

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

NM INVESTMENT COMPANY, LLC
A Michigan Limited Liability Company, and
RVTS ACQUISITION, LLC
A Michigan Limited Liability Company

Case No. 21-
Honorable

CZ

COMPLAINT

Plaintiffs,

v

LEELANAU TOWNSHIP,
A Michigan General Law Township, and
LEELANAU TOWNSHIP BOARD

Defendants

Brion B. Doyle (P67870)
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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

Plaintiffs, NM Investment Company, LLC, (hereinafter "NM Investment"), and RVTS Acquisition, LLC ("RVTS") (collectively, "Timber Shores" or "Plaintiffs"), by and through their attorneys, VARNUM LLP, state for their Complaint against Defendants as follows:

INTRODUCTION

1. Since 2019, Timber Shores has sought to develop and construct an RV and camping resort on a 213-acre bayfront property located near the town of Northport in Leelanau County, Michigan. As part of that effort, Timber Shores engaged multiple highly-regarded consultants to design an RV resort and campground that will live up to the memories of thousands of individuals who visited the previous Timber Shores campground that existed on the site until the 1970s, respect the environment and the Leelanau community, and be financially sustainable and economically beneficial to the local community. Timber Shores submitted its Special Land Use Application ("SLU Application") for the proposed site in March 2020. And while the COVID-19 pandemic delayed the process, Timber Shores has worked diligently with Defendant Leelanau Township (the "Township") and its officials to ensure that the proposed RV resort and campground complies with all legal, environmental, engineering, and safety requirements, and county, state, and federal permitting requirements.

2. While Timber Shores' proposal has been well-received among business owners and year-round residents in the Leelanau community, a small number of part-time residents have raised unfounded objections and made false claims regarding the proposed development. A handful of property owners who live near the resort have also objected about a new development "in their backyard." Timber Shores very recently learned that this includes two members of the Township Board, whose actions to interfere with the development represent an improper conflict of interest and violation of the public trust. Specifically, in March 2021, while Timber Shores' SLU Application was pending and progress was being made, Defendants, at a Special Meeting of the Township Board, passed an ordinance that placed a six-month, renewable moratorium over all applications for special use recreational vehicle parks in the commercial resort district.

3. The moratorium was ostensibly enacted pursuant to the Township's police power in response to alleged "public health, safety, and welfare" concerns raised by Township Board members and certain members of the public, rather than being enacted pursuant to the requirements of the Michigan Zoning Enabling Act. However, in the year between when Timber Shores submitted the SLU Application and when the Township enacted the moratorium, no Township official raised or mentioned any "public health, safety, or welfare" concerns regarding the proposed development.

4. The Ordinance further falsely stated that Timber Shores' SLU Application had been "rejected as incomplete," even though Timber Shores was at the time actively engaged in preparing documentation to complete its application pursuant to the requirements of the Township Zoning Ordinance and had never been notified that its Application was rejected. The Township's arbitrary "rejection" of Timber Shores SLU Application violates the Township Zoning Ordinance, which requires that an applicant have 90 days to cure any deficiencies in its application.

5. Defendants' moratorium pursuant to their "police power" that effectively suspends or amends the Township's existing zoning ordinance demonstrates that Defendants, or at least certain individuals within the Township government and Board, is motivated by a desire to thwart Timber Shores' proposed development, as opposed to objectively and fairly carrying out the functions of local government. These actions are contrary to Michigan law and violate due process protections afforded by the United States and the State of Michigan.

6. This filing was necessitated by the Defendants' failure to rectify their improper conduct, despite repeated requests. Plaintiffs seek the invalidation of the township's illegal police power moratorium, the processing of Timber Shores' SLU Application by the Township under the

zoning ordinance as it existed at the time of submission, the recusal of the conflicted officials from matters involving Timber Shores, along with the other relief requested below.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff NM Investment Company, LLC is a Michigan Limited Liability Company with a principal address of 74 W Long Lake Road, Suite 101, Bloomfield Hills, MI, 48304.

8. Plaintiff RVTS Acquisition, LLC is a Michigan Limited Liability Company with a principal address of 74 W Long Lake Road, Suite 101, Bloomfield Hills, MI, 48304.

9. Defendant Leelanau Township is a Michigan general law township existing under the laws of the State of Michigan with a principal address of PO Box 338, 119 E Nagonaba St., Northport, MI 49670.

10. Defendant Leelanau Township Board is the township legislative body.

11. The controversy between the parties involves equitable issues and venue is proper in this court.

BACKGROUND

THE TIMBER SHORES PROJECT

12. Timber Shores owns 213 acres of land located on M-22 near the town of Northport in Leelanau County, MI, including 1700 feet of frontage on Grand Traverse Bay. Plaintiffs and/or their principal Mr. Fred Gordon have owned the property for approximately twenty years and have paid county property taxes assessed as a "commercial resort" during that time, in the total amount of more than \$1.5 million.

13. In 2006, Timber Shores successfully obtained authorization from Defendants to construct and operate a Mixed Use Residential/Commercial Planned Urban Development ("PUD")

on the site. However, following the 2008 financial crisis, Plaintiffs were unable to proceed with the PUD development on the site, and the Mixed-Use authorization expired.

14. In connection with the current development efforts, Timber Shores first met with the prior Township Supervisor and Zoning Administrator to discuss the plan to open the RV resort and campground in or about August 2019. In or about October 2019, Timber Shores made a full presentation to the Township Planning Commission, including a preliminary site plan and a public discussion of the proposal.

15. On March 20, 2020, Timber Shores submitted a Special Land Use Application ("SLU Application") to the Township Planning and Zoning Department, seeking special use approval to construct an RV resort and campground on the site, subject to the condition of obtaining all necessary state and county permits and engineering approval.

16. The proposed RV resort and campground would utilize approximately 50% of the space approved for the prior PUD, and will contain campsites, including park model cabins for campground guests and overnight tourist lodging.

17. On or about May 26, 2020, Township Zoning Administrator Stephen Patmore contacted Timber Shores' project Manager stating that the application fee had been received, and noted that an escrow account of \$10,000 would need to be established for the purpose of covering the legal fees and fees associated with environmental, planning, and engineering review of the project. See May 26, 2020 Correspondence, **Exhibit A**.

18. In or about September 2020, Timber Shores established and paid \$10,000 into an escrow account to cover the costs of the Legal Review and Expert Planning Review of the application.

19. Following the submission of the Special Use Application, Mr. Patmore provided the application to the Planning Commission for information purposes and posted on the Township's website that the application had been submitted.

20. The Township's regularly-scheduled planning commission meetings were disrupted by the COVID-19 pandemic, resulting in the first regular meeting of the Planning Commission following the submission of the Special Use Application for the site taking place in August 27, 2020.

21. At the August 27, 2020 regular meeting, approximately 10 individuals during the scheduled time for public comment raised objections to the construction of the site, arguing that it would harm the environment and be unsafe for the Township. The Planning Commission did not provide public notice that Timber Shores would be discussed at the August 27, 2020 regular meeting. Upon information and belief, and according to Township property records, the individuals that raised objections at the public meeting are neighboring property owners or part-time and/or recent residents of the Township.

22. On or about October 21, 2020, the Mr. Patmore contacted Timber Shores via e-mail, advising that the Township was reviewing the Environmental Assessment and revised site plans that Timber Shores had provided, and advised that the Zoning Administrator would be meeting with the Township Attorney regarding the application and items recently submitted. See 10/21/20 E-mail, attached as **Exhibit B**.

23. On or about November 12, 2020, Mr. Patmore met with Township Attorney Robert Thall regarding the SUP Application. See 11/12/20 Email and Status Report, attached as **Exhibit C**. Mr. Thall recommended that the Township hire a planning expert "to review the application, site plans, and zoning ordinance and assist the Township Attorney and Zoning Administrator in

determining what is necessary to complete the Application in sufficient detail to commence Planning Commission Review." *Id.*

24. The Township subsequently hired the firm of Williams & Works to serve as Planning Experts on behalf of the township. A copy of the SLU Application was provided to Williams & Works in or about January 2021.

25. On or about February 10, 2021, Williams & Works issued a report (the "Williams & Works Report") that stated that the Application and Site Plan "lack[ed] sufficient completeness for planning commission review." See Williams & Works Report, attached as **Exhibit D**.

26. The Williams & Works Report identified documentation items needed for the SUP Application that were either "somewhat complete" or "incomplete." Of the 58 specific items identified in the report, 31 were deemed "complete," 8 were "somewhat complete," 17 were "incomplete," and two items were "not applicable."

27. The Williams & Works report further stated:

Discussion: Section 11.6, B, 3, [of the Township Zoning Ordinance] states that "The Zoning Administrator shall review the application and site plan to determine to determine [sic] whether they are complete in accordance with the requirements of Section 11.4. In the event that the application does not meet the requirements of 11.4, the Zoning Administrator shall notify the applicant in writing specifying the areas of deficiency." In our opinion, there are a number of deficiencies in the completeness of the application. This memo may be used to notify the applicant of these deficiencies prior to review by the Planning Commission."

Id. at 11.

28. Mr. Thall transmitted the Williams & Works Report to Timber Shores via e-mail on February 10, 2021. See 2/10/21 Email, attached as **Exhibit E**.

29. On or about February 11, 2021, Mr. Patmore issued a Status Report related to the SUP Application, noting the following: (1) Williams & Works had concluded that the SUP

Application was not sufficiently complete for Planning Commission review; (2) that the Township Attorney agreed with the report; (3) Timber Shores had been notified through their attorney; and (4) until such time that a completed application was received, the issue would not appear on further agendas of the Planning Commission. See 2/11/21 Status Report, attached as **Exhibit F**.

30. That same day, Timber Shores notified Mr. Thall and Zoning Administrator Patmore that it would address all of the alleged deficiencies in the SUP Application identified in the Williams & Works Report. See 2/11/21 Email, attached as **Exhibit G**. Timber Shores immediately commenced compiling the necessary documentation to complete its SUP Application.

31. Section 11.6(B)(3) of the Township Zoning Ordinance states that the Zoning Administrator "shall review the application and site plan to determine whether they are complete in accordance with the requirements of Section 11.4" and "shall notify the applicant in writing [of] any areas of deficiency." Zoning Ordinance, § 11.6(B)(3). Section 11.6(B)(3) further states that if "the applicant fails to rectify correct the deficiencies of the application within 90 days, the Zoning Administrator may deny the application on the basis that it is incomplete." *Id.* The 90-day period provided for in Section 11.6(b)(3) has not expired.

THE 2021 ORDINANCE AND MORATORIUM

32. On or about March 17, 2021 (only 35 days after the deficiencies were identified in the Williams & Works report), the Township Board adopted Ordinance No. 2 of 2021 (the "2021 Ordinance") placing a six-month moratorium on RV resorts and campgrounds in the commercial resort zoning district. See 2021 Ordinance, attached as **Exhibit H**.

33. As part of its findings, the Ordinance stated that the Township had received an application "for a special use recreational vehicle park and campground in a commercial resort

district." The Ordinance further stated that the application "was subsequently rejected as incomplete." *Id.* § I.2.

34. The findings further stated that, "[i]n the time that the Application was considered, before rejection as incomplete, the Township received substantial comments and information from the public raising public health, safety, and welfare concerns regarding use of the commercial resort district property for a recreational vehicle park and campground." *Id.* § I.3. In addition, the findings recite that the contemplated moratorium would allow for the study of the public health, safety, and welfare concerns of the Township Board and "allow for any needed Zoning Ordinance update and implementation process to occur. *Id.* § 1.5.B.

35. Per the 2021 Ordinance, the moratorium is "imposed upon the consideration of any applications for special use recreational vehicle parks in the commercial resort district for 180 days or until an amendment to the Zoning Ordinance is adopted, whichever occurs first." *Id.* § II. Moreover, the 2021 Ordinance provides that the Moratorium may be extended by resolution of the Township Board to allow sufficient time to complete amendments to its ordinances. *Id.* § III.

36. During the approximately 18 months that Timber Shores was in contact with the Township regarding the proposal and SUP Application, no Township official ever suggested or claimed that the current Zoning Ordinances and the required county, state, and federal permitting process was inadequate to protect the "public health, safety, and welfare."

37. On or about March 26, 2021, Timber Shores, through counsel, contacted the Township attorney regarding the status of the SLU Application. See 3/26/21 Email, attached as **Exhibit I**. Timber Shores questioned the Ordinance's finding that Timber Shores' SUP Application had been "rejected as incomplete," and advised that Timber Shores had been working to compile the remaining application materials within the time frame set out in Zoning Ordinance Section

11.6(B)(3). *Id.* Timber Shores requested that the Ordinance be corrected and requested confirmation that the SLU Application was still pending review and would move forward under the current Zoning Ordinance. *Id.*

38. Mr. Thall responded to Timber Shores via e-mail on or about March 29, 2021.

See 3/29/21 Email attached as **Exhibit J**. Mr. Thall informed Timber Shores:

The findings the ordinance do not say that your application was **denied** as that term is used un Section 11.6(B) but instead says that **the application was rejected as incomplete**. These are not intended to say the same thing. It is a matter of semantics. **It was a simple fact that your application could not move forward as it was incomplete**. You were notified that your application was incomplete on February 10, 2021. **It is immaterial that the application was not denied under Section 11.6(B) of the Township Zoning Ordinance**. Timber Shores does not have a vested right with regard to its proposed project.

Id. (emphasis and highlighting in original).

39. Mr. Thall's March 29, 2021 correspondence also invited Timber Shores to attend the April 8, 2021 Planning Commission public hearing where the commission would consider whether the Moratorium should be recommended to the Township Board as a Zoning Amendment.

Id.

40. The Zoning Ordinance contains no provision allowing for an SUP Application to be "rejected because it is incomplete," as asserted by the Mr. Thall.

41. Counsel for Timber Shores responded to Mr. Thall's e-mail via letter on March 30, 2021. See 3/30/21 Letter, attached as **Exhibit K**. Timber Shores told Mr. Thall that the Township's position that the application was "rejected as incomplete" but not "denied" under Section 11.6(B) was contrary the Zoning Ordinance and documentation of the review process. *Id.* Timber Shores further pointed out that Williams & Works had stated that their review was pursuant to Section 11.6(B).

42. Timber Shores further noted that Mr. Thall had stated that the SUP Application was "rejected as incomplete" but also indicated that it fell under the Moratorium and was thus still under consideration. *Id.*

43. Counsel for Timber Shores requested in the March 30, 2021 letter that (1) the Township provide Timber Shores with written notice that the property is currently before the Township for consideration under the current Zoning Ordinance; (2) that the SUP Application was in abeyance pursuant to the Moratorium, and (3) that upon resolution of the matters identified in the Ordinance, the SUP Application review would resume and Timber Shores will be provided with the opportunity to insure that the SUP Application could be updated for review and consideration in accordance with any new zoning regulations. *Id.*

44. On or about April 2, 2021, counsel for Timber Shores wrote to Zoning Administrator Patmore that Timber Shores intended to make a presentation at the April 8, 2021 public hearing. See 4/2/21 Letter, attached as **Exhibit L**. Counsel for Timber Shores further advised that Timber Shores objected to the Township's decision to include Timber Shores SUP Application on the agenda of the August 27, 2020 regular meeting without public notice. *Id.* Counsel for Plaintiff further objected to the prejudice demonstrated by the Township during prior Planning Commission meetings and requested that Timber Shores be granted a fair hearing at the April 8, 2021 public meeting. *Id.* Specifically, Timber Shores requested that it be allowed uninterrupted time at the public hearing to present a legal rebuttal to the Ordinance and to rebut claims that Timber Shores presents any health and safety concerns. *Id.*

45. Timber Shores was not permitted to make its presentation at the April 8, 2021 Planning Commission meeting. Rather, representatives of Timber Shores had to outline the arbitrary nature of the 2021 Ordinance and detail the economic damage to the community should

the Timber Shores project be delayed or ceased through several disjointed three minute public comments made prior to and after the regular meeting.

THE CONFLICT OF INTEREST

46. Timber Shores recently learned that Township Supervisor John Sanders and his wife, Township Trustee Georgina Murray, who were directly involved in the review of the SUP Application and the 2021 Ordinance, live across the street from the Timber Shores development site.

47. Undersigned counsel contacted Defendants, through Mr. Thall, via letter on or about May 11, 2021 to advise of the conflict of interest presented by Mr. Sanders and Ms. Murray's involvement in the SUP Application review and to request that they recuse themselves from any further Township action that impacts Timber Shores in any way, pursuant to the requirements of the Standards of Conduct for Public Officers and Employees Act, MCL 15.341, *et seq* ("Standards of Conduct Act"). See **Exhibit M**.

48. Counsel for the Township responded almost one month later, on June 7, 2021. See 6/7/21 Letter, attached as **Exhibit N**. In its correspondence, counsel for the Township did not deny that Mr. Sanders and Ms. Murray live across the street from the Timber Shores site and did not attempt to deny that they have a conflict of interest. However, the Township's counsel did not offer to have Mr. Sanders or Ms. Murray recuse themselves or otherwise withdraw from proceedings involving Timber Shores.

49. Rather, counsel for the Township, Robert Thall, indicated that the Standards of Conduct Act "does not have general applicability to Township officials," such that "Mr. Sanders and Ms. Murray are not bound by the Standards of Conduct Act." *Id.*

50. The statement in Mr. Thall's June 7 correspondence is directly contradicted by a legal opinion that *Mr. Thall himself* provided to the Michigan Township Association ("MTA"). Specifically, in a March 21, 2011 Memorandum to the MTA, which is available to members on the MTA website, Mr. Thall stated that "The Standards of Conduct Act regulates the ethical conduct of public officers and employees," and indicated that it applied to a situation in which township board members were considering voting on a matter in which they had a personal or financial interest. See 3/21/11 Memorandum, **Exhibit O**. In reaching this conclusion, Mr. Thall noted that his firm "researched case law, Attorney General opinions and the various statutory amendments to the Standards of Conduct Act." *Id.* Based on the applicability of the Standards of Conduct Act, Mr. Thall advised that township board members "would not be allowed to vote" on matters "in which the township official has a financial or personal interest." *Id.*

51. On or about May 19, 2021, undersigned counsel again contacted the Township via letter, through Mr. Thall, to alerting the Township to Timber Shores' belief that the 2021 Ordinance is void and invalid because (1) under the ZEA, MCL 125.3202., the Township cannot suspend a zoning ordinance via a "police power" moratorium, and must instead go through the process mandated when a Township adopts legislation; (2) it is not a valid use of the Township's "police power" insofar that it regulates not an activity, but rather a land use that must be regulated pursuant to the ZEA; and (3) it was passed with the votes and under the influence of two Township Board members who have material conflicts of interest and should have recused themselves from the proceedings. See 5/19/21 Correspondence, attached as **Exhibit O**.

52. Counsel for the Township responded almost one month later, on or about June 7, 2021. See 6/7/21 Correspondence, attached as **Exhibit P**. Mr. Thall denied that any wrongdoing on the part of the Township.

COUNT I – DECLARATORY JUDGMENT – INVALID MORATORIUM

53. Timber Shores realleges and incorporates by reference the allegations of the preceding paragraphs.

54. Under the ZEA, local municipalities are empowered to establish zoning regulations. MCL 125.3202.

55. Local municipalities may also "adopt ordinances regulating the public health, safety, and general welfare of persons and property." MCL 41.181.

56. However, a local government may not avoid the substantive and procedural requirements of the ZEA by merely claiming that a zoning ordinance is valid as an enactment pursuant to the general police power. *Little Mack Entm't v Twp of Marengo*, 625 F Supp 2d 570, 574 (WD Mich 2008) (citing *Krajenke Buick Sales v Kopkowski*, 322 Mich 250, 254 (1948)).

57. Thus, under Michigan law, the Township cannot suspend a zoning ordinance via a "police power" moratorium. *McCarthy v Vil. Of Marcellus*, 189 NW2d 80, 85 (Mich Ct App 1971).

58. Instead, when a township suspends or amends a zoning ordinance, the ZEA requires the township to go through the process mandated when adopting legislation. MCL § 125.3202; *Whitman v Galien Twp*, 808 NW2d 9, 14 (Mich Ct App 2010); *Tuscola Wind III, LLC v Ellington Township*, 2018 WL 1291161 (E D Mich Mar 13, 2018).

59. The 2021 Ordinance is a zoning ordinance insofar as it regulates land use, rather than activities that may be regulated under the Township's police power. *Nat Aggregates Corp v Brighton Twp*, 539 NW2d 761, 768 (Mich Ct App 1995); *Square Lake Hills Condo Ass'n v Bloomfield Twp*, 471 NW2d 321, 326 (Mich 1991).

60. Upon information and belief, the Township did not conform to the requirements of the ZEA when enacting the 2021 Ordinance and moratorium.

61. Because it was not enacted in compliance with the ZEA, moratorium is void. *Tuscola Wind III, LLC v Ellington Township*, 2018 WL 1291161 at *5 -*11 (holding that moratorium on development of wind energy systems passed by township board, ostensibly through its police powers, was void because of the failure to comply with procedural requirements of the ZEA).

62. Accordingly, the 2021 Ordinance and moratorium is unlawful and should be declared void.

63. There is an actual case or controversy between the parties regarding whether the 2021 Ordinance is unlawful and void.

64. A present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

65. The Court has authority to declare the 2021 Ordinance as unlawful and invalid pursuant to MCR 2.605, MCL 124.21, *et seq.*, and other applicable law.

COUNT II – DECLARATORY JUDGMENT – CONFLICT OF INTEREST

66. Timber Shores realleges and incorporates by reference the allegations of the preceding paragraphs.

67. Upon information and belief, Township Supervisor Sanders and Township Trustee Murray had direct involvement in the review of the SUP Application and enactment of the 2021 Ordinance.

68. The Michigan Standards of Conduct For Public Officers and Employees Act, ("Standards of Conduct Act"), MCL 15.341, et seq. applies to Mr. Sanders and Ms. Murray in their capacity as public officers of the Township. See MCL 15.341.

69. Section 2b of the Standards of Conduct Act provides whistleblower protection to a public officer or employee who reports a violation of Section 2 of the Standards of Conduct Act by another public officer or employee. MCL 15.342b. For the purposes of this whistleblower protection, Township employees and officials fall under the prohibited conduct contained in Section 2. Id.

70. Subsection 7 of Section 2 provides that:

Except as provided in Section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest.

MCL 15.342(7) (emphasis added).

71. Considering, voting, or other official involvement in the SUP Application constitutes participation in the regulation or supervision of a matter in which Mr. Sanders and Ms. Murray have a personal and financial interest.

72. The Zoning Board of Appeals Handbook, published by the Michigan Municipal League, instructs that a conflict of interest should be declared if an official's home falls within the notification radius used for zoning actions.

73. Michigan common law also provides that public officials should not participate in or vote on matters in which they have a personal or financial interest, and that participation by a public official with a conflict of interest will result in the decision being void.

74. Therefore, Mr. Sanders and Ms. Murray have a conflict of interest with regard to matters related to Timber Shores, given that they live across the street from the Timber Shores site.

75. This conflict of interest should be remedied through (1) the entry of a declaratory judgment that Mr. Sanders and Ms. Murray have a conflict of interest with regard to Timber Shores; and (2) the entry of an injunction enjoining Mr. Sanders and Ms. Murray from any participation in activities related to Timber Shores, including, but not limited to, evaluating and/or voting on the SUP application, and participating in any discussions, hearings, deliberations, and other information-gathering activities regarding the SUP Application.

76. There is an actual case or controversy between the parties regarding Mr. Sanders and Ms. Murray's conflict of interest.

77. A present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

78. The Court has authority to declare that Mr. Sanders and Ms. Murray have a conflict of interest pursuant to MCR 2.605, MCL 124.21, *et seq.*, and other applicable law.

COUNT III – VIOLATION OF SUBSTANTIVE DUE PROCESS – AS APPLIED

79. Timber Shores realleges and incorporates by reference the allegations of the preceding paragraphs.

80. The United States Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend. V, XIV.

81. The Constitution of the State of Michigan provides that no person shall be deprived of life, liberty, or property without due process of law. Mich. Const. art I, § 17.

82. These due process clauses protect the rights of persons, including corporations and other business entities, from deprivation at the hands of arbitrary and capricious government actions.

83. Timber Shores' SLU Application substantially complied with all requirements of the Zoning Ordinance at the time that the 2021 Ordinance was enacted and was within the 90-day period to cure any deficiencies in its SLU Application pursuant to Section 11.6(B)(3) of the Zoning Ordinance at the time that the 2021 Ordinance was enacted.

84. Timber Shores has invested substantial resources and "sunk costs" into the project.

85. The moratorium under the 2021 Ordinance prevents Timber Shores from having their Application considered by the Planning Commission.

86. The moratorium as applied to Timber Shores' SLU Application therefore constitutes an arbitrary exercise of power by entirely stripping Timber Shores of their right to have the Application Processed in accordance with the Zoning Ordinance.

87. The moratorium is not reasonably related to public health, safety, welfare, or morals, or any other legitimate government interest and, as applied to Timber Shores, constitutes an arbitrary and capricious exclusion of legitimate land uses as the moratorium was enacted contrary to the provisions of the Ordinance and further appears to have been enacted solely to deprive Timber Shores of their property interests in and arising out of the Timber Shores Project.

88. The moratorium, as applied to the Application, violates Timber Shores' substantive due process rights under the United States Constitution.

89. The moratorium, as applied to the Application, violates Timber Shores' substantive due process rights under the Michigan Constitution.

90. This due process violation should be remedied by invalidating the unconstitutional moratorium and granting Timber Shores further relief as requested below.

COUNT IV – VIOLATION OF PROCEDURAL DUE PROCESS

91. Timber Shores realleges and incorporates by reference the allegations of the preceding paragraphs.

92. The United States Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend. V, XIV.

93. The Constitution of the State of Michigan provides that no person shall be deprived of life, liberty, or property without due process of law. Mich. Const. art I, § 17.

94. Procedural due process protects individuals from arbitrary and capricious government action by requiring fair procedures before the government acts.

95. The Board issued the Moratorium without following procedural requirements set out in the ZEA.

96. This act was arbitrary and capricious.

97. Timber Shores has a recognized property right under the United States and Michigan Constitutions to have their Application processed in accordance with the Ordinance.

98. Additionally, Timber Shores has a recognized property right under the ZEA to have their Application approved because it complies with the conditions imposed under the Ordinance, other applicable ordinances, and state and federal statutes. MCL 125.3504(3).

99. The Board's actions deprived Timber Shores of their recognized and vested property rights under the due process provisions of the United States Constitution and the Michigan Constitution.

100. Further, the Board deprived Timber Shores of their property rights without due process of law, as the Board failed to afford Timber Shores sufficient procedural safeguards, including, but not limited to, proper notice, hearing, and the right to an unbiased decisionmaker.

101. By allowing the Moratorium to continue, Defendants continue to deprive Timber Shores of their property rights without due process of the law.

102. The Board's issuance of the moratorium pursuant to its police power does not represent a reasonable exercise of discretion granted by state or federal law.

103. The Board's failure to follow the ZEA prior to depriving Timber Shores of their property interest violates the due process clauses of the United States Constitution and the Michigan Constitution.

104. This due process violation should be remedied by invalidating the unconstitutional Moratorium and by granting Timber Shores relief as requested below.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court enter an order as follows:

A. A declaratory judgment that the Moratorium is not a proper exercise of the Township's police power under Michigan law, and is void insofar as it failed to conform to the requirements of the ZEA;

B. An injunction directing the Township to take such action on Timber Shores' SLU Application as is proper and required under the Ordinance as it existed as of the date of the enactment of the unlawful 2021 Ordinance;

C. A declaratory judgment that Mr. Sanders and Ms. Murray have a conflict of interest with regard to all matters pertaining to Timber Shores;

D. An injunction enjoining Mr. Sanders and Ms. Murray from any participation in activities related to Timber Shores, including, but not limited to, evaluating and/or voting on the SUP application, participating in any discussions, hearings, deliberations, and other information-gathering activities regarding the SUP Application.

E. A declaratory judgment that the Moratorium is void as applied on the grounds that it violates Timber Shores' substantive due process rights under the United States Constitution, the Michigan Constitution, and the ZEA;

F. A declaratory judgment that the Moratorium is void as applied on the grounds that it violates Timber Shores' substantive due process rights under the United States Constitution and the Michigan Constitution;

G. Award Timber Shores costs, attorney fees, and such other relief as this Court deems just and equitable.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiffs

Date: June 17, 2021

By: _____

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