance shown on the site plan appears to limit the overall impact of site work. Alterations to the topography appear to be the minimum necessary to provide the most appropriate building site within unit 19. However, it should be noted that the owner is currently subject to an “Order to Restore” from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Water Resources Division (WRD) based on recent clearing and stump grinding. EGLE has provided the owner with a directive to restore vegetation to ensure compliance with Part 353, Sand Dune Protection and

Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended

- C. *The site plan shall provide reasonable visual and sound privacy for all dwelling units located therein. Fences, walks, barriers and landscaping shall be used, as appropriate, to accomplish these purposes.*

Comment: Existing vegetation outside of the limits of disturbance will provide visual screening from the road and units to the east. There will be no screening of the west side of the dwelling from unit 18. However, screening was not intended between units 18-19 based on the shared driveway shown on the PUD plan (see plan on page 2).

- D. *All buildings or groups of buildings shall be arranged so as to permit necessary emergency vehicle access as required by the Fire Department.*

Comment: The Fire Department must review the site layout regarding site access and the ability to respond to emergencies. It appears that the driveway design was approved by the Fire Department on February 10, 2022, based on a note on the site plan. However, this approval should be confirmed.

- E. *There shall be provided a pedestrian circulation system which is separated from the vehicular circulation system. In order to ensure public safety, special pedestrian measures, such as crosswalks, crossing signals and other such facilities may be required in the vicinity of schools, playgrounds, local shopping areas and other uses which generate a considerable amount of pedestrian traffic. All federal, state, and local barrier free requirements shall be met.*

Comment: While the PUD indicates a nonmotorized trail, it is not located near unit 19. Sidewalks or pathways are not required along the unit's frontage.

- F. *The arrangement of public or common ways for vehicular and pedestrian circulation shall be connected to existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern serving adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified in the City's land use plan.*

Comment: The U-shaped drive from Dunegrass Circle Drive was approved in concept as part of the 2015 PUD plan. This driveway is intended to provide access to units 18-21 (see plan on page 2). As stated earlier, sidewalks or pathways are not required along the unit frontage.

G. All streets shall be developed in accordance with city specifications, unless developed as a private road.

Comment: As stated earlier, the U-shaped drive from Dunegrass Circle Drive was approved in concept as part of the 2015 PUD plan. Driveway and private road details were included on the plan sheet C-102A.

H. Appropriate measures shall be taken to ensure that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Provisions shall be made to accommodate storm water, prevent erosion and the formation of dust. The use of detention/retention ponds may be required. Surface water on all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, create puddles in paved areas or create erosion problems.

Comment: Due to the sandy soils within the PUD, stormwater detention was not required. Rainwater is proposed to be collected by gutters and downspouts and conveyed to a leach basin.

I. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened by an opaque wall or landscaped screen not less than six feet in height. (See §§ 154.142 through 154.144).

Comment: As a single-family dwelling, there are no exterior loading or storage areas noted on the plan.

J. Exterior lighting shall be arranged so that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets. Flashing or intermittent lights shall not be permitted.

Comment: Light fixtures are proposed on the west side elevation along the garage and lower-level entry. Typical residential lighting is anticipated.

K. In approving the site plan, the Planning Commission may recommend that a bond or other financial guarantee of ample sum be furnished by the developer to ensure compliance for such requirements as drives, walks, utilities, parking, landscaping and the like (see § 154.173).

Comment: Not applicable.

Recommendation

The two primary compliance issues are lot coverage and building height. The Planning Commission could table consideration until addressed or approve the site plan with the following conditions to be confirmed administratively. Alternatively, the Planning Commission could amend or supplement these conditions.

1. Update the site plan to comply with the five percent lot coverage requirement.
2. Update the building plan to comply with PUD height requirements.
3. Provide a landscaping plan in accordance with Section 154.027 and site restoration per Resolution No. 150610-A.
4. Secure Fire Department approval of access and sprinkling system.
5. Secure EGLE Critical Dune permitting requirements, as applicable.

Please see the following page concerning conditions of approval and validity of site plans.

§ 154.064 CONDITIONS OF APPROVAL.

- (A) As part of an approval to any site plan, the Planning Commission or City Council, as applicable, may impose additional conditions as in its reasonable judgment may be necessary for protection of the public interest and compliance with chapter 154.
- (B) Such conditions shall be related to and ensure that the review standards of § 154.064 are met. Any performance guarantee shall meet the requirements of § 154.173.
- (C) Approval of a site plan, including conditions made as part of the approval, is attached to the property described as part of the application and not to the owner of the property.
- (D) A record of conditions imposed shall be maintained. The conditions shall remain unchanged unless an amendment to the site plan is approved.
- (E) A record of the decision of the Planning Commission, the reason for the decision reached and any conditions attached to the decision shall be kept and made a part of the minutes of the Planning Commission. A similar record shall also be kept by the City Council in those instances where they have the final review authority.
- (F) The Zoning Administrator may make periodic investigations of developments for which site plans have been approved. Non-compliance with the requirements and conditions of the approved site plan shall constitute grounds for the Planning Commission or City Council, whichever had final review authority, to terminate the approval following a public hearing. (Ord. passed 6-24-1996; Am. Ord. 02-02, passed 2-11-2002; Am. Ord. 170626-2, passed 6-26-2017)

§ 154.065 VALIDITY OF SITE PLANS.

- (A) The Planning Commission shall approve, approve with conditions or deny the submitted site plan. Reasons for a denial shall be set forth in writing.
- (B) Where City Council approval is required the Planning Commission shall transmit its recommendation to the City Council. The City Council shall thereafter review the site plan and may approve, approve with conditions or deny the submitted site plan. Reasons for denial shall be set forth in writing. The applicant shall be provided with a copy of the resolution of the City Council regarding the site plan.
- (C) Approval of a site plan is valid one year. If physical construction of a substantial nature of the improvements included in the approved site plan has not commenced and proceeded meaningfully toward completion the approval shall be null and void.
- (D) Upon written application, filed before the termination of the one-year review period, the Planning Commission may authorize one extension of not more than one year. The extension shall only be granted based on evidence from the applicant that the development has a likelihood of commencing construction within the one-year extension. (Ord. 170626-2, passed 6-26-2017)



Planning Commission Agenda Item Report

FROM: Ryan Cummins

MEETING DATE: 12-15-22

SUBJECT: Public Hearing Signage

DESCRIPTION:

The Planning Commission has expressed interest in signage being placed outside of properties subject to an upcoming public hearing. The belief is that this will assist with better informing the community of zoning matters. The signage would not take the place of any statutory requirements for public hearing mailings and newspaper notices.

The City Clerk has three large metal A-frames that can have signage swapped out as needed. The frames and metal signage would be able to withstand poor weather conditions and would avoid anything being placed into the ground.

Signage would be general and direct interested community members to contact the Zoning Administrator or access the City website for details. An example is below.

If the Planning Commission is supportive of the proposed signage, staff will work to have the signage created and placed outside of properties prior to public hearings.



A Frame Signage



Message Example

SAMPLE MOTION:

Discussion item only.

Ryan Cummins

From: Joe Filippelli <joe@northhouse.design>
Sent: Friday, December 16, 2022 4:20 PM
To: Ryan Cummins
Cc: mannssteven@hotmail.com; Jason Dedic
Subject: 383 Dunegrass - follow up
Attachments: LUCID_Dunegrass_PermitConstruction_021618_markup.pdf

Hi Ryan,

Thank you again for the opportunity to discuss 383 Dunegrass last night.

I was able to pull some numbers from 389 Dunegrass (Lot 20, just east of our lot). Please see attached PDF of selected sheets from the approved permit/ construction documents.

I've made notes throughout the set but to summarize:

- For this project, the driveway/garage is not the lowest point of fire truck access. Sheet C101 shows the fire truck accessing the property by cutting through the driveway into the front yard. Jason Dedic, the builder for this project who is also copied on this email, can verify and further elaborate on the construction of this area in preparation for future fire truck access if necessary.
- The drawing references the sea level elevation of 650'-0" is equivalent to the architectural elevation of 100'-0". This would make the lowest level of fire truck access, which is referenced as 635'-0", equal to the architectural elevation of 85'-0"
- On Sheet A301, the top of wall (where the roof eave meets the wall) is identified as architectural elevation 120' - 2 3/4", which is a total of 35' - 2 3/4" above the lowest point of fire truck access.
- Even if one would argue that the T.O. SLAB elevation of 89' - 3 3/4" is the lowest point to be referenced, the height still exceeds 30'

Please include this information & document in the information for the December 21st meeting.

Thanks again,

Joe Filippelli, AIA
Principal Architect/ Owner

North House Architects
T +1 616 405 2224
info@northhouse.design
www.northhouse.design

GARY E. MEDLER

gary.medler@yahoo.com

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December 19, 2022

BY EMAIL DELIVERY

PLANNING COMMISSION

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Re: Planning Commission Meeting
December 21, 2022
383 DuneGrass Circle – Site Plan Review

Dear Ms. Wolters:

This comment letter is submitted for inclusion in the Record on the continued Site Plan Review Application of Edward and Melissa Harmening (“Applicant”) for the proposed build at 383 DuneGrass Circle (“Application”).

The task before the Planning Commission (“PC”) is site plan review pursuant to Code Sections 154.060 – 154.068.

The PC's only authority is to determine, within the four-corners of the Application, whether Applicant's site plan meets the standards set forth in the Code and in the SLU and PUD Resolutions. The prior, secret, illegal actions of the former Zoning Administrator do not evidence historical precedent, only egregious malfeasance and knowing and intentional violations of the Code and the SLU and PUD Resolutions.

Code Section 154.061 (B) (3) required Applicant to submit a survey showing property corners. Applicant's "Survey" shows Lot 19's lot lines and lot area of .43 acres. The Survey is definitive evidence of the "Lot Area" for calculation of "Lot Coverage" as defined in Code Section 154.005. The proposed Lot Coverage (footprint) of 1,545 square feet substantially exceeds the 937 square foot Lot Coverage permitted under the Code and the SLU and PUD Resolutions (5% of .43 acres).

Code Section 154.061 (C) (14) required Applicant to provide the elevation of the proposed build to the top of the building. Applicant's architect plans evidences the building height of 132' 9." The proposed building height exceeds the PUD Resolution restriction by 4' 3."

Code Section 154.062 required the Zoning Administrator ("ZA") to conduct an administrative review of the site plan for compliance with the City's Land Use ordinances in Chapter 154. The ZA conducted this administrative review and determined Lot Coverage and building height exceeded the permitted limitations and therefore the Code standards had not been met (See revised ZA Memorandum, dated December (8)(15), 2022, contained in the PC Packet.

Under Code Section 154.171 (B), the ZA has the authority to make administrative interpretations and determinations (as confirmed by City Counsel at the last PC Meeting); however, the Code does not authorize the PC, and the PC has no such discretion, to make interpretations. The PC's only authority is to determine if the Code and SLU and PUD Resolutions standards have been met.

Code Section 154.063 sets forth the standards which must be met for site plan approval by the PC.

Code Section 154.064 sets forth the conditions for approval.

Code Section 154.065 authorizes the PC to approve, approve with conditions (provided the conditions are related to and ensure that the review standards of Code Section 154.064 are met), or deny the submitted site plan. On its face, Applicant's site plan cannot be approved because the proposed build exceeds the limits on Lot Coverage and building height.

The PC is not a court of equity and has no discretionary authority under the Zoning Enabling Act, the City Code or the terms and conditions of the SLU and PUD Resolutions. The PC's obligation is to ensure compliance with the law. As read into the record, the PC's Bylaws reinforce the PC's duty to enforce the Code and SLU and PUD provisions.

EXPLOSIVE DISCLOSURE:

At the December 15, 2022, PC Meeting, it was disclosed the prior ZA, Cindy Osman ("Osman"), violated her duties and responsibilities and exceeded her authority under Code Sections 154.171 (A) and (N) in processing site plan review applications for the DuneGrass PUD builds.

Code Section 154.171 DUTIES OF THE ZONING ADMINISTRATOR states:

"Section 154.171 (A) Enforcement. The Zoning Administrator shall administer and enforce this chapter...."

"Section 154.171 (N) Limits on authority. Under no circumstances is the Zoning Administrator permitted to make changes in this chapter, nor to vary the terms of this chapter while carrying out the duties prescribed herein. It shall be the responsibility of the City Council to assure that the Zoning Administrator enforces the provisions of this chapter."

As disclosed, Osman violated her obligations and authority under the Code as follows:

Failed to take six (6) DuneGrass site plan review applications to the PC for required review and approval. Each such illegal build constitutes a nuisance per se, subject to abatement (See Code Section 154.117 (A)).

Permitted six (6) homes to be constructed in violation of the Code and the SLU and PUD Resolutions. Each such illegal build constitutes a nuisance per se, subject to abatement (See Code Section 154.117 (A)).

Failed to enforce the Code provisions and the terms and conditions of the SLU and PUD Resolutions as to building height (only requiring approval from the Saugatuck Township Fire District Chief because Osman did not care about the building height) resulting in homes to be constructed in excess of height limits. Each such illegal build constitutes a nuisance per se, subject to abatement (See Code Section 154.117 (A)).

Failed to enforce the Code provisions and terms and conditions of the SLU and PUD Resolutions as to Lot Coverage by permitting at least five (5) homes to be built in excess of the permitted Lot Coverage (some substantially). Each such illegal build constitutes a nuisance per se, subject to abatement (See Code Section 154.117 (A)).

DISTRACTION:

While not raised in the Application, at the December 15, 2022, Applicant and their professionals questioned why this Application is being subject to PC review and compliance with Code and SLU and PUD restrictions because Osman permitted other DuneGrass builds without such PC review or satisfying Code standards.

Applicant was not surprised by the required restrictions, only imposition of the restrictions on their build now that Osman is no longer the ZA.

From the start, Applicant and their professionals knew the Code and SLU and PUD requirements and restrictions.

The SLU and PUD Resolutions constitute deed restrictions on Lot 19.

Applicant's title policy disclosed the SLU and PUD Resolutions and Code restrictions.

The Condominium Bylaws DuneGrass Site Condominiums states:

“Section 7.6 (a) All construction and landscaping must comply with the requirements of (i) the City of Saugatuck as set forth in its special land use and PUD approvals for the Project and (ii) the requirements of the Michigan Department of Environmental Quality for the Property.”

Separately attached is the Master Deed of DuneGrass Site Condominiums, recorded September 2, 2015 (“Master Deed”), which contains a copy of these Bylaws.

Applicant and their professionals cannot reasonably claim reliance on any representation made to them by Osman.

This Application is simply another example of an applicant desiring a larger build than permitted. Applicant and their professionals assumed the risk in acting on the knowingly false and illegal representations and actions of Osman.

DISTURBING PC ACTIONS ON DECEMBER 15, 2022:

At the December 15, 2022, PC Meeting, a motion was actually made to approve this Application based on the prior, secret, illegal builds permitted by Osman. This motion was not seconded.

When a motion to deny the application was not seconded, the PC directed the ZA to review the prior Osman DuneGrass files to establish a historical precedent to support approval of this Application.

Review of the Osman files will not provide historical precedent for approval. Review will only confirm evidence of Osman’s egregious malfeasance in office, Osman’s knowing and intentional violations of her duties and limits on authority under the Code and the SLU and PUD Resolutions. The Osman files, including this Application to the extent processed by Osman, only constitute evidence of potential crimes.

If the PC relies on Osman’s prior, secret, illegal actions as historical precedent, the PC itself is violating its obligations under the Code and the SLU and PUD Resolutions. Such approval would also violate the rights of all parties, including mine, pursuant to the Consent Judgment in *Medler v. City of Saugatuck, Planning Commission and City of Saugatuck Zoning Administrator*, Case No: 13-52646-CZ, and the related terms and conditions of the Saugatuck Planning Commission Resolution No. 1312203-A (“SLU Resolution”) and Saugatuck City Council Resolution 150610-A (“PUD Resolution”); and the Consent Judgment in *In the Matter of: Lakeshore Camping, Gary Medler and Shorewood Association on the Permit Issued to Dune Ridge SA LP (Consolidated Cases)*, File No.: 14-03-0020-P through 14-03-0028-P, and the related terms and conditions of the SLU Resolution and PUD Resolution (“Settlement”).

HEIGHT LIMITATION:

It’s unclear why the PC spent hours attempting to find a work around for the proposed building height. The ZA made a determination the proposed building height exceeded the PUD requirement by 4’ 3” based on application of the required measurements under the International Fire Code.

Applicant could easily meet the building height restriction by reducing ceiling height on each of the three floors.

LOT COVERAGE:

Applicant’s Lot 19 consists of .43 acres as evidenced by the Master Deed at page 48 (separately attached) and the Survey.

Nothing in the Code, the SLU and PUD Resolutions or the PUD Plan alter the Code definitions to authorize limited common elements in calculation of Lot Coverage. Condominium Unit is defined as a Lot; Lot Area is the land between the lot lines; and Lot Coverage is a percentage of the Lot Area. Limited common elements are simply not included in the calculation of Lot Coverage.

Under the Code Chapter on Planned Unit Development (Section 154.110 *et seq.*), the Maps attached to the PUD Plan are only required to “approximate the number of units and approximate the number of acres and square feet to be occupied.” The Code requires definitive acreage and square feet for lots in a PUD involving a condominium project is evidenced to be evidenced by a recorded master deed.

Separately attached is the recorded Master Deed. At page 48 is the Map showing Lot 19 consists of .43 acres.

ADDITIONAL FACTS:

The following facts are submitted to supplement the Record:

1. Public records show Edward and Melissa Harmening (Applicant) acquired Lot 19 on September 8, 2022, for \$330,000.
2. Public records show Mr. Harmening’s brother and wife (Thomas and Lizabeth Harmening) acquired Lot 18 in DuneGrass (located adjacent to Lot 19) on July 15, 2021, for \$380,000. Lot 18 is even smaller than Applicant’s Lot 19 (See Master Deed at page 48, separately attached).

If the PC approves this Application, what will the PC do when Thomas and Lizabeth Harmening request accommodation?

What will the PC do when a non-relative applicant proposes a build in DuneGrass and requests accommodation?

All PC Members know this Application cannot be approved as presented. Searching for prior unauthorized and illegal builds to claim as historical precedent would constitute a cover up for Osman’s prior misdeeds.

CULPABILITY OF CITY AND PLANNING COMMISSION:

On September 24, 2020, I issued a Notice of Breach/Demand to the City and the PC related to the former ZA's failure to enforce the provisions of the SLU and PUD Resolutions pursuant to the Settlement (separately attached). The City failed to respond and to my knowledge has taken no investigative action. Had the City or the PC performed any due diligence, it would have discovered the prior, secret, illegal actions of Osman.

How many illegal builds occurred in DuneGrass and the related Lots 13-21 in the Dune Ridge development after September 24, 2020? How many other secret, illegal zoning events did Osman effect after September 24, 2020, which could have been curtailed? How much human and financial cost (already incurred by the City) could have been avoided had the City effected any oversight of Osman as required by Code Section 154.171 (N)? How much human and financial cost could the City have avoided if it had heeded any of the countless Public warnings during the term of Osman's employment?

Sincerely

Gary E. Medler

cc: Lauren Stanton
Garnet Lewis
Holly Leo
Russ Gardner
Gregory Muncey
Helen Baldwin

December 16, 2022

To:

Jamie Wolters
City Clerk
City of Saugatuck
102 Butler Street/PO Box 86
Saugatuck, Michigan 49453
jwolters@saugatuckcity.com

Planning Commission

Steven Manns, Chair
Ann Broeker, Vice Chair
Holly Anderson
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Subject: Planning Commission Meeting
December 21, 2022
383 Dune Grass Circle – Site Plan Review

Dear Ms. Wolters:

This comment letter is submitted for inclusion in the Record for the Planning Commission Meeting on the continued Site Plan Review Application of Edward and Melissa Harmening (“Applicant”) for the proposed build at 383 Dune Grass Circle (“Application”).

Throughout the December 15, 2022 meeting it seemed that the most vocal members of the Planning Commission were searching for any available mechanism to approve multiple variances to the PUD as negotiated by and for Dune Grass. It was also clear that several members felt that the PUD requirements as approved, and the requirements for modification to allow major changes if required, must be followed according to local ordinance and State of Michigan laws.

It seemed that those supporting the applicant’s request for variances would use the unlawful (*see below*) actions of the previous zoning administrator as precedent to allow major modifications to the PUD. Those supporting the variances also seemed swayed to support because the applicant “relied” on guidance from the former Zoning Administrator. To address that point I submit the following:

Bad advice is everywhere. Just because a person gets bad advice does not relieve them of the responsibility to follow the law, and just because others followed bad advice and did not get caught or punished does not make that or similar action allowable for others.

As examples, the President of the United States may say you need to go to the Capital and fight like hell. The federal court system has sent to prison for several years some of those that followed that advice. They went to prison for doing as advised by the President of the United States.

At the state level, water quality staff in Flint Michigan were fined and sent to prison for willful neglect of duty when the governor wanted to save money.

Right here in Saugatuck the zoning ordinance states “*Limits on authority. Under no circumstances is the Zoning Administrator permitted to make changes in this chapter, nor to vary the terms of this chapter while carrying out the duties prescribed herein.*” Despite this clear and absolute prohibition, a zoning administrator may say an applicant can violate the zoning ordinance. While it may generate some level of sympathy, just because an applicant knowingly relied on that bad advice does not make their deviations from the ordinance legal or allowable for themselves or others, especially following that Zoning Administrator’s resignation.

Bad advice is everywhere. Reliance on bad advice when the law and regulations are clear and known is never a good path to follow.

This site plan request is not for a modest structure. The drawings as submitted show the requested structure to have ceiling heights of 10 feet on the main floor and 9 feet on the upper level where the residential standard is 8 feet. The building height limit serves multiple purposes. As specified in the Master Plan, the zoning structure height limits were created not merely to satisfy the fire code but to limit the bulk of buildings to maintain the character of Saugatuck. The PUD ordinance and measurement process are clearly defined and must be enforced as negotiated by the developer and as recorded or modified as allowed.

The lot coverage standard preserves open space, which according to the master plan and zoning ordinance is and has been considered essential to the character of the CRC district. What is being requested is a 70% variance from the standard of 5% lot coverage allowed according to the PUD. It is difficult to consider 70% deviation as an allowable minor modification of the PUD.

The maximum building envelop for the applicant’s house was established when they purchased the lot they chose. The restrictions are clear. If an applicant desires a larger house than is allowed on their lot, they should have and could have purchased a more spacious lot.

Individually and together these requests constitute major modifications (*anything that is not a minor request*) to the PUD. Please uphold the local ordinance and the State of Michigan

Enabling Act and deny the site plan and require compliance with the PUD as negotiated and approved by the Planning Commission or amend the PUD as allowed by law.

Respectfully Submitted,

James Bouck
638 Spear Street
Saugatuck MI 49453