

PENINSULA TOWNSHIP

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**PENINSULA TOWNSHIP
PLANNING COMMISSION – SHORELINE REGULATION STUDY GROUP
AGENDA**

February 12, 2024

Township Hall

5:00 pm

This meeting will not be recorded, and no minutes will be taken.

1. Call to Order
2. Attendance
3. 5:00 pm - Business
 - a. Role of Shoreline Regulation Study Group
 - b. Discussion on Jurisdiction (Ex. 1)
 - c. Process for Amending Zoning Ordinance
 - d. Existing Peninsula Township Shoreline Regulations (Ex. 2)
 - e. Proposed Shoreline Regulations from 2021 (Ex. 3)
 - f. Example Shoreline Regulations from other Local Governments
4. Public Comments
5. 7:00 pm – Adjournment

Exhibits:

1. Legal Briefs
2. Existing Peninsula Township Zoning Ordinance Regulations
3. Proposed Shoreline Regulations from 2021
4. Example Shoreline Regulations from other Local Governments



Jenn Cram, Planning & Zoning Director

Posted February 7, 2024, 12:30 pm

Exhibit 1

STATE OF MICHIGAN
GRAND TRAVERSE COUNTY CIRCUIT COURT

HIDDEN RIDGE CONDOMINIUM CO-OWNERS ASSOCIATION, a Michigan nonprofit corporation, and HIDDEN RIDGE BEACH ASSOCIATION, a Michigan nonprofit corporation,

Plaintiffs,

v.

PENINSULA TOWNSHIP, a Michigan municipal corporation

Defendant.

Case No. 2022-36212-CZ

Hon. Thomas G. Power

**PENINSULA TOWNSHIP'S
BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY DISPOSITION**

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Dated: September 26, 2022

**PENINSULA TOWNSHIP'S BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION**

Defendant and Counter-Plaintiff, Peninsula Township (the "Township") respectfully opposes Plaintiffs', Hidden Ridge Condominium Co-owners Association and Hidden Ridge Beach Association, ("Hidden Ridge") motion for summary disposition and requests that the Court deny the motion as premature or, if not, instead deny the motion and grant summary disposition in favor of the Township on its Answer, Affirmative Defenses, and Counterclaim under MCR 2.116(I)(2).¹

INTRODUCTION

Hidden Ridge contends that the Township lacks authority to regulate the boat docks and hoists used by Hidden Ridge's 31-unit residential condominium development, which has only 237.52 feet of water frontage for the project's 25.8 acres. Many Michigan municipalities and area townships with waterfront along the Great Lakes have similar zoning ordinances to protect against the harmful effects of uncontrolled "funnel" or "keyhole" developments (where an excessive number of building sites access a body of water via a single narrow waterfront parcel)². Likewise, Section 7.4.2 of Peninsula Township's Zoning Ordinance limits any waterfront land used by more than one family to not more than one dock per parcel and one boat hoist per fifty feet of shoreline (See Zoning Ordinance Section 7.4.2, attached as **Exhibit A**, referred to as the "Dock Ordinance").

¹ MCR 2.116(I)(2) provides that: "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

² See, e.g., **Acme Township Zoning Ordinance**, Sec 4.3.6 (one dock and one boat hoist per fifty feet of water frontage): https://www.acmetownship.org/uploads/2/4/3/0/24300134/acme_twp_zo_v9_final_07-31-2022_effective.pdf;

Bingham Township Zoning Ordinance, Sec 3.9.3 (one dock per one hundred feet of shoreline): https://www.leelanau.gov/downloads/pdf_version_062819.pdf;

Torch Lake Township Zoning Ordinance, Sec 2.13 C 1 (one dock for each one hundred feet of front lot line): <https://torchlaketownship.org/Ordinances/Zoning%20Ordinance%20%2007.20.21%20.pdf>.

Hidden Ridge argues that its docks and hoists are not subject to Township regulation because they are located on Great Lakes bottomlands, but the exact location of those structures in relation to the bottomlands has not been factually established and is a matter for discovery. In addition, there are relevant facts concerning the issuance and violations of Special Use Permits (“SUP”) under which Hidden Ridge is permitted to use its land as a site condominium that Hidden Ridge completely ignores. Those facts are also subject to discovery. Discovery has not been completed, so, this motion is premature.

To the extent that Hidden Ridge argues that no set of facts can establish the validity of the Township’s ordinance, it fails. If Hidden Ridge claims that its claim is a pure question of law, then this Court should not only deny its motion, it should grant summary disposition to the Township, because 1) Hidden Ridge is bound by its SUP; 2) the Dock Ordinance is a proper land use regulation that has not been pre-empted by state or federal law; and 3) Hidden Ridge is barred by estoppel, laches, and waiver from challenging the Dock Ordinance, the SUP and Hidden Ridge’s own Bylaws.

COUNTERSTATEMENT OF FACTS

Although Hidden Ridge claims there is no issue of material fact (inappropriately so, as discovery in this case has barely commenced), their less-than-one-page statement of the facts is narrow, selective, misleading, and at best incomplete (Hidden Ridge’s Brief, pp 1-2). Therefore, the Township presents this counterstatement of facts to balance, correct, and complete the facts needed to decide this dispute.

The Hidden Ridge plaintiffs are associations of the owners of residential condominium units and the condominium’s beach/shoreline of the Hidden Ridge development in Peninsula Township, Grand Traverse County, Michigan, Parcel Number 11-514-900-00 (“Parcel”) (Hidden

Ridge Brief, p 1; Counterclaim, ¶ 2). Hidden Ridge is adjacent to and abuts the East Bay of Grand Traverse Bay within the jurisdiction of the Township (1st Amended Complaint, ¶ 16). The history of Hidden Ridge's relationship with the Township is best told through David Sanger, current Township Trustee and past member of the Township's Planning Commission. (Sanger Affidavit, **Exhibit B**).

In 2001, the Township's Planning Commission considered an application by Hidden Ridge for a Special Use Permit to establish and develop its planned unit development. The Township Board approved the initial Special Use Permit for Hidden Ridge (SUP #76) (**Exhibit C**) on March 21, 2001. Later, on December 14, 2004, the Township Board approved an amended Special Use Permit for Hidden Ridge (SUP #92) (**Exhibit D**). (Sanger Affidavit, ¶ 3)

Hidden Ridge's Special Use Permit application as reviewed by the Planning Commission presented several site problems for both the project's developer and the Township, including (a) steep slopes on the property, (b) presence of wetlands, (c) one or more adjacent islands in the immediate vicinity of the property's narrow waterfront, (d) the need for residents to cross Bluff Road to reach the waterfront, (e) insufficient space for parking near the waterfront, (f) lack of adequate space for winter storage of a dock and boat hoists on the property's narrow waterfront between Bluff Road and the East Bay, and (g) the close proximity and impact of Hidden Ridge's waterfront on adjacent waterfront residences. (Sanger Affidavit ¶ 5)

The site design for Hidden Ridge consisted of 31 parcels, with each parcel having a defined building envelope. Initially, Hidden Ridge wanted each parcel to have access to the then-available 120 feet of waterfront; however, in applying the Township's Zoning Ordinance, the Township determined that only 15 of the project's parcels could have access rights to the limited waterfront. The Township also applied the requirements of Section 7.4.2 of the Zoning Ordinance *and the*

development's own By-Laws, which allowed the property to have only 1 dock and 3 boat hoists based on the then 120 feet of water frontage. **(Exhibit E)** The Site Plan for the project also only provided 5 parking spaces along the waterfront for use by the project's homeowners and contained only limited space on the site for the winter storage of a dock and boat hoists, because there was not room for more parking or site storage on the project's narrow waterfront property along Bluff Road. (Sanger Affidavit ¶ 5). The Township initially issued SUP #76, approving Hidden Ridge's application and site plan. This approval on March 21, 2001 included the approval of the Master Deed and By-laws, which were later recorded with the Grand Traverse County Register of Deeds on March 8, 2002. (Sanger Affidavit ¶ 6).

A First Amended Master Deed was recorded on June 28, 2002, and identified Hidden Ridge's waterfront property as a "Limited Common Element" for access only by 15 of Hidden Ridge's 31 parcel owners. The Township Board approved an amended Special Use Permit, SUP #92, December 14, 2004, followed by the recording of a Second Amended Master Deed on April 6, 2005. This amendment added an additional 117 feet of shoreline to the waterfront and across Bluff Road from the development. The amendment also changed the shoreline from a "Limited Common Element" to a "General Common Element," meaning that it could now be accessed by all parcel owners in the development. (Sanger Affidavit ¶ 7). The addition of 117 feet of shoreline also changed how the Township's Zoning Ordinance applied to the number of boat hoists and docks that would be allowed under the Special Use Permit. Originally, with 120 feet of shoreline, Section 7.4.2 of the Zoning Ordinance permitted only 3 boat hoists and one dock. With the additional 117 feet of shoreline added to the development, the number of hoists could increase to 5 (but still have only one dock). (Sanger Affidavit ¶ 8).

In reviewing Hidden Ridge's application for its Special Use Permit, the Planning Commission reviewed several limiting factors pursuant to Section 7.4.2 relating to the use of the waterfront. All these factors concerned use of the project's upland and its impact on health, safety and welfare, the Township's Master Plan, and neighboring property owners' land uses. The factors involved parking, a pedestrian crossing over a county road in a 35 MPH zone, sanitation, noise, and winter storage of docks and boat hoists. All these considerations involve property use that is appropriately regulated by the Township for the public benefit. The way Hidden Ridge property owners access the bottomlands impacts not only their own safety, health, and welfare, but also that of their invitees, their neighboring property owners, and the public. (Sanger Affidavit ¶ 9).

For example, parking for users of the waterfront was limited to 5 spaces in the development; the narrowness of the 237 feet of waterfront required that all parallel parking on the roadway would be in the road right-of-way. There were concerns for the safety of people exiting cars parked in the right-of-way. Although the additional 117 feet of water frontage permitted all 31 parcel owners in Hidden Ridge access to the waterfront, the parking, noise, and safety concerns remained. Winter storage space for the shared dock sections and the allowed 5 boat hoists also remained an issue; this issue was exacerbated when more than the permitted 5 boat hoists were unlawfully added by parcel owners, resulting in greatly increased upland use (including by guests invited to accompany boat owners in their boat use) and activity and unlawful winter storage of boat hoists in the road right-of-way. (Sanger Affidavit ¶ 10).

The application of the Township's Zoning Ordinance concerning the number of boat hoists and docks in relation to shoreline frontage addresses land use concerns with how the upland is used, including the above-stated issues of parking, safety, sanitation, noise, and winter storage of docks and boat hoists. This upland is subject to the Special Use Permit and the Township's zoning

jurisdiction. The Township approved the Special Use Permit for Hidden Ridge by applying the Zoning Ordinance to limit the number of boat hoists and docks that could service the development through its very narrow “funnel” to the water, and in that way mitigate the above land use concerns. (Sanger Affidavit ¶ 11). The expanded and illegal docks and boat hoists have introduced heavy use of the upland along the narrow shoreline of this development, which defeats the Township’s proper concern for the safe use of this project by its residents and in harmony with surrounding land uses. (Sanger Affidavit ¶ 12).

During the first 12 years of their existence, Hidden Ridge seasonally installed no more than one dock and five boat hoists in compliance with Section 7.4.2 of the Zoning Ordinance, the SUP, and their own By-Laws (1st Amended Complaint, ¶ 17; Answer, ¶ 17). But in 2013, after twelve years of complying with the dock and hoist requirements, Hidden Ridge unlawfully installed nine boat hoists. The Township notified Hidden Ridge of this violation on October 14, 2013. After Hidden Ridge failed to respond, the Township sent Hidden Ridge a follow-up violation notice on August 18, 2014 (Counterclaim, ¶¶ 12- 13; see October 14, 2013).

Hidden Ridge emailed the Township on September 15, 2014, that the boat hoists were scheduled to be removed. The Township acknowledged this email on October 9, 2014, but warned that no more than five hoists could be reinstalled in the 2015 season (Counterclaim, ¶ 14; see October 9, 2014, violation notice, attached as **Exhibit F**).

Upon reinspection on June 1, 2015, the Township’s Planning & Zoning Coordinator found that Hidden Ridge had reinstalled the nine hoists in violation of the Zoning Ordinance, but Hidden Ridge’s representative stated that Hidden Ridge intended to comply with the dock and hoist requirements (Counterclaim, ¶ 15; see June 1, 2015, violation notice, attached as **Exhibit G**). After Hidden Ridge had not corrected the violations by June 16, 2015, the Township issued Hidden

Ridge a municipal civil infraction citation for the violations (Counterclaim, ¶ 16; see June 16, 2015, violation notice and citation, attached as **Exhibit H**).

Instead of correcting the violations, Hidden Ridge has since further increased their violations. Throughout the summers of 2021 and 2022, Hidden Ridge's dock extended from their waterfront into the Bay for 460 feet with twelve finger docks and twenty boat hoists (Hidden Ridge's Brief, p 2; Counterclaim, ¶¶ 17-19; see June 21, 2022, violation notice, attached as **Exhibit I**; see photograph from August 2022, attached as **Exhibit J**).

On April 28, 2022, the Township's then attorney issued Hidden Ridge a Notice of Violation of Zoning Ordinance & Demand to Cease and Desist (1st Amended Complaint, ¶ 22; Answer, ¶ 22) (**Exhibit K**). Hidden Ridge responded by filing this lawsuit.

STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(9) or 2.116(C)(10) tests the legal or factual sufficiency of a claim or defense. *Smith v Globe Life Ins Co*, 460 Mich 446, 454, 597 NW2d 28 (Mich 1999); *see also Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Under MCR 2.116(C)(9), all well-pleaded defenses are construed in the light most favorable to defendant. *Maiden*, 461 Mich at 119. "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Slater v Ann Arbor Pub Schools Bd of Ed*, 250 Mich App 419, 425-26; 688 NW2d 205 (2002). In deciding a motion under this section, the Court considers only the pleadings. *Slater*, 250 Mich App at 425.

In reviewing a motion for summary disposition under MCR 2.116(C)(10) the Court also considers the affidavits, pleadings, depositions, admissions, and other documentary evidence. *Smith*, 460 Mich at 454 (quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d

314 (1996). The Court may grant a motion for summary disposition under MCR 2.116(10) if the evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* They Court may, however, instead grant judgment in favor of the opposing party under MCR 2.116(I)(2), which provides that “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.”

ARGUMENT

1. Hidden Ridge’s Motion is premature as discovery has not commenced and discovery will uncover factual support for the Township’s position.

As a general rule, “summary disposition is premature if granted before discovery is complete on a disputed issue. ‘However, summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion.’” *Vill of Edmore v Crystal Automation Sys Inc*, 322 Mich App 244, 262; 911 NW2d 241 (2017). The Township need only assert that a dispute does indeed exist and support that allegation by some independent evidence. *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994).

Here, the Township asserts that the SUPs issued to permit the establishment and ongoing use of Hidden Ridge as a site condominium development create a factual issue regarding Hidden Ridge’s assertion that it is nevertheless permitted to ignore the Township’s ordinance despite the SUPs’ requirement that Hidden Ridge do so. The Township has presented independent evidence regarding the SUP both through the affidavit of Township Trustee David Sanger and through the SUP documentation itself. The Township should be permitted the opportunity to conduct discovery with regard to Hidden Ridge’s drafting of its Master Deed and amendments, its Bylaws, and in particular its years of compliance with the Dock Ordinance – all of which are relevant to the

Township's claim of estoppel, laches and waiver. In addition, the location of the structures that, as placed, currently violate the Dock Ordinance creates a factual question as to whether it relates to Hidden Ridge's claim that its structures are located on the Great Lakes' bottomland and thus not subject to Township regulations. Hidden Ridge has – since its motion was filed – presented the Township with a survey which the Township has yet been able to assess and evaluate through discovery as to its accuracy and relevance to Hidden Ridge's claims. Hidden Ridge's motion is simply premature and deprives the Township of a fair opportunity to defend its position.

2. The Michigan Zoning Enabling Act grants the Township authority to regulate boat docks and hoists that are used by Hidden Ridge's condominium development.

The Michigan Zoning Enabling Act ("MZEA") delegates "broad authority" to the Township to regulate "land development" and the "use of land." MCL 125.3201 (general zoning authority) and MCL 125.3502 (special land uses); *Risko v Grand Haven Charter Twp Zoning Bd of Appeals*, 284 Mich App 453, 463; 773 NW2d 730 (2009). The Michigan Constitution requires that authority granted to municipalities under the MZEA (and other statutory grants of authority) "shall be liberally construed in their favor[;][p]owers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution." Mich Const 1963, Art 7, § 34; *Charter Twp of Delta v Dinolfo*, 419 Mich 253, 260 and n. 2; 351 NW2d 831 (1984) (zoning is a "broad grant of power" that "should not be artificially limited").

Consistent with this broad grant of authority, our Supreme Court held in *Hess v W Bloomfield Twp*, 439 Mich 550, 560; 486 NW2d 628 (1992) that the regulation of "land development" and the "use of land" as used in the former Township Rural Zoning Act ("TRZA") "'fairly impl[ies]' the inclusion of boat dockage." Those same words, as used in the MZEA, also authorize the Township to regulate Hidden Ridge's docks and hoists in this case.

In *Hess*, plaintiff homeowners sought to invalidate a township's zoning regulations concerning boat docks. Similar to this case, the township had earlier granted plaintiffs a special use permit to convert an outlot into a private park and beach for its members subject to restrictions on the number and length of the boat docks. Plaintiffs sued when the township refused to increase the mooring capacity years later. The Michigan Supreme Court rejected plaintiffs' argument that the township's zoning authority over "land" did not extend to boat docks finding that land use zoning "includes those rights or interests that attach to the ownership of land, which extends to riparian rights. Mooring of boats at a dock adjacent to [plaintiffs' land] constitutes an exercise of the riparian rights of the property owners of that piece of property." *Hess*, 439 Mich at 562.

The Township's ordinance in this case is no less a valid exercise of its zoning power under the MZEA. As in *Hess*, the focus of the Dock Ordinance is on *how the land is serviced* by the number of boats dependent upon access to the upland area, and thus riparian rights, which "include the right to erect and maintain docks along the owner's shore, and the right to anchor boats permanently off the owner's shore." *Id.* at 561—62.³ Cases cited by Hidden Ridge demonstrate that it holds those same riparian rights in their lands. *See Glass v Goeckel*, 473 Mich 667, 672, n.1; 703 NW2d 58 (2005); *Hilt v Weber*, 252 Mich 198, 225; 233 NW 159 (1930); *Peterman v State Dept of Nat Res*, 446 Mich 177, 191; 521 NW2d 499 (1994). The right to build docks and hoists services Hidden Ridge's *land* and is an interest attached to its *land* and is thus subject to the Township's zoning authority under *Hess*. The ordinance itself expresses the Township's intent to regulate land, stating that its intent is "to reduce the conflicts that occur between residential single family

³ Although described as "riparian rights," the rights might more properly be referred to as "littoral rights," because they refer to use of a body of water such as a lake, rather than a river or stream.

use and shared waterfront use, such as a number of families using the beach, making noise, trespassing, temporarily storing boats, boat hoists and other equipment.” Section 7.4.2(1).

Hidden Ridge cites cases that do not describe uses appurtenant to land. Indeed, those cases are critically distinguishable because there was no connection to the land whatsoever. *See People v Jondreau*, 384 Mich 539, 542; 185 NW2d 375 (1971) (Native American fisherman exercising treaty fishing rights on Keweenaw Bay); *People v Bouchard*, 82 Mich 156 (1890) (sale of liquor from a boat anchored ½ mile offshore); *People v Coffey*, 155 Mich 103 (1908) (fishing from a boat offshore); and *Andrews v Ellsworth*, 190 Mich 157 (1916) (fishing from a boat offshore). In contrast, the Township’s ordinance makes no sense without the ownership of land serviced by the regulated structures. Hidden Ridge’s arguments and authority are inapposite.

3. The Township Ordinance Act grants the Township authority to regulate boat docks and hoists for the public health, safety, and general welfare.

Although the Township adopted Section 7.4.2 under the MZEA, which is sufficient authority for that ordinance section as discussed above, Hidden Ridge also makes an argument (Brief, pp 8-9) that the Township Ordinance Act (“TOA”), MCL 41.181 *et seq.*, does not authorize the regulation of Hidden Ridge’s docks and boat hoists. For completeness, the Township will briefly address that argument.

As with the MZEA, the Michigan Supreme Court has held that townships possess authority to regulate boat docks pursuant to their general police power under the TOA. *Square Lake Hills Condo Ass’n v Bloomfield Twp*, 437 Mich 310, 325, 471 NW2d 321 (1991); *see also Miller v. Fabius Twp. Bd.*, 366 Mich 250, 253, 114 NW2d 205 (1962). In *Square Lake*, decided a year before *Hess*, the Court interpreted the language of the TOA broadly. It held that the regulation of boat docking and launching by Bloomfield Township on inland lakes is a perfectly reasonable use of township police power under the Act. *Id.* at 322.

In *Miller v. Fabius*, the Michigan Supreme Court emphasized that even if a township ordinance regulates what may be characterized as a “state-wide” problem:

there are peculiar circumstances that are local in character—*such as the number of boat users on a lake; the amount of fishing on the lake; the congestion and conflict between fishermen and water skiers; [and] the location of the lake to densely populated areas*—which [the TOA] authorizes townships to deal with under the “health and safety of persons and property” clause. 366 Mich at 259.

Although *Square Lake* involved docks on an inland lake, the rationale for the Court’s decision applies equally to the bay waters adjacent to the Township, because they present *local concerns* of health, safety, and welfare, i.e., “the number of boat users on [the] lake,” “congestion and conflict” between recreational users, and “the location of the lake to [the] densely populated areas” – all of which apply with equal force in the Township and neighboring townships on Grand Traverse Bay with similar ordinances.

4. Section 7.4.2 of the Zoning Ordinance is not preempted by state or federal law.

Although Hidden Ridge does not even use the word “pre-emption” in its brief in support of its motion, Count 2 of its complaint alleged that the Dock Ordinance is pre-empted by state and federal law due to permits granted by state and federal agencies. For the reasons stated below, Hidden Ridge’s pre-emption arguments lack any merit.

a. Section 7.4.2 is consistent with state and federal law.

Hidden Ridge asserts that Section 7.4.2 is pre-empted by state and federal law, including (1) Part 325 of NREPA, MCL 324.32501 et seq. (1st Amended Complaint, ¶ 38), and (2) Section 10 of the RHA, 33 USC § 403 (1st Amended Complaint, ¶ 39), but Hidden Ridge does not cite any specific sections of those statutes that they claim create the operative conflict or preemption. The mere fact that the state owns the bottomlands of the Great Lakes does not of itself pre-empt local regulation by the Township. *See, e.g., Burt Twp v Dept of Nat Res*, 459 Mich 659, 665, 667-71;

593 NW2d 534 (1999) (holding that the township’s broad zoning authority extended to the Michigan Department of Natural Resources (“DNR”) and its proposed boat launch, and that NREPA did not exempt the DNR or its facilities from the township’s zoning jurisdiction).

As our Supreme Court recently explained (and not addressed by Hidden Ridge), a statute may preempt an ordinance in one of two ways, generally referred to as “conflict preemption” and “field preemption.” *DeRuiter v Twp of Byron*, 505 Mich 130, 140; 949 NW2d 91 (2020).

(1) Conflict preemption does not apply in this case.

The *DeRuiter* Court addressed conflict pre-emption, holding that the township zoning ordinance did not conflict with a statute authorizing the operation of marihuana caregivers. The Court applied the following rules to conflict preemption:

- Conflict preemption requires an “examination of both the relevant provisions of the [statute] and of the ordinance.” *Id.* at 141.
- A direct conflict exists only where the state statute and local ordinance “cannot coexist and be effective.” *Id.* at 146.
- To the extent an ordinance goes further in its regulation than the relevant state statute but does not attempt to “forbid what the legislature has *expressly* licensed,” it is valid. *Id.*
- “[A]n ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the statute.” *Id.* at 147.
- A local unit of government may implement additional conditions so long as they are not “unreasonable and inconsistent with regulations established by state law.” *Id.* at 148.

In this case, examining the express language of Part 325 of NREPA and Section 10 of RHA shows that Section 7.4.2 of the Zoning Ordinance does not conflict with any sections contained in those statutes, and Hidden Ridge has nowhere cited any specific sections of those statutes that create a conflict.⁴ Part 325 of NREPA authorizes the MDEQ to approve “marinas” and other “permanent structures” on Great Lakes bottomlands that “may restrict or prevent the free public

⁴ It is the burden of the party claiming preemption to prove it. *Konynenbelt v Flagstar Bank*, 242 Mich App 21, 29; 617 NW2d 706, 711 (2000).

use of the affected bottomlands ...” MCL 324.32501; 324.32505; 324.32512;324.32513. Section 10 of the RHA simply requires USACE approval of docks and similar structures in the Bay in order to control “obstruction” of the Bay’s “navigable capacity.” 33 USC § 403. No specific requirements in those statutes are violated by Section 7.4.2 of the Zoning Ordinance. It is not unreasonable or inconsistent for Hidden Ridge to obtain approval for their dock and hoists from the MDEQ, the USACE, and the Township.

(2) Field pre-emption does not apply in this case.

Our Supreme Court also recently addressed the issues involved with field pre-emption in *Michigan Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695; 918 NW2d 756 (2018). As the Court there explained, field pre-emption applies if “the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.” *Id.* at 703. The Court acknowledged the factors to determine whether the state regulation “occupies the field”:

- “[P]re-emption of a field of regulation may be implied upon an examination of legislative history. ...” *Id.* at 704.
- “[T]he pervasiveness of the state regulatory scheme may support a finding of pre-emption. ... While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer pre-emption, it is a factor which should be considered as evidence of pre-emption.” *Id.* at 705.
- “[T]he nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.” *Id.*

The Court held the local regulation was not pre-empted because there was a clear intent *not* to occupy the field in question. Indeed, the relevant statute listed specific local units that could not regulate firearms and did not include defendant in that list, which resulted in the Court finding an unambiguous “intent to regulate the subject matter only partially.” *Id.* at 705-06.

In this case, applying the factors should result in a finding that the relevant statutes do not pre-empt the field. Hidden Ridge, which as the burden of proof, has offered no legislative history of Part 325 of NREPA or Section 10 of the RHA that would even suggest any field preemption. Those statutes regulate entirely different fields than the Zoning Ordinance: Part 325 seeks to control permanent structures that “may restrict or prevent the free public use of the affected bottomlands ...” MCL 324.32501; Section 10 of the RHA attempts to control “obstruction” of “navigable capacity ...” 33 USC § 403. In contrast, the Township’s Dock Ordinance is intended “to reduce the conflicts that occur between residential single-family use and shared waterfront use, such as a number of families using the beach, making noise, trespassing, temporarily storing boats, boat hoists and other equipment.” Section 7.4.2(1).

b. Hidden Ridge’s state and federal permits disclaim pre-emption of local ordinances.

Although Hidden Ridge repeatedly refers to their permits from EGLE and USAC (1st Amended Complaint, ¶¶ 18-20, 40-42, Ex A and Ex B), they fail to mention that those permits ***expressly disclaim any intent to preempt local authority***. The EGLE permit states: “This permit does not ... waive the necessity of seeking ... all local permits ... This permit does not convey, provide, or otherwise imply approval of any other governing act, ordinance, or regulation, nor does it waive the permittee’s obligation to acquire any local [or] county ... approval or authorizations” The USACE permit similarly states: “This permit does not obviate the need to obtain ... local authorizations.” Like *Michigan Gun Owners, supra*, where the statute expressed an intent not to occupy the field (502 Mich at 707), here the state and federal permits expressly disclaim any pre-emption of local authority. *See also Checker Cab Co v Romulus Twp*, 371 Mich 232, 236; 123 NW2d 772 (1963)(holding that the county’s taxi concession agreement, requiring taxis to operate in “strict conformity with all pertinent federal, state and local government laws and regulations”

and that they “shall obtain all licenses and permits which may be properly required by federal, state [and] local government[s],” demonstrated that the county did not preempt regulations of taxis by townships).

5. Hidden Ridge is barred by estoppel, laches, and waiver from challenging the boat dock and hoist restrictions in the Zoning Ordinance and the SUP.

Hidden Ridge developed its condominium project by obtaining SUP No. 76 on March 21, 2001 (attached as **Exhibit B**). The SUP required that: “All development of the premises shall be in strict conformance with the Site Plan.” The “Site Plan” as described in the SUP included, among other documents, Hidden Ridge’s own By-Laws which relevantly provided: “All boat dockage, mooring, etc., shall be subject to the regulations of Peninsula Township” and “Said regulations further allow one dock and three shore stations/lifts.” (Condominium By-laws, Section 18(b) and (e), pp 18-19). Hidden Ridge accepted and complied with these conditions for a dozen years and did not challenge the validity of the conditions in this Court until 22 years after receiving the SUP. Hidden Ridge failed to commence a timely appeal from the SUP to this Court at the time it was granted. As a result, Hidden Ridge is now barred by estoppel, laches, and waiver from challenging the restrictions on its docks and boat lifts at this late date.

a. Hidden Ridge’s claims are barred by estoppel.

Hidden Ridge is barred by estoppel because they voluntarily complied with the ordinance and SUP conditions and waited 22 years to challenge them in this Court. In *Edel v Filer Twp*, 49 Mich App 210, 213; 211 NW2d 547 (1973), property owners challenged the validity of a township zoning ordinance that existed for eighteen (18) years before the plaintiffs commenced the action. *Id.* at 211. Other property owners followed the ordinance without incident over that period. *Id.* at 213. The court emphasized: “When a zoning ordinance has been the subject of public acquiescence

and reliance for [a lengthy time], the reasonableness of a belated challenge is certainly open to question. Such challenges have been successfully defended on the basis of estoppel or by overriding policy considerations.” *Id.* Because the township zoning ordinance was in effect for over eighteen (18) years before being challenged for the first time, the ordinance was declared valid. *Id.*

Hidden Ridge is also barred by estoppel because they accepted the SUP and the substantial advantages it gave them to develop their 31-unit condominium development on over 25 acres with only 237.52 feet of water frontage on the Bay. In *City of Troy v Aslanian*, 170 Mich App 523, 530, 428 NW2d 703 (1988), the municipality granted plaintiffs a permit to expand previously nonconforming uses on the property, subject to certain conditions. *Id.* at 525. Plaintiffs later refused to comply with the conditions in the permit arguing that the conditions were unlawful. *Id.* The court held that plaintiffs were estopped from challenging the permit conditions. *Id.* at 529-30. The court emphasized that “[a] party who has accepted and retained the advantages of a variance granted on condition is estopped to attack the propriety of the condition and will be deemed to have waived any error with respect to the imposition of the condition.” *Id.* at 530 (quoting 101A CJS, Zoning & Land Planning, § 238, p 691).

b. Hidden Ridge’s claims are barred by laches.

Hidden Ridge is also barred by laches due to their failure to bring a challenge to the Zoning Ordinance provisions within any reasonable statute of limitations. “Delays beyond analogous statutes of limitations are ‘presumptively prejudicial and unreasonable, creating a rebuttable presumption of laches.’” *Nartron*, 305 F3d 397, 408 (CA 6, 2002), citing *Elvis Presley Enter, Inc v Elvisly Yours, Inc*, 936 F2d 889, 894 (CA 6, 1991).

The Court in *Thatcher Enterprises v Cache Cnty Corp*, 902 F2d 1472, 1476 (CA 10, 1990) applied laches where plaintiff waited 17 years after adoption of the ordinance and nine (9) years from the time they received a conditional use permit allowing limited commercial uses on their property before challenging the zoning ordinance in court.⁵ The Court there held that:

“Whether the reason is called laches, estoppel, waiver, or public policy, challenges to the procedural invalidity of a zoning ordinance and constitutional challenges based thereon must be brought within a reasonable time from enactment of the ordinance. If not brought in a timely manner, the plaintiff will be barred from challenging the zoning ordinance.”

c. Hidden Ridge’s claims are barred by waiver.

Under the circumstances of this case, Hidden Ridge would never have been allowed to develop 31 units on 25.8 acres and only 237.52 feet of water frontage on the Bay without the conditions imposed by Section 7.4.2 and by their own By-Laws. It would clearly be inequitable to simply cast aside these protections based on Hidden Ridge’s late-blooming arguments that the Township’s zoning jurisdiction did not authorize those restrictions. Such legal rights may be waived, as the court held in *Randy Disselkoen Properties, LLC v Charter Twp of Cascade*, 1:06-CV-141, 2008 WL 114775, at *9 (WD Mich Jan 9, 2008). In that case, the township granted plaintiff a variance with conditions, and the Court held that plaintiff validly waived its constitutional claims by delaying in bringing a challenge until years later. *Id.*

⁵ See also *Bylinski v City of Allen Park*, 8 F Supp 2d 965, 973 (ED Mich, 1998) (holding that constitutional challenges to zoning ordinances are subject to laches, citing *Thatcher Enterprises, supra*, 902 F2d at 1475-76); *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 494; 608 NW2d 531, 538 (2000) (laches applied because plaintiff did not challenge the rezoning until “nearly ten years later”); *Richmond Twp v Erbes*, 195 Mich App 210, 225; 489 NW2d 504, 512 (1992) *overruled in part on other grounds*, *Bechtold v Morris*, 443 Mich 105, 503 NW2d 654 (1993) (plaintiffs estopped from challenging zoning ordinance 13 years after its enactment); and *Northville Area Non-Profit Hous Corp v City of Walled Lake*, 43 Mich App 424, 435; 204 NW2d 274, 280 (1972) (time bar applied because zoning ordinance provision had been in effect for 4 years before it was challenged).

Under Michigan law, a challenge to an SUP is waived unless it is timely appealed to circuit court. *Krohn v City of Saginaw*, 175 Mich App 193, 197-98; 437 NW2d 260 (1988); *Macenas v. Village of Michiana*, 446 N.W.2d 102, 106, n. 11 (Mich. 1989); *Guay v Beaver Creek Twp*, 296321, 2011 WL 2586003, at *3 (Mich App June 30, 2011); *Stops v Charter Twp of Watersmeet*, 272570, 2007 WL 1720008, at *4 (Mich App June 14, 2007); *see also* MCR 7.122(B) (providing 30 days for appeal to circuit court from any decision made under a zoning ordinance). Hidden Ridge waived any objection to the SUP conditions by failing to take a timely appeal from the SUP.

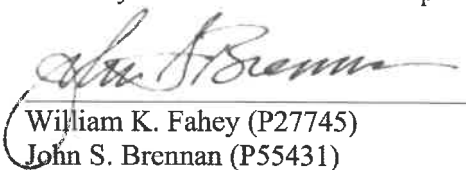
CONCLUSION AND RELIEF

Defendant and Counter-Claimant Peninsula Township respectfully requests that the Court deny Hidden Ridge's motion for summary disposition pursuant to MCR 2.116(C)(9) and 2.116(C)(10), as premature, and permit discovery to commence so that an appropriate factual record may be developed. In the alternative, should this Court should deny Hidden Ridge's motion on the merits and instead grant summary disposition in favor of the Township pursuant to MCR 2.116(I)(2), dismiss Hidden Ridge's Complaint in its entirety and with prejudice, and grant judgment to the Township under its Counterclaim compelling Hidden Ridge's compliance with the terms of the Zoning Ordinance and the SUP.

Respectfully submitted,

Fahey Schultz Burzych Rhodes PLC
Attorneys for Peninsula Township

Dated: September 26, 2022



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CERTIFICATE OF SERVICE

I, Denise A. Van Hoven, hereby certify that on the 26th day of September, 2022,
I electronically filed the foregoing document with the ECF system which will send a notification
of such to all parties of record.

/s/ Denise A. Van Hoven
Denise A. Van Hoven

STATE OF MICHIGAN
GRAND TRAVERSE COUNTY CIRCUIT COURT

HIDDEN RIDGE CONDOMINIUM CO-
OWNERS ASSOCIATION and HIDDEN
RIDGE BEACH ASSOCIATION,

Plaintiffs-Counterdefendants,

v.

PENINSULA TOWNSHIP,

Defendant-Counterplaintiff.

Case No. 22-36212-CZ

Hon. Thomas G. Power
Circuit Court Judge

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BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION

By and through counsel, Plaintiffs-Counterdefendants, Hidden Ridge Condominium Co-Owners Association and Hidden Ridge Beach Association (collectively, the "Association" or "Plaintiffs"), submit this brief in support of their motion for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10).

INTRODUCTION

This case involves Peninsula Township's attempt to regulate the number of boat hoists located on the bottomlands of the East Arm of Grand Traverse Bay ("East Bay") outside of the Township's territorial boundaries and jurisdiction. The Township claims to have the power to exercise police power regulation outside of its territory, and the Association disputes the Township's authority to do so. This motion seeks summary disposition on this narrow issue and asks the Court to render a declaratory ruling in accordance with Count 1 of Plaintiffs' first amended complaint.

STATEMENT OF FACTS

The Association is comprised of property owners within the Hidden Ridge residential development in Peninsula Township. The Association owns 237.52 feet of shoreline on East Bay, and all owners in the Association have access rights on this property. The Association applied for and received a permit from the U.S. Army Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act to seasonally install and remove a 460-foot-long dock with 20 boat slips on the bottomlands of East Bay below the Ordinary High Water Mark (OHWM) of 581.5 feet (IGLD 85) for Lake Michigan.

The Township has issued numerous notices to the Association claiming that it and its members are in violation of Section 7.4.2(4) of the Peninsula Township Zoning Ordinance (the "ZO"), which states as follows:

Group docking, hoist and other related facilities and boat hoists shall not exceed one dock per parcel and one boat hoist per fifty (50) feet of shore line, measured at the ordinary high water mark, and shall be located as near as possible to the center of the parcel.

The Township has filed a counter claim in this action, which alleges that Plaintiffs have violated this provision in the ZO by installing and maintaining more than 5 boat hoists on the bottomlands

of East Bay adjacent to the Association's shared beach access site. The boat hoists are located below the OHWM.

All of the foregoing facts are undisputed. And these are the only material facts relevant to the question before the Court.

STANDARD OF REVIEW

Plaintiffs move the Court for summary disposition of Count 1 of their first amended complaint pursuant to MCR 2.116(C)(9) and (C)(10).

A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings. *Slater v Ann Arbor Pub Schools Bd of Ed*, 250 Mich App 419, 425 (2002). The trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim. *Id.* A motion under MCR 2.116(C)(9) is analogous to summary disposition under MCR 2.116(C)(8) in that the trial court may only consider the parties' pleadings. *Royce v Citizens Ins*, 219 Mich App 537, 540 (1996). "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Slater*, 250 Mich App at 425-26. A defendant must "categorically" deny a "material allegation of the complaint" in order to avoid summary disposition as to the pleaded defense under this rule. *Hazel Park v Potter*, 169 Mich App 714, 718 (1988).

A motion under MCR 2.116(C)(10) tests the factual support for a claim or defense. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278 (2004). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. *West v Gen Motors Corp*, 469 Mich 177; 665 NW2d 468 (2003).

When deciding a motion for summary disposition under MCR 2.116(C)(10), the court must

consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Importantly, “[t]he affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion.” *SSC Associates Ltd Partnership v General Retirement System*, 192 Mich App 360, 364; 480 NW2d 275 (1991). “Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule; disputed fact (or the lack of it) must be established by admissible evidence.” *Id.*

If the nonmoving party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Meagher v Wayne State Univ*, 222 Mich App 700, 719; 565 NW2d 401 (1997); *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). A trial court should not hesitate to grant summary disposition under MCR 2.116(C)(10) “where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion.” *Dep’t of Social Services v Aetna Casualty & Surety Co*, 177 Mich App 440, 446; 443 NW2d 420 (1989).

For reasons that follow, the Court should grant summary disposition in Plaintiffs’ favor under MCR 2.116(C)(9) and (C)(10) and issue a declaratory ruling pursuant to MCR 2.605(a) to confirm that Defendant lacks authority to regulate Plaintiffs’ and its members’ activities outside of the Township’s jurisdictional borders on the bottomlands of the Great Lakes below the OHWM.

ARGUMENT

Michigan townships have authority to regulate inland lakes via riparian rights that attach to the adjoining water. *Township of Yankee Springs v Fox*, 264 Mich App 604, 606 (2004) (“[I]t is the location of the riparian land, and not the location of the lake that abuts the land, that determines the plaintiff’s authority and jurisdiction.”). Unlike inland lakes, the State of Michigan holds title to the center of each Great Lake bordering Michigan, and riparian owners on the Great Lakes only own to the OHWM. *Hilt v. Weber*, 252 Mich 198, 202; 233 NW 159 (1930) (“[T]he

State [of Michigan] has title in fee in trust for the public to submerged beds of the Great Lakes within its boundaries.”); *Peterman v Department of Natural Resources*, 446 Mich 177, 192; 521 NW2d 499 (1994) (“The title to submerged lands under the Great Lakes and the straits connecting them, but not the rivers, is in the State of Michigan in trust for the people. On the other hand, the title to subaqueous land under all the other navigable waters, including the rivers connecting the Great Lakes, is in the riparian owners.”).

Upon joining the Union in 1837, Michigan took title to all navigable waters and the lands beneath them in trust for the benefit of all citizens.¹ These public trust waters and bottomlands can never be alienated, surrendered, transferred, or subordinated. In the Great Lakes, “the proprietor of the adjacent shore has no property whatever in the land covered by the water of the lake.” *Hilt*, 252 Mich at 208. In this case, Defendant’s territory does not include any portion of the bottomlands beneath the water in East Bay or West Bay. The Township does not have legal authority to direct the State as to its ownership and use of the bottomlands of the Great Lakes. Given that exclusive adjacent property owners’ riparian ownership ends at the OHWM of the Great Lakes and that the State holds fee title to the bottomlands, it logically follows that local zoning authority to regulate ends at this point.

The Great Lakes Submerged Lands Act, MCL 324.32501 *et seq.* (the “GLSLA”) further restricts the Township’s authority to regulate. The Act covers the bottomlands of the Great Lakes “including the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark.” MCL 324.3502. The Act charges the Department of Environmental Quality (“DEQ”) with the care of the Great Lakes. The Michigan Legislature entrusted the DEQ

¹ Great Lakes Submerged Lands Act of 1994 (“GLSLA”) Section 32514, MCL 324.32514; GLSLA Rule 1017, R 322.1017.

“to preserve and protect the interests of the general public.” *Id.* The Legislature has not granted this authority to Peninsula Township.

The Michigan Supreme Court has definitively held that “under Michigan law, the boundaries of the township do not extend into the Great Lakes.” *People v Jondreau*, 384 Mich 539, 542 (1971). *See also People v Bouchard*, 82 Mich 156 (1890); *People v Coffee*, 155 Mich 103 (1908); *Andrews v Ellsworth*, 190 Mich 157 (1916). In *Bouchard*, the Supreme Court considered whether the township of Bangor could regulate an individual’s activity while in his boat that was anchored beyond the shore line on the bottomlands of Saginaw Bay adjacent to the township. 82 Mich at 157-158. The Court held that it could not, reasoning that “[t]he boundaries of a municipal corporation are fixed by law, and cannot be made to depend upon the fact that the owners of land within the limits have rights appurtenant extending beyond such limits.” *Id.* at 160. The Court explained that it “is difficult to see how such boundaries can properly be extended by judicial construction to include territory, whether of land or water, outside such surveyed lines.” *Id.* at 159.

The *Bouchard* Court also stated that there has been “an express legislative recognition that such boundaries do not so extend” and that a state statute is required to enforce actions on the Great Lakes. *Id.* at 159-60. The Court was referring to the fact that pursuant to state statute, counties bordering on Lake Michigan have “jurisdiction of all offences committed on that part of Lake Michigan.” MCL 45.10. The Legislature granted such jurisdiction because it did not exist before. But the Legislature has only granted counties the authority to prosecute criminal offences; it has not granted local municipalities jurisdiction to exercise zoning power to regulate the use of the Great Lakes.

In this case, the boundaries of Peninsula Township end at the OHWM. Even the

Township's Zoning Ordinance ("ZO") recognizes that the Township's authority ends at the OHWM. Under subsection (5) of ZO § 6.1.3: "Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines; on the Great Lakes, the boundaries shall be the ordinary high water mark, elevation 579.8 feet above sea level, International Great Lakes Datum of 1955." As former Township Director of Planning and Zoning Michael Reardon concluded in her April 7, 2016 memorandum, this means that "the Township does not hold zoning jurisdiction over structures completely outside of this boundary, as defined." (*See* memorandum attached hereto as **Exhibit 1.**)

The Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 *et seq.* (the "ZEA"), further confirms this jurisdictional limitation on the Township's authority to regulate. The ZEA is the statutory mechanism by which the State of Michigan has delegated its police power authority to local governments such as Peninsula Township. Without such delegation, the Township would have no authority to enact zoning regulations or exercise police powers. That authority remains with the state unless delegated. But the state has elected to delegate its authorities through the ZEA. MCL 125.3201(1) provides as follows:

A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts **within its zoning jurisdiction** which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare. [Emphasis added.]

Thus, the ZEA's delegation of zoning regulation is limited to the "zoning jurisdiction" of a local unit of government, which the ZEA defines as follows:

“Zoning jurisdiction” means the area encompassed by the legal boundaries of a city or village or the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to a township zoning ordinance. [MCL 125.3102(w).]

In this case, the Township’s zoning jurisdiction is confined to its legal boundaries outside the limits of incorporated cities and villages, and these boundaries end at the OHWM of the Great Lakes.

The same is true with respect to the Michigan Township Ordinances Act, Act 246 of 1945, MCL 41.181 *et seq.*, which enables townships to enact police power ordinances that “may apply to streets, roads, highways, or portions *of the township* . . . or specified platted lands *within the township*.” MCL 41.181(2). Again, in this case, the township’s territory does not extend beyond the OHWM to the bottomlands of the Great Lakes. Thus, the Township may not regulate the activity it seeks to regulate outside of its boundaries.

In its affirmative defenses to Plaintiffs’ first amended complaint, Defendant maintains that its territory extends to the bottomlands below the OHWM. (Def.’s Aff. Def., ¶ 2.) Alternatively, Defendant contends that even if its authority does not extend to the bottomlands below the OHWM, it nevertheless “has legal authority to regulate conduct on adjacent lands that impact its territory and the health and safety of the township’s citizens.” (Def.’s Aff. Def., ¶ 3.) Neither of these arguments is supportable.

It is an uncontestable fact that the Township’s physical boundaries end at the OHWM of East Bay and do not include any of the State-owned bottomlands on which Plaintiffs have seasonal installed and maintained boat hoists. Likewise, it is an unimpeachable legal proposition that the Township only has authority to regulate land use and activities within its territorial boundaries. Peninsula Township cannot, for example, regulate the use of land in East Bay

Township or the City of Traverse City. Defendant's police power and zoning authority only extends within its territorial jurisdiction, which ends at the OHWM of the Great Lakes.

CONCLUSION

In light of the foregoing, there is no genuine issue of material fact relating to Count 1 of the first amended complaint, and Plaintiffs are entitled to a declaratory judgment as a matter of law to confirm that the Township does not possess any legal authority to regulate Plaintiffs' and its members' activities outside of the Township's jurisdictional borders on the bottomlands of the Great Lakes below the OHWM. Plaintiffs are not legally required to comply with the ZO with respect to activities and land use occurring outside of the Township's boundaries, and their seasonal installation and maintenance of more than 5 boat hoists on the bottomlands of the Great Lakes below the OHWM is not a violation of any enforceable regulation of the Township.

Respectfully submitted,

KUHN ROGERS PLC
Attorneys for Plaintiffs-
Counterdefendants

Dated: August 26, 2022

By: /s/ W. Dane Carey
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Phone: (231) 947-7900
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EXHIBIT 1

To: File

From: Michelle Reardon, Planning & Zoning Department

Re: Zoning District Boundary along the shoreline

Date: April 7, 2016

Per Section 6.1.3 Interpretation of District Boundaries Subsection (5) of the Peninsula Township Zoning Ordinance, boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines; on the Great Lakes, the boundaries shall be the ordinary high water mark, elevation 579.8 feet above sea level, International Great Lakes Datum of 1955.

Therefore, the Township does not hold zoning jurisdiction over structures completely outside of this boundary, as defined.

Feel free to contact me should you have any questions.

Exhibit 2

Section 6.2 R-1A Districts: Rural and Hillside Residential:

Section 6.2.1 Intent and Purpose: This section establishes the R-1A Rural and Hillside Residential District to set standards for the continued development of: (1) rural areas suited to very low density residential development; (2) fragile hillside areas; and (3) interface areas between more intensive residential uses and agricultural land uses. This district includes existing low density residential developments as well as areas within which such development appears both likely and desirable.

Section 6.2.2 Uses Permitted by Right:

(1) Single Family Dwellings:

(2) Customary Uses and Structures

- (a) Accessory Buildings: Accessory buildings such as farm buildings and a detached garage for the storage of automobiles shall be permitted with a single-family dwelling; provided, however, that the farm buildings and garage shall comply with the setback restrictions and side yard requirements.
- (b) Guest Houses: A guest house detached from the dwelling shall not be permitted on the same lot with a single-family dwelling unless the lot has a width twice the normal width, and the guest house is so located as to be qualified as a single-family dwelling in its own right on one-half the width of the lot of the principal dwelling.

(c) Boat Hoists and Docks:

- 1. A maximum of one (1) dock per parcel plus one boat hoist, is permitted per fifty (50) feet of shore line, measured at the ordinary high water line, provided that a pre-existing lot of record is allowed at least one dock and one boat hoist.
- 2. Boat hoists and docks are allowed on properties of insufficient size for a single-family dwelling, provided the lot is a pre-existing lot of record or has a minimum width of fifty (50) feet and also provided that provision is made for a minimum of two (2) parking places off the adjacent road right-of-way. In the event of properties owned by the same party being separated by a thoroughfare, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling.
- 3. No dock shall be wider than seven (7) feet and no longer than necessary to provide adequate water depth for the boat using the dock or boat hoist.
- 4. Shared waterfront ownership is allowed pursuant to Section 7.4.2.
(REVISED BY AMENDMENT 109C)

(d) Decks and Storage: **(REVISED BY AMENDMENT 140)**

1. Intent It is the intent of this section to allow reasonable use of shoreline property by allowing decks with attached seating and enclosed storage to be located in front yard and ordinary high water line setback areas. It is also intended to only allow decks in locations where shoreline vegetation can be retained to protect scenic beauty, control erosion, reduce septic tank effluent and reduce other nutrients from entering the water. It is recognized that there are shoreline areas where decks and/or storage are not appropriate or reasonable because of the limited area between the road right-of-way and the Ordinary High Water Line. It is also recognized that the levels of the Great Lakes vary over time, and it can be hazardous to build structures where they may be damaged by high water or become a hazard to boats if they are destroyed by wave action.
2. Decks (including attached seating and/or attached storage) shall be allowed within the Ordinary High Water Line and the Front Yard setbacks in the case of properties located along the Great Lakes shoreline, provided:
 - (a) All parts of the deck, attached seating, storage and railing shall be constructed within a building envelope as provided below: (See Figure 6-1)
 - i. Located a minimum distance of 35 feet from the Ordinary High Water Line which is 581 feet above sea level (USGS).
 - ii. Located above the Flood Elevation Line which is 584 feet above sea level (USGS).;
 - iii. Located outside the fifteen foot side yard setbacks;
 - iv. The floor of the deck at any point shall not have a height greater than thirty (30) inches above the finished grade of the site and no higher than the center of the traveled surface of the adjacent roadway.
 - v. Attached Seating shall be no higher than 34 inches above the floor of the deck and no higher than 34 inches above the center of the traveled surface of the adjacent roadway.
 - vi. Enclosed storage shall be no higher than 34 inches above the floor of the deck or 64 inches above finished grade, whichever is higher, provided that it is no higher than 34 inches above the center of the traveled surface of the adjacent roadway.
 - (b) There shall be no walls, roofs or other construction attached to a deck other than the allowed seating, storage and railings required to meet the minimum requirements of construction codes.
 - (c) Unattached items such as umbrellas, grill, swing or hammock are allowed as accessories to a deck.
 - (d) Enclosed storage areas shall be constructed so as to conceal all stored material.
 - (e) The total area of land covered by the deck, seating and storage shall not exceed ten (10%) percent of that land area within the side yard setbacks extending: a) from the road right-of-way to the ordinary high water mark; or b) where there is a residence on the

parcel, from a line parallel to the road right-of-way and touching the closest part of the foundation of the residence to the ordinary high water line.

(f) No deck shall be constructed within a road right-of-way.

(e) Rental of Non-owner Occupied Dwelling: **(REVISED BY AMENDMENT 182)**

1. Intent -This is a clarifying amendment that confirms the determination by the Zoning Board of Appeals on September 9, 1999, that the minimum length of time that a dwelling may be rented and be in conformance with the intent of the ordinance is one month and reaffirmed by the Zoning Board of Appeals on September 11, 2008 as 30 days. This is also to distinguish between rental of a "non-owner occupied dwelling" and "Bed and Breakfast" which is rental of a owner occupied dwelling.
2. A property owner may rent a non-owner occupied dwelling, provided that the minimum length of time that the dwelling may be rented is 30 days.

(3) Public Recreation:

(4) Storage of Trailer Units:

(5) The Keeping of Domestic Pets: Provided that all pets are so maintained as to not constitute a public nuisance and provided further that in the event the same are horses or livestock, then the sheltering structure shall be at least two hundred (200 feet) from any lot line and the pasturing area shall be at least one hundred (100 feet) from any lot line; and both the pasturing area and the sheltering structure shall be at least two hundred (200 feet) from any well or residence.

(6) General Farming and Horticultural Uses: Including the carrying on of usual soil practices of cultivation, spraying and fertilization including the use of barnyard and poultry manure, and also including migrant workers' quarters and roadside stands for the sale of agricultural products, but excluding the raising and grazing of farm animals and fowl excepting as permitted in (5) above.

(7) Family Day Care Homes and Group Day Care Homes:

- (a) Such uses shall be duly licensed by the State Department of Social Services.
- (b) Fencing of outdoor play areas may be required should it be determined by the Zoning Administrator that conditions exist in the immediate vicinity which could be hazardous to the user children or that objectionable trespass could occur onto neighboring properties by the user children. The Zoning Administrator shall make such determination by contacting adjacent property owners by U.S. Mail and allowing a ten (10) day response time to receive comments from the neighbors regarding such probability.
- (c) The Zoning Board of Appeals may, at any time, limit the hours of operation of a family day care home should they receive any written complaints regarding operating hours.

Section 7.3 Supplementary Height and Area Regulations:

Section 7.3.1 Permitted Exceptions: When a given use is permitted in any District, the following kinds of structural appurtenances shall be permitted to exceed the otherwise required height limitations for authorized uses, provided that they shall not be used for human occupancy:

- (1) Ornamental church steeples and cupolas.
- (2) Functional chimneys, ventilators, television aerials and ham radio antenna.

(REVISED BY AMENDMENT 159)

Section 7.3.2 Permitted Exceptions, Agricultural Districts: In the agricultural district, traditional agriculture related buildings, such as barns and silos, may be constructed to heights in excess of that specified for the district, provided they are first granted a special use permit for such exception under the procedures and requirements of Section 8.1 of this Ordinance.

Section 7.3.3 Individual lot areas in plats abutting certain agricultural lands described in Section 4.7.10 of the Township Subdivision Control Act recorded subsequent to the date of this amendment may be less than the required minimum PROVIDED the average lot size in the recorded plat is not less than the required minimum and PROVIDED FURTHER that any reduced lot size is not less than Seventy (70) percent of the required lot area. Provision for reduced lots shall be stated on the recorded plat so that minimum average lot sizes will be maintained in the event of any subsequent amendments to the plat. No more than twenty (20) percent of the total lots in the plat shall contain less than the required minimum lot area.

Section 7.3.4 Any lot existing and of record on the effective date of this original Ordinance may be used for any permitted use specified for the District in which such lot is located whether or not such lot complies with the lot area and width requirements of this Ordinance, PROVIDED that all other requirements of this Ordinance are complied with, and PROVIDED FURTHER that not more than one (1) dwelling unit shall occupy any lot except in conformance with the required lot area for each dwelling unit.

Section 7.4 Supplemental Great Lake Shoreland Regulations:

Section 7.4.1 Intent and Purpose: It is the intent and purpose of this Ordinance to protect water quality and land resources related to the Great Lakes Shoreland for the future health, safety and welfare of Township residents.

Section 7.4.2 Shared Waterfront Ownership: Any waterfront land that is to be used by more than one family shall meet the following requirements:

- (1) Intent It is the intent of this section to reduce the conflicts that occur between residential single family use and shared waterfront use, such as a number of families using the beach, making noise, trespassing, temporarily storing boats, boat hoists and other equipment.

- (2) Land Use Permit Where more than one family has Shared Waterfront Ownership in the waterfront property, a land use permit shall be obtained from the Zoning Administrator. The application for land use permit shall indicate the number of families with access rights, the name and address of a principal family member for each family, the name and address of one person who shall receive the tax bill in the event that all families do not have taxable real property in Peninsula Township and a site plan showing compliance with the minimum requirements of this Section 7.4.2. The Zoning Administrator shall be notified of any change in ownership.
- (3) Minimum Lot Widths and Vehicle Parking Space Requirements:
- (a)
- | No. of Families
With Access Rights | Minimum
Lot Width |
|---|----------------------|
| Two Families | 100 |
| Three Families | 150 |
| Four Families | 200 |
| Over Four Families
(Five additional feet per family) | |
- (b) One parking space for each boat hoist shall be provided off the traveled portion of the road such that all portions of a parked vehicle are at least five (5) feet from the driving lane to provide safe egress from the vehicle.
- (c) Each parking space shall be a minimum of twenty-three (23) feet in length. The parking space does not have to be paved or graveled. **(REVISED BY AMENDMENT 122) REVISED BY AMENDMENT 190)**
- (4) Group docking, hoist and other related facilities and boat hoists shall not exceed one dock per parcel and one boat hoist per fifty (50) feet of shore line, measured at the ordinary high water mark, and shall be located as near as possible to the center of the parcel.
- (5) No dock shall be wider than seven (7) feet and no longer than necessary to provide adequate water depth for the boat using the dock or boat hoist.
- (6) No dwelling units or clubhouses are allowed on shared waterfront parcels.

- (7) The area within fifteen (15) feet of side lot lines shall not be used for the permanent or temporary placing or storage of boats, boat hoists and other equipment, nor for locating fire pits or decks flush with the ground.
- (8) A portable toilet is allowed, provided it is not placed within a road right-of-way, and not closer than twenty (20) feet from the water's edge. Also provided that screened shall be between the toilet and the nearest property line, the road and the water.
(REVISED BY AMENDMENT 109B)

Section 7.4.3 Filling and Grading Within 200 feet of Normal High Water Mark: The following rules shall apply to any filling, grading or other earth movement within 200 feet of the normal high water mark to prevent harmful erosion and related sedimentation:

- (1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (2) Temporary ground cover such as mulch must be used as soon as possible and permanent cover such as sod be planted.
- (3) Diversions, silting basins, terraces and other methods must be used to trap any sediment.
- (4) Fill must be stabilized according to accepted engineering practices.
- (5) The Zoning Administrator may issue a land use permit for a sea wall without regard to the Minimum yard setback from the ordinary high water mark otherwise required in Section 6.8.1 when a sea wall is necessary to protect or prevent structures on the premises from erosion damage caused by high water.

Section 7.4.4 Removal of Shore Cover: Regulation of tree cutting along the Great Lakes shoreline is necessary to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. These provisions shall not apply to the removal of dead, diseased or dying trees at the discretion of the landowner, or to silvicultural thinning upon recommendation of a forester. Tree cutting in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the normal high water mark of the shoreline shall be limited in accordance with the following provisions:

- (1) No more than 30% of the length of this strip shall be clear cut to the depth of the strip.
- (2) Provided, further that cutting of this 30% shall not create a clear cut opening in this strip greater than thirty (30) feet wide for every one hundred (100) feet of shoreline.
- (3) In the remaining 70% length of this strip cutting shall leave sufficient cover to screen cars, dwellings, accessory structures, as seen from the water; to preserve natural beauty and to control erosion.
- (4) Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

- (5) Paths - any paths, roads or passages within the strip shall be so constructed or surfaced as to be as effective in controlling erosion.
- (6) Cutting Plan - as an alternative to the above requirements a special cutting plan allowing greater cutting may be permitted by the Board of Appeals. In applying for such a permit the Board may require the lot owner to submit a sketch of his lot including the following information: location of all structures, location of parking, gradient of the land, existing vegetation, proposed cutting and proposed replanting. The Board may grant such a permit only if it finds That such special cutting plans:
 - (a) Will not cause undue erosion or destruction of scenic beauty, and
 - (b) Will provide substantial shielding from the water of dwellings, accessory structures and parking areas. The Board may condition such a permit upon a guarantee of tree planting by the lot owner. Such an agreement shall be enforceable in court.
- (7) Commercial Forestry - from the inland edge of the thirty-five (35) foot strip to the outer limits of the shoreland the commercial harvesting of trees shall be allowed when accomplished under accepted forest management practices. The maintenance and improvement of water quality shall be emphasized in all timber harvesting operations. The purpose of this provision will favor long-lived species.

Section 7.4.5 Review by Michigan Water Resources Committee If it is determined by the Zoning Administrator that any proposed structure may adversely effect, deteriorate or alter the shoreland resource, preliminary plans and specifications shall be transmitted to the staff of the Michigan Water Resource Commission for review and approval. If it is determined by the Water Resources Commission staff that such development would adversely affect public and private rights, impair the public trust or otherwise deteriorate the unique shoreland resource, such determination shall be considered sufficient justification for denying a building permit.

Section 7.4.6 Deleted by Amendment 61(10) 8/13/85

Section 7.4.7 Flood Plain and Wetland Controls: (REVISED BY AMENDMENT 195)

(A) Wetland

Definition of Wetland: Land characterized by the presence of water at frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh. A wetland may or may not be contiguous to the Great Lakes, an inland lake or pond, or a river or stream. This applies to public, commercial, and private lands regardless of zoning or ownership. Wetlands are regulated per Part 303 of the Natural Resources and Environmental Act, 1994 PA 451, as amended.

Development: There shall be no development or modification of any kind within a wetland area without there first having been issued a wetlands permit by the Michigan Department of Environmental Quality (MDEQ) and/or an Earth Change and Storm Water Permit from Peninsula Township. Any such approved development shall be subject to the following:

- (1) A setback of 25 feet shall be maintained between any structure or impervious (including but not limited to parking lot, driveway, paths, etc.) surface and wetland.
- (2) Except as specified in subsection (3), there shall be no development or modification of any kind within a wetland or wetland setback. Wetlands may be used for density calculations and incorporated in Storm Water Management Plans.
- (3) Boardwalks 3 feet or less in width shall be permitted following issuance of a Land Use Permit and subject to MDEQ approval, upon finding there will be no adverse impact on ground or surface waters of the wetland. The Zoning Administrator or Planning Commission, as applicable, may require the applicant to obtain a formal determination of the wetland boundary by the MDEQ.
- (4) Wetland Identification: In the event of reasonable doubt as to the presence of a wetland, the Zoning Administrator may require the applicant to submit detailed engineering studies prepared by a State of Michigan certified wetland delineator showing the existence, extent, and location of wetland areas. The Zoning Administrator shall use such information provided in making a final determination of the presence of a wetland.
- (5) Compliance with Part 303, Wetlands Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

(B) Flood Plain

Intent and Purposes: The purpose of these regulations is to protect those areas of the Township which are subject to predictable flooding in the flood plain of the Great Lakes. All land included in the flood plain shall be subject to the requirements and prohibitions specified herein, in addition to the normal zoning district requirements in which the land is located.

- (1) Notwithstanding anything to the contrary in this entire Ordinance, any request to fill in a flood plain of a parcel or a portion thereof, must be evaluated together with the proposed use of the land after the filling in of the flood plain or portion of the flood plain, and such proposed use must be a permitted use as set forth in Section 7.4.7 (B) (3). A request to fill in the flood plain or a portion thereof will not be considered alone and is not permitted.
- (2) Flood Plain Area Identification: Flood plain areas shall be those areas falling below elevation 584 feet North American Vertical Datum of 1988 or in accordance with all FEMA FIRM panel maps effective 8/28/2018 . Such flood plain areas may not be filled in except as specifically set forth and subject to Section 7.4.7 (B) (1) and (3), and (5). The Zoning Administrator shall obtain, review and reasonably utilize, flood elevation data available for federal, state and or local resources. The most recent flood evaluation data received from FEMA shall take precedence. In the event of reasonable doubt as to the location of a flood plain, the Zoning Administrator may require the applicant to submit detailed engineering studies prepared by a professional engineer, licensed surveyor, plant ecologist, hydrologist, soils scientist or other relevant professional. showing the extent and location of the flood plain areas per Part

31 of the Act, 451 PA 1994, as amended.

(3) Permitted Uses: In conformity with Section 7.4.7(B)(1), no uses shall be permitted to occur within a flood plain or to occur on a parcel for which a request has been made to fill in the flood plain or a portion thereto, except the following:

- (a) Gardens, preserves, and low intensity use areas in parks.
- (b) Boardwalks and paths no wider than 3 feet.
- (c) Yard and setback areas or other open space portions required for any District.
- (d) Access drives for utility uses, when designed so as not to increase the possibility of flood or be otherwise detrimental to the public health, safety, and welfare.

(4) Restricted Uses: Any structure where human habitation is contemplated either as a place of residence, place of work, or place of public gathering shall be prohibited from locating in the flood plain as provided by 7.4.7(B)(1). These structures shall be installed above the Base Flood Elevation (BFE).

(5) Required Conditions For Permitted Uses: To the extent that a request to fill in the flood plain on a parcel or a portion of a parcel along with the permitted use as set forth in Sections 7.4.7 (B)(1) or (3) has been granted, such granting of the request is subject to the following conditions:

- (a) Any work, construction, or filling in the flood plain shall conform to the requirement of Section 7.4.7 of this Article, and permits for such work, construction, or filling in the flood plain shall not be issued unless they receive review and approval by the Zoning Administrator and the Township Engineer.
- (b) Any work, construction, or filling in the flood plain shall be so fixed to the site as to withstand the force of the expected velocity of flood water. The Zoning Administrator may require professional engineering, licensed surveyor, landscape architect, plant ecologist, hydrologist, or other professional review of any such construction.
- (c) The Zoning Administrator may request additional information prepared by a registered professional engineer, licensed surveyor, plant ecologist, hydrologist, soils scientist or other relevant professional. Information may include: topographic information, studies to determine the effects of flooding or flow of water, determination that the use will not adversely affect floodplain capacity, and that the use will not generate storm water, sedimentation or other water quality concerns.
- (d) All of the conditions set forth herein must be fully satisfied before applicant may

proceed with the work, construction, or filling in the flood plain, or a portion thereof.

(e) Compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994, PA 451, as amended.

(6) Vegetated Buffer Protection: All shoreline properties including flood plain areas shall have a vegetated strip inland of the beach area to filter nutrients and storm water and give protection from lake waves. Use of deep rooted shrubs, tree, and native plants provide greater protection than man-made structures.

(7) Retaining Wall or Seawalls: Notwithstanding Section 7.4.3(5), There shall be no retaining walls or seawalls in any flood plain area.

Section 7.5 Non-Conforming Uses and Structures: (REVISED BY AMENDMENT 171B)

Section 7.5.1 Intent and Purpose:

Non-Conforming Use. At the discretion of the owner, the lawful use of any building, structure, land or premises existing prior to the effective date of this Ordinance, although the use does not conform to the provisions of this Ordinance, may be continued; and such use of any building may be extended throughout such building, provided no structural changes be made therein except those required for safety and sanitation.

Non-Conforming Structure. It is the intent to allow the continued use of a non-conforming structure. It is also the intent that the Zoning Board of Appeals may grant a variance to move or reconstruct a non-conforming structure where the structure was legally built on parcels that would be otherwise unbuildable due to overlap in the yard requirements. It is not the intent to allow significant increases in the intensity of previously established residential use on otherwise unbuildable lots. It is not the intent to allow the construction of a residence on a vacant parcel where yard requirements meet or overlap such that there is no buildable area on the parcel.

Section 7.5.2 Change of Use: Whenever the non-conforming use of any structure or land is changed in whole or in part to a conforming use, such use shall not thereafter be reverted to any non-conforming use. If the non-conforming use of any building, structure or land is discontinued through vacancy, lack of operation or otherwise for a continuous period of twelve (12) months, then any future use of said building, structure or land shall conform, in its entirety, to the provisions of this Ordinance; provided, however, that the Board of Appeals may, upon application within six (6) months of the termination of said period, permit the resumption of such non-conforming use.

Section 7.5.3 Reconstruction of Damaged Non-Conforming Structure: Nothing in this Ordinance shall prevent the reconstruction, repair or restoration and the continued use of any non-conforming building or structure damaged by fire, collapse, explosion, acts of God or acts of the public enemy, subsequent to the effective date of this Ordinance, wherein the non-conforming user has first obtained the approval of the Board of Appeals, wherein the Board of Appeals has first determined that the continued use will be substantially the same as the previous non-conforming use and that such continued use will not be detrimental to the health, safety and welfare and that substantial justice is achieved.

Exhibit 3

Peninsula Township - Draft (2021) Zoning Ordinance

Article 3: Zoning Districts and Map Section 3.13: Great Lakes Shoreline Regulations

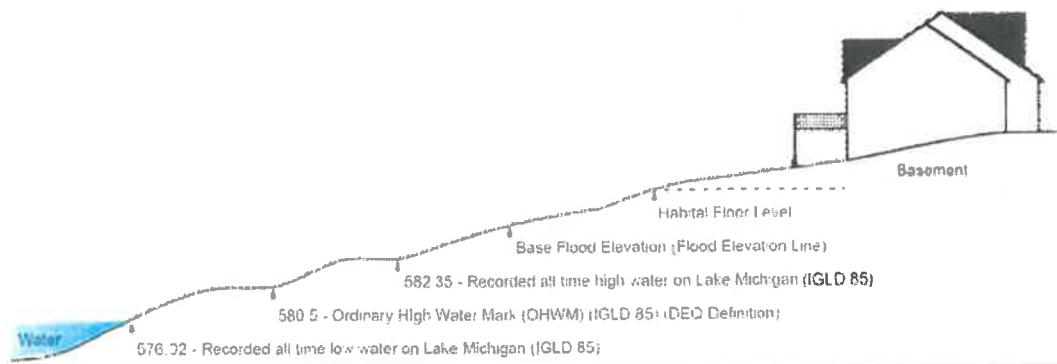
Section 3.13 Great Lakes Shoreline Regulations (Currently Sections 6.2 and 7.4)

- (A) **Intent and Purpose.** It is the intent and purpose of these shoreline regulations to protect and preserve the 42 miles of Grand Traverse Bay shoreline in Peninsula Township and to promote the health, safety, and welfare of the general public while allowing multiple uses. The water levels of the Great Lakes vary continually, and high water, wave action, or ice can cause damage to existing structures and property and can also become a hazard to neighboring properties. Shallow waters near shore also support lake ecology and provide habitat for a greater variety of organisms than all other aquatic areas.

To protect and preserve the Grand Traverse Bay shoreline, a number of best management practices are embodied in the following regulations. These include measures to minimize the effects of waves, ice, fluctuating water levels, and erosion and to maintain water quality, ecological health, and scenic views. These regulations also support best management practices associated with the Michigan Department of Environmental Quality.

- (B) **Great Lakes Coastal Elevations and Marks.** Coastal elevations or marks are measurements in feet above sea level along the Great Lakes. The federal government, state, and county agencies have established these marks and the township subsequently adopted them. The ordinary high water mark (OHWM) is 580.5 feet above sea level I.G.L.D. 1985 (International Great Lakes Datum) as defined and regulated under Part 325, Department of Environmental Quality, and shown below (see Figure 3-1). This elevation is the point from which certain setbacks are defined, and represents the point from which the boundaries of the waterfront regulated area and upland regulated area are defined as shown in Figure 3-2. The floodplain is established by the most current FEMA FIRM panel maps (adopted by Peninsula Township effective August 28, 2018). The base flood elevation is provided in the flood insurance study (FIS) report and flood insurance rate maps (FIRM). The lowest level for a habitable floor in a structure shall be constructed above the floodplain level and base flood elevation (BFE) in compliance with applicable local, state, federal, and international building codes as enforced by the Grand Traverse County Construction Code. (See Figure 3-1 and also regulations for floodplain in Section 8.02).

Figure 3-1. Elevations and Marks along Great Lakes Shoreline



- (C) **Establishment of Great Lakes Shoreline Regulated Areas.** There are two regulated areas along the Great Lakes Shoreline, measured inland from the ordinary high water mark (OHWM). These areas are described and illustrated below (See Figure 3-1).

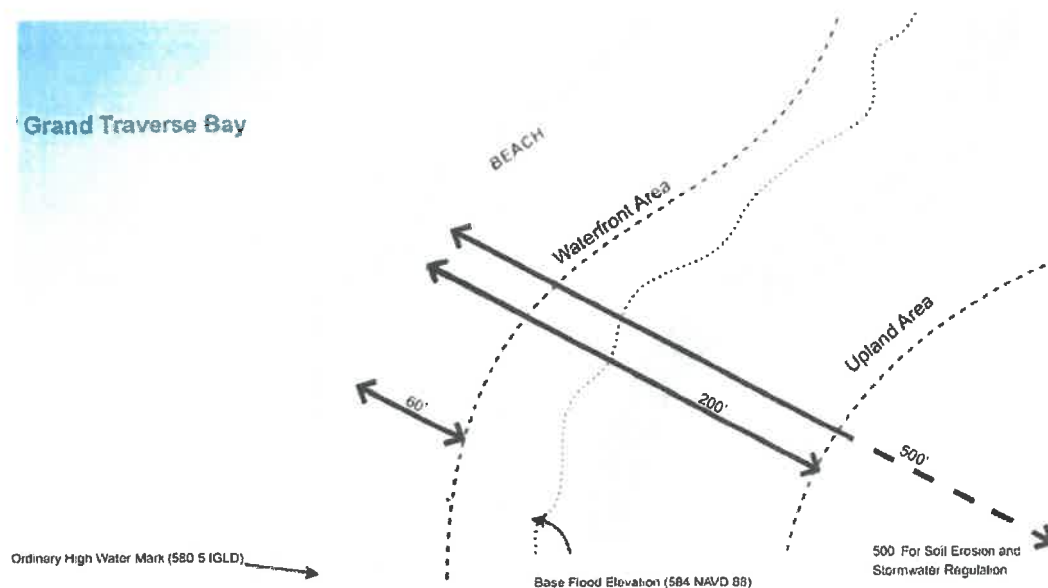
Article 3: Zoning Districts and Map
Section 3.13: Great Lakes Shoreline Regulations

(1) **Waterfront Regulated Area.** The beach area and 60 feet inland from the OHWM (see [Section 3.13\(F\)](#)).

(2) **Upland Regulated Areas.** Two hundred feet from the OHWM for grading, dredging, or filling (see [Section 3.13\(G\)\(1\)](#)) and commercial forestry (see [Section 3.13\(G\)\(2\)](#)).

Additionally, the area between the OHWM and 500 feet inland is subject to regulations related to soil erosion and stormwater management (see [Section 3.13\(F\)\(3\)](#) and [Section 8.05](#)), and most of the Great Lakes shoreline is also associated with a floodplain. The floodplain boundary relates to the base flood elevation. Associated regulations are contained in [Article 8](#).

Figure 3-2. Great Lakes Shoreline Regulated Areas



(D) **Land Use Permit Required.** Activities within the waterfront area and upland area such as increasing the amount of impervious cover on the parcel, earth moving or filling, or reducing the amount of vegetated buffer or tree canopy cover require a land use permit. A site plan for the parcel must be presented to the zoning administrator for administrative review to ensure compliance with these regulations.

- (1) The requirement for a land use permit is in addition to any county soil erosion and sedimentation control (SESC) or other county or state requirement that may apply.
- (2) Regulations on stormwater management may also apply to parcels with structures or impervious surfaces (see [Section 8.05](#)).
- (3) Regulations in this section apply in addition to those contained in the applicable zoning district. Where the provisions of this section conflict with other applicable zoning requirements, the provisions of this section shall apply.
- (4) Normal gardening activities and maintenance of landscaping in compliance with this section do not require a land use permit.

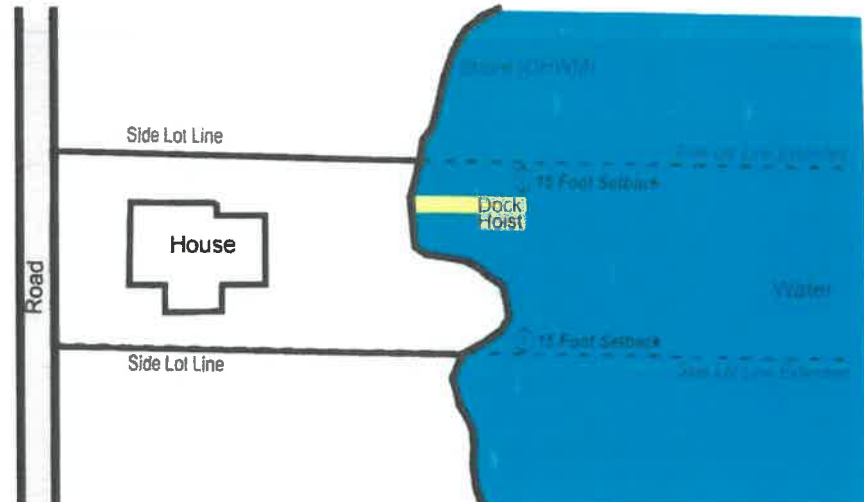
(E) Waterfront Regulated Area (most from current Section 7.4.4).

- (1) **Intent and Purpose.** The intent and purpose of the waterfront regulated area is to protect the natural vegetation along the shoreline in order to prevent erosion, improve stormwater quality, limit invasive shoreline plants, and limit the application of pesticides, herbicides, and fertilizers while maintaining fish and wildlife habitats within areas of the township shoreline.

(2) **Docks (currently Section 6.2.2(2)(c)).**

- (a) **Docks and Boat Hoists.** A maximum of one dock is allowed per parcel. This dock may have one boat hoist per 50 feet of shoreline associated with the parcel, measured at the OHWM. Any pre-existing lot of record is allowed at least one dock and one boat hoist. No part of any dock or hoist may be located within 15 feet from a line that represents an extension of the side lot lines into the water, generally perpendicular to the shore, except as provided for in (e) below. Docks and hoists are temporary structures, as provided for in (d) below, and those existing at the time of adoption of this ordinance section must meet all requirements upon installation for the following year.

Figure 3-3. Dock and Hoist Placement



- (b) **Nonconforming Lots.** A maximum of one dock and one boat hoist is allowed on properties of insufficient size for a single-family dwelling, provided the lot is a pre-existing lot of record or has a minimum width of 50 feet; and a minimum of two parking places must be provided off the adjacent road right of way. In the event of properties owned by the same party being separated by a road, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling.
- (c) **Maximum Dock Width and Length.** No dock shall be wider than seven feet and no longer than necessary to provide adequate water depth for the boat using the dock or boat hoist.
- (d) **Storage of Docks and Hoists.** Docks and hoists are temporary structures and must be removed on or before December 31 of each year to avoid ice damage and to prevent potential hazards to navigation and neighboring properties.
- (e) **Shared Waterfront Docks.** Docks and hoists on shared waterfront properties are allowed provided that each property owner provides to the zoning administrator such owner's written consent to the sharing arrangement and provided that such arrangement does not result in any more docks or hoists than would otherwise be allowed.
- (3) **Temporary Storage of Docks and Boat Hoists.** Temporary off-season storage of portable docks, boats, boat hoists, and other water recreational items is permitted provided that

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Section 3.13: Great Lakes Shoreline Regulations

storage does not take place in a required side yard setback or road right of way. All items stored outdoors shall be operational.

- (4) **Septic Areas Prohibited.** Septic tanks and septic systems filtration fields are prohibited unless the Grand Traverse County Health Department determines that there is no other feasible location.
- (5) **Paths and Impervious in-Ground Structures.** Any paths or passages on the ground within the vegetated buffer strip (see [Section 3.13\(E\)\(7\)](#)) shall be so constructed or surfaced as to be pervious and effective in controlling erosion. Patios and similar impervious surfaces are prohibited.
- (6) **Structures and Impervious Surfaces.** Any above-ground structure or impervious surface such as a deck, walkway, or boat ramp must be reviewed and approved by the township zoning administrator and other applicable reviewing agencies prior to construction taking place. Boardwalks three or fewer feet in width shall be laid on the surface of the ground with no post holes or piers using open pile construction. Access steps required to negotiate changes in site elevation are permitted provided that landings are no greater than four feet by four feet.
- (7) **Vegetated Buffer Strip Required.** At least 70% of the first 35 feet landward from the OHWM shall be a vegetated buffer strip covered with a mixture of deep rooted trees, deep rooted shrubs, and other plants to establish a viable land cover. A minimum of 30% of the tree and shrub cover must be made up of a mature canopy or trees that are well suited for the site and will be at least 40 feet in height at maturity. Trees shall be preserved so that views from the Grand Traverse Bay have an appearance of being unbroken and to prevent shoreline erosion. This is not intended to prevent the selective trimming for views and removal of diseased or unhealthy trees, however clearcutting is prohibited. Trees and the vegetated strip are the most successful methods to retain the shoreline, filter nutrients, reduce the water and wind dynamics that erode property and destroy the character of the Township. Because turf grasses do not have the holding power of deep rooted plants, not more than 50% of the vegetated buffer strip may be turf grasses. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and preserving natural beauty.
- (8) **Plant Materials and Species.** Vegetation used to provide the required buffer strip shall consist of non-invasive trees, shrubs, and dune grasses. Use of native plant species is encouraged. The township may maintain and provide a list of invasive and other prohibited species.
 - (a) **General.** Harvesting of trees shall not occur except in conformance with a forest management plan prepared by, and under the supervision of, a professional forester and/or licensed landscape architect using Michigan Department of Natural Resources best management practices for forestry.
 - (b) **Vegetation.** A minimum of 30% of the tree and shrub cover will be made up of a mature canopy or trees that are well suited for the site and will be at least 40 feet in height at maturity. Trees shall be preserved so that views from Grand Traverse Bay have an appearance of being unbroken and to prevent shoreline erosion. This is not intended to prevent the selective trimming for views and removal of diseased or unhealthy trees, however clearcutting is prohibited.
- (9) **Removal of Shore Tree and Shrub Cover in the Waterfront Area (currently Section 7.4.4).** Regulation of tree and shrub cutting along the Great Lakes shoreline is necessary to protect scenic beauty, control erosion, and reduce effluent and nutrient flow from the shore land. These provisions shall not apply to the removal of dead, diseased, or dying trees and shrubs at the discretion of the landowner or to silvicultural thinning upon recommendation of a forester. Tree cutting in a strip parallel to the shoreline and extending 35 feet inland from all points along the OHWM of the shoreline shall be limited to:

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- (a) **Maximum Clearing.** No more than 30% of the length of this strip shall be clear cut to the depth of the strip.
 - (b) **Maximum Clear Cut Opening.** Cutting of this 30% shall not create a clear cut opening in this strip greater than 30 feet wide for every 100 feet of shoreline.
 - (c) **Remaining Vegetative Cover.** In the remaining 70% length of this strip, cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures as seen from the water to preserve natural beauty and to control erosion.
 - (d) **Re-Vegetation.** If the vegetative cover is less than 70% prior to construction activity or if the construction activity will result in reducing the vegetative coverage to less than 70%, then the plan submitted for the land use permit shall include additional vegetative cover to be planted in the waterfront/OHWM area that will achieve 70% vegetative coverage over the long term. The plan submitted by the applicant to meet this requirement shall be certified by a registered landscape architect. If compliance with this requirement is not feasible, the applicant's registered landscape architect must state the reasons on the certified plan.
 - (e) **Alternate Tree Cutting Plan.** As an alternative to the above requirements, a special cutting plan allowing greater cutting may be permitted by the zoning administrator, or the zoning administrator may defer the decision to the planning commission. In applying for such a permit, the zoning administrator or planning commission shall require the lot owner to submit a site plan that includes the location of all structures, the location of parking, the gradient of the land, the existing vegetation, the proposed cutting, and the proposed replanting. The plan shall be certified by a registered landscape architect. The approving authority may grant such a permit only if it finds that such special cutting plans:
 - (i) Will not cause undue erosion or destruction of scenic beauty; and
 - (ii) Will provide substantial shielding from the water of dwellings, accessory structures, and parking areas. The zoning administrator may condition such a permit upon a guarantee of tree planting by the lot owner via a performance guarantee and development agreement reviewed by the township attorney.
- (10) **Yard Waste Storage Prohibited.** Storage of leaves, grass clippings, and similar yard and garden waste is prohibited.
- (11) **Dredging and Filling.** Dredging and filling, including the addition of beach sand, is prohibited within any floodplain, wetland area, or below the OHWM. (See also [Section 8.02](#), [Section 8.01](#), and [Section 3.13\(G\).](#))
- (12) **Seawalls.** The best protection for structures and property on the shoreline are methods that use natural shoreline treatments such as plantings and natural stone to limit the loss of property due to erosion. Where vertical seawalls are built, the gradual transition from shallow water to upland is destroyed. In addition, wave action off vertical seawalls causes bottom scouring to occur, stirs bottom sediments, increases water turbidity, and impacts spawning areas and aquatic vegetation. These negative effects of vertical seawalls on natural resources damage not only the subject property but also adjacent properties. Therefore, the zoning administrator may issue a land use permit for a seawall only to protect an existing structure and only if:
- (a) A registered engineer has submitted a certified report that all other options have been reviewed to protect the property and a seawall is the only feasible option. This report must be submitted to the zoning administrator and must be approved by the township engineer;

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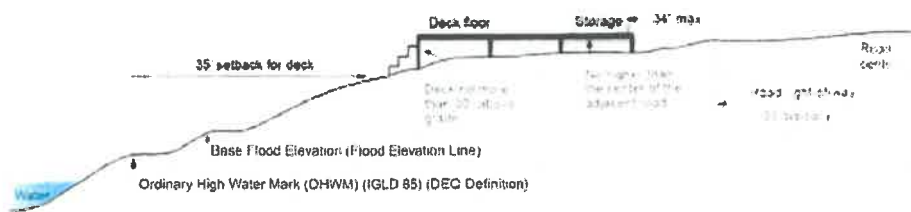
- (b) A permit has been obtained from MDEQ and the U.S. Army Corps of Engineers; and
- (c) All floodplain requirements of [Section 8.02](#) have been met.

(13) **Road Ends.** There shall be no structures or restriction of access at public road ends.

(F) Decks, Storage, and Walkways Located in the Waterfront Regulated Area . (currently Section 6.2.2(2)(d)).

- (1) **Intent.** It is the intent of this section to allow reasonable use of shoreline property by allowing decks with attached seating and enclosed storage to be located in the waterfront regulated area. It is also intended to only allow decks in locations where shoreline vegetation can be retained to protect scenic beauty, control erosion, reduce septic tank effluent, and reduce other nutrients from entering the water. It is recognized that there are shoreline areas where decks and/or storage are not appropriate or reasonable because of the limited area between the road right of way and the OHWM. It is also recognized that the level of the Great Lakes varies over time, and it can be hazardous to build structures where they may be damaged by high water or become a hazard to boats or neighboring properties if they are destroyed by wave action.
- (2) **Deck and Storage Requirements.** Uncovered decks (including attached seating or attached storage) shall be allowed within the area between the OHWM and the front yard setback for properties with a dwelling or within the area between the OHWM and the road right of way for properties without a dwelling, provided all of the following are met:
 - (a) **Location.** All parts of the deck, attached seating, storage, and railing shall be constructed within a building envelope as illustrated and described below (see [Figure 3-4](#)).

Figure 3-4. Deck Elevation, Setbacks, and Standards



- (i) **Ordinary High Water Mark Setback.** Located a minimum distance of 35 feet from the OHWM.
- (ii) **Above**
- (iii) **Flood Elevation.** Compliance with [Section 8.02](#).
- (iv) **Side Yard Setback.** Located at least 15 feet from the side lot line.
- (v) **Maximum Height of Deck.** The floor of the deck at any point shall not have a height greater than 30 inches above the finished grade of the site and no higher than the center of the traveled surface of the adjacent road.
- (vi) **Maximum Height of Attached Seating.** Attached seating shall be no higher than 34 inches above the floor of the deck, provided that it is no higher than 34 inches above the center of the traveled surface of the adjacent road.
- (vii) **Maximum Height of Enclosed Storage.** Enclosed storage shall be no higher than 34 inches above the floor of the deck, provided that it is no higher than 34 inches above the center of the traveled surface of the adjacent road.

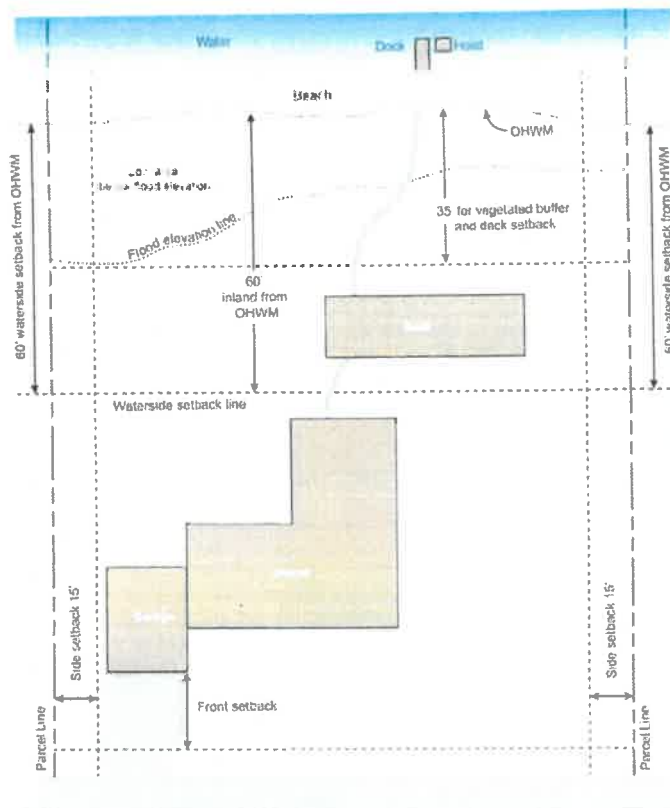
- (b) **Allowable Attachments.** There shall be no walls, roofs, or other construction attached to a deck other than the allowed seating, storage, and railings required to meet the minimum requirements of construction codes.
- (c) **Unattached Items.** Unattached items such as umbrellas, grills, swings, or hammocks are allowed as accessories to a deck.
- (d) **Concealment of Enclosed Storage.** Enclosed storage areas shall be constructed so as to conceal all stored material.
- (e) **Maximum Coverage Area on Lots without a Residence.** The total area of land covered by the deck, seating, and storage located within the waterfront area and located outside of the required side yard setbacks and any road right-of-way extending from the OHWM shall not exceed 10%. If at a future time a residence is to be constructed, before the occupancy permit is approved, the areas of the deck, seating, and storage shall be removed. For lots with a residential dwelling, the maximum lot coverage shall meet the requirements of the zoning district (see [Section 4.02](#)).
- (f) **Prohibited Structures.** Patios and similar impervious structures are prohibited within 35 feet of the OHWM.
- (g) **Prohibited in Road Right-of-Way or Private Road Easement.** No deck shall be constructed within a road right-of-way or private road easement.

(G) Upland Area Regulations. The following regulations apply within 200 feet of the OHWM:

- (1) **Grading, Dredging, or Filling (currently Section 7.4.3).** In addition to any state, county, or local soil erosion and sedimentation control requirements, the following rules shall apply to any filling, grading, or other earth movement beyond normal gardening within 200 feet of the OHWM to prevent harmful erosion and related sedimentation:
 - (a) The smallest amount of bare ground shall be exposed for as short a time as feasible;
 - (b) Temporary ground cover such as mulch must be used as soon as possible and permanent cover, such as sod, shall be planted;
 - (c) Diversions, silting basins, terraces, and other methods must be used to trap any sediment; and
 - (d) Fill must be stabilized according to accepted engineering practices.
 - (2) **Commercial Forestry.** From the inland edge of the required 35-foot vegetated buffer strip to the 200-foot limit of the upland area, the commercial harvesting of trees shall be allowed only when accomplished under accepted forest management practices. The maintenance and improvement of water quality shall be emphasized in all timber harvesting operations. The purpose of this provision will favor long-lived species.
- (H) Soil Erosion, Sedimentation, and Stormwater Management Regulations.** For all areas within 500 feet of the OHWM, Grand Traverse County requires soil erosion permits and Peninsula Township regulates stormwater management (see [Section 8.05](#) and the Peninsula Township Stormwater Control Ordinance #33 as amended).

Article 3: Zoning Districts and Map
Section 3.13: Great Lakes Shoreline Regulations

Figure 3-5. Summary of Great Lakes Shoreline Regulations



- (I) **Shared Waterfront Ownership (currently Section 7.4.2).** Any waterfront land where there is no dwelling that is to be used by more than one family shall meet the following requirements:
- (1) **Intent.** It is the intent of this section to reduce conflicts that occur between residential single-family use and shared waterfront use, to regulate use and storage of docks and hoists, and to reduce negative impacts on shoreline vegetation.
 - (2) **Land Use Permit.** Where more than one family has shared waterfront ownership in the waterfront property, a land use permit shall be obtained from the zoning administrator. The application for the land use permit shall indicate the number of families with access rights, the name and address of a principal family member for each family, the name and address of one person who shall receive the tax bill in the event that all families do not have taxable real property in Peninsula Township, and a site plan showing compliance with the minimum requirements of this ordinance. The zoning administrator shall be notified of any change in ownership and a new land use permit may be required.
 - (3) **Minimum Lot Widths and Vehicle Parking Space Requirements.** These requirements apply to shared waterfront property not approved within a subdivision or condominium.

Number of Families with Access Rights	Minimum Lot Width
Two Families	100
Three Families	150
Four Families	200
More Than Four Families	Five additional feet per family

- (a) One parking space for each boat hoist shall be provided off the traveled portion of the road such that all portions of a parked vehicle are at least five feet from the driving lane to provide safe egress from the vehicle.
- (b) Each parking space shall be a minimum of 23 feet in length. The parking space does not have to be paved or graveled. Any paving shall be of pervious material.
- (4) **Maximum Number of Docks and Boat Hoists.** Group docking, hoists, and other related facilities and boat hoists shall not exceed one dock per parcel and one boat hoist per 50 feet of shoreline, measured at the OHWM, and shall be located as near as possible to the center of the parcel.
- (5) **Maximum Dock Width and Length.** Where a dock is within the jurisdiction of Peninsula Township, no dock shall be wider than seven feet and no longer than necessary to provide adequate water depth for the boat using the dock or boat hoist.
- (6) **Dwellings and Clubhouses Prohibited.** No dwelling units or clubhouses are allowed.
- (7) **Minimum Side Yard Setback.** The area within 15 feet of side lot lines shall not be used for the permanent or temporary placing or storage of boats, boat hoists, and other equipment, nor for locating fire pits or decks flush with the ground.
- (8) **Portable Sanitary Facilities.** A portable toilet is allowed, provided the township is notified of the placement and maintenance schedule for the toilet. The toilet shall not be placed within a road right of way, closer than 30 feet from the OHWM, or in any side yard setback. The toilet shall be screened from the nearest property line, the road, and the water.

Section 3.14 Airport Overlay Zone District (currently Section 7.9)

Notwithstanding any provisions of this ordinance, any project located in the airport overlay zone district shall comply with all standards of 14 CFR Part 77, "Standards for Determining Obstructions to Air Navigation," prepared by the Department of Transportation, Federal Aviation Administration (FAA). In the event of conflict between this ordinance and any airport zoning regulations, the limitations and requirements most conducive to airport and air travel safety shall govern.

(A) Applicability.

- (1) Every parcel of land that lies in whole or in part within the airport overlay zone district as depicted on the official zoning map is subject to the regulations of this section.
- (2) The regulations of this overlay zone are in addition to any regulations in the underlying zoning district; however, these regulations supersede all conflicting regulations of the underlying zoning district to the extent of such conflict but no further.

(B) Height Limitations.

- (1) Notwithstanding any other provisions of this ordinance, no area of land or water or appurtenances thereof shall be used as to constitute an airport hazard.
- (2) No structure or vegetation shall interfere with or penetrate the airport critical zone, conical, or airport outer horizontal surface without prior review and approval by the FAA and, when applicable, the State of Michigan Aeronautical Department.
- (3) No structure within the airport inner horizontal surface area shall exceed the elevation of 774 U.S.G.S.

Exhibit 4

**Acme Township,
Grand Traverse County, MI**

E. Bicycle Parking: Bicycle parking shall be required for every new development and additions or improvements to existing developments that add over one thousand (1,000) square feet of additional impervious surface at the following rate:

1. Two (2) bicycle parking spaces plus one (1) bicycle parking space for every ten (10) vehicle parking spaces.

4.3 WATERFRONT OVERLAY DISTRICT

4.3.1 Intent and Purpose

The Township Board finds that protecting water quality, lakes, streams, wetlands, and other sensitive environmental features is good land use planning and protects the public health, safety, and welfare of the community. Thus, owners of waterfront lots have an added responsibility regarding the preservation and protection of these natural resources, water quality, and community scenic and recreational values.

4.3.2 Applicability

The standards of the Waterfront Overlay District shall apply to all private development and/or use of that portion of a lot or parcel of land within fifty (50) feet of the following:

- A. The ordinary high water mark on Grand Traverse Bay.
- B. The normal stream bank of Acme Creek, Bakers Creek, Tobacco Creek, Yuba Creek, and any associated tributaries.
- C. Any established wetland.

4.3.3 General Requirements

The following requirements shall apply to all uses, structures, and lands within the Waterfront Overlay District:

- A. Compliance with the Acme Township Stormwater Control Ordinance, as amended, is a zoning requirement and a condition of approval of any and all land uses and structures.
- B. As to any specific property on which commercial farm products are produced within the meaning of MCL 286.472(a), if any applicable Generally Accepted Agricultural Management Practices (GAAMP) approved by the Michigan Department of Agriculture conflicts with any provision of this chapter, the GAAMP shall control.
- C. The use of pesticides, herbicides and fertilizers shall be prohibited.
- D. Composting, including the collection and storage of leaves, grass clippings, or other similar yard/garden waste shall be prohibited.
- E. No fill or excavation shall be permitted, except as allowed through an approved shoreline stabilization project.

4.3.4 Natural Shoreline Buffer

- A. Purpose: The purpose of the natural shoreline buffer is to protect water quality by preventing soil erosion, providing a filter for the removal of nutrients,

pesticides, fertilizers, and other potential water pollutants, and to preserve a visual barrier by maintaining a strip of natural vegetation along the shoreline.

- B. Extent: The natural shoreline buffer shall include all lands located within twenty five (25) feet of the ordinary high water mark on Grand Traverse Bay, a normal stream bank, or an established wetland.
- C. Preservation: Vegetation within the natural shoreline buffer shall be maintained in a natural state. The removal or pruning of trees, shrubs or other native vegetation, and the mowing of grasses and herbaceous plants shall be prohibited within the natural shoreline buffer with the following exceptions:
1. Pruning to remove dead portions of trees, shrubs or other vegetation.
 2. Removal of dead trees, shrubs or other vegetation, however, the root systems shall be left in place for shoreline stabilization.
 3. Removal of invasive species as identified by the Northwest Michigan Invasive Species Network.
 4. Removing limbs and/or branches from living trees up to a height of twelve (12) feet above grade and trimming herbaceous plants that exceed a height of four (4) feet above grade to establish filtered views.
 5. Clearing and removal of vegetation to accommodate a walkway, a deck or patio structure, and/or to provide reasonable water access. Such allowed vegetation clearings shall be limited as follows:
 - 1) For parcels along Grand Traverse Bay, such clearing shall be limited to twenty (20%) percent of lot width at the ordinary high water mark, or twenty (20) feet, whichever is less.
 - 2) For parcels having a stream bordering or traversing the property, such clearing shall be limited to twenty (20%) percent of the length of the stream bordering or traversing the parcel, or twenty (20) feet, whichever is less.
 - 3) For parcels bordering or containing a wetland, such clearing shall be limited to twenty (20%) percent of the length of the wetland's border within or along the property line, or twenty (20) feet, whichever is less.
- D. Restoration: For any project or development requiring a land use permit on a waterfront lot that does not have an established natural shoreline buffer meeting the standards of this Section, the establishment, restoration, and/or maintenance of a natural shoreline buffer shall be required that meets the following standards:
1. Any and all fill material placed within the natural shoreline buffer shall be removed, except those placed as part of an approved shoreline stabilization structure. Only soil substrates consistent with the composition of the pre-existing on-site soil substrates shall be allowed when necessary for growth of new vegetation. The placement of beach sand shall be prohibited.
 2. The natural shoreline buffer area shall be replanted solely with native, non-invasive species best suited for that habitat and shall meet the Landscaping

Standards and Criteria in Article 6.

3. Native vegetation shall be required at a rate of one (1) deciduous tree and three (3) deciduous or coniferous shrubs per twenty five (25) feet of shoreline. The placement of the trees and shrubs shall be so designed as to imitate the natural shoreline exemplified along the waterfront and to evenly distribute root structures throughout the natural shoreline buffer area to provide soil stability against erosion. The remainder of the natural shoreline buffer area shall be planted with native wildflowers, vines, grasses, rushes, sedges, and/or ferns.
 4. All natural shoreline buffer restorations shall require a landscape plan satisfying the requirements of Article 6 and shall be reviewed and approved by the Zoning Administrator.
- E. Violation: It is a violation of this Ordinance to alter or disturb the natural shoreline buffer, except as permitted. If altered or disturbed, the following corrective measures shall be required:
1. The natural shoreline buffer shall be restored as prescribed in the Restoration item of this subsection.
 2. Plantings that are removed shall be replaced at a rate consistent with the requirements in the Existing Landscape Credit Ration table in Article 6. For example based on the table, if a ten (10) inch deciduous tree is removed, it will need to be replaced with four (4) deciduous trees with a minimum caliper size of two and a half (2 1/2) inches.

4.3.5 Permitted Structures

- A. Permitted structures within the Waterfront Overlay District shall require a land use permit and shall be limited to the following:
1. Patios and Decks: One (1) permeable patio or deck, not to exceed two hundred (200) square feet. Patios and decks shall be limited to a maximum of two (2) feet above average finished grade surrounding the structure. Fill and excavation shall be prohibited.
 2. Walkways and Stairs: A maximum of one (1) walkways, including portions constructed as stairways and boardwalks, shall be allowed per parcel to allow reasonable private riparian access. Walkways and/or stairs shall be limited to four (4) feet in width and constructed of a permeable surface. Allowance may be permitted by the Administrative Review Committee on a case by case if the applicant can document the necessity of additional width requirement for accessibility needs.
- B. All permitted structures shall be constructed of pervious material such as porous concrete, patio blocks, wood chips, gravel, or decking.
- C. All permitted structures must meet the side yard setbacks for the district.
- D. All permitted structures shall meet the standards of any applicable federal, state, or local agency requirements and shall secure any necessary permits.

4.3.6 Shoreline Stabilization Structures

Shoreline stabilization structures may be allowed in the Waterfront Overlay District through a site plan review approval by the Administrative Review Committee. In addition to the standards for site plan review approval in Article 8, the following standards shall be met for shoreline stabilization structures:

- A. The need for the shoreline stabilization structure is to protect existing structures on the property from the imminent threat of loss or damage, and is the minimum amount necessary to provide protection against the threat.
- B. In order to minimize negative impacts of natural shoreline processes on neighboring properties and the shoreline ecosystem, shoreline stabilization structures may be permitted in the form of sloping revetments. Vertical structures such as sea walls and structures exceeding a fifty (50%) percent slope (1:2) shall be prohibited.
- C. Shoreline stabilization structures shall be constructed parallel to the natural shoreline.
- D. Any disturbance to the natural shoreline buffer shall be restored as prescribed in Restoration item of this Section. A landscape plan may be required to indicate the necessary restoration efforts.
- E. All permitted structures shall meet the standards of any applicable federal, state or local agency requirements and shall secure any necessary permits.

4.3.7 Limitations On Funnel Development

Any parcel with water frontage to Lake Michigan that is proposed to be used by more than one (1) family unit shall meet the following requirements:

- A. The waterfront access shall be on a parcel adjacent to, or contained within, the parcel for residential development for which common access is proposed.
- B. Meet the minimum parcel size and setbacks as required by the zoning district in which such use is proposed. The minimum parcel size shall increase by three thousand five hundred (3,500) square feet for each dwelling in excess of two (2) having access privileges.
- C. Have a minimum frontage on the water of not less than one hundred (100) feet, measured at the ordinary high water mark. The minimum frontage shall increase by fifty (50) feet for each dwelling in excess of two (2) having access privileges.
- D. No dwelling units or clubhouse shall be permitted on any such shared waterfront parcel.
- E. Individual docks, boat hoists and related installations shall not exceed one (1) per fifty (50) feet of water frontage, measured at the ordinary high water mark, and shall be located as near as possible to the center of the parcel.
- F. Off-street parking shall be provided at a rate of one (1) spot per dwelling having access privileges located on an adjacent lot further than three hundred (300) feet away from the waterfront parcel.
- G. For waterfront parcels adjacent to residentially used properties, a twenty (20) foot wide greenbelt as prescribed in Article 6.

**Saugatuck Township,
Grand Traverse County, MI**

ARTICLE XII. - WATER ACCESS AND DOCK DENSITY REGULATIONS

SAUGATUCK TOWNSHIP

Footnotes:

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Cross reference— Waterways, ch. 38.

Sec. 40-906. - Intent and purpose.

- (a) The township, after extensive deliberations and discussions, has concluded that the use of water resources situated within the township must be considered within the framework of the township's longterm costs and benefits. Further, the township has concluded that it is desirable to retain and maintain the physical, cultural and aesthetic characteristics of its Inland Waterways and its portion of Lake Michigan.
- (b) Pursuant to its deliberations and discussions, the township has concluded that a lack of regulation regarding the density of Docks on and general access to Inland Waterways and Lake Michigan within or adjacent to the township has resulted in a Nuisance condition and an impairment of irreplaceable natural resources of the township. Further, the lack of regulation is resulting in the destruction of property values and constitutes a threat to the public health, safety and welfare of all persons utilizing these Inland Waterways and Lake Michigan and occupying adjacent properties within the township. Consequently, the township desires to adopt reasonable regulations regarding Dock density and general water access to protect the public health, safety and welfare, as well as the irreplaceable natural resources of the township.
- (c) The township has further concluded that regulation of water access and Dock density will help reduce conflicts which occur between residential single-Family use of the waterfront and shared waterfront use.

(Ord. No. 81, § 1(8.C.01), 9-15-1999)

Sec. 40-907. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access envelope means an area extending over the water surface. The sides are formed by lines extending from the Side Lot Lines of a Lot or Parcel (or condominium unit treated as a Lot or Parcel) that is immediately adjacent to an Inland Waterway, to a point at the center of the Inland Waterway. This denotes the area limits of certain activities regulated in this article.

Anchored Rafts means all types of nonpowered rafts used for recreational purposes which are anchored seasonally on Inland Waterways of this township.

Boat, Vessel, or Watercraft are interchangeable terms and mean every description of a contrivance used or capable of being used as a means of transportation on water.

Boat Slip or Slip means an improved Watercraft docking space partially above and partially in the water, or a vertical Boat lift mechanism, offering sufficient draft and design to be capable of securing and providing boarding access to one or more Boats. A Boat Slip may be a partially submerged natural or manmade ramp or may be part of a Pier or Dock. Boat Slips with a draft capable of accommodating the following types of Vessels are subject to the limitations contained in this section:

- (1) Boat Slips for Vessels required by the State of Michigan to be registered; or
- (2) Boat Slips for Vessels of equal or greater size to a Vessel required to be registered by the state but which is, for reasons of foreign origin or public ownership, exempted from registration by the state.

Boat Slips for small and very shallow draft private Vessels and unimproved beach and shoreline areas used for the incidental beaching of such private Vessels are exempt from the regulations of this section and of this article. Vessels accommodated by this exemption include rowboats and sailboats less than 16 feet in length, rafts, paddleboats, swim floats, canoes and kayaks, all not required to be registered by the state.

Designated Waterfront Activity Area means the area defined and located on Waterfront Access Property within which on-shore activities such as Boat landing and active and passive recreational activities are permitted.

Dock and Docking mean the mooring of a vessel directly to a Pier, which is a platform or other permanent or seasonal fixture extending from the shore, and directly accessible to Water Frontage; it also means the regular anchoring of a vessel adjacent to Water Frontage.

Inland Waterways means Goshorn Lake, Silver Lake and the Kalamazoo River.

Launch means the entry of a vessel into the Inland Waterways of this township, but not including the entry of a vessel into the Inland Waterways from a public Launch area approved or designated by the appropriate state agency.

Shared Waterfront Property Ownership means the multiple or divided interest in property having frontage on Inland Waterways or Lake Michigan, through deed, land contract, nonexclusive easement or other form of dedication or conveyance, which ownership is shared by two or more persons.

Waterfront Access Property means a Lot or Parcel or two or more contiguous Lots or Parcels (or condominium units treated as Lots or Parcels), abutting an Inland Waterway or other inland lake or Lake Michigan, used or intended to be used in whole or in part by persons having Shared Waterfront Property Ownership at that location, for gaining pedestrian or vehicle access to the Water Frontage of an Inland Waterway or other inland lake or Lake Michigan from land without Water Frontage. Waterfront access over the Waterfront Access Property may be gained by easement, common fee ownership, lease, or other form of

dedication or conveyance. The dedication or conveyance may or may not entitle physical interaction with the water body itself and may or may not otherwise entitle or limit the use and purposes of the Waterfront Access Property.

Water frontage means that portion of a Lot or Parcel, existing on documentation recorded with the county register of deeds, which abuts or intersects with Inland Waterways or Lake Michigan, whether such Lot or Parcel is owned by one or more persons. The length of Water Frontage shall be the linear measure along the Water's Edge.

(Ord. No. 81, § 1(8.C.02), 9-15-1999; Ord. No. 2009-03, §§ 4, 5, 5-6-2009; Ord. No. 2010-01, § 3, 12-1-2010)

Cross reference— Definitions generally, § 1-2.

Sec. 40-908. - Dock and Boat Slip density regulations.

These regulations are intended to limit the density of Docks and the number of Boat Slips in those zoned districts where Docks are permitted, except that Boat Slip areas for small and very shallow draft private Vessels and unimproved beach and shoreline areas used for the incidental beaching of such private Vessels are exempt from the regulations of this section. Vessels accommodated by this exemption include rowboats and sailboats less than 16 feet in length, rafts, paddleboats, swim floats, canoes and kayaks, all are not required to be registered by the state. Docks and Boat Slips in all zoned districts are subject to the applicable rules of Parts 301 and 303 of Public Act No. 451 of 1994.

On any Lot with Water Frontage, the density of Docks and the number of Boat Slips subject to these regulations shall be as follows:

Body of Water	Length of Water Frontage	Permitted Dock Density and Number of Boat Slips
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Lake Michigan and Inland Waterways not governed by the natural river overlay district	Existing Lots of record prior to September 15, 1999 with less than 50 feet of Water Frontage:	One Dock and two Boat Slips for a total docking capacity of not more than two Boats.
	Existing Lots of record prior to September 15, 1999 with at least 50 but less than 100 feet of Water Frontage:	Two Docks and four Boat Slips for a total docking capacity of not more than four Boats.
	Lots with at least 100 feet of Water Frontage:	One Dock and two Boat Slips for a total docking capacity of not more than two Boats for each 50 feet of Water Frontage.
Inland Waterways governed by the natural river overlay district	Each Dock must be constructed in accordance with the rules of Part 301 of Public Act No. 451 of 1994 (MCL 324.30101 et seq.); reasonable access for the Lot owner shall be granted but the number of permitted Docks per Lot may be limited to no more than one. Lots regulated by the natural river overlay district must comply with Sections <u>40-591(c)(1), (4), (9) and (10)</u> and <u>Section 40-591(d)</u> , and any other applicable regulations.	

(Ord. No. 81, § 1(8.C.03), 9-15-1999; Ord. No. 2009-03, § 6, 5-6-2009; Ord. No. 2010-01, § 4, 12-1-2010)

Editor's note— Ord. No. 2009-03, § 6, adopted May 6, 2009, changed the title of § 40-908 from "Vessel regulations" to read as herein set out.

Sec. 40-909. - Dock regulations.

- (a) Prior to the construction or installation of any permanent or seasonal Dock or Boat Slip subsequent to September 15, 1999, the owner of the Water Frontage from which the proposed Dock would extend must submit the plans for the proposed Dock to the township and receive township authorization from the Zoning Administrator to construct or install the proposed Dock. For the purpose of this section any permanent or seasonal Dock or Boat Slip that is installed or intended to be installed for more than 30 days is subject to these regulations.
- (b) No Dock may be constructed or installed unless and until it has received all required approvals from all federal, state and county agencies having jurisdiction.

- (c) Anchored Rafts shall not be used for vessel Docking, Launching or mooring purposes.
- (d) On Lots of record created subsequent to the effective date of this subsection [May 29, 2009], each Dock shall be set back a minimum of 20 feet from the Side Lot Lines as they intersect with the water's edge and shall otherwise be located entirely within the access envelope. Docks shall be designed, located and operated to avoid or minimize conflict with any other Docks.

(Ord. No. 81, § 1(8.C.04), 9-15-1999; Ord. No. 2009-03, §§ 7, 8, 5-6-2009)

Sec. 40-910. - Waterfront Access Property: Limitations and regulations.

In any zoning district where there is an intent to create or use a Lot or Parcel (or condominium unit treated as a Lot or Parcel), easement, private park or common area for the purpose of providing shared Water Frontage access, by deed or otherwise, the following standards shall apply:

(a) *Area Requirements:*

- (1) The Waterfront Access Property shall be a separately described easement or Lot or Parcel (or condominium unit treated as a Lot or Parcel) or two or more contiguous Lots or Parcels.
- (2) The Waterfront Access Property shall encompass not less than the minimum Lot Area and Lot Width required for platted single-family Lots located in the same zoning district as the Waterfront Access Property. In zoning district provisions where a Lot Width is not specified the minimum length of Water Frontage and Lot Width shall be 100 feet (as measured from at least one point at the water's edge).
- (3) The Waterfront Access Property shall have at least 33 feet of frontage on a Street or Private Road unless it is adjacent to or connected by easement or other conveyance to land without Water Frontage in a manner which complies with subsections (b) and (e) below.
- (4) Waterfront access property may be bisected by a street or Private Road provided that each portion of the Waterfront Access Property is opposite and contiguous to the other and that each portion has measurable Lot Area outside of the Street or Private Road. On at least one side of the Street or Private Road there shall be a Lot Depth of at least 30 feet to either the Water's Edge or to the Rear Lot Line.

(b) *Easements:*

- (1) There shall be only one designated area on a Waterfront Access Property used to provide waterfront access. The width of the designated access area at the Water's Edge shall be equal to the width of the Waterfront Access Property at that location. Within the designated access area shall be a Designated Waterfront Activity area within which all permitted waterfront activities shall be contained. The setbacks for the Designated Waterfront Activity area from adjacent Lot Lines shall be as indicated in Table 40-910-1.

- (2) Any easement or other instrument used to convey access over or within the Waterfront Access Property or to provide connecting access to the Waterfront Access Property shall be not less than 15 feet in width and shall meet the contiguity requirements of subsection (e). The width of any connecting easement or street frontage shall be at least 33 feet where the access is to accommodate Motor Vehicles required by law to be licensed and registered by the state. All access easements and connecting easements shall be set back from adjacent property that is not benefitted by the easement. The setbacks shall be equal to or greater than the minimums established in Table 40-910-1.
- (c) *Number of permitted accesses and required setbacks.* For purposes of this article, "accesses" shall mean the Parcels or Lots, condominium units treated as Lots or Parcels, or Dwelling Units permitted to share the waterfront access portion of the Waterfront Access Property. The number of such accesses and the required setbacks for the easements and designated areas facilitating the accesses shall be as follows:

Table 40-910-1 Number of Permitted Accesses and Required Setbacks			
Body of Water	Length of Water Frontage Providing Waterfront Access	Maximum Number of Accesses Permitted (see subsection (d) for the number of accesses that may be allowed on Substandard Lots or Parcels and Easements of record)	Minimum Setback of Access Easements to and Over Waterfront Access Property and of Designated Waterfront Activity Areas From Adjacent Non-benefiting Property

Inland Waterways governed by the natural river overlay district	150 feet	One access for each 150 feet	10 feet
Lake Michigan and Inland Waterways not governed by the natural river overlay district	100 feet	Four accesses	20 feet
	More than 100 feet to 200 feet	One access for each 25 feet for a total of not more than eight	
	More than 200 feet to 300 feet	One access for each 20 feet for a total of not more than 15	
	More than 300 feet to 400 feet	One access for each 15 feet for a total of not more than 26	
	More than 400 feet	One access for each 10 feet	

(d) *Substandard Waterfront Access Property of record:*

- (1) In any zoning district where there is an existing Lot or Parcel or easement of record with Water Frontage and width (as measured from at least one point at the Water's Edge) that is less than but at least 90 percent of the minimum Lot Width required for Lots in that zoning district, the Lot or Parcel may be used as Waterfront Access Property. The Waterfront Access Property will be allowed the same number of accesses allowed for parcels which meet the minimum Water Frontage required in the zoning district, in accordance with the table in the subsection above. If Shared Waterfront Property Ownership and use had been conveyed to more than the number permitted herein prior to the effective date of this Section, such use may continue as provided by Section 40-1011.
- (2) In any zoning district where there is an existing Lot or Parcel or easement of record with Water Frontage and width (as measured from at least one point at the Water's Edge) that is less than 90 percent of the minimum Lot Width required for Lots in that zoning district, and such Lot, Parcel or easement was, prior to the effective date of this section, not used

for shared waterfront access, the Lot, Parcel or easement may not be used or conveyed as Waterfront Access Property. If Shared Waterfront Property Ownership and use had been conveyed prior to the effective date of this section, it may continue as provided by Section 40-1011 and the number of conveyed accesses may not be expanded.

- (e) *Contiguity and proximity of ownership:* Every Waterfront Access Property created must be contiguous to each Lot or Parcel, condominium unit treated as a Lot or Parcel, or Dwelling Unit deeded or otherwise granted a share in its ownership for waterfront access. For the purpose of this article, "contiguous" shall mean any one of the following:
- (1) The Waterfront Access Property is within the same platted subdivision, condominium project, or other legally created and described land development which subdivision, condominium project or other development is contiguous with itself (i.e., is not disconnected or located in two or more distinct areas of the Township).
 - (2) The Waterfront Access Property is directly adjacent to the platted subdivision, condominium project, or other legally created and described land development containing each of the Lots or Parcels, or condominium units treated as Lots or Parcels, or Dwelling Units granted shared ownership for waterfront access, by virtue of a shared and common property line not less than 15 feet in length.
 - (3) The Waterfront Access Property is directly adjacent to an aggregate of continuously adjacent Lots or Parcels, or condominium units treated as Lots or parcels, granted shared ownership for waterfront access, by virtue of at least one of the continuously adjacent Lots or Parcels, or condominium units, having a shared and common property line of not less than 15 feet in length with the Waterfront Access Property.
 - (4) The Waterfront Access Property faces, but is separated by a Street or Private Road from, a platted subdivision, condominium project, other legally created and described land development, or an aggregate of continuously adjacent Lots or Parcels or condominium units treated as Lots or Parcels granted shared ownership for waterfront access.
- (f) *Improvements:* In all zoning districts, and unless otherwise more strictly regulated under the provisions of Section 40-590, floodplain overlay district and requirements, and Section 40-591, natural river overlay district requirements, site improvements made to Waterfront Access Properties shall be subject to the following standards:
- (1) *Stairways, footpaths, walkways, driveways and non-Building structures.* Stairways, paved walkways, boardwalks, footpaths, driveways for vehicles and other structures which are not Buildings but which are allowed and constructed on Waterfront Access Properties shall be contained within easements and/or Designated Waterfront Activity Area in compliance with the setbacks required in Table 40-910-1. Docks shall be located as regulated under Section 40-909.

- (2) *Parking Areas and Accessory Buildings.* Parking Areas and Accessory Buildings such as gazebos and pavilions may be permitted on Waterfront Access Property by the Planning Commission as Special Approval Uses under the provisions of Article VI. For Parking Areas, the provisions of Section 40-647 shall also apply. For Accessory Buildings, the standards of Section 40-631 shall also apply, except that the Planning Commission shall waive the requirement for a Principle Building and Accessory Buildings may not be used for the storage of Motor Vehicles.
- (3) *Parcels or Lots supporting a Dwelling.* A Waterfront Access Property on which a Dwelling is constructed may not include a Parking Area or Accessory Building that is to serve more than four Lots or Parcels or condominium units treated as Lots or Parcels. When considering a Special Approval Use application which would exceed the limit of four, the Planning Commission shall require the creation of two distinct Lots or Parcels or condominium units treated as Lots or Parcels. One of the Lots or Parcels or units shall be created solely as an access property meeting the minimum standards contained in this section. The second Lot or Parcel or unit shall be a residential Lot or Parcel or unit encumbered by waterfront access easements which benefit not more than three other Lots or Parcels or condominium units treated as Lots or Parcels. The burdened residential Lot or Parcel or unit shall meet the minimum Lot Width, Lot Area and Setback standards applicable to Single-Family Dwelling Lots.
- (g) No Waterfront Access Property may be used for any purpose except in accordance with this section and in accordance with the Uses allowed by the underlying zoning district.
- (h) In no event shall a canal or channel be excavated for the purpose of increasing the Water Frontage required by this section. Canals or channels which interface with an Inland Waterway or Lake Michigan and were lawfully in existence as of the effective date of this section may be cleaned and maintained in accordance with applicable laws of the State of Michigan so long as they are not enlarged.
- (i) To the extent applicable, this article shall be considered when the Township receives a Planned Unit Development application. At the discretion of the Township, and as allowed by the standards in Section 40-779 and the objectives of Section 40-780, the requirements of this article may be modified.

(Ord. No. 81, § 1(8.C.05), 9-15-1999; Ord. No. 2009-03, § 9, 5-6-2009; Ord. of 8-25-2014, § 38)

Editor's note— Ord. No. 2009-03, § 9, adopted May 6, 2009, changed the title of § 40-910 from waterfront regulations to read as herein set out.

Secs. 40-911—40-935. - Reserved.

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measurement of average grade may include the following measurements as determined by the Zoning Administrator:

- A. Existing or natural grade – the grade of a site that exists or existed prior to man-made alterations, such as grading, filling or excavating.
- B. Finished grade – the final grade of a site, after grading, filling or excavating.

SECTION 2.03 DEFINITIONS - B

BASEMENT OR CELLAR

A portion of a building having more than one-half (½) of its height below grade.

BED AND BREAKFAST ESTABLISHMENT

A use within a detached single dwelling in which transient guests are provided a sleeping room, breakfast and access to bathing and lavatory facilities in return for payment.

BOARD OF APPEALS, or BOARD

As used in this Ordinance, this term means the Village of Pentwater Zoning Board of Appeals, where specified.

BOAT DOCK

A boat dock or dock is a platform extending from the shore of a Waterfront Lot used to moor, land or provide access to boats or vessels or is used as a walkway. Boat docks are subject to the requirements of Section 3.31. A private boat dock is a boat dock restricted to the use of persons residing on the premises or their guests, or with respect to marinas or commercial businesses, by patrons of the premises. A boat dock shall not be leased, rented, or otherwise made available for compensation, unless such dock is approved as a marina, subject to the special land use requirements of this Ordinance and state and federal regulations.

BOAT LAUNCH

A facility used for the purposes of loading and unloading recreational and commercial watercraft into a body of water. A private boat launch shall be a boat launch restricted to the private use of persons residing on the premises or their guests. A private boat launch shall not be leased, rented or otherwise made available for compensation. Unless used only as a private boat launch, a boat launch must be approved as a special land use in compliance with this Ordinance, including Section 15.04.N.

MANUFACTURED HOME SPACE

A plot of ground within a manufactured home park designed for the accommodation of one (1) manufactured home.

MARINA

A facility extending into or over a body of water which offers service to the public or members of the marina for docking, loading, servicing, or other activities related to recreational or commercial watercraft. A private dock in compliance with the requirements of Section 3.31 of this Ordinance shall not be considered a marina.

MASTER PLAN

The Master Plan currently adopted by the Village of Pentwater, including graphic and written materials, indicating the general location for streets, parks, schools, public buildings, and all physical development of the Village of Pentwater, and includes any unit or part of such plan and any amendment to such plan.

MOTEL

A series of attached, semi-attached, or detached rental units providing overnight lodging for transients, open to the traveling public for compensation. A motel shall not include accessory used, such as gift shops, restaurants, and other similar uses.

MOTOR HOME

A motorized vehicular unit primarily designed for temporary dwelling in connection with travel and/or recreational usage. This term does not include manufactured homes.

SECTION 2.15 DEFINITIONS - N

NON-CONFORMING BUILDING

A building or portion thereof lawfully existing at the effective date of this Ordinance or amendments thereto, and which does not conform to the provisions of the Ordinance in the Zoning District in which it is located.

NON-CONFORMING LOT OF RECORD

A lot, whether platted or unplatted, that conformed with all zoning lot requirements at the time of recording but which no longer conforms to the zoning regulations and requirements for lot area, lot width, or both; and which has not been subdivided or reduced in size subsequent to the time it did conform to the Zoning Ordinance.

NON-CONFORMING USE

A use which lawfully occupied a building or land at the effective date of this Ordinance or amendments thereof, and that does not conform to the use regulations of the Zoning District in which it is located.

- D. No retail or other sales of merchandise or products shall be conducted upon the premises except for incidental products related to the home occupation or those goods actually produced on the premises.
- E. Any traffic generated by such home occupation shall not be so great as to cause serious adverse effects within or upon the surrounding neighborhood. Parking areas for a home occupation shall be located off street and other than in a required yard.
- F. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises. (Amended 9/10/07)
- G. Home occupations shall be approved by the Zoning Administrator, who shall issue an approval upon receipt of a letter from the applicant detailing information related to the requirements of this Section and stating their intent comply with such requirements.

SECTION 3.23 [RESERVED FOR FUTURE USE]

SECTION 3.24 NON-CONFORMING BUILDINGS AND USES

A. General Conditions

- 1. Except where specifically provided to the contrary, and subject to the provisions of this Section, any building, structure, or use existing and lawful on the effective date of this Ordinance or in the case of an amendment of this Ordinance, then on the effective date of such amendment, may be continued even though such use does not conform with the provisions of this Ordinance or any amendment thereto.
- 2. Any building, structure, or use shall be considered existing and lawful and for purposes of this Section to have been in use for the purpose for which constructed if on the effective date of this Ordinance, a building permit has been obtained therefore, if required, or, if no building permit is required, a substantial start has been made toward construction and construction is thereafter pursued diligently to conclusion. With respect to legal non-conforming boat docks used on a seasonal basis, the seasonal removal and re-installation of the dock in the same location, using the configuration and size, will be considered a continuous use for that calendar year.
- 3. Any structures or uses which failed to conform to the previous Zoning Ordinance, were not permissible, non-conforming uses or structures thereunder, and which violate this Zoning Ordinance shall not be considered permissible non-conforming uses under this Ordinance but shall be considered impermissible non-conforming uses and subject to the enforcement provisions of this Ordinance.

- (4) Removal of equipment or fixtures which are necessary for the operation of the non-conforming use;
 - (5) Other actions, which in the opinion of the Zoning Administrator, constitute an intent of the part of the property owner or lessee to abandon the non-conforming use.
 - (6) Seasonal removal and re-installation of a boat dock in the same location, using the same configuration and size, will be considered a continuous use for that calendar year.
 2. The Zoning Administrator may permit a building, structure, land or premises used for a non-conforming use to be converted to a more conforming use which is less intensive or objectionable use, determined as follows:
 - a. The building or premises may be changed to a use permitted by right in the same district in which the existing non-conforming use would be permitted, if the new use is required by the Zoning Ordinance to have the same, or less, parking and if the new use will be totally enclosed within a building.
 - b. The use of the building or premises may be changed to another non-residential use which would be permitted by right in a more restrictive zoning district.
 3. The area occupied by a non-conforming use shall not be enlarged, increased, or expanded to occupy a greater area of land unless the Planning Commission shall find that the following conditions are met:
 - a. That all height, area, and/or parking and loading provisions of this Ordinance are met with respect to such enlargement, increase, or expansion.
 - b. The enlargement, increase, or expansion is limited to the same parcel the non-conforming use was located on at the time of the adoption of this Ordinance.
 - c. The enlargement, increase, or expansion will not interfere with the use of other properties in the vicinity or create undue traffic congestion or traffic or pedestrian circulation problems.

SECTION 3.25 DEMOLITION PERMITS

No buildings shall be razed until a permit has been obtained from the Zoning Administrator who may require a performance bond in such amount set by the Village Council. Such bond shall be conditioned on the applicant completing the razing within a reasonable period as prescribed in the permit and complying with such requirements as the Zoning Administrator may prescribe, including, but not limited to, filling excavations and proper termination of utility connections.

SECTION 3.26 PRIVATE STREETS

(Amended 11-13-00)

A. Purpose

The Village of Pentwater determines that it is in the best interest of the public health, safety, and welfare to regulate the construction, improvement, extension, relocation, and use of private streets. These provisions have been enacted to assure that private streets:

- D. Each pool shall be enclosed by a minimum five (5) foot high fence or wall, or other structure or device, sufficient to make such body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground; all gates must be self-latching with latches placed four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children.
- E. All swimming pool installations shall comply with the State Construction Code and all standard codes referred to therein.

SECTION 3.31 ACCESS TO WATERS, USE OF WATERFRONT LANDS, DOCKS AND PRIVATE BOAT LAUNCHES

The following restrictions are intended to limit the number of users of lands containing lake, river or stream frontage in order to preserve the quality of the waterfront lands, shorelines and waters, to promote safety, and to preserve the quality of recreational use of all waters within the Village.

- A. Waterfront Access Parcel. To use or access the lake, river or stream frontage from over or across a parcel of land or a lot, a parcel or lot must be a "waterfront access parcel" as provided in this section. To be a waterfront access parcel, a parcel or lot shall meet each of the following requirements:
 - 1. A waterfront access parcel shall have, for each dwelling unit using or accessing the lake, river or stream frontage, at least sixty-six (66) feet of lake frontage, or at least two hundred (200) feet of river or stream frontage, as measured along the ordinary high water mark of the lake, river or stream. For example, a multiple family building with four (4) dwelling units would require two hundred and sixty-four (264) feet of lake frontage. Non-residential uses must have at least 75 feet of lake frontage, or 200 feet of river or stream frontage, as applicable, unless a greater amount is specified elsewhere in this Ordinance.
 - 2. The waterfront access parcel must be in compliance with the requirements of the district in which it is located, including lot width and setbacks as measured on the water side of the lot. Each parcel must also have, in addition to any district regulations, at least 5,000 square feet of land area for each non-frontage dwelling unit using the waterfront access parcel. No front yard setback (water-side) shall be less than 30 feet from the lot line or high water mark, whichever is more restrictive. If the waterfront access parcel contains an artificial or man-made canal, channel or other alteration to the shoreline, that man-made area shall not be included in the calculation of required frontage, such distance to be measured between side lot lines; provided, however, any man-made area in existence at the time this ordinance becomes effective shall, for purposes of this Section 3.31.A, be considered a natural, not a man-made or artificial area.
 - 3. Buildings, structures, parking lots and other impervious surfaces shall not cover more than 50% of the area of the waterfront access parcel.
 - 4. At least 50% of the street frontage shall be open (unobstructed by buildings or other man-made structures) yard area between the street and the waterfront. The Planning Commission may reduce this requirement when architectural, terrain or other features provide sufficient means to retain desired water views.

- B. Interests Covered by this Section. The restrictions of this Section shall apply to all lots and parcels on or abutting any lake, river, or stream in all Districts, regardless of whether access to the lake, river, or stream waters shall be by easement, park, fractional ownership, fee ownership, condominium arrangement, license, lease or other form of ownership.
- C. Private Docks, Launches and Accessory Buildings on Waterfront Lots. Private boat docks on waterfront lots shall comply with all applicable state and federal regulations and shall only be permitted subject to the following provisions:
1. One (1) private boat dock shall be permitted for each waterfront access parcel. For waterfront access parcels exceeding fifty (50) feet in width, one (1) additional boat dock shall be permitted for each full fifty (50) feet of lot width exceeding the first fifty (50) feet along the lake or other body of water.
 2. Dock design, including length, shall not interfere with navigation or other riparian rights of waterfront owners nor shall it violate MCL 324.80163.
 3. Boat docks and boat slips shall be used only by persons residing on the premises or their guests, or with respect to marinas or commercial businesses, by patrons of the premises, and shall not be leased, rented, or otherwise made available for compensation, unless such dock is approved as a marina, subject to the requirements of this Ordinance and other state and federal regulations.
 4. No dock for boat use shall be located, used or placed within seven (7) feet of the side lot lines of a lot or parcel as extended to the center of the lake or body of water, except that offshore marine storage devices may be located within two (2) feet of a side lot line as so extended to the center or thread-line of the lake or body of water, as applicable in determining ownership of the bottomland or lake bed.
 5. No watercraft shall be launched, stored, moored or docked within two (2) feet of the side lot lines of a property as extended to the center of the lake or body of water.
 6. The maximum number of boats or vessels anchored, moored or stored at or on a dock shall not exceed the following:
 - a. Three, for a principal residential use or other permitted dock;
 - b. For common docks as described in subpart 7 of this section or a dock being used by more than one dwelling in accordance with this section, three for each dwelling, but not to exceed nine;
 - c. For purposes of determining the number of vessels for this subpart, a personal watercraft shall be counted as one-half of a vessel.
 7. A common dock may be installed without regard to side setbacks between two (2) or more adjoining waterfront access parcels constituting separate frontages or multiple unit developments, in cases where the respective waterfront access parcel owners have submitted a planned common dock plan which meets each of the following requirements:
 - a. the plan is approved by all waterfront access parcel owners;

- b. the dock will not exceed the maximum number of boats permitted to be docked;
 - c. and when considering the waterfront access parcel as a whole, shall not violate the requirements of this section.
- D. Existing boat docks and accessory buildings on waterfront lots that do not contain a principal building or use. Waterfront lots or parcels that contain a dock and/or an accessory building as of the effective date of this ordinance shall be permitted as non-conforming structures. Such docks and/or accessory buildings may be maintained, repaired and/or replaced so as to keep the non-conforming dock, building or structure in a sound condition, subject to the following requirements:
 - 1. The owner shall obtain a permit for the dock, or a permit for an accessory building or other non-conforming structure in the same manner as a dock permit, as provided in part 7 above. The owner shall submit sufficient proof, to the satisfaction of the Zoning Administrator, that the dock, accessory building or other non-conforming structure was in existence prior to the effective date of this ordinance.
 - 2. The dock, accessory building or structure shall be reconstructed on approximately the same footprint and location as the original, except that if any part of the original footprint encroached onto an adjacent parcel(s) under separate ownership, the reconstructed or re-installed dock, building or structure shall be located entirely on the applicant's parcel of land.
 - 3. The reconstructed dock, accessory building or structure shall not be increased in total area or size from the original.
 - 4. The reconstruction, revision or re-installation and subsequent use of the non-conforming dock, building or structure shall not increase adverse effects on adjacent or nearby lands or the uses thereof.

Any such reconstruction or replacement of a dock, accessory building or structure under this part 8 shall be commenced within a period of one year after the removal, discontinuance of use or abandonment of such dock, building or structure. Once commenced, such reconstruction or replacement shall be diligently pursued to completion.
- E. Waterfront Accessory Lot. A Waterfront Accessory Lot may contain an accessory building or a private boat launch, or both, even if such Waterfront Accessory Lot does not contain a principal building or use, provided the Waterfront Accessory Lot shall satisfy each of the following requirements:
 - 1. Second Lot. The owner of the Waterfront Accessory Lot also owns a second lot which contains a principal dwelling or use, and one or both of the lots is a waterfront access parcel as provided in this section.
 - 2. Minimum Distance between Lots. The two lots are located within 300 feet of each other, measured at their nearest points.

3. Restrictive Covenant. A restrictive covenant, approved by the Village Attorney, shall be recorded prohibiting either lot to be sold separately from the other lot. This provision shall be enforceable by the Village and any violation shall be a violation of this zoning ordinance.
 4. Accessory Building Regulations. The Waterfront Accessory Lot shall not contain more than one accessory building and no accessory building located on the Waterfront Accessory Lot shall exceed 200 square feet in size or 12 feet in height. The accessory building shall comply with all laws, regulations and restrictions, shall not contain restroom facilities and shall not be used for residential or living quarters. With respect to setbacks, the accessory building shall comply with all required setbacks, and with respect to any waterfront yard, shall not be located closer than the minimum front yard setback for a principal building in that district.
 5. Boat Launch Regulations. Any boat launch on a Waterfront Accessory Lot shall only be for private use of the persons residing on the premises (either lot) or their guests and shall not be leased, rented or otherwise made available for compensation unless the boat launch receives a special land use permit in compliance with Section 15.04.N.
 6. Parking Regulations. No more than four motor vehicles, with or without trailers, may be parked on a Waterfront Accessory Lot at any time. Any vehicle must be parked within an approved parking space or driveway.
- F. Except as provided in subparts D and E above, a dock, accessory building or boat launch may only be permitted on a waterfront access parcel if a main building or principal use exists on such lot.
- G. Waterfront Lots.
1. Waterfront Lots. Waterfront lots shall be required to maintain a vegetative strip along the water at least five (5) feet in width consisting of naturally occurring vegetation, such as wild grasses and reeds, unless the Zoning Administrator finds that adjacent water bodies will not be substantially degraded by the absence of a vegetative strip in preventing or limiting the cumulative effects of harmful pesticides, herbicides, fertilizers, fuel, sedimentation or other natural or man-made environmental contaminants on water quality.
 2. Floodlands and Steep Banks. No dwelling or other principal building shall be constructed or placed on lands which are subject to flooding or on banks where a minimum of four (4) feet between the finished grade level and high ground water cannot be met. Land may be filled to meet the minimum requirement of four (4) feet between the finished grade level and high ground water only under the following conditions:
 - a. No material is allowed to enter the water either by erosion or mechanical means.
 - b. Fill material is of a pervious material such as gravel or sand.
 - c. Any and all permits have been acquired as required by the State of Michigan and the rules and regulations of the Department of Natural Resources and

the Department of Environmental Quality of the State of Michigan, provided that it shall be unlawful to alter the shoreline of any lake, river or creek in the Village by soil removal or fill.

- d. All filling or grading work shall be accomplished so as not to alter the natural drainage of adjoining land.

H. Modifications. The Planning Commission may authorize modifications to the requirements of this Section 3.31 in cases where unusual topography, past practices or land uses, safety considerations or other similar reasons dictate that a modification of the literal requirements will improve the quality of the development or use for the applicant and the surrounding properties and uses.

SECTION 3.32 STORAGE AND REPAIR OF VEHICLES

The carrying out of repair, restoration and maintenance procedures or projects on vehicles in any Residential District, when such work is not conducted entirely within the interior of a building, shall be subject to the following limitations:

- A. Procedures or projects which require the vehicle to be immobile or inoperable in excess of sixty (60) days within any twelve (12) month period shall be carried out within an enclosed building.
- B. Inoperable vehicles and vehicle parts shall be stored inside a building, except for one (1) such vehicle which may be stored in the rear yard in a location not plainly visible from the street or adjoining properties.

SECTION 3.33 ALTERATIONS TO GRADE

(Amended 9/10/07)

Excavation, filling or any combination thereof, or any leveling to a smooth, horizontal or sloping surface shall be permitted, subject to the following limitations:

- A. The natural grade of any site shall not be altered in such a way that the finished grade has an adverse effect on neighboring properties. Adverse effects shall be determined by the Zoning Administrator, or if the Zoning Administrator elects to do so, the decision may be referred to the Planning Commission for a determination. In evaluating whether negative effects are present, the impact of storm water runoff and drainage, the visual impact of the grading change and other potential adverse effect may be considered. The elevation of a property shall be the same as neighboring properties or consistent with the natural slope of the area, unless there are practical difficulties or unusual circumstances that warrant a change elevation.
- B. Final grades shall be harmonious with the surrounding grades. No final grade shall create an area that will fill with water, except areas that are approved storm water management facilities.