

Regular Town Board Meeting  
Christina Deeren, Recording Secretary

**PENINSULA TOWNSHIP BOARD**  
**October 25, 2017**  
**7:00 p.m.**  
**Special Meeting – Different Location**  
**St. Joseph Church, Parish Hall, 12675 Center Rd., Traverse City MI**

1. **Call to Order**
2. **Pledge**
3. **Roll Call:** Manigold, Westphal, Achorn, Bickle, Sanders, Wunsch, Wahl
4. **Brief Citizen Comments:** None
5. **Approve Agenda:** Motion by Sanders; second by Wunch. No Discussion  

**Passed Unam**
6. **Conflict of Interest** – None
7. **Business;**
  1. The 81 on East Bay – Public Hearing with the following steps:
    - A. Presentation by Applicant
    - B. Public Comment
    - C. Deliberation by Township Board regarding only those issues that were remanded to the Township Board in the Circuit Court Order of 1/15/16 in Circuit Court File No. 2015031218AA. Deliberations may include questions to the applicant, public or Township planner or other professionals.

**Manigold; Open Public Hearing.**

**Jim Young, Attorney for the Township:** Scope of review decision by previous Board in 2015. Decision was appealed to Circuit Court and a portion of that decision was set aside remanded back to the Township. Key Concepts: In conclusion the court finds that the Board will lawfully exercise its discretion under the ordinance when it determines:

1. That the natural recourses will be preserved to maximum extent feasible.
2. The open space meets the requirement of the ordinance.
3. The proposed Special Use SUP/PUD meets the objective set forth in the ordinance.

The issues delegated to the Peninsula Township Fire Department and the Engineer for review and approval including the location and functionality of the emergency access road and whether the Standards for soil erosion, grading and storm water have been met are remanded to the Board for further proceedings constant with this decision and order. This hearing tonight is the further proceedings. Conceptually the court in its remade had two general comments:

1. Location and functionality of the emergency access road.
2. Whether the standards for soil erosion, grading and storm water have been met.

When the court refers to standards it is referring to the standards in the zoning ordinance. Those standards have to be met. Understand that the scope of the review tonight is limited. It is limited by the Court remade. The Board is to gather facts the burden is on the applicant to show that the standards have been met.

**Westphal;** Question directed to Attorney; Of the two items that you have identified that were remanded if the Board finds a significant problem with one or more of them does this mean that this whole Special Use Permit process would start over?

**Jim Young;** Number one all standards have to be met and not a majority. If you find that there are sufficient facts to conclude that one of the standards have not been met or there are insufficient facts that decide whether all of the standards have been met then it would be denied. Then at that point the applicant has two options. One is to appeal the decision to Circuit Court and second to file a new application to try and eliminate any deficiencies that might be found. Under the law if the facts established by clear and convincing evidence that the standards have been met you must approve it. If there are insufficient facts to make a conclusion or if the facts indicate that the standards cannot be met and have not been met then you are obligated to deny the request.

**Bickle;** The components that we have are very limited as all the rest have been prior approval. This is understood. Is it not correct that regardless of what the decision is the applicant still has to come before the Town Board as the previous Board approved 29 pages of conditions but the applicant still has to come back to satisfy those conditions. Is that not a correct understanding once we get through the process?

**Jim Young;** The applicant must meet the conditions that you set forth to the extent that there were conditions imposed in the 2015 decision that are not impacted by the Court remade those still remain in effect. If you decide to impose additional conditions that relate to standards then those would supplement what was decided in 2015. If an applicant proceeded and violated those conditions then that would be a violation of the zoning ordinance and you would take enforcement action like you would with any other zoning violation.

#### **Presentation presented by Applicants Representation:**

**Brian Etzel, Miller Law Firm; 950 West \_\_\_\_\_ Dr. Suite 300, Rochester, MI;** Attorney for the 81 Development. This is a unique project that will complement the adjoining areas and the Township as a whole. As our presenters will discuss the project has been meticulously planned and is in all respects an environmentally safe and sound project. The applicant, the 81 Development was formed and founded by Kevin O'Grady who is present with family. Kevin is a Township resident, land owner and taxpayer, just like most of you in attendance. We are asking that the 81 Development be afforded the fair and unbiased decision based on the merits of the application and based on the facts. Free of personal animist and free of prejudice. We ask that the 81's application be held to the same standards and the

same level of scrutiny that similarly situated applicants have been held to. No more and no less. The Township Board approved the 81 Developments original Special Land Uses permit application on August 11, 2015. The Townships approval of the 81's permit was appealed to the Circuit Court by an adjacent land owner. The Circuit Judge, Judge Rodger's rejected the appeal and upheld the Township Boards approval. The Judge determined that the 81's development plan met "met all of the objectives set forth in the Special Land Use Ordinance". "The project will preserve the natural resource of the area to the maximum feasible extent." Judge Rodger's remanded two issues to the Board for further proceedings.

1. The location of a fire access road
2. Whether the standards for soil erosion, grading and storm water have been met.

Judge Rodger's found that the previous Board designated / delegated these issues to the Fire Chief and Township Engineer and that the Board itself needs to make independent findings on these two narrow issues. Reading from the Township's brief filed in late 2015: "The standard for SUP/PUD logically takes into consideration what is allowed under the ordinance and what is being proposed as part of the Special Use permit. It cannot be viewed in a vacuum as proposed by the Appellants. Given the type of grading and construction on this site which could occur given the current zoning classifications as a Use by Right on this property the proposed PUD presents a less intensive alternative than what would otherwise be allowed. The whole point of the PUD is to compare what is being proposed in a PUD to what is otherwise allowed as a Use by Right." The central issue tonight certainly from the Townships perspective is whether this project will adversely impact neighboring and adjacent property owners especially any soils from this project. Given that focus it is important to keep in mind how this property could be used as by right without a permit. It could be used as dairy farm, cattle livestock farm, orchard, vineyard or a far more intense development with up to 55 home sites.

**Doug Mansfield, 830 Cottage View Dr., Traverse City, MI 49685;** Outline existing property; I have been working on this property since 2006 when it was held for another company. Provided a layout outlining the highest and best use for appraisal purposes. (Visual Board) This is the Use by Right plan for 82.63 gross acres from the center of right of way, property lines to the water's edge. Removing the right of way takes the acreage to 81 acres of land thus sets the name 81. The property is dual zoned: R1A (Rural and Hillside) 1 acre lots & R1B (Coastal Zone Residential) – there are density calculations in the zoning ordinance that provide for what you can do with this property. This plan physically shows the geometry of this property provides for 55 lots, we have a small common area surrounding a wetland which cannot be touched. Beyond that there is no other open area on this project. This project meets every standard of the ordinance and was approved by the previous Board as a tentative plat. That has since lapsed at the request of the Planning Commission and the Township Board. The zoning ordinance would allow up to 62 lots per the PUD allowance in the zoning ordinance this lot could achieve 72 separate lots. This could be with duplexes or single family homes but that is an allowable density in the ordinance. The owners had another dream and another vision for this project and chose to go with the Planned Unit Development. It has been somewhat of a surprise the process that we have been through as I have been involved in several Planned Unit Developments within the Township. I have never run into the standards that we are being held to. I have never had to have experts brought into this. I just finished another PUD Vineyard Ridge which was approved by this Board. It is a single family development just

like this one. It is a total of 29 acres with 47 units. This is 2 xs to 3x the density. When we look at the PUD are we protecting the land more through the PUD than can be possible through the Use by Right the plat. This plat provides for single family lots they would have septic and wells. The plat process is governed by the State Law. The Land Division Act is yet another process of dividing and conveying land this project would have 13 land divisions available in the 81 acres. Land division is the bases of land conveyance of subdivisions in the State and is meant to be a speedy non-public participatory program for a limited number of lots. I could create 13 land divisions meeting the zoning ordinance of 1 acre, I could meet the road ordinance and I could meet the requirements of the Health Department, Soil Erosion just as we have and basically those 13 lots could be taken along the lakeshore. The State Law provides that after the 13 lots have been divided I have the right to go back through the Plat Act or the Site Condominium Act and sub-divide the entire remainder of the property. None of those require for us to provide any open space for public benefit or common areas. This is a Use by Right Michigan is a property oriented State. (New Visual Board) – This is the same scale plan of the same property with the development shown on it. Explains the outline of the property: There are 41 proposed lots this is 40% less than what the PUD would allow. The proposed lots are about ½ acres in size apiece the majority of these lots will be serviced by a community septic system so they will not have individual septic systems on each parcel. Green area on visual board is all open space & 1500 ft. of shoreline not to be developed or purchased by individual buyers preserving it in the state that it is in today. The only two requested variances in this PUD –Reduce lot size and lot width to lots that are 100 feet / ½ acre in size. Not asking for higher density, multi-family or commercial use. The property will be served by a private road that will be maintained by the association. The second entrance will serve as a fire access only entrance that comes out to Smokey Hollow Rd. This plan provides the developer with more view lots, not waterfront lots. By reducing the width along the ridge line it creates more view lots. Only 10 of the lots will have waterfrontage and they will be 25 feet short of the ridge line. We are providing a 30,000 gallon underground water tank with an automatic refill to service this rural part of the Peninsula that will also be open to the public this is to maintain at the cost of the association. We have received and maintained preliminary approval from the Road Commission for the entrance on Burrows and the fire entrance off of Smokey Hollow. We have received preliminary approval from the County Health Dept. for the lots and community system. We have received storm water approval from the Township Engineer as well as private road design approval. We have maintained a fully recommended and certified soil erosion and sedimentation control from the County Construction Code office. We have an \$80,000 surety with the posted with the County strictly for use by the County should anything happen they can tap into that resource. We have joint Army Corps and MDEQ permit for a community dock for 36 slips we also have a MDEQ waste water community permit. We also have unanimous approval from the Peninsula Township Planning Commission and the Township Board. The fire access road had been reviewed by the interim Fire Chief, Randy Rittenhouse and found that it met the criteria of the Fire Protection code a private engineering company was hired to review the auxiliary road as well as the new Fire Chief. County Construction Code in this County provides for soil erosion control and permitting. Site grading this was a farm at one time the valley lies between the ridge and the tree line. We have provided detailed grading plans for the road and for the sites. We have a letter from the Engineer stating that it meets the standards of the ordinance. Doug outlined the construction process and phasing of this development. Using visual boards of the area and enhanced sections of the property.

Recommended that this project be done in three separate phases so the property is not opened up all at once. Installation of a mud map to help keep soil on the property, silt fencing protection around storm water basins and around the wetlands. Monitoring that everything was installed and report to the County Construction Code and Township. Tree and stump removal, stacking top soil in a mound and seeding, grading of road and lots. Reaching the base grade of the elevation would cease the first phase. Concerns with the property previously being used as an orchard. This site goes in a shallow grade from north to south removing the knolls it will keep a shallow grade along the ridge line. The old road will be widened out in order to meet the condition of the ordinance. We are not trying to snake down those roads at all. When we approach the ridge line we need to undercut which is done with an excavator. We have experience with these developments with ski slopes.

**Westphal;** Steep slope that runs 25-48% slope referring to the soil survey. So you are going to tell me that you are smooth that out and remove the vegetation and not expose a highly sandy soil, highly erode that is already classified as an F2 and you will not have any problem with any saltation, soil creep erosion likelihood listed in the soil survey. **Mansfield;** This has a sincere break in the ridge there is a bluff line there and there are humming's along that bluff line we are just notching those off and smoothing them out. We are not getting into the break of this ridge with the grading plan. We are working from the back and drawing it away from the bay. We have a permit from the authority that oversees this. In the Use by Right there is no protection for the slope and no control. Property owners own 25 feet from the ridge line and will not be able to build until another 30 feet. The houses will not be 50-60 feet before they can start to build, same characteristics as building on critical dunes. These are some of the most beautiful water lots still existing on East bay. They are larger lots that will be serviced with septic and well. They exhibit a driveway, septic, well and structure. Lots 2-10 will be filled and the structures placed on that filled out. **Achorn;** When walking this area lots 6-10 the drop was 15-20 feet it was explained that the area would be filled and then structures placed on top of the fill. How can you prevent that extra 15-20 feet of fill from going into the water? **Mainsfield;** It varreis first of all. There are cross sections that identify what it will look like. We use retaining walls, structure and basements down to a natural grade. There are many methods to do this and not impact the land at all. Practical construction standards.

**Andy Smits; : 402 Beavertail Traverse City, MI 49686;** This illustration that I put up here on the board tonight outlined in red shows the 81 property and the property in yellow highlights shows the historic remainder township properties. These are all residential subdivisions now where people are living. Eastern elementary used to be an orchard, all the homes around it used to orchards. Old Mission Peninsula School used to be an orchard. This is a very common historic land use in our community. I was retained because of my expertise in about the time that it was identified that there were these remanded additions related to soil erosion and sedimentation control. I am Geological Engineer I am also a State Certified Storm Water Operator. Someone is certified and trained to inspect storm water control. I have done over the past 25-30 years in the private engineering practice worked with developments and re-developments with properties like this. So I have some germane expertise that led me to conclude that my choice of place to live where I send my kids to school and play on the playground is perfectly suitable. I did not see any adverse impact on my son who is now living in Ann

Arbor. That is a little bit of a side bar that I use in introducing myself. Being brought into this subject by a team to evaluate the remanded issues I needed to spend some time understanding the property and I walked it, visited it by boat and I have visited it on a number of occasions. I have reached its history as you can see. To determine what the prior land uses were and I have researched the materials from prior studies. I have researched the materials that the Board is used previously to make its determination. I have read most of the materials subsequent to that. I have also read the environmental study that was done on the property well before the issues were remanded back. This one that is called Phase 1 environmental site assessment study which was not done by myself but rather done by a firm from downstate the study is quite common which are used to evaluate what are called recognized environmental conditions and recognized environmental conditions in the context of the Phase 1 site assessment are used to direct property owners or interested parties owners in property as to whether or not there are concerns that are identified in the first phase of inquiry that are warranted for further site. The conclusions in that first Phase 1 site did not identify the agricultural use of this property. That study is part of your materials you can look at the conclusions and find that it is not recognized as part of the condition. That's natural because if it was then you would have literally hundreds of thousands of acres of Michigan land that would be deemed to be environmentally hazardous or risks or regulated as some would suggest it should be. That is not to suggest that one should not be concerned about what has been applied to the land historically. There are conditions, very few of which under the Michigan \_\_\_\_\_ part 201 standards which would in some cases it could apply to agricultural properties would apply. If you had pesticide use and you had a spill concentrated application of regular application of pesticides, herbicides or agrichemicals where such a regulation should apply. Where such a regulation should apply but not to Ag land like this. There is no record of it until the studies have been taken by Phase 1 level nothing to suggest that there has been an industrial accident with pesticides or misuse. This land is much like any other acre of land around the Peninsula and elsewhere in Northern and Western Michigan. It just has had a history of agricultural use. Looking to whether or not there has been an adverse impact based on my experience is germane because for an adverse impact to occur it would seem that first you would have to have movement of soil which is where the residents exist today from one property to another. If they are all agricultural use how does that become adverse? How can that adversely impact when the uses are essentially the same it just defies logic. Maybe the conditions outside of this property are actually worse. We don't know this is a unique property that has under gone such scrutiny and detailed study. We have gone well beyond the Phase 1 study with this property. None the less the adverse impact will moved off the site during construction the movement of soil off the site is by more and more maybe by erosive forces of precipitation or it could be by moving around of equipment, physically moving it through grading or it could be wind. The Soil Erosion Sedimentation Control Act considers all of this. Soil erosion is defined by movement of soil particles. So in evaluating the record here, the record that the prior Board relied on it is clear that not only did the design engineer consider soil erosion and that professional deemed that the measures were appropriate. The Townships Engineer did also. Not just on one occasion but on several. While it may not have been evident at the time that there were historic agricultural uses of the land certainly revisiting such decisions is warranted and in doing so one would have to say what is about applying agricultural chemicals to soil that would make them more **mobile** than if I would have not applied them at all. In this case we are talking about lead arsenic it is a pesticide that was used commonly not just in Michigan but throughout the world.

Before more common organic pesticides that are of better of use today. In fact it was spray applicator some places didn't spray in fact some places out east fixed irrigation more commonly through our community some sprayers as some of you might know what those are like. You might live near currently tilled or cultivated properties and can hear them at night spraying mist. If you do then you know that when sprayers move around despite best efforts the wind and weather can take the applied substances and transport them to places other than where they intended to go. So to assume that activities that have happened here just happened here I think that everyone who has lived near agricultural properties knows that is probably not the case. Due to natural activities wind gust whatever was applied here or there didn't stay here or there it was probably transported to the adjacent properties as well which also makes adverse impact of properties problematic in evaluation. How can it be more adverse when properties are essentially the same? None the less after the design engineer and the reviewing engineer made the determinations that the soil control measures were adequate that meant movement of soil particles off the property. The developer applied for a soil erosion sedimentation control permit. That permit followed the application process and the control measures that were planned were reviewed by a person trained and qualified to review those plans and they came to the same conclusion. So I am the fourth engineer or the fourth trained person to come and look at these records and try to make a determination as to whether or not there is any reason to believe that there is an adverse impact based on the record for this proposed development. My conclusion is that I can't find any possible reason to find adverse impact. None the less in this process of trying to get the land use permit or special use permit approved through discussion with the Township Counsel and Township developer it was agreed that further study beyond the Phase 1 study would be undertaken. I guess I should take a cue from Doug (Mansfield) who made sure the audience had a change to look at the figure to. Additional study was done on this property beyond the Phase 1 to evaluate the potential for adverse impact to other properties that had the same chemicals applied. That study included very detailed work, work planned that was reviewed by the experts from the Township and found to be adequate that characterized the property. There were chemicals there at unusual levels the results of the study revealed that there were chemicals there that consistent with historic use of the property. Much like dozens and dozens of other properties that have been developed. Including the results that you have for other properties you have in the Township that are similarly situated properties. Properties where special use permits have been granted without the level of study and consideration that this one has suffered. The results showed especially with comparing the nature of the properties that the range in concentration of these compounds is essentially the same. Exhaustive statistical analysis were done and simply taking the results and looking at the lowest level and the highest levels and the ranges in between yields a finding in my opinion that this is consistent with many other properties in this County that show that the levels are roughly the same in some cases lower and in some cases higher kind of what you would expect from long term application, lawful application of agricultural chemicals. So again after all that comparison of other similarly situated properties and considering the topography here and the fact that natural slopes and the development plan promote the retention of water on the property and not runoff. Water would actually have to run uphill for erosion to take this water off the property in some places.

**Wahl;** What about the erosion into the water that the water runs into the properties?

**Smits;** Which water are you talking about?

**Wahl;** You said that the water would have to go uphill to affect other properties but if the water is running into the water then it seems that the water would go to other properties into the lake along the shoreline properties.

**Smits;** Again I go back and I think my analysis was pretty clear that I relied on the work that three other engineers and the soil erosion control officer has relied upon design wise for shoreline protection. There is no development runoff to get up this hill to get over the crest. The development plans that you have shown how the natural and naturally maintained storm water on the property within the useful illustration in response to that question.

**Doug Mansfield;** Speaking to the existing nature of the site from the west to the middle of the site goes downhill. This goes downhill from here this buffer zone of trees over here. This wasn't used as agriculturally over here and this ridge wasn't used agriculturally where the agricultural exist was in the middle. The way we created this site is also from the middle of the houses at basically a 2% grade from the ridge we are moving the water into the site then there is a notch into here where it breaks two percent. Two percent is basically the grade of a barrier free parking spot. You cannot get water to move over asphalt at one percent so understand the level of that grade to the ridge line here. What Andy Schmdit should probably say also is that the arsenic lies in the first top two feet? **Andy Smits:** A foot. **Doug Mansfield;** If it gets embraced by the soils at the level then it doesn't go down into it but we are taking that off the other thing is that this wasn't orchard area. So you might have had some over sprays but the concentrated levels are all in the middle of this site so transporting that arsenic that isn't there anymore and was never there anymore first of all isn't allowed by our soil erosion permit. Number one it's not allowed so we can't do it. They have an \$80,000 surety that they can cash in if something happens but it should not by the natural containment of this land ever happen. There you are water does not go uphill.

**Speaker;** If you can draw your finger around the area where the historical agricultural use ended or ends so they can see that the ridge line is not part of that area.

**Mansfield;** Again here is the ridge line. That is this area here and the orchard went up to this top property line and then followed about the base of the knolls and then down into the base of the property where more of the operations were.

**Smits;** Doug reminded me that one of the important things to convey with respect to agricultural chemicals that were used historically in this region and evidently from the studies considerable studies of this property is the nature of it. The compound that had been detected here includes pesticides and herbicides that were used back in the 40's and 50's and 30's commonly lead arsenic and that is one of the reasons we test Phase 2 study for arsenic and lead. I made very briefly those results were details of those study itself design and those results are part of the record. The compound themselves were led by implication, arsenic a naturally occurring element in the earth crust. So when we test lead and arsenic in soil we don't differentiate what is naturally occurring or what is a result of a manmade process of agricultural we just measure the total amount. That is an important thing to convey for a

number of different reasons. The most important is that arsenic in particular is present in nature in a number of different states different species if you will and only some of them are harmful. When we measure for total arsenic we are comparing results assuming it is all the worse stuff that is almost never the case. In fact many studies have shown that only a fraction of the total that is harmful. The nature of these compounds themselves are heavier than the soil particles themselves so they tend to immobilize. They are not as transportable as soil itself. Soil in Michigan particularly this part of the state of the glacier lows are sandier and are not as dense as more silica as metals lead and arsenic are both metals so they are heavy so they tend to concentrate in the upper part of the soils they don't dissolve readily from precipitation or snow melt so they just reside there in the soil heavier than the soil so generally less mobile than the soil itself. That is just an important point that I want to convey.

**Doug Mansfield;** Slope stability as it comes to the site again it is govern or measured certified by the County Soil Erosion permit which we have. Construction of the houses and stability of the soils is actually governed by County Construction Code which embodies Michigan building code. Michigan building code has standards for how much pressure the soil needs to provide for a house to sit on and that is measured especially when we get into a larger house. Many of the houses out here on the Peninsula we test the soil for its bearing capacity and strength. When we approach a house with a slope like this where there is a diagonal influence from the foundation through the soil about 30 degrees down and as it goes down into the ground the weight of that dissipates among the weight of the soil. So the Michigan Building Code looks at the house you want to build. On the ground you want to build it says you have to be so far away from any ridge line where you can't have a bearing pressure that intersects the slope. It seems very complicated but actually it is extremely simple. Basically it backs the houses away from the ridge due to the size of them. Now one of the dangers of this slope is that we are taking weight off this slope, a lot of weight by removing those knolls out here. **Westphal;** which area are you talking about Doug? **Mansfield;** All along the bluff line. **Westphal;** the beach, along the beach the eastern side what about the western side? **Mansfield;** The western side frankly has slopes that we built a lot of houses on in this community and in this region of the state. We would use the same standards for those but frankly that slope being in the 20 to 30 percent range wouldn't be considered the bluff range that we have on the lakeside. **Westphal;** I find that very hard to believe. Let me just quote something from the Soil Conservation Service booklet. **Mansfield;** Okay. **Westphal;** "This land" and it is talking specifically about the F2 Leneelau, Kalkaska soils which make up those two slope areas. "This land is too sandy, too steep and too severally eroded for uses other than woodland and wildlife habitat because slopes are unfavorable and the sandy material is frequently shifted by wind the surface is difficult to stabilize. Native plants establish themselves naturally on some of the smaller areas and on islands of less eroded soils that are included in some places. On larger and more open areas however artificial seeding or planting is needed to stabilize the shifting soil material and in a few places other practices are required. Scotch pine and jack pine can be planted if the sandy surface is partly protected by weeds, grasses or shrubs. Consult a Soil Conservatism for assistance in selecting and applying practices needed in these specific areas". I know you have had three or four engineers on this did you have any registered certified Soil Scientist on this project as consultants? Did you? I am asking because these are tough\_\_\_\_\_. **Mansfield;** I am going to hand this over to Roger Malby because he is a

licensed insured Geo Technical Engineer. **Westphal;** Is he a registered Soil Scientist? **Mansfield;** I will let him answer that.

**Roger Malby;** I am not a registered Soil Scientist, I am a professional Engineer. The question is can you build in this areas. The surficial stuff that you are talking about should be stabilized after the fact in conjunction with soil erosion permitting. The part that I took a look at is the stability of the slopes. Can you build in these areas and are they safe to build in, and that has jurisdiction by the Michigan Building code. The Michigan Building Code dictates specifically where you can build on slopes and it talks about setbacks. You cannot build on those sites until you get other regulatory permits beyond what the Township would provide for. That is a building permit to build a house and you have to adhere to the Michigan Building code and soil erosion as well. In taking a look at those things our conclusion or opinion of the setbacks of these steep slopes most of the sites that we looked at are buildable. You have to take into account the stipulations that are in the building code, setbacks from the crest of those slopes. So that is the perspective of an Engineer not a Soil Scientist. **Westphal;** I cannot imagine that those codes would allow on 25-48 percent slopes significant residential building without modification of the land form. **Mansfield;** That is exactly what we are talking about in the restrictions that we have. Again, what your ordinance does not provide for in the Use by Right or in any farming practice is that I can't knock those slopes right down to nothing. Your ordinance does not protect those slopes under a by a Use by Right scenario and that is what you have to put this against. We are looking at using technologizes and foundations designs and bearing capacities that allows you to build on this. We are saying that we are going to preserve about 50% of the slope in its natural state. (Referencing visual board) – Does this provide for more protection of the character of the landscape than this one does. I will tell you that that does not provide for any type of protection of any part of that ridge. If you look at subdivisions that are platted around the area, and I have done several of them. By the time you meet Road Commission standards for design, Fire Department standards, sewer standards and water standards, Cherry Land Electrics bench, DTE's bench, we have properties that don't even resemble what they looked like not due to the intent of the developer but the rules that we have to live by. I can build this road to your restrictions and you cannot protect those trees through any of your codes. This is providing, volunteering protection of 50% of that slope. **Westphal;** But the other 50% of the trees, vegetation , wildlife habitat and yes, knoll and little ridges that provide habitat will be covered over exposed and as this soil survey suggest become very susceptible for additional soil erosion unless you very quickly get cover back onto that landscape. **Mansfield;** That is what this soil erosion permit requires. We will have to pull a soil erosion permit not only for this project but we will also have to pull a permit for every lot in this development independent. Every lot in this development will have its own site plan, its own grading plan, its own restoration plan and most likely its own surety. **Westphal;** What does it matter if you already scarified it and leveled it out so that all you're doing is setting a series of corner post on it to mark one lot from another. **Mansfield;** What we are dealing with is development, land development. This land was a farm and at one time other trees were taken off and scarified and it was an orchard then for years, for decades. Now it is going to be developed as a residential development. (Pointing to visual boards) – We have to decide if we are going to do it like this or like this. I will tell you that this is a lot more sensitive than that is exhibited and guaranteed by the clearing limits exhibited on this plan and the ownership limits exhibited on this plan. The Conservation Board is a

great community of people their books have been exhibits for farmers but frankly the building code does not recognize those exhibits. I am sorry that you feel they should. I will say that the person that did the slope stability study with Mr. Malby is extremely close to the Conservation District a former lead officer and took the context of that land in mind when he wrote his report. **Gordon Hayward;** Roger, could you give me an indication of what the slope is on what I am calling the lower slope in the middle and the upper but what's the slope on lots 2, 3 and 4 between the home sites? **Malby;** You mean along the lakeshore? **Hayward;** The top of the bluff down to them water. **Malby;** Those are steep slopes. **Hayward;** Any idea what that grade is? **Malby;** No, not without looking back. 30%. **Hayward;** So if I were to say from the toe to the top of the bluff somewhere around 50 feet? I would say it would be 60% slope if it were 30 feet high and 50 feet from the water on a horizontal line that would be a 60% slope. **Malby;** Right, but the building code addresses that. **Hayward;** My question is that but what is the slope on the upper bluffs? Let's call it the middle bluff. **Mansfield;** First of all your throwing out numbers that are incorrect so I need to stop you 2,3 and 4 are 15-20 feet above the total slope so when you talk about 30 to 60 feet you can count the contours of graph that is certified. You talk grade it's probably up to 30 verses vertical elevation is 15-20 percent. Slope verse distance. **Hayward;** from the ordinary high water line to the top of bluff on 2, 3 and 4 what is the height? **Mansfield;** Your asking a different question. From the water's edge there is a beach that rises up to about 10 feet and there is a distance of about 30 feet. Then it breaks there is a 15-20 foot ridge line along there. That is probably about 30 percent. Then it flattens out on top again our program does not get into that. Our building area is at 2-5 percent. Those are parking lot grade that is where our building area goes across this envelope of development. **Hayward;** Maybe someone else here could tell me what that is? What the height from the bluff to the water, to the ordinary high water. **Malby;** It varies up to maybe 25 feet as a maximum from the water to that first plateau. **Westphal;** On this site it is 29 on this lot 2 up to the bluff part. **Bickle;** I am actually going to take a sharp turn here for a second and I am going to ask our staff or our Legal Counsel, I may be misinformed so I am hoping that you can inform me. If I recall at one point when we had observed during prior presentations to the Township the A or B, B or A on the Use by Right high density map that Mr. Mansfield is showing us aren't there not some complexities or additional cost due to state requirements that would have to be met if they did B the Use by Right high density houses like roads to a certain standard. I guess the question in general is what are the greater complexities and greater regulations and or hurdles that would have to be gone through that could actually take plan B much longer than or more time than what is in front of us tonight? **Hayward;** I will take a stab at that. I believe what you are talking about was the plat that was submitted to the Planning Commission and ultimately withdrawn. It would have to comply with our subdivision control ordinance. So there are a lot of other standards that would come into play beyond just a flat because you would have deal with slopes, storm water, grading, erosion all the things that you have to deal with on this site. Just as a general statement they could not come in and ask for that and get approval in one night. It would have to comply with the subdivision control ordinance. **Bickle;** For the Plan B. **Hayward;** They are operating under the Condominium Act. There are three ways of developing property. Land Division which are limited numbers, Condominium Act or Sub-Division Control Act all of those have their own standards of review through the Planning Commission and Town Board. **Mansfield;** If you meet the standards you must approve it. That is governed by the State and you can't treat different conveyance methods or approval methods under Use by Right scenario differently than the Township process. Township can

control land use and not conveyance. So just remember that. The Township Engineer having this project for two years came to us in a letter I got yesterday at about 4 pm in the afternoon, questioning the ability of lots 2-4 to sustain the info-structure for a home, driveway, septic and wells. Those lots are serviced by septic and wells. Lots 2-4 are the lake access lots. The buildable area on those lots outside the setbacks is in a flat area, generally a flat area. The slope on that area is generally 2-5 percent again I will say that 2-5 percent is any parking lot that you have driven on. It is not very steep. They break down to the beach 20-25 percent anywhere from 20-30 feet. They are beautiful bayside lots. They are about a ½ an acre in size actually over 30,000 square feet an acre is 43,560 square feet about 3 quarter of an acre. You have had since 2015, the Engineer signed off on them individual lot diagrams for those lots. We have approval from the Health Department that we can facilitate septic fields on those lots. We have grading plans on those lots with many floors the letter from the Engineer states that there is not enough detail to determine if those lots can sustain that development. So we have a lot ½ acre wide, the Health Department signed off. We show a house, driveway and well in its appropriate isolation zone. There is not a whole lot more that goes into a permit for a house. I have delivered to the Planning Commission a composite drawing of a house, driveway septic field and well on the existing terrain with a finished floor. I could hand this in as soon as I have land use approval to County Construction Codes and get a Soil Erosion permit and I could go to the Health Department and get a well and septic permit with this. The question is does this meet the criteria? I will say yes it does and you are going to say that I don't believe you. Here is the truth and it is what interests me the most. This exhibit shows our property (visual board) this property down here is known as the Cove. It is a single family residential development, private roads, lots ½ acre in size or 100 feet wide. So they are smaller than our lots and generally the same slope pretty flat. Done by the Township Engineer and approved by the Township in 2012. It fits a house, driveway, septic field and well so the question can those lots sustain that development, yes by the Township Engineers own experience. I wish I would have had more time having this for years as I would have had the permits in hand for the septic field, house and the soil erosion permit. I could have gone in the day of this approval and actually got my land use permit. Lots 2-4 facilitate everything they need to sustain development just as the Cove has for 6 or 7 years.

**Westphal;** I think that part of the question is that we did not get a chance as the new Town Board to go in and be on the site until just recently and it was clear that some of the site that you have especially 2, 3 and 4 are so close to that steep slope embankment that goes down to the bay that there was concern over bringing in heavy equipment to establish a foundation for those houses and then also to do the other work that was a part of grading on those particular sites would in fact enhance and possibly speed the sedimentation or sloping that would occur off of that steep slope embankment that is why the Engineer asked to see it the amount of distance between your foundation and that slope is relatively small. **Mansfield;** Roughly 30 feet. **Westphal;** Well if you would have provided a scale on your drawing then we would be able to establish that. **Mansfield;** Your Engineer has scaled drawings and has since 2015. **Westphal;** I am sorry but you just handed this out without a scale on it and you expect us to be able to read it. **Manigold;** As JoAnne has indicated we were allowed to walk the property a few weeks ago with our Engineer, it was quite an experience. Now you have heard from the applicant you have heard reference to the Fire Chief. We have hired another Fire Chief to review the road. We also have Dr. Harless in the audience tonight our expert witness for the Township. Could you please give your report?

**Dr. James Harless; 4398 Blvd \_\_\_\_\_ . MI;** I was retained for my environmental expertise initially to evaluate if there could be an adverse effect on adjoining or neighboring properties from the breaking of activities that are going to occur on the property and to evaluate Section 8.1.3.3 (a) of the ordinance. My initial review was the historical area photographs that showed that indeed there were orchards on the site. Personal experience as well as research indicates that there is a high likelihood in orchards for residual pesticides, arsenic and lead chlorinated phosphorous is by far the most difficult. Ultimately the presence of arsenic at higher levels than you would expect in that ground were confirmed on the site. Arsenic is a regulated human carcinogen by the Occupational Safety and Health Administration. It is a known human carcinogen under International Agency of Research for Cancer, (IARC). It is compounds that will potentially give adverse effects to people that are exposed to it. Not everybody, regulated carcinogens like this will increase the risk of a negative medical condition for people. If you lived on this site a higher percentage of people are likely to be impacted. The interesting part about current regulations is that because this was a pesticide legally applied the Environmental Regulations of Michigan don't regulate it on an agricultural property. The same level of arsenic that we found which is above the levels that are safe for residential use by Michigan Department of Environmental Quality and a large number of Environmental Regulatory Agencies in other states around the country. Because it is on agricultural land it is not regulated from an exposure stand point. So you can have this level of arsenic on an adjoining piece of property that was used for Industrial purposes or a dump and you could not do unlimited residential development of the property, because this happens to be agricultural land that doesn't apply. According to the law and the court's interpretation is that there is nothing that you can do about it. However, if the material is taken off the property and put some place else that would be regulated as a release. Once it got onto the other property now it can be regulated. The issues that we have here are there is a risk so if this material escapes the property it can certainly have adverse effects. One of the things that was brought up earlier, "Hey who cares because the adjoining properties were used for the same thing they are most likely similarly contaminated". That is like tell the people of Flint that you have lead in your water but a little bit more won't hurt. The reality is that even if those adjoining properties have similar contamination any erosion any dust from this property is going to add to the contaminate level. That is an adverse effect. If it was any place else you would incur more cost for cleanup. One of the things that were also said was that the contamination on site is 12 inches. That is true, but the samples that were collected were not any deeper than 12 inches. So we really do not know, in a number of the samples there was a higher concentration at 12 inches than 3-6 inches. In all the samples there was an elevated concentration in the shallow but it was also deeper and we found a lot of them, we don't know where it is. We can't regulate it on site but off site you have the issues some of these adjoining properties that have been redeveloped that are residences. There is no evidence that there is any impact at the surface. If erosion takes the soil from the site and puts it over there then you may very well be adding contamination at the surface where there isn't now. So adverse effect, yes there is a very strong potential for adverse effect. There is an easy solution keep the soil on the site. If it can't get off site then it is not going to have any adverse effect. How do you do that? That is for other experts to talk about that is not my area of expertise. The idea that arsenic particles are heavier than soil and that they are going to stay on site while the soil moves off site no that is not going to work chemically what happens is that the arsenic adheres on to the soil particles. It is spray applied whatever carrier a liquid water carrier evaporates and

leaves the arsenic behind and it leads onto the soil and it is going to go with the soil. It is not going to stay behind because it is heavier and denser. That density does not apply in this situation so it is not only important to have a good design with the soil erosion program soil erosion plan but it is going to be really important for a contaminated site like this to make sure that it is implemented well. The Soil Erosion Ordinance says, "That to ensure that soil erosion and sedimentation control facilities are properly designed constructed and maintained so as to provide water quality and protection and prevent the conveyance of sediment via wind and storm water runoff." Not minimize, not most of the time, prevent any movement of the soil from the site. I have a fair amount of experience visiting construction sites. Over the past 20 years I have been involved in redevelopment of contaminated sites in Michigan and in other states around the mid-west. My concern and it can be managed if it is done properly the reality of construction is most of these sites if not all of these sites have to have this permit. They have to have soil erosion controls. When you drive by a site like I did a few weeks ago a former prison in south-east Michigan there were dust clouds everywhere. I would bet that the soil erosion permit said that that kind of thing couldn't happen. I have been to many sites that I was consulting on where the silt fences had been knocked over, they were not effective and they had not been repaired. My recommendation to you is to make sure that their using really good detailed plan about how the dust is going to be controlled, track out is going to be controlled and how the storm water runoff is going to be controlled to maintain sediment on site. Just the track out stone pads that are commonly used may not be enough to keep the soil from tracking out off site. We had those on a site in Jackson that just so happened to be under the windows of the DEQ and I received calls about every three days that it wasn't working so they had to put a street sweeper out there and about every two hours they had to sweep the streets. There are ways to do this it is just a matter that the plan needs to be really detailed and needs to bring all these issues into account. On top of that it needs to be inspected to make sure that it happens. One of the things the Township may want to do is to have an independent party inspect that daily to make sure that work is proposed is what is really taking place. Are there any questions? **Wunch;** I just have a question about the 212 section. My understanding of the 212 section is that it exist for situations where agricultural chemicals were used legally but if it came to light that a farmer used led arsenic after it was banned would that change the regulatory status? **Dr. Harless;** The exemption states that it has to be legally applied according to manufacture specifications now that is the application if you had evidence at some point there was a spill on the site. Very often you will find higher concentrations were the chemicals were mixed on the site. The exemption does not apply to that but assuming that it was applied to the orchards and to the crops with manufactures specks then it applies. **Bickle;** Dr. Harless a couple of questions; This is from your October 20<sup>th</sup> findings under the site assessment you set up the premise that though the number of samplings performed were less than you recommended you made reference that this false negative. What is a false negative mean is it that you don't have enough samplings it was a unique term. Dr. Harless; What was conducted here was an environmental screening approach. The goal of this assessment was not so much to delineate where the impact was but it was a yes / no. Are there residual pesticide materials that are there and above the concentration that could potentially cause risk. If you went out and did three samples the reality is that you didn't do enough sampling so you would have a false negative determination. It was false that there was nothing there. You do your best to screen the site as soon as you do find impact it really doesn't matter how many samples you have answered the yes / no question. **Bickle;** In your

professional opinion do you feel that enough samples were taken too gathered to provide certainty in any false negative situation. **Dr. Harless;** The fact that they found elevated levels of arsenic is necessary and sufficient for deposits being affirmative determination. **Bickle;** Page 5 of your report you do mention in the first sentence that you agree with Mr. Malby's statement from Jan 16, 2017 letter if the soils can be managed and he makes certain reference to certain components to the agreement. You go on to say however, in my opinion the submitted plans do not demonstrate that they meet Mr. Malby's performance criteria or section 11.5 objective preventing the conveyance of sediment via wind and soil water runoff. Further this deficiency should be a concern with respect to Section 8.1.3.3 (k). Could you explain further? **Dr. Harless;** When I had written that letter it had an adequate description of the track out control. That particular sheet did not address the sedimentation control, silt fencing detail and also did not include anything about dust control. I have since seen sheet C 1.7 which has more detail on it but I don't think that there is enough detail for an expert in erosion control or the Township to really make a determination whether that would prevent the adverse effect. As I said earlier that is for Civil Engineers and people that are versed in designing these controls to determine what are going to be appropriate. An example would be wetting the soil, wet it down once a day if you are doing work in the summer and you have wind it will dry the soil out pretty quickly. There are other ways to wet soil and keep dust down you can use calcium chloride solutions. I don't know what is going to be best. If you use water then how many times a day will you have to put it on. You can do a performance evaluation if you see dust you do it. It depends on how fast you react. That is where that site monitoring comes in to make sure whatever is used is used appropriately. **Westphal;** Dr. Harless, would you say that one of the most effective ways of minimizing arsenic of getting off of the site would be to maintain a maximum plant cover on that site especially in terms of the ground cover. So minimize the footprint of the disrupted soil area for the building foundation. **Dr. Harless;** Obviously the smaller the area that you grade the less likely that you will have erosion but as soon as you start grading anywhere you will have this issue to deal with. It is independent from the area that you are doing. **Westphal;** If you are dealing with certain lots like 1-3. 2, 3 and 4 the ideal lakeshore lots which are relatively flat all though they do slope towards East Bay verse the lots that are up on the western ridge area which slopes the 25-48 percent and you level parts of that particular land form would you not want to get a ground cover on that as fast as you could as you did the leveling moving down the roadway opening each individual lots as you had to as a construction site. **Dr. Harless;** I am not an expert in how you manage these erosion obviously once you get ground cover on it then it will help with any erosion, but you still have to deal with as you are opening that up. I am sure that there are a number of techniques to help keep that soil stabilized and not going into the wind even if you seed it will take weeks before that seeding is effective enough to really control the soil. **Achorn;** I have a question on the emergency access road. Is it safe to assume the same arsenic and pesticides would be on that road way or would you require additional testing for that area? **Dr. Harless;** The developers representatives were saying that the orchards all around there are similarly contaminated. The access road goes almost completely through former areas that were orchards. So I would say yes that it is a reasonable assumption that area is similarly contaminated. Unless it is proven otherwise. **Achorn;** and the same protective measures would be needed in the construction of that road. **Dr. Harless;** Absolutely.

Manigold; introducing the next person to speak on behalf of the Township. Joe Asti

**Joe ASTI Environmental, 10448 Citation Dr., Suite 100;** We were charged with developing a soil management plan to address the adverse impact of soil erosion onto adjoining neighboring properties. In full disclosure we were brought into this about a week ago. I am not very clear of the site other than reviewing the plans that we have and some of the historical documentation. What we did with our soils management plan was to try apply best management practices produced by the DEQ as well as EPA and apply them to this site. To try to control arsenic contaminated soil from leaving the site and adversely impacting neighboring properties. Bickle; In your professional opinion the things that you proposed here would you say would satisfy any concerns that pertains to the drifting of the dirt and to silt fencing. How many recommendations do you have here? Joe; I believe that there are 12 points. I believe it is a total of 16 pages of additional requirements. A plan is generally as good as the paper it is written on. A lot of it comes down to implementation, inspection, documentation and record keeping. The final section in our program is for setting up monitoring and inspection developing that in order to satisfy some of the concerns that have been brought up here. Especially in respect to wind born dust carrying contaminated dust across properties as Dr. Harless said if you are working in hot weather you are going to need someone fulltime inspecting those areas. To make sure that you don't start to generate making dust. That they are getting the right treatments, frequency and that those are being documented so people can look back and certify that what was said was being done was what was actually done. Bickle; Are these considered to be the best practices in the United States that are out there and as they are implacable to this project? Joe; These are the best practices as produced by the Michigan Department of Environmental Quality or the EPA. Specifically we sent this out for review there was a question about silt fencing we looked at the DEQ's regulations for silt fencing and I understand that the EPA is more stringent. We included a reference to the EPA best management practice. It is included as an attachment in the plan. Achorn; most of us have not had a chance to review your plan because it was received so late but could you briefly outline the procedures that are in your plan? Joe; Some of the procedures that we have, I think that there are 12 different sections. The first is a development of a health and safety plan for not only protection of site personal but also for protection which extends off site to other people that are not going to be on the property. Dust control measures we give some recommendation measures as far as speed limitation site setting up and maintaining that dust protection program. Different suggestions on application of water or calcium chloride or other accepted methods as long as they don't pollute. A suggestion to have someone on site that can determine to capacity of omissions as they are being generated. We used other general recommendations for sweeping road ways if any dust is generated. Having a qualified trained person that is method 9D which is determination of opacity. Making sure that geo-tech fabrics and other materials are used to prevent the generation of dust during wind events and ceasing operations if there is a high wind event. Anything over 25 miles per hour. Environmental monitoring program, excavation monitoring, soil erosion handling and ground water handling storm water handling, track out soil, soil stabilization, more detail on access roads with specific specifications for those. Grading management and dealing with spoil piles or soil piles on the property and silt fencing management. **Manigold;** In your expertise we have discovered that there is a high level of led arsenic but is it manageable if we keep it on site? Joe; It is manageable as long as it is managed correctly. A robust program or plans to manage the control of that are suggested. Not only in this plan but also in the soil erosion and sedimentation control plan. That they are monitored and documented so people can refer to those to make sure it is being followed.

Managing soil per the ordinance. **Manigold;** it is a manageable problem but we don't want it to leave the site.

**Brian Etzel;** We have a SASC permit conditions that we have to comply with. What soil containment measures are you recommending that we do over and beyond requirements of our permit and virtue of the plans that we are required by virtue to follow that the Township Engineer already approved? **Joe;** One of the key items was perimeter monitoring. I don't recall seeing that in the plan. To ensure at the property boundary that there is no transfer of soil. Brian; so that is the only difference that you are aware of? **Joe;** No, also silt fence the silt fence tied into the EPA best practice requirements. We are trying to identify the best management practices. From the DEQ and EPA. What kinds of practices would try to prevent adverse impact on the neighboring properties? **Brian;** And you have never personally visited the site? **Joe;** I have not. **Brian;** We have a silt fence so how is your silt fence different from our silt fence? **Joe;** That is a good question I would have to go back and review the two. **Brian;** If we were going to till this property as some kind of orchard would any of the other measures that you are offering come into play? **Joe;** Our charge was to look at the ordinance and to prevent adverse effects and adverse impacts on the adjoining properties. That is what we were looking at we took that ordinance and reference and we tried to design a plan that would address that ordinance. **Brian;** About 5-6 months ago with similar intensity to our development called Vineyard Ridge there was also a phase 2 report to suggest that there were contaminants agricultural that were also used historically on that site do know any measures similar to what you are proposing that were in place for Vineyard Ridge? **Joe;** I have not reviewed those plans. **Wunsch;** I would like to address as to what I see being the difference between Vineyard Ridge and the 81 project. The slopes on the 81 development are much steeper than they were on Vineyard Ridge. Personally I have concerns about the possibility of erosion going into the east arm of East Bay and to the adjacent properties. So while Vineyard Ridge was another project approved by this Board there are substantial differences between the two of them. Brian Etzel; Did you have an Environmental Consultant for Vineyard Ridge? Did the Township hire an Environmental Consultant? **Wunsch;** No, we did not. The topography is a significant difference. **Westphal;** A major difference is the proximity to East Bay the 81 verses Vineyard Ridge. **Manigold;** We are not going to do the cross examination here. We need to have a Phase 1 and a Phase 2. **Brian Etzel;** That is fine. **Andy Smits;** Just one follow up question is it possible that there are conditions naturally occurring conditions of geography of the site the maintenance of the wood lot along bluff that would possibly give you due cause to consider whether or not further monitoring is not necessary. Not necessary to the degree that you have proposed. **Joe;** Once again not knowing the site we had to try to be as protective as possible of neighboring properties. We tried to figure out a way that we could demonstrate that impacts were not crossing property boundaries. That is where we came up with the idea of some kind of perimeter monitoring that would not only inform concerned citizens that there is not a problem but also the developer, the Township that would have something documented that there is not arsenic contaminated dust. It is possible seeing the site and if we have not understood the conditions correctly that there could be different conclusions that are made. Once again given the data that we had and trying to be as protective as possible to prevent an adverse impact on adjoining properties. That was the best suggestion that we could come up with.

Manigold; opens up for public comment

**Mark Noldowski, 10 McKinley Rd., Traverse City, MI 49686;** Speaking as President of Protect the Peninsula for those that don't know we have been around since about 1978. Our concern is in respect to the integrity of what goes on around the Peninsula. Concerned about the future of the Peninsula and its history and maintaining the quality of life. That we have come to expect on the Peninsula and in the Township that is unique to our Country. This is not meant to say anything negative about the developer. But I have some information here that might be interesting. There were pictures taken of Kevin O'Grady's personal house and his building on Bluff Rd., The pictures show what happens when you build on a site that should never have been built on. In order to build this house the site was excavated a 125 feet of vegetative hill bluff the hill has a steep slope to the water's edge. Somehow in 2014 he received at least 3 variances from the Zoning Board of Appeals. Which included cut backs into the hill on the waterside. I have a picture that was taken from the water this last August of his house and it shows the erosion that is taking place because of the three variances that were given to excavate into the side of the hill. As a result he has had to rebuild that hill with sand and retaining blocks. As the pictures show there has been continuous erosion of the slope towards East Grand Traverse Bay. As a result of that erosion a massive retaining wall has been built to hold back the erosion while using sand as a fill. I am not a civil engineer but common sense says that sand and the wall are not going to stand up over time. It may eventually jeopardize the foundation of the house. Why am I bringing this information up? Because the same thing only worse is going to happen if the project 81 development is built as the developer has planned. The development on Bluff Rd. and the hilltop call for the removal of trees on those bluffs and excavating approx. 20-25 feet of soil from the tops of those bluffs. All to put 28 home sites on those bluffs overlooking East Bay. I have a report here with the approval of Chris Grobbell who did this report back in July 2015 addressing this project and he has given me the approval to take experts from this report to read tonight. "The project was brought before review before the Peninsula Township Board on July 11, 2015". These are Chris Grobbell's comments not mine. application as provided the project should be denied. For the failure to comply with all of the requirements of the Peninsula Township Zoning Ordinance. Section 6.2.4 (r) 1 (a), Section 6.3.2 Coastal Residential District and now PUD R1A and R1B Districts as Special Land Uses. PUD objectives state objectives shall be considered in reviewing any application for a Special Land Use permit for Planned Unit Development. Documentation was read outlining the report that was written by Chris Grobbell. Do not let this happen the Township Board was elected and appointed to enforce the Master Plan as well as the Zoning Ordinance. The last administration did not exert their authority and protect our environment. We as citizens of Peninsula Township have confidence in you that you will exert your authority that was entrusted to you.

**Amanda Yin, 3991 Boursaw Rd., Traverse City, MI 49686;** Which makes my property the closest to this development. I just purchased it. I am a single mother with a school aged daughter I am also now taking care of my niece who is a medical sensitive young lady with a lot of difficult medical conditions that she is challenged with. I will just talk briefly and say that I hope you guys over there in your suits when you think about this led dust floating through the air with the arsenic in it that you are thinking about my daughter and my niece and them breathing in that and living next to that the whole time.

When you question whether special protect should be put up on this beautiful piece of land and you think about my kids. They are important and their health is important and this scares me to death. I am a single mom again taking care of my daughter and a medically sensitive niece that is staying with me. I don't have the money to move I was lucky to find this property next to my mom so she can help us out. I hope that you think about that when you go through this process.

**Tim Boursaw, 12875 Bluff Rd., Traverse City, MI 49686;** I just want to add a little clarification for everybody here. This is not the only agriculture in the center of this property. This last ridge was also farmed. Most of it up there anything up to the tree line where the slope starts in the flat ground up there to the west of that ridge was all farmed. Even the back slope to where the pine trees are to the west line early on was all corn plantations. I don't know if that changes things but you should be made aware that this western part was also all orchards and agricultural use when it was referred that this center piece and everything was going to flow into the center and that was the only thing to be concerned about because that is where the agriculture was but it was also all along the west line.

**Christopher Grobell, 8288 E. Northwood Trail Lake Leelanau, MI; (Grobell Planning Associates).** I have been an Environmental professional for more than 30 years having worked for the DEQ. Taught topic of environmental law policy as well as environmental impact assessment and environmental planning management at Michigan State for many years. I have been in private practice for several years. I have been the Planner of record for a number of communities in our region including Torch Lake and a number of others. First of all in the interest of time I will not repeat anything from any other reports a number of those issues are really not on the table anymore. I want to talk about what we do know the change since we were here just a few years ago. That is we have the results of soil sampling and as a lay person I would imagine it is a little dough ting trying to figure out what it all means. You have heard about the toxicity of arsenic. We have 27 of 32 sample locations at this property that exceed relevant DEQ criteria for human health and the environment. We have 62.5% that exceed direct contact. The direct contact numbers are based exposure pathways of white male's life time body burden or breathing dust over time it doesn't consider the most vulnerable. It doesn't consider kids that have a much faster respiration rate and are lower to the ground than most of us. We have to very importantly understand what the state regulations are and what your role is and how it all over laps. The bottom line is that you have a key role to play to make sure that if this thing is approved or approved with conditions. We are going to have to make sure that it is done safely. The question about what happens when property is developed is essential the question of what happens during development is essential. I was the Planner of record for eleven years for Acme Township, I am not proud of it. I happened to be their Planner with the Village of Grand Traverse and Meijer development. We had massive losses of soil and four major plum events in the Acme creek. We had 400 year storm events during the time that they were trying to get their seeds established. All of which was under a Soil Erosion plan from the County. They couldn't get the grass to grow and we put every single best management practice plan known to man in place and it didn't work. Elmer's had 35 employees there within 24 hours of the first problem and they spent that \$80,000 in the first 6 hours. This went on for months. The State of Michigan stepped into enforces who refused to enforce their own soil erosion ordinance. So we need to be realistic when the Main\_\_\_\_\_ project the wind blew all

the sediment top soil off that site and onto US 31 for two weeks. Do you remember? When the golf course went in. For two weeks they were trying to scrape it off the highway. Similarly the Leaneau Lawrence recently same thing off site transport sediment into wetlands all of which were under plans approved by the development agencies all of which promised the Townships that this would not happen. Very important to realize your role. The storm water runoff dust particular matter tracking is very serious concerns. You have been told a lot of information. Unfortunately the public has not had much of a chance here tonight. I do not know what our time frame is but you need to listen to the public about the realistic concerns. I agree with the Townships consultant that there are very significant issues with the adjoining property owners and a high level of impact off site. We have extraordinary steep slopes all through this area which are really challenging and they are planning the development in those areas. The nice broad areas are going to be left alone as open space. The developable part. The number one rule of good land use planning is to look at the site and preserve what needs to be preserved and you develop the stuff that is flat and easy. This is inverted and flip flopped completely ridiculous plan. They are developing the worse locations because they are the best for economic return. There are many things that can be done by way of best management practices. All of which are based upon implantation, monitoring and daily oversight. Problems will occur upsets will occur. The implacability of part 201 keeps coming up. What is the State's role here? There is an agricultural exemption under part 201 it was put in with amendments 20 years ago and it says: " If agricultural chemicals are applied in accordance with label instructions and mixed in accordance with label instructions then there may be an exemption." Now there are a lot of these properties out her in Old Mission, Leaneau, as the conservancies has purchased old orchards about 60% of the time the DEQ makes us do something about it. About 40% of the time it is a private transaction where it misses the DEQ. So I would want to make sure that there is a very clear communication between you all and them as to whether there is an exemption. Is there an exemption when this goes into residential use as there shouldn't be as that is not agriculture. Is there an exemption today that it is not in agriculture. Working on behalf of the City of Petoskey we had to excavate for their new trail which derailed the trail project because of led and arsenic where the railroads used it as well as herbicide that was sprayed on the back of their cars. The fact that it exist does not mean that it is not important. It is extremely important. I would encourage you to get that definitive answer from the DEQ. You are going to have to make sure this development is safe during construction. We have had Monday and Tuesday 40-50 mile winds. I recorded over 7 inches of rain at my house on those days this week. That is two month worth of rain in 48 hours. The weather patterns are changing whether you agree with the big picture patterns or not. We get very strong high intensity events these days. I have only lived here 30 years but that has been my experience so far. Gave history of Acme Township and the issues that occurred with the Meijer store and the issues that occurred with the soil erosion.

**Susan McMann, 4114 Trevor Rd., Traverse City, MI 49686;** Our property is to the north of this property. Explained health issues with her husband and the chemicals that he was exposed to during his time in the service and . The pesticides will affect the people in the Community.

Missy Holch Kimable, 1566 Smokey Hollow Rd., Traverse City, MI 49686; Our property is adjacent to the projected 81 project. Our east line property adjoins 340 feet to the west line to the 81. Read letter of

concerns. Increase of traffic on the roads, equipment, removal of trees and cutting into the ridge line. Home and family will be directly impacted by this development by noise, dirt and pollutants. Numerous references with the Peninsula Township Master Plan with protection to the land and environment. Would request that the development be denied as the impact on the community. The property is perfect as is. Do not allow a developer to desimate the property.

**Monnie Peters, 1425 Neahatawanta Rd., Traverse City, MI 49686;** I am coming to point out something that has not been addressed about this property. If you look at it by the assessing database or the various plans there are piles of rock s all the way along the shore line. The bluffs by the houses on lots 2-4 what is going to be done with the plans on how to protect the bluffs from the shoreline. Keeping water runoff going into effective watercourses this is an important subject for you the Board to think about. DEQ is saying that the best way to preserve shorefront property is by planting trees and shrubs. Does not seem that they are planning deeply rooted trees and plants the shoreline is a whole other area that has not been discussed. Our ordinance states you cannot cut 30% of the shoreline trees and vegitations.

**Terry Goodell, 10876 Bluff Rd., Traverse City, MI 49686;** I would like to thank Mr. Mansfield. It was a great presentation. I have heard some slanderous statements regarding Mr. O'Grady. Everything he has said he has done.

**Paula Kelley, 4375 Woodland Rd., Traverse City, MI 49686;** We have spent a lot of time listening to professional people talk about soil erosion. 8.1.3 (k) – Grading and filling will not destroy the character of the surrounding properties. I would like to know where the certified Harborist is in this process what trees are being removed and in what time of year will be cutting down oaks which may or may not have oak wilt and if they do how will they be transported and contained. What about invasive species? Is that all that will be left or will there be traditional native trees left? Any development should have a certified Harborist throughout the whole process. Not all trees play well together.

**John Fisher, 10493 Center Rd., Traverse City, MI 49686;** I have lived on Center Rd. and traffic now is terrible. It is a matter of time before the road will be required to be widened. Center Road has a ton of traffic and this project will create more trucks and more traffic. It will not go down Center Road and not Bluff Rd.

**Jim Komendera, 4168 Rocky Shore Trail, Traverse City, MI 4968;** President of Preserve Old Mission - Soil level of contaniments were mentioned earlier. Concerns of weather events and what will happen. Gave report to the Board. The developer is fighting hard to getting this PUD approved as it will financially benefit him. All about someone making a profit but not at the cost of the environment.

**Scott Howard, 420 E. Front St., Traverse City, MI 49685;** Gave Township Board handouts. Outlined that they were Proposed Findings of Fact the developer has submitted their Findings of Fact. Went over three specific issues with reviewing the application. The ordinance states that the proposed development will not cause soil erosion or sedimentation problems. Outlined concerns with the soil

erosion and sedimentation issues that have occurred in other areas in the state comparing it with the development site.

**Mark Noldowski, 10 McKinley Rd., Traverse City, MI 49686;** If Mr. O'Grady want to be a hero and most respected person in the community maybe he would sell this property to the Township. A park would do wonders to the community.

**Manigold;** closed public Hearing and brought back to the Board for discussion.

**Adjournment:** Motion by: Wunsch to adjourn until the November 8, 2017 meeting / 2<sup>nd</sup> by Westphal.  
10:42 pm

**Pass unam**