

SUP 127 ISSUES

At the July 18th meeting, I mentioned several concerns regarding SUP 127. The new information from the developer does not address my concerns and I have listed them below. Some or all of these should be addressed at the August meeting. Thank you. laws 8/17/16

There should be a map differentiating Limited Common Elements and General Common Elements. Right now maps show "Common Area" but do not differentiate between the two types. General Common Elements are shared by all of the development's residents. At the July meeting, the developer's representative stated that Limited Common Elements were in the building envelopes, but that is not in writing or in a map. Several areas in the Master Deed refer to the reassignment of Limited Common Elements, so the different Common Elements should be listed separately on a map.

It should be mentioned in the Master Deed or Condominium Bylaws that an owner cannot put any kind of structure (including patio, walkway, trellis, lamp post, picnic table, roof overhang, fence, etc) outside of their building envelope. Most property owners have control over their yards and it should be noted somewhere for prospective buyers that they do not have that right.

MASTER DEED CONCERNS

Page 7 (e) Yard area mentions that Limited Common Elements are on the subdivision plan. This is missing.

(f) Mail and paper boxes can be located in the General Common Element, which is Open Space. Forty-seven units with one or two post per unit will lessen Open Space calculations. They should only be allowed in the building envelopes. Also, if individual lighting is installed per unit, it should be placed in the building envelope so that it does not affect open space percentages. This should be clarified in the Master Deed and/or Condo By-laws.

Page 8 (b) "If an Owner elects, with the prior written consent of the Association, to construct or install any improvements within a Unit or on the Common Element....." It should be specified that only an Owner's Limited Common Element can be improved. The Common Elements include General Common Elements which is Open Space used by all residents.

Page 10 (4.4) If a Limited Common Element is located within a building envelope, can it be reassigned??

(4.5) "...Developer or Association can amend the Condominium

Documents to assign or reassign the Limited Common Elements.”

In the above two sections, there is discussion of reassigning of Limited Common Elements. I’m not sure if that is possible, but it should be mentioned that an SUP amendment would be required.

Page 11 (5.3) “...the number, size, style, boundary, or location of a Unit or of any Limited Common Element appurtenant to a Unit may be modified from time to time by Developer...” It should be noted that an SUP amendment would be required and that Open Space percentages could not be reduced.

Page 12 (7.4) Withdrawal of land from the project would require an SUP amendment. It should not reduce Open Space percentages.

(7.5) “Any amendment to the Master Deed made by the developer to contract the Condominium may also contain provisions.....to create or change restrictions or other terms and provision including designations and definition of Common Elements affecting the parcel or parcels being withdrawn from the Project....” An SUP amendment would be required to withdraw land. It should also be specified if this refers to Limited Common Elements, General Common Elements or both. Open Space percentages could be affected.

(7.6) Must comply with local ordinances, including SUP amendment.

Page 16 (10.4) After ten years, Developer can withdraw undeveloped portions of the Project. Would this include General Common Elements or just Units and Limited Common Elements? An SUP amendment would be required.

CONDO BYLAWS

Page 5 (4.4 b) “All maintenance, repair, and replacement of the General Common Elements, whether located inside or outside the Units,”..... General Common Elements are not included inside Units--are they?

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Sent via email

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SUBJECT: SUP 127 issues, memo sent to the planning commission on August 17, 2016

Dear Michelle:

Thank you for sending me Laura's memo with her questions regarding SUP 127. Here are my comments regarding that memo. I agree that there should be a map showing where the limited common elements and the general common elements are. Mentioning in the master deed that structures cannot be put outside of their building envelope makes sense because they are required to meet all setbacks under the ordinance. However, the master deed does state repeatedly that the unit owner must comply with Peninsula Township's Zoning Ordinance. Thus, the request is helpful information, but is not necessarily mandated as part of the SUP process.

As far as the master deed concerns, I agree with the comment regarding page 7(e) as I have not seen this in the subdivision plan either. I also agree with the general comments regarding the structure holding the mailboxes. It is logical for such a development to have mailboxes concentrated in one area as opposed to a mailbox in front of every unit. In some situations, the postmaster may not deliver to these types of developments without the boxes being placed in a single area. I know that this is the case for some of the older, larger subdivisions, such as Swiss Village East in Antrim County. This may be an issue to discuss with the postmaster as well. If the developer is that tight on open space calculations that a structure holding mailboxes puts it under 65%, perhaps they are pushing the PUD envelope a little far.

As far as the comment regarding page 8(b), I agree. This looks as if the word "limited" was left out.

Regarding the comment on page 10(4.4) and (4.5) of the master deed, limited common elements can be reassigned. However, to the extent that limited common elements are reassigned, this would have to be done in such a manner that it would not materially change the site plan. Often a limited common element reassignment does not change the area of the location of the limited common elements, just the parties or unit owners to whom it is limited to. If that is the case, with no site plan change, there would be no need for an amendment to the SUP.

Michelle Reardon, Planner
August 22, 2016
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As far as Laura's comment regarding page 11 (5.3), while no request for language change is provided, I agree that this commonly utilized provision in master deeds would trigger an SUP amendment under the zoning ordinance. The developer should be aware of that.

With respect to comments on page 12 (7.4), withdrawals from the projects are common and this is a required statement that must be placed in a condominium development. It is rare for anyone to waive this right under the Condominium Act. Naturally it would require an SUP amendment. If the development fails or has to be divided out, then the landowner developer would come back for zoning approval. No further mention of it is required in the master deed, as that is simply a fact of law.

With respect to comments on page 16, this statement is a required statement that must be placed in the master deed under the Condominium Act. This withdrawal would not only include units, but potentially blocks of land from this development. Laura is correct that an SUP amendment and other zoning issues may arise should this occur. It is possible to ask the developer to waive this provision. The reason the developer may not waive this is to retain the ability to redevelop the parcel into something else. Otherwise, the undeveloped portion becomes attached to the common elements and the developer loses his/her development rights to it. Regardless, I see the point and the possible problem if the developer suddenly tries to withdraw a portion of the development after most of the units are built, as the built out project would no longer meet the requirements of the zoning ordinance for a PUD. It would be logical to request the developer to state in the master deed that the developer cannot withdraw undeveloped portions of the land without an amendment to the SUP to ensure compliance with Peninsula Township's Zoning Ordinance. This would prevent a situation where the land is suddenly withdrawn with units developed and the open space requirement suddenly in violation of the original SUP. It is wise to anticipate possible project failures given what has occurred in the past 10 to 15 years.

Finally, with respect to your review of 5 (4.4 b) in the condo bylaws it would appear to be a typographical error with the phrase "whether located inside or outside the units" needing to be eliminated.

This is a good review and Laura caught a couple of items which I had not seen in my initial review on the condominium documents.

Sincerely,

Peter R. Wendling

PRW/tac