

**Town Board Meeting**  
**December 12, 2017, 7:00pm**  
**St. Joseph's Catholic Church**  
**Regular Meeting Minutes**

1. **Call to Order** by Manigold at 7 p.m.

2. **Pledge**

3. **Roll Call** Present: Manigold, Westphal, Bickle, Achorn, Wunsch, Sanders, Wahl.

Also present: Greg Meihn, Township Attorney; Gordon Hayward, Assistant to the Planning Director; Brian VanDenBrand, Planning Director; Joe Buetler of ASTI; Dr. Harless, Expert Witness; Jennifer Hodges, Engineer, with Gordie Fraser & Associates

4. **Brief Citizen Comments for items not on the agenda** None

5. **Approve Amended Agenda**

Motion to approve the agenda by **Sanders**; seconded by **Wunsch**. **Passed Unam**

6. **Conflict of Interest** None

7. **Business**

**Supervisor Manigold closed Regular Meeting and Opened Public Hearing for 81.** Township Attorney, Greg Meihn gave a brief presentation instructing the Board and the public that the only items which were remanded back to the Township by Judge Powers were to be addressed. He advised that the two dates to keep in mind for the Board are August 11, 2015, when the Township Board approved the application for the 81 Developments Special Use Permit (SUP) and January 15, 2016, when the Circuit Court, Judge Rodgers remanded issues back to the Township. He also stated that a lawsuit was filed by a citizen group against the approval of the 81's SUP. It is the specific remanded issues that are the reason for this public hearing. This is not the time or the place to review whether back in 2015, this entire project was properly approved. The limited scope of this hearing and the limited scope of the decisions that the board will make tonight has to do with the limited remanded sections. It was found that the board had improperly delegated several issues related to the emergency access road and the grading plans related to soil erosion and storm water management to the fire department and the township engineer, respectively for review and approval, and the Board did not independently determine that the proposed SUP met the ordinance requirements pertaining to those issues. That is issue number one on this remand that the board is required to make a decision on. Item number two, the board delegated approval of the grading plans to the township engineer in respect to the approval of the grading and storm water plans. In Footnote #46 of the court findings, statements of the Board were not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water had been met. The court remanded that issue back to the Board for further consideration. The court concluded as follows: "The issues delegated to the Peninsula Township Fire Department and the Township 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 consistent with the decision of the Board".

**Supervisor Manigold:** The applicant has asked to make a short statement to the Board, and then we will ask Dr. Harless, and Joe Buetler from ASTI to make a short presentation. We will then open the floor to public comments, and when that is concluded, the Board will begin deliberations on the issues which were remanded back to the Board by the Circuit Court for further discussion. Manigold requested that the audience refrain from clapping since this is a business meeting. He thanked the

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public for attending the meeting and reaffirmed that the audience would have the opportunity to speak.

**Meihn:** Once the public hearing is closed and other presentations have concluded, the Board will go into its deliberations. At that time, all communication between the Board and the public ends, and only communication between the Board and its advisors can take place.

**David Rowe, Attorney for the Developer ; 202 East State St., Suite 100, Traverse City, MI 49686.** He introduced himself as co-counsel for the 81 Developer. This is the continuing hearing for the issues remanded by Judge Rodgers. This is the fourth public hearing, and at each hearing there has been extensive public comments and deliberation by this Board. The Petitioner's team has been present at each of the hearings to answer the Boards questions. Prior to each of those hearings, the 81 has submitted proposed findings of facts with substantial information. As a result there is a substantial record of materials surrounding the remanded issues which support approval of the 81's application. The only additional supporting information that has been supplied to this Board is the comparative slope evaluation report which was prepared by Inland Seas Engineering. We simply ask the Board to make a decision based on the findings of facts based on our plans and based on information received from the professionals that have prepared and reviewed these plans. There has been a lot of misinformation about his project and the remanded issues. Our team is here to point the Board to the facts and information that is in the extensive records. Hopefully we can eliminate once and for all, any confusion surrounding this development. The Township has hired no less than four outside consultants which have reviewed 81's application with respect to the remanded issues at a significant cost to the 81. All of these costs have been passed on to the applicant. This has never been done before. The Township will have conducted four full hearings on the remanded issues over the course of two years since Judge Rodgers upheld the prior Board's approval. I speak on behalf of our entire team, including Doug Mansfield who has 25 years of presenting applications like this including Peninsula Township. The amount of scrutiny given to these remanded issues has been extraordinary. No one in this room can appreciate the financial and emotional burden that this has placed on Mr. O'Grady and his family. He has waited over 853 days since Judge Rodger's upheld the prior Boards approval of their SUP/PUD. We are asking for the Board to make a decision today to approve the project, deny the project, or approve it with conditions. It is time to put this issue to an end.

**Andy Schmidts, Geological Engineer with Inland Seas Engineering GEI Consultants.** What you have in the public record from the applicant is a very short comparative evaluation between slopes of the 81 and slopes elsewhere in the area of the Township. These are public records in one location for you to review and provide some context to the concern that was expressed in regard the remanded issues pertaining to the steep slopes. The report shows that the deposits in this area are regional in nature and are generally uniform and are mapped over broad areas and are shown on the map. These are highlighted on the prior slope evaluation report done by Mawby PC. My work does nothing but review previous public records. The development of the 81 as proposed does a better job at protecting these steep slopes than other developments do nearby. Glacier deposits gave rise to the soils in this area; soils evolved from the glacier deposits through weather and climate changes and through plant growth. These deposits are called till which are hard as a brick. This sample is 11 feet down and taken with a geotechnical drilling grid within 2 miles of the 81. It is a material that is in a vast amount throughout the Peninsula. This is what gives us steep stable slopes. The developments that are shown in the exhibits show how home sites have been built in this material on the face of the slopes. The development proposal for the 81 respects those slopes and the natural areas by setting

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development back away from the crest of the slope. I think the concerns in regards to the steep slopes have been addressed by the developer, and the plans present a superior development style than those that have already been approved by the Township.

**Doug Mansfield, President, Mansfield Land Use Consultants, 830 Cottage View Dr. Suite 201, Traverse City, MI 49686;** I am here to address one of the conditions that we saw in the draft that came out Monday from the Township. The draft condition had to do with two of the fire gates that are at each end. One at the fire access roads is to the northwest corner of the site and then the other would be located at the southern entrance of the site. This fire access road has been established at the site for the years that this has been approved. We have had the two Fire Chief's from the Township review it, and a current acting Fire Chief review this as a consultant for the Township. We talk about fire gates which are allowed but not required in the NFPA Ordinance on the same road. Gates have never been required by any of the consultants or the Fire Marshal. I want you to picture having these two fire gates in place one at Smokey Hollow Road and the other on Bourse Road. The NFPA requires that the Fire Department respond in 6 to 9 minutes which is hardly achievable. Your ISO insurance ratings are based on this. Mansfield continues to give a descriptive outline of the difficulties involved responding for a fire call and the challenges that would occur if the gates were mandated to be placed on both road ends of the site. The engagement time to unlock two separate gates for emergency services is critical whether this be for a fire or first responder; these gates are not recommended by the Fire Marshal or any Fire Consultant personal. Gates impede time limits for emergency personal to respond to any type of call. Time is wasted opening gates that are not required or requested. It is now in a finding of conditions of this Town Board so I implore you to look at these gates. The only reason it was even discussed is because it became a nuisance to protect the Wells family. This road is posted with no trespassing, authorized vehicles only and no parking signs. It is a Federal Offense to break those laws. On the occasion that someone drives down there, it would be the Wells family that gave the easement to the 81 development. I know that this is a condition to the draft set of findings that I had and I don't know an emergency firefighter, ambulance or EMS that would say that they want impediments in the way of them getting to an emergency.

In comments provided from your council to our council were concerns of development and grading of lots 6-10 of the site. We have prepared individual lot grading plans for each site which is uncommon to a developer. Those were given the Township and passed along to the Township Engineer who reviewed all of them and then had some minor concerns which were addressed and then incorporated into the final plans. There still seems to be some questions with those lots so I am here to answer those questions. Mansfield presented exhibits of these lots blown up individually to show the grading of each separate lot. Mansfield goes into detail with an explanation of each lot and the grading to be conducted on each lot. The road will be built upon the existing farm trail as the base to the road that will support this development. The back slope will not be touched. Limits of extent of grading on the proposed lot measurements are taken from the top of the ridge 42'-67' away from the ordinary high water mark. The mandated set back from the wetland areas is 25'. These slopes will be a mow able slope with 4 inches of top soil and seed. There is a 1 foot in rise for every 3 feet of distance. (1 out of three is a practical slope). Lots 6-10 will be served by a community sewer system. We have shown with these cross sections that have been a part of the record for a year and a half that have also been approved by the Township Engineer as being acceptable so that with ease and practical development methods we can build on these lots. That was my understanding of the concerns that were brought forth from this counsel.

**Manigold** introduced Township Planner Brian VanDenBrand, Assistant Planner Gordon Hayward, Township Attorney Greg Meihn, Dr. James Harless, and Joe Buhler of ASTI, and Jennifer Hodges,

**Dr. James Harless, of S&E.** I was retained by the Township to take a look at the site and evaluate the potential for adverse effects. This was requested because of the history of the property which was that it was used for orchards. It is well known in the environmental business that property that was previously used for orchards is often contaminated with residuals of the pesticides that were used. It is not uncommon to find arsenic, lead and potentially mercury. There had not been any assessment done on the property at the time. The consultant for the developer had appropriately recommended to them initially, that the property was not subject to part 201, based on a MDEQ recommendation, because it was to be retained in agriculture. [Editor's note: there is a portion of the statute that exempts agricultural property from clean-up requirements if herbicide and pesticide products were appropriately applied; under those conditions, the contaminants would not be considered a "release"]. MDEQ has interrupted that part of the state law by establishing an exemption to part 201, which is the part of the Michigan statute that regulates contamination which in essence states that you have to clean it up or you don't. The developer did do an assessment of the property and did confirm that arsenic is present on the site. It was found that the levels would exceed standards for people coming into contact with the soil while working and living on the site. With that being said, with this project the levels of contamination cannot be regulated or controlled unless the contaminated soil leaves the property and is deposited on any of the neighboring properties or sites. It is interesting that we are not as concerned with exposure of people on-site or the dust being generated from this project, it is the material that could come off site that will track out on vehicles and be discharged as dust generated from construction activities or that may run off the site during storm water discharge and become deposited on the adjoining properties. We don't have regulatory control but the risk to adjoining properties can be mitigated if the material remains on site. The challenge is to come up with performance criteria that states, as a condition of doing work, they would keep the contaminated soil on-site. The second challenge is determining how you do this and that would be a soil management plan that is put in place, prior to any excavating occurring. A plan was put together by ASTI that calls for the use of the best management practices to keep that material on the site. This will never occur at 100% because it is not technically feasible. Best management practices can help to keep this to a minimal in terms of erosion and discharge with air borne products and storm water runoff, but they can never prevent 100% of the material from going off-site.

**Joe Buetler, ASTI (expert witness for the Township) 10448 Citation Dr., Brighton, MI.** ASTI was tasked with developing a soil management plan based upon section 8.1.3.3(k) of the Peninsula Township Ordinance. This part of the ordinance specifies that grading and filling will not adversely affect the adjacent or neighboring properties. ASTI reviewed prior documentation that identified arsenic on the property due to historic orchard operations. We reviewed development plans, soil erosion sedimentation control plans, and we walked the property with the developer. ASTI understands that the primary transport mechanisms during grading and filling operations are storm water erosion, wind borne dust, and equipment egress or ingress specifically at the access roads. ASTI has provided additional detail that goes above and beyond what is outlined in the soil erosion and sedimentation control plan with respect to the following: health and safety, dust control, river monitoring, excavation soil handling, dewatering of soil, storm water handling, soil track out, and soil stabilization, access roads, grading, soil piles, and silt fencing. Additionally we recommend that a third party inspector or designated enforcing agent be retained by the Township to monitor compliance with soil management plan as well as the soil erosion and sedimentation plan. ASTI believes that the soil management plan is a reasonable approach and that by following this plan the developer would be in compliance with section 8.1.3.3 (k). **Bickle;** the report that is before us looks

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like there were 12 individual documents that your company reviewed. These documents set up baseline information and established basic premises; they also provided best management practices which are in sections 4.0 through 5.0, and 6.0. Those recommendations are the results of the best case practices and your discoveries that were in those documents. **Buetler**; that is correct. **Bickle**; you make reference in your findings on page 8 about 20% opacity, what does that mean? **Buetler**; It means that if you are looking through clear air, it is not opaque but rather transparent. 20% opacity means that it is 20% opaque. There is a method referenced in the report that explains the measurement.

**Manigold**; All of the reports that we are referencing are available on our website and open for public audience comments.

Scott Howard; I agreed that this project has been a long road. This project is a big deal for the community. You all have taken this seriously. I represent residents and neighbors of Old Mission. We initially filed the lawsuit regarding this case. It was mentioned earlier that Judge Rodger's stated that the appeal was properly granted. The Judge ruled that the SUP was properly ruled and granted. I just want it to be clear that was not the case. The Judge said that certain findings were supported on the record, but certain findings were not. Certain findings were improperly delegated to Township staff to make findings. The Judge stated that these statements are not legally sufficient findings to support a conclusion for standards of soil erosion, grading and storm water have been met. We do not have a properly approved permit as of yet. That is part of your roll in this process. The Judge remanded for those specific considerations. The scope of the remand is soil erosion sedimentation, storm water and grading. Just to be clear, there is not a permit at this point.

I would like to touch on contaminated soils. I think it is important to understand that these soils are a focus of this discussion in my opinion for two reasons: what happens to those soils if they go off site, and how are we going to protect the future residents of this property from these contaminated soils? We don't want them to go off site but we also need to make sure that kids that are playing on this property or in the open spaces are not playing in contaminated soils. How are we going to do that? What is the plan to do that? I have not seen anything in the plans from the developer that indicates what they are going to do to protect the future residents of the property. I think that this is a critical component of your review. Again, 8.3.1 3 (h) states: That soil conditions are suitable for excavation and site preparation. Soils that are not suitable for development will be undisturbed or modified in an acceptable manner. So what are we doing with these soils even if we keep them onsite? The other important thing I would like to talk about is soil erosion. You have a magnificent geological feature on this site. It is a steep bluff that goes down to the water's edge. One of the bluffs is a little smaller than the other. I would like to focus on a document that is new to your packet, and I think substantial attention is required. It is entitled "Living on the Coast" (packet addition "E"). That document is crucial for your consideration of this project. We also looked at the slope stability report that was provided by the developer. This report is states: "Significant earth work is planned to achieve proposed grades including approximately a 30 foot cut along the ridge line of the upper bluff. The ridge will be leveled to achieve a desired view". That is what the slope stability report says. The Army Corps of Engineers document tells you to "Avoid removal of portions of sand dunes to improve the view of the lake or allow access to the water's edge. Such actions to remove the natural protections from wind and storms..." p 23. The Army Corps is telling you to do the exact opposite of what the developer is proposing to do. We have the sorts of conditions that are affected by erosion. The site has heavy clay material overlain with sandy material; the heavy material stays in place while the sandy material filters down or slides across it, filtering through voids in the soil

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structure. This leads to soil erosion and slope in-stability. Do we have those situations here? Absolutely, you can look at the developers own report. Mawby's report stated that there was a "slope safety factor"; this rating how likely the slope is going to erode. It rates the soils at about one. The Army Corps on page 12 of their document states that once the balance of forces in the safety factor is reduced to less than "one", slope failure is likely to occur. Again the question is do we have a potential problem here? The answer is absolutely we do. We have soil erosion officers in the County, and we rely on them. Here is what the Army Corps states regarding that; "Ordinances restricting how close buildings can be placed on the lake fronts edge, bluff or bank cannot be assumed to be sufficient to protect long term coastal investments. They further state "Governments incentive to avoid litigation has to be stronger than incentives to provide safe distances between buildings and the dynamic boundaries of the Great Lakes." The slope stability report states that we will take the top off the bluff and that will increase the slope stability because then there will be less weight on the bluff. Frankly that is an unsophisticated view of slope stability according to the Army Corps. If you look at page 22, another critical statement is "protections of a slope face typically involve vegetation controlling surface water runoff. Root able plants enhance the surface of a bluff that is already stable against deep slopes." This plan calls specifically for the removal of at least half of the vegetation on the property. Half of the trees will be gone; these trees are the ones along the bluff that block the view which will cause further instability. The "view" is what drives these types of projects and that can be summed up as "economic gain". The Army Corps address this on page 34. Here they explain the long term aspects of what is important, not the short term. If you do not take into consideration the long term hazards of erosion, it could have devastating consequences. I think this is a critical piece of information for this Board to take into consideration. What I would ask of the Township is for you to have your Attorney go back and provide you with both alternatives. What does an approval look like and what does a denial look like. The standard with which the Court reviews these types of approvals says: Is there competent material of substantial evidence on the record to support your decision. Would there be competent material on this decision to support a denial? Absolutely, take a look at the developers own report on slope stability. What is the analogy out there? Take a look at the Arcadia Golf Course; this project resulted in substantial soil erosion. Lastly I will state that we did provide the Board with some Findings of Fact. I would be happy to read these into the record. I think that you can make a decision tonight. However I believe the only decision that the records support is one denying this project. We can do better and the community can do better. You are the stewards that are here to protect the best interest of the community.

**Greg Meihn;** Overstated or understated, the Judge had ruled in terms of what the Board had lawfully and properly delegated; its discretion today lies with the remand issues that were stated.

**Penelope Rosi, 2711 Old Mission Rd., Traverse City, MI 49686;** I just spoke to Mr. Schmidts regarding a question that I had regarding his presentation, and I wanted to be clear. One of my concerns is with regard to this slope (referring to west bluff on the visual board), and how it will be maintained. What Mr. Schmidts said is that the soils in the area have a certain compound called "till". This characteristic helps to hold moisture so that there won't be a slump. He stated that he was looking at the other slope (easterly). I am concerned about the west slope. I know that the soil holds moisture but when you eliminate the trees for viewing on the upper area, the question is how this will affect the slopes on the west portion.

I also cannot understand why we have an additional access off of Smokey Hollow. Originally we talked about going off to the north, and then it was discouraged. Also if you live in lot #1 or lot #41, you will have lots of traffic that you are dealing with. Every house generates at least 10 trips per day,

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so there will be a lot of cars traveling by your home each day.

**Mansfield;** The NAPA Fire code requires that you have a distance between your two fire roads that is half the diagonal distance of the property. In this case, it is 2900 feet from corner to corner. We have to have 1450 feet separation between entrances.

**Jim Komendera, 4168 Rocky Shore Trail, Traverse City, MI 49686;** President of the non-profit to Preserve Old Mission. I do not think that we can give the Board any more information on this, and I admire that you have poured over this. We have many reports, expert testimony, findings and many people have stated that this is not a good project as proposed. As the Township Attorney has pointed out the number one ruling of the Judge was that soil erosion did not meet the ordinance requirements. It is your duty to go back and make sure that they meet it. If you look at the ordinance, this project goes against what the ordinance and what the master plan is for the Peninsula. Section 8: "All natural resources should be preserved to the maximum feasible extent"; this project is a joke when you look at our ordinance language. All the environmentally sensitive areas are the areas being developed and cut into, while all the buildable areas are not. I know that you have had meetings with your Township Attorney, and the Attorney that I am referring to is employed and represents the insurance company. I am sure he has given you wise advice but he still is the Township Attorney for an insurance company, and I think if I were an insurance company I would want to minimize the chance of a lawsuit. Whether intentionally or unintentionally, it may have influenced any advice that was given. I am asking you as Board Members that you do the right thing and not be bullied by the threat of a lawsuit that may lurk out there if you do not approve this thing. You know that you are overwhelmingly supported by the residents of the Township in opposing this.

**Ann Rogers, 1236 Peninsula Drive, Traverse City, MI 49686;** I am here representing Northern Michigan Environmental Action Council (NMEAC). We are a volunteer organization. We have been involved for the past 38 years with all things environmental in this northwest corner of the state. Several of us walked the property earlier when Mr. Komendera called and asked for us to help. The property is beautiful with the slopes and the forest area along the bluffs. You had a person from our Board at your last meeting and because public comment did not happen, the letter that we sent out did not get read into the record. I would like it be read into the record to reflect NMEAC's position.

**David ( no last name), 9988 Riley Road, Interlochen, MI;** Doug Mansfield discussed firefighting ability and the access road. There are NFPS and ISO guidelines that you can cite that state how much water you must have. This is a rural fire department, you don't fight fires with only a 30,000 gallon tank. It is not be sufficient for a real fire. It is important that you are voting on numbers that are supported by standards, and not just what the Fire Chief thinks. The next couple of weeks the best roads will be challenging to get down. We do not want to condemn these houses due to the location of this project. In 5 years or 10 years down the road when issues come up, you do not want to address these same issues. You have minimum requirements to meet here. We have learned from mistakes. Today, we have fire hydrants and trucks that do come into play reflecting the sites we are trying to protect.

**Monnie Peters, 1425 Nehtawanta Rd., Traverse City, MI 49686;** I spoke before specifically about the shoreline concerns. I found that these reports, particularly when considering storm water runoff, were not well covered originally or even now. It is interesting that the wonderful one from ASTI did not show up until 9:30 this morning. I spent a couple of hours going through that most excellent report. I noticed that not every exhibit that was lettered was on the website. Of course

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additional correspondence came in throughout the day as I kept looking at the website. This has been a common problem. I think that the report from ASTI regarding the soil stabilization and grading was good. If you were to approve this project, it talks about the grading and different phases. One of the things that has not been emphasized enough is the recommendation from the Army Corps of Engineers regarding the role of plants and shrubs in stabilizing a shoreline. Doug Mansfield was disingenuous when he talked about setbacks for all houses being 50 feet or 70 feet from ordinary high water in the plans. It has been in our ordinance that you may not build a house within the 60 foot set back from ordinary high water mark. I think that Scott Howard and the booklet "Living on the Coast" from the Army Corps of Engineers, goes into detail about why that is. The point being, the further away that you get from the edge, the safer it will be. I think you need to look at on-site monitoring daily if you were to approve this project. Getting into the specific findings of fact: it either has or has not been approved. You need to look at 8.1.3.3 5 page 6 in our ordinances; there are bullet points defining the stabilization of soil. The stabilization needs to begin as soon as the trees come down. Soils need to be protected within a couple of days afterward; these are things that need to be addressed as you review the findings of fact. Care should be taken in the wetlands and the water bodies. Of course we need to stay away from the wetlands. I think the cutting of trees along the bluff is more severe than even staying away from the wetlands. The plans need to be designed well enough to avoid the issues that Acme had by considering whether our standards are good enough for 200 year storm events. I am not confident enough to state that they are. (See Letter from NMEAC in Packet Correspondence).

**Kathy \_?\_\_\_, 11126 Bluff Rd.**(Editor's Note: This address does not exist in our Assessor's records, so name could not be verified), **Traverse City, MI 49686**; I think that one issue that needs to be addressed is public safety. I live on Bluff Road, which is a recreational road. There are a ton of bikers that use this road. I feel that safety is a really big issue especially with this proposed development because it would increase the flow of traffic, especially with big trucks. This would put the recreational use at risk. I also work in the health care profession, and I do have additional concerns with the water runoff and health risks associated with soil erosion. How can the erosion and the containments on that property be controlled? Looking years down the road, do we know what risk this poses to the residents that live out here?

**Shelly Drew??**(Editor's note: Rachel Ellison owns property at this address in address; could not verify if this person was a renter). **3823 Smokey Hollow Dr., Traverse City, MI 49686**; I am a Board member for Preserve Old Mission. As a mother, I am concerned about the environmental impact of this project on my child's health. I come to you today for practical reasons with a practical concern, "how I protect my child"? Do I tell my child not to play in the lake or go outside? Even the experts say that you cannot contain the contamination, so what do I tell my child? How do I protect my child and what recourse do I have?

**Mark Nodowski, President of Protect the Peninsula**; This project has been going on since 2014; any project going on that long has to be a problem. Otherwise it would have gone through. We know the issues that were brought before the former Town Board. For all the reasons that have been brought up earlier, and those being presented today, especially by Scott Howard, all these reasons are all good reasons for denying this project. This is not a good project for the Peninsula; it is not who we are. People move out here to get away from these types of projects. It is too bad that these ideas were brought to this Township. The environmental issues that we deal with out here on the Peninsula on a daily basis are prime consideration for your decision. We have lived with the decisions that you make out here, and 90% of those issues deal with the environment, soil, traffic, and pollution. If you

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do the right thing, you will have the support of the residents here on the Peninsula.

**Liz Hauge, 13505 Bluff Rd., Traverse City, MI 49686;** I live in the Cove and this is the road that I live on. I am one of those people that just moved into the area from downstate; I lived in one of those subdivisions downstate. I wanted to get away from the traffic and was elated to find a piece of property that was surrounded by nature and beautiful East Bay. I look at this proposed site every day when walking my dogs; it is gorgeous. I also have two children that are 7 and 4, and I am concerned with the arsenic levels, mercury and lead on this site. I know that I live on a property that was also an orchard at one time, but I am concerned that there will be more arsenic, mercury and lead in the air and water that my children will be exposed to. When I purchased this property, I did not know that this could happen, or that that they could potentially be exposed to it. Like the Drew family, my children also swim just a few hundred feet away from this development. So what do I tell my children? Do I say that they can't swim because they are excavating this land, or that it's been raining a lot and contaminated soil is going to fall into East Bay? I am concerned as to what they are going to be exposed to.

**Wendell Woodard, 17768 Smokey Hollow Rd., Traverse City, MI 49686;** I do not know how many of you are aware that cutting down oak has a specific season or window in which it has to be done without running the major risk of oak wilt. If this project goes ahead without a stringent plan on cutting the oak, we can say good bye to a lot of oak on this side of the peninsula. It would not just affect this property but potentially many more properties.

**Manigold,** If you read the newsletter, we are going through this issue at Pelizzari Park right now, where the Park Commission is removing diseased oak in order to save the healthy ones.

**Marilynn Elliot, 1811 Whispering Trail, Traverse City, MI 49686;** As a Board, you have three choices with this project: denial, approval or approval with conditions. I do not know how to manage any conditions that you might place on this project if you approve it with conditions, nor do I have a sense of who will practically enforcement those conditions. All conditions are going to be difficult and very expensive to accomplish. There needs to be a coordination of efforts in stabilization of soils and slopes, with all these different agencies, and who pays for that? I am sure that there is an answer, and I hope you have that answer before you approve this project. Here is an example of the complexity of the issues. We have three phases of construction plans, but part of the first phase is to remove the trees from all of the phases. The previous gentleman stated that you don't just go cut trees because some can't be cut in certain times of the year. Already one sees that soil erosion is not the only issue. Furthermore, I do not think it would be physically possible to stabilize the site if all tree cutting occurs in phase one. I don't know if it is possible under our code to state that you cannot take all the trees off of the property because of the need for slope stabilization. I live on the shore line and stabilization is a very serious matter. Removing one rock out of the water or one shrub off of the shore or one tree from a bluff, creates real consequences for this type of behavior. For those of us that live along the shore, we know that makes a tremendous impact not just on us but also on the adjacent properties. To take all of the trees off of this property, does not make sense, and could seriously affect the value of the property.

**Ted Schweitzer, 11328 Center Rd., Traverse City, MI 49686;** I would like to know what plan B would be if this project gets developed but it is not successful due to economic change or it does not appeal to the buyers. Around 50% or more of the buyers do not want to go past Gray Rd., and the other 50% are retired and do not want to live in a subdivision. We do not have any subdivisions this

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far north so I would like to know what the plan would be after the trees get removed, and it has been developed but is not successful. I do not know if there is an answer but it may be nice to at least have an option for knowing what could be a long range effect of that.

**Jill Byron, 2249 Twin Eagles Dr., Traverse City, MI 49686;** I really do not think that this is the kind of subdivision that is common to the types of subdivisions that we have in this community. When we have had communities that are heavily wooded with steep slopes and a lot of shore line, we have worked with those properties to enhance the beauty and the value of the subdivisions. What this subdivision does is look like something that came from Oakland County. It has a cookie cutter layout, with a bunch of individual lots and desecrated trees. When former Town Board Trustee, Penny Rosi asked how many trees were going to be removed, she was totally blocked from any kind of answer from Attorney Quant at the time. I think that you have a significant responsibility today as the new Town Board, since our Board did not this plan to come back with a bonafide plan of action. If you allow this project to go forward, then you must specify what they can and cannot do, and then enforce it. The only way that you can protect this property is to be very detailed about what it that is this builder can develop since he and the land use planner have had several unsuccessful land use projects in this community..

**Bernie Soutar, Bluff Rd., Traverse City, MI 49686;** I am a Geographer. This site encompasses a drumlin field. Drumlins are unique geographic formations that with glaciation. When I heard about a till plain from Mr. Andy Smits, I thought that was very interesting. I know where till plains are, and we do not really have any till plains here. Till plains at the toe of a glacier, when a glacier retreats. It is a flat out washed surface. They are usually undifferentiated. You also have undifferentiated areas in these drumlins; some have rock in some places and other places do not within a drumlin. It would be hard to predict where rocks are going to be. Though I suspect that there are not huge boulders in these drumlins, since as they are usually left behind as the glacier retreats creating kettle lakes. If you take the tops of the ridges off (which are really the spine of the drumlin), what you will have left is undifferentiated material. You will have no soil left if you take off the tops of those ridge lines, and you will have no trees left. We already do not allow 30 foot of 100 feet of the shoreline to be revegetated. Taking the stumps will worsen the problem. Protecting the trees and their roots is the only way to protect the soil on the shoreline.

**Susie Shipman, 14735 Shipman Rd., Traverse City, MI 49686;** I do not want to repeat a lot of what has already been said but I would like to state that I support what has been said by others. In particular I would like to support Monnie's comments regarding the standards 8.1.3.3 (j,k) I feel that the material I see in the packet allows you to reject those standards and I would encourage you to do so. I do not think that this project is right for Peninsula Township.

**Kevin Tasche, 13755 Bluff Rd., Traverse City, MI 49686;** I would like to go back to what Ted stated as far as living that far out on the Peninsula. My family has been on the Cove since 1954. We have seen slow development; The Cove was vacant for the 20 years with only two homes on it. What happens if this project is not finished to completion? Look at Kelley Park out by Haserot Beach. That site was going to be developed for 15 homes; the owners even put up gazebos and fencing for marketing purposes. It finally was sold to the state for a boat launch. My question goes back to how far out do people really want to live, and who is going to do this within the time frame proposed especially if it sits vacant for 10 to 15 years. Another point is addresses how much erosion already has happened on its own? The lake levels are as high as I have seen them since 1984 -1986, and they may keep getting higher. With north and south winds, erosion is happening on its own. If you dig

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into that shoreline and remove trees, roots, and plants, this is going to accelerate the forces of Mother Nature moving it on her own. Anyone living on the Peninsula today has seen the issues with beach frontage occurring at the moment.

**Manigold** closed public hearing portion of the meeting and informed the audience that the remaining time of the meeting would be for the Township Board discussion.

**Greg Meihn;** Gave an overview of the findings of fact that were given to the Board Members from Attorney, Tim Wilhelm and a context for the documents that were presented to the Board. He proceeded through the document, page by page, giving the Board a description of each page and its contents. The report contains sections that the Board was required to address in the remand. Page 2 of the document contains Section 8.1.3 (1)(3): “Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools”. He noted sub-paragraph I-6 that outlines the findings of fact that establishes whether this standard has been met. He directed Supervisor Manigold to make sure that the Board has reviewed the standard and that I-6 has a factual basis on which to support the decision and to ask any questions. At the end of the discussion, a motion will need to be made whether the standard has been met or not met.

**Manigold,** Have we all have been presented with this information and have read it correctly?

**Board;** Yes.

**Manigold,** Any questions on the document I-6

**Westphal;** I have a question about the storm water retention that is provided in (I). One of the requirements for the project deals with the nature of the soils that are present on the site. It appears that the land consultant is generally ignoring warnings of ground water contamination due to the high sand content of the soils series that are out on-site. I point specifically to the areas where they have placed the retention ponds and the septic fields. In my review of the documents, I feel that the storm water basin lacks a liner and the septic fields may pass effluent through too quickly which would contaminate ground water. I find this a real significant omission in the report which was provided by our Engineer when reviewing the Mansfield document. **Meihn;** Mr. Supervisor do any of the other Board members have any other concerns or questions or objections to I-6?

**Achorn;** I have a question (I) with respect to the drainage patterns. I was looking particularly at lots 2-6 the arrows are all going towards the water. I do not see any precautions for those areas close to the shore line to prevent storm water from going into the water which could potentially carry contaminates and perhaps even cause soil erosion.

**Meihn;** Mr. Supervisor I would ask if any of the other Board Members have any other objections to items I-6?

**Board;** No

**Meihn;** At this point I would ask that a motion to be made as to whether or not this standard has been met.

**Manigold;** I would ask for a motion that this standard has been met.

**Bickle;** Is that a simple “so moved” and “second”?

**Meihn;** Yes

**Bickle;** **So moved/supported by Wahl that this standard has been met.**

**Roll Call Vote:**

**Achorn:** No

**Wunsch:** Yes

**Sanders:** Yes

**Wahl: Yes**

**Bickle: Yes**

**Manigold: Yes**

**Westphal: No**

**Motion to approve items I-6 of the findings of fact, final vote: Yes – 5 No- 2 Passes**

**Meihn;** Mr. Supervisor on page 3 for the record the second standard that you asked to consider section 8.1.3(3)(d): That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services. Below that are 1-3 factual bases, indicating that this standard has been met.

**Manigold,** Are there any questions about 1-3 on this standard?

**Westphal;** I can't find where the storm water retention capabilities with the soils on this site have been met; these have been ignored by developer. There is question as to whether or not they have the capacity to retain storm water at all without soil erosion and other factors. The fact that these soils will be carrying arsenic and lead into receiving water bodies is a possibility and for those reasons I feel that the standard has not been met.

**Manigold;** anyone else share that view?

**Achorn;** For most of the calculations, it appears that they have been met. The exception is the shore lots 2-4 and 5-10, I do not think that the applicant has provided sufficient information as to show that the lake is protected from storm water drainage.

**Sanders;** Can I ask a question? Jennifer, as our Engineer for Gordy Fraser, can you make a comment regarding this subsection?

**Jennifer Hodges;** I have interceded myself and have been appointed as the contact person and I'm here for Peninsula Township. So I did take the liberty recently to just go through and peruse a lot of the documents and familiarize myself with the site, and in particular to review as it pertains to storm water ordinance 33 and soil erosion ordinance 25. I guess a couple of the comments as it pertained to this item in particular, and as far as -- and I was just kind of taking notes, so give me a minute. The concern that Trustee Westphal had brought to the attention with conveyance, basically I went through and looked at the ordinance and there is a unified storm water ordinance and there is a bunch of identified criteria, and I went through and looked at that ordinance and compared the calculations that were provided over the course of the past couple of years from the applicant's plans and submitted documentation. And a couple items that I had noted that I didn't have provided, from what I reviewed, was prevalent to conveyance. The basins themselves were sized 100 year back to back, and a lot of it is because they don't have enough over flow. But there is a considerable amount of ditching that's presented on the site along with the road and taking that into consideration to account for impervious and the site that was all reviewed from the storage value computation. But a couple of the criteria within the ordinance as it pertains to conveyance that I didn't see that I have documentation to support was to review flow velocities because there are some thresholds whether a grass waterway, it looked like it appeared to me from the plans that the applicant was proposing stone conveyance controls, so that kind of puts them at a different flow velocity characteristic and allows between 4 to 8 feet per second. And any time we see exceeding soils of that nature then we like to see some type of dissipation feature, such as check dams, which I did see some of those things proposed. But there was some uncertainty on the plans from what I saw. I didn't have any computations to support that there was compliance with the ordinance to address those. And the reason those criteria are in there for those specific reasons is to address erosion and soil. Does that answer some of your questions? **Sanders;** Yes. Thank you.

**Manigold;** any other questions on items 1-3?

**Moved by Wunsch/Supported by Bickle that the standard has been met.**

**Roll Call Vote** followed:

**Achorn; No**

**Wunsch; Yes**

**Sanders; No**

**Wahl; No**

**Bickle; No**

**Manigold; No**

**Westphal; No**

**(This motion was voted down per Jennifer Hodges responses, and the advice of Legal Counsel to vote down the motion made by Wunsch/supported by Bickle.)**

**Wahl** questioned if a new condition could be added. Then asked Jennifer what other information would you need to have provided to you to ensure that there is adequate run off from what you just stated?

**Jennifer Hodges;** It will depend on how the ordinance is written. One of the conditions that should be provided is a valuation of open channel flow, and there are certain equations that are to be provided with that requirement to demonstrate what the flow for these ditches are collecting. The storm water will depend on the range of volume they are designed for; they may have to construct them differently, as I have indicated.

**Meihn;** how do you want to put that in legal language as to what would be required.

**Jennifer Hodges;** to ensure that the ditch can handle a proposed 24 hour rain event and provide those flow velocity calculations. I do not have the documentation to support the criteria. The documentation that I do have accounts for having a storage volume area but there are also other conditions. Let's say that the soils are frozen; it is a conveyance measure criterion in the ordinance which requires us to evaluate it as a conveyance and not just for storage. Again, I do not have any documentation that has been provided to me that I saw from the multiple packets from the applicant.

**Wahl;** I request approval upon the condition that we have adequate insurance provided that there is ditch flow capacity calculations to ensure that the ditch can accommodate a 10 year, 24 hour event.

**Westphal;** questioned Hodges about how many other documents are incomplete or lacking that the engineer felt the Board should have before the Board can make intelligent decisions. "Are there any other documents missing dealing with storm water, water drainage, alignment of the roads or anything that is in this standard 8.1.3(3)(d)".

**Jennifer Hodges;** I have taken some notes so I will go through those. I have created a basic standard check list which follows the ordinances. From my perspective and review of the plans, there are outstanding items that I did not find that should have been provided, or that at this point have not been specifically addressed by the developer. One of these items was dealing with surface water runoff. In this case, the basin sizing that the ordinance requires that the watershed collection area is supposed to outlined on the plans. I did not see any illustrations defining that specific water shed. All of the computations relied on it, but the ordinance specifically requested it, and it was not provided. It is always nice to see that outlined for graphical purposes. It is not necessarily that they coincide with each other but they have not been illustrated so I do not have a full picture to look at. The overall drainage areas were not illustrated on the drawings. You are looking at it from a pre- and post-development computation. As far as the network piping itself, there is an open ditch but there should be storm piping as well that is proposed along The 81's primary developments. There are also

criteria in the ordinance that makes you look at these specifications from a 25-year event perspective, to ensure that you do not have an increase in water elevation so that you are not flooding out your structures. I did not see this valuation provided that looks at the 25-year event which would ensure you do not have flooding. I did not have this data to compare against the ordinance to see if they would be compliant in that or not.

**Westphal;** A 25-year storm event is pretty standard on plans like this, right?

**Jennifer Hodges;** Correct. It is a part of standard ordinance language that many townships have.

**Westphal;** Should we be going to a larger storm event like 100- or 200-storm event years as Dr. Grobbel suggested?

**Jennifer Hodges;** It would depend on who you ask. It is a difficult question; we are obviously seeing changes in our weather. I am not the person to make that decision. That is why you ask for the 25 year event, so that you can ensure that you are not flooding or creating any adverse effects on the surrounding sites. The ordinance states the standard and then the worst case scenario. I did have some concerns with the east 81 road and the cul-de-sac at the end, along with the ditching. The way it stands right now that cul-de-sac is designed with asphalt and at the end, there is a stone basin. If this stone basin becomes inundated with rainwater, I would be concerned with an overflow situation since there is nothing at the end of the ditching to indicate that there is anything stabilizing the basin.

**Manigold;** Basically, what you have done is go through the entire project, and you have fly-specked it. Your fly-specking of the entire project has resulted in these concerns as things that were not shown on the drawings; with approval of the project, you would recommend that they be provided to you as conditions of approval.

**Jennifer Hodges;** Correct. I am not saying that this project is permit-unlikely, but for me to be able to make that recommendation and ensure everything is compiled correctly within the ordinance, there are some short falls. Some discrepancies and clarifications need to be made.

**Wahl;** In asking for this information, is this stuff that we have requested from the developer in the past? Have we asked this of other property owners?

**Meihn;** Whether you have asked this of all property owners in the past is irrelevant; you should be following the ordinances to the T.

**Rowe;** Can I just make one comment?

**Meihn;** You cannot.

**Ahorn;** my concerns are the shore lots 2-4 and 5-10, have you looked at those lots and the drainage patterns as shown on the plans? It appears that storm-water moves towards the water in the bay and not the road. Have you reviewed this aspect of the plans in respect to the shore line?

**Jennifer Hodges;** I looked at the soil aspect (editor's note: "aspect" is the compass direction that a slope faces) of the area that you had indicated. On the plan, what we have are some red arrows. It was apparent that those were not included in accounting for storm water measures that are proposed for the site. I did review some supporting documentation from the past. How this will be addressed is that each of these lots will be subject to its own storm water review and soil erosion permit. There were some proposed grading plans that were provided as conceptual plans for each lot. My understanding is that each lot will be addressed individually as the lots are being built.

**Manigold;** This was approved by Brian Boles (previous Township Engineer); however we did ask Jennifer to review the information. These are her recommendations for approval.

**Bickle;** the four items that were offered up: watershed delineation, storm piping, 25-year storm event, and ditching-flow capacity, if these were provided on the plans, would that satisfy your questions or concerns or both?

**Westphal;** given the shortness of time in which we have engaged our new Engineer and looking at these documents I would say no. It is clear that our previous Engineer and Mr. Mansfield have overlooked a number of important pieces of information that should be on the plans but are not on

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the plans. I think these are significant enough given the nature of the lots, especially the ones Marge Achorn has been addressing, that the plans really need to be reviewed in my opinion.

**New motion; Westphal moves that the standard has not been met / Supported by Sanders  
Manigold; No  
Bickle; No  
Wunsch; No  
Wahl; No  
Achorn; No  
Sanders; Yes  
Westphal; Yes**

**Motion that the standard has not been met final vote: Yes – 2 No- 5 Motion Failed**

**Moved by Bickle that the standard has been met with incorporating the four items: the water, shed, storm piping, 25 year plan vs. 10 year plan and the ditching. Supported by Wunsch.  
Manigold; Yes  
Bickle; Yes  
Wunsch; Yes  
Wahl; Yes  
Achorn; Yes  
Sanders; No  
Westphal; No**

**Motion that the standard has been met final vote: Yes- 5 No-2 Motion passes.**

**Meihn**, Mr. Supervisor on page 4 Section 8.1.3 (3)(h): That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner. There are 6 findings of fact that the standard requires in order to be met.

**Manigold**; With this section is there anyone concerned with these standards?

**Westphal**; I would just like to say that having the limits of all construction work a minimum of 25 feet outside of the existing wet lands is truly a minimum in today's standards and most other advisory boards like Tip of the Mitt would suggest at least 100 feet back from the wetland to protect that wet land. I find that this is one of the conditions that we need to change in our ordinances in the future.

**Achorn**; In regard to The 81, the Board finds that the soils within the project construction limits are generally classified under loamy sands. I am not a soil expert or engineer, but I have been reading a lot regarding this. My conclusion is that I do not feel that these soils are suitable for excavation and development.

**Westphal**; I would like to also suggest to the Board that when you have a site with LkD2 soils (Leelanau-Kalkaska loamy sands), the slope will be a minimum of 12-18 percent (D) and it is already moderately eroded—that is what the number 2 indicates. LkF2 has a slope of 25-45 percent and the number 2 indicates that is already undergoing moderate erosion. These soils are not recommended due to erosion and where are most of those lots placed? On those types of soils, as soon as you start pulling the bank back and removing the vegetation, you will exacerbate problems with erosion. As a soil scientist I can tell you this. Also, the particular map that Mansfield provided is mislabeled; those soil types listed on the ledger have incorrect descriptions. I would like this to be

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noted.

**Manigold;** Any other questions or concerns?

**Bickle;** I have a question for Jennifer of GFA since we are talking about Section 8.1.3(3)(h) as it pertains to soil erosion, what were some of your findings?

**Jennifer Hodges;** not specific to the wetlands, I did look at the soil erosion permit. I did have a couple of additional comments. Sites 33-40 show some of the contours are misleading regarding the slopes; the contours suggest a ratio of 1 foot rise over 3 feet of distance (33%) slope, instead of 1 foot of rise over two feet of distance (50% slope). What I have recommended is instead of a mulch blanket is to do a turf reinforcement mat. For some of those areas that are steeper, this would be standard engineering practices. The grading and stabilization plan has to be provided by the contractor to County Soil Erosion for their review prior to construction.

**Bickle;** Let me stop you for just one second. You are saying that the grading and stabilization plan upon your review, in all the documents that you reviewed, did not exist.

**Jennifer Hodges;** It is not a condition of securing a County Soil Erosion control permit. This was stated by Soil Erosion when they did their preliminary review of the project. It is not included as part of the soil erosion permit. It would be my recommendation that you would include this as a requirement for a township special use permit.

**Bickle;** No grading and stabilization plan. The other thing that you stated was a turf reinforcement mat vs. a mulch blanket. In your opinion are there any other conditions that should be considered?

**Jennifer;** Correct. The recommendations would supplement the ASTI report. I support that report. The township needs to have a more involved approach, along with proper inspection measures and procedures. You do have the ability to retain a bond to ensure that the project is taking place as permitted. You do have the ability to site violations accordingly. Your ordinances already address some of this.

**Westphal;** I am really concerned with some of the things that you have brought up as it affects that west bank of houses with the 25-48 percent slope. If some of these houses are going to be on the 1:3 slope that we are told are the most stable from an engineering standpoint, but really has a 1:2 slope, are we are putting lives and investments at risk by approving this? These plans have been sloppily done. The hope is that the seven of us do not know enough to be able to look at them and critically evaluate them, causing us to be really reliant on our engineers and other experts to tell us that they are okay. Which is fine with me but in the final analysis there is an issue of honesty in the delivery of a set of plans for the applicant and for the Town Board. We are finding that there are omissions of significance in all different types of plans, from storm water to grading and stabilization aspects of the plans. I really think that we need to think about this as a group. I am sure that these homes will be lovely as Mr. O'Grady develops them. This is a big project that will have tremendous impact on each of the individual households that come in and are touched by it. I think that this sloppiness is not acceptable in Peninsula Township.

**Meihn;** Jennifer you said that the slopes are more than 1:2. They heard you say that the slopes are more like 1:2.

**Jennifer Hodges;** This is why I said that it would be a valid point to have the turf mat.

**Wahl;** Is the turf mat a recommendation or is this just a personal preference or is there some sort of supporting document?

**Jennifer Hodges;** It is incorporated as best management practices. It is supported by EPA, but a lot of it comes down to just the best engineering practices. When you look at lots 4-10, and some of your criteria in your ordinances, it states that fill must be stabilized accordingly to engineering practices. Some of it may be subjective, but once you get into that 1 foot rise for every 2 feet of distance range, then the turf mat is typically what our firm has utilized a lot of times. It is a recommendation at this point.

**Bickle;** I raise the question: are there any other conditional items or best practices, and your answer was the turf mat for steep slopes and a grading and stabilization plan? Here we are December 12<sup>th</sup>, several years into this, and we have already had another re-review by GFA. We have everybody that has any responsibility as far as lining things up with our ordinances. I don't think that we can visit this thing any more than we already have. I don't think that we are going to discover anything new. The new components are what the best practices are. So those are the two items that you have offered up for our consideration.

**Meihn;** The only thing that I would add from a legal perspective is that you have asked her what her view would be in terms of whether the standard has been met. Remember, the comments that she makes, she will be held to those comments from now until eternity as I am and also all of you. I believe that what she is suggesting to the Board is that the standard has been met with the recommendation that there should be turf sheets and a grading/ stabilization plan provided and that there should be a performance guarantee. What she is doing is giving you the best advice that she can. The ordinances are broad enough to give you the discretion to do the right things for the safety and welfare of the public.

**Wahl;** I move that the standard has been met.

**Bickle;** My position is not a motion but I feel with these two additional conditions added to this that the standard has been met.

**Meihn;** Make a motion for Wahl to amend his motion for the standard and have a vote on the motion to amend and then we can go forward.

**Bickle; Moves to amend Trustee Wahl's motion that the conditions of a turf reinforcement mat, a grading/stabilization plan, and a performance guarantee be conditions of this approval for the standard to be met. / Support by Wunsch.**

**Westphal;** Question. Jennifer identified lots that are on the 1:2 slope (50%) ratio instead of 1:3 slope (33%) ratio; should this be corrected in the grading/stabilization plan?

**Jennifer Hodges;** Nothing in the ordinance prohibits that you can't have lots that steep.

**Westphal;** How does that increase the possibilities of slumping or having another situation like the Enclaves go sliding down into Franklin Woods, like we saw just a few years ago at the base of the Peninsula?

**Jennifer Hodges;** I think that is what the applicant is proposing to do is to find a measure to accommodate the slope to ensure stabilization by creating an impediment with the turf reinforcement mat.

**Westphal;** We think that is enough instead of having them re-grade it to a 1:3?

**Jennifer Hodges;** the ordinance does not prohibit building on a 1:2 slope; there is nothing in the ordinance that encourages this.

**Sanders;** We started this discussion on 8.1.3(3)(h) and then we mentioned 8.1.3(3)(i) I just want to clarify that we are on wetlands section (h).

**Ahorn;** In regard to the wetlands, Lake Michigan is a wetland, and all those sites along the shore are relative to this section of the ordinance. It is important to recognize that not only are protections on the upper hill put in place but protection is more important along the shore line. What conditions would be necessary to prevent erosion into Lake Michigan?

**Jennifer Hodges;** Let me clarify that when I had stated that the comments I made regarding the soil erosion preliminary review was specific to that bluff, I also brought up the comment regarding the ditching for that cul-de-sac, which just terminated and did not address any potential overflow. The goal once the site is stabilized is to do a case by case review of each proposed lot to make sure that setbacks, a soil erosion control permit, and a storm water review will take place for each site. There

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will be another level of review that will take place above and beyond just this site itself once these become buildable. Also, they may not build all of them right in a row.

**Manigold;** Call for the question. **Yes**

**Bickle;** **Yes**

**Wunsch;** **Yes**

**Wahl;** **Yes**

**Achorn;** **Yes**

**Sanders;** **Yes**

**Westphal;** **No**

**Motion that the standard has been met final vote: Yes- 6 No-1 Motion passes.**

**Meihn;** Now that you have the motion to approve with amendments now you vote on the motion as amended.

**Roll Call Vote on the Amended Motion:**

**Manigold;** **Yes**

**Bickle;** **Yes**

**Wunsch;** **Yes**

**Wahl;** **Yes**

**Achorn;** **Yes**

**Sanders;** **Yes**

**Westphal;** **No**

**Amended Motion that the standard has been met final vote: Yes- 6 No-1 Motion passes.**

**Meihn;** Mr. Supervisor on page 5 Section 8.1.3(3)(i): That the proposed development will not cause soil erosion or sedimentation problems. Pages 5-8.

**Manigold;** Does anyone have comments on 1-13 on Section 8.1.3(3)(i)

**Westphal;** I do have questions on permit conditions dealing with soil erosion and sedimentation permit. This permit does not waive the necessity for obtaining all other federal, state or local permits. With the contamination levels that were found on the site, does this particular site have a brownfield designation?

**Jennifer Hodges;** Not that I am aware of. I can research that.

**Manigold;** In the last few meetings, the issue of oak wilt had come up I find that this is something that is really pressing in the area. It was suggested that we have an arborist look at this. Is this something that should be added to the conditions?

**Meihn;** As I understand it, you are speaking of having an arborist come out to assist or provide a recommendation on how to avoid that issue? I would indicate on page 8 no. 5 (read). My suggestion is that if this is a condition that you would like to see in this approval, then it is up to the Board to add it.

**Manigold;** It would just be a recommendation as to the timing as to when to cut the oak.

**Bickle;** I have questions for the staff along this same line of an arborist is one suggestion, as Manigold suggested. In our past experience and most recent especially with Pelizzari are there other alternative solutions that would at least provide the ability to assess and determine the trees and the things of that nature. I do not want to get too far out of the parameters of what we are here to do tonight.

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**Hayward;** I think that there are two issues that should be considered with the oak wilt. One would be to find out if there is any existing oak wilt on the site, and the second, if there is a window as to when you can oaks without the danger of spreading any oak wilt. The current soil erosion permit stated that they should be left in place until mass grading can be modified. Page 8

**Manigold;** Are there any other questions on this section?

**Westphal;** I have a question under the Roman numeral II on page 7: All stumps and underground organic material shall be completely removed with an excavator and hauled off the site. Why would we allow that? Why don't you leave them in place with the rest of the material that is above them.

**Meihn;** I'm just a lawyer but my guess would be that it is hard to build foundations on top of stumps and it provides for uneven grading.

**Bickle;** We have identified three issues with our previous approval that would also carry over to this with the mat, grading/stabilization plan, and a performance bond. I don't see there would be a need to add it again.

**Jennifer;** correct.

**Manigold Moves to approve this standard to be met with a condition being added that an arborist would give a recommendation on the timing of removing the oak trees to be paid for by the developer / Support by Bickle**

**Achorn;** I have read everything I can on this, and I do not care what you do to try to band-aide it. There is going to be soil erosion and sedimentation problems.

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; No**

**Sanders; No**

**Westphal; No**

**Meihn;** Mr. Supervisor on page 10 Section 8.1.3(3)(j): That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

**Manigold;** Anyone have concerns on these standards?

**Sanders;** I have a concern with every single one of them. I have read every single thing regarding this project even before I was on the Board. I have read everything from the experts for us and from the experts for the applicant and for Komendera. At some point I have to determine which of the expert is the expert. Relying on my education, I always turn towards to Corps of Army Engineers. I do know a few things about this, and I have always trusted the Army Corps because half of them were my professors in college. This project is on such a grand scale that I really have a problem separating that grand scale for one individual lot on the hillside vs. somewhere else on the Peninsula. I too am a licensed Real Estate Agent. I have seen a lot of stupid houses built over the past few years and I feel bad for those people who have bought them. They are going to have issues. I had friends that lost their houses in Southwest Michigan in the 80's when they rolled into the lake. I grew up on Lake Erie in Ontario where my cottage is no longer there because it went into the lake. The earth changes with soil erosion and storm-water run-off, not just water but also with snow. Just consider a

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couple of years ago with the incredible amounts of snow that we have had, what it did to the lake shore. There is a place for houses to be built, and there are places where houses should not be built. For this particular place that we are looking at and voting on with the best management practices and with all the expert advice, I am going to rely on the Army Corps of Engineers who I feel very comfortable with. There is no way that I could approve this project, even with conditions. It is on too big of a scale, and there is way too much involved. At stake is not just the health and safety of the immediate residents, but also with our lake shore which we need to protect because it is our neighbor as well.

**Manigold;** Okay. Would anyone else like to weigh in on this as well?

**Westphal;** I would like to weigh in on some of the statements that go with the standards number 4: The property's proximity to the East Bay of Traverse Bay requires State oversight under MDEQ National Pollution Discharge Elimination System (NPDES) during construction and will require weekly reports of site conditions. We seem to have a little bit of a problem with even getting the DEQ to enforce its own rules much less the County, so who is going to do these weekly reports? We don't seem to have the support in the State and County to be able to monitor anything. It calls for weekly reports of site conditions, so who is going to pay for that?

**Meihn;** There is no way that is part of the responsibility of the MDEQ.

**Manigold;** Skipping ahead that is why we are recommending or telling the developer to have an onsite person using the guidelines watching the grading and watching anything that is going on to be turned in. I think that is the safety valve that ties this whole thing together. We will have somebody on site. I would entertain a motion

#### **Sanders moves that the standard has not been met 8.1.3(3)(j) / Support by Westphal**

**Meihn;** Before you do the roll call I would substantially ask the Board to outline the reasoning. I know that we have the Army Corps of Engineers, which is contrary to all the other reports so the Board should at least discuss this condition. We have a standard to meet.

**Bickle;** I have a huge amount of respect for all of my colleagues and their experiences. The Army Corps of Engineers report, how does that really play into this? I do understand and have read all the documents, but I think what we are looking at specific items that are driven from our ordinances that have been reviewed a sufficient amount of times by our Attorneys and by our staff and twice by GFA so I am not sure about this component suggested by counsel. What is the basis for declining it? I have a different opinion.

**Meihn;** They have never looked at this project nor given any opinion on it other than the dock. It is what it is, and there is a manual out there. You had two of your Engineers look at the project. I do not know what Jennifer's view is, but I am sure she will let you know.

**Sanders;** Best practices start with the Army Corps of Engineers, but I see what you are saying, Brad. That report provides examples of what we are talking about. I would not use it as a personal expert. These are examples and pictures of stuff that has actually happened when projects like this have moved forward and the lake shore has not been taken into account.

**Bickle;** Could it not be respectfully argued that what we have before us is a culmination of all the best experts that are knowledgeable of this specific region? We have combined this information with our ordinances and advice from our Engineering Firm and staff. From my perspective, what we have before us is implacable items that should address that standard 8.1.3(3)(j). I respect that the article has examples in it, but how can you apply it to this piece of property?

**Sanders;** I respect your view but the reason that we are sitting here is to decide if something like this is planned well and well thought out. Three years to go, and I do see a lot of missing pieces in the plans. Some have been brought up tonight and that bothers me as they have had three years to turn

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this information into us. Perfect examples of what you have done in the region to show us how this is preventable because it is clearly not preventable and has happened in very local areas. There has been erosion and run off into the Bays. The reason that we are here to vote on this is to make a decision on which experts are correct. The conditions are great and applicable on some of the smaller pieces of this project, but in the greater scope of soil erosion and run off into the Bay and into the neighboring properties, I disagree with you Brad.

**Bickle;** Would it be a fair dialogue of what other items would otherwise help bolster or otherwise help make your decision?

**Sanders;** No, I think I have done my research, and I have done my due diligence and I am prepared to make my decision.

**Achorn;** I would like to add something. This section that we are looking at is in isolation; but once you combine it with vegetation and the removal of mass soil, I think that it piggy backs to add more problematic happenings. Based on what I have read, and I have read everything possible and have looked for other things to answer my questions, I think that the entire project is pushing this issue to catastrophe.

**Westphal;** I don't think that I have to add anything to that.

**Meihn;** You have not articulated any basis for your concerns, Marge? Any report that has been before you that supports the concerns that you have been raised? Maura, can you site anything in the Army Corps reports that supports your concerns as they apply to this project? Again, you have Jennifer here to ask questions. If you are not going to follow your own experts, then I understand that your concerns are well established. The factual basis for your concerns is what is important.

**Sanders;** I believe that we are following our experts. They have clearly shown us that this has great potential to be a major issue. What you are suggesting is that we follow the conditions.

**Meihn;** It is what you are required to do on the remand.

**Sanders;** We are not required to follow the conditions, we are required to follow the remand. The conditions we are putting on ourselves.

**Meihn;** The remand is what the Judge has asked and that is to take a look at your ordinances and all the documents from your experts that have been provided, and determine whether or not the standard has been met. That is all we are instructed to do.

**Saunders;** I appreciate that, Greg, and I have done that, but I do not want you steering me or my colleges.

**Meihn;** I do not want to steer you.

**Sanders;** I know, but that is what it sounds like. We have all the experts here from all sides, and a lot of us have done our own research. I think that we need to vote, and then figure it out.

**Meihn;** I understand; all I was asking you to do is articulate the parts that you are disagreeing with because ultimately that is what I am going to be asked to do. I am going to be asked to say what caused the vote to veer. When I have nothing but air and beliefs, I get caught, and you have the information in front of you. That is all I want you to do. Could you just give me the manual or the information that you are relying upon. The Army's manual. Just state it for the record.

**Sanders;** "Living on the Coast Protecting Investments and Shore Property Around the Great Lakes." US Army Corps of Engineers: Detroit District. 2003.

**Achorn;** Dr. Grobbel's letter dated November 15, 2016 and Steve DeBrabanden, Shore Line Development Assistant. Mawby's letter dated October 26, 2016.

**Wahl;** I agree that there is a chance that this happens but no one has given me a percentage of what that chance could be. All we have heard from our experts is that it is possible but not likely.

**Westphal;** Using supporting documentation from Dr. Grobbel's report dated August 2, 2016.

**Bickle;** Jennifer, there are items contained in this specific remand that I would like verification of its

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truth as of tonight under bullet point 2 (read bullet point 2). Does this remain true today per your personal assessment?

**Jennifer;** It does, the review I looked at was limited to your ordinance which was outside of the Army Corps and MDEQ materials. The goal was to capture what additional things were required to be in compliance with the ordinances.

**Sanders moves that the standard has not been met 8.1.3(3)(j) / Support by Westphal**

**Roll Call Vote on the Motion:**

**Manigold; No (have been met)**

**Bickle; No (have been met)**

**Wunsch;No (have been met)**

**Wahl;No (have been met)**

**Achorn; Yes (has not been met).**

**Sanders; Yes (has not been met)**

**Westphal; Yes (has not been met).**

**Motion that the standard has not been met final vote: Yes- 3 / No-4 Motion failed**

**New Motion: Moved by Bickle that the standards of 8.1.3(3)(j) have been met / Supported by Wunsch.**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; No (has not been met).**

**Sanders; No (has not been met)**

**Westphal; No (has not been met).**

**Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passed**

**Meihn;** Mr. Supervisor, on page 11 Section 8.1.3(3)(k): That the grading or filling will not destroy the character of the property of the surrounding area, and will not adversely affect the adjacent or neighboring properties. Support for this are items 1-26.

**Manigold;** Anyone have any issues with items 1-26?

**Westphal;** Under item 6, “The board finds that, based on the soil assessment and Dr. Harless’ review, the reported sampling methodology and the chemical analysis was consistent with the standard of care for the contaminants being tested for and the soil assessment performed and the soil assessment of the property was sufficient to determine whether contamination is present.” That is true, but I would just like to point out that it might be sufficient to know the extent of the contamination because of the limited number of samples that were taken. That should be on the record.

**Manigold;** For the record, we are treating the entire site and not just the portion that formally was used as the agricultural area, so the ASTI guidelines cover the entire site. Anyone else have any questions?

**Bickle;** This gives acknowledgement to the ASTI report dated December 6, 2017 which was the newer of the reports and comprehensive plan. ASTI had an invitation per the developer to come onto the property and was able to provide more clarity. Should both of these reports be added as a condition to this standard?

**Meihn;** I would add and not subtract information. I would add the October 25<sup>th</sup> meeting information, and the new one that you have recently received.

**Westphal;** I plan to pursue that “character of the property question” just a little further, because this property has some very unique glacier characteristics. It has an esker, and the applicant’s plan is to reduce it nearly 50 feet in elevation by the mass grading proposed along that east slope. As this and the drumlins referred earlier in the public discussion are removed and/or altered dramatically, clearly the character of the property is going to be changed, and as a consequence the surrounding area will also be changed. Then there is the issue of airborne soil and other factors that will be a part of that mass grading, again this will dramatically change the character of the property and its surroundings. If we go back into the literature and consult the visual management plan from the US Forest Service there are five qualities that determine the character of a property landform, rock form, water form, vegetative form, and cultural form **Meihn interrupts statement.**

**Meihn;** I lead you down the wrong path, apologizing. The only thing that was subject to the remand was that it will not adversely affect the adjacent or neighboring properties. Not the character. Apologizing to the Clerk.

**Westphal;** Then let’s go to the second part of this sentence: Will not adversely affect the adjacent or neighboring properties. We are on loamy sand and not a sandy loam. This type of soil is subject to saltation. Saltation is the bumping along on the surface of sand grains and the disbursement of silt and clay that they hit in the process. If we have a site that is contaminated with arsenic which coats the soil particles, this presents an adverse condition to neighboring properties. The prevailing winds up here are out of the Southwest. They will go right up that valley and into the next subdivision. I think that this particular standard cannot be met, even with monitoring for opacity of the air and other factors because of the mass grading being proposed and other modifications of the land form.

**Manigold;** our expert Joe Buehler from ASTI has determined how to keep everything on-site. That is what will be built into this. There will be someone on-site; it goes with the phase grading. Many of the things that people spoke about tonight are built into these safe guards.

**Bickle;** That is why I think that it is important that we incorporate the additional report from ASTI that was published on December 6, 2017; it is a very comprehensive bullet point of items and containment is clearly one of those issues. This report provides a very detailed plan for our consideration.

**Joe Buhler;** I do understand that there are concerns. We did put in very detailed information to comply with Section 8.1.3(3)(k), which included regular monitoring and source monitoring when it comes to fugitive dust. We would recommend that you have an agent working with the Township. We believe that this plan provides those protections.

**Sanders;** The fugitive dust information that I have read seems to be for spring, summer and fall. I imagine that a great part of that property will be sitting idle through the winter, with possible snow coverage. I understand that the entire property will not be blanketed with the geo-tech materials. How do you mitigate that from moving with the fierce winter weather that we are having?

**Joe Buhler;** One of the ways that we set up in this plan is to have that agent right on site. One of the requirements is that when they excavate the soils, they get a covering on it immediately if it is going to be left in place. Soil Erosion and sedimentation control permits will have to be followed along with the best management practices. The options of coverage are seeding, turf covering, geo- tech style covering. The third party consulting agent would be able to cite any defaults, discrepancies or non-compliance issues immediately to the township.

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**Westphal;** This is just one standard with criteria: Item 12 – The Board finds that Dr. Harless concluded that the submitted plans do not demonstrate that they meet Mr. Mawby’s performance criteria or the Section 11.5 objective of preventing the conveyance of soil and sediment via wind and storm water runoff. My question to my fellow Board Members is: Why would we pass this?

**Wahl;** I do not understand why we are not requiring any of these restrictions upon any other developer or development within the Township. I drive past one development every single day, and I do not see any ground-covering placed.

**Achorn;** 6.0 Non-compliance. What happens if there is non-compliance; what happens then?

**Joe;** The three parties would come together and get the developer back into compliance. Reporting occurs first, then working with the Board and developer would follow.

**Meihn;** One of the concerns raised by one of your Board members is in regard to non-compliance between the time that you report to the Board and the time that you get a meeting together between Township and Developer. What is happening at the project during that time interval? I would suggest to the Board that we simply have a process as a condition or part of the motion, which is paragraph 11. This paragraph says that as part of the motion the SUP permit and enforcing agent shall promptly notify the Township Administrator of the non-compliance. The Board shall be able to take all permitted action to ensure that compliance is brought to bear on the project (page 16, number 11). One of the missing elements here is that if you have a problem, you should have a non-compliance buffer. Jennifer just indicated that what I have asked for is already in the ordinance.

**Manigold;** I would entertain a motion.

**Bickle moves that the standard Section 8.1.3(3)(k) has been met / support by Manigold**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; Yes**

**Sanders; No (has not been met)**

**Westphal; No (has not been met).**

**Motion that the standard has been met final vote: Yes – 5 / No-2 – Motion passed**

**Moved by Bickle to add the ASTI December 6, 2017 report/recommendations to be a part of the conditions for the SUP; Support by Wahl. Passed Unam**

**Meihn;** Mr. Supervisor, on page 15 Section 8.1.3(3)(n), the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities.

**Manigold;** Anyone have any issues with this?

**Westphal;** I would just like to comment that I think that this is also one of those standards that the Planning Commission and the Board should consider things beyond public streets. We should be looking at pedestrian on-site and non-motorized thoroughfares in all of our subdivisions. This site plan has a perfect opportunity to join Boursaw Rd. to the cul-de-sac on the north boundary where the fire access road would link up to the next subdivision, creating additional recreational activities.

**Manigold;** Any other questions? I would entertain a motion please.

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**Moved by Wahl that the standard for Section 8.1.3(3)(n) has been met / Support by Bickle**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; Yes**

**Sanders; Yes**

**Westphal; Yes**

**Motion that the standard has been met final vote: Yes – 7 / No-0 – Motion passes**

**Meihn;** Mr. Supervisor, Page 15 Section 8.3.3(7); The proposed planned unit development shall meet all of the standards and requirements outlined in this section 8.3 and also Section 8.1 and Article VII.

**Manigold;** Anyone have any comments or concerns regarding this section? I would entertain a motion.

**Moved by Wahl that the standard for Section 8.3.3(7) has been met / support by Bickle**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; No**

**Sanders; No**

**Westphal; No**

**Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes**

**Meihn;** Mr. Supervisor, page 15 Section 7.2.5 Storm water detention: 1) When any land in the Township is developed or altered in any way which affects storm water runoff, the owner shall develop and submit to the Zoning Administrator for approval by the Township, a plan detaining any storm water runoff onto adjacent properties including roads and other rights of way. Such detention shall follow accepted storm water detention practices; and 2) the maximum amount of storm water runoff allowed shall not exceed that which existed prior to the development or improvement of the property.

**Manigold;** Anyone have concerns or comments on this? I would entertain a motion.

**Moved by Wahl that the Standard for Section 7.2.5 Storm water Detention has been met / Support by Wunsch**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

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**Wunsch; Yes**

**Wahl; Yes**

**Achorn; No**

**Sanders; No**

**Westphal; No**

**Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes**

**Meihn:** Page 16 is the proposed motion that is all of the things that you have just done along with the conditions 1-11. The only other thing that I would ask is that a motion would include all the other conditions that have been voted on, and approved, throughout this meeting.

that based upon the supplement findings above with respect to Sections 8.1.3(1)(c); 8.1.3(3)(d); 8.1.3(3)(h); 8.1.3(3)(i); 8.1.3(3)(j); 8.1.3(3)(k); 8.1.3(3)(n); 8.3.3(7) and 7.2.5 that the Applicant has met these standards and in conjunction with the Township Board's previous findings and approval of the SUP #123/PUD on August 11, 2015 along with these supplemental findings, as required pursuant the Court's Decision and Order dated January 15, 2016, all standards have been met and the Applicant's request for Special Use Permit and Planned Unit Development (SUP #123/PUD) is hereby approved subject to the following conditions:

**Bickle;** I would like to open this up for discussion with the Board. The way that this is being proposed right now is that: an enforcing agent, acceptable to the Township, shall be retained by or on behalf of the applicant/developer/contractor, at the applicant's sole cost. My only dialog is would it not be more beneficial if we were the ones that retain the acting enforcing agent, like we did on another recent development project. We would have to discuss the cost.

**Manigold;** Anyone care to make the motion? Motion to approve all the conditions.

**Moved by Wahl to approve the conditions 1-11 and all of the other conditions stated on record / Support by Manigold**

**Achorn: No**

**Wunsch: Yes**

**Sanders: No**

**Wahl: Yes**

**Bickle: Yes**

**Manigold: Yes**

**Westphal: No**

**Manigold:** I want to go on record to state that this process has been exhausting for everyone. Both the applicant and the residents have sued us. We have been over the same ground as the previous Town Board. If this project had come before us, I don't have any doubt that it would have been a totally different project. Mr. O'Grady actually told me that he wanted to keep some vineyards on-site, and he was told no by the Township. I do not know why he was told no. As we have gone through this thing, we have done is our best with the narrow scope that we had to deal with, to make it safe for everyone. When we look at our ordinances, we realize that a lot of our ordinances have to be beefed up so that we can be better stewards of the land. With that being said, I do support this motion.

**Manigold: Yes**

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**Westphal;** I would just like to say that over the years I have trained over 2,000 undergraduate students in landscape architecture and recreation resources to work competently in their fields and to have the confidence to challenge the status quo when the environment is challenged. I would defame the values of my profession and would cast myself into the role of a hypocrite to all of those young professionals that I have trained over the past 43 years that I have been in academia. For these reasons, I vote “no” on this project.

**Westphal: No**

**Roll Call Vote on the Motion:**

**Manigold; Yes**

**Bickle; Yes**

**Wunsch; Yes**

**Wahl; Yes**

**Achorn; No**

**Sanders; No**

**Westphal; No**

**Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes**

Adjournment Motion to adjourn by **Sanders**; seconded by **Wahl**. Passed Unam

Meeting closed: 11:30 p.m.