

Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

SPECIAL USE PERMIT
SUPPLEMENTAL FINDINGS OF FACT ON REMAND
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
December 12, 2017

PENINSULA TOWNSHIP BOARD

DECISION AND ORDER ON REMAND

Applicant: The 81 Development Company, LLC
Kevin O'Grady, Owner
6978 Dixie Hwy, Suite A
Clarkston MI 48346

Hearing Date(s): May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17,
2016, October 25, 2017, December 12, 2017

PROPERTY DESCRIPTION

Parcel ID#: 28-11-114-001-00; 28-11-114-002-00

INTRODUCTION AND BACKGROUND

On August 11, 2015, the Township Board approved Applicant The 81 Development's application for a Special Use Permit (SUP #123) and Planned Unit Development (PUD) to build a 41-unit residential condominium development located on Bluff Road in Peninsula Township subject to specific conditions. An adjoining land owner appealed the decision to Grand Traverse County Circuit Court (Case No. 15-31218-AA) claiming the Board's approval was (a) not supported by material evidence, (b) not authorized by law, and (c) invalid because of a single Trustee's decision to recuse herself from the vote due to a conflict of interest. The Applicant intervened in the appeal as an appellee.

On January 15, 2016, the Circuit Court (Judge Rodgers) issued his Decision and Order concluding that, while the Township had lawfully and properly exercised its discretion as to many of the Zoning Ordinance requirements relating to the SUP and PUD standards, it had improperly delegated several issues relating to the emergency access road and the grading, soil erosion and storm water plans to the Fire Department and Township Engineer for review and approval and did not independently determine that the proposed SUP/PUD met the ordinance requirements pertaining to those issues. On page 11 of its Decision regarding Condition No. 1, the Court stated, "In this case, the location for the additional egress for emergency purposes was undecided at the time the Board voted to approve the SUP/PUD." The Court continued as to Condition No. 6, "Similarly, the Board delegated approval of the grading plan to the Township Engineer." With respect to the review and approval of the grading and storm water plans, the Court found that the Board improperly delegated the review and approval to the Township Engineer, and explained, in footnote 46, that the Board's statements "were not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water have been met and the Court remands these issues for further consideration by the Board." The Court concluded its

Decision and Order 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 this decision and order."

RELEVANT STANDARDS ON REMAND

The Township Board's consideration of the remanded issues relates to the following Township Zoning standards: General Standard Section 8.1.3(1)(c); Specific Standards Section 8.1.3(3)(d); Section 8.1.3(3)(h); Section 8.1.3(3)(i); Section 8.1.3(3)(j); Section 8.1.3(3)(k); Section 8.1.3(3)(n); Section 8.3.3(7); and Section 7.2.5.

Except for the reconsideration of these "Court-remanded" issues, all other portions of the Township Board's Decision and Order of August 11, 2015, including all Findings and Conditions, remain unchanged.

FURTHER PROCEEDINGS ON REMAND

Pursuant to the Circuit Court's January 15, 2016 Decision and Order in Case No. 15-31218-AA remanding specific issues for further proceedings, , the Township Board properly scheduled, noticed, and held public hearings on SUP #123/PUD on May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17, 2016, October 25, 2017, December 12, 2017. The Board conducted the further proceedings ordered by the Court, and having heard the statements of the Applicant and its agents and considered documents submitted on the Applicant's behalf, and having considered the statements of the public and documents submitted by them and all Exhibits, which are part of the record in this matter, the Board has reached a decision on this matter which is based on the entire recording regardless of whether all relevant Exhibits have been cited or even incorrectly referenced, and states as follows:

SUPPLEMENTAL FINDINGS OF FACT ON REMAND

SECTION 8.1.3(1) GENERAL STANDARDS:

Section 8.1.3(1)(c): Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the storm water retention standard of providing volume for "back-to-back" 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design and the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)

- ii. The Board finds that because the proposed development will contain more than 30 one-family residential dwelling units, the International Fire Code (IFC) (2012 Ed) Appendix D107.1 requires it to be served by two (2) separate approved fire apparatus access roads, and that pursuant to Appendix D104.3 the two (2) fire apparatus access roads "shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses." (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iii. The Board finds that based on the reports provided by Peninsula Township Fire Chief Rittenhouse, Fire Chief Dundas, retained on behalf of the Township, and Ron Taylor of Nederveld, a consultant retained by the Applicant, the proposed development contains two (2) fire apparatus roads: 1) 81 Avenue connecting to Boursaw Road; and 2) the emergency access road connecting the northwest corner of the site and to Smokey Hollow Road (see drawing sheets "Fire Lane: Overall Site, SESC & Drainage Plans pp 1-3 Mansfield Project No. 14016 revised 9/7/16) through an Emergency Access Easement recorded in the Grand Traverse County Register of Deeds as Document 2016R-09726 meets the requirements of IFC Appendix D107.1 and D104.3. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iv. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- v. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- vi. The Board finds that Peninsula Township Fire Chief Rittenhouse provided additional written information dated October 20, 2017 relating, in part, to the security gates for the emergency access road, and indicated that the security gates would not be required unless traffic on the emergency access road becomes a nuisance and it is used for non-emergency purposes. (Township Exhibit: Fire Chief Rittenhouse Letter 10/20/17)

This standard HAS/HAS NOT been met.

SECTION 8.1.3(3) SPECIFIC STANDARDS:

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.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)
- ii. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- iii. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)

This standard HAS/HAS NOT been met.

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.

- i. The Board finds that the Applicant provided a Wetland Delineation Report for the site dated June 15, 2015, prepared by GEI Consultants which identified and delineated one regulated wetland located in the southern portion of the site and the wetland boundaries were flagged and sequentially numbered in the field and surveyed using GPS information and incorporated into the site plans for the proposed development. (Applicant Exhibit 18)
 - ii. The Board finds that the project site plans for the proposed development, Sheet C3.0, contains the following notes:
 - a. "The limits of all construction work shall be a minimum of 25 feet outside of the existing wetlands."
 - b. "Protect the exiting wetland from construction activities. Place silt fence at 25 feet offset from the wetland perimeter." (Applicant Exhibits 4, 18)
 - iii. The Board finds that, based on the information submitted regarding the wetland boundaries on the site and the note that construction limits will be, at a minimum, 25 feet outside of the wetland boundaries, the wetland on the site will be undisturbed. (Applicant Exhibits 4, 18, 41; Township Exhibits: Applicant's SUP Application).
 - iv. The Board finds that the soils within the project construction limits are generally classified under Hydrologic Group A, well-drained sands or gravel, and the soils on the site are suitable for
- TWP Findings of Fact – 12-05-17 draft

excavation and development. (Applicant Exhibits 4, 7, 10, 18, 41; Township Exhibits: Applicant's SUP Application)

This standard HAS/HAS NOT been met.

Section 8.1.3(3)(i): That the proposed development will not cause soil erosion or sedimentation problems.

- i. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the proposed development plans and issued SESC Permit #24013 which contains the following Permit, General and Specific Conditions:

Permit conditions:

- The permitted activity shall be completed in accordance with the approved plans and specifications, and the following general conditions;
- This permit does not waive the necessity for obtaining all other federal, state or local permits;
- Permittee shall notify the permitting agency within one week after completing the permitted activity or one week prior to the permit expiration date, whichever comes first;

General conditions:

- In accordance with Rule 1709 promulgated under the authority of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act 1994 PA 451, as amended, and in addition to the information on the attached Plan(s) and special conditions, the following general conditions apply to the earth change authorized by this permit:
- Design, construct and complete the earth change in a manner that limits the exposed area of disturbed land for the shortest period of time.
- Remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
- Temporary or permanent control measures shall be designed and installed to convey water around, through or from the earth change at a non-erosive velocity.
- Install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and maintain the measures on a daily basis. Remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. (Stabilized means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.)
- Complete permanent soil control measures for the earth change within five calendar days after final grading or upon completion of the final earth change. If it is not possible to permanently stabilize the earth change, then maintain

temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

Specific Conditions:

- This permit is approved according to the site plan received on April 8, 2016, and revised on May 3, 2016, from Mansfield Land Use Consultants Job No. 14106 with the following requirements:
- Follow all prescribed soil erosion and sedimentation control measures on page C3.0 of the revised Site Plan.
- Phasing must be followed according to the schedule. Each phase must be stabilized as described before moving to the next phase. Any change in the schedule must be approved by this office.
- Install silt fence according to the Site Plan, properly entrenched in 6" deep and end stakes wrapped. Double rows are required as specified. Silt fences must be inspected regularly. It is imperative to inspect all fences during and after spring snow melt.
- Construct all storm ditches/swales with no greater than 3:1 slopes and stabilize as shown on page C1.2.
- The storm water detention basin must be stabilized with erosion control blankets as indicated. All outlets must be stabilized with rock rip wrap as shown in the engineer site plan.
- Construct wooden stairs as shown. Stabilize all disturbed areas around the post holes with woody mulch or other non-erosive ground cover.
- Any vegetation must be established and show significant growth in order to final this permit.
- Construct stone construction entrance as shown. Do not allow sediment to be tracked onto the street. If tracking does occur, sweep the street at the end of the work day.
- Install a culvert in the road ditch under the entryway. The ends of the culvert must be stabilized so that erosion does not occur in the road ditch.
- The storm water operator, licensed by the MDEQ, must submit weekly reports to the County enforcing agent.
- Submit a copy of the MDEQ Notice of Coverage to this office.
- The engineer of record must submit a letter of certification stating that the project is built according to the site plan in order to final this permit.
- Permit, green card and site plan must be posted at the project site at all times until permit has final approval from this office.

Amend 08-12-16 fire lane access from Smokey Hollow Road:

- Install silt fence as shown on the amended site plans submitted from Mansfield Land Use Consultants, Job No.: 14016.
- Install mats on ditches as shown on the engineer's site plan.
- Check dams should be installed immediately upon shaping the ditches.
- Install rip rap at all outlets as shown.

- Install stone construction entrance to prevent tracking onto Smokey Hollow Road. If tracking does occur, the road must be swept by the end of the day.
- All vegetation must be re-established and this road completely stabilized in order to final the permit.

(Applicant Exhibit 17, 54; see also Applicant Exhibits 4, 7, 10, 25-26, 41, 43-44)

ii. The Board finds that the project plans contain the following construction notes on Sheet C3.0:

- Silt fence shall be installed before the construction begins and shall be maintained throughout the project duration until permanent vegetation is established and the site is stabilized. The contractor must remove the silt fence upon completion.
- All stumps and underground organic material shall be completely removed with an excavator and hauled off the site.
- All stumps, logs and chips will be hauled off the site to a licensed landfill/pit. Nothing shall be buried on site.
- The contractor will obtain a temporary access permit for access onto Boursaw Road. The temporary construction access, culvert and sediment sumps shall be maintained throughout the duration of construction.
- Stock piles shall be located inland, away from the existing wetlands and lakeside bluffs. Dorman stock piles shall be seeded to prevent sedimentation and airborne erosion.
- The storm basis and sedimentation forebay shall be constructed prior to the construction of the storm sewer and ditching.
- Final construction shall meet the requirements of the approved SESC permit from Grand Traverse County.
- Care should be taken to prevent material movement into adjacent wetlands and water bodies.
- Care should be taken to maintain existing roadside drainage via culvert installation, without sediment pump placed downflow of culvert.
- The limits of all construction work shall be a minimum of 25' outside of the existing wetlands.
- Slopes 3:1 or steeper shall be restored with mulch blanket, as necessary.
- The contractor shall use water or dust palliative to control dust on and adjacent to the project site. Maintain the Boursaw Road entrance by regular sweeping, as necessary until the site is permanently stabilized.
- Minimize disturbance to all existing vegetation along the lakeside bluffs and the lakeshore community areas, except where noted otherwise.

(Applicant Exhibit 4)

iii. The Board finds that Sheet C3.0 of the project plans contains the following notes pertaining to grading and soil erosion and sedimentation control measures:

- Install a double row of silt fence along the waterfront, TYP. (Phase 3 – down by the water.)

- Install a double row of silt fence along the bluff, TYP. (reference to middle bluff)
- Leave existing vegetation in place as long as possible to maintain a stabilized slope along the bluff. After completion of grading, stabilize with new vegetation as soon as possible to prevent elongated exposure to erosion.
- Mass grading shall be completed to prevent erosion of the existing lakeside bluffs. Minimize disturbance of existing vegetation to maintain a stabilized bluff. The mass grading along the bluff shall be carefully completed to prevent any excavated material from sliding down the bluff. The ridge shall be excavated by undermining on the valley side such as all material may be pulled away from the bluff to prevent any loss of material or erosion down the bluff.
- Internal soil stock pile location to be determined by the contractor. Seed long term stock piles to prevent airborne erosion and sedimentation. No work shall be completed in the area of the proposed primary and reserve septic fields to preserve their natural state and soils. The contractor shall identify these areas prior to grading operations and provide a visual and/or physical barrier to keep construction equipment out of these areas.

(Applicant Exhibit 4)

- iv. The Board finds that Sheet C3.0 of the project plans also contains stabilized construction access specifications to minimize tracking of sediment on to public roadways and to minimize disturbance to vegetation. (Applicant Exhibit 4)
- v. The Board finds that in addition to implementing soil erosion and sedimentation control measures, existing vegetation on the upper bluff (in the area of proposed lots 11-29) will be left in place until mass grading can follow directly afterward ensure the soil is exposed for the shortest duration possible and the mass grading on the upper bluff will be completed by pulling material away from the bluff to prevent. (Applicant Exhibits 4, 7, 10, 17, 41; Township Exhibit: Mansfield Letter 3/5/15)
- vi. The Board finds that the Applicant's slope stability report dated October 26, 2016, prepared by Otwell Mawby, PC, states that significant earthwork is planned to achieve the proposed grades, including the grading on the upper bluff and ridge which will be accomplished by removing vegetation and pulling the earth back and away from the crest of the bluff and the resulting grades will slope gently away from the bluff. (Applicant Exhibit 10)
- vii. The Board finds that the proposed grading and earth work on the bluffs generally will remove soil burden on steep slopes and improve soil stability. (Applicant Exhibit 4, 10)
- viii. The Board finds that the project plans, specifically Sheet C3.0, provide for mass grading and site construction to take place in three (3) phases. The first phase generally includes the entrance to the site off of Boursaw Road, a portion of roadway (81 Avenue) from the entrance back to Lot 29, the community septic system and storm water basin, and the areas for Lots 2-4, 11-29. The second phase generally includes the remainder of 81 Avenue and the areas for Lots 30-41. The third phase includes 81 East roadway and the areas for Lots 5-10. Each grading phase must be completed and stabilized before grading in the next phase can begin. (Applicant Exhibit 4).

- ix. The Board finds that, based on the information provided, after grading and leveling along the bluffs is completed and the areas stabilized, structures will be located in compliance with applicable setback requirements in Michigan Residential Code R403.1.7.2 for descending and ascending slopes which requires the face of the structure footing be a minimum of 1/3 of the slope height behind the slope at the corresponding elevation, but need not exceed 40 feet. (Applicant Exhibit 10)
- x. The Board finds that the Township Engineer has reviewed the proposed grading plan for the development, including the additional grading information and details for the building sites on Lots 1-41 which are included in the overall project plan set, and found they meet applicable Township ordinances, standards and requirements and recommended engineering approval. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance. (Applicant Exhibit 7; Township Exhibit: Township Storm Water Control Ordinance)
- xi. The Board finds that the Township Engineer reviewed the design of the proposed roads (including the emergency access road to Smokey Hollow Road) for compliance with applicable requirements regarding grading, drainage, and pavement cross sections and recommended engineering approval. (Applicant Exhibit 7)
- xii. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 4, 7, 10, 17, 41)
- xiii. The Board finds that, as designed, the development plans meet the applicable Township and County storm water standards, and if the grading, soil erosion, sedimentation, and storm water control measures in the plan and in SESC Permit #24013, including its conditions, are properly installed, implemented, monitored and enforced, the proposed development will not cause soil erosion or sedimentation problems. (Applicant Exhibits 4, 7, 10, 17, 25-26, 41; Township Exhibits: individual grading plans and cross-section details and other information for Lots 1-41)

This standard HAS/HAS NOT been met.

Section 8.1.3(3)(i): 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.

- i. The Board finds that the drainage facilities for the proposed development maintain the intent of the natural on-site drainage patterns. (Applicant Exhibits 4, 7, 17; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the paved roadways are curbed with drain structures that convey storm water to a basin located in the interior of the property, and that the storm water basin is properly sized and meets the applicable Township and County Storm Water Ordinances and requirements and is sufficient to ensure that neighboring properties will not be impacted by additional runoff from the

proposed development. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 17; Township Exhibits: Applicant's SUP Application, Township and County Storm Water Control Ordinances).

- iii. The Board finds that based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project and have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance and the proposed development will not cause undue runoff onto neighboring properties or overload water courses in the area. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 11; Township Exhibits: Township and County Storm Water Control Ordinances)
- iv. 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. (Township Exhibit: Mansfield Ltr 4/13/16)

This standard HAS/HAS NOT been met.

Section 8.1.3(3)(k): That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

- i. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the project and issued SESC Permit #24013 which remains valid until May 2018. (Applicant Exhibit 17)
- ii. The Board finds that the Township Engineer, Brian Boals of Gourdie-Fraser, reviewed the grading plan and concluded that, while the mass grading plan for the project is adequately designed from an erosion control and storm water management standpoint, the grading and site construction have the potential to relocate and redistribute soil materials, including arsenic, on neighboring properties depending on weather conditions which was also acknowledged by Dr. James Harless of SME. (Applicant Exhibits 4, 7, 26, 43)
- iii. The Board finds that the Otwell Mawby soil assessment dated August 29, 2017, submitted on behalf of the Applicant entailed soil samples collected from the upper 12 inches of the soil column at 15 sample locations on the Property that were historically used as agriculture and that would be disturbed during grading and site construction. Samples were taken from two depths at each location, and each sample was analyzed for arsenic, lead and three composite samples were analyzed for pesticides. (Applicant Exhibits 34, 51)
- iv. The Board finds that the soil assessment for the Property shows the presence of arsenic at concentrations greater than the current (7,600 µg/kg) and proposed (9,000 µg/kg) State generic residential human direct contact criterion in 17 samples at 10 of the 15 sampling locations. Arsenic exceedances of criteria were reported in samples from all areas of the Property where samples were

collected and in over one-half of the deepest samples collected, but arsenic was not present in any sample greater than the current or proposed generic residential particulate inhalation criteria. (Applicant Exhibit 34, 51)

- v. The Board finds that the soil assessment of the property showed that neither lead nor the other target pesticides tested for were reported at concentrations above the current or proposed generic residential human direct contact or particulate inhalation criteria. (Applicant Exhibit 34, 51)
- vi. 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. (Applicant Exhibit 34, 51)
- vii. The Board finds that, based on Dr. Harless' review, the soil assessment shows that a significant mass of soil over a large area of the Property is contaminated with arsenic at levels above the published statewide default background level, the Michigan Glacial Lobe background level, and the State generic residential human direct contact criteria. (Applicant Exhibit 34, 51)
- viii. The Board finds that Dr. Harless reviewed the soil assessment for the property and other materials relating to the area within the emergency access easement and concluded that all of land which the emergency access road easement traverses from the western boundary of the Property to Smokey Hollow Road, and which will be disturbed during construction, appears to have been used historically as orchards and for agricultural purposes and recommends that the soils in the easement area either be assumed to be contaminated at levels similar to those on the property or be tested to determine that it is not contaminated. (Applicant Exhibit 34, 51)
- ix. The Board finds that Dr. Harless reviewed the soil assessment for the Property and concluded the levels of arsenic in soil on the property are sufficient to adversely affect the adjacent or neighboring properties if the soil escapes the site via wind, storm water runoff, or vehicle track-out during site grading and construction activities by either adding contaminated soil to land that is not contaminated at levels of concern or by increasing the contaminant load on properties that may have been previously impacted by contamination, and Section 8.1.3(3)(k) of the Township's Zoning Ordinance is designed to address both scenarios. (Applicant Exhibits 34, 51)
- x. The Board finds that Dr. Harless concluded that soil erosion on the property is likely to occur during grading and site construction on the property and in the emergency access easement and the potential for soil erosion during grading and earthwork was also acknowledged by Roger Mawby in his letter dated 1/16/17. (Applicant Exhibits 25, 51)
- xi. The Board finds that both Dr. Harless and Roger Mawby agree that, if the soils can be managed and contained on-site during grading and post grading operations, it can reasonably be concluded that the grading operations will not adversely affect the adjacent or neighboring properties. (Applicant Exhibits 25, 34, 51)
- xii. 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 II.5 objective of preventing the conveyance

of soil and sediment via wind and storm water runoff. (Applicant Exhibits 4, 25, 34, 51; Township Exhibit: Township and County Storm Water Control Ordinances)

- xiii. The Board finds that, based on Dr. Harless' review, the level of detail in the project plans, including the Maintenance Plan and Budget, is inadequate to demonstrate that the erosion control measures for the proposed development will prevent the grading from adversely affecting the adjacent or neighboring properties. (Applicant Exhibit 51)
- xiv. The Board finds that Dr. Harless recommends that the silt fencing required for the project be comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012). (Applicant Exhibit 51)
- xv. The Board finds that Dr. Harless recommends that the vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project be revised to state: "Sediment deposited in public rights-of-way **shall be removed immediately** and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction. (Applicant Exhibit 51)
- xvi. The Board finds that Dr. Harless recommends that a detailed, site-specific erosion control or soils management plan be prepared by a licensed professional engineer incorporating best management plans to prevent conveyance of soils and sediment via wind, storm water runoff, and vehicle track-out and that a performance monitoring, inspection, and enforcement program be implemented to prevent fugitive soil erosion emissions from the site during grading and site construction in order to ensure that adjacent or neighboring properties are not adversely affected. (Applicant Exhibit 51)
- xvii. The Board finds that the Township received a report dated October 25, 2017 from ASTI Environmental titled *Soil Management Plan the 81 on East Bay Peninsula Township, Michigan* which addresses the concerns regarding the insufficient soil erosion details in the project plans identified by Dr. Harless, and which contains a Soil Management Plan in Section 4.0 including provisions pertaining to a health and safety plan, dust control measures, environmental monitoring, excavation soil handling, groundwater handling, storm water handling, track-out of soil, soil stabilization, access roads, grading management, spoil piles, and silt fencing, and a Proposed Performance Monitoring and Inspection Program in Section 5.0. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xviii. The Board finds that ASTI Environmental recommends that a number of specific dust control measures in Section 4.2 of the Soil Management Plan be implemented including, but not limited to, dust suppression measures such as, the application of water, calcium chloride or other acceptable compounds as frequently as necessary to ensure dust emissions do not exceed 20% opacity or cross the Subject Property boundaries, air quality testing during grading activities which shall be performed by a qualified person trained in conducting opacity measurements using EPA Method 9d. Additional dust control recommendations include the application of dust suppression compounds to the site roadways, sweeping of paved roads, ceasing earthwork when sustained winds exceed 25 mph, covering excavated soils during high winds, and monitoring and inspection recordkeeping. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

- xix. The Board finds that ASTI Environmental recommends that a number of specific measures should be implemented for managing excavated soils (Section 4.4) and spoil piles (4.11) during grading and site construction as part of the Soil Management Plan including, among others, excavated soils should be stockpiled on plastic sheeting or liner with proper erosion controls (e.g., covering, berms) to prevent wind borne soil erosion and runoff. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xx. The Board finds that ASTI Environmental recommends that a truck tire wash be installed near the construction entrance which shall be used as required by the enforcement agent as part of the Soils Management Plan. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxi. The Board finds that ASTI Environmental recommends that as the 3-phase grading plan is implemented, the next phase of grading cannot begin until the previous grading phase is completed and stabilized. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxii. The Board finds that ASTI Environmental recommends that the specifications and procedures for access roads during grading and site construction as listed in Section 4.9 be implemented as part of the Soil Management Plan. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxiii. The Board finds that ASTI Environmental recommends that an enforcing agent be retained to monitor and inspect grading and site construction activities for compliance with the Soils Management Plan and the project plans to prevent soil erosion. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxiv. The Board finds that ASTI Environmental recommends that a performance monitoring and inspection program to be implemented by an enforcing agent to ensure the soil erosion control and management measures contained in ASTI's Soil Management Plan, the project plans, and the SESC Permit are installed, implemented, monitored, and maintained as designed and required. (Applicant Exhibit 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxv. The Board finds that, based on the available information, if the ASTI Environmental Soil Management Plan is properly implemented, and all soil erosion control measures contained in it, the project plans and the SESC Permit are properly installed, implemented, and maintained subject to ongoing monitoring and inspection for compliance by an enforcing agent, the grading for the proposed development will not adversely affect the adjacent or neighboring properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxvi. The Board finds that, based on the information from Dr. Harless and ASTI Environmental and other sources, the hiring of an enforcing agent or consultant, acceptable to the Township, at the Applicant/Developer's cost, to implement the monitoring and inspection program outlined in the ASTI Environmental Soils Management Plan, including the monitoring and inspection program, and to determine whether, when and what soil management measures should be used is integral to the effectiveness of the ASTI Environmental Soil Management Plan and ensuring that the grading and site construction activities on the Property will not adversely affect the adjacent or neighboring

properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

This standard HAS/HAS NOT been met.

Section 8.1.3(3)(n): That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

- i. The Board finds that there are no existing public facilities in the vicinity of the property, and the proposed on-site community septic system, individual wells, storm water system and roadways will be privately owned and maintained by the developer and/or the homeowners association. (Applicant Exhibit 4; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the proposed on-site community septic system, individual wells, storm water system and roadways for the development meet the applicable ordinances, requirements and standards. (Applicant Exhibits 3, 4, 7, 17, 19-22, 55)

This standard HAS/HAS NOT been met.

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.

- i. The Board finds that, for the reasons stated above, the requirements of Sections 8.3 and 8.1 and Article VII have been met.

This standard HAS/HAS NOT been met.

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

- i. The Board finds that based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance and the proposed development will not cause undue runoff onto neighboring properties or overload water courses in the area. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 11)
- ii. The Board finds that, based on information from the Applicant's land use consultant, 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. (Township Exhibit: Mansfield Letter 4/13/16)

This standard HAS/HAS NOT been met.

MOTION TO APPROVE/DENY

Motion made by _____, supported by

_____ 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:

1. Security gates with Knox locking system and signage, as referenced in Fire Chief Rittenhouse's letter dated 10/20/17, shall be installed at each end of the emergency access road, but the security gates do not need to be closed and locked unless unauthorized non-emergency traffic on the emergency access road becomes a nuisance.
2. The project plans shall be revised and resubmitted to the Township to show the security gates, Knox locking system and signage as referenced in the Township's Fire Chief and consultant reviews and these conditions. (Fire Chief Rittenhouse Letter 10/20/17; Fire Chief Dundas Report 10/20/17)
3. The emergency access road, gates, and signage shall be maintained by the developer or homeowners association so that the emergency access road is accessible and can be used by any and all Township Fire Department emergency apparatus and equipment.
4. The roads, including the emergency access road, must be maintained and kept reasonably clear of snow, at all times.
5. The individual grading plans for Lots 1-41 shall be and are incorporated into the project plans and Applicant shall be revise and resubmit a set of project plans containing these individual lot grading plans, including cross-sections. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance.
6. Silt fencing required for the project shall comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012).
7. Any and all reports from the licensed storm water operator to the Grand Traverse County Soil Erosion and Sedimentation Control Department or other agencies relating to the project shall also be provided to the Township Planning Department.

8. Construction activities on the property, including grading, earthwork and excavation, shall comply with all notes in the project plans and SESC Permit No. 24013.
9. The vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project shall be revised to state: "Sediment deposited in public rights-of-way **shall be removed immediately** and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer shall have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction.
10. The ASTI Environmental Soil Management Plan is hereby incorporated into the project plans and grading and site construction activities shall be subject to and governed by the ASTI Environmental Soil Management Plan.
11. A qualified enforcing agent, acceptable to the Township, shall be retained by or on behalf of the Applicant/Developer/Contractor, at its sole cost, to implement the ASTI Environmental Soil Management Plan, including the monitoring and inspection program outlined in Section 5.0. The enforcing agent shall be responsible for monitoring and inspecting the grading and site construction activities on the property for compliance with the Soils Management Plan, the project plans, and the SESC Permit and shall have authority to enforce the plans and ensure the grading will not adversely affect the adjacent or neighboring properties. If the Applicant or any other person or party working on its behalf violates any condition or requirement of the Special Use Permit, then the enforcing agent shall promptly notify the Township Zoning Administrator of the noncompliance.

Ayes:

Nays:

TIME PERIOD FOR JUDICIAL REVIEW

MCL 125.3606 provides that any party aggrieved by a decision of the Township Board may appeal that decision to the Circuit Court within thirty (30) days after the Township Board issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the Township Board, if there is no chairperson, or within twenty-one (21) days after the Township Board approves the minutes at which the decision was made.

SUPPLEMENTAL TOWNSHIP EXHIBITS FOR SPECIAL BOARD MEETING – DECEMBER 12, 2017

- a. All previous exhibits of record for "The 81 on East Bay" SUP #123/PUD
- b. Draft Condominium Master Deed and Bylaws

TWP Findings of Fact – 12-05-17 draft

- c. February 15, 2015 Hirschenberger letter 2/15/15 to Reardon re: Lot Plans for 41 sites and updated design plans sewer and water plans per Ronk for water tank and fire lane
- d. S.E.S.C. Plan – Sites 1-41 dated 2/5/16
- e. Publication USACE “Living on the Coast”
- f. 1/31/17 Boals Letter regarding environmental assessment
- g. 3/13/16 Township resolution declining sewer system - for the record
- h. 6/9/16 Emergency Access Road Easement including Exhibits A, B and C
- i. Township Fire Prevention Ordinance
- j. International Fire Code (2012 Edition)
- k. 11/15/16 Grobbel Environmental and Planning Associates. Pg 3 water quality degradation within the nearshore environment of East Grand Traverse Bay
- l. 10/25/17 ASTI Environmental (Soil Management Plan) Mansfield #50
- m. Township Storm Water Control Ordinance 33
- n. Grand Traverse County SESC and Stormwater Control Ordinance 6/20/2012
- o. Grand Traverse County Soil Survey
- p. Water well Lot 16 permit with notes re nitrates and arsenic.
- q. Maintenance Plan and Budget (storm water)
- r. Fire Chief Rittenhouse Letter 10/20/17
- s. Applicant’s SUP Application
- t. Mansfield Letter 3/5/15
- u. US EPA *Stormwater Best Management Practices, Silt Fences* (EPA 833-F-11-008, April 2012)
- v. Mansfield Letter 4/13/16

