

---

OLSON, BZDOK & HOWARD

---

RECEIVED  
NOV 17 2016  
BY: 12:42 PM  
J.A.

November 17, 2016

Peninsula Township  
Supervisor and Trustees  
13235 Center Road  
Traverse City, MI 49685

via Email to :  
planner@peninsulatownship.org

Re: Proposed Condominium Subdivision for  
The 81 on East Bay  
Our File N<sup>o</sup> 6079.00

Dear Supervisor Manigold and Township Trustees:

I represent Preserve Old Mission, a non-profit entity dedicated to preserving what is unique about the peninsula and its community. The purpose of this letter is to urge that you deny the PUD request for the 81 on East Bay and summarize information previously provided to the Township for new board members. The development proposal, as it stands, turns the Township's open space preservation principles on their head. The proposal seeks to pack in all of the homes along two sensitive ridgelines, with a density much greater than would otherwise be allowed by the Zoning Ordinance. The proposal significantly re-grades the unique topographical features on the land while at the same time clear-cutting half of the trees on the property. In doing so, the project creates substantial soil erosion concerns that violate the standards in your ordinance.

In this case the Circuit Court has remanded the PUD for further consideration and analysis by the Township. The remand is not a formality – it is a requirement that the Township evaluate the project in light of the new information that has been submitted, additional information provided during the public hearing, and in light of the specific standards within the Zoning Ordinance. If the Board concludes that the Developer has not met its burden and sufficiently justified the PUD, then the request should be denied.

As we have argued previously, the character, density and environmental impact of the proposed project is inconsistent with the standards of the Zoning Ordinance. We believe the evidence submitted in the record, as supplemented on remand, clearly mandates a denial of the project. To that end, we submit this analysis on the remand, as well as our alternative recommended findings of fact supporting a denial of the project.

Peninsula Township Supervisor and Trustees  
November 17, 2016  
Page 2 of 4

### **Soil Erosion, Grading and Storm Water**

The project's extensive grading and tree removal highlights how much the development is inconsistent with the natural features on the property and the intent of the open space preservation provisions. Removal of vegetation and recontouring the natural ridge lines and steep slopes on the property are activities that violate the conditions for approval in the Ordinance.

In order to highlight the environmental impact of this proposed project, we have retained Dr. Christopher Grobbel to provide an independent analysis of the project plans. Dr. Grobbel reviewed the project initially, and has also reviewed the most recent plans submitted to the Township. As Dr. Grobbel's supplemental report indicates, there are numerous environmental concerns with this project. Of particular note is the incredible amount of earthwork proposed in the plan and a high risk for erosion based on removal of tree cover and the types of soils on the property. This is compounded by the concern that, if the project were to fail, there would be an enormous scar on the land at the end of bluff road with no natural protection to prevent substantial erosion both on and off the property. Finally, we note that the County's soil erosion program is currently under probation from the State of Michigan. This probation highlights the need for the Township to independently review any and all soil erosion issues with strict scrutiny. We urge you to give these concerns careful consideration as you reevaluate this project.

One half of the existing trees on the property will be removed for the development. As Dr. Grobbel's report indicates, this has important negative impacts for soil stability and erosion. The development plans do not provide how the disrupted and graded soils will be stabilized after clearing and grading but before lots are sold and home are built. County soil erosion permits have not been obtained for the development and the project is lacking stabilization plans required for the County's final approval. As indicated by the County, there is a substantial chance of runoff on to neighboring properties if the grading activities are not done properly and without appropriate safeguards. Finally, there are significant questions about the soils and any residual pesticide contamination that could be spread through the grading activities. All of these items are reasons to deny the proposed PUD, or at least postpone a decision until more information is received by the Township.

One area that we believe the Township needs to pay particular attention to is the possibility of soil contamination on the property from historic pesticide application. You will be provided information at the public hearing about the historic farming activities on the property and the use of pesticides that contain things like lead and arsenic. The Developer has not presented the Township with any information or studies related to the condition of the soil on the property. Typically a developer of land does environmental due diligence studies on the property in conjunction with the property purchase. This includes Phase I and Phase II studies to identify any contaminants in the soil or groundwater, and the filing of a BEA with the state if

Peninsula Township Supervisor and Trustees  
November 17, 2016  
Page 3 of 4

contaminants are present on the property. It is not clear whether this developer did those studies, but we have not seen any information presented to the Township on this topic.

If contamination exceeding state criteria exists on the property, the developer has a “due care” responsibility not to increase the potential exposure of persons to the existing contamination. Often times there is a “due care plan” file with the state explaining the actions that will be taken to prevent exposure. Again, we are not aware of whether such a plan exists, and we do not believe the developer has shared a due care plan with the Township.

The reason why this all is important to the Township is that Section 8.3.1(3)(h) requires the township to conclude that “soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.” Given the information about historic use of pesticides on the property, it is impossible to conclude that this standard will be met unless there is substantial environmental information shared with the Township. None of that has been presented up until this point. Moreover, the significant amount of grading and re-contouring of the property makes this extremely important. The Township needs to make sure the development plans do not ultimately increase exposure and potential contact with contaminants like lead and arsenic because of soil grading plans.

#### **Additional Road Surface and Open Space Concerns**

In addition, the emergency access road and the widening of the 81 East Road from 20' to 26'. These items have been added to the development plans in order to address this standard, and add a minimum of at least 4,230 square feet of paved area to the project that needs to be subtracted from the open space calculations. As the Board may recall, the materials submitted by the developer stated that the development had just enough open space to qualify (the ordinance requires 65%, and the development calculated right at 65%). However, the way that this calculation was arrived at is contrary to the ordinance. The developer took the entire property, removed the area to be occupied by the roads and building envelopes for the homes, then counted everything else as “open space.” This ignores the description of “qualified open space” in the Ordinance, and incorporates almost 6 acres of questionable open space. The questionable open space in the calculation includes:

- Storm sewer detention basin (+/- 125,231 SF)
- Community septic system (+/- 54,000 SF)
- A16.5 foot gap between the gravel road edge and buildable envelope (+/- 65,142 SF) - (each units private driveway crosses this 16.5 foot open space gap)
- Centers of cul-de-sacs (+/- 5,460 SF)

