

PENINSULA TOWNSHIP

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www.peninsulatownship.com

PENINSULA TOWNSHIP PLANNING COMMISSION AGENDA

February 28, 2022

7:00 p.m.

1. **Call to Order**
2. **Pledge**
3. **Roll Call**
4. **Approve Agenda**
5. **Brief Citizen Comments (For Agenda Items Only)**
6. **Conflict of Interest**
7. **Consent Agenda**
 - a. Approval of Meeting Minutes: Planning Commission Regular Meeting January 24, 2022
8. **Reports and Updates**
 - a. Citizens' Agricultural Advisory Committee (Cram)
9. **Business**
 - a. Peninsula Township Purchase of Development Rights Ordinance #23 Re-write – Introduction (Cram/Coulter)
 - b. Special Use Permit (SUP) – Peninsula Shores Planned Unit Development (PUD) #123 Amendment #3 – Updates from Introduction and Continuation of Public Hearing
 - c. Special Use Permit (SUP) #140 - Schroeder Bed & Breakfast – Findings of Fact and Conditions
10. **Public Comments**
11. **Other Matters or Comments by Planning Commission Members**
12. **Adjournment**

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the clerk.

Minutes

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PENINSULA TOWNSHIP PLANNING COMMISSION MEETING MINUTES

January 24, 2022, 7:00 p.m.

1. Call to Order: 7:00 p.m. by Shipman

2. Pledge

3. Roll Call:

Present: Shipman, Wunsch, Hall, Dloski, Alexander, Couture; excused: Hornberger, also present: Planner, Jenn Cram, Attorney, Meihn via phone, and Township Clerk staff Beth Chan taking minutes.

4. Review for Conflict of Interest: None

5. Brief Public Comments: None

6. Additions to Agenda/Approval:

Moved by Couture to approve agenda as presented, seconded by Wunsch

Roll Call:

approved unanimously

7. Consent Agenda:

a. Approval of Meeting Minutes: Planning Commission Regular Meeting, December 20, 2021

b. Correspondence

Moved by Dloski to approve consent agenda, as presented, seconded by Alexander.

Roll Call:

approved unanimously

8. Reports and Updates:

a. Master Plan Committee (Shipman/Alexander)

Cram: the master plan is still out for public comment and those comments are due mid-February.

Once we receive all of the comments, we will take a look at them and see if any changes need to be made and bring them back to the planning commission for further discussion.

b. Zoning Ordinance Committee (Hall/Dloski/Hornberger)

Hall: The zoning ordinance committee did not meet. What is the status of the draft restatement and what is the plan?

c. Project Updates/Project Committee Reports (Cram)

Cram: summarized the two resolutions from January 3, 2022, adopted by the township board.

Resolution No. 01-03-2022 #1: to impose a temporary moratorium on the consideration of any new applications for special use permits and amendments to special use permits in the agricultural district for a maximum of six months. Resolution 01-03-2022 #2: to direct the planning commission to work with the citizens' agricultural advisory committee to continue reviewing the zoning ordinance, including specifically the agricultural district, and to provide to the board a complete zoning ordinance for review and approval, if applicable. The agricultural advisory committee has

been meeting to discuss agricultural-related sections of the zoning ordinance and will bring forth recommendations specifically related to the agricultural zones. A document will be produced that will compare the 2009 zoning ordinance with subsequent amendments highlighted in the latest draft. Attorney Greg Meihn and his office will assist with this. We are proposing joint study sessions with the planning commission and board to move that forward within the six-month time frame.

Hall: how will the actual drafting of the ordinance language occur and how will Greg Meihn's law firm be involved?

Cram: they will be involved (with the comparison of changes) and any additional changes moving forward will be tracked and will go through the appropriate public hearing process.

Meihn: the language will be flow-charted through the draft process.

Cram: looking to potentially schedule the first joint meeting on the 15th of February and again on March 1st. These would be study sessions without public comment. Public comment will be taken at public hearings with both the planning commission and the township board.

Wunsch: suggested that Alan, Laura, and Monnie be available for questions.

Couture: Laura was the note taker.

Discussion of the process, drafting process, and the timeline

Meihn: stated his staff is ready to work on a searchable document during the drafting and for the final draft.

Cram: for the Bella View project, they are completing their geotechnical report and the other items that were requested by Gordie-Fraser's office. We have requested a complete application for review.

Finally, work is being done on the annual report for 2021 and it will be presented in February.

d. Resolution for a Moratorium on Special Use Permits and Amendments to Special Use Permits (Cram)

Cram: summarized the resolutions.

e. Citizen's Agricultural Advisory Committee (Cram)

Cram: gave update under project updates.

f. Non-Motorized Committee (Cram/Shipman)

Shipman: currently meeting weekly, parks, township board and planning commission are represented.

9. Business Items:

a. Special Use Permit (SUP) – Peninsula Shores Planned Unit Development (PUD) #123 Amendment #3 – Updates from Introduction and Public Hearing

Cram: Mark Maguire, from Gordie-Fraser, is present to answer questions. Summarized the SUP, with packet additions one and two added. Amendment number three proposes to relocate unit one from the southeast part of the site to the northwest corner between units twenty nine (29) and thirty (30). Also, removal of a parcel (A), which served as water access for unit one. Next, make minor lot dimension changes in units thirty-eight (38) through forty-one (41) and finally, a proposed sanitary easement to unit six (6). The applicant did provide some additional information since the December 20, 2021 meeting and it is included in the packet. They have some drawings to show this evening. Public comments were received and they are in the packet.

**Moved by Dloski to close the regular meeting and open public hearing, seconded by Hall
approved by consensus**

Scott Howard, 420 W. Front Street, representing the Haddox family and the Lewis family cottage: gave an overview of his January 24, 2022 letter, included in the packet, with emphasis on the zoning ordinance sections 8.1.3 (1)(a), 8.1.3 (1)(b), and 8.1.3 (3)(f). Section 8.1.3(1)(a) says the property needs to be designed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and the letter details why that standard is not met. This standard cannot be met and it will be detrimental to their property and others in the neighborhood. Section 8.1.3 (1)(b) is a standard that addresses natural resources and this was discussed at great length when this particular project was approved and there is a series of documents that explain the natural features that were to be preserved. Explained photos of an aerial view of the proposed plan and what was done during construction. Discussed Map C2, found in the packet, as well as a series of photos showing the natural features of Peninsula Shores. There is a requirement of the developer to designate those natural features and preserve them. Spoke about the impacts of the proposal on the Haddox property and their use and enjoyment of the area. Stated that the SUP should be denied by the planning commission.

Meagan Haddox, 4150 Trevor Road: explained that this is the third attempt by the developer of Peninsula Shores with an amendment to make a change to the open space, the developer promised to keep his land along our property and open space buffer when the PUD was approved. In return, he was granted the right to develop the shoreline with much narrower lots making that portion of the development much denser than otherwise would have been permitted. Now the developer is coming back to the township and saying, never mind what I promised. Letting him break that promise is fundamentally unfair. It would mean that the community can have no faith that future PUD's and SUP's will be honored by the township or a developer. The photos show that the developers have already taken down trees by our property that they promised would remain a buffer. The new house will be visible from every window of their house and tower over the natural open space. Light and sound will be increased and negatively affect the use and enjoyment of our cottage and cul-de-sac. The proposed amendment does not comply with at least four of the requirements of the township zoning ordinance. Urged the planning commission to reject the amendment.

Mark Nadolski, 10 McKinley Road, speaking as President of Protect the Peninsula: felt this project should have not been approved. The developer has removed at least eighty percent of the trees the bluff will be unstable because of the tree removal. The developer is always coming in with changes. Asks the planning commission to deny any changes.

Dixie Roethlisberger, 25532 Bluff Road: property is contiguous to part of the area they are trying to change and she is in favor of the change. Thought the open space was for the development itself.

Kyle O'Grady, 416 Michigan Avenue: stated for the record, that it is highly offensive for Mark to say the bluff will not hold. It is disheartening for somebody to put on the record after we followed every single standard that was asked of us and we are monitored. We have reached out to the neighboring property owners three times. The project has been thoroughly vetted by all governing agencies. Showed pictures of the site. The first photo shows the trees and land before development. Photo two shows where the proposed unit one will go and there were no trees before the development was started. The comment about trees being taken down on areas they were not supposed to be taken down is false; it is part of the approved plan. Shows additional photos of the site, including the water access that goes through two neighboring properties. Moving lot one to the north side of the property is much more congruent with the subdivision as a whole. Green open space will be at the corner of Bluff and Boursaw Roads. The first amendment dealt with open space and was approved. Since day one, we have followed the zoning ordinance.

Dloski: looking at sheet two, at an area identified as common open space, it appears it ends at the boundary where the new house is to be built. Why is that?

O'Grady: it does not end there currently, the house was photoshopped in.

Alexander: It looks like there are trees there.

O'Grady: those trees are existing trees. Explains where the property is in context to the Haddox property.

Alexander: their concern is that trees were taken down elsewhere.

O'Grady: I will let them speak to this, but where the house is to be built, there are no trees and there never were.

Alexander: asked for clarification of the condition that more development could occur on the shoreline if the open space was left alone.

O'Grady: we didn't promise anything, we follow an ordinance that was approved.

Alexander: referenced the map, and lot twenty-nine; asked for clarification for lot one and lot twenty-nine.

O'Grady: we were moving the road and the lot, there was an initial objection to moving the lot, so we just moved the road. Then we came back to move the lot on this amendment. Lot one was further to the east. Moved it further to the west.

Alexander: with the changes in density along the shoreline, you would leave that space empty; would that have been discussed/recorded in the original 2015 PUD?

O'Grady: we are discussing something that was years ago. Emergency access was discussed with the neighbors, but there was a concern with a septic system.

Alexander: feels it would be beneficial to look at the original document.

O'Grady: explained the importance of amendments to the residents of the community.

Craig Haddox, 4150 Trevor Road: submitted a lengthy e-mail to the township, which is included in the packet. The second request was an open space calculation with this request. Reviews open space previously presented.

Mark McGuire, Gordie-Fraser: confirmed open space calculations were done.

Craig Haddox: in terms of Dixie's comment, there is nothing to stop conveying beach access to Dixie and building on lot one. The lots in this development are similar in size and the lots in Smokey Hollow Estates are approximately two acres, so open space is not the same thing. For communication with Kyle, it has not occurred for over a year. Offers site visits for the planning commission members to visit the Haddox property. In terms of the trees and the views, Kyle has mentioned that no trees were cut, that was not our main point. This lot will benefit from the trees that were removed before in the buffer. The trees were supposed to remain originally. What was done in past amendments that were approved was a shifting of internal open space, there was no encroachment on the buffer for the benefit of adjoining properties.

Moved by Dloski to close the public hearing for SUP-Peninsula Shores Planned Unit Development (PUD) #123 and reopen the regular meeting, seconded by Alexander.

approved by consensus

Dloski: this issue is going to turn on three ordinance provisions cited by Mr. Howard in his January 24, 2022 letter. Asked O'Grady if he has reviewed the ordinance provisions and provided a response.

O'Grady: no, but in speaking with GFA we have met all of the criteria.

Hall: concurs with Dloski, asks GFA and Cram to look at those provisions.

Discussion ensued

O'Grady: the provisions are subjective; asks that the three ordinance provisions be reviewed with regards to the new lot location and the open space at the entrance of the subdivision.

Alexander: referred to the map of units six through ten, along Shoreline Court; the front setbacks do not look consistent with all the other front setbacks.

O’Grady: the setbacks go from twenty to ten feet.

Wunsch: reiterated that (applicant) material should be submitted with more time given; not to be turned in the day of the meeting.

Wunsch moved to table SUP-Peninsula Shores Planned Unit Development (PUD) #123 Amendment #3 and reopen at the February 28, 2022 planning commission meeting, seconded by Alexander.

Roll call: approved unanimously

b. Special Use Permit (SUP) #140 - Schroeder Bed & Breakfast – Updates from Introduction and public hearing.

Cram: the proposal is for an owner-occupied bed and breakfast. There is one bathroom and a sitting space also associated with those two bedrooms. But the occupancy is based on the number of bedrooms; the property is located at 11594 Peninsula Drive. The applicant is here, there was some additional information provided since the introduction on December 20th, the applicant answered several of the questions. We did receive two public comments that are included in the packet addition. We also received a response from the fire department, that all of their items had been fulfilled as of January 19th.

Dloski: what is the occupancy?

Cram: five

Beth Schroeder, 11594 Peninsula Drive: three in the large bedroom and two in the second bedroom.

Moved by Dloski to close the regular meeting and open the public hearing, seconded by Alexander. approved by consensus

Jason Delo, 1399 Chimney Ridge: stated objection to the bed and breakfast, does not like the precedent set creating new bed and breakfasts in this area. He owns property adjoining the proposed bed and breakfast. He moved up here for the quality of life and does not like the idea of transients, people that are not part of the community, coming in and out. Secondly, he does not like the tweaking of permits.

Sean Goheen, 1223 Chimney Ridge: concerned about the additional traffic, this is a residential area, not a commercial space. Is this the beginning of different changes that will allow other people to do this? This may increase the volume of guests coming in. Not in support of the SUP.

Schroeder: has been following the application process in a serious manner. This is our home and we will be home during the time of rentals. Will enforce rules and will maintain the integrity of the property. There will be a maximum of five people; does not see the occupancy as a major impact. Section 3a does require that we be in residence during the rental period.

Dloski: you will only be renting during the summer?

Schroeder: we will be here in the summer and fall, only while we are in residence.

Moved by Wunsch to close the public hearing and open the regular meeting, seconded by Hall. approved by consensus

Hall: asked for a brief summary of bed and breakfast zoning.

Cram: generally the use is regulated. It does note that there are specific requirements that have to be met: minimum lot size of one-acre, off-street parking shall be provided per section 7.6.3 and 7.6.4. So essentially, they would have to have two parking spaces for the existing residents and two additional parking spaces for the bed and breakfast. I did ask the applicant for some additional information on that, her response was included in your packet. And I did speak to her about having a site plan or something that shows specifically where parking would be located and there will likely be a condition of approval. If supported, there would be no parking permitted on Peninsula Drive. The residents shall be the principal dwelling occupants on the property and shall be owner-occupied at all times. We would have to take into consideration the seasonality of the property owners and make that very clear. The residence shall have at least two exits to the outdoors; that is in the letter from the fire chief. No more than three sleeping rooms; they are proposing the two sleeping rooms. Not more than eight overnight guests may

be accommodated any time the rooms utilize for sleeping shall be part of a dwelling. An occupancy permit is provided in your packet. The rental sleeping units have a minimum size of at least a hundred square feet. Proof of evaluation of the well and septic is required; they have provided updated records for both well and on-site septic system. They have provided a floor plan at the appropriate scale of 1/8 inch equals 1 foot. Each owner-operator shall keep a guest registry which will be available for inspecting by the zoning administrators, police, and fire officials. At any time of the length of stay of each guest will not exceed seven days.

Discussion ensued

Wunsch: this leaves room for subjectivity or site-specificity. Reads zoning ordinance section fifteen and refers to section thirteen; it leaves flexibility for the permit process. The transient occupancy works better with the bed and breakfasts versus allowing short-term rentals. Bed and breakfast operators need to give up their primary residence exemption. This is the smallest lot size that a bed and breakfast would be on the peninsula.

Meihn: to clear the record, does not agree with the use of the word "discretionary" when one considers the evaluation of a SUP. Each planning commission member will conclude as to whether one or more of the requirements are met. But I just want to be clear not to use the word discretion.

Couture: are there three bed and breakfasts on the peninsula? This is rare for a bed and breakfast request.

Shipman: how far is the nearest resident to the north

Schroeder: there is a house being built, fifteen-feet three inches off of the property line. House to house may be approximately sixty-five feet.

Shipman: the provision in the ordinance is page 123-124 of the current zoning ordinance for reference. Refers to number 13, noise. The planning buffer provision will protect neighbors. The bill is moving through the state legislature for short-term rentals, but this is a different issue.

Alexander: appreciates the residence requirement

Wunsch: will the beach be opened?

Schroeder: they can only use the waterfront

Dloski moves to table the recommendation for Special Use Permit (SUP) #140 - Schroeder Bed & Breakfast to the next planning commission meeting, February 24, 2022, seconded by Wunsch

Roll call

approved unanimously

Cram: The facts, findings and conditions would be ready for that meeting.

Discussion of procedure

10. Public Comments:

Meagan Haddox: to clarify, we will be able to see the house from our cottage; it is our property and the cul-de-sac that we use.

Jason Delo: concerned about the use of plans for the bed and breakfast property, it is like a slippery slope. Concerned there will be more bed and breakfasts and do not want to see the neighborhood/area changed.

Dloski: notes that a guest registry will be available to provide compliance information

Cram: condition of approval will be owner-occupied

Meihn: the township can look at the registry and act on complaints. For enforcement, these actions exist civil infractions, injunctive relief, and forfeiture of the SUP.

Schroeder: the fire chief will inspect annually

Craig Haddox: reiterated invitation to visit his property

Mark Nadolsky: question in regards to how the owner of the bed and breakfast will advertise, will it be on the Airbnb, if so, will that make it an Airbnb?

Couture: Section 8.1.3(1)(b) of the zoning ordinance is a key component of our analysis of the change to the Peninsula Shore SUP. Questioned what this means: “change not be hazardous or disturbing to existing uses in the same general vicinity and will be a substantial improvement to the community as a whole,” what does it mean to be disturbing to existing uses?

Meihn: will provide a response

Mark Nadolsky: asks for an answer to his question

Cram: will research the exact answer; advertisement should be consistent with the approval

11. Other Matters by Planning Commission Members: None

12. Adjournment:

Moved by Dloski to adjourn, seconded by Hall

passed by consensus

Adjournment at 8:41 p.m.

DRAFT

Business

PDR Ordinance Re-write

Peninsula Township Purchase of Development Rights Ordinance
Summary of Revisions Proposed by the Purchase of Development Rights Study Group
2/22/2022

The Peninsula Township Purchase of Development Rights Ordinance was initially approved by the Township Board on May 4, 1994. It was revised August 25, 2003 amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

There have been two millage votes to support the Peninsula Township Purchase of Development Rights Program (PDR). The funding has been fully committed so the program is unable to buy any more Development Rights even though there are unrestricted farms whose owners are willing to participate in the program.

In 2019, a PDR Planning Group met with representation from the Township Supervisor and Board, the Planning Commission, the initial PDR Drafting Committee, the PDR Selection Committee, the Planner, and the Grand Traverse Regional Land Conservancy (GTRLC). They discussed a potential renewal of the PDR millage in order to protect additional farmlands within the Agricultural Preserve Area.

An Evaluation of the Peninsula Township Farmland Preservation Program had been written by Tom Daniels, Ph.D. on behalf of the GTRLC in 2008. This was submitted as well as recommendations from the conservancy staff to update the ordinance and better define the management processes for PDR. Additionally, circumstances had changed. The following is a list of things that changed during the PDR years that further prompted a review and update of the PDR Ordinance:

- The PDR Program and other preservation efforts have been supported and have been successful. There are, according to the GTRLC Peninsula Township Protected Land Map 2021, 6,036 acres of land under protection, representing 34% of the township.
- Agriculture on the Peninsula has become more diversified.
- The Michigan Zoning Enabling Act of 2006 was adopted.
- The Agricultural Preservation Area was expanded by the Township.
- Matching State and Federal Funds have become available that may be used to enhance the PDR Program if the program requirements are in alignment.
- The Township's experience and recommended best practices in the conservation industry have provided input for process and management changes.

A core group of the PDR Planning Group, known as the PDR Study Group, worked diligently into 2020 to revise the PDR Ordinance but went on a Covid-19 hiatus when it was unsafe to meet and it became apparent that there was no chance to move forward with a renewal election in that year. The core group's work resumed in 2021. The following is a summary of the substantial changes to the PDR Ordinance that are proposed.

The Peninsula Township Purchase of Development Rights Ordinance as amended August 25, 2003 was used as the base document for the revisions. It was reformatted for ease of reading before the editing began. Many minor changes have been made for clarity, grammar, and to update terms. Language has been added throughout the document for compliance with the Zoning Enabling Act.

The following is an outline of noteworthy changes made Section by Section:

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

- Updated the descriptions of agriculture.

SECTION 2 DEFINITIONS

- Clarified definitions.
- Deleted definitions not used elsewhere within this ordinance.
- Added several definitions including:
 - Conservation Easement;
 - Master Plan;
 - Open Space;
 - Peninsula Township Purchase of Development Rights Ordinance; and
 - Zoning Ordinance.

SECTION 3 AUTHORIZATION

Paragraph 6 provides budgeting guidelines for the monitoring of Conservation Easements.

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

- Deleted unnecessary language.
- Paragraph 4 added specifications regarding the size of retained home sites, their survey and monumentation.

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

- Specified that property that is part of an approved Special Use Permit for a Winery Chateau or Remote Winery Tasting Room is not eligible to participate in the Purchase of Development Rights program.
- Provided for up to 10% of the generated taxes to be spent on acquiring unused Development Rights from properties with existing Conservation Easements.
- Added a chart of criteria for the above purpose.
- The criteria used to prioritize the acquisition of development rights on new property was simplified and the weighting was changed to favor large parcels and the leveraging of funds.
- Previously, viewsheds were individually evaluated and the scoring was subjective. The new scoring is much simpler. If any of the parcel falls within a viewshed it is given a fixed number of points.

- The Planning Commission reviewed and enlarged the Agricultural Preservation Area Map. In so doing, they took into consideration the Red Tart Cherry Site Inventory and the physical characteristics of the township's land so these items have been deleted from the scoring.
- Points have been added for other funds that are to be used to leverage easement acquisitions.
- Eliminated points for adjacency to "currently farmed properties", instead there are points for adjacency to properties with conservation easements.
- Increased points for parcel size.

SECTION 6 SELECTION COMMITTEE

- The committee size was reduced from seven to five; terms were amended accordingly.

SECTION 7 SELECTION

- Streamlined and rearranged the process for selection.
- Clarified the appraisal criteria and process.
- Added that the Selection Committee may re-score and re-prioritize applications as information and conditions change.
- Added language regarding appeals.

SECTION 8A DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTEREST

- Replaced previous ordinance language with "The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the conservation purposes as described in the conservation easement, or by exercise of eminent domain."

For an unexpected change in condition, there would need to be a majority vote of the township and must go through judicial proceedings to entitle the Township to compensation in accordance with Internal Revenue Code provisions.

If any of the property is taken by eminent domain, compensation is determined by an Internal Revenue Code method.

SECTION 8B AMENDMENT OF CONSERVATION EASEMENT

- First Paragraph - Added that procedures for the administration of the amendment process will be established and adopted within 90 days of the passage of this ordinance.
- #3 Review - was added to provide legal review for applicable laws, rules and regulations as well as for compliance with current Land Trust Standards and Practices, and amendment principles, published by The Land Trust Alliance.
- #6 Standards - was revised to incorporate principles that have been adopted by The Land Trust Alliance. A previously used list of negative conditions is used in a positive tone as examples of acceptable outcomes.

- #7 Appraisal of Changes in Value - deleted payment of increase in value to the Township because according to the principle in #6a iii "The amendment does not result in private inurement or confer impermissible private benefit.

SECTION 8D TRANSFER OF DEVELOPMENT RIGHTS

- This section was added to clarify that property where the Township has purchased Development Rights may not, now or in the future, serve as a receiving area for a transfer of development rights.

SECTION 9 RELATED COSTS

- No substantive changes.

SECTION 10 SUPPLEMENTAL FUNDS

- No substantive changes.

SECTION 11 TOWNSHIP PURPOSE

- No substantive changes.

SECTION 12 DEVELOPMENT RIGHTS ACQUISITION FUND

- No substantive changes.

SECTION 13 DEVELOPMENT RIGHTS ENFORCEMENT FUND

- Added that the Township Board shall not only establish, but shall maintain a Development Rights Enforcement Fund and increased the budget amount from \$40,000 to \$100,000.

SECTION 14 SEVERABILITY

- No substantive changes.

PENINSULA TOWNSHIP PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE

REFORMATTED AND SHOWING MARKUPS

Approved by Peninsula Township Board May 4, 1994

Revised August 25, 2003 amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

Revised February 28, 2017 amending Section 6(4) regarding Committee termination. Revised _

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Original Land Use

ORDINANCE NO. 23

AN ORDINANCE, ~~enacted in accordance with the Michigan Zoning Enabling Act of 2006, as amended, relating~~~~amended, relating~~ to the acquisition of voluntarily offered interests in ~~f~~armland and ~~o~~pen ~~s~~pace ~~It~~ and in Peninsula Township: calling an election by the voters of the Township on August 2, 1994, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisition. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes. Although the authorization for the Purchase of Development Ordinance is located in the Zoning Enabling Act, there was no legislative intent whatsoever to have the legal review of Purchase of Development Ordinances based on Zoning Law. This Ordinance shall not be construed to enable the transfer of development rights.

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

The Township Board finds that:

1. Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected **to benefit the public.**
2. The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming they also include other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage. However, Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.
3. The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables to sell at roadside stands and other local outlets in the Township. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of Agricultural Use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource **and public benefits are** permanently lost to the citizens of Peninsula Township.
4. It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Comprehensive Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A. 116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use zoning and subdivision control. However, these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.
5. Agriculture on Old Mission Peninsula is predominantly fruit production; the majority of the nation's tart cherries are grown within this region. Of the 17,000 acres of land in Peninsula Township, there are about currently 12,000 acres in the Agricultural District of which some 7,000 acres provides the basis for the township's currently active agricultural enterprises. The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables for national distribution as well as for sale at roadside stands and at other local and regional outlets.
6. Generally, fFarmland and oOpen sSpace lands which are close to urban centers have a greater market value for future urban development than their market value for farming or open space, and prime fruit land has the same features of high elevations and proximity to water that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers

and removed from *Agricultural Use*.

7. The permanent acquisition by the Township of voluntarily offered interests in farmland and openspace lands within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for **public benefits** ~~the public interests~~ which are served by farmlands and open space lands within the Township.
8. Properties on which the Township has purchased the Development Rights should remain ~~substantially undeveloped~~ in order to promote their "Agricultural Use".
9. The acquisition of interests in farmland and open space lands as provided in this Ordinance is a public purpose of Peninsula Township **that will yield public benefits**. Financing such acquisitions requires that the Township enter into purchases or installment purchases not to exceed statutory limits.
10. **The objective of voluntarily purchasing development rights from land owners in the manner prescribed in this ordinance is consistent with the Peninsula Township Master Plan.**

SECTION 2 DEFINITIONS

1. **"Agricultural Use"** means substantially undeveloped land devoted to the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities. Agricultural Use does not include the management and harvesting of a wood lot, except as an incidental or ancillary use.
2. **"Agricultural Rights"** means an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other Agricultural Uses.
3. **"Appendix A"** of this Ordinance means the maps and related materials which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large-scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are provided in the Appendix of appended to this Ordinance for more readily accessible public reference.
4. ~~"Chairperson"~~ means the member of the Selection Committee who is elected Chairperson by the Selection Committee:
- 5.4. **"Conservation Easement"** means a grant, by an instrument, whereby the owner relinquishes the development rights to the public in perpetuity ~~but remains private ownership. but retains private land ownership subject to the terms of the conservation easement.~~ .. A Conservation Easement is a legal and recorded instrument that contains a covenant that runs with the land extinguishing surrendering development rights, except as may be expressly reserved in the instrument. -
- 6.5. **"Development"** means an activity which materially alters or affects the existing conditions or use of any land.
- 7.6. **"Development Rights"** means an interest in and the right to use and subdivide

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amended. This includes borrowing money and issuing bonds or notes.

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SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

1. To promote the "Agricultural Use" of properties on which the Township has purchased the Development Rights, it has been determined that such properties should remain substantially undeveloped.
- ~~2. It is in the best interest of property owners and of the Program to Purchase Development Rights that property owners retain some residential development rights so long as the land remains substantially undeveloped. When property owners retain some development rights their land value remains higher than it would be if they sold all their Development Rights and the value of the Development Rights to be purchased is correspondingly reduced.~~
- ~~3.2.~~ Applications for the sale of Development Rights may include a provision to retain the right to build residential dwellings (Residential Development Rights), provided, that no retained residential development rights would result in more than one dwelling unit per twenty (20) acres of land (exclusive of approved migrant housing units). This is not to preclude the sale of all the remaining Development Rights on a property that has existing dwelling units in excess of one dwelling unit per twenty acres of land.
3. The building locations for retained Residential Development Rights may be restricted in the negotiated "Development Rights Conservation Easement" in order to protect Scenic Views identified in the Township Comprehensive Master Plan.
4. When a future home site (or home sites) are being retained within a Conservation Easement, the boundaries of such home site(s) shall be no less than one acre and the boundaries of such home site(s) shall be surveyed by a registered surveyor and proper monumentation shall be placed on the property.

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SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

The tax revenues shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7. Property that is part of an approved Special Use Permit for a Winery Chateau or Remote Winery Tasting Room is not eligible to participate in the Purchase of Development Rights program.

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Primary criteria that all properties must meet:

All properties must be described in a voluntary application completed by the property owner and must be included in the Agriculture Preservation Area Map (Appendix 2) adopted by the Peninsula Township Planning Commission, as it may from time to time be amended.

Priorities for acquisition of existing reserved development rights, sites.

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Up to ten percent of the tax revenues generated for acquisition of development rights may be allocated to acquire retained development rights associated with past agreements and reserved building sites. When reserved development sites are included within a conservation easement, an easement amendment pursuant to Section 8B is required. The following criteria shall be used in

determining the priority by which applications are processed.

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<u>Cumulative Points</u>	<u>Criteria</u>
<u>0-100</u>	<u>One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood groups, foundations, unrelated private individuals, etc.) or will be donated by the landowner (the landowner accepts less than the appraised value).</u>
<u>0 or 25</u>	<u>Acquisition of reserved development site(s) results in a ratio of not more than 1 home site for each 40 acres of land encumbered in an existing PDR easement.</u>
<u>125</u>	<u>Total Possible Points</u>

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Criteria for selection within same priority

Priorities for acquisition of development rights on new property

The following criteria shall be used in determining the priority by which applications are initially processed. offers to accept in the event that funds are not adequate in any Selection Round to purchase Development Rights on all Eligible Lands of equal priority for which valid offers have been received by the Township:

<u>Cumulative Points</u>	<u>Criteria</u>
<u>21-30</u> <u>0 or 10</u>	Parcel by class is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission. <u>(10 points if any part of the subject property is included in an identified Prime Scenic View area depicted in Appendix 1, 0 points if not)</u> Class I - (30) Class II - (27) Class III - (24) Class IV - (21)
<u>20-30</u> <u>0-100</u>	Parcels with percentages of green and/or yellow rated sites as shown on the RedTart Cherry Site Inventory for Grand Traverse County published by the Soil Conservation Service: One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood groups, foundations, unrelated private individuals, etc.), or will be donated by the landowner (wherein the landowner accepts less than the appraised value).
<u>40</u> <u>0 or 5</u>	Parcel that is adjacent Contiguous to another parcel that is subject to an existing conservation easement with other properties currently being farmed: Adjacent parcels include those that are across a public or private right-of-way, or otherwise share a common property line greater than ten feet in length. Five points awarded if adjacent, 0 points if not.
<u>40</u>	Parcel which is greater than 10 acres and is adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for

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Varies	<p>sale: <u>One point for each whole acre (rounded up or down) to be included in proposed conservation easement.</u></p>
5	<p>Parcels offered for development rights purchase that are 10 acres or more in size:</p>
5	<p>Parcels which are less than 10 acres in size and adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale:</p>
105+ Total	<p><u>Total Possible Points</u></p>
25	<p>Up to 25 points for Physical Characteristics based on PROFESSIONALLY QUALIFIED site analysis to be used when other point totals are equal (Tie Breaker):</p> <p>Soil Factors-Texture</p> <p>1.—Coarse loamy sand</p> <p>2.—Fine loamy sand</p> <p>Soil Factors-Drainage</p> <p>1.—Well drained</p> <p>2.—Moderately well drained</p> <p>Soil Factors-Depth/rooting restrictions</p> <p>1.—No restrictions to 48 inches</p> <p>2.—Coarse fragments</p> <p>Physiographic Factors-Slope</p> <p>1.—2-12%</p> <p>2.—0-2%</p> <p>Physiographic Factors-Elevation</p> <p>1.—Minimum 640 feet above sea level.</p>
	<p>Physiographic Factors-Air Drainage</p> <p>1.—Uninterrupted airflow to major air storage basin.</p> <p>2.—Minor obstruction of air flow to major air storage basin.</p>

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SECTION 6 SELECTION COMMITTEE

1. A ~~five~~seven-member Selection Committee shall be appointed by the Township Board within ninety (~~90~~) days following the approval of the Millage by the voters. The Selection Committee shall advise the Township Board in the selection of Eligible Lands on which Development Rights are offered for acquisition by their owners. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.

2. The Selection Committee shall consist of residents and/or property owners of the Township chosen to provide equitable representation of geographical and agricultural interests. The Township Board may appoint ex-officio members.
3. The Selection Committee may consult experts as it may desire and the Township Board may appropriate funds for that purpose.
4. Members shall serve three-year terms, except that the initial term of ~~two~~three members shall be two years and terms of ~~three~~four members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms but the Selection Committee shall be terminated when the proceeds of the Millage vote have been spent.
5. No member shall vote on the selection of individual parcels in which they have an interest or on individual parcels adjacent to property in which they have an interest.

SECTION 7 SELECTION

Beginning in the first year following the Millage election and continuing at least once a year until all proceeds of the Millage election have been expended, the Township Board will request that the Selection Committee shall conduct a voluntary property selection process by creating an application window for a specific period of time (herein called "Selection Round"). The selection process will generally take place as follows:

1. The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the general program eligibility requirements, application and general program procedures.
2. Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. Applications must include all information needed to perform a preliminary ranking of the proposal and may require attachments and documentation.
3. Terms and conditions of a proposed sale and information on the effect of the sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.
4. Upon closing of the application period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search.
5. Upon the closing of each Selection Round, the Selection Committee shall identify an initial group of projects to move forward with toward Conservation Easement acquisition. The size of groups shall be determined by the Selection Committee. Applications shall be reviewed for program eligibility and validity of information provided. The Selection Committee shall identify highest ranking projects according to the criteria contained in SECTION 5, thereby generating a ranked list of projects from highest to lowest.
6. For those highest-ranking applications, which meet the requirements of SECTION 5. Eligible Lands

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~~and Priority of Acquisition above,~~ the Selection Committee shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the Value of Development Rights. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any specifically retained Residential Development Rights. The cost of this initial appraisal will be borne by Peninsula Township.

7. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised in writing, but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense provided it meets the criteria and requirements as determined by the Selection Committee. The

Selection Committee may use both appraisals to reach an agreement as to the appropriate value of the development rights:

- ~~8. Appraisals of properties with an approved Winery Chateau Special Use Permit (SUP) shall have the value for full ownership reduced by the value of one potential residential development right for the primary use of the winery and by one potential residential development right for each support use as noted below:~~

- ~~• The manager's residence.~~
- ~~• Each single family residence, existing or retained development right.~~
- ~~• Every three (3) guest rooms~~

9. All appraisals shall be performed by an individual holding a Certified General Appraiser License from the State of Michigan, Department of Licensing and Regulatory Affairs and shall meet other criteria, requirements and qualifications as determined by the Selection Committee. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. The same appraiser shall conduct the before and after appraisals.

- 5:10. In each Selection Round the Development Rights on all Eligible Land ~~properties offered~~ shall be eligible for purchase. However, ~~in all Selection Rounds~~ properties of higher priority (in accordance with the ranking system described in SECTION 5) shall be purchased with available funds before properties of lower priority are purchased, provided:

- ~~a. If the average appraised value per acre of Development Rights on a given parcel deviates by 30% or more from the median appraised value of all appraised properties, then the Township Board may renegotiate for a lower price and/or seek outside funding for the purchase of Development Rights on that parcel.~~
- ~~b. In the interest of protecting as much significant amount of agricultural land as possible, the Township Board may determine not to buy only a portion all or any of the development rights on a particular parcel if the Board~~

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~~makes a finding that it is in the best interest of the program, to protect a larger number of acres rather than a smaller number of acres of higher valued development rights.~~

~~c.a. In the event that points are assigned to properties based on a view shed and the whole scenic view is not protected because either some of the properties in the view shed are not offered or an easement that protects the scenic view cannot be successfully retained negotiated, then the Selection Committee may shall determine and remove some or all those scenic view points from all parcels that might be obstructed by development on the non-protected parcel.~~

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~~d.b. Should other ranking-related conditions change with one or more applications, the Selection Committee may reprioritize and re-score applications accordingly resulting in updated application ranking. The selection committee shall remove points that were given because the property was adjacent to properties with offered development rights and those adjacent development rights are no longer offered.~~

~~c. In the event that the ranking of applications results in an equal number of points between one or more applications (i.e., a tie), the Selection Committee may determine the higher ranking application(s) with an impartial selection process (i.e., a lottery or similar unbiased process). The selection committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.~~

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~~e.d. For properties located within a Prime Scenic View as shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Master Comprehensive Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.~~

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~~11. If a property owner and Selection Committee cannot reach agreement on the acquisition, the application may be withdrawn for subsequent consideration.~~

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~~6.12. The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the properties eligible for purchase in that Selection Round, the general procedure to be followed in the selection process, including an estimated time schedule for the steps in the process, and shall invite the Owners of such properties to make application for purchase of Development Rights by the Township and to describe the property interest which the Owner is willing to sell, such document shall include any residential development rights to be retained by the owner.~~

~~7.13. Upon closing of the application period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search. For properties located within a Prime Scenic Views shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Comprehensive Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.~~

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~~8.1. For those applications which meet the requirements of SECTION 5. Eligible Lands and Priority of Acquisition above, the Selection Committee shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the Value of Development Rights. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market~~

value of the Agricultural Rights plus any specifically retained Residential Development Rights.

~~Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense by a State Certified appraiser. The appraisal shall then be filed with the Selection Committee. Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.~~

9. Appraisals shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

~~10.1. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense by a State Certified appraiser. The appraisal shall then be filed with the Selection Committee. Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.~~

~~11.1. Terms and conditions of sale and information on the effect of the sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.~~

12. Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. These written offers shall include any development options desired to be retained by the owners.

14.

15. Upon receiving the recommendations of the Selection Committee, the Township Board may shall take final action to execute all closings on such recommendations.

13.16. The Selection Committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.

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SECTION 8A DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTEREST

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following:

The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the conservation purposes as described in the conservation easement, or by exercise of eminent domain.

a) Unexpected Change in Conditions. If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated. The Township Board shall submit to the voters of the Township a proposition to approve the disposition of such interest. If a majority vote approves such proposition, the extinguishment must go through judicial proceedings. The Township will then be entitled to compensation in accordance with the provisions of the Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii). Notwithstanding the foregoing, the Owner and Township intend that the Conservation Easement not be subject to the legal doctrine of "changed conditions" that is applied to traditional servitudes.

—Eminent Domain. If the property is taken, in whole or in part, by power of eminent domain, then the Township will be entitled to compensation as determined by the method set forth in Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii).

~~If the Township Board shall find that farmland and open space land described in this Ordinance can no longer reasonably be used for "Agricultural Use" the conservation purchases as described in the conservation easement, as to any interest in land acquired with Millage proceeds, the Township Board shall submit to the voters of the Township a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Township and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. A "before and after" appraisal shall be made to determine the Value of Development Rights, and the Township shall not sell the Development Rights for an amount less than the appraised value of the Development Rights determined as follows:~~

~~The appraisal will assess the unrestricted fair market value of the property (excluding improvements) along with the restricted value with agricultural rights, including any retained development rights. The difference between the two is the value of the development rights. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any retained development rights.~~

~~Appraisals of the fair market value of Full Ownership or of a property interest other than Development Rights shall be made by State Certified Appraisers selected by the Selection Committee in the same manner described in Section 7 (7) above on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.~~

SECTION 8B AMENDMENT OF CONSERVATION EASEMENT

Because of the public trust that is inherently involved with the Purchase of Development rights and the corresponding intent that all Conservation Easements endure in perpetuity, amendments of Conservation Easements ~~are to be discouraged~~ and can only be amended in compliance with strict standards. Procedures for the administration of the amendment process, including all fees, appraisals, and surveys, will be established and reviewed by a recognized and legally

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~~established non-profit land conservancy or other experienced and qualified individual and adopted by the Township Board within 90 days of the passage of this ordinance.~~ An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

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1. **Application.** Application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.

2. **Application Costs.**

- a. The Township shall not be responsible for any expenses incident to the request for amendment.
- b. All costs associated with the requested amendment, including appraisals, attorney fees and publication fees, shall be paid by the applicant, ~~unless the Township is the applicant.~~
- c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.

3. ~~Review. The proposed amendment shall receive legal review, be reviewed by a legally established non-profit land conservancy or other experienced and qualified individual, for applicable laws, rules, and regulations as well as for compliance to the accordance with the current version of the Land Trust Standards and Practices, and amendment principles, published by The Land Trust Alliance.~~

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3.4. **Public Hearing.** The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment.

4.5. **Notice.** All property owners within 1,320 feet of the property shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.

6. **Standards.** An amendment to a Conservation Easement shall ~~only not~~ be granted by the Township Board if the amendment ~~satisfies causes all any of the following principles of the conditions set forth in Section 8B (5), a. i-vii to occur, unless a finding is made that the standards in both Section 88: (5) b. and c. hereunder have been satisfied;~~

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a. Principles: the amendment

- (i) Serves the public interest and is consistent with the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance.
- (ii) Complies with all applicable laws, rules and regulations.
- (iii) Does not result in private inurement or confer impermissible private benefit.
- (iv) Is consistent with the original easement's intent and conservation purposes.
- (v) Is consistent with the intent of the grantor and any direct funding source.
- (vi) Has a net beneficial or neutral effect on the conservation values protected by the original easement.

b. Examples. The following list is meant to be examples of actions that may be appropriate outcomes of a proposed amendment.

- (i) The amendment decreases the number of future dwelling units.

- (ii) The amendment decreases the probability of parcel fragmentation.
- (iii) The amendment results in a scattering of residences less than prior to the amendment.
- (iv) The amendment decreases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
- (v) The amendment increases the net amount or quality of productive agricultural land as a result of the amendment.
- (vi) The amendment results in no new buildings located in identified scenic views

7.
5.8.

a. ~~Conditions~~

- (i) ~~The amendment decreasesincreases the number of future dwelling units.~~
- (ii) ~~The amendment decreasesincreases the probability of parcel fragmentation.~~
- (iii) ~~The amendment results in a scattering of residences lessmore than prior to the amendment.~~
- (iv) ~~The amendment decreasesincreases the amount of driveway across prime and unique agricultural land necessary to access dwellings.~~
- (v) ~~The amendment increasesreduces the net amount or quality of productive agricultural land as a result of the amendment.~~
- (vi) ~~The amended building sites do not interfere with air drainage.~~
- (vii) ~~The amendment results in no new buildings located in identified scenic views~~

b. ~~The possible adverse effects on adjacent property, particularly adverse visual effects on adjacent conservation easement parcels, shall be determined to be less than the positive benefits of the proposed amendment.~~

c. ~~The amendment enhances the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance. Examples of enhancements include, but are not limited to:~~

- o ~~a residence or reserved building is moved from the current location to a location further away from land being actively farmed;~~
- o ~~a residence or future building site is moved and placed in an area of existing buildings;~~
- o ~~a residence or future building site is moved to a location on adjacent property that consolidates residences in a cluster;~~
- o ~~an existing building is moved from a prime scenic view and relocated to another site that is out of prime scenic view;~~
- o ~~a building or reserved building site is moved from a location that creates an adverse impact on farming operations due to its location or access to a site that has less of an adverse impact;~~
- o ~~the amendment will result in a larger block of agricultural land without an existing residence or future building site.~~

The Township Board shall make written findings of fact as to the foregoing conditions and standards.

6.9. **Appraisal of Changes in Value:** Prior to a final decision on a proposed amendment to a

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recorded Conservation Easement, the Township shall obtain an appraisal of the property (paid for by the property owner) to determine if the value of the retained development rights is increased as a result of the amendment. The appraiser shall be selected in the same manner described in Section 7(7) above. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.

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7.10. Publication. The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.

8.11. Referendum. A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall stay any action until the decision has been approved by the voters.

9.12. Recording. All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment.

SECTION 8C — REPURCHASE

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~~Although it is the intent that all Conservation Easements endure in perpetuity, an owner of land from which development rights have been purchased under a PDR program may request repurchase of those development rights. The procedure to consider this occurs in the same manner as outlined in Section 8AB above, and Peninsula Township is under no obligation to approve such a request. In a very rare instance in which a repurchase does occur, funds generated shall be placed back in the program and shall be used to purchase development rights on other properties.~~

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SECTION 8C TRANSFER OF DEVELOPMENT RIGHTS

The transfer of development rights onto a property encumbered by a conservation easement held by the Township is not allowed.

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SECTION 9 RELATED COSTS

The costs of appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Township shall be paid from the

proceeds of the Millage, however, the Township shall not be responsible for expenses incurred by the Owner incident to this transaction.;

SECTION 10 SUPPLEMENTAL FUNDS

Supplemental or matching funds from other Governmental Agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights, or some lesser interest in Eligible Lands or to supplement or enlarge such acquisition. The Township Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise supplement the proceeds of the Millage in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 11 TOWNSHIP PURPOSE

The Township Board finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in Eligible Lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements, or to participation with any party for such purposes will promote the public health, safety, and general welfare of the people of Peninsula Township.

SECTION 12 DEVELOPMENT RIGHTS ACQUISITION FUND

The revenues from the Millage shall be deposited in a Farmland Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Peninsula Township (here and after "Acquisition Fund"). Money in such Acquisition Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The revenues from the Millage and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 13 DEVELOPMENT RIGHTS ENFORCEMENT FUND

The Township Board shall establish and maintain a Development Rights Enforcement Fund (here and after "Enforcement Fund") from the proceeds of the Millage vote in an amount of not less than ~~\$100,000~~~~\$40,000.00~~ to be used for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering, and other professional services. Money in such Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Section.

SECTION 14 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

PENINSULA TOWNSHIP PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE REFORMATTED AND EDITED

Approved by Peninsula Township Board May 4, 1994

Revised August 25, 2003 amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

1. Revised February 28, 2017 amending Section 6(4) regarding Committee termination.
2. Revised _____, 2020 amending multiple sections for conformance with the Michigan Zoning Enabling Act of 2006 as amended and updating several sections to reflect

PRIOR VERSIONS FROM COMMITTEE DISCUSSION

~~UPDATED AFTER 10/17/19 meeting~~

~~UPDATED AFTER 11/4/19 Meeting~~

~~UPDATED AFTER 11/21/19 Meeting~~

~~UPDATED AFTER 12/19/19 Meeting~~

~~UPDATED AFTER 1/9/2020 Meeting~~

~~UPDATED AFTER 1/23/20 Meeting~~

~~UPDATED AFTER 2/6/2020 Meeting~~

~~UPDATED AFTER 3/11/20 Meeting~~

~~UPDATED AFTER 1/10/22 Meeting~~

~~UPDATED AFTER 1/25/22 Meeting~~

~~UPDATED AFTER 2-2-22 Meeting~~

~~UPDATED AFTER 2-21-22 Meeting~~

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ORDINANCE NO.23

AN ORDINANCE, enacted in accordance with the Michigan Zoning Enabling Act of 2006, as amended, relating to the acquisition of voluntarily offered interests in Farmland and Open Space Land in Peninsula Township: calling an election by the voters of the Township on _____, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisition. This ordinance is a separate and unique ordinance and is not the Zoning Ordinance. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes. . Although the authorization for the Purchase of Development Ordinance is located in the Zoning Enabling Act, there was no legislative intent whatsoever to have the legal review of Purchase of Development Ordinances based on Zoning Law. This Ordinance shall not be construed to enable the transfer of development rights.

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

DRAFT

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

The Township Board finds that:

1. Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected to benefit the public.
2. The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming they also include other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage. However, Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.
3. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of Agricultural Use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource and public benefits are permanently lost to the citizens of Peninsula Township.
4. It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A. 116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use by zoning and subdivision control. However, these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.
5. Of the 17,000 acres of land in Peninsula Township, there are about 12,000 acres in the Agricultural District which provides the basis for the township's active agricultural enterprises. The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables for national distribution as well as for sale at roadside stands and at other local and regional outlets.
6. Generally, farmland and open space lands which are close to urban centers have a greater market value for future urban development than their market value for farming or open space, and prime fruit land has the same features of high elevations and proximity to water that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers and removed from *Agricultural Uses*.
7. The permanent acquisition by the Township of voluntarily offered interests in farmland and open space lands within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for public benefits which are served by farmland and open spaces within the Township.
8. Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their "Agricultural Use."

9. The acquisition of interests in farmland and open space lands as provided in this Ordinance is a public purpose of Peninsula Township that will yield public benefits. Financing such acquisitions requires that the Township enter into purchases or installment purchases not to exceed statutory limits.
10. The objective of voluntarily purchasing development rights from land owners in the manner prescribed in this ordinance is consistent with the Peninsula Township Master Plan.

SECTION 2 DEFINITIONS

1. **"Agricultural Use"** means substantially undeveloped land devoted to the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities. Agricultural Use does not include the management and harvesting of a wood lot, except as an incidental or ancillary use.
2. **"Agricultural Rights"** means an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other Agricultural Uses.
3. **"Appendix"** of this Ordinance means the maps and related materials which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large-scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are provided in the Appendix of this Ordinance for more accessible public reference.
4. **"Conservation Easement"** means a grant, by an instrument, whereby the owner relinquishes the development rights to the public in perpetuity, yet remains in private ownership. A Conservation Easement is a legal and recorded instrument that contains a covenant that runs with the land extinguishing development rights, except as may be expressly reserved in the instrument.
5. **"Development"** means an activity which materially alters or affects the existing conditions or use of any land.
6. **"Development Rights"** means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.
7. **"Eligible Land"** means farmland and open space land for which the purchase of a "Conservation Easement" with tax funds are authorized pursuant to this Ordinance. The Agricultural Preserve Area, as depicted in the Appendix provides the basis for Eligible Land.
8. **"Full Ownership"** means fee simple ownership.
9. **"Master Plan"** means a plan adopted by Peninsula Township in accordance with the Michigan Planning Enabling Act of 2008.
10. **"Open Space"** means land that is not developed for residential and commercial purposes. When it is included in a Conservation Easement it remains in private ownership and it is not open to public access except as allowed by the landowner.
11. **"Owner"** means the party or parties having the fee simple interest, a real estate contract vendor's or vendee's interest, or a mortgagor's or mortgagee's interest in land.
12. **"Parcel"** means contiguous property under one ownership that is included in an application.

13. **“Peninsula Township Purchase of Development Rights (PDR) Ordinance”** means Peninsula Township Ordinance No. 23 as adopted May 4, 1994 as subsequently amended. The Purchase of Development Rights Ordinance is a separate ordinance from the Zoning Ordinance, not to have legal review based on Zoning Law.
14. **“Permitted Use”** means any use contained within a Conservation Easement essential to the farming operation or which does not alter the open space character of the land.
15. **“Selection Committee”** means the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.
16. **“Substantially Undeveloped Land”** means land on which there is no more than 1 residential dwelling unit (exclusive of migrant housing units) for each 20 acres of land.
17. **“Township Board”** means the Peninsula Township Board.
18. **“Value of Development Rights”** means the difference between the fair market value of Full Ownership of the land (excluding the buildings thereon) and the fair market value of the *Agricultural Rights* plus any Residential Development Rights to be retained by the owner.
19. **“Zoning Ordinance”** means the Peninsula Township Zoning Ordinance, adopted June 5, 1972 as subsequently amended.

SECTION 3 AUTHORIZATION

1. The Township Board is hereby authorized to expend tax revenues to acquire property interests on Eligible Land as prioritized in Section 5 of this Ordinance. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The collected tax revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.
2. The Township is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchases are made, the Township is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.
3. The Township Board is further authorized to contract with other parties to participate jointly in the acquisition of interests in Eligible Lands.
4. The Township shall contract with a recognized and legally established non-profit land conservancy or other experienced and qualified individual that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any Conservation Easements acquired under this Ordinance. All work shall be done in accordance with the current version of the Land Trust Standards and Practices published by The Land Trust Alliance.
5. Interest which the Township owns in property other than Eligible Lands may be exchanged for property interests in Eligible Lands on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

6. On an annual basis, the Township Board shall budget funds to contract the monitoring of all Conservation Easements purchased under the authority of this Ordinance or donated under the authority of the Peninsula Township Donation of Development Rights Ordinance, No. 45. Such funds may not originate from a PDR millage and shall be a line item in the Township's general fund.
7. The Township Board is authorized to finance the PDR program using all of the mechanisms described in Section 125.3509 of the Michigan Zoning Enabling Act as amended. This includes borrowing money and issuing bonds or notes.

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

1. To promote the "Agricultural Use" of properties on which the Township has purchased the Development Rights, it has been determined that such properties should remain substantially undeveloped.
2. Applications for the sale of development rights may include a provision to retain the right to build residential dwellings (Residential Development Rights), provided, that no retained residential development rights would result in more than one dwelling unit per twenty (20) acres of land (exclusive of approved migrant housing units). This is not to preclude the sale of all the remaining Development Rights on a property that has existing dwelling units in excess of one dwelling unit per twenty acres of land.
3. The building locations for retained Residential Development Rights may be restricted in the negotiated "Conservation Easement" in order to protect Scenic Views identified in the Township Master Plan.
4. When a future home site (or home sites) are being retained within a Conservation Easement, the boundaries of such home site(s) shall be no less than one acre and the boundaries of such home site(s) shall be surveyed by a registered surveyor and proper monumentation shall be placed on the property.

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

The tax revenues shall be used to purchase property interests in the following farmland and open space lands in the following order of their priority subject to the provisions of Section 7. Property that is part of an approved Special Use Permit for a Winery Chateau or Remote Winery Tasting Room is not eligible to participate in the Purchase of Development Rights program

Primary criteria that all properties must meet:

All properties must be described in a voluntary application completed by the property owner and must be included in the Agriculture Preservation Area Map (Appendix 2) adopted by the Peninsula Township Planning Commission, as it may from time to time be amended.

Priorities for acquisition of existing reserved development rights.

Up to ten percent of the tax revenues generated for acquisition of development rights may be allocated to acquire retained development rights associated with past agreements and reserved building sites. When reserved development sites are included within a conservation easement, an easement amendment pursuant to Section 8B is required.

The following criteria shall be used in determining the priority by which applications are processed.

Cumulative Points	Criteria
0-100	One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood group, foundation, unrelated private individual, etc.), or will be donated by the landowner (the landowner accepts less than the appraised value).

0 or 25	Acquisition of reserved development site(s) results in a ratio of not more than 1 home site for each 40 acres of land encumbered in an existing PDR easement.
Total	

Priorities for acquisition of development rights on new property

The following criteria shall be used in determining the priority by which applications are processed. The scoring of applications may change during the process as owners make decisions regarding their applications and other factors change (i.e., outside funding).

Cumulative Points	Criteria
0 or 10	Parcel is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission (10 points if any part of the subject property is included in an identified Prime Scenic View area depicted in Appendix 1, 0 points if not)
0-100	One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood group, foundation, unrelated private individual, etc.), or will be donated by the landowner (wherein the landowner accepts less than the appraised value).
0 or 5	Parcel that is adjacent to another parcel that is subject to an existing conservation easement. Adjacent parcels include those that are across a public or private right-of-way, or otherwise share a common property line greater than ten feet in length. Five points awarded if adjacent, 0 points if not.
Varies	One point for each whole area (rounded up or down) to be included in proposed conservation easement.
Total	

SECTION 6 SELECTION COMMITTEE

1. A five-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of the Millage by the voters. The Selection Committee shall advise the Township Board in the selection of Eligible Lands on which Development Rights are offered for acquisition by their owners. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.
2. The Selection Committee shall consist of residents and/or property owners of the Township chosen to provide equitable representation of geographical and agricultural interests. The Township Board may appoint ex-officio members.
3. The Selection Committee may consult experts as it may desire and the Township Board may appropriate funds for that purpose.
4. Members shall serve three-year terms, except that the initial term of two members shall be two years and terms of three members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms. The Selection Committee shall be terminated when the proceeds of the Millage vote have been spent.
5. No member shall vote on the selection of individual parcels in which they have an interest, or on individual parcels adjacent to property in which they have an interest.

SECTION 7 SELECTION

Beginning in the first year following the Millage election and continuing until all proceeds of the Millage election have been expended, the Township Board will request that the Selection Committee conduct a voluntary property selection process by creating an application window for a specific period of time (herein called "Selection Round"). The selection process will generally take place as follows:

1. The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the general program eligibility requirements, application and general program procedures.
2. Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. Applications must include all information needed to perform a preliminary ranking of the proposal and may require attachments and documentation.
3. Terms and conditions of a proposed sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.
4. Upon closing of the applications period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search.
5. Upon closing of each Selection Round, the Selection Committee shall identify an initial group of projects to move forward with toward Conservation Easement acquisition. The size of groups shall be determined by the Selection Committee. Applications shall be reviewed for program eligibility and validity of information provided. The Selection Committee shall identify highest ranking projects according to the criteria contained in SECTION 5, thereby generating a ranked list of projects from highest to lowest.
6. For those highest-ranking applications, the Selection Committee shall order an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the Value of Development Rights. The appraisal shall determine difference between the fair market value of Full Ownership of the land (excluding buildings thereon) and the fair market value of the Agricultural Rights plus any specifically retained Residential Development Rights. The cost of this initial appraisal will be borne by Peninsula Township.
7. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised in writing, but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule, have a review appraisal made at the Owner's expense, provided it meets criteria and requirements as determined by the Selection Committee. The Selection Committee may use both appraisals to reach an agreement as to the appropriate value of the development rights.
8. All appraisals shall be performed by an individual holding a Certified General Appraiser License from the State of Michigan, Department of Licensing and Regulatory Affairs and shall meet other criteria, requirements and qualifications as determined by the Selection Committee. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. The same appraiser shall conduct the before and after appraisals.

9. In each Selection Round, the Development Rights on all Eligible Land shall be eligible for purchase. However, properties of higher priority (in accordance with the ranking system described in SECTION 5) shall be purchased with available funds before properties of lower priority are purchased, provided:
 - (a) In the interest of protecting as much agricultural land as possible, the Township Board may determine to buy only a portion of the development rights on a particular parcel if it is in the best interest of the program.
 - (b) In the event that points are assigned to properties based on a view shed and the whole scenic view is not protected because either some of the properties in the view shed are not offered or an easement that protects the scenic view cannot be successfully retained, then the Selection Committee may remove some or all scenic view points from all parcels that might be obstructed by development on the non-protected parcel.
 - (c) Should other ranking-related conditions change with one or more applications, the Selection Committee may reprioritize and re-score applications accordingly resulting in updated application ranking.
 - (d) In the event that the ranking of applications results in an equal number of points between one or more applications (i.e., a tie), the Selection Committee may determine the higher ranking application(s) with an impartial selection process (i.e., a lottery or similar unbiased process).
 - (e) For properties located within a Prime Scenic View as shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Master Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.
10. If a property owner and Selection Committee cannot reach agreement on the acquisition, the application may be withdrawn for subsequent consideration.
11. Upon receiving the recommendations of the Selection Committee, the Township Board may take final action to execute all closings.
12. The Selection Committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.

SECTION 8A DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTEREST

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following:

The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the conservation purposes as described in the conservation easement, or by exercise of eminent domain.

- a) Unexpected Change in Conditions. If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated. The Township Board shall submit to the voters of the Township a proposition to approve the disposition of such interest. If a majority vote approves such proposition, the extinguishment must go through judicial proceedings. The Township will then be entitled to compensation in accordance with the provisions of the Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii). Notwithstanding the foregoing, the Owner and Township intend that the

Conservation Easement not be subject to the legal doctrine of "changed conditions" that is applied to traditional servitudes.

- b) Eminent Domain. If the property is taken, in whole or in part, by power of eminent domain, then the Township will be entitled to compensation as determined by the method set forth in Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii).

SECTION 8B AMENDMENT OF CONSERVATION EASEMENT

Because of the public trust that is inherently involved with the purchase of development rights and the corresponding intent that all Conservation Easements endure in perpetuity, amendments of Conservation Easements and can only be amended in compliance with strict standards. Procedures for the administration of the amendment process, including all fees, appraisals, and surveys, will be established and adopted by the Township Board within 90 days of the passage of this ordinance. An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

1. **Application.** Application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.
2. **Application Costs.**
 - a. The Township shall not be responsible for any expense incident to the request for amendment.
 - b. All costs associated with the requested amendment, including appraisals, attorney fees and publication fees, shall be paid by the applicant, unless the Township is the applicant.
 - c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.
3. **Review.** The proposed amendment shall receive legal review for applicable laws, rules and regulations as well as for compliance with current Land Trust Standards and Practices, and amendment principles, published by The Land Trust Alliance.
4. **Public Hearing.** The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment.
5. **Notice.** All property owners within 1,320 feet of the property shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.
6. **Standards.** An amendment to a Conservation Easement shall only be granted by the Township Board if the amendment satisfies all of the following principles:
 - a) Principles: the amendment
 - i) Serves the public interest and is consistent with the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance.
 - ii) Complies with all applicable laws, rules and regulations.
 - iii) Does not result in private inurement or confer impermissible private benefit.

- iv) Is consistent with the original easement's intent and conservation purposes.
 - v) Is consistent with the intent of the grantor and any direct funding source.
 - vi) Has a net beneficial or neutral effect on the conservation values protected by the original easement.
- b) Examples. The following list is meant to be examples of actions that may be appropriate outcomes of a proposed amendment.
- i) The amendment decreases the number of future dwelling units.
 - ii) The amendment decreases the probability of parcel fragmentation.
 - iii) The amendment results in a scattering of residences less than prior to the amendment.
 - iv) The amendment decreases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
 - v) The amendment increases the net amount or quality of productive agricultural land as a result of the amendment.
 - vi) The amendment results in no new buildings located in identified scenic views
7. **Appraisal of Changes in Value:** Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall obtain an appraisal of the property to determine if the value of the retained development rights is increased as a result of the amendment. The appraiser shall be selected in the same manner described in Section 7 (7) above. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.
8. **Publication.** The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.
9. **Referendum.** A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall stay any action until the decision has been approved by the voters.
10. **Recording.** All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment..

SECTION 8C TRANSFER OF DEVELOPMENT RIGHTS

The transfer of development rights onto a property encumbered by a conservation easement held by the Township is not allowed.

SECTION 9 RELATED COSTS

The costs of appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Township shall be paid from the proceeds of the Millage, however, the Township shall not be responsible for expenses incurred by the Owner incident to this transaction.

SECTION 10 SUPPLEMENTAL FUNDS

Supplemental or matching funds from other Governmental Agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights, or some lesser interest in Eligible Lands or to supplement or enlarge such acquisition. The Township Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise supplement the proceeds of the Millage in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 11 TOWNSHIP PURPOSE

The Township Board finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in Eligible Lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of conservation easements, or to participation with any party for such purposes will promote the public health, safety, and general welfare of the people of Peninsula Township.

SECTION 12 DEVELOPMENT RIGHTS ACQUISITION FUND

The revenues from the Millage shall be deposited in a Farmland Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Peninsula Township (here and after "Acquisition Fund"). Money in such Acquisition Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The revenues from the Millage and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 13 DEVELOPMENT RIGHTS ENFORCEMENT FUND

The Township Board shall establish and maintain a Development Rights Enforcement Fund (here and after "Enforcement Fund") from the proceeds of the Millage vote in an amount of not less than \$100,000.00 to be used for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering, and other professional services. Money in such Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Section.

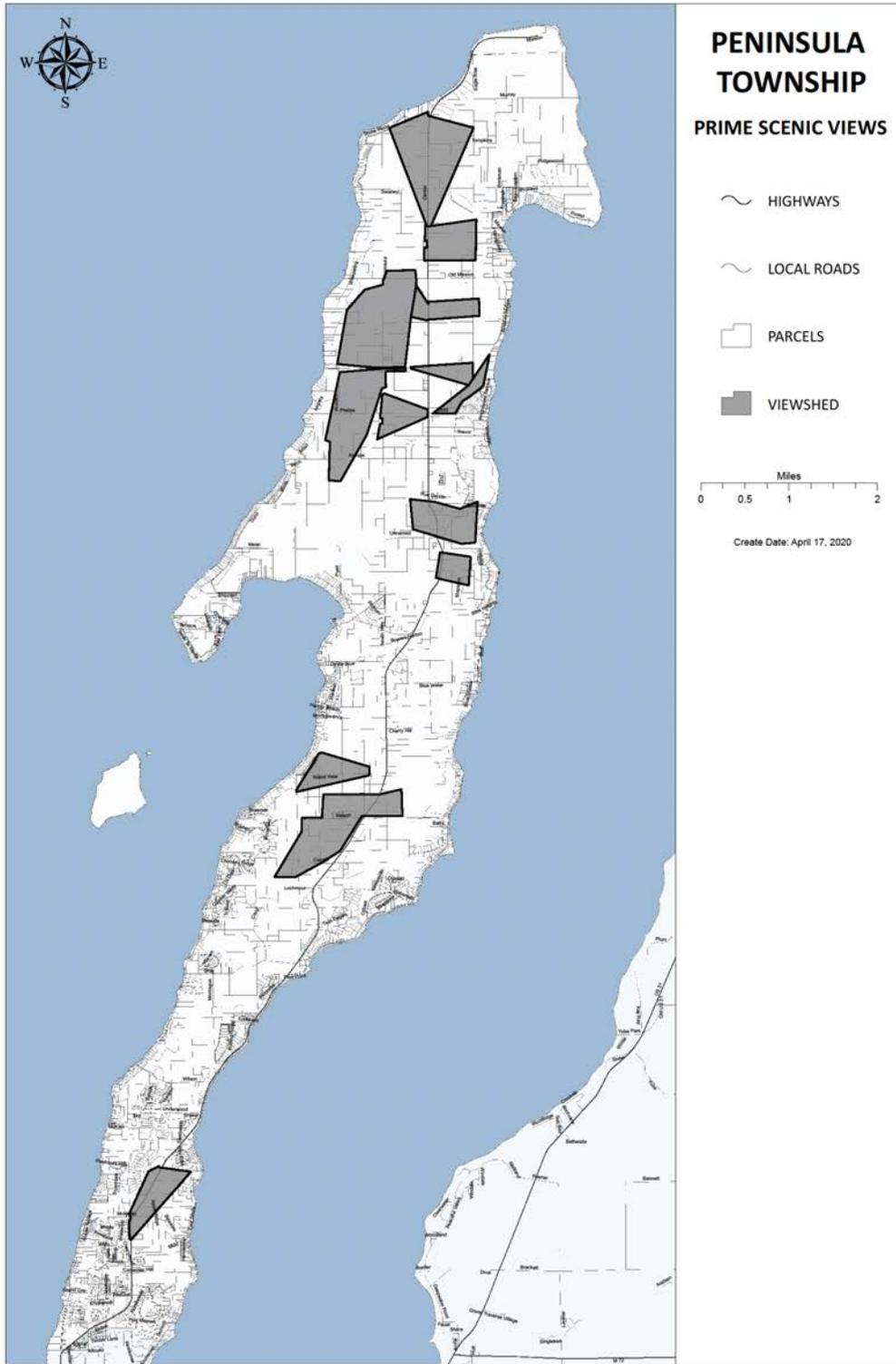
SECTION 14 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

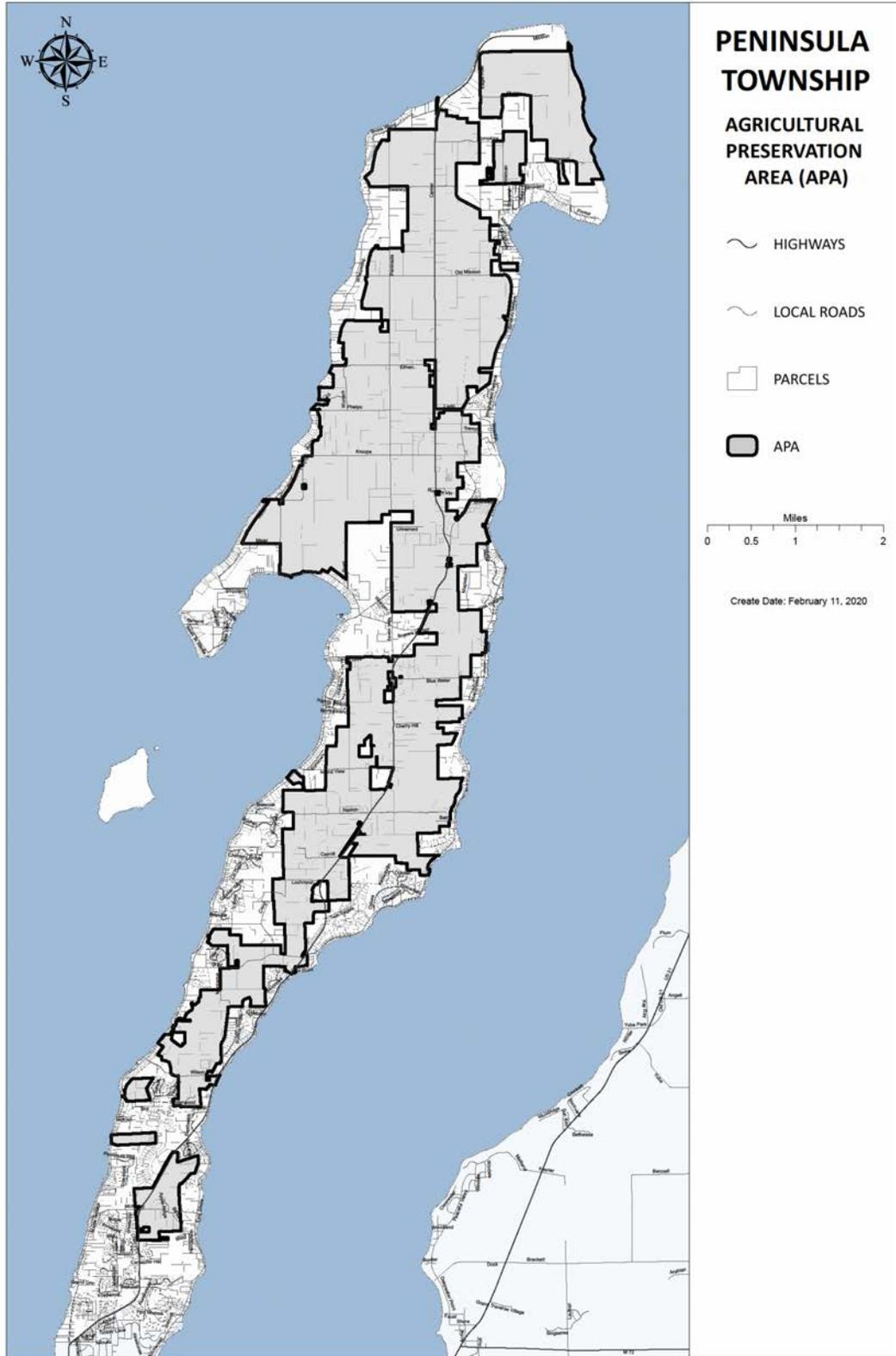
APPENDICIES

DRAFT

APPENDIX 1 VIEWSHED MAP



APPENDIX 2 AGRICULTURAL PRESERVATION AREA MAP



Peninsula Shores PUD



PENINSULA TOWNSHIP

MEMO

To: Planning Commission
From: Jenn Cram, AICP
Date: February 23, 2022
Re: Peninsula Shores PUD, SUP #123, Amendment #3

The Peninsula Shores PUD, SUP #123, Amendment #3 was introduced at the December 20, 2021, Planning Commission meeting. The first public hearing was held on January 24, 2022. The public hearing was Tabled to the February 28, 2022, Planning Commission meeting.

Since January 24th the applicant has provided additional information in response to Planning Commission and public comments attached as Exhibit #1 to this memo. Staff has also received additional public comments attached as Exhibit #2. In addition, staff has gone back through both Planning Commission and Township Board minutes and located the approved Findings of Fact and Conditions for the original approval in 2015 and 2017 and the first amendment in 2019. The originally approved grading plan is also included. This history is attached for reference as Exhibit #3.

Staff finds the application to be complete and meets Peninsula Township Zoning Ordinance standards for a Special Use Permit amendment. Staff believes that the application could be ready to move forward to Findings of Fact and Conditions at the March 21 regular Planning Commission meeting.

Staff will be available during the public hearing on February 28 to answer questions and listen to additional comments.

Project: Peninsula Shores
 Task: Check Open Space Calcs
 Date: 1/24/2022
 Eng: MWM

* Areas per Applicant CAD 06-24-2020			
**Update Unit 1, 38-41 SF per 10-24-2021 Open Space Plan			
	sf	ac	Non-Open space
Area Gross to OHWM	3591199	82.44	
Parcels	1011026	23.21	23.21
*Prop Site Roads	202605	4.65	
*Boursaw Rd	11335	0.26	
*Gravel & asphalt pvt	2822	0.06	4.98
Non Openspace sub total		28.19	34.19%
Openspace sub total		54.26	65.81%
Summary from Parcels			
Unit No	sf	ft	ac
**UNIT 01		31110	680.82 0.71
UNIT 02		28778	816.37 0.66
UNIT 03		29923	805.17 0.69
UNIT 04		33073	867.46 0.76
UNIT 05		37684	974.31 0.87
UNIT 06		18321	564.01 0.42
UNIT 07		12883	494.23 0.30
UNIT 08		16009	543.35 0.37
UNIT 09		16033	551.81 0.37
UNIT 10		14807	520.64 0.34
UNIT 11		23248	662.32 0.53
UNIT 12		24911	717.02 0.57
UNIT 13		26155	740.46 0.60
UNIT 14		26459	736.48 0.61
UNIT 15		25358	717.34 0.58
UNIT 16		24264	716.07 0.56
UNIT 17		23071	681.47 0.53
UNIT 18		22180	657.43 0.51
UNIT 19		22196	654.86 0.51
UNIT 20		22169	657.56 0.51
UNIT 21		22044	659.21 0.51
UNIT 22		22654	667.16 0.52
UNIT 23		23585	688.78 0.54
UNIT 24		23847	702.24 0.55
UNIT 25		25035	736.10 0.57
UNIT 26		26513	770.61 0.61
UNIT 27		27240	779.38 0.63
UNIT 28		28148	798.41 0.65
UNIT 29		32311	867.91 0.74
UNIT 30		25959	657.68 0.60
UNIT 31		23003	633.43 0.53
UNIT 32		24392	683.90 0.56
UNIT 33		24670	696.85 0.57
UNIT 34		24769	698.73 0.57
UNIT 35		24868	700.61 0.57
UNIT 36		24966	702.49 0.57
UNIT 37		25065	704.36 0.58
**UNIT 38		25163	748.01 0.58
**UNIT 39		22579	755.53 0.52
**UNIT 40		25018	703.57 0.57
**UNIT 41		30565	701.03 0.70

Exhibit 1



Peninsula Shores SUP Amendment #3

Requested modifications to the Peninsula Shores development as part of this application for SUP Amendment #3 are as follows:

- Relocate Unit 1 from the south end of the development along Boursaw Road, to the north end of the development.
Benefit: The move will open up the entire view shed along Boursaw Road as Common Open Space. The proposed new location to the north is suitable for home construction in that the new site is an open area with soils suitable to construction.
- Remove Parcel A from the SUP. Parcel A is the lakefront access for the existing Unit 1 location along Boursaw Road. SUP open space calculations have been updated to reflect the change and continues to provide 65%+ common open space.
Benefit: The 10-foot wide lakefront access route is squeezed in-between two existing homes outside of the Peninsula Shores development. The travel route to the beach is just 12-feet from the existing home to the north and 25-feet from the existing home to the south. Removal of this element from the SUP will benefit the existing neighboring homeowners and lessen potential impact along the lakefront.
- Modify a sanitary easement on Unit 6.
Benefit: Shortening the sanitary easement on Unit 6 will allow greater flexibility of construction within the building envelope. This modification only benefits Unit 6 and has no effect on any other aspect of the development.
- Adjust lot lines of Units 38-41.
Benefit: Slight adjustments to these lot lines will allow greater flexibility of construction within the building envelopes. This modification only benefits Units 38-41 and has no effect on any other aspect of the development. SUP open space calculations have been updated to reflect the change and continues to provide 65%+ open space.



Ordinance Reference - Section 8.1.3 Basis of Determination

10. Include a statement of HOW the proposed project meets the standard:

a. That the applicant may legally apply for site plan review.

The applicant is the legal owner of the project site since June 2014. Recorded deeds for the parcels listed below were provided to the Township as part of the original PUD application.

15634 Smokey Hollow Road (Tax ID 28-11-114-001-00)

15636 Bluff Road (Tax ID 28-11-114-002-00)

The applicant still has majority share of Peninsula Shores HOA (owning of 35 of the 41 total units within the PUD) and therefore may still solely and legally apply for the requested amendment to the PUD per the developments Master Deed and By Laws.

b. That all required information has been provided.

The applicant believes that all required/requested information has been provided as part of this application.

c. That the proposed development conforms to all regulations of the zoning district in which it is located.

The proposed amendment #3 continues to meet the intent and parameters of the approved SUP#123 which is significantly less impactful to the landscape and surrounding uses than had the parcel been developed per the underlying residential zoning standards.

The proposed residential use is a use-by-right within the underlying R-1A and R1-B Zoning District. Underlying zoning allows a minimum 1-acre and 25,000 square foot lot size with a potential practical development density of 55 lots with no preserved open space.

Peninsula Shores SUP#123 as approved in 2017 consists of 41 lots, while preserving 65% open space including 1,500 lineal feet of East Bay shoreline.

	<u>Use-By-Right</u>	<u>PUD</u>
<i>Residential density</i>	<i>55 lots</i>	<i>41 lots</i>
<i>preserved open space</i>	<i>none</i>	<i>54-acres, 65%</i>
<i>preserved shoreline</i>	<i>none</i>	<i>1,500 lineal feet</i>

d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

The requested amendment does not change the site circulation or unit density and therefore should not cause any changes to existing services within the PUD (as confirmed in the Twp Engineers review).

The existing residential development is served by private wells, and both private and community septic system. The proposed unit #1 location has been successfully perc tested by the Health Department for an individual drain field.



Storm water control infrastructure was constructed per the Peninsula Township Stormwater Control Ordinance and has been functioning without incident since installation.

The proposed amendment has no impact on emergency services use of the secondary emergency access to Smokey Hollow Road located at the northwest end of the site (near the proposed unit #1 location), or the underground fire suppression water tank located at the center of the site which is a benefit for the safety of the general vicinity, not only residents of Peninsula Shores.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

All major common infrastructure within Peninsula Shores PUD was installed in 2018, including the following governmental agency permits.

- *Soil Erosion Sedimentation Control*
- *NDPES DEQ Notice of Coverage Permit*
- *Grading and Stabilization Plan*
- *Storm Water Control Permit*
- *Storm Water Bond / Escrow Provided*
- *Sanitary / Water Final Plan Submission*
- *DEQ Permits (Part 41)*
- *Health Department Permits (Residential Wells)*
- *Corp of Engineer Permit (Seasonal Dock)*
- *Township Private Road Permit*
- *County Road Commission Permit*
- *Private Road Name Approval (Twp Board)*

The proposed SUP amendment does not change or affect any of the existing infrastructure of the development. The existing unit #1 location would have been serviced by an individual well and septic (drain field system) as will the proposed unit #1 location, so there is no change in infrastructure quantity or density. A test hole by the Health Department verified that soils in the proposed unit #1 location will sustain drain field infrastructure. Individual well and septic associated with home construction within Peninsula Shores is permitted at the time of individual unit Land Use Permit application.

- f. Grand Traverse County Road Commission Grand Traverse County Drain Commissioner County DPW standards for sewer and water if public.

- i. Grand Traverse County Health Department for private systems State and Federal Agencies for wetlands, public sewer and water.

A test hole by the Health Department verified that soils in the proposed unit #1 location will sustain drain field infrastructure. Individual well and septic permitting by the County Health Department is completed at the time of Land Use Permit application associated with the individual home construction.



- ii. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
The Peninsula Shores PUD offers reduced residential density while preserving 65% open space, including a wetland, steep slopes, wooded acreage and 1,500 lineal feet of waterfront on a very scenic parcel of land.
The proposed lot line adjustments meet the intent of the original PUD and continue to preserve the natural resources listed above while.
- iii. That the proposed development property respects floodways and flood plains onor in the vicinity of the subject property.
60 lineal feet of waterfront (floodplain) will be removed from the development (Parcel A). There are no floodways or floodplains in the vicinity of the other proposed adjustments of units within the development.
- g. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
The proposed location for unit 1 is well suited for development in that the soils are good, there are no steep slopes, and very little woody vegetative cover. A test hole by the Health Department verified that soils in the proposed unit #1 location will sustain drain field infrastructure.
Individual well and septic permitting by the County Health Department is completed at the time of Land Use Permit application associated with the individual home construction.
- h. That the proposed development will not cause soil erosion or sedimentation problems.
The proposed lot line adjustments within the existing development will not cause SESC problems.
Individual home construction requires Land Use Permit applications including soil erosion and sedimentation control measures.
- i. That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
Storm water infrastructure for the development is already in place, and the proposed modifications do not cause any change to previously permitted impervious lot coverage or land use density.
Land Use Permit applications associated with individual home construction require storm water runoff calculation be provided.
- j. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.



The proposed lot line adjustments within the existing development do not require any grading or filling.

Land Use Permit applications associated with individual home construction require a site plan.

- k. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

The proposed lot line adjustments within the existing development will not cause changes to existing air drainage.

Land Use Permit applications associated with individual home construction require a site plan.

- l. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

Infrastructure related to Peninsula Shores was constructed in one phase. The proposed lot line adjustments within the existing development do not change any of the existing infrastructure.

- m. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

The proposed lot line adjustments within the existing development does not change any of the previously approved Peninsula Shores infrastructure. There are no public sewer, water or drainage facilities in the vicinity of Peninsula Shores. Existing Peninsula Shores roadways, sewer, water, and stormwater infrastructure is privately owned and maintained. A Fire Suppression water tank located within the development is a public benefit in support of the Peninsula Township Fire Department.

- n. That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.

The applicant is offering to provide some landscape screening along the northern property line of the proposed unit 1 location. In addition to setbacks on individual lots, the entire existing development offers a 30-foot PUD perimeter setback.

- o. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

Residential parking continues to be accommodated on each individual residential lot.

- p. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

The proposed lot line adjustments within the existing development do not cause any change to the existing and previously approved vehicular and pedestrian traffic. The private, dead end road is much like any other residential subdivision road, and should be safe for shared vehicular/pedestrian traffic.



- q. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
The proposed lot line adjustments within the existing development do not cause any change to the one-site management of refuse. Each individual lot owner is responsible for their own garbage service.
- r. That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
The proposed lot line adjustments within the existing development do change the spirit or intent of the previously approved PUD plan.
As stated in the original PUD application, the development meets and exceeds the objectives of the Ordinance and the principles of sound planning by seeking approval through a Planned Unit Development. This PUD offers reduced lot density and 65% open space preservation including a wetland, steep slopes, wooded acreage and 1,500 lineal feet of waterfront on a very scenic parcel of land.



Section 8.3.2 Objectives: The following objectives shall be considered in reviewing any application for a special use permit for planned unit development.

1. Provides a more desirable living environment by preserving the natural character of open fields, stand of trees, brooks, ponds, lake shore, hills, and similar natural assets.

The proposed lot line adjustments within the existing development do not cause any change in intent of the previously approved SUP.

Relocating Unit 1 will provide for a more desirable living environment away from the public road corridor, and the removal of Parcel A from the development will lessen potential impact of another family (additional population) using the small area of waterfront located between two existing homes, not within the development.

2. Provision of open space requirements.

The proposed lot line adjustments within the existing development continue to provide 65%+ (54.28 acres) common open space for the use and enjoyment of Peninsula Shores residents.

3. A more creative and imaginative approach in the development of residential areas.

The proposed lot line adjustments within the existing development does not change the intent of the previously approved clustered, open space development, SUP #123.

Relocating Unit 1 provides for a better residential lot away from the public road corridor.

4. More efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.

The proposed lot line adjustments within the existing development does not change the intent of the previously approved clustered, open space development, SUP #123.

Relocating Unit 1 provides for a better open space aesthetic along Boursaw Road.

5. Encourage variety in the physical development pattern of the Township by providing a mixture of housing types.

The proposed lot line adjustments within the existing development does not change the intent of the previously approved clustered, open space development, SUP #123.

6. The retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.

The proposed lot line adjustments within the existing development does not change the intent of the previously approved clustered, open space development, SUP #123.

The existing Master Deed has a provision allowing for the HOA to plant open space areas of the development in crops if they collectively choose to at any time in the future.



Below is an image submitted as part of the original PUD application illustrating the land preservation benefits of the PUD over a Use-by-Right development plan.

7-27-2015



Use-By-Right

Per Zoning / Michigan Land Division Plat Act

- 55 lots
- 1+ acre lot size
- 0% common open space (0 acres)
- 0 lineal feet of East Bay shore line preserved
- 0 perimeter open space buffer area
- no protection of forested areas
- no protection of steep bluffs
- 55 individual septic systems with no regular oversight or monitoring
- maximum density / maximum traffic

Planned Unit Development

The 81 on East Bay -an open space community

- 41 lots
- ½ acre to ¼ acre average lot size
- 65% common open space (54 acres)
- 1,500 lineal feet of East Bay shore line preserved
- 30 foot wide perimeter open space buffer area
- forested areas protected within open space areas
- steep bluffs protected within open space areas
- 10 individual septic systems / 1 state permitted and monitored community sewer system
- reduced density / reduced traffic

The PUD plan provides the benefit of a 25% reduction of housing density and 65% preservation of open space including 83% of the shoreline bluff including 1,500 lineal feet of East Bay waterfront.



Section 8.3.3 Qualifying Conditions: Any application for a special use permit shall meet the following conditions to qualify for consideration as planned unit development.

1. The planned unit development site shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the site size requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of the land.

Peninsula Shores is currently 82.63 acres. The removal of Parcel A (0.19 acres) results in a proposed site area of 82.44 acres.

The applicant has majority share of Peninsula Shores HOA and therefore may still solely and legally apply for the requested amendment to the PUD.

2. The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts. Individual planned unit developments may include land in more than one zone district in which event the total density of the project may equal but not exceed the combined total allowed density for each district calculated separately.

The underlying zoning of Peninsula Shores SUP #123 is R-1A Rural and R-1B. The total possible density of the site is 66 one-acre lots and five 25,000 square foot lots, equaling a total of 71 lots allowed, however, the practical number of buildable units is 55 based on a platted subdivision layout designed on the site.

Peninsula Shores SUP#123 was approved with 41 units while preserving 54 acres of open space including a wetland, steep slopes, and 1,500 lineal feet of shoreline.

This application for PUD amendment is not requesting any changes to the current density of the PUD.

3. Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements. It is recognized that joining water and sewer ventures with contiguous or nearby landowners may prove to be expedient.

This application for PUD amendment does not require any changes to the existing community infrastructure already in place within the Peninsula Shores development.

Each of the 41 residential units will have a private well. Units 1-4, 25-29 will have individual sanitary systems, and units 5-24, 30-41 are serviced by an on-site community wastewater treatment system.

4. The proposed population density of the planned unit development shall be no greater than if the tract were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1.

This application for PUD amendment does not change the residential density of the existing Peninsula Shores SUP #123 development. Peninsula Shores will continue to be a 41-unit residential development.

The project site could have practicably accommodated 55 residential lots with no preserved open space if developed as a use-by-right subdivision.



- 5. Open space shall be provided according to Section 8.3.6.
Open space is provided per Section 8.3.6 (1) Open Space Preserved for Private Use. 65% (54 acres) of the site continues to be kept in open space owned by the Homeowners Association for the sole use and enjoyment of owners and residents within the PUD. A common element within the community open space includes waterfront access/boat docks.

- 6. For purposes of this Section 8.3, Open Space does not include building envelopes, parking lots and roads (roadbed width plus two (2) foot shoulders on each side).

<i>Total project site</i>	<i>82.44 acres</i>	
<i>Residential lots</i>	<i>-23.19 acres</i>	
<i>Roadway</i>	<i>-4.98 acres</i>	
<hr style="border: 0.5px solid black;"/>		
<i>Total remaining open space</i>	<i>54.28 acres</i>	<i>65% open space</i>

- 7. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1. and Article VII.
Please refer to the parts of this submittal relating to Section 8.3 and Section 8.1.

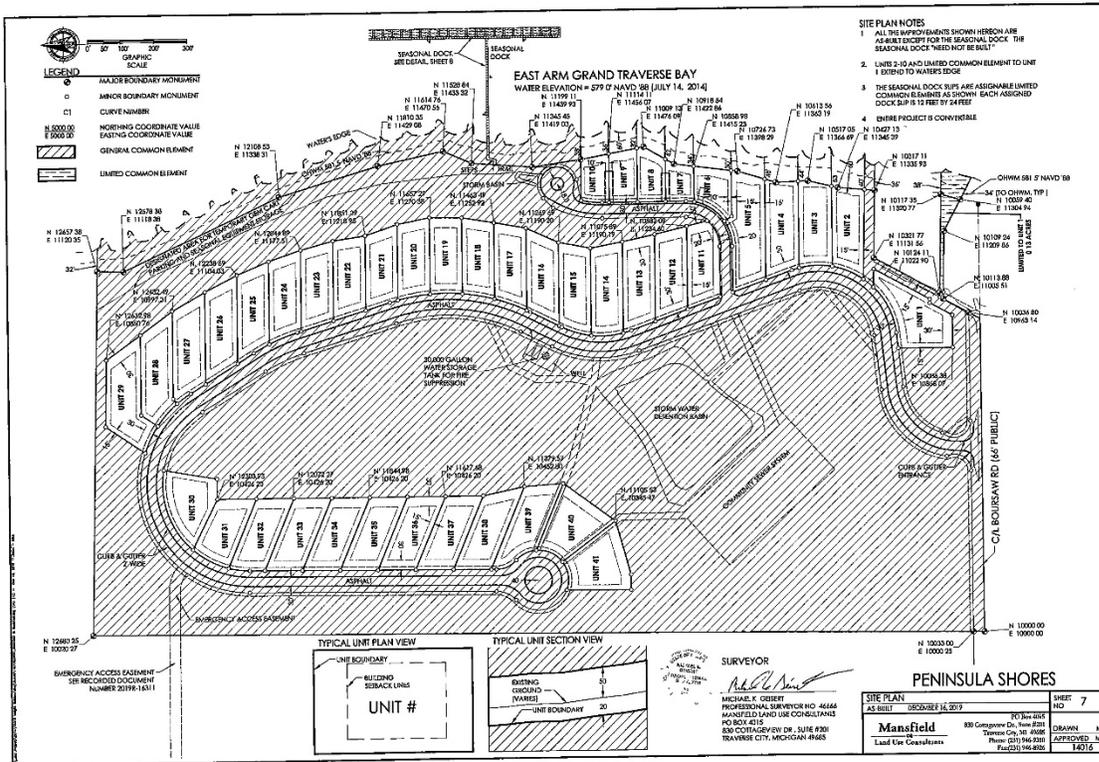


Section 8.3.5 Lot Size Variation Procedure: The lot area for Planned Unit Developments within Residential and Agricultural Districts may be averaged or reduced from those sizes required by the applicable zoning district within which said development is located by compliance with the following procedures:

7. Open Space Dedicated for Private Use: A residential planned unit development with a minimum of 65% of the net acreage kept as open space and owned by the Homeowners Association or Condominium Association. That open space land shall be set aside as common land for the sole benefit, use and enjoyment of present and future lot or homeowners within the development.

a. Such open space shall be conveyed by proper legal procedures from the project owner or owners to a homeowners association or other similar non-profit organization so that fee simple title shall be vested in project lot owners as tenants in common.

The existing, recorded Peninsula Shores Master Deed exhibit indicating general common open space will be amended to reflect the changes requested as part of this amendment #3 to the PUD.



Grand Traverse County Register of Deeds 2019C-00055 Pg# 72

b. Documents providing for the maintenance of said land and any buildings thereon to assure that open space land remains open shall be provided to the Township Board for its approval.

The existing, recorded Peninsula Shores Master Deed provides for the maintenance of general common open space. The proposed lot line adjustments requested as part of this amendment #3 to the PUD do not change the existing intent for maintenance of the general common areas and the language will remain as is.



- c. The access and characteristics of the open space land are such that it will be readily available and desirable for the use intended.

The proposed lot line adjustments requested as part of this amendment #3 to the PUD do not change the existing intent of the general common areas and the language will remain as is.



Section 8.3.7 Maximum Percentage of Lot Area Covered by All Structures:

- a. The maximum percent of lot area covered by all structures shall not exceed fifteen (15) percent of net acreage.

The total area of all building envelopes within the development is 12 acres which equates to 14% of the total 82.4-acre site.

Needless to say, the entire building envelope of a residential unit/lot will not be entirely covered by structures, so the practical, overall percentage of lot coverage will be considerably less than 14%.

- b. A Building Envelope within which structures may be located shall be shown on the site plan for all existing or future structures.

Building envelopes are indicated for each individual unit on the site plan as the area within the building setbacks.

- c. The maximum number of square feet to be covered by all structures for each building envelope shall be shown on the site plan or attached to it.

The maximum number of square feet within each building envelope is indicated on the chart to the side.

The total area of all building envelopes within the development is 12 acres which equates to 14% of the total 82.4-acre site.

Section 8.3.7

Maximum Percentage of Lot Area Covered by all Structures

NUMBER	UNIT SIZE	BUILDING ENVELOPE
UNIT 1	31,110 sf	17,023 sf
UNIT 2	28,778 sf	13,349 sf
UNIT 3	29,923 sf	14,560 sf
UNIT 4	33,073 sf	16,688 sf
UNIT 5	37,684 sf	18,707 sf
UNIT 6	18,321 sf	7,000 sf
UNIT 7	12,883 sf	4,108 sf
UNIT 8	16,009 sf	6,434 sf
UNIT 9	16,033 sf	6,617 sf
UNIT 10	14,807 sf	5,620 sf
UNIT 11	23,248 sf	11,439 sf
UNIT 12	24,911 sf	12,997 sf
UNIT 13	26,155 sf	13,878 sf
UNIT 14	26,459 sf	14,258 sf
UNIT 15	25,358 sf	13,391 sf
UNIT 16	24,264 sf	12,295 sf
UNIT 17	23,071 sf	11,726 sf
UNIT 18	22,180 sf	11,216 sf
UNIT 19	22,196 sf	11,286 sf
UNIT 20	22,169 sf	11,201 sf
UNIT 21	22,044 sf	10,995 sf
UNIT 22	22,654 sf	11,506 sf
UNIT 23	23,585 sf	12,100 sf
UNIT 24	23,847 sf	12,115 sf
UNIT 25	25,035 sf	12,782 sf
UNIT 26	26,513 sf	13,678 sf
UNIT 27	27,240 sf	14,124 sf
UNIT 28	28,148 sf	14,928 sf
UNIT 29	32,311 sf	18,070 sf
UNIT 30	25,959 sf	12,959 sf
UNIT 31	23,003 sf	11,753 sf
UNIT 32	24,392 sf	12,649 sf
UNIT 33	24,670 sf	12,759 sf
UNIT 34	24,769 sf	12,829 sf
UNIT 35	24,868 sf	12,900 sf
UNIT 36	24,966 sf	12,970 sf
UNIT 37	25,065 sf	13,040 sf
UNIT 38	26,647 sf	13,881 sf
UNIT 39	26,018 sf	12,618 sf
UNIT 40	27,528 sf	14,689 sf
UNIT 41	28,274 sf	15,136 sf
Unit Totals	1,016,167 sf	512,273 sf

23 acres

12 acres buildable area

82 acres total project site

14% of the site is buildable area

but only a fraction of the buildable area will be covered in structures

SUP #123 Amendment #3

Mansfield 2-18-2022

photo is mid-2021ish

SUP Amendment #3 proposes to move unit 1 to the north end of the development, and remove the Parcel A waterfront access from the SUP.



Trevor Road Cul-de-sac
existing fence line
30 foot PUD setback

approx.
proposed
unit 1

emergency services
access road

Parcel A (waterfront access)

approx.
unit 1



units 30-41

unit 1

30-foot PUD setback

Trevor Road
cul-de-sac

Trevor Road cul-de-sac
existing Trevor Road home



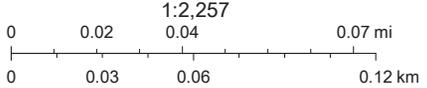
approx.
unit 1

Grand Traverse County Parcel Viewer



2/18/2022, 4:46:35 PM

- Address Points
- Municipal Boundaries
- Eighths
- Tax Parcel
- Sections
- Survey Points
- Roads
- Quarters



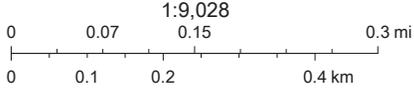
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Grand Traverse County Parcel Viewer



2/18/2022, 4:44:50 PM

- Tax Parcel
- Municipal Boundaries
- Quarters
- Roads
- Sections
- Eighths



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February 21, 2022

VIA EMAIL ONLY

Peninsula Township Planning Commissioners
13235 Center Road
Traverse City, MI 49685

Susan Shipman, Chair
shipman.parks@gmail.com

Randy Hall, Vice-Chair
rand.plancom@gmail.com

Lawrence Dloski, Secretary
lwdloski@gmail.com

Al Couture, Member
acouture@need-lawyer.com

Julie Alexander, Member
jualexanptpc@gmail.com

Donna Hornberger, Member
dsh_44@yahoo.com

Isaiah Wunsch, TB Representative
wunschis23@gmail.com

Re: Proposed PUD Amendment for Peninsula Shores

Dear Planning Commissioners:

Please be advised that our firm represents O’Grady Development Company which has, as you know, submitted a proposed PUD Amendment for Peninsula Shores. After reviewing public comments submitted by a few members of the public (several of which were authored by several members of one family and their attorney which own a single parcel located near the development), we felt compelled to provide a response to these comments and the misinformation perpetuated by some opponents of the development.

First, it has been stated that the proposed amendment does not have enough open space. This position goes back to a legal argument presented by opponents to the Peninsula Shores project, historically. These arguments were rejected by the courts and the project was determined to have sufficient preserved open space to comply with the ordinance. The proposed amendment actually increases the amount of preserved open space and the open space calculations have been confirmed by the township planner and consultants. Accordingly, there is demonstrably sufficient open space necessary to support the amendment consistent with Section 8.3.4 and 8.3.6 of the Peninsula Township Zoning Ordinance.

Second, it has been alleged that the proposed amendment does not meet the zoning ordinance requirements of Section 8.1.3. As the Planning Commission is aware, Section 8.1.3 requires that land uses not be “... disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.” Some comments have indicated that allowing the amendment would be violative of this provision. However, it is clear that the proposed use is residential and is completely harmonious with surrounding residential uses. If the commenters were correct, then it would never be appropriate to allow a house to be built next to another house, as having to look at another house

may be “disturbing”. This would be an absurd reading of the ordinance. Further, there is a buffering tree line which exists along most of the northern border of the Peninsula Shores development and those trees shall remain under the current proposal. The complaint that “we have to look at a house next to our house” is understandable, but does not rise to a violation of Section 8.1.3. To address this concern, our client has graciously agreed to plant six (6) mature spruce trees on the northern perimeter of lot 1 in an effort to further screen the relocated lot and mitigate this concern of having “to look at another house”. Incidentally, this is not the first time this objection has been lodged against Peninsula Shores development. Again, these arguments have been rejected both by prior Township action, as well as in the courts.

Third, it has been alleged that the application does not include all of the required information necessary for Planning Commission action. Again, this is a complete misrepresentation, in that all of the necessary documents demonstrating the size of the open space, as well as other detail, has been previously provided as part of the application. Amendments to the Master Deed reflecting the changes as noted in the application for the amendment will be drafted after approval and will be completely conforming with any official action of the Planning Commission. After all, why would it be appropriate or necessary to go through the cost and expense of amending a Master Deed and Bylaws if the application is rejected? Accepting this argument would necessitate a foolish use of resources.

Fourth, a comment was made regarding alleged overcutting of trees to make way for the new location of lot 1. This is completely untrue, and misconstrues the official record of the Township with respect to preservation of trees. Even the letter from attorney Scott Howard dated January 24, 2022, shows an area nearly encompassing all of the proposed lot 1 with “trees to be removed” clearly denoted on the site plan. In the area noted “existing trees to remain”, the bulk of that tree stand still remains and is projected to remain as a buffer to the property to the north. Despite this misconstruance of the record and prior statements made prior to the approval of the final site plan (which superseded the statements referenced in Mr. Howard’s letter), the conditions required under the original PUD approval have been scrupulously followed. Nonetheless, as stated previously, in order to address the concerns of one of the neighboring properties to the north, the developer has graciously agreed to plant mature screening spruce trees to address this concern, even though such an effort is not required.

Fifth, several comments appear to indicate that there is a false perception that a PUD should never be amended. The ordinance contemplates such amendments for just such events, such as the one presented by this application. So long as the amendment request meets the relevant requirements of the ordinance, there is no “claw back” or extra advantage provided to the developer at the detriment of the Township or the community. The proposed application is, in fact, a more appropriate use of the land, as it maintains conforming open space, provides screening of the development from Bluff and Boursaw Roads, and provides a tree and vegetative buffer to the east and south of current lot 1, and is overall in harmony with this high-quality residential development. The Peninsula Shores team have not removed more trees than originally approved (as was alleged in one of the public comments), and in reality, only one house can be seen from the proposed lot 1 relocation.

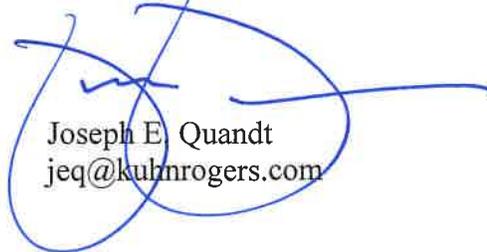
Accordingly, the objections presented to the proposed amendment are not based in fact or law and are largely the complaints of a single property owner. Further, my client is well aware of these objections and has offered to meet with the neighbors to discuss those concerns. Attached as Exhibit A is a copy of that letter. My client's offer to meet did not even receive the dignity of a response and, instead, received the continued hostile and baseless accusations contained in the public comment.

To conclude, we believe that the application presents a meritorious proposal for an amendment to the current PUD. The application, when viewed in the context of the ordinance, demonstrates compliance with all of the ordinance requirements for approval. There is no legal basis for rejection of the application based upon the positions previously articulated by project opponents, many of those arguments having been previously presented to the Township and to the courts, with uniform rejection of those positions all the way to the ultimate rejection by Michigan's Supreme Court. Distilling down the basis of the opposition's argument, the position is essentially "we don't want to look at another house from our house". Again, this cannot possibly be any standard of review, as no house could ever be constructed if it was a requirement to obtain the consensus of the neighbors as to where a neighboring house could be located. The record clearly shows my client's willingness to attempt to accommodate the concerns of the Peninsula Shores' neighbors and the current application before the Planning Commission clearly demonstrates that willingness to go above and beyond in an effort to accommodate. Rejecting the application based upon the baseless allegations of these opponents would be clearly in error.

Of course, if you have additional questions or comments regarding any of the information provided in this letter, please feel free to contact me.

Sincerely,

KUHN ROGERS PLC



Joseph E. Quandt
jeq@kuhnrogers.com

JEQ:shp
cc: Kyle O'Grady



R. EDWARD KUHN
TERRY C. ROGERS (*LLM, Taxation*)
EDGAR ROY III
JOSEPH E. QUANDT
GREGORY J. DONAHUE
GREGORY L. JENKINS
TROY W. STEWART
GINA A. BOZZER
CHRISTOPHER G. ROGERS
(also admitted in Illinois)

412 SOUTH UNION STREET
TRAVERSE CITY, MICHIGAN 49684
TELEPHONE: 231-947-7900
FAX: 231-941-5154

LANSING OFFICE:
2937 ATRIUM DRIVE, STE 200
OKEMOS, MI 48864

MOUNT PLEASANT OFFICE:
3046 JEN'S WAY
MT. PLEASANT, MI 48858

J.D. PRAASTERINK
(also admitted in Arizona)
MARC S. McKELLAR II
DAVID P. GLENN
PATRICK M. ELLIS
W. DANE CAREY

OF COUNSEL:
LEWIS G. GATCH
A. BROOKS DARLING

June 10, 2021

VIA EMAIL scott@envlaw.com

Scott W. Howard
Olson, Bzdok & Howard, P.C.
420 E. Front Street
Traverse City, MI 49686

Re: Proposed PUD Amendment for Peninsula Shores

Dear Scott:

Consistent with my previous voice mail message to you, please be advised that I am representing Peninsula Shores (formerly The 81 on East Bay) with respect to a PUD Amendment currently pending in Peninsula Township. I am in receipt of your July 19, 2020 correspondence to the Township on behalf of Lewis Family, LLC and Simple Melody, LLC noting your objections to the PUD Amendment.

Your letter to the Township Planning Commission references several concerns, some of which I believe can be addressed and others which are likely not matters which my client or the Township can address. With respect to the specific concerns related to the relocation of Lot 1, you indicate that the relocation of Lot 1 "is not harmonious with the character of the adjacent Lewis property." Your client's particular concern in this regard appears to be related to your client's concern that their viewshed to East Grand Traverse Bay may be affected by the removal of trees, encroaching structures, noise and light pollution, etc. In discussing these concerns with my client, they may be willing to address your client's concerns by significantly limiting the removal of any trees from the new proposed Lot 1 and also locating the proposed home on Lot 1 in a way which will minimize viewshed impacts. My client's belief is that because of the elevation of your client's neighboring property and with the limited tree removal, sight line objections may be resolvable by mutual consent and can be enforced by appropriate restrictive covenants. I have discussed this approach with the Township attorney, Greg Meihn, and he has indicated that the Township would encourage this type of collaborative solution.

KUHN ROGERS PLC

June 10, 2021

Page 2

I would like to see if we can arrange a time to meet on the proposed Lot 1, as well as on your client's property, to get some photos to establish baseline elevation conditions and see if there is some cooperative solution that can be found to address this particular concern.

Please let me know if your clients are open to this type of approach to resolution and when they may be able to meet with my client and Township staff and I will try to coordinate an onsite meeting. Accordingly, I look forward to hearing from you.

Sincerely,

KUHN ROGERS PLC

A handwritten signature in black ink, appearing to read "Joe E. Quandt", written over the typed name "Joseph E. Quandt".

Joseph E. Quandt

Direct Dial: (231) 947-7901 x115

jequandt@krlawtc.com

JEQ:shp

cc: Kyle O'Grady
Greg Meihn

Exhibit 2

Jenn Cram

From: John Jacobs <jjacobs@jjacobs.com>
Sent: Sunday, February 20, 2022 12:06 PM
To: Susie Shipman; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Subject: Peninsula Shores PUD

Dear Peninsula Township Planning Commission,

I noticed that the Peninsula Shores PUD will be discussed again in an upcoming meeting. Reiterating the objections I expressed when it was last discussed:

The proposed amendment would result in a building lot (and house to follow) in existing open space that serves as a buffer for Smokey Hollow Estates to the north. When the developer submitted its PUD application, they assured the township that they would protect surrounding properties and the natural resources on their own property. Specifically, the developer agreed to provide an open space buffer between housing developed on their property and neighboring properties. Those promised protections were a commitment to the community, the township and their neighbors in exchange for being granted special development privileges.

Now, the developer wants to renege on those commitments, to the detriment of its neighbors' quality of life and property values. Unfortunately, there is a pattern of commitments made in poor faith by this developer. Please don't allow it to continue. A deal should be a deal, especially in this case that extracted such extraordinary privileges from the township.

Sincerely,
John Jacobs
5290 Forest Ave.

Jenn Cram

From: Mcmomm <mcmomm@aol.com>
Sent: Sunday, February 20, 2022 2:07 PM
To: Shipman Parks; Rand Plancom; Lwdloski; Acouture; Jualexanptpc; Dsh 44; Wunschis23; Planner
Subject: Re: Peninsula Shores proposal (again)

Hello All,

I am sending this letter again as a reminder that I think Peninsula Shores is going back on their word to keep this lot as green space. I don't care that they missed out on Lot # 1. That was their mistake. Where is their integrity? They are impinging on the rights of others for their own financial benefit. Enough is enough!

Thanks for your consideration, hard work, and doing the right thing!

On Jan 16, 2022 at 6:01 PM, <[Wendy Brickman](#)> wrote:

Dear Planning Commission,

I am opposed to the 3rd request by the developer of Peninsula Shores to build a home on what was supposed to be open space. Brings to mind "they paved paradise and put up a parking lot ... Don't it always seem to go that you don't know what you got 'til it's gone ..."

Please don't allow this.

Wendy Brickman
4948 Forest Ave

Jenn Cram

From: Laurie Wilson <lww920@yahoo.com>
Sent: Sunday, February 20, 2022 3:52 PM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; Larry Dloski; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; wunschis23@gmail.com; planner@peninsulatownship.com
Subject: Fw: Peninsula Shores Proposed Amendment

Hi,

We just want to reiterate our continued support of holding the developer to his original commitment to his open space. It would not be right to let him change his plans after a number of years have passed. The township kept their end of the bargain, and now he needs to keep his.

Thank you very much,
Craig and Laurie Wilson

----- Forwarded Message -----

From: Laurie Wilson <lww920@yahoo.com>
To: shipman.parks@gmail.com <shipman.parks@gmail.com>; rand.plancom@gmail.com <rand.plancom@gmail.com>; lwdloski@gmail.com <lwdloski@gmail.com>; acouture@need-lawyer.com <acouture@need-lawyer.com>; jualexanptpc@gmail.com <jualexanptpc@gmail.com>; dsh_44@yahoo.com <dsh_44@yahoo.com>; Wunschis23@gmail.com <wunschis23@gmail.com>; planner@peninsulatownship.com <planner@peninsulatownship.com>
Sent: Monday, January 17, 2022, 06:03:49 PM EST
Subject: Peninsula Shores Proposed Amendment

To the Township Board:

We are writing to express our concerns and objections to this amendment. We appreciate the township's many efforts to have open space in the township as open space is very valuable to our community. The developer previously committed that the area where he now wants to move unit 1 would be open space. It would be very unfair and very detrimental to the property owners along the north edge of Peninsula Shores to have promised open space taken away from them.

Approving the change in this open space would also set a very bad precedent. The developer and the township agreed that this area would be open space for the benefit of other property owners in the area when the SUP was approved. In return, the developer was granted special rights to develop his property in a manner that otherwise was not permitted under the zoning code. The township should not remove protections and benefits for neighboring properties in a previously approved SUP once the developer has reaped the other benefits of its SUP bargain. If the township allows a house to go in this open space, when future SUP applications arise the community will have little confidence that the township will keep its end of the bargain. This developer should not be allowed to claw back land for development that he

promised would remain as open space when he was granted special rights to develop the rest of his property.

Thanks for your consideration of our thoughts.

Craig and Laurie Wilson
12456 Bluff Road *

Jenn Cram

From: jilesoh@aol.com
Sent: Sunday, February 20, 2022 7:51 PM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; wunschis23@gmail.com; planner@peninsulatownship.com
Subject: Fwd: Comments on proposed amendment to Peninsula Shores SUP

Hello,
I continue to be in opposition to a lot being placed in the open space as stated in this email below which was originally sent on January 16, 2022.
Thank you,
Jill Lewis

-----Original Message-----

From: jilesoh@aol.com
To: shipman.parks@gmail.com <shipman.parks@gmail.com>; rand.plancom@gmail.com <rand.plancom@gmail.com>; lwdloski@gmail.com <lwdloski@gmail.com>; acouture@need-lawyer.com <acouture@need-lawyer.com>; jualexanptpc@gmail.com <jualexanptpc@gmail.com>; dsh_44@yahoo.com <dsh_44@yahoo.com>; Wunschis23@gmail.com <Wunschis23@gmail.com>; planner@peninsulatownship.com <planner@peninsulatownship.com>
Sent: Sun, Jan 16, 2022 4:10 pm
Subject: Comments on proposed amendment to Peninsula Shores SUP

Dear Planning Commission Member,

My name is Jill Lewis. I am writing to express my and my family's concerns about and objections to the proposed amendment to Peninsula Shores (formerly known as The 81) on East Bay SUP.

My family has enjoyed a long and memorable history on the Old Mission peninsula and feel a deep connection to this whole area. My Dad started coming here in 1949 with my Mom joining him in 1950. Our family has been coming here ever since and it is now a part of our soul. We stayed in a family friend's cottage until my parents built their own cottage in 1997, which has become a wonderful gathering place for my extended family - we're now into great-grandchildren being introduced to our "OM paradise". No matter what time of year I would come here, I would completely relax from the worries of my job and I would leave feeling rejuvenated and peaceful. As I sat on our porch listening to the wind blowing through the trees and to the birds and other animals, I felt the weight of the world slip away from my me. Our porch faces what is now the Peninsula Shores Development.

I am so upset and saddened when I look out from our porch now. So many trees have been removed due to the Peninsula Shores development (even more than originally planned) and so many birds and woodland creatures have had their natural habitat abruptly razed out from under them. My view from my once-tranquil porch is now barren land and bulldozers. Now I have learned that the developer wants to cut up a common open space and place a house next to our cottage and cul-de-sac which was not in the original plan which was previously approved. Changing this common open area along our property would violate Section 8.1.3(1)(a) of the Township zoning ordinances as it would be detrimental to our property. This is the third time the developer has submitted a request to make a change to build a house on this previously agreed upon open space.

Our family and the other families of Smokey Hollow Estates respect and are good stewards of the land on which we live. I ask you please to take this into consideration before agreeing to let the Peninsula Shores developer, who in my opinion has shown little respect for land or nature, strip more of the beauty of the Old Mission peninsula away.

Thank you for your time and consideration.

Sincerely,

Jenn Cram

From: tgdurham@verizon.net
Sent: Monday, February 21, 2022 11:49 AM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Cc: chaddox75@gmail.com; durhamnancy@gmail.com; jimdurham56@gmail.com
Subject: Peninsula Shores PUD ammendment

Dear Planning Commission members:

On January 20 of this year I sent the following message to the planning commission. I am sending it again ahead of this week's hearing.

My name is Tom Durham and my family owns a home on Trevor Road in Smokey Hollow Estates, the development abutting the Peninsula Shores development (previously known as 81 Development). I concur with the concerns of the Lewis family with regards to the proposed change that would eliminate common open space (originally planned and approved) that abuts the Lewis family property near the cul-de-sac where Trevor Road ends. In 2020 a vast removal of trees was made that had a distinct detriment to the landscape abutting Smokey Hollow Estates; recently more trees were removed in the open space where the developer now wants to build a home. The additional change would put a home in close distance to the Trevor Rd cul-de-sac and, even with this change, still adversely affect the view and privacy for the Lewis house.

As noted in previous correspondence by Lewis family members and others, previous agreements were made by the developer to preserve common open space abutting the section of Smokey Hollow Estates next to the Lewis house and at the end of the Trevor Rd cul-de-sac. This previous promise by the developer, must be kept to avoid further detriment, not only to the privacy of the Lewis house, but to the common property owned by Smoky Hollow homeowners on the west side of the cul-de-sac. As stated by several of us in 2020, the developer should not be allowed to renege on promises to preserve open space in the original plan.

As a representative of the Durham family, I ask the Planning Commission to deny this recent request to change a plan that was approved after "long and contentious negotiations." This change could potentially set a precedent for similar requests in the future. By denying this request, the Planning Commission will hold the developer in compliance with the Township zoning ordinance section 8.1.3(1)(a) and avoid further detriment to the property at Smokey Hallow Estates.

Thank you.

Sincerely,

Thomas G. Durham
4126 Trevor Rd.
Traverse City, MI 49686

Jenn Cram

From: Wjlwrite <wjlwrite@aol.com>
Sent: Monday, February 21, 2022 5:10 PM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Subject: PC meeting on the proposed PUD amendment on 2/28

Hi. This is a copy of a letter I sent just before your last meeting. I just wanted you to know of my continued keen interest in the proceedings taking place on 2/28. Nothing has changed about our feelings since this letter was first sent.

Thank you.

Dear Planning Commission Member,

I believe you have recently received a letter from my sister, Megan Haddox. Megan, I think, did an excellent job of re-capping what has transpired thus far, most especially with respect to how the Peninsula Shores development has impacted our family property that abuts the development. In particular, the issue of the additional trees that were not supposed to be cut down in the original agreement and the developer's seemingly continuous effort to build on those lots.

Megan referenced our family history, including the fact that our dad began vacationing on the peninsula in 1949 (mom in 1950). Both loved the place so much that Dad is buried at the Peninsula Cemetery and Mom will be as well. (She's still with us, thank goodness, and will be 94 this month.) Although Mom is no longer able to travel, I know she and Dad would be very upset if they knew how the cutting down of the extra buffer trees has already affected our quality of cottage life and how much more the additional building would further erode that.

It's my understanding that the original agreement with the developer clearly stated that the buffer trees in question were to remain as common open space. That certainly would have negated any building on the proposed lots. So, I really fail to see why this new change should even be a consideration. Especially since it's the third time it's been brought up. Common decency, to me, says the deal was sealed, let's move on.

I really urge you to look at photos that were taken of the property before and after the trees were cut down. I think you'll clearly see the evidence that the original agreement has already been broken. I would even argue that additional trees should be re-planted where the original ones stood. But that may be a topic for a different meeting.

Thank you for taking the time to read this. My siblings and I are all now co-owners of our family property. We continue to vacation there every year, and, as Megan said, a 4th generation of kids is now enjoying all that Old Mission has to offer. I have great faith that you and the other planning commission members will abide by the original zoning agreement and, once and for all, put this to bed so that no further time, money, or effort is wasted on the issue by you and the Township going forward.

Best regards,

Susan and Bill Lewis
4150 Trevor Rd.

Bill
Bill Lewis
Wordsmith-at-Large

Jenn Cram

From: Megan Haddox <mlhaddox@mac.com>
Sent: Monday, February 21, 2022 5:22 PM
To: Nancy Durham
Cc: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Subject: Re: Comments on Proposed Amendment to Peninsula Shores

Sent from my iPad

On Feb 21, 2022, at 5:14 PM, Nancy Durham <durhamnancy@gmail.com> wrote:

February 21,2022

Dear Planning Commission Member,

We sent the following letter last month. Nothing has changed except that we continue to be frustrated by this situation and how the builder has continued to drag this on. It is our hope that this can be settled soon and that we can rest assured that his attempts to change the plan will be rejected.

Original letter follows:

We are next door neighbors of Megan Haddox and her extended family on Trevor Road. We are writing in support of her heartfelt request that changes not be allowed to the plan for house sites in the Peninsula Shores development.

Our group of families on Trevor Road frequently gather on the cul-de-sac at the top of Trevor Road for stargazing, pot luck dinners, family game nights and other activities. We are saddened and deeply troubled by what appears to be the exorbitant number of trees that have been removed from the nearby landscape. Having a home built right next to this area would be a further incursion into our community.

The approval of this development has been controversial from the start and it is very frustrating that the builder continues to try to change and expand the plan that was approved. This is the third time the builder has done this.

Nancy Durham and Bruce Fried

4126 Trevor Road

Jenn Cram

From: Jim Durham <jimdurham56@gmail.com>
Sent: Tuesday, February 22, 2022 9:19 AM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Cc: Megan Haddox; Craig Haddox; Tom Durham; Nancy Durham
Subject: Peninsula Shores PUD Amendment

Dear Planning Commission Members:

On January 19, 2022 I sent the following message to the Planning Commission. I am sending it again prior to this week's hearing.

Dear Planning Commission Member,

My name is Jim Durham and my family owns a home on Trevor Road in Smokey Hollow Estates. I am writing to express my concerns and objections to the proposed amendment to Peninsula Shores (formerly known as The 81) on East Bay SUP.

One of the aspects of this area that has drawn our family, like so many others, is the feeling of seclusion and enjoyment of nature that comes with cottages nestled among trees. It's a wonderful mix of water and woods. Peninsula Shores has already removed many, many trees, totally changing the character of this landscape that had been in harmony with the surrounding area for years. **It appears the developer has already taken down trees in the open space (where the developer now wants to place a lot) that were not supposed to be removed according to the original plan submitted to and approved by the township.**

The plan for the development that was approved calls for common open space on the land that immediately borders Smokey Hollow Estates. Thus the current land use authorization for the space where the developer wants to move the lot is common open space. Changing that land use authorization at this point to cut up that common open space and place a house directly next to us would even further change the character of the landscape that borders ours. It would adversely affect our view and our privacy. It would bring noise and light pollution right to our property.

We believe that the developer agreed and committed at numerous hearings and in applications submitted to the township that the area where the developer now wants to build this house would be open space. The developer should not be allowed to renege on those commitments at this point. **This is the third time the developer has submitted a request to make a change to build a house on this previously agreed upon open space.** We are asking you, the Planning Commission, to deny this request to make additional changes to a plan that was approved only after long and contentious negotiations. If the precedent is set to approve this change, what's to stop the developer from coming back time after time with more changes that benefit his company and adversely affect neighboring properties? Chopping up currently zoned common open space (that was clearly designated in the approved plan) to put a house in that common open

space immediately adjacent to our property not only significantly changes the character of the common open space and adversely affects us and our neighbors, but also sets a precedent for future requests of this nature. Adding the new lot and a house thereon is not harmonious with the open space on our property, our use of our cottage and surrounding acreage, and the character of our property. Adding the new lot and a house thereon will be a substantial detriment rather than a substantial improvement to our property and neighboring properties which are in the immediate vicinity of the proposed lot. The common open space along our property per the originally approved PUD should be retained to keep that existing harmony and character as required under Section 8.1.3(1)(a) of the Township zoning ordinance. Any change to that common open space along our property would violate Section 8.1.3(1)(a) of the Township zoning ordinance as it would be a substantial detriment to our property rather than a substantial improvement.

Thank you for your time and consideration.

Sincerely,

Jim Durham

4126 Trevor Road

Jenn Cram

From: Megan Haddox <mlhaddox@mac.com>
Sent: Tuesday, February 22, 2022 11:13 AM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Subject: Re: Comments on proposed amendment to Peninsula Shores SUP

Dear Planning Commission Members,

Unfortunately, I will not be able to attend the meeting on February 28th, but I wanted to indicate that I am still very much opposed to the proposed amendment for the reasons set forth below.

Thank you,
Megan Haddox
4150 Trevor Rd.

Sent from my iPad

On Jan 15, 2022, at 1:56 PM, Megan Haddox <mlhaddox@mac.com> wrote:

Dear Planning Commission Member,

My name is Megan Lewis Haddox. I am writing to express my and my family's concerns about and objections to the proposed amendment to Peninsula Shores (formerly known as The 81) on East Bay SUP.

My family has a long history on the Old Mission peninsula. My father first started coming to Old Mission with college friends in 1949. My mom's first year here was 1950. They've come every year of their lives since (except the year my brother was born). My dad passed away in 2014. My mom has come every year through age 91. Most of our family has come to the Old Mission peninsula every year of our lives.

Our family stayed in our friends' cottage until 1997 when Mom and Dad built their own cottage for our family. Since then our extended family has gathered every summer and many Christmases at the cottage. My parents spent every summer at the cottage until my father's death. Every year, four generations of the Lewis family gather at our cottage. Our family members and friends from neighboring cottages play games, hang out and star gaze in our traffic circle and cul de sac. We spend hours on our screened in porch which faces The 81 development. If you ask my children what their favorite place on earth is, they say without hesitation, Old Mission. It's a love of place our entire family shares.

One of the aspects of this area that has drawn our family, like so many others, is the feeling of seclusion and enjoyment of nature that comes with cottages nestled among trees. It's a wonderful mix of water and woods. Peninsula Shores has already removed many, many trees, totally changing the character of this landscape that had been in harmony with the surrounding area for years. **It appears the developer**

has already taken down trees in the open space (where the developer now wants to place a lot) that were not supposed to be removed according to the original plan submitted to and approved by the township.

The plan for the development that was approved calls for common open space on the land that immediately borders our property. Thus the current land use authorization for the space where the developer wants to move the lot is common open space. Changing that land use authorization at this point to cut up that common open space and place a house directly next to us would even further change the character of the landscape that borders ours. It would adversely affect our view and our privacy. It would bring noise and light pollution right to our property.

We believe that the developer agreed and committed at numerous hearings and in applications submitted to the township that the area where the developer now wants to build this house would be open space. The developer should not be allowed to renege on those commitments at this point. **This is the third time the developer has submitted a request to make a change to build a house on this previously agreed upon open space.** We are asking you, the Planning Commission, to deny this request to make additional changes to a plan that was approved only after long and contentious negotiations. If the precedent is set to approve this change, what's to stop the developer from coming back time after time with more changes that benefit his company and adversely affect neighboring properties? Chopping up currently zoned common open space (that was clearly designated in the approved plan) to put a house in that common open space immediately adjacent to our property not only significantly changes the character of the common open space and adversely affects us and our neighbors, but also sets a precedent for future requests of this nature. Adding the new lot and a house thereon is not harmonious with the open space on our property, our use of our cottage and surrounding acreage, and the character of our property. Adding the new lot and a house thereon will be a substantial detriment rather than a substantial improvement to our property and neighboring properties which are in the immediate vicinity of the proposed lot. The common open space along our property per the originally approved PUD should be retained to keep that existing harmony and character as required under Section 8.1.3(1)(a) of the Township zoning ordinance. Any change to that common open space along our property would violate Section 8.1.3(1)(a) of the Township zoning ordinance as it would be a substantial detriment to our property rather than a substantial improvement.

Thank you for your time and consideration.

Sincerely,
Megan Lewis Haddox

Jenn Cram

From: chaddox75@gmail.com
Sent: Tuesday, February 22, 2022 3:05 PM
To: shipman.parks@gmail.com; rand.plancom@gmail.com; lwdloski@gmail.com; acouture@need-lawyer.com; jualexanptpc@gmail.com; dsh_44@yahoo.com; Wunschis23@gmail.com; planner@peninsulatownship.com
Cc: 'Scott Howard'
Subject: Peninsula Shores PUD Amendment
Attachments: Boursaw Statement.pdf; Map of Orchards.pdf; Roethlisberger May 13 2015 email.pdf

Dear Planning Commission Members:

Below are additional comments about the proposed amendment to the Peninsula Shores PUD amendment request. Please include my prior comments, these comments, and the attached items in the official record of these proceedings.

PROPERTY IN QUESTION IS NOT CURRENTLY ZONED FOR RESIDENTIAL USE. The property by Smokey Hollow Estates where the Developer now wants to build a house is not zoned for any residential use. Instead, it is zoned as open space. Section 8.1.2(6) of the Township zoning ordinance states:

“if and when approved, the special use permit, with all conditions imposed, if any, shall constitute the land use authorization for the property, and all improvement and use shall be in conformity with such amendment.”

This is not a situation where the property in question is zoned residential and the question before you is where to locate the lots. It is a situation where no residential use is permitted under current open space zoning on the property in question.

THE PROPOSED RELOCATED LOT DOES NOT MEET THE ZONING ORDINANCE REQUIREMENTS. The Township zoning ordinance contains several requirements that clearly are not met as to the proposed new lot location:

1. Section 8.1.3(1)(a) states there must be

“... adequate evidence that each use on the proposed location will:

- (a) Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.”

Placing a house on property zoned as open space is a change in character since it is turning the property into something that was not either designed, zoned or used for. That is the definition of “change of character” that attorney Meihn advised the Township Board of when the Board was approving portions of the initial PUD at its December 21, 2017 meeting.

2. Section 8.1.3(1)(b) states there must be

“... adequate evidence that each use on the proposed location will:

- (b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

There have been ample comments provided about how placing a house in this open space would be adverse to our house and property and to the other properties in and residents of Smokey Hollow Estates due to issues like view, noise, light, etc., so I won't repeat those here. However, a review of the original PUD approval has us greatly concerned about the contamination on the Peninsula Shores property and the transmission of that contamination to our property should construction of a house immediately adjacent to our property be approved (see the CONTAMINATION OF PROPERTY section below). We understand that the Township approved the PUD based on the implementation of a soils management program that would minimize the transmission of contaminated soils to adjoining properties. That made sense – the property at that time was already zoned for residential, so imposing best practices for soils management was reasonable. This situation is different – the Developer has no right to put a house in this space as it is zoned as open space rather than residential. The Peninsula is very windy, and the prevailing winds come from the south. By clearing so many trees, the Developer has made the wind that comes from its property onto our property even greater. The soils management plan that the Township relied on to approve the original PUD contains terms such as best practices, economic feasibility, etc. There was no suggestion or promise that no contaminants would be transmitted to neighboring properties. Throughout the record there are references to the monitoring efforts that were part of the soils management plan, which indicate that actual transmission of contaminated soil is a very real occurrence. At the December 21, 2017 Board public hearing the Township's consultant Dr. James Harless of SME stated:

“So the challenge is to come up with a performance criteria that says as a condition of doing the work, keep the contaminated soil on site. The second challenge is how you do that, and that is the soil management plan that was put together by ASTI that specifies really we want to use best management practices, do the best we can to keep that material on site. You will never do it 100 percent, it's not technically feasible...” (underline added for emphasis)

So if a house is allowed by our property, there will be contaminants coming onto our property as a result. The areas they will come to include the cul de sac area where the Smokey Hollow Estates children, grandchildren and dogs play. This is just one more example of how allowing a house here will be both hazardous and disturbing to our use of our property and further evidence that the Section 8.1.3(1)(b) standard is not met. Please put yourselves in our shoes and ask yourself whether you would consider the construction and existence of a house in this open space to be hazardous and disturbing to your use of the property much less a substantial improvement to your property.

3. Section 8.1.3(3)(k) states the Township Board and the Planning Commission shall consider the following standards:

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

As stated below under CONTAMINATION OF PROPERTY, contaminants coming onto our property will adversely affect us. Will we need to keep our children, grandchildren, and pets indoors when earth moving activities are occurring? Will we need to tell our children and grandchildren that they can no longer play in the dirt?

There are other ways that the proposed lot relocation does not meet the zoning ordinance, but the above three are so clear cut to me that no other explanation should be needed.

CONTAMINATION OF PROPERTY. A review of the original record approving this PUD shows that a large portion of the Peninsula Shores property was used for many years as an orchard, and that as a result there are contaminants on many portions of the property. The attached Boursaw statement gives some history of this property. The attached map confirms that the location of the proposed lot was used as an orchard. Page II of the Executive Summary of the Developer's April 24, 2014 Phase I on the property (which should be in the Township's record) states that there is a recognized environmental condition on the property as follows:

“The majority of the subject property was utilized as an orchard from at least 1938 until between 1989 and 1993. Orchards utilize specific herbicides and pesticides with higher metal contents than traditional farm crops. The long-term use of pesticides, fertilizers, other agri-chemicals, and or other petroleum products may have a residual negative impact on the soil and groundwater at the subject property.”

The Developer had soil samples taken and tested, which revealed the presence of arsenic and lead in the soil. The Township Board’s finding of facts from its December 12, 2017 included the following:

1. The Township Engineer found grading and site construction have the potential to relocate and redistribute soil materials, including arsenic, on neighboring properties depending on weather conditions.
2. Soil samples taken were of areas to be disturbed during grading and construction.
3. The soil assessment of the property showed the presence of arsenic at concentrations greater than the current and proposed state generic residential human direct contact criterion in 17 samples at 10 of 15 sampling locations. Arsenic exceedances of criteria were reported in samples from all areas of the property where samples were collected.
4. Lead was also found, but not at levels above current criteria.
5. A significant mass of soil over a large area of the property is contaminated with arsenic at levels above the published statewide default background level, the Michigan Glacial Lobe background level, and the State generic residential human direct contact.
6. An expert concluded the levels of arsenic in soil on the property are sufficient to adversely affect the adjacent or neighboring properties if soil escapes the site via wind, storm water runoff, or vehicle track-out during site grading and construction activities.

There is significant evidence throughout the initial PUD approval record that this property is contaminated at levels that are harmful to humans, and that these contaminants can be spread to adjoining properties through grading and construction activities.

APPROVING THE LOT RELOCATION WOULD SET BAD PRECEDENT. Allowing the Developer to move the lot is bad precedent in three ways:

1. When the Developer requested the PUD approval, it submitted a site plan which showed how it would develop the property. The Developer’s application stated that trees along the perimeter of the site would be preserved to act as a buffer to the development, that the proposal was for clustered lots, and that the common open space areas were identified on the site plan. The PUD proposal allowed the Developer to put many more lots along the prime ridges than it could under existing zoning in return for, among other things, having more open space buffers with neighboring properties than would have been required under existing zoning. At the May 18, 2015 Board public hearing, the Developer stated that the proposed plan was a nice plan that had less impact on the neighbors than the zoning by right. Thus the impact on neighboring properties was part of the pitch the Developer made to get the PUD approved. The Developer told the Township and the community if you grant the PUD, this is how we will develop this property, including setting aside certain portions of the property as open space as designated on the site plans that were part of the Developer’s original PUD application. To allow the Developer to now take back some of the benefits promised to the neighbors is bad precedent. The community will be unlikely to support future PUD’s on other properties if it knows the Township may just later give a developer back items a developer gave up to get the approval in the first place. A developer should be held to the commitments it makes in order to obtain a PUD approval.
2. The findings of fact when the Township approved the PUD included a finding that the development as proposed provides a desirable living environment with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds. Thus the preservation of viewsheds for neighbors was a factor in the Board approving the PUD. The Township should not now go back on that commitment. To now significantly worsen that viewshed is bad precedent and will give the community little

faith that the Township will preserve benefits for neighboring properties or the community set forth in any PUD future approval on other properties.

3. If the Township approves the lot relocation, what is to stop the Developer from coming back again and again and moving other lots by our property? The precedent will be set, and the Township would be hard pressed to find that another lot doesn't meet the zoning ordinance standards if it finds that moving the lot in question is permitted. Of course the Developer may say this is the only lot it wants to move. However, the Developer previously said this area would be open space, but then he changed his mind several years later. What's to stop the Developer from changing his mind in the future again? And again?

COMMENTS ON CURRENT LOT #1 INCLUDING BEACH ACCESS PARCEL.

The Developer can sell Ms. Roethlisberger the beach access parcel and still build a house on current lot 1. That lot will no longer have its own private beach access, but it will just need to use the common beach like most of the other lots in the development.

The Developer now says open space where lot 1 is currently located will be beneficial to his development even though the Developer decided the current location of lot 1 to begin with. There is no requirement that the Developer build on lot 1. If the Developer thinks open space there will benefit its development, then don't build a house there.

Ms. Roethlisberger stated at last month's public hearing that she supports the proposed change. The time for her to bring up any concerns about the PUD as approved was back during the initial PUD approval process. Instead, she submitted the attached email in 2015 where she said the proposed project is beautifully planned and she had no issues with it.

COMMENTS ON DEVELOPER.

The Developer cut down many more trees than it proposed in its initial application, including trees that would have provided Smokey Hollow Estates with a greater buffer and trees that would have greatly diminished the lake view of the proposed lot. The Developer should not now be rewarded with a lot that will be much more valuable due to the trees the Developer removed and Developer's failure to preserve natural resources to the maximum feasible extent as required under Section 8.1.3(3)(f).

I believe there is a general principle in Michigan zoning law that an applicant should not be provided relief from a condition the applicant created. Here, the Developer asserts that current lot 1 would be better as open space, and the open space by our property would be better with a house on it. The reason current lot 1 is where it is and the reason why the property by us is open space is because that is what the Developer decided it should be and had it rezoned as such. Therefore, the Developer should not be granted any relief from the conditions it created.

CONCERNS ABOUT PROCESS

At the last meeting in January, I requested backup information for the open space calculations that were contained in the Developer's submissions. I also understand that the Developer has been asked to provide a lot of additional information since his initial application was inadequate. My guess is that the Developer is submitting what is in essence a new application. I was told by the Planner that the Developer was to submit this information by February 18. I was also told by the Planner to submit all our written comments by February 18, and told that we would receive the additional information the Developer was submitting and the open space calculation backup after February 18. I indicated that this process would not allow us to address any new information the Developer or the Township consultants submitted until the continuation of the public hearing on February 28, and that this process seemed counterproductive if the goal of the PC was to receive information and comments from all parties and the public in advance of the February 28 meeting. This process also denies the public and other interested parties from making any comments on the Developer's new application for consideration at the February 28 meeting unless they can attend the February 28 meeting. We find this process troubling on many levels. If the Planning Commission would prefer that we submit written comments about the Developer's additional submissions and the Township consultant submissions prior

to the February 28 meeting, please let us know. Otherwise, we will address those materials at the continuation of the public hearing at the February 28 meeting.

Thank you for your consideration of the above.

Craig Haddox
4150 Trevor Road

5/10/2018

Outlook.com - Jameskamenders@men.com

Statement from Tim Boursaw:

In regards to whether the Boursaw property (now known as "The 81") was ever used as a farm, all you have to do is stop by the Boursaw farmhouse at the corner of Boursaw Road and Bluff Road and read the Centennial Farm sign stating that the farm was owned by the same family for over a hundred years.

Abraham Lincoln signed the property deed to the Boursaw family. In the beginning, the farm was used as a maple syrup operation, and then transformed into cattle, food crops and a small dairy operation, similar to many of the farms on the Old Mission Peninsula at that time. In the 1930s, it was transformed into a cherry farm.

From the 1930s to the 1970s, about 80 percent of the property was cherry orchards. Like all cherry farms on the Old Mission Peninsula from the 1930s to the 1950s, the land was exposed to pesticide and fertilizer practices of the time. This included applications of copper, lead, nicotine, arsenic and other toxic pesticide and fertilizer substances which were legal at the time, but phased out through the late 1950s and early 1960s and replaced with more effective, but no less toxic substances.

That being said, the history of cherry farming on the Old Mission Peninsula was a great boon to area farmers, but did have negative consequences on the land. After the Boursaw farm was sold around 1970, Phil Weatherholt took over the care and harvest of the orchards until they had run their course and the trees were pushed out. The property has sat dormant since then.

Jane

Scanned by CamScanner

1765

Document received by the MI Grand Traverse 13th Circuit Court.



Document received by the MI Grand Traverse 13th Circuit Court.



February 22, 2022

Peninsula Township
Planning Commissioners
13235 Center Road
Traverse City, MI 49685

via Email to: planner@peninsulatownship.org

Re: Proposed PUD Amendment for
Peninsula Shores

Dear Planning Commissioners:

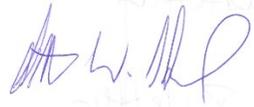
I have written to you on a number of occasions concerning the requested “Peninsula Shores” SUP/PUD amendment. This is the third time the Applicant has requested to relocate lot 1 within the development to locate it within what is currently dedicated open space. On each occasion we have objected to the change and explained why it is not allowed under the standards of the Township’s zoning ordinance (in particular Sections 8.1.3). Please see my correspondence from 1/22/2022; 9/20/2020; 7/19/2020; 6/15/2020; 8/16/2019, which are incorporated by reference. In particular, the letter from January 22, 2022 addresses the most recent proposal and explains why it does not conform to the zoning ordinance requirements for an amendment. My clients have likewise provided you with substantial information relevant to your consideration. Please pay close attention to what they have to say, as they are the ones uniquely impacted by the developer’s request.

I also understand that the developer will be providing substantial information to explain his requested amendment. The deficiencies in the application are something that we have pointed out with regularity in our previous submissions, so we are happy to see the Township requiring a complete application. However, I do note that the deadline for submission of this letter does not allow us to fully review and respond to the developer’s submission as would have been the case if a complete application had been submitted in the first place. Therefore, we ask you not to take any action on the requested permit until the public has had a chance to review these submissions and provide you with public comment.

Planning Commission
February 22, 2022
Page 2 of 2

Thank you for your continued attention to this matter and your consideration of our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "S.W. Howard", is centered on the page. The signature is written in a cursive style with a large, looped "H" and "W".

Scott W. Howard



January 24, 2022

Peninsula Township
Planning Commissioners
13235 Center Road
Traverse City, MI 49685

via Email to: planner@peninsulatownship.org

Re: Proposed PUD Amendment for
Peninsula Shores

Dear Planning Commissioners:

I am writing on behalf of the Lewis Family, LLC and Simple Melody, LLC, neighboring property owners to the former 81 development, now called “Peninsula Shores.” This is the third time the Applicant has requested to relocate lot 1 within the development to locate it within what is currently dedicated open space. The purpose of this letter is to reiterate our objections to this amendment and to restate the reasons why this proposed amendment should be rejected. Also attached are supporting documents to assist with your decision.¹

The last two times this was before you we expressed our concerns about the lot relocation. Just before this Planning Commission denied those other requests, the Applicant withdrew the request before it could be denied. Nothing substantive has changed or has been added in the current application, despite the passage of time. While the developer has moved the location of the lot a bit, the same deficiencies in the request still exist and have not been remedied over the intervening time. As noted previously, the 81 development was significantly vetted by the Township and litigated extensively in court. In light of that background, we suggest that the Township needs to strictly scrutinize any efforts to change the plans that were approved by that process. We firmly believe that the Planning Commission cannot, and should not, approve the proposed amendment to the development.

1. The Proposed Amendment Will Detrimentially Impact the Surrounding Properties

The proposed changes to the PUD/SUP are required to meet the standards contained in the Zoning Ordinance, including those of Section 8.1.3. However, the Application for the amendment only states “no change” in response to these standards and does not contain any explanation or rationale for this conclusion.

¹ Included are aerial photos of the property; excerpts of minutes from previous meetings; excerpts from the plans; and proposed findings of fact supporting a denial of the amendment request.

Planning Commission
January 24, 2022
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Relocating Lot 1 to its proposed new location is not harmonious with the character of the adjacent Lewis property. Section 8.1.3(1)(a) of the Zoning Ordinance requires that the development “[b]e designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.” The neighboring Lewis property is open space, which is consistent with the original planned open space. Placing a home lot among this existing open space fundamentally alters the character of the area in violation of the requirement of the code. The original open space location per the original approved PUD should be retained to keep that existing harmony and character.

Of particular concern is the impact of the new lot and home on the views from my clients’ property along with the noise and light pollution that will come from the relocated lot and associated home. My clients did not object to the original plans for development based on the promised open space plan. However, the relocation of Lot 1 will dramatically and fundamentally change the impact of the development on the essential character of the area. It changes the promise the developer made to the Township, my clients, and the other adjacent property owners.

In addition, adding the new lot and a house will be a detriment rather than a substantial improvement to the property in the immediate vicinity. Section 8.1.3(1)(b) of the Zoning Ordinance requires that the change not be “disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.” As explained above, the prior planned open space is consistent with, and beneficial to, the existing neighboring land use. Relocating a unit and constructing a home is not beneficial to the property in the immediate vicinity.

It is important to emphasize that these impacts to the surrounding properties and the character of the area will happen even if the location of the building envelope is relocated some on Lot 1. The only way to avoid these impacts is to keep the original open space location intact and keep Lot 1 in its existing location. Approval of the amendment is not warranted if the Lot occupies any of the open space on the north end of the development.

2. The Developer Over-Cut Trees to Make Way for the New Location of Lot 1

At the last Planning Commission Meeting there was a question about whether the Developer honored its commitment to preserve certain trees on the property, and in particular those in the vicinity of the area for the new location of Lot 1. The answer is that the developer did not. By over-cutting the trees in the area, the Developer has cleared the land that allows for the new proposed location for Lot 1 and the views that make the Lot 1 proposed location desirable.

Throughout the history of the development, the Developer committed to preserve half of the trees that existed on the property before construction of the development. From the start, the application for the original SUP stated that half of the trees on the property would be preserved, and that “Scenic natural features such as a wetland pocket, valley meadow, wooded areas, a steep bluff and most of the shoreline along East Bay will remain as community open space.” In particular

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 January 24, 2022
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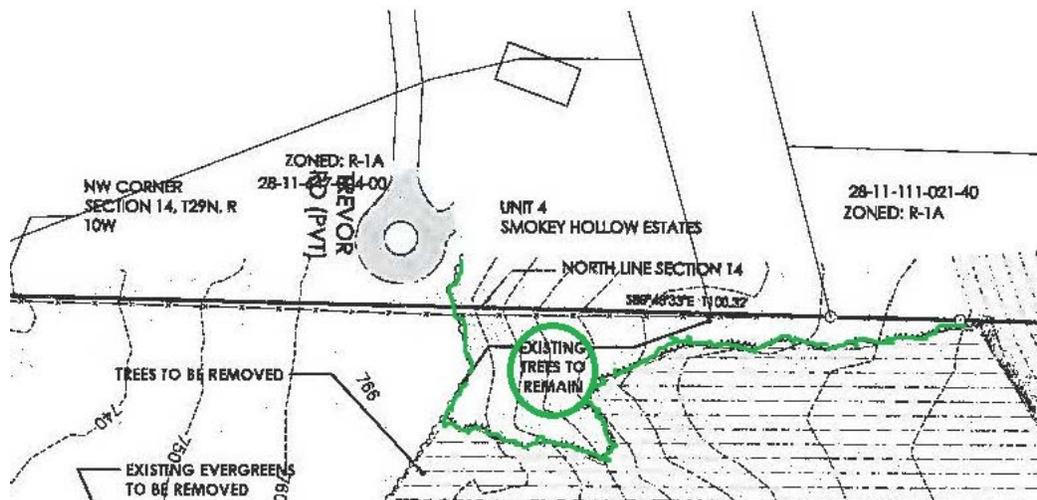
“Trees along the perimeter of the site will be preserved to act as a buffer to the development.” Application p 10. The Application further describes the trees to be preserved and their location:

STANDS OF TREES

Tree cover is present along the western, northern and eastern perimeters of the site. There is also a stand of trees in a wetland near Boursaw Road and a stand of maples in the meadow. Approximately half of the existing tree cover will be removed to accommodate grading and earthwork for the project. *Trees along the perimeter of the site will be preserved to act as a buffer to the development.* The existing stand of trees in the wetland and the meadow will be preserved.

In 2015 during the original review of the proposed development, the minutes indicated that Joe Quandt, the Developer’s Attorney said “There will be select cutting for the viewsheds. The details are in the site plan.” Then Doug Mansfield, the Developer’s Engineer, said “Section 7, Map C2 in the project binder shows the tree clearing. The upper ridge slope area 39% will be impacted and the shoreline bluff area 17% will be impacted.” See attachments.

Map C2 clearly indicates a section of trees that were to remain in the area adjacent to the northern boundary of the property. There is an area clearly identified on this map, along with other renderings of the development throughout the application process, where the existing trees were to remain on the property:



A close up of Map C2 shows that the area highlighted in green consisted of “existing trees to remain.” This notation and tree preservation area is consistent throughout all of the various plans submitted to the Township and the condominium documents filed with the register of deeds. Unfortunately, the commitment to preserve trees was not honored. The area circled in red in the following photo is the approximate location of the area designated “existing trees to remain.” As is apparent from the arial photos, the existing trees were cut down and created the view for the proposed relocation of Lot 1.

Planning Commission
January 24, 2022
Page 4 of 4



The Attached photos show the property before development, as planned, and as actually developed. Notably, many of the areas that were designated as trees that were too be preserved have been cut down instead.

Finally, Section 8.1.3(3)(f) requires that, as part of the amendment, “natural resources will be preserved to a maximum feasible extent.” Not only will the new proposed lot interrupt the open space on the north end of the project, it will reward the developer with an amendment after failing to comply with its previous commitments.

All of these issues were raised at prior Planning Commission meetings, and there has been no direct response from the developer. Since there is no evidence that has been presented to support the requested SUP/PUD amendment, it must be denied. To that end, the attachments include proposed findings of fact for your review and adoption if you agree that the amendment should be denied.

Thank you for your attention to this matter and your consideration of our concerns. For the reasons stated above, the amendment to the Peninsula Shores is not appropriate and should be rejected. We strongly urge the Planning Commission to reject the amendment as proposed.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. W. Howard".

Scott W. Howard

Aerial photo Before



Aerial photo with trees as planned





Aerial Photo During Construction

Hoffman added additional reports and addition to the edit list of invoices totaling \$42,794.92.

MOTION: Witkop/Weatherholt to accept the Consent Calendar Agenda as amended with items added by Hoffman.

ROLL CALL VOTE: Witkop-yes, Weatherholt-yes, Correia-yes, Hoffman-yes, Byron-yes, Avery-yes and Rosi-yes

MOTION PASSED

BUSINESS

1. The 81 on East Bay (tabled from July 14, 2015)

Byron left the board to sit in audience.

Joe Quandt, representing the developer, introduced developer Kevin O’Grady and his family and Doug Mansfield and Petra Kuehnis from Mansfield and Associates. **Wendling** said this is the deliberation portion of this request at this point the applicant will only be taking questions and not making a presentation. **Rosi** asked how many trees will be removed. *Mansfield* said approximately 10.5 acres. **Rosi** said at the Planning Commission, Tom Maguire, Planning Commissioner; discussed the question of performance bonds guaranteeing the completion of the project. *Quandt* said the applicant agreed to work with the Township to develop an appropriate financial assurance mechanism to ensure that the infrastructure development is completed. That can be a condition of the Township Board’s approval. There is already a provision in the Master Deed and the By-laws and also State law requires that a bond be posted with the Michigan Department of Environmental Equality for the completion and funding of the waste water treatment facility. **Rosi** said in the ordinance the definition of Cul-de-sac is a short road. The cul-de-sac in this development is almost a mile. **Rosi** asked why there is not another access on the west and eliminate the cul-de-sac. The house on Lot 1 could have 410 cars passing every day. There must be a way to get that road down to Boursaw Rd. *Quandt* said we are only asking to be treated the same way as other developments. There are 40 other developments that have this kind of road. If the road goes through more trees will be lost and there will be more topographical destruction. **Avery** asked how much dirt will be hauled away. *Mansfield* said none. **Hoffman** asked Reardon to address definition of cul-de-sac. **Reardon** said she worked with the Township Engineering and with the Township Attorney. **Wendling** said when looking at a zoning ordinance the definitions are meant to clarify as they apply to the regulations contained in the ordinance. Also have to look over time at the administration of the ordinance by the Township to see how that matches with both the regulation and the definition. Short/long it is not a specific definition. When these things occur do not have a good legal ability to shorten the cul-de-sac. **Witkop** said in the July 27, 2015 letter from Mansfield which depicted the use-by-right and the PUD, there was a second road connection in the use-by-right plan. Why not put the second road connection in the PUD plan? *Quandt* said in order to get a 12% grade out of the connection there would be a lot of dirt moved. If develop a use-by right-plan with 55 lots, trading off saving any trees or any of the topography for a second connection on Boursaw Rd. The Township’s main issue is safety and it has been addressed. **Witkop** asked if the applicant has the easement language in place today. *Quandt* said there are drafts of the cross easement agreement and they

letter of credit or bond condition is applied to insure infrastructure or reclamation should the economic viability if the development failed. **Serocki** said she is concerned because it seems the steep slopes are being impacted. **Serocki** asked the Township Engineer if he recommended a plan on how to complete the mass grade and maintain stabilization, how he plans to monitor the project and what are his powers to make sure the plan is followed. *Boals, Township Engineering*, suggested as part of the final design process an engineer with geotechnical qualifications is retained. Moving forward he would like to see the final site grading on all of the building sites-how building sites would be achieved how driveway slopes would be handled, and how that will transition with the final slopes approaching the bluffs. **Serocki** asked if project is approved and excavation begins will Boals be at the site occasionally. *Boals* said he would be part of that process. **Serocki** asked how the shoreline will be handled when some is common and some is privately owned. **Reardon** said both would be subject to the part of the ordinance that regulates shoreline. **Serocki** said the Findings of Fact states over half the trees will be removed. How will that be determined? *Joe Quandt, Developer's Representative* said the estimate was garnered from where the mass grading and the road will take place. There will be select cutting for the viewsheds. The details are in the site plan. *Doug Mansfield, Mansfield Land Use Consultants*, said Section 7, Map C2 in the project binder shows the tree clearing. The upper ridge slope area 39% will be impacted and the shoreline bluff area 17% will be impacted. **Rosi** said she is concerned about the steep slopes. *Quandt* said most of the slopes are being retained. There are two natural terraces where the houses will be built and the roads do not exceed 12% grade. A geotechnical review of the project has been completed. It has been verified that there are no problems maintaining this development with those slope characteristics. **Maguire** said Grand Traverse Soil Erosion have forwarded a letter with more questions than answers. **Rosi** asked if Boals is comfortable with response. *Boals* said he is at this time but would like to see more detailed grading plans. It sounds like the applicant has retained a geotechnical report and he would like to see that report. *Quandt* said there will be a Part 91 soil erosion permit, the oversight of the Township Engineer and each LUP will need to a soil erosion permit. **Rosi** said this is an old agricultural parcel asked about contaminated soil. *Quandt* said it has not been looked at because the larger portion of this property was not farmed. The portion of the property that was farmed will be graded. It is not part of the ordinance criteria. **Rosi** said another concern is the wetlands. *Quandt* said there has been a second wetland delineation completed by a professional wetlands scientist and biologist that was acceptable to the Township Engineering. The wetland area has been flagged. **Rosi** asked about the dock system. **Reardon** said there is enough lineal feet measured at the Ordinary High Water Mark to have 30 in the joint dock system. Each individual waterfront owner would be allowed one dock and one hoist per 50 ft of lineal frontage as allowed by the ordinance. *Quandt* said the US Army Corp of Engineers regulates that and it is under final review. He believes they will say less than 30 slips. **Leak** asked the first plan had 36 lots and now 41 lots how were these lots added. *Mansfield* said took the lot width down by 4 ft on some of the lots and reduced lot depth to make up for the open space. **Leak** said the Fire Chief recommended another access. What provisions have been made for that access? *Quandt* said the applicant has come to possible agreement with the home owners to the north to make a connection to Trevor Rd. for an emergency egress. **Hornberger** asked to have something in writing in the condo documents that steps are not permitted and a restriction on fertilizer and herbicides. *Quandt* said yes a restrictive covenant can be put in the Master Deed.

**Proposed Findings of Fact to Support a Denial of
Peninsula Shores PUD #124 Proposed Amendment 2**

The Planning Commission Finds that the Following Standards in Section 8.1.3 are not met:

8.1.3(1)(a) Be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed. *The proposed plan does not meet this standard for the following reasons:*

- *The existing character of the general vicinity consists of open space, which is consistent with the original SUP/PUD plans for that area.*
- *Placing a home lot among this existing open space fundamentally alters the open space and natural character of the area in violation of this standard.*
- *The open space location for the original approved SUP/PUD should be retained to keep the existing harmony and character of the area.*
- *The change in design of the plans and the location of Lot 1 is inconsistent with the original promises to keep the area as open space rather than a development lot.*

8.1.3(1)(b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole. *The proposed changes do not meet this standard because they will be disturbing to existing or future uses in the same general vicinity for the following reasons:*

- *Based on testimony and written submissions by persons residing nearby and other interested parties, the relocation of the lot would be disturbing to existing and future uses in the general vicinity and would not be a substantial improvement to property in the immediate vicinity.*
- *The existing viewshed related to neighboring property to the north is negatively impacted with the relocation of the lot and the subsequent construction of a new home.*
- *The existing and future uses of the property to the north would also be negatively impacted by increased construction and residential traffic and noise, and increased light at night from a house.*
- *Permitting a house to be built on property currently zoned as open space which is adjacent to property to the north which is also open space is a detriment to the properties in the immediate vicinity and the community.*
- *The prior planned open space is consistent with, and beneficial to, the existing neighboring land use. Relocating a unit and constructing a home is not beneficial to the property in the immediate vicinity.*

8.1.3(3)(f) That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site perse. *This standard is not met for the following reasons:*

- *The proposed relocation of Lot 1 will segment the open space on the north end of the project.*
- *Based on aerial photos submitted to the Township, the developer has already removed significantly more of the wooded areas that were to be retained in the original approved plans.*
- *This removal of trees and vegetation is contrary to the previous promises and keep the open space as forested as possible.*
- *The remaining natural resources on the site will be retained to the maximum feasible extent by keeping Lot 1 in its original location rather than segmenting and disturbing the existing open space plan.*

Exhibit 3

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

**SPECIAL USE PERMIT
FINDINGS OF FACT
August 11, 2015**

SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)

PENINSULA TOWNSHIP BOARD

DECISION AND ORDER

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

Hearing Date: May 18, 2015, June 15, 2015, July 14, 2015 and August 11, 2015

PROPERTY DESCRIPTION

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

APPLICATION

The applicant is asking for review by the Peninsula Township Board for the development of a forty-one (41) unit condominium subdivision planned unit development (PUD) within the Rural and Hillside (R-1A) and the Coastal Zone Single and Two-Family (R-1B) zoning districts.

The Board having considered the Application, a public hearing having been held on May 18, 2015 before the Planning Commission and July 14, 2015 before the Township Board after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered _____ Exhibits, and the Board having reached a decision on this matter, states as follows:

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel is located in Section 14 of the Township and has approximately 945 feet of road frontage on Boursaw Road. (Planning Commission Exhibits 1, 3 & 19 and Board Exhibit 3)
- b. The Board finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at roughly 82.63 acres. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use permit approval to develop a Condominium Subdivision Planned Unit Development on site as permitted by Section 6.2.4 and Section 6.3.2 of the Peninsula Township Zoning Ordinance. (Planning Commission Exhibits 1, 3 & 19)
- b. The Board finds that the final site plan and special use permit are subject to the requirements of 8.1.3 - Basis of Determination and 8.3 - Planned Unit Developments of the Peninsula Township Zoning Ordinance. (Planning Commission and Board Exhibit 1)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned R-1A, Rural & Hillside and R-1B, Coastal Zone Single and Two Family encompassing two (2) parcels which is considered conforming to local zoning. (Planning Commission Exhibits 1, 3 & 19)
- b. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the site plan. (Planning Commission Exhibits 3, 4, 5, 6, 7, 8, 11, 12, 13, 14)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence on the date of this report adjacent to the proposed development.

- a. **North-** The land adjacent to the north of the subject properties is zoned R-1A, Rural & Hillside and is primarily residential in use. (Board Exhibits 1 and 3)
- b. **South-** The properties adjacent to the south are zoned R-1B, Coastal Zone Single and Two Family. The Cove, a residential subdivision, and other residential uses are prominent.
- c. **East-** The property is bound by East Grand Traverse Bay to the east. (Board Exhibit 3)
- d. **West-** The property located west of the subject is zoned R-1A, Rural & Hillside with the exception of a 12-acre parcel at the Northwest corner of the subject site that is zoned A-1, Agriculture district. The land is primarily low-density residential not including the active agriculture land at the northwest corner previously mentioned. (Board Exhibit 3)

- e. The Board finds that the future land use plan identifies the subject location as an area designated for rural agricultural usage. The objective of the rural agriculture use category is to preserve the important natural resources of the Township while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. (Planning Commission and Board Exhibit 2)

- f. The Board finds that development of property as single family residential is a use by right in the R-1A, Rural and Hillside residential zoning district as well as the R-1B, Coastal Zone Single and Two Family residential district. (Planning Commission Exhibits 1 & 19)

- g. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, Michigan Department of Environmental Quality, and the Army Corps of Engineers.

2. Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)**

- ii. **The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 1, 2, 8 & 19)**

- iii. **The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1 & 29 and Board Exhibit 3)**

- iv. **The Board finds that under the master plan, chapter 3, Land Use and Zoning Map No.4 depicting existing land use, shows that the existing land use for The 81 property is residential regardless of the fact that the property is located in both the R-1A, Rural and Hillside and R-1B, Coastal Zone Single and Two Family Zoning Districts. As such, the proposed PUD is harmonious and appropriate in appearance with the existing use and character of the vicinity. (Planning Commission Exhibits 1, 2 (land use map no. 4), 8 & 19.2 and Board Exhibits 3, 4, 5 & 6)**

- v. **The Board finds that the intent and purpose of the Rural and Hillside Residential District (R-1A) is to contain standards for the continued development of very low density residential properties, inclusive of fragile hillside areas and to interface these areas between more intensive residential uses and agricultural land uses. The district includes existing low density residential developments as well as areas within which such development appears both likely and desirable. The Board finds that the Coastal Zone Residential District (R-1B) provides additional standards for residential development and lakeshore drive areas and areas of high scenic value where more intensive development would deteriorate the peninsula environment and less intensive development is not essential to maintenance of the established environment. The Board finds that the proposed PUD provides for a buffer zone along the property's border with East Grand Traverse Bay of 1500 feet which will remain as an undeveloped setback other than the dock area and that the PUD itself by preserving 65% of the property, being 54 acres, as open space conforms with the intention of both districts by decreasing the density which would otherwise be allowed in these districts should the property be developed in a manner otherwise allowed under the zoning ordinance. (Planning Commission Exhibits 1 –section 6.3.1 Intent and Purpose, section 6.5.A.1, & 19.2 and Board Exhibit 7)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that the future land use map no. 9 in the master plan specifically carves out this particular parcel for future use as rural agriculture. The proposed PUD lacks any agricultural purpose regardless of open space left after the property has been developed. The Board further finds that the surrounding residential properties are not of the same density as the proposed development, especially when compared to areas north of the property such that the proposed development is not harmonious and appropriate in appearance with the intended character of the general vicinity. (Planning Commission Exhibits 2 – map no. 9, 8, 19.2 & 19.5 and Board Exhibit 3 and 7c)**

- ii. **The Board finds that the proposed development includes grading and development of steep slopes located on the property and as depicted on land no. 6 of the Peninsula Township Master Plan. The Board further finds that the development of the steep slopes would require significant grading, particularly with the lakeward facing properties and road with**

development of units, lined up in a design which will change both the existing and intended character of the area in the vicinity as well as the essential character of the area surrounding this development. (Planning Commission Exhibits 2- land map no. 6 & steep slopes policies & surveys, 19.2, 19.5, 19.7, 19.9, 27.h, 27.k & 28.o and Board Exhibits 7d, 7j, and 7v)

This standard HAS/HAS NOT been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
- ii. **The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1, 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
- iii. **The Board finds that the development of the proposed PUD should not negatively impact adjacent neighbors. The applicant has designed the housing sites to complement the existing residential use pattern which incorporates 54 acres of the site in open space. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
- iv. **The Board finds that the PUD as submitted preserves open space, keeping 65% of the site undeveloped, inclusive of 1500 lineal feet of waterfront preserved as common open space, for the proposed project. The Board further finds that the lot locations, regardless of the slopes in the area, are located sufficiently within the interior of the property of the project site such that view sheds are sufficiently preserved both landside from township public roads as well as from the water. The Board further finds that there is no evidence that the development would disturb existing or future uses of the land within the vicinity. The Board further finds that the preservation of the open space is a substantial improvement over other non-PUD development rights as provided in the Peninsula Township Zoning Ordinance which, in turn, benefits the properties within the immediate vicinity and the community as a whole. (Planning Commission Exhibits 1 – land uses allowed in the R-1A and R-1B zoning districts, 2 – map no. 4, 8, 19.2, 19.5, 19.7 & 19.9 and Board 3)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. The Board finds that the clustering of condominium units on the steep slopes area of the property and the required grading to develop these site condominium units and the road would not constitute a substantial improvement to the property in the immediate vicinity as such grading at the intensity proposed provides no improvements to other properties in the immediate vicinity or the community as a whole given the goal of preserving steep slopes within the township. (Planning Commission Exhibits 2 – map no. 6, 19.2 & 19.7 and Board Exhibits 3, 7d, 7j, and 7v)**

This standard HAS/HAS NOT been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7.10, 19.7. & 23)**
- ii. The Board finds the development will be served by a community septic facility and private septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Planning Commission Exhibits 15 & 19.10.iii)**
- iii. The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning commission Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
- iv. The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Planning Commission Exhibits 13 & 19.10.iv)**
- v. The Board finds that an emergency access to the site via Trevor Road allows for adequate fire and emergency access on the north side of the development. (Board Exhibit 10)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that concerns remain regarding fire protection given the lengthy private road and cul-de-sac. While other such lengthy roads exist in the township, the vast majority of roads of this length which end at a dead-end cul-de-sac were created before the applicable standards of the zoning ordinance. As such, the development is not adequately served with respect to fire protection. (Planning Commission Exhibits 1 – definitions, 15, 18 & 23 and Board Exhibits 10 & 14)**

**** NOTE: THIS STANDARD MAY BE ELIMINATED SHOULD THE RECOMMENDATION TO MOVE FORWARD WITH THIS DEVELOPMENT REQUIRE A CONDITION THAT THE DEVELOPMENT MEETS ADEQUATE SAFETY STANDARDS FOR FIRE PROTECTION SUBJECT TO THE PENINSULA TOWNSHIP FIRE DEPARTMENT'S FURTHER REVIEW BY STEVE RONK, FIRE CHIEF. GIVEN THE RECENT PLANS AND EXCHANGE BETWEEN CHIEF RONK AND MS. KUEHINS FROM MANSFIELD, THIS MAY BE RESOLVED.**

This standard HAS/HAS NOT been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the applicant will be responsible for any improvements required as part of this proposal. (Planning Commission Exhibit 19)**

- ii. **The Board finds that the development as presented will not create excessive additional requirements at public cost for public facilities and services given that development of single family residential properties is allowed in the zoning districts in which the property is located. The Board further finds that the applicant will be incorporating adequate service roads within the development and there is otherwise no evidence of any excessive additional requirements at public cost for public facilities and services on the record. (Planning Commission Exhibits 11, 12, 19.3, 19.7, 19.10, 20, 21, & 23 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Planning Commission Exhibit 19)**

- ii. **The Board finds that the very nature of residential development is not the type that results in a use generating fumes, glare or odors. The Board further finds that there has been no evidence presented that the proposed development will result in negative activities or uses which would compromise the general welfare of township citizens as a result of fumes, glare or odors. (Planning Commission Exhibits 11, 12, 19 & 21 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

2.2 Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. **Address, resolve and comply with the recommendations presented by the Peninsula Fire Chief.**
- b. **Proof of compliance with all Federal, State, County, Township and other governmental regulations relative to the establishment of a forty-one (41) unit Condominium Subdivision Planned Unit Development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the Special Use Permit.**
- c. **Relocate the entrance sign to be compliant with section 7.11 of the Ordinance.**
- d. **Remove the second proposed sign to be compliant with section 7.11 of the Ordinance.**

THE ABOVE FINDINGS ARE NOT REQUIRED AS THIS IS NOT A STANDARD, BUT RATHER AN ADVISORY STATEMENT. IF THE TOWNSHIP BOARD APPROVES THE PROJECT THERE CAN CERTAINLY BE CONDITIONS RELATED TO THE STANDARDS CONTAINED IN THE ZONING ORDINANCE WHICH WOULD APPLY TO THE PROJECT.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Commission and the Township Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.
 - i. **The Board finds that the applicant is the owner/operator of the petitioned property and may legally apply for said review process. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- b. That all required information has been provided.
 - i. **The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided site plans. (Planning Commission Exhibits 19 & 21)**
 - ii. **The Board finds that the applicant will be required to submit all necessary permits (i.e. soil erosion, health department, etc.) and has already submitted some of these permits all of which will need to be finalized and issued prior to the final approval of a Special Use Permit and PUD. (Planning Commission Exhibits 13, 15, 18 & 19)**

This standard HAS/HAS NOT been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibit 19)**
- ii. **The Board finds that each individual unit will be subject to the land use permitting process to ensure all structures comply with the Special Use Permit and the requirements of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**
- iii. **The Board finds the proposed PUD shall be designed in accordance with section 8.3 of the Ordinance as discussed in section 3.2 of these findings. (Planning Commission Exhibits 1, 19 & 21)**
- iv. **The Board finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7 & 19 and Board 3)**
- v. **The Board finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square**

feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)

- vi. The Board finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Planning Commission Exhibits 19 & 21 and Board Exhibit 3)**

- vii. The Board finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)**

- viii. The Board finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 11, 12, 14, 19.10.ii, 20 & 21) (10, 19.10.iii)**

This standard HAS/HAS NOT been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.**
 - i. The Board finds that a permit to construct the private road curb cut from the Grand Traverse County Road Board shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission and Board Exhibit 1)**

 - ii. The Board finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated January 22, 2015 that department has indicated they have no objections to the plan. (Planning Commission Exhibit 13)**

 - iii. The Board finds that a soil erosion permit for a forty-one (41) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval for a thirty-six (36) unit Planned Unit Development has been granted at this time. Please see the letter dated January 23, 2015 from the Grand Traverse County Soil Erosion – Sedimentation Control Department for the specifics related to this review. (Planning Commission Exhibits 14 & 19.10.i)**

- iv. **The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 12 & 14)**

- v. **The Board finds that the site plan shall meet all necessary requirements related to the Great Lakes waterfront as mandated by the Michigan Department of Environmental Quality and the Army Corps of Engineers. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 9 & 29)**

- vi. **The Board finds that storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Planning Commission Exhibits 19.10.ii, 20 & 26)**

- vii. **The Board finds that the Grand Traverse County Health Department (GTCHD) has preliminarily reviewed the community septic system and individual septic systems for units 1-4. They have provided initial comments for the thirty-six (36) unit plan. Please see the email dated February 18, 2015 from Daniel Thorell for specifics related to this ongoing review. All required well and community septic permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibit 10)**

- viii. **The Board finds that an emergency access to the site via Trevor Road allows for adequate fire and emergency access on the north side of the development. (Board Exhibit 10)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that concerns remain regarding fire protection given the lengthy private road and cul-de-sac. While other such lengthy roads exist in the township, the vast majority of roads of this length which end at a dead-end cul-de-sac were created before the applicable standards of the zoning ordinance. As such, the development is not adequately served with respect to fire protection. (Planning Commission Exhibits 15, 18 & 23)**

**** NOTE: THIS STANDARD MAY BE ELIMINATED SHOULD THE RECOMMENDATION TO MOVE FORWARD WITH THIS DEVELOPMENT REQUIRE A CONDITION THAT THE DEVELOPMENT MEETS ADEQUATE SAFETY STANDARDS FOR FIRE PROTECTION SUBJECT TO THE PENINSULA**

TOWNSHIP FIRE DEPARTMENT'S FURTHER REVIEW BY STEVE RONK, FIRE CHIEF. GIVEN THE RECENT PLANS AND EXCHANGE BETWEEN CHIEF RONK AND MS. KUEHINS FROM MANSFIELD, THIS MAY BE RESOLVED.

This standard HAS/HAS NOT been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
 - i. **The Board finds that the applicant is cooperating with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the issuance of the SUP. (Planning Commission Exhibits 9, 10, 11, 13, 15, 18, 19.10.i-vii & 20 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development under the zoning ordinance, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that regardless of the fact that the proposed development is a PUD, the development, as presented, has site condominium units as well as a portion of the road servicing them located in some of the steeper slope areas on the parcel. In addition, the Board finds that the plan calls for the removal of a substantial amount of trees in order to accommodate grading and earth work for the project. The Board finds that this is unusual given that a majority of the property is unforested which in turn could allow for development**

with open space in a manner which could have a much lesser impact on the slope areas of the property and existing trees. As such, the Board finds that the plan as presented does not preserve the natural resources on the property to the maximum feasible extent. (Planning Commission Exhibits 1, 19.6, 27.a & 27.b and Board Exhibit 7d)

This standard HAS/HAS NOT been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.**
 - i. The Board finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. (Planning Commission Exhibit 19)**
 - ii. The Board finds that the proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. (Planning Commission Exhibits 1 & 19)**
 - iii. The Board finds that the Michigan Department of Environmental Quality will review the plan to ensure compliance with applicable State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. A permit, if necessary, from this agency shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Planning Commission Exhibit 29)**
 - iv. The Board finds that the Army Corps of Engineers will review the plan to ensure compliance with Federal regulations. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from this agency shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Planning Commission Exhibit 9)**

This standard HAS/HAS NOT been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Planning Commission Exhibits 11, 14 & 19.10.i-iv, 19.11 and Board Exhibits 4, 5 & 6)**

- ii. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14 and Board Exhibits 4, 5 & 6)**

- iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Board Exhibits 4, 5 & 6)**

- iv. The Board finds that the applicant shall provide a confirmation by a qualified consultant for the wetland delineation shown on the plans as requested by the Township Engineer. (Planning Commission Exhibit 11)**
***** NOTE: I AM NOT SURE THIS HAS BEEN COMPLETED, SO I DEFER TO MICHELLE.**

This standard HAS/HAS NOT been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.**
 - i. The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Planning Commission Exhibits 14 & 19 and Board Exhibits 4, 5 & 6)**

 - ii. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14 and Board Exhibits 4, 5 & 6)**

- iii. **The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.**

This standard HAS/HAS NOT been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
 - i. **The Board finds that the applicant will be required to maintain all storm water runoff on site. The storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Planning Commission Exhibits 19.10.ii, 20 & 26 and Board Exhibits 4, 5 & 6)**

This standard HAS/HAS NOT been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site, per se. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)**
- ii. **The Board finds that the development of the road appears to be reasonable in the context of the existing topography and existing drainage patterns. (Planning Commission Exhibit 19)**
- iii. **The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14)**

- iv. **The Board finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP.**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that regardless of the fact that the proposed development is a PUD, the development, as presented, has site condominium units as well as a portion of the road servicing them located in some of the steeper slope areas on the parcel. In addition, the Board finds that the plan calls for the removal of approximately one-half of the tree cover on the property in order to accommodate grading and earth work for the project. The Board finds that this is unusual given that a majority of the property is unforested which in turn could allow for development with open space in a manner which could have a much lesser impact on the slope areas of the property and existing trees. As such, the Board finds that the plan as presented does not preserve the natural resources on the property to the maximum feasible extent. (Planning Commission Exhibits 1, 19.6, 27.a & 27.b and Board Exhibit 7d)**

This standard HAS/HAS NOT been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
 - i. **The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.
 - i. **The Board finds that the development of the site is to occur in one phase. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7.10, 19.7. & 23)**
- ii. The Board finds the development will be served by a community and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Planning Commission Exhibits 15 & 19.10.iii)**
- iii. The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning Commission Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
- iv. The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Planning Commission Exhibits 13 & 19.10.iv)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. The Board finds that concerns remain regarding fire protection given the lengthy private road and cul-de-sac. While other such lengthy roads exist in the township, the vast majority of roads of this length which end at a dead-end cul-de-sac were created before the applicable standards of the zoning ordinance. As such, the development is not adequately served with respect to fire protection. (Planning Commission Exhibits 1 – definitions, 15, 18 & 23)**
**** NOTE: THIS STANDARD MAY BE ELIMINATED SHOULD THE RECOMMENDATION TO MOVE FORWARD WITH THIS DEVELOPMENT REQUIRE A CONDITION THAT THE DEVELOPMENT MEETS ADEQUATE SAFETY STANDARDS FOR FIRE PROTECTION SUBJECT TO THE PENINSULA TOWNSHIP FIRE DEPARTMENT’S FURTHER REVIEW THROUGH STEVE RONK, FIRE CHIEF. (See Board Exhibits 10 & 14)**

This standard HAS/HAS NOT been met.

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.**
 - i. The Board finds that the site shall have the required landscaping per the Zoning Ordinance. Specifically, the residential units shall have street trees as required by section 6.9.3.5 of the**

Ordinance. The site shows the appropriate buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. The shared waterfront shall be subject to section 7.4.4 of the Ordinance ensuring appropriate screening of the site from the water. (Planning Commission Exhibits 1 & 19)

This standard HAS/HAS NOT been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - i. **The Board finds there is one (1) parking area located on the west side of 81 Ave to accommodate the shared waterfront as required by section 7.4.2 (c) and (c). These spaces are in compliance with the Ordinance and are outside of the private road right-of-way. This layout will allow traffic to flow uninhibited within the site and will not impact traffic off-site. (Planning Commission Exhibits 1 & 19)**

This standard HAS/HAS NOT been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - i. **The Board finds that there is no pedestrian infrastructure proposed as part of this development. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1, 15, 18 & 19)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that concerns remain regarding fire protection given the lengthy private road and cul-de-sac. While other such lengthy roads exist in the township, the vast majority of roads of this length which end at a dead-end cul-de-sac were created before the applicable standards of the zoning ordinance. As such, the development is not adequately served with respect to fire protection. (Exhibits 15, 18 & 23)**

**** NOTE: THIS STANDARD MAY BE ELIMINATED SHOULD THE RECOMMENDATION TO MOVE FORWARD WITH THIS DEVELOPMENT REQUIRE A CONDITION THAT THE DEVELOPMENT MEETS ADEQUATE SAFETY STANDARDS FOR FIRE PROTECTION SUBJECT TO THE PENINSULA TOWNSHIP FIRE DEPARTMENT'S FURTHER REVIEW THROUGH STEVE RONK, FIRE CHIEF. (Board Exhibits 10 & 14)**

This standard HAS/HAS NOT been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that there are no proposed refuse containers as part of the general proposal. Each unit will provide for individual garbage removal and shall be subject to Ordinance #43 Solid Waste of Peninsula Township. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that this the largest waterfront undeveloped parcel left in the township. The Board recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-1B) zoning districts. While the Board recognizes that development is going to cause disturbance to the land, the Board finds that the PUD as proposed preserves 54.23 acres as undeveloped open space. The Board further finds that although narrow, a setback along the coast of East Grand Traverse Bay of 1500 lineal feet of undeveloped property (exclusive of dockage facilities), is beneficial and in accord with the purpose and spirit of the ordinance as well as sound planning principles. The Board further finds given that there are other options available for development which could be much more intensive, the plan as presented with the preservation of open space meets the objectives of land use planning under the zoning ordinance. (Planning Commission Exhibits 1 ,2, 19, 20, 21 & 30 and Board Exhibit 3)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. The Board finds that regardless of the fact that the proposed development is a PUD, the development, as presented, has site condominium units as well as a portion of the road servicing them located in some of the steeper slope areas on the parcel. In addition, the Board finds that the plan calls for the removal of a substantial amount of trees on the property in order to accommodate grading and earth work for the project. The Board finds that this is unusual given that a majority of the property is unforested which in turn could**

allow for development with open space in a manner which could have a much lesser impact on the slope areas of the property and existing trees. The Board further finds that the combination of larger lots, particularly in the steeper slopes area, and less intensive development in the steep slopes would do more to align this development with the spirit and purpose of the zoning ordinance and the objective sought therein, such that the development as presented is not in accord with the spirit and purpose of the zoning ordinance with respect to preservation of the natural landscapes and features of property in Peninsula Township sought in the zoning ordinance. (Planning Commission Exhibits 1, 19.6, 27.a & 27.b and Board Exhibit 7d)

This standard HAS/HAS NOT been met.

3. Specific Findings of Fact – Section 8.3 (Planned Unit Developments)

3.1 Objectives – The following objectives shall be considered in reviewing any application for a special use permit for planned unit development.

- a. To provide more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the preservation of 54.23 acres of open space as well as the preservation of 1500 lineal feet of East Grand Traverse Bay frontage will preserve the natural character of the open fields largely contained within the open space areas as proposed. While the Board is mindful that the development will result in some grading of slopes and removal of trees, given other development options under the zoning ordinance, the development as proposed provides for a desirable living environment for future purposes of units within the development both with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds and having negative impacts upon the lakeshore and other natural assets of the property. (Planning Commission Exhibits 10, 11, 12, 14, 19 & 20 and Board Exhibit 3)**

*****THIS PARTICULAR STANDARD VIEWS ONLY THE PROPERTY ITSELF AND WHETHER OR NOT THE DEVELOPMENT AS PRESENTED PROVIDES FOR A MORE DESIRABLE LIVING ENVIRONMENT FOR THOSE WHO WOULD BE PURCHASING UNITS WITHIN THE DEVELOPMENT.**

- ii. **The Board finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- b. To provide open space options.
 - i. **The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30)**

This standard HAS/HAS NOT been met.

- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.
 - i. **The Board finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the zoning regulations contained in the zoning ordinance for zoning districts R-1A and R-1B provide a multitude of options for development at this site. Given the available options that the applicant has, the PUD does provide for the preservation of substantial open space, to wit; 54.22 net acres of undeveloped property as well as a strip of 1500 (lineal?) feet of East Grand Traverse Bay waterfront that will also remain largely undeveloped excepting the boat dock area. As such, the Board finds that when balancing market demands for desirable residential parcels in conjunction with the preservation of at least 65% of the property, the PUD as presented is a more creative and imaginative approach to the development of this parcel for residential purposes than what would otherwise be allowed under the Peninsula Township Zoning Ordinance. (Planning Commission Exhibits 1 – section 6.2, 6.3, 6.5.A; 11, 12, 13, 19, 20 & 23 and Board Exhibit 3)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that under section 6.5.A.1 of the zoning ordinance that the purpose behind planned unit development for residential districts is to allow the planned development of areas of the township where conventional development practices are suitable to the terrain. The Board finds that some of the more intensely developed portions of this development are located on the steep slope areas where the majority of the trees are located as opposed to the**

flatter portions of the property which largely consist of field-type vegetation. The Board is mindful of the other forms of development that this property may be put to under the regulations in the zoning ordinance, but given that the proposal develops significant portions of the property with respect to terrain and natural environmental conditions the Board finds that the PUD is not an improvement over what is allowed with respect to conventional development in the R-1A and R-1B zoning districts. (Planning Commission Exhibits 1, 17, 19, 27.a & 27.b and Board Exhibits 3 and 7d)

This standard HAS/HAS NOT been met.

- d. To provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the applicant's plans do preserve 1500 (lineal) feet of waterfront property from direct development, excepting dockage facilities while also maintaining open space along Boursaw Road which results in minimal aesthetic changes viewed along the road corridor. The Board further finds that the small wetlands area on the portion of the property will remain preserved, resulting in an attractive development for residential housing. (Planning Commission Exhibit 19 and Board Exhibit 3)**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD NOT BEING MET.

- i. **The Board finds that under section 6.5.A.1 of the zoning ordinance that the purpose behind planned unit development for residential districts is to allow the planned development of areas of the township where conventional development practices are suitable to the terrain. The Board finds that some of the more intensely developed portions of this development are located on the steep slope area where the majority of the trees are located as opposed to the flatter portions of the property which largely consist of field-type vegetation. The Board is mindful of the other forms of development that this property may be put to under the regulations in the zoning ordinance, but given that the proposal develops significant portions of the property with respect to terrain and natural environmental conditions the Board finds that the PUD does not bypass natural obstacles, but rather develops these areas. (Planning Commission Exhibits 1, 17, 19, 27.a & 27.b and Board Exhibits 3 & 7d)**

This standard HAS/HAS NOT been met.

- e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
 - i. **The Board finds that The 81 has general design standards which allow for diversity in unit types. (Planning Commission Exhibit 19)**

This standard HAS/HAS NOT been met.

- f. To provide for the retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.
 - i. **The Board finds the parcel is subject to residential zoning, is currently vacant and not being utilized for farmland. The Board further finds that this development does not impact farmland utilized in the township directly adjacent to the development or within the vicinity of the development. The Board further finds that the 65% open space will likely remain as fallow land. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**
 - ii. **The Board finds that the layout of the plan preserves 65% of the land for open space as confirmed by the Township Engineer. (Planning Commission Exhibits 19 & 30 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

3.2 Qualifying Conditions – Any application for a special use permit shall meet the following conditions to qualify for consideration as a planned unit development.

- a. The planned unit development project shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the project acreage requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of the land.
 - i. **The Board finds that the proposed project is 81+ acres. (Planning Commission Exhibit 19 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- b. The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts. Individual planned unit developments may include land in more than

one zone district in which event the total density of the project may equal but not exceed the combined total allowed density for each district calculated separately.

- i. The Board finds that the proposed development includes forty-one (41) units. This is less than the allowable number of units should the property be developed outside of the PUD ordinance as determined by the underlying zoning district regulations. The Board further finds that the property is zoned R-1A and R-1B. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- c. Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements. It is recognized that joining water and sewer ventures with contiguous or nearby land owners may prove to be expedient.
 - i. The Board finds the development will be served by a community septic facility, individual septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer of Record (Engineer) to ensure they are compliant with all applicable regulations. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 1, 10 & 19)**

This standard HAS/HAS NOT been met.

- d. The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1 except as provided by Section 8.3.5 (1).
 - i. The Board finds that the proposed density of the site is no greater than if the project were developed with the lot area requirements within the R-1A and R-1B zoning districts. (Planning Commission Exhibits 1 & 19)**
 - ii. The Board finds that the density of the development is in compliance with Section 8.3.5 (1). The net acreage of the site is 82.63 acres. (Planning Commission Exhibits 1 & 19)**

This standard HAS/HAS NOT been met.

- e. Open space shall be provided according to Section 8.3.6.
 - i. **The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- f. For purposes of this Section 8.3, Opens Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. **The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

This standard HAS/HAS NOT been met.

- g. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.
 - i. **The Board finds that the proposal meets Section 8.3 of the Ordinance in these findings and below. (Planning Commission Exhibits 1 & 19)**
 - ii. **Section 8.3.4, PUD Uses that may be permitted: The Board finds that the applicant is proposing single family dwellings, open space in accord with Section 8.3.6 and a sign.**
 - iii. **Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that proposal reduces the size of the forty-one (41) units below the minimum lot size required by the underlying zoning according to the following calculations and within the allowances provided by the Ordinance as detailed here. The Site Acreage for density calculation is 82.63 acres less the fifteen (15) percent for the R-1A and R-1B requirement and is equal to 70.24 acres. Per the underlying zoning districts 92% (64.63 acres) of the Site Area Computation is subject to R-1A zoning 8%**

(5.61 acres) of the Site Area Computation is subject to R-1B zoning. Therefore the site will allow a maximum of 73 units to be developed. These units can be reduced in area below the minimum lot size required by the zone district in which the PUD development is located provided that the total number of units does not exceed that which is allowed by the underlying zoning. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)

- iv. The Board finds that the building envelopes are shown on the site plan and are not included as open space. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)

- v. The Board finds that the minimum lot area is 11,633.17 square feet as indicated in the application. (Planning Commission Exhibit 19 and Board Exhibit 3)

- vi. The Board finds that the maximum permissive building height for residential structures shall be 2.5 stories and not greater than 35 feet and accessory structures shall not exceed 15 feet. (Planning Commission and Board Exhibit 1)

- vii. Section 8.3.6, PUD Open Space: The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Exhibit 3)

- viii. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: The Board finds that the maximum percentage of lot area covered by all structures is proposed to be 14% of the net acreage of the site as permitted by this section. This reflects an average permitted lot coverage of 47% of the individual units. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

- ix. Section 8.3.8, PUD Affidavit: The Board finds that the applicant shall record an affidavit with the register of deeds as required by this section of the Peninsula Township Zoning Ordinance.

- x. The Board finds the Article VII of the Ordinance requires The 81 to address the following items:

Section 7.1.2, Sanitation Requirements: The Board finds the development will be served by a community septic facility, individual septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. All required permits shall be submitted to Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.2.5, Stormwater Detention: The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning Commission Exhibit 20 and Board Exhibit 3)

Section 7.2.6, Supplemental Setbacks for Planned Unit Developments, Mobile Home Parks, and other Group Housing Developments: The Board finds that the site shows the necessary buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.4, Supplemental Great Lakes Shoreland Regulations: The Board finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. The proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. The Michigan Department of Environmental Quality and the Army Corps of Engineers will review the plan to ensure compliance with applicable Township and State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from these agencies shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Planning Commission Exhibits 1, 9, 19 & 29 and Board Exhibit 3)

Section 7.6, Off Street Parking and Loading Regulations: The Board finds that the proposal provides two (2) off street parking spaces for each dwelling unit as required by this section. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.7, Developments Abutting Agricultural Lands: The Board finds that the site plan shows the required 100 foot setback from agricultural lands found in section 7.7 of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.10, Road Standards: The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and developed according to the standards found in Section 7.10 of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.11, Signs: The Board finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Planning Commission Exhibit 1 and Board Exhibit 3)

The Board finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

The Board finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

The Board finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

Section 7.14, Exterior Lighting Regulations: The Board finds that the applicant is not proposing any street lighting as part of this petition. All exterior lighting on the residential units shall comply with the standards set forth in this section at the time of application for a land use permit. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

This standard HAS/HAS NOT been met.

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
March 16, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Leak; Wunsch; Serocki, Couture and Hornberger

ALSO PRESENT: Michelle Reardon, Director of Planning and Zoning; Elise Crafts, Assistant Planner; Brian Boals, Township Engineer; Peter Wendling, Township Attorney and Deb Hamilton, Recording Secretary

ABSENT: Rosi & Maguire (excused)

APPROVAL OF THE AGENDA

MOTION: Serocki/Couture to approve the Agenda as submitted.

MOTION PASSED

REVIEW FOR CONFLICT OF INTEREST

None

PLANNER REPORT

Reardon noted the meeting calendar dates are in front of the Commission. There are two additional emails concerning The 81 on East Bay one from Edward Shipman and one from Becky Wells. Reardon expects an application from AT&T soon.

PUBLIC COMMENT - (OTHER THAN AGENDA ITEMS)

None

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - January 22, 2015 – Language Sub-Committee
 - March 12, 2015 – Language Sub-Committee (added)
 - February 12, 2015 – ZBA Report
 - March 12, 2015 – ZBA Report (added)
 - February 2015 – Township Board Report
2. Meeting Minutes
 - December 15, 2014 – Regular Meeting

MOTION: Hornberger/Serocki to approve the consent agenda as amended.

MOTION PASSED

NEW BUSINESS

SUP #111 (1st Amendment) – Old Mission Lighthouse Gift Shop

Crafts reviewed application. The Commission may wish to discuss the Findings on page 8, letters at the top of the page. Pulling the Master Plan into the discussion the Commission may want to discuss whether the Amendment meets the Master Plan in terms of plans toward future use of public and semi-public land use. Staff has provided findings to both support and deny based on this standard.

Celia Villac, Mission Point Lighthouse Director, said she does not have anything to add to the application presented. **Leak** asked are the additional items to sell are they unique to the Lighthouse. *Villac* said the additional items are items visitors have requested. The level of detail is to achieve two goals – to not leave room for interpretation and to avoid having to do this in the near future. **Serocki** asked if they want to change the displays do they need permission. **Crafts** said yes the original SUP 111 is very specific as to the list of items to be sold, the list of areas that can be displayed and the list of storage space. The display areas are measured in their dimension and the number of them -not to exceed two walls and the shelves can be only be 24 inches from the wall. **Hornberger** said the Fire Chief has approved the displays.

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

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #111, Mission Point Lighthouse Gift Shop
Township Board - April 14, 2015

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel, 20500 Center Road, is located in Section 23 of the Township and the total acreage utilized for the Mission Point Lighthouse site is measured at approximately five (5) acres. (Exhibits 3, 4)

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use approval to allow the Mission Point Lighthouse to expand the retail operations in the existing gift shop by requesting the following: (1) additional items to be authorized for sale; (2) additional display space within the existing gift shop; and (3) additional storage space for back stock product within the existing lighthouse building. (Exhibits 3, 4)

- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park of the Peninsula Township Zoning Ordinance. (Exhibits 2, 4)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing one (1) parcel which conforms to local zoning. (Exhibits 1, 2)
- b. The Board finds that the Mission Point Lighthouse Gift Shop was approved under SUP no. 111 in 2009, and is currently in compliance with their approved SUP no. 111 (Exhibits 2, 3, 4)
- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the proposed expansion efforts. (Exhibits 3, 4)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence adjacent to the subject parcel per the date of this report. (Exhibits 3, 4)

- a. **North-** The subject parcel is bound on the northern property line by Grand Traverse Bay.
- b. **South-** The land adjacent to the south of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- c. **East-** The land adjacent to the east of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- d. **West-** The land adjacent to the west of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- e. The Board finds that the future land use plan, in regards to the subject property, suggests that the adjacent and surrounding land will continue to be considered as an agricultural preservation region of the Township. (Exhibit 1)

2. Specific Findings of Fact – Section 8.1.3 BASIS FOR DETERMINATIONS

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building. (Exhibits 3, 4)

2) The Board finds that no physical expansion of the gift shop interior space or lighthouse building is proposed and therefore the essential character of the area will not change. (Exhibits 3, 4)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building . (Exhibits 3, 4)

2) The Board finds that the existing approved retail operation use is not proposed to change and the applicant is not proposing to introduce any new uses on site. (Exhibits 3, 4)

This standard HAS been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

1) The Board finds that current operation areas should not require additional essential facilities or services and the applicant is working with all local permitting agencies to achieve compliance. (Exhibits 3, 4)

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

1) The Board finds that the applicant's request should not require excessive future essential facilities or additional public services. The Mission Point Lighthouse is not introducing any new uses on site which would trigger additional public infrastructure, public services, or public costs. (Exhibits 3, 4)

This standard HAS been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1) The Board finds that the proposed use of the site should not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibits 3, 4)

This standard HAS been met.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.

1) The Board finds that the applicant is the owner/operator of the petitioned property and Mission Point Lighthouse and gift shop operation and may legally apply for said review process. (Exhibits 3, 4)

This standard HAS been met.

- b. That all required information has been provided.

1) The Board finds that the applicant has provided all the required information as portrayed within the special use permit application and upon the provided final site plans. (Exhibit 3)

This standard HAS been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

1) The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibits 2, 3, 4)

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services:

Grand Traverse County Road Commission- Because site access off of the M-37/Center Rd. right-of-way is regulated by the State of Michigan, it is not subject to County review.

Michigan Department of Transportation- Site access off of the M-37/Center Rd. right-of-way has been originally approved and there are no anticipated changes to said access. All permits, if necessary, shall be obtained by the applicant prior to the issuance of a special use permit.

Grand Traverse County Sheriff's Department- Sheriff's Deputy Suhy has reviewed a copy of the application and site plan at this time. In a written statement dated February 14, 2015, Deputy Suhy indicated there are no issues with the proposed changes.

Peninsula Township Fire Department- Assistant Chief Rittenhouse has reviewed a copy of the site plan and application. In a written statement dated February 14, 2015, Assistant Chief Rittenhouse indicated there are no issues with the proposed changes.

Grand Traverse County Construction Code Office- Rick Frederick, Building Plan Examiner, has reviewed the proposed application and site plan. In an email dated February 9, 2015, Mr. Frederick indicated there are no issues with the proposed changes.

Grand Traverse County Health Department- Health Department approval is not required.

Grand Traverse Soil Erosion & Sedimentation Control Department- Soil Erosion & Sedimentation

Control approval is not required.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. All permits, if necessary, shall be obtained by the applicant prior to the issuance of a special use permit. (Exhibit 3)

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. (Exhibit 3)

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1) The Board finds that no external changes are proposed to the existing structure and therefore natural resources will not be affected by the proposed amendment. (Exhibits 3, 4)

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact natural resources. (Exhibits 3, 4)

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact the existing drainage plan. (Exhibits 3, 4)

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

1) The Board finds that no external changes are proposed and no additional grading or filling is anticipated to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact air drainage systems. (Exhibits 3, 4)

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1) The Board finds that the proposed amendment is to occur in one phase. (Exhibits 3, 4)

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

1) The Board finds that no additional services or facilities are needed or anticipated on or off site to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Township Board in pursuance of the objectives of this Ordinance.

1) The Board finds that the existing landscaping and surrounding acreage separate the Mission Point Lighthouse operation from those surrounding neighbors. (Exhibits 3, 4)

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

1) The Board finds that the existing approved parking layout is not anticipated to change. (Exhibits 3, 4)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

1) The Board finds that the infrastructure servicing onsite pedestrian traffic appears to be functioning well and should be adequate for the proposed interior redesign. (Exhibits 3, 4)

This standard HAS been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

1) The Board finds that there are no changes to the previously approved garbage and refuse storage. (Exhibits 3, 4)

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage of the site is consistent with the requirements of Section 8.6.1 (4) of the Ordinance. (Exhibit 2)

2) The Board finds according to the Future Land Use map from the Master Plan the subject property is classified as Public & Semi-Public Land use. (Exhibit 1)

3) The Board finds that the proposed amendment meets the following future land use goal of the Master Plan for the Public & Semi-Public Land use because the proposed amendment is meant to improve the Mission Point Lighthouse Park for the education, well-being, and enjoyment of Township residents and visitors:

- (a) Goal: Provide a variety of parks, trails, recreational facilities and programs to serve all groups of citizens (p. 37 of Master Plan). (Exhibits 1, 3)**

This standard HAS been met.

3. SECTION 8.6.1 (4) MISSION POINT LIGHTHOUSE AND LIGHTHOUSE PARK REGULATIONS

The Board finds that under Section 8.6.1 (4), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. Items sold shall be limited to merchandise relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. Examples include items such as light house replicas, hats, t-shirts or sweatshirts, coffee mugs, pencils, pins, pens, prints, books, calendars, lapel pin, magnets, puzzles, patches, ornaments and bookmarks with lighthouse logos.

1) The Board finds that Section 8.6.4 (1) authorizes the Mission Point Lighthouse gift shop to sell items relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. (Exhibit 2)

2) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;
- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- b. The Township Board may authorize the sale of other items related to the lighthouse park.

1) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;
- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;

- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- c. Net proceeds from the gift shop shall be placed in a designated fund to be used for operation and maintenance of the Mission Point Lighthouse and Lighthouse Park.

1) The Board finds that the proposed changes shall not impact this standard and process. (Exhibit 3)

This standard HAS been met.

- d. No general funds may be used for the operation of the gift shop.

1) The Board finds that the proposed changes shall not impact this standard. (Exhibit 3)

This standard HAS been met.

Motion to Approve the Findings of Fact.

MOTION: Couture/Hornberger the Board moves to recommend approval of the above findings of Fact for SUP #111 (1st Amendment) and recommend approval for the application for the proposed changes to the Mission Point Lighthouse, principal site, located in Section 23 of Peninsula Township, and as legally described.

MOTION PASSED

SUP#123 – The 81 on East Bay (Condominium Subdivision Planned Unit Development)

Reardon clarified tonight is a public hearing and reviewed the application. There are minor issues that need to be worked out specifically the sign and height of common building. Before final issuance of an SUP conditions will have to be met through the ordinance and not addressed through variance.

Doug Mansfield, President of Mansfield Land Use Consultants, 830 Cottage View Dr. Suite 201, Traverse City, explained the development. Kevin O’Grady is the Developer and a resident of Peninsula Township. A graded access for potential connection to Trevor Road for Fire Department use only will be provided. Mansfield understands that the Fire Department wants to expand the turnaround. The common storage building’s roof slope and height is an issue but will work through the issues. The PUD allows for 72 lots and the use by right could be 62 lots. This development will be 36 lots. This is a gift from the Developer. He is preserving the character.

There will be almost no notable change with 400-500 ft. from the entrance at all and little to no visible change publicly along Boursaw Road or from the neighboring properties.

Serocki said the map (C3.0) shows steep slopes. **Mansfield** said the hummocks that would be smoothed out but not getting into the embankment. **Serocki** asked about the north side. **Mansfield** said there is a fill area for the road and maybe 5 or 6 feet of balancing the dirt there. Climbing the hill, there is maybe 10-20 feet of a cut and fill section for balancing coming up the curve. Along the ridge, the only part excavated is the area for the appropriate turnaround. They are not invading the characteristics of the land that are truly critical but making appropriate home sites. **Serocki** asked if the stock pile is for construction only. **Mansfield** said yes for the Soil Erosion permit they need to know where the stock pile will be. **Serocki** asked how close the porta-jon is to Bluff Road. **Mansfield** said 1,500 ft. **Serocki** said she thought the picnic pavilion area on C6.0 was to be removed. **Reardon** said the word pavilion should be struck. **Serocki** asked dimensions of the storage barn. **Mansfield** said 6,000 sq. ft. **Serocki** asked about events or association meetings being held at the barn. **Mansfield** said no, code would not allow that. It is just storage. **Reardon** said there are regulations in the ordinance that the storage barn has to be for the exclusive use of the residents. She would like to see some of that language in the Master Deed. **Leak** asked where the ditch goes that is running through the open area. **Mansfield** said into the storm water basin flowing north to south. **Leak** asked if the turnaround was going to be increased due to the Fire Department request. **Mansfield** said yes. **Leak** asked if the parking by the community picnic area was for vehicles. **Mansfield** said it is sized for golf cart type vehicles. The Fire Department wants a 20 ft. wide access down there so now there will be a 20 ft. wide road. **Leak** asked if no motor vehicles in the picnic area will be in the restrictions. **Mansfield** said correct.

Leak opened the Public Hearing at 7:37 p.m.

Tom McMahon, 4114 Trevor Road, he and his wife are full time residents. There are four adjoining lots in our area. The lots are owned by people that met shortly after World War II and are considered family. It was and is our dream to spend our retirement years in a beautiful rural setting. We believe this development is not in the keeping with the character of the area. Grades are being changed. Trees will disappear and slopes will be graded. Wildlife habitats will be disrupted. The development does not appear to be consistent with the desires of citizens expressed in Master Plan. A portion of Trevor Road will be opened for traffic. Whether that is for emergency egress from this development or not, it will endanger privacy of our property. There has been no agreement or contact between the developer and us. He asked that the Commission not be swayed by arguments or anything the Commission may think about similar developments or PUDs that have been done. There is a development on Smokey Hollow that is not in character but it does not mean that because something else happened it is a precedent that the Commission should approve in the future. In his opinion there has been insufficient concern for alternative design elements that would mitigate the possibility of any noxious affects that would diminish the value of his property and other neighboring properties. When a Developer says they could have more density by right than what is being planned. He suggests asking the

Planner if that is true. He urges to not accept the fact that the Developer could have done more and therefore approve the project. In conclusion the impact of the development is significant to the Peninsula as a whole. He does not feel there has been significant community input. He urges the Commission for approval to be denied. He also urges the Commission to suggest to the Developer to find a way to get some community involvement to hear more community concerns.

Leak read Eddie Shipman's email into the record.
Dear Planning Commission,

I wish to have my comments read at the Planning Commission meeting scheduled on 3/16/2015 during the public hearing since I am not able to attend.

As a current resident born and raised on the Old Mission Peninsula I strongly oppose the planned development of a 36 unit condominium subdivision. Great efforts have been made over the long term to preserve the quiet, scenic and agriculture character of the Old Mission Peninsula, which as a resident I cherish. If this planned development of high density housing is approved it would be in complete opposition to the current low density residential character we have fought for and invested in. The traffic on our scenic roads is already congested and the additional traffic caused by 36 new households this far out on the peninsula would be make this problem even worse. Please do not approve this development.

Thank you,

Edward Shipman
14735 Shipman Road
Traverse City, MI 49686

Leak read Becky Well's email into the record.
Michelle, I have just a few questions.

There is a 30' PUD perimeter setback around the entire site providing a buffer to neighboring properties. How close are the row of 25-36 houses to that buffer. We do grow hops and they are sprayed so wanted to be sure there would be no problem with our agricultural business.

Would there be any open space usage of the now open area on our border?

Will electric lines be along our border?

It states no odors etc and I want to be sure there will be NO wood burning activities and if houses have fireplaces that they have the proper filtering apparatus in their chimneys so that we do not have any smoke traveling down to our property and homes. Any filtering system should be of extremely high quality and probably exceed the minimum required.

I will not be able to attend the meeting due to the mustiness of the hall.

It causes asthma attacks and I have to avoid that. Thanks, Becky Wells

Leak asked about the electrical and phones lines. **Reardon** said there is a utility easement along the private road and will be underground. **Reardon** said any open space along the border would be subject to Master Deed and subject to the same uses outlined in the Master Deed. The Township does not regulate wood burning activities with PUD or any of the Township regular metes and bounds properties. They would need to talk to the County and she understands that the County does not have a wood burning ordinance at this time. **Serocki** said on Rosi's list of comments she wondered if there was going to be a site visit. **Reardon** said that would have to be scheduled but it can be done. **Serocki** asked if any of the other Commissioners wanted to visit the site. **Leak** said he does not think it would hurt. **Couture** said he already went and looked at the site. **Wunsch** said a site visit could be instructive. **Hornberger** said sure. **Reardon** said she will talk with the developer and his representative and schedule a site visit. **Leak** said the Commission will hold any approval until after the site visit. **Reardon** said that is at the decision of this Commission.

Reardon said the Township cannot compel Trevor Road to allow any access with the exception of what the Fire Chief can do through emergency. This is a lengthy road that serves 36 units with a single access point. She encourages the Commission to talk with Chief Ronk.

Steve Ronk, Peninsula Township Fire Chief said he understands Trevor Road's concerns. It is all about access. The development has an extremely long road and if it was blocked there is no other way out. It is tough piece of land to develop. If it can be worked out between Trevor Road and the Developer it will solve a problem. *Joe Quandt, Attorney for the Developer*, this issue was brought up in the planning process. It is a legitimate issue. The Developer is willing to build their portion of the road. It would be the Township responsibility to discuss with Mr. McMahan or the others of Trevor Road any ingress/egress that can be gained from that portion of the road. **Leak** asked McMahan if he would consent to talk to the Fire Chief as to the fire protection and the emergency access to/from Trevor Road. *McMahan* said would happy to talk to anybody as long as the home owners association asks him to do so. **Reardon** said from a staff point of view we recognize this is a long road and we recognize we cannot compel any private road to allow access in this way. If planning for the future and Trevor Road does come up to a private road standards that would allow additional access, emergency access would have already been built. In our discussions with the Developer we talked about **substrate** with ground cover over that for emergency access vehicles only. This is simply an opportunity for us to plan for the future. The ordinance does talk about where it can happen continuity of road system should be created. **Leak** said it sounds to him that the Chief would be the best neutral party to provide for such a thing. **Reardon** said she would invite any discussion that staff and Chief may have with this home owners association about the future of that road and how to improve access. *Mansfield* said emergency access has been discussion point from day one. If this connection does not happen, this will not stop the development. Looping this road around is easily done. The fire tank that will be put in has an easement for public. The water in that tank can be used to fight any fire. That water access may make your insurance payments go down. Joint use of the trail **substrate**

would have to be gated. Your concerns are our concerns. More land can be paved to make this happen but trying to avoid that.

Leak closed the Public Hearing at 8:05 p.m.

Couture said he would like to have a second public hearing after the site visit.

MOTION: Hornberger/Couture to table this issue and at the April 20, 2015 Planning Commission meeting have a public hearing of this issue.

MOTION PASSED

OLD BUSINESS

None

PUBLIC COMMENT

None

ADJOURNMENT

MOTION: Couture/Wunsch to adjourn the meeting at 8:10 p.m.

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for April 20, 2015.

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
April 20, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Leak, Wunsch, Serocki, Rosi, Maguire, Couture and Hornberger

ALSO PRESENT: Michelle Reardon, Director of Planning and Zoning; Elise Crafts, Planning & Zoning Coordinator; and Deb Hamilton, Recording Secretary

ABSENT: None

APPROVAL OF THE AGENDA

Serocki add SUP #123 to Old Business, add April 9, 2015 ZBA Report and April 16, 2015 Sub-Committee Minutes to the Consent Agenda and remove March 9, 2015 ZBA Report and March 12, 2015 Sub-Committee Minutes from the Consent Agenda (approved at March 16, 2015 meeting).

Rosi said she would like to give her Township Board Report tonight. This item was placed on the Agenda after Review of Conflict of Interest.

MOTION: Serocki/Maguire to approve the Agenda as amended.

MOTION PASSED

REVIEW FOR CONFLICT OF INTEREST

None

TOWNSHIP BOARD REPORT

Rosi said SUP #111 1st Amendment regarding the various uses that were requested at the Lighthouse was denied by the Township Board. The vote was 5/1 to deny SUP #111 1st Amendment (Jill Byron was excused until late in the meeting). The issues at Bonobo Winery were discussed. The issues are onsite management, lighting changes, percentage of crop planting. These items were all part of the original SUP. There was also a request for vacation of undeveloped roads in the original plat map of Old Mission. The request was approved. There were a number of properties adjacent to roads and alley ways that were never developed. The property owners asked the Township Board to vacate the roads and allow them to be used for the property owners' purposes. At the end of the meeting there was a resignation from the Lighthouse Manager and a Park Commissioner.

Serocki asked reason for denying. **Rosi** said she wants to see the minutes because she was surprised. When the minutes are published we will be able to understand what the decision was based on.

PLANNER REPORT

Reardon said there is a notification that Milton Township is holding Public Hearing on their revised Master Plan. Staff has received the AT&T application. Staff has not received a revised application from The 81 on East Bay.

PUBLIC COMMENT - (OTHER THAN AGENDA ITEMS)

Anne Griffiths, 14548 Bluff Rd., said she would like to make comments about the denial of SUP #111 1st Amendment. She thanked the Planning Commission for the approval of the Amendment. There continues to be misinterpretation and misrepresentation of the financial situation of the Lighthouse. She brought a Profit & Loss Report for the whole year and a report that shows the trending of the Lighthouse profit not loss. We were not well represented by your representative. Members of the Township Board went off on some tangents - not understanding why the Lighthouse was selling trinkets and unfair competition on the part of the Lighthouse as a non-profit competing with commercial entities on the Peninsula. There was no discussion about storage or the display rack. She thinks that they were not well served by the discussion and wished the representative of your Commission would have been more proactive in helping. Griffiths intends to explore every opportunity to re-visit this action whether by petition or community action.

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - April 9, 2015 – ZBA Report
 - April 16, 2015 – Language Sub-Committee
2. Meeting Minutes
 - March 16, 2015 – Regular Meeting

MOTION: Hornberger/Serocki to approve the consent agenda as amended.

MOTION PASSED

NEW BUSINESS

SUP #41 (1st Amendment) – Kroupa Food Processing Plant – Winery (Introduction, discussion and potential recommendation)

Reardon reviewed the staff report. The DEQ will have a comment on wastewater from production. When the structure was originally permitted by Soil Erosion-Sedimentation Control Department of the County it stated that it was not for production. The applicant is working with Soil Erosion-Sedimentation Control Department so the permit will reflect the purposed use. These two items should be conditions of approval should the Planning Commission recommend approval to the Township Board. The applicant is currently working with the Michigan liquor Control Commission. The Township Board did recommend that the applicant could apply for a small wine maker's license. The applicant will also need to obtain the appropriate building permit to occupy the structure which was built as an agricultural storage unit.

Rosi asked why the applicant had to come for approval. **Reardon** said the existing SUP does not incorporate the area the applicant wanted to do the production. The piece that is currently incorporated is the northwest corner of the parcel. This SUP amendment will extend to include the northern most 10 acres. An amendment needed to happen because the area the applicant wanted to expand production was not in the existing SUP. The use is not changing. **Rosi** asked

about the acreage used for the Peninsula Cellars SUP. **Reardon** said that is a separate SUP that has 150 acres associated with it. This additional five acres is not part of that SUP.

Reardon said in front of the Commission is the entire application and staff report. The Planning Commission may choose to call a public hearing at the Planning Commission level at the next meeting, make a recommendation for approval or denial based on the Findings of Fact this evening or table the request. The Township Board is required to have a public hearing on this request. **Maguire** said he does not think the Planning Commission has to have a public hearing on this request. The request is straight forward. **Serocki** said 2.1 on the staff report says “proposed new construction”. **Reardon** said it should say “expanded use”. **Serocki** asked about the Findings of Fact 1.4 h & i have no findings. **Reardon** said the Planning Commission simply should make some findings here. There is no signage proposed. The finding would be the Board there is no new signage proposed as part of the application. The applicant is required for parking five spaces plus one for the maximum number of employees. The finding would be the Board finds there is ample space to accommodate the required nine spaces. **Rosi** asked if the building was properly constructed. **Reardon** said yes. **Wunsch** said he has no concerns with this request.

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

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #41 1st Amendment, Kroupa (Food Processing Plant in A-1 Districts)
April 20, 2015

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel is located in Section 16 of the Township and has approximately 660 feet of road frontage on Kroupa Rd.
- b. The Board finds the total acreage utilized for the amended Food Processing Plant in A-1 Districts is measured at roughly 10 acres.

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use permit approval to construct and continue and expand operation as a Food Processing Plant in A-1 Districts as permitted by Section 6.7.3(4) and Section 8.5 of the Peninsula Township Zoning Ordinance. (Exhibit 2 & 3)
- b. The Board finds that the final site plan and special use permit are subject to the requirements of Sections 8.1.3 Basis of Determination and 8.5 Food Processing Plant in A-1 Districts of the Peninsula Township Zoning Ordinance. (Exhibit 2)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing one (1) parcel which is conforming to local zoning. (Exhibit 2)
- b. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the amended site plan. (Exhibit 5)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence on the date of this report adjacent to the proposed development.

- a. **North-** The land adjacent to the north of the subject property is zoned A-1, Agricultural and is in active agricultural use.
- b. **South-** The properties adjacent to the south are zoned A-1, Agriculture and are primarily utilized for ongoing agricultural production and one residential structure.
- c. **East-** Property to the east is zoned A-1, Agricultural and is in active agricultural use.
- d. **West-** Property to the west is zoned A-1, Agricultural and is in active agricultural use.
- e. The Board finds that the future land use plan, in regards to the subject property, suggest that the adjacent and surrounding land will continue to be considered as an agricultural preservation region of the Township.
- f. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code and Michigan Liquor Control Commission.
- g. The Board finds that any proposed lighting implemented onsite shall comply with the existing Ordinance found within section 7.14, added by Amendment 175A, Exterior Lighting Regulations.
- h. The Board finds that the applicant is not seeking signage approval as part of this application.
- i. The Board finds that the additional acreage as part of this application shall provide ample space for the required nine (9) parking spaces.

2. **Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)**

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1) The board finds that the proposed expansion of a Food Processing Plant in A-1 Districts is an agricultural land use permitted by special use permit in the A1-Agricultural district. This type of land use is specifically supported within the 2011 Master Plan as one of the goals in this district to encourage local growers to produce, process, and market agricultural products. All site design requirements are currently met. (Exhibit 1, 2 & 4)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1) The Board finds that the operation of the nursery/greenhouse selling at retail on site should not impact adjacent neighbors. The applicant has significant acreage to buffer adjacent neighbors from the expanded use. The existing access for Food Processing Plant in A-1 Districts will continue to be used and has been reviewed and approved by the Grand Traverse County Road Commission. (Exhibit 4 & 5)

This standard HAS been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

1) The Board finds that the proposed expansion should not require additional essential facilities or services as onsite water and waste water treatment will be maintained onsite. The operation will be reviewed and permitted by the Grand Traverse County Health Department and the State of Michigan Department of Environmental Quality as required.(Exhibit 5)

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

1) The Board finds that the applicant's request is not anticipated to require future essential facilities or additional public services. (Exhibit 5)

This standard HAS been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1) The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibit 4)

This standard HAS been met.

2.2 Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Township Board shall consider the following standards:

a. That the applicant may legally apply for site plan review.

1) The Board finds that the applicant is the owner's representative and operator of the petitioned property and Food Processing Plant in A-1 Districts and may legally apply for said review process. (Exhibit 4)

This standard HAS been met.

b. That all required information has been provided.

1) The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided final site plans. The applicant will be required to submit all necessary permits (i.e. soil erosion, driveway, health department) prior to commencement of operation. (Exhibit 4)

This standard HAS been met.

c. That the proposed development conforms to all regulations of the zoning district in which it is located.

1) The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibit 6)

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

1) The Board finds that the Grand Traverse County Road Commission has reviewed and approved the expansion of use for the pre-existing driveway on site. (Exhibit 5)

2) The Board finds that Deputy Suhy has reviewed a copy of the site plan and in a conversation with Planning & Zoning staff on March 17, 2015 stated that he sees not issues with the plan as provided.

3) The Board finds that Chief Ronk has reviewed a copy of the site plan and application. In a conversation with Planning & Zoning staff on March 17, 2015 Chief Ronk stated he sees no issues with the plan provided the applicant reviews the change of use with the Grand Traverse County Construction Code office and obtains the proper permits.

4) The Board finds that a soil erosion permit was issued on June 19, 2014 for the construction of a farm storage building. The proposed operation will occur in this pre-existing building and the Grand Traverse County Soil Erosion and Sedimentation Control department will need to review and approve the proposed change of use. This review will be required to be submitted to the Peninsula Township Planning & Zoning Department prior to commencement of processing within this building. (Exhibit 5)

5) The Board finds that storm water control review is not required for this project due to the location and nature of the operation.

6) The Board finds that a well and septic permit has been issued from the Grand Traverse County Health Department for this use. This permit has been submitted to the Planning & Zoning Department and has been placed with this file (Exhibit 5).

7) The Board finds that the applicant will be required to obtain a building use permit from the Grand Traverse County Construction Code office prior to commencement of processing within this building.

8) The Board finds that the site plan conforms to all applicable zoning district regulations as outlined in the Preliminary Food Processing Plant in A-1 Districts Special Land Use Permit (Exhibit 6).

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the commencement of the Food Processing Plant in A-1 Districts use.

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1) The Board finds that the proposal will utilize existing structures and therefore there shall be no exterior construction. (Exhibit 4)

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1) The Board finds that the proposal will utilize existing structures and therefore there shall be no disruption of flood ways and/or flood plains. (Exhibit 3 & 4)

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1) The Board finds that the proposal will utilize existing structures and therefore there shall be no disruption of the soil. (Exhibit 4)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.

1) The Board finds that the proposal will utilize existing structures and therefore there shall be no disruption of the soil. (Exhibit 4)

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1) The Board finds that the applicant will be required to maintain all storm water runoff on site. Due to the nature of the operation, the scope of construction and the acreage of the parcel there are no anticipated problems with this requirement.

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

1) The Board finds that the proposal will utilize existing structures and will require no grading and filling. (Exhibit 4)

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1) The Board finds that that air drainage is not anticipated to be effected per the expanded use of the site. (Exhibit 3)

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1) The Board finds that the proposal will utilize existing structures and will be completed in one phase. (Exhibit 4)

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

1) The Board finds that no additional public streets will be needed to accommodate the expanded use.

The Board finds that the additional waste water is subject to review and approval by the State of Michigan Department of Environmental Quality. A

permit from MDEQ, if required, shall be submitted to the Planning & Zoning Department prior to commencement of processing in the proposed building. (Exhibit 5)

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.

1) The Board finds that the acreage of the parcel provides significant setbacks from the any existing residential structure. There are not anticipated negative impacts on the adjacent land owners. (Exhibit 4)

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

1) The Board finds that the site plan was developed to accommodate the anticipated usage of the site and should not adversely affect the flow of traffic to or from the public roads. (Exhibit 4)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

1) The Board finds that there shall be little pedestrian traffic on site since the structure will not be open to the public. The side design appears to provide adequate pedestrian access for the proposed use. (Exhibit 4)

This standard HAS been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

1) The Board finds that all outdoor storage of refuse shall be out of sight from the general public. (Exhibit 4)

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage and implementation of the site appears to be consistent with the requirements of the ordinance and is considered the highest and best utilization of the land (Exhibit 1, 2 & 4).

This standard HAS been met.

3. Food Processing Plants in A-1 Districts – Section 8.5

3.1 Authorization: The Township Board may authorize the construction, maintenance and operation in the Agricultural District of food processing plants related to local agriculture production, by the issuance of a special use permit, subject to the procedures and requirements of Section 8.1 and provided that it has been demonstrated that the operation will not create any nuisance which will be detrimental to the health, safety and welfare of Township residents or adversely affect adjoining property owners.

3.2 Required Information: The following information shall be submitted as a basis for judging the suitability of the proposed operation:

- a. A site plan of the property showing the location of all present and proposed buildings, drives, parking areas, waste disposal fields, landscaping, plant materials, screening fences or walls, and other construction features which shall be proposed.

The Board finds that the applicant has submitted a site plan and a health department permit showing the necessary information (exhibit 4 & 5).

- b. A description of the operations proposed in sufficient detail to indicate the effects of those operations in producing traffic congestion, noise, glare, air pollution, fire or safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation.

The Board finds that the existing food processing plant has been in operation since 1994 and has not produced any traffic congestion, noise, glare, air pollutions, fire or safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation (Exhibit 3).

The Board finds that the proposed expansion of use will not produce traffic

congestion, noise, glare, air pollutions, fire or safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation.

c. Engineering and Architectural Plans for:

- i. The treatment and disposal of sewage and industrial waste or unusable by-products.

The Board finds that the applicant has obtained a permit from the Grand Traverse County Health Department regarding the septic system on site. This system has been built in compliance with all applicable regulations (Exhibit 5).

The Board finds that waste water as part of a winery operation is regulated by the Michigan Department of Environmental Quality. The applicant is currently working with this agency to review and approve the proposed expansion of use. All approvals shall be conditioned upon the presentation of the necessary permit to the Peninsula Township Planning & Zoning Department (Exhibit 5).

- ii. The proposed handling of any excess traffic congestion, noise, glare, air pollution, water pollution, fire or safety hazards, or emission of potentially harmful or obnoxious matter or radiation.

The Board finds that the applicant has sufficiently planned for these items in the submitted application. Specifically, the property is not open to the public and no traffic congestion is anticipated, noise levels shall not exceed currently noise on site, no glare or pollution shall be generated, the applicant will adhere to MIOSHA standards as it pertains to fire and safety hazards on site, CO2 levels will be within industry standards and no radiation will be produced (Exhibit 4).

- d. The proposed number of shifts to be worked and the maximum number of employees on each shift.

The Board finds that there will be one shift worked with a maximum of four (4) employees (Exhibit 4).

Motion to Approve the Findings of Fact.

MOTION: Couture/ Wunsch to approve the above Findings of Fact for SUP #41 1st Amendment, application for an expansion of a Food Processing Plant in A-1 Districts, located in Section 16 of

Peninsula Township, and as legally described.

MOTION PASSED

MOTION: Maguire/Wunsch to approve contingent upon verification that all the requirements of the zoning ordinance have been met and all required permits have been submitted to the Planning and Zoning Department.

MOTION PASSED

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

SPECIAL USE PERMIT AMENDMENT

EXHIBIT LIST

SUP #41 1st Amendment, Kroupa (Food Processing Plant in A-1 Districts)

April 20, 2015

- 1. Peninsula Township Master Plan 2011**
- 2. Peninsula Township Zoning Ordinance**
- 3. Kroupa Food Processing Plan – Winery**
- 4. Application and Site Plans**
- 5. Permitting agency communications**
- 6. Preliminary Food Processing Plant Use Permit**

OLD BUSINESS

SUP #123 – The 81 on East Bay (Condominium Subdivision Planned Unit Development)

Rosi asked will The 81 on East Bay come back for a special meeting or regular meeting. **Reardon** said when the applicant resubmits the application staff will review the application and place it on the appropriate regular meeting calendar. If the applicant wishes to have a special meeting, it would be at their request.

MOTION: Hornberger/Wunsch to un-table SUP #123.

MOTION PASSED

MOTION: Wunsch/Hornberger to table SUP #123 to May 18, 2015 meeting.

MOTION PASSED

PUBLIC COMMENT

Rosi said the Master Plan was approved in 2011. State law says every five years the Master Plan is to be reviewed. That means the review should be complete in 2016. The Township Board referenced the Master Plan at their April 16, 2015 meeting. Rosi cannot find the justification for the decision the Township Board made regarding SUP #111 1st Amendment based on the Master Plan. The Township Board appeared to make a decision based on the Zoning Code. In Chapter 4 Future Land Use - public and semi public land use goals and actions is one that she thinks they have been remiss in dealing with on the Township level. She has mentioned this to people in the Township and to the Township Attorney. Four years ago this was put in the Master Plan- "Create a Capital Improvements Plan (CIP) for township services and facilities." We have not done this. On the next page "Develop a Capital Improvement Plan (CIP) in accordance with state mandates." We have been loose in our responsibility as a Township to deal with what we are required to do by the State government. She would like the Planning Commission to go back through the Master Plan and look at the implications of what needs to be done in the next year. She would also like the Planning Commission to look at the survey from 2006 and see how it plays out in terms with what is going on in our township. The Township Board meeting on April 16, 2015 was not comfortable for her but it made her go back take a closer look at the Master Plan. The Master Plan is an important document. Rosi will be taking to the Township Attorney regarding the justification for the decision.

Susan Feiger, 2513 Nelson Rd., said she is in support of Anne Griffiths and all of the volunteers and people who have worked so hard at the lighthouse. Why was the decision at the Township Board made? It made no sense to her.

Walt Feiger, 2513 Nelson Rd., said there should be some sort of review of how two different groups can be so diverse in their thoughts. There is not a good understanding of what is happening at the lighthouse. They are trying to raise money. There is a lot of responsibility being taken about money. For a thing like postcards to cause a resignation of a fine young lady and other resignations he finds revolting.

ADJOURNMENT

MOTION: Maguire/Serocki to adjourn the meeting at 7:46 p.m.

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for May 18, 2015.

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
May 18, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Leak, Wunsch, Serocki, Rosi, Maguire, Couture and Hornberger

ALSO PRESENT: Michelle Reardon, Director of Planning and Zoning; Elise Crafts, Planning & Zoning Coordinator; Peter Wendling, Township Attorney and Deb Hamilton, Recording Secretary

ABSENT: None

APPROVAL OF THE AGENDA

MOTION: Rosi/Hornberger to approve the Agenda as presented.

MOTION PASSED

BRIEF CITIZEN COMMENTS – FOR ITEMS NOT ON THE AGENDA

None

CONFLICT OF INTEREST

Maguire said he has a conflict with AT&T Wireless Communications Tower. Maguire will recuse himself from that item on the agenda.

CONSENT AGENDA

1. Reports and Announcements (Township Board report to Planning Commission was added)
2. Correspondence (as provided in packet)
3. Meeting Minutes
April 20, 2015 – Regular Meeting

MOTION: Rosi/Serocki to approve the consent agenda as presented.

MOTION PASSED

NEW BUSINESS

Preliminary Plat Review – The 81 Development Company, LLC (introduction, discussion and schedule public hearing)

Joe Quandt, 412 S. Union, Traverse City, said this is an introduction to the project. Staff comments have been provided. Staff and counsel will have to meet to discuss the Subdivision Control Ordinance the Township adopted in 1979 and the Land Division Act adopted in 1997. The Land Division Act substantially amends what can be done in respect to plats under the Subdivision Control Act. The applicant is not asking for any action tonight other than to set a Public Hearing. **Rosi** asked Mr. Quandt to explain a plat. *Quandt* said a plat under the Land Division Act is a specific design that is proposed by a developer that under Section 109 of the Land Division Act says if it meets certain dimensional requirements then the municipality would

be required to approve it if it meets all the geometric and density of the underlying zoning district. There would be a public hearing at the Planning Commission level and the Planning Commission would make a recommendation to the Township Board in respect to action. The Township Board, once the preliminary plat is reviewed and approved, would give the applicant a year to go through the approvals with the other governmental jurisdictions to provide comment. Once all the other issues are identified and addressed in respect to the other agencies, the applicant would come back to the Township for final approval. The Commission has probably not had a plat and a Planned Unit Development plan under consideration at the same time. There is nothing in the Ordinance that prohibits that process. The developer needs to know that he has predictable pathway for the development of this land. He would rather develop the PUD because he thinks it is a better plan. If the PUD process becomes too cumbersome or meets extraordinary legal challenge the applicant would have to consider his options. If a plat process has already gone through the approval process then that would be a default plan in lieu of the PUD.

Hornberger asked if this plan has two points of egress. *Quandt* said yes. **Reardon** and **Wendling** reminded the Commission that the plat and the PUD are two separate applications and should be processed and reviewed separately. **Rosi** said there is no reference to elevation on the plat. *Quandt* said that would be provided at preliminary plat review. **Rosi** asked the size of parcels created through the plat. **Reardon** said approximately a minimum of an acre. **Rosi** asked about water frontage. **Reardon** said 15 units have private water front. There is no shared access as part of this plat. **Rosi** asked if Master Plan concerns apply to plat. *Quandt* said the Master Plan is important document that helps develop comprehensive land use strategies. The reality is the applicant whether under the PUD or the plat process is required to comply with the Zoning Ordinance because all of the requirements of the Master Plan are coalesced in the Zoning Ordinance.

MOTION: Rosi/ Hornberger to have Public Hearing on this item on June 15, 2015 at the next Planning Commission regular meeting.

MOTION PASSED

SUP #124 – AT&T Mobility Wireless Communication Tower (introduction and discussion)

Maguire left the Commission and sat in audience.

Walley Haley, AT&T Wireless, said Steve Wells is also here tonight with Schnelz Wells. The application is back with minor changes. The original application was in 2013. There were numerous meetings and there were numerous changes based on those meetings. The application came back before the Commission and at that time the Commission voted to recommend denial to the Township Board of the AT&T Special Land Use (SUP) application. Prior to going back before the Township Board AT&T pulled the application. January AT&T sat down with members of the Township Board, Planning Commission and other concerned citizens to stress the importance of the site to AT&T and to listen to the Township's concerns. The application before the Commission now is the result of the re-filing on April 6, 2015. Haley submitted a letter that is now before the Commission that addresses some of the administrative items. The applicant will be filing a soil erosion permit. Plans have been sent to MDOT for preliminary

determination if MDOT wants AT&T to formally apply. The Township's Storm Water Control application has now been submitted. Certified letters have been sent to the other cell providers (Sprint, T-Mobile and Verizon). Kevin Klein, Cherry Capitol Airport Director, sent an email receipt of notice and approval. Reardon had asked for a letter to verify. When AT&T originally filed for this project with the FAA and Michigan Aeronautics Commission approvals were received at 110 feet. During the process the height was lowered to 80 feet. The original determination was good until November 14th AT&T has re-filed. Also Haley distributed to the Commission a letter that was drafted after Planning Commission recommended denial to the Township Board. Haley does not believe the Commission ever had a chance to see that letter. *Haley* said AT&T has made serious efforts with the Township. The Findings of Fact when the Commission recommended denial stated the site was not harmonious with the area. *Haley* said the letter starts out stating that the Planning Commission's Findings of Fact stated that AT&T met all the requirements of the Township's wireless ordinance. Also it was found that AT&T demonstrated a need for the site. After the Planning Commission's public hearing the site was changed and the height was lowered. Yet despite the above, the Commission found that under Section 8.1 the tower was not harmonious with the surroundings. When AT&T started this project 3-4 years the tower was planned to at the Fire Station but at that time the Township Board would not entertain that idea. AT&T went back and looked at alternative sites. There are only two alternative sites in the area, one is the nature area and the other is the existing site. AT&T moved ahead and brought the application forward. It is close to the view shed but not in the view shed. The Township sets the standards on where to put towers. AT&T did all the things they were supposed to do under the Township's ordinance. Court cases support that if AT&T meets all the requirements of the wireless ordinance then by nature it is harmonious. AT&T hopes tonight the Commission evaluates this application in that light. **Serocki** asked about shelter height. *Haley* said probably 10 ft. to the eave. **Serocki** said Section 1 Affidavit says this system will replace the GSM system with UMTS and on the next page it states will ultimately migrate to LTE technology. Will AT&T need a taller tower for LTE? *Haley* said it will be the same height. **Serocki** asked if the picture in Section 2 is the type the tower. *Haley* said no that would be a design choice. Haley suggested that someone work with AT&T about the design. **Rosi** said this started with 110 ft. unipole. Would an 80 ft. unipole accomplish what AT&T needs? *Haley* said no because at 80 ft. the antennas will need to go horizontally. **Rosi** asked if AT&T would come back if reasonable service could not be provided by low monopoles. *Haley* said he cannot guarantee that AT&T or anyone else would not come back and say they have a hole. Looking at the propagation maps there is still an area of break up. Someone could come back to try to solve that problem. **Rosi** asked if it was possible for the tower to be shorter. *Haley* said no. **Hornberger** asked how many cell providers could co-locate. *Haley* said up to four. **Couture** asked about maintenance of the monopine tower. *Haley* said that would be a good condition of the Special Use. **Wunsch** asked what would be accomplished in terms of service with this tower. *Haley* said what is there now is GSM and GSM technology in going away with or without the tower. When GSM goes away there will be no coverage in that area for AT&T. The expectation of how cell phones are used has changed. To keep up with technology the protocols have changed. LTE is an even greater enhancement. It about reaching more customers, providing better service, provide better data and allowing customers to use their phones the way they want

to use it. **Leak** said in the first presentation AT&T talked about the quality of cell service. Is AT&T building the tower for that purpose or to rent it out to other providers? *Haley* said that is not AT&T's goal. Their goal is to provide service to their customers. AT&T, Sprint, T-Mobile and Verizon have a master lease in place. They have agreed in writing on how to share. **Leak** said if AT&T was alone in this would they be spending the funds necessary to put the tower. *Haley* said absolutely. **Wendling** said co-locating is a requirement under the ordinance. Also there was an extension provided by AT&T last time in this process the SUP. There is no extension this time and under the Zoning Enabling Act if no action is taken by July 21, 2015 on this application AT&T automatically gets this tower. It is critical that the Planning Commission move this issue along so the Township Board could have at least two meetings on this application. Under the Telecommunication Acts there are certain things the Commission cannot rule against. Radiation admissions cannot be a consideration and unlike a regular Special Use Permit opinion evidence cannot be used. Evidence should be substantiated. **Reardon** said the Planning Commission is not required to have a public hearing. The Township Board is required to have a public hearing. **Wendling** said it is important to get this application to the Township Board.

The Findings of Fact follow the minutes.

Maguire returned to the Commission

SUP #123 – The 81 on East Bay Planned Unit Development (public hearing and potential recommendation)

Reardon reviewed SUP #123. The application is in significant compliance with the ordinance. Outstanding issues are Peninsula Township Fire Chief as concerns with the single point of egress for 41 units. Conditions of approval should be a fire access road. Other issues are long term maintenance and access for the water point. Proof of compliance with all Federal, State, County, Township and other governmental regulations relative to a Plan Unit Development (PUD) should be submitted to Planning & Zoning Department prior issuance of the SUP. There are issues with signage but working on resolving.

Joe Quandt, Applicant Representative, said there are 44 other roads that have similar design configurations. The applicant wants to be sure to be treated equally. The road was designed to minimize ground disruption using the contours of the ground. The applicant has agreed to make an emergency access connection to the north, if the owner of the property to the north is willing to make that connection. The applicant has volunteered to put in a 30,000 gallon water tank for fire suppression. Another comment in the staff report was in regards to lot size. The lot size requirement is a minimum of 15,000 sq. ft. that is pulled from the R1B district it is not part of the PUD district. The PUD provisions under Section 8.3.5 have no basic lot minimum. There was also concern in respect to the wet lands. The applicant is fine with having an outside consultant provide a report on the wet lands for the Planning Commission and/or the Township Board. There is a recommended circle turnaround at the hammerhead where the fire tank will be located. The applicant has agreed to widen/lengthen the hammerhead as seen on the current design. The existing design is more than sufficient to allow a fire truck to access the tank. The applicant is

concerned about the turnaround it could be aesthetically unattractive. **Leak** said a lot of roads mentioned on the list were put in 50's and 60's. *Quandt* said many of them were not. **Serocki** said in the Master Deed in Section 6, on Page 5 and 7, there is an error in the sanitary sewage system. It says it is servicing unit 11-24 and units 30-41 but in the earlier section it says units 6-24. *Quandt* said it will be reconciled. **Serocki** said on Page 16 in the Master Deed under Withdrawal of Property which units are must be built. *Quandt* said must be built units are not identified. Common elements are identified. If the plan was approved but market did not support any changes would have to be approved. **Rosi** asked are the homes going to be built by the developer or just the lots. *Quandt* said there is not a requirement that the developer build the homes. **Rosi** asked who decides who builds the home. *Quandt* said the unit owner. An Architectural Control Committee would have ability to approve within the Association the design plan. **Leak** asked who controls the open land. *Quandt* said the Association. An owner has a 1/41st interest on the open land. The restrictions are any use of the open land has to comply with the Township's Zoning Ordinance. **Rosi** asked if there will be docks for all the lots. *Quandt* said there will be docks for the water front lots. The rest of the will be represented by the shared dock. *Quandt* said the Corp of Engineers will determine the ~~under~~ number of hoists. *Kevin O'Grady, 9491 Peninsula Dr. and Developer of The 81 of East Bay* said the use by right plan is there because of the major investment. He plans on building the majority of homes himself. The PUD is a nice plan with less impact to neighbors and to the land itself than the use by right. The only reason the use by right plan is there is to protect his investment if the PUD is not approved. **Rosi** asked can the Township rule on a single piece of land for two options. **Wendling** said they are two parallel options but they should not be mixed together. **Leak** asked why O'Grady is against the second egress. *O'Grady* said it is a financial expense that he feels will never be used. **Leak** asked it is financial or environmental. *O'Grady* said he feels it is not necessary for the plan in his opinion. O'Grady feels it is win/win with the connection to Trevor Rd. In case of emergency it is the best for us and them.

Leak opened Public Hearing at 9:10 pm

Mark Nadolski, 10 McKinley Rd. and President of Protect the Peninsula, had nine points of concern. 1) Has an environmental assessment been done for lead and arsenic on this farmland? 2) How will the developer address surface storm water runoff to the bay? 3) Are or were there any underground or above ground storage tanks used for agri-chemicals on the property? 4) Are or were there any underground or above ground storage tanks used for hydrocarbon fuel products or oil tanks? 5) Were there any storage barns for agri-chemicals on this property? 6) Will the developer drill test wells to determine if the water being used for the drinking water is safe? 7) If a common well is required will the Township be responsible for the common well if it has any problems? 8) Are soils adequate for the septic systems both community and private in this property? 9) Concern for the increases traffic load on Center Road during the construction period. (Mr. Nadolski's letter to the Planning Commission is part of the packet).

Scott Howard, Olson, Bzdok and Howard, he represents Kadee and Bobby Tseitlin, Mr. Howard said his clients did not receive notice of this public hearing. They also requested updated plans

for the project which they did not receive until this morning. **Reardon** said she has Affidavit of Certification of Notification. The Tseitlin's are on all three notification lists. The notice was returned from their Chicago address but their local address did not get returned. Mr. Howard suggested considering continuing the public hearing into the next meeting. He wants to have his clients have the right to speak before action. **Wendling** said there is evidence that the notice was sent properly. *Howard* said a PUD is a special request for a deviation from the rules. The Ordinance has important standards to view this PUD request. Mr. Howard ~~sited~~ **cited** Section 8.3.2 subparagraph 1, subparagraph 4 and site plan standards. He said that is the lens to view the development projects. This project does not cut it on a number of levels. It is important for the Township to ask what preservation the Township is getting for the special benefits that the developer is asking for. There are better ways and better developments.

John Nelson, 4022 Incochee Crest Commons, Traverse City, works at the Watershed Center and is speaking in that position. Our concerns are about the integrity of the clean water of East Grand Traverse Bay. What concerns the Watershed most is the 18 units along the ridge line. The Watershed Center would suggest the building envelopes be setback from that ridge line. Any views could be created by getting a forester to selectively cut or prune the trees. The two major threats to Grand Traverse Bay are sediments and nutrients. Low impact development techniques should be used. He asked if there could be rules in the condo documents to limit or ban the amount of fertilizers that will be used on those landscaped lots. He appreciates the developer's effort to put together a community waste water treatment system and suggest as part of that to include a phosphorous filtration system.

Ann Rogers, 1236 Peninsula Dr., said the peninsula is a special place. She is also the Chair of Northern Michigan Environmental Action Council (NMEAC). NMEAC has concerns about the impact of what this development would do to water, soil, air and traffic. There should be no tree removal within the water setback. NMEAC encourages a joint waste water system. The huge dock will change the water out there. On the Bluffs there should be no tree cutting or stump removal. NMEAC has been around for 40 years. Ms. Rogers encourages getting the expertise before moving forward.

Jim Komendera, 4168 Rocky Shore Trail, said he heard a lot about investment tonight. Most of the people here tonight are land owners. When he looks at this development he does not see anything like it in the area. It will change the area permanently and set a precedent for other developers. The subject of the Master Plan was brought up. If the Master Plan conflicts with the site plan codes and rights then the site plan codes and rights prevails. If that is the case then what is purpose of a master plan? He is not against development but should be developed in a consistent way that would conform with the nearby areas.

Tom McMahon, 4114 Trevor Rd., said when he first became aware of the development he submitted his initial concerns and comments. He was also authorized by homeowners association to provide comment and did that too. During the last public hearing he thought there were two things the Commission directed. One was a tour of the site for the Commissioners.

Reardon said there was a tour of the site by the Commissioners but not at the same time. Second was the Fire Chief, a representative of the Planning Staff and a representative of the homeowners association meet but that meeting never happened. Mr. McMahon is concerned about the condition of the majority of Trevor Road. The McMahons and the homeowners association have not been contacted by the developer. Commonly developers contact people in the area and discuss plans and offer solutions. The Master Plan was designed to affect this kind of decision. This development is not in compliance with the Master Plan. He asks for an independent look at issues such as does the current Master Plan provide for residential development of either portion of the affected zones. Does the future land use map designate portions, almost all or all of the development as agricultural? This project could be the Planning Commission's legacy of being good stewards of the assets of this peninsula or could be opposite.

Joanne Westphal, 12414 Center Rd., said there are not 44 roads that have this configuration. Many of those roads were present before the first Master Plan. That does not mean duplicate what does not work. The statement that wet lands delineation would be conducted on this site. That should be done before a plan is developed. She suggests the Township hire the people suitable to look at wetlands and soils. She does not see anything creative in this subdivision in terms of design. We need leadership in our developer, in Planning and Zoning Department and in our Township Board. Will there be a landscaping covenant or a maintenance covenant? Is the 60 ft. setback from the shoreline sufficient to protect the soil erosion issues? Who will maintain and address the shoreline erosion once these sites are ongoing? Is it possible to put the water tank underground? A lot of effort was made by the previous Planner and the citizenry to protect the natural resource base and farm base. She is not opposed to development but opposed to poor development. How can we do a better job?

Bernol Soutar, 15249 Bluff Rd., said this common area idea is well accepted. If 41 people are going to have say of what goes into this common area that is problematic. Maintaining a balance is an important consideration. Mr. Soutar thinks there is a problem with the building envelope on lots 6-10 in regards to the cliff. A condition of approval could be to protect the slopes.

Rick Curran, 15618 Bluff Rd., said he realizes that Mr. O'Grady has passion for this development and the people have passion for the peninsula as a whole. We also need to let Mr. O'Grady know we are willing to work with him on this development. Mr. Curran said he contacted the Land Conservancy every time there was a change of ownership. He was told that the Conservancy and the Township was not interested in this property. We need to work together so the developer can realize a profit and protect the peninsula.

Jason Hunt, 4007 Circle View Dr., Williamsburg, said he is for the development - The 81 on East Bay. The development is an amazing creation. One thing that is consistent is change. Mr. O'Grady has a vision to mix and blend old mission beauty in a development that will be built of the finest quality. The end result will be spectacular. The PUD has 65% of open area and the beach sanctuary being maintained. This is not a condominium project. Kevin O'Grady has passion to make The 81 unbelievable.

Leak closed Public Hearing at 10:06 pm

Wendling suggested the Commission ask any question of the developer or request additional information. He does not recommend any further deliberation tonight. If the Commission is going to request additional information from the developer it would be a good idea to have that information at least a week ahead of the next regular meeting. The public may also submit items but also recommends at least a week ahead of next meeting. **Reardon** said that date would be Monday June 8, 2015.

Leak asked about restrictions on taking the trees down. *Quandt* said there is going to be select cutting but would have to comply with the Township's Engineers requirements and the Soil Erosion Sediment Control provisions. **Leak** asked about steps going down. *Quandt* said there will be no steps. **Couture** said the road is an important issue. He encourages the developer talk to the McMahons. **Maguire** said he is concerned about high end residential development failures. **Maguire** asked about the capitalization and financing of this project. *O'Grady* said it is primarily self-financed.

CITIZEN COMMENTS

None

BOARD COMMENTS

Rosi said it would be a good exercise to look at the Master Plan. It is not the official ordinance but it does have some direction. It would be worth the time to review it, specifically the future land use map.

ADJOURNMENT

MOTION: Hornberger/Couture to adjourn the meeting at 10:22 p.m.

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for June 15, 2015.

**PENINSULA TOWNSHIP
PLANNING COMMISSION**

**Special Land Use Permit
AT&T**

Applicant: Steven Wells, on behalf of AT&T

Applicant Address & Contact Information: 280 North Old Woodward, STE 250
Birmingham, MI 48009
(248) 258-7074

Owner:

Proposed Location: 7178 Center Road, Traverse City MI 49686
Section 30, Peninsula Township

Parcel ID#: 28-11-030-012-00

Zoning District: A-1, Agricultural

Hearing Date: TBD

PROPERTY DESCRIPTION

The property of the Owner is described as being located at 7178 Center Road, Traverse City, Michigan, 49686 and having a parcel ID # of 28-11-030-012-00.

Hereinafter referred to as the "property".

APPLICATION

The Applicant seeks approval for a Special Land Use Permit to erect and operate an eighty foot (80') monopine cellular telephone tower on the above described property which is located in the Agricultural (A-1) District.

The Planning Commission being fully apprised and having received numerous exhibits, as well as testimony by the Applicant and other interested parties and the public at large, the Planning Commission having considered letters submitted by members of the public and comments by members of the public, if any, the Planning Commission having considered 7 Exhibits, and the Planning Commission having reached a decision on this matters, states as follows:

General Findings of Fact

1. The Planning Commission finds that the subject parcel is located in Section 30 of the Township and has approximately 494 feet of road frontage on Center Road. (See exhibits 2)
2. The Planning Commission finds that the petitioned site is zoned Agricultural (A-1) and the parcel is considered legal and conforming. (See exhibits 2)
3. The Planning Commission finds that the adjacent land uses throughout this portion of the Township are as follows:
 - a) North - The land adjacent and to the north of the subject property is zoned Suburban Residential Single and Two Family (R-1C) and Agricultural (A-1), the uses include residential and forested land.
 - b) East - The land adjacent and to the east of the subject property is zoned Agricultural (A-1) and Rural & Hillside (R-1A), the uses are primarily forested lands.
 - c) South - The land adjacent and to the south of the subject property is zoned Suburban Residential Single and Two Family (R-1C), the uses are primarily residential.
 - d) West - The land adjacent and to the west of the subject property is zoned Suburban Residential Single and Two Family (R-1C), the uses are exclusively residential. (See exhibits 1 and 2)
4. The Planning Commission finds that the Wireless Communication Tower is a use allowed by Special Use Permit in the Agricultural District and is subject to Section 8.1.3, Section 8.1.3 (11), and Section 7.12.1. (See exhibit 2)
5. The Planning Commission finds that the applicant is subject to all local, State and federal agencies, including, but not limited to, the Grand Traverse County (County) Health Department, the County Soil Erosion Department, the County Construction Code Department, the Michigan Department of Transportation, Michigan Aeronautics Commission and the Federal Aviation Administration.
6. The Planning Commission finds that the proposed tower on the revised site plan is to be an 80' (eighty foot) tall tower camouflaged to look like a pine or spruce tree. (See exhibits 4).

MOTION: Serocki/Wunsch to approve the General Findings of Fact.

MOTION PASSED

Specific Findings of Fact Under Section 8.1.3 Basis for Determination

Before making recommendation on a special use permit application, the Town Board shall establish that the following general standards, as well as the specific standards outlined in each section of the Article, shall be satisfied.

(1) General Standards: The Town Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

(a) Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1. The Planning Commission finds that although not located in the scenic viewshed as depicted in Chapter 4, Map 7 of the Peninsula Township Master Plan, the site of the proposed tower is one of the highest hilltops within Peninsula Township. As such, the cell tower, regardless of its camouflage as a pine or spruce tree, stands significantly above the surrounding vegetation such that its appearance is not harmonious and is outside the character of the general vicinity resulting in a material change in the character of the area surrounding its location. (See exhibits 1 [Chapter 4, Map 6 - Future Land Use - depicting hills and steep slope areas], 2 & 4)

This standard HAS been met.

(b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1. The Planning Commission finds that the tower as proposed is not hazardous or disturbing to existing or future uses in the same general vicinity. (See exhibit 4)

2. The Planning Commission finds that the tower is not a substantial improvement to property in the immediate vicinity which despite attempts at camouflage, still exhibits the look of an artificial tower/structure within the immediate vicinity. (See

exhibit 4)

This standard HAS been met.

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

1. **The Planning Commission finds that the cellular monopine tower and facilities site has adequate access for essential services and, in fact, provides additional services through better E911 service to the south half of the township. There are no issues regarding drainage problems, refuse disposal, or issues involving water, sewage facilities or schools. (See exhibits 4)**

This standard HAS been met.

- (d) Not create excessive additional requirements at public cost for public facilities and services.

1. **The Planning Commission finds that there is already an existing antenna with facilities on the site and that the erection of a monopine tower will not create any additional requirements at public cost for public facilities and services. (See exhibit 4)**

This standard HAS been met.

- (e) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1. **The Planning Commission finds that the 80' (eighty foot) tower design with the look of a properly tapered and proportioned pine or spruce tree, which is unlit and does not contain paints or other materials that would result in glare, will not be detrimental to persons, property or the general welfare of the community by causing glare, odors or fumes. The Planning Commission further finds that the activities, processes, materials and equipment utilized do not require a significant amount of maintenance after installation such that it will not be detrimental to persons, property or the general welfare of**

the area. (See exhibit 4)

This standard HAS been met.

- (2) Conditions and Safeguards: The Town Board may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

1. **The Planning Commission finds that this is a provision in the Ordinance which may be implemented if the Special Land Use Permit is approved, to wit; conditions which are part of the approval.**

MOTION: Couture/Hornberger the General Standards on page 3 through the top of page 5 have been met based on the Findings of Fact.

MOTION PASSED (6/1 Leak)

- (3) Specific Requirements: In reviewing an impact assessment and site plan, the Town Board and the Planning Commission shall consider the following standards:

- (a) That the applicant may legally apply for site plan review.

1. **The Planning Commission finds that this standard has been met with the submission of the letter from the owner's estate showing evidence of permission to pursue the Special Use Permit (See exhibits 4)**

This standard HAS been met.

- (b) That all required information has been provided.

1. **The Planning Commission finds that the following items shall be submitted prior to issuance of a Special Use Permit: approval from the Michigan Department of Transportation for the new use on an existing driveway, Soil Erosion and Sedimentation Control Permit, Storm Water Control application and permit, and FAA review and approval of the tower. (See exhibits 2 & 4)**

This standard HAS been met.

- (c) That the proposed development conforms to all regulations of the zoning district in which it is located.

1. **The Planning Commission finds that under section 7.12.1(2), personal wireless communication towers and related facilities may be located in the Agricultural (A-1) Zone or the Commercial (C-1) Zone, with the proposed facility being located in the A-1 Zone. (See exhibit 2)**

The Planning Commission finds that the structures conform to all required setbacks. (See exhibit 7)

This standard HAS been met.

- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

1. **The Planning Commission finds that the plan does meet all of the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, and other public facilities and services given that some of these required services will not be utilized, such as water and sewer, or utilized minimally, such as police protection. (See exhibits 2 & 4)**

2. **The Planning Commission finds that the proposed site shall submit a storm water control permit application as required by the Peninsula Township Storm Water Control Ordinance. Further a storm water control permit shall be obtained prior to issuance of the special use permit. (See exhibit 2)**

2. **The Planning Commission finds that there is adequate access to the site for emergency services for EMS, fire and police. (See exhibits 4)**

This standard HAS been met.

- (e) That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

1. **The Planning Commission finds that the applicant shall submit evidence of FAA approval prior to issuance of the special use permit. (See exhibit 6)**
2. **The Planning Commission finds that the MDOT Aeronautics Commission has issued a Tall Structure Permit in 2013. MDOT has determined that obstruction marking and lighting is not required for this structure. The applicant shall submit evidence that the 2013 determination is still valid prior to issuance of the special use permit. (See exhibit 6)**
3. **The Planning Commission finds that the Airport Director for the Cherry Capital Airport has issued the following statement “The airport concurs with the original airspace study and will continue to concur at the reduced height. Please ensure this site is air spaced at the new height with the FAA. Please ensure that if an additional flexible antenna is attached you use a higher height as the overall height (structure plus flexible antenna = overall height).” (See exhibit 6 & 8)**

This standard HAS been met.

- (f) That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1. **The Planning Commission finds that due to the fact that the property is not located, but is adjacent to the scenic viewshed area as depicted on map No. 7 of the Peninsula Township Master Plan and due to the fact that the site already has an existing cellular antenna with accompanying equipment, no additional natural resources will be disturbed and thus preserved to the maximum feasible extent during construction. (See exhibits 1 & 4)**

This standard HAS been met.

- (g) That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1. **The Planning Commission finds that the property, if not the highest, is one of the highest points within Peninsula Township. As such, flood ways and flood plains are not an issue with this site or within the vicinity. (See exhibit 4)**

This standard HAS been met.

2. **The Planning Commission finds that the proposed site shall submit a storm water control permit application as required by the Peninsula Township Storm Water Control Ordinance. Further a storm water control permit shall be obtained prior to issuance of the special use permit.**

This standard HAS been met.

- (h) That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1. **The Planning Commission finds that the applicant shall obtain and submit a Soil Erosion and Sedimentation Control permit from Grand Traverse County prior to the issuance of the special use permit. (See exhibit 5)**

This standard HAS been met.

- (i) That the proposed development will not cause soil erosion or sedimentation problems.

1. **The Planning Commission finds that the site plan, including final construction plans and drainage plans, shall be reviewed by the proper county agencies and under the township's applicable police power ordinance to ensure that the development will not cause soil erosion or sedimentation problems. (See exhibit 5)**

2. **The Planning Commission finds that the applicant shall obtain and submit a Soil Erosion and Sedimentation Control permit from Grand Traverse County prior to the issuance of the special use permit. (See exhibit 5)**

This standard HAS been met.

- (j) That the drainage plan for the proposed development is adequate to handle anticipated storm water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1. **The Planning Commission finds that the site plan, including final construction plans and drainage plans, shall be reviewed**

by the proper county agencies and under the township's applicable police power ordinance to ensure that the development will not cause soil erosion or sedimentation problems. (See exhibit 5)

This standard HAS been met.

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

1. **The Planning Commission finds that grading and filling, if done properly, will not in of itself destroy the character of the property or the surrounding property nor will it adversely affect the adjacent neighboring properties as a result of the grading and filling which will occur. (See exhibit 5)**
2. **The Planning Commission finds that the applicant shall obtain and submit a Soil Erosion and Sedimentation Control permit from Grand Traverse County prior to the issuance of the special use permit. (See exhibit 5)**

This standard HAS been met.

(l) That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1. **The Planning Commission finds that there is no evidence that shows the disruption of air drainage systems necessary for agricultural uses within the surrounding area. The Planning Commission further finds that the property is located in one of the highest portions of the Township in elevation and that the camouflaged design will not have any disruptive impact on airflow in the area. (See exhibit 4)**

This standard HAS been met.

(m) That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1. **The Planning Commission finds that the standard has been met as development of the site will occur in one phase. (See exhibit 5)**

This standard HAS been met.

- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
 - 1. **The Planning Commission finds that the property will not require the expansion of existing facilities such as public streets and water or sewage facilities. (See exhibit 4)**
 - 2. **The Planning Commission finds that the proposed site shall submit a storm water control permit application as required by the Peninsula Township Storm Water Control Ordinance. Further a storm water control permit shall be obtained prior to issuance of the special use permit.**

This standard HAS been met.

- (o) That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.
 - 1. **The Planning Commission finds that this not a standard, but rather a directive providing discretion on the part of the Town Board and Planning Commission as it pertains to landscaping, fences or walls which may be a condition imposed if this Special Land Use is approved. (See exhibit 2)**

This standard has been met.

- (p) That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - 1. **The Planning Commission finds that there is no parking proposed as part of this land use. (See exhibit 4)**

This standard HAS been met.

- (q) That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - 1. **The Planning Commission finds that vehicular and pedestrian traffic within the site is sporadic and minimal and is not directly related to streets or sidewalks serving the site other than a drive off of Center Road leading to the site. (See exhibit**

4)

This standard HAS been met.

- (r) That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
1. **The Planning Commission finds that the site does not have an area for the storage of garbage and refuse as it is not necessary for this particular type of development. The Planning Commission further finds that any garbage or refuse generated at the site shall be carted away on the day of its creation by the owner, agents or employees of AT&T. (See exhibit 4)**

This standard HAS been met.

- (s) That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
1. **The Planning Commission finds that the site is not in accord with the spirit and purpose of this Ordinance given that the location is one of the highest locations within the township and although not located within the scenic viewshed area as depicted on Map 7, Chapter 4 of the Peninsula Township Master Plan, the site is nevertheless a part of the viewshed within the southern part of the township given the site's elevation. As such, the Planning Commission finds that the tower, albeit camouflaged to look like a pine or spruce tree, is still of a height, size and construction which is clearly artificial in nature and not consistent with the objectives sought to be accomplished by this Ordinance and the principles of sound planning. (See exhibits 1, 2, 4)**

This standard HAS been met.

MOTION: Hornberger/Rosi the Specific Requirements on pages 5-11 have been met.

MOTION PASSED (6/1 Leak)

Specific Findings of Fact Under Section 8.7.3 (11)
Wireless Telecommunication Antenna Towers

Towers over 40 feet in height shall be subject to the provisions of Section 8.1 in addition to the following standards:

- (a) All tower, structure locations and design approvals for towers in excess of forty (40) feet shall require a Special Use Permit subject to the provisions of Section 8.1 of this Ordinance and this section.

- 1. **The Planning Commission finds that Section 8.1 has been addressed in previous section of this report and the findings of fact.**

This standard HAS been met.

- (b) Standards for approval shall include the following in addition to the standards of Section 8.1.

- 1. In order to maximize the efficiency of the provision of telecommunication services, while also minimizing the impact of such facilities on Peninsula Township, co-location, or the provision of more than one antenna on a single tower may be allowed and/or required by the Township Board.

- A. The Applicant shall be required to provide information regarding the feasibility of co-location at proposed sites. Factors to be considered in determining feasibility of co-sharing include available space on existing towers, the tower owner's ability to lease space, the tower's structural capacity, radio frequency interference, geographic service area requirements, mechanical or electrical incompatibilities, the comparative costs of co-location and new construction, and any FCC limitations on tower sharing.

- 1. **The Planning Commission finds that this standard has been met since AT&T is currently co-located on all existing towers in the Township. The applicant has provided affidavits from Syed Hussain, Radio Frequency Engineer, regarding the existing and proposed telecommunications coverage. (See exhibit 4)**

This standard HAS been met.

B. The Applicant shall be required to send a certified mail announcement to all other tower users in the area, stating their citing needs and/or sharing capabilities in an effort to encourage tower sharing. The Applicant shall not be denied or deny space on a tower unless mechanical, structural, or regulatory factors prevent them from sharing.

1. The Planning Commission finds that this is not a standard, but rather a requirement of the applicant as determined by the Planner/Zoning Administrator. The Planning Commission further finds that the affidavits of Syed Hussain, Radio Frequency Engineer, regarding the existing and proposed telecommunications coverage address this issue. (See exhibit 4)

This standard HAS been met.

C. Further, the Applicant may be required to provide a letter of intent to lease excess space on a facility and commit itself to:

- i. Respond to any requests for information from another potential shared use applicant;
- ii. negotiate in good faith and allow for leased shared use if an applicant demonstrates that it is technically practicable; and
- iii. make no more than a reasonable charge for a shared use lease.

1. The Planning Commission finds that the findings under 8.7.3(11) A and B above address these issues.

This standard HAS been met.

2. Tower height may be no more than required according to engineering requirements for a specific site or the technical capabilities of the antennae being mounted. The Applicant shall provide funds to the Township determined by the Township Board to be sufficient to acquire an independent technical and engineering evaluation of the need for any tower in excess of 40 feet. Where the independent evaluation shows that service can be provided by a forty (40) foot or lower tower, no tower in excess of forty (40) feet shall be allowed.

1. **The Planning Commission finds that no independent technical or engineering evaluation has been obtained at this time. This standard is not applicable to the Planning Commission deliberations and leaves this standard to be determined by the Township Board. (See exhibits 2, 4)**

NOT Applicable

3. The tower and its accessory buildings shall be fenced with no less than a six (6) foot safety fence with a locked gate.

1. **The Planning Commission finds that the applicant shall place fencing of at least six feet or more with a locked gate around each facility. (See exhibits 2 & 4)**

This standard HAS been met.

4. The entire facility must be aesthetically and architecturally compatible with its environment.

- a. The use of compatible materials such as wood, brick or stucco is required for associated support buildings, which shall be designed to architecturally match the exterior of residential structures within the neighborhood.

1. **The Planning Commission finds that the applicant indicates that the proposed accessory structure will have a brown stucco exterior. (See exhibit 4)**

This standard HAS been met.

- b. In no case will metal exteriors be allowed for accessory buildings.

1. **The Planning Commission finds that the applicant indicates that the proposed accessory structure will have a brown stucco exterior. (See exhibit 4)**

This standard HAS been met.

- c. All connecting wires from towers to accessory buildings shall be underground.

1. **The Planning Commission finds that to the extent possible, all connecting wires from the towers to accessory buildings are underground. (See exhibit 4)**

This standard HAS been met.

- d. All electrical and other service wires to the facility shall be underground.

1. **The Planning Commission finds that to the extent of the applicant's control over the property all electrical and other service wires to the facility from all public or private sources are placed underground. (See exhibit 4)**

This standard HAS been met.

- e. The tower itself must be of monopole design, there shall be not guyed or lattice towers.

1. **The Planning Commission finds that the pole is a "camouflaged monopine" made to look like a pine or a spruce tree with the antennas located within the branches. (See exhibit 4)**

This standard HAS been met.

- f. The Township Board may require landscape screening of the service building and fencing.

1. **The Planning Commission finds that this is not a standard, per se, but something that can be required as a condition should this special land use be approved. (See exhibit 2)**

- g. Lighting shall be limited to that which is absolutely necessary and required by appropriate agency and in addition:

- i. Shall conform to the requirements of section 7.14, and
- ii. Strobe lights shall not be allowed.

1. **The Planning Commission finds that lighting will comply with section 7.14 and due to the height of the tower that no**

additional lighting is required either under state or federal law, including regulations from the Federal Aviation Administration. (See exhibits 2, 4 & 6)

This standard HAS been met.

- h. The Township Board may, at its sole discretion, require that the tower be camouflaged to be less obtrusive.

- 1. The Planning Commission finds that this is a standard which may be imposed if this special land use is approved. (See exhibit 2)**

This standard HAS been met.

- 5. The maximum time which an unused tower of over forty (40) feet may stand is twelve (12) months. The Applicant or owner is responsible for the removal of an unused tower. Failure to do so shall be sufficient for the Township to remove the structure according to the provisions under the Dangerous Buildings Ordinance adopted by the Township.

- 1. The Planning Commission finds that this is a required regulation should this special land use be approved and built out. (See exhibit 2)**

This standard HAS been met.

- 6. Applications shall include the following in addition to any other specific requirements under section 8.1.
 - a. Evidence of ownership of the property on which the facility is to be placed.

- 1. The Planning Commission finds that the applicant has obtained permission from the landowner, the Mabel H. Russell Trust, to apply for this permit. (See exhibit 4)**

This standard HAS been met.

- b. Name and address of the proposed owner and/or operator of the site.

- 1. The Planning Commission finds that the following**

information has been submitted with respect to this standard:

**Goodman Networks/AT&T Mobility
16025 Northland Drive
Southfield MI 48075
(See exhibit 4)**

c. Engineering requirements for the service to be provided at the site.

1. The Planning Commission finds that this a requirement if the special land use is approved. (See exhibit 2)

d. Name and address, including phone number of the person responsible for determining feasibility of co-location as provided in this section.

1. The Planning Commission finds that the following information has been submitted with respect to this standard:

**AT&T Radio Frequency Engineer
Syed Hussain, c/o Steven Wells
280 North Old Woodward, STE 250
Birmingham, MI 48009
(248) 258-7074
(See exhibit 4)**

e. Site plan showing location of all proposed and existing structures on the property.

1. The Planning Commission finds that the required information is shown on the site plan. (See exhibit 4).

f. Preliminary design of all proposed structures.

1. The Planning Commission finds that this has been provided. (See exhibit 4)

This standard HAS been met.

g. Name and address of all adjacent property owners within three hundred (300) feet of the property.

1. **The Planning Commission finds that the applicant has worked with the Township assessing department as well as Township staff to acquire this information which has been completed and shall be submitted prior to issuance of the special use permit. (See exhibit 8)**

This standard HAS been met.

- h. Registered Engineer's certification of the design and safety of the proposed tower to withstand winds of one hundred (100) miles per hour.

1. **The Planning Commission finds that this information was provided in a letter dated December 2, 2013. The applicant shall submit final engineering plans verifying this design element prior to issuance of a special use permit. (See exhibit 6)**

This standard HAS been met.

MOTION: Couture/Hornberger the standards have been met from page 11 to top of page 18 except #2.1 is not applicable.

MOTION PASSED

Specific Findings of Fact Under Section 7.12
Personal Wireless Communication Towers and Related Facilities

1. Wireless Telecommunication Antenna Towers and Equipment Shelter Buildings shall not be placed in any road right-of-way or in any easement for road purposes.
 1. **The Planning Commission finds that the proposed tower and equipment shelter are outside of the road right-of-way and is compliant with all Ordinance required setbacks. (See exhibits 4 & 7)**

This standard HAS been met.

2. Such towers and facilities may be located in the Agricultural (A-1) Zone or the Commercial (C-1) Zone.

1. **The Planning Commission finds that the proposed tower is located on land that is zoned Agricultural (A-1). (See exhibit 2)**

This standard HAS been met.

3. Such towers and facilities shall be placed on parcels (whether the land is owned or leased by the tower owner), that have an area no less than the minimum parcel size for the district.

1. **The Planning Commission finds that the proposed location is situated on a parcel that is 16.19 acres. This area exceeds the minimum parcel size of 5 acres in the Agricultural (A-1) Zoning District. (See exhibit 2)**

This standard HAS been met.

4. All setbacks for the zoning district shall be met and in addition, no tower shall be placed closer than 50% of the tower's height from any property line.

1. **The Planning Commission finds that the proposed tower meets all applicable setbacks. (See exhibits 2 & 7)**
2. **The Planning Commission finds that the proposed 80' tower camouflaged to look like a pine or a spruce tree is located 140' from the right-of-way line of Center Road, 247' 8" from the northernmost property line, 1,116' 5" from the easternmost property line, and 247' 7" from the southernmost property line. (See exhibits 2, 4 & 7)**

This standard HAS been met.

5. No tower shall be placed in a scenic view area as shown on the Scenic View Map adopted or subsequently amended as part of the Peninsula Township Comprehensive Plan.

1. **The Planning Commission finds that the proposed tower is not in a scenic view area as shown on the adopted Scenic View Map in the Peninsula Township Comprehensive Plan, but is adjacent to it. (See exhibit 1)**

This standard HAS been met.

6. All tower proposals of more than thirty-five (35') feet shall be submitted to the Cherry Capital Airport Commission and FAA for review and approval prior to approval by Peninsula Township.

1. **The Planning Commission finds that the applicant shall submit FAA review and approval prior to issuance of the special use permit. (See exhibit 6)**
2. **The Planning Commission finds that the Airport Director for the Cherry Capital Airport has issued the following statement “The airport concurs with the original airspace study and will continue to concur at the reduced height. Please ensure this site is air spaced at the new height with the FAA. Please ensure that if an additional flexible antenna is attached you use a higher height as the overall height (structure plus flexible antenna = overall height).” (See exhibits 6 & 8)**

This standard HAS been met.

7. Prior to approval by the Township any franchise required by the Township Board shall be in place.

1. **The Planning Commission finds that no franchise is required. (See exhibit 2)**

This standard HAS been met.

8. Wireless Telecommunication Antenna Towers of forty (40) feet or less, including antenna. All such tower location proposals shall require approval by the Planning Commission.

1. **The Planning Commission finds that this part of the Ordinance is not applicable because the tower is greater than forty (40) feet. (See exhibit 2)**

This standard does not apply as the proposed tower more than 40'.

MOTION: Hornberger/Couture page 18 to the end have been met.

MOTION PASSED (6/1 Leak)

MOTION: Couture/Serocki to Recommend Approval of SUP #124 based on the General and Specific Findings of Fact as presented in their entirety-

to recommend that AT&T's application for site plan and special land use approval to place an 80' cellular telephone tower on a piece of property having a street address of 7178 Center Road, Traverse City, Michigan 49686, located in Section 30, Peninsula Township and having a parcel ID No. of 28-11-030-012-00 be **APPROVED** by the Township Board based upon the general and specific findings of fact applied to the standards contained in this Zoning Ordinance. If approved, recommended conditions:

Conditions

1. A landscaping agreement to maintain the landscaping in the event of diseased/dying existing and proposed landscaping.
2. The tree to be camouflaged to resemble a natural pine tree including 3 branches per foot, branches to extend down to within 20-30 feet of the ground, tapering of the branches beginning with an appropriate diameter at lowest branches and tapering upward, and all external antennae shall be fully camouflaged within the branches.
3. Height of the tower to be restricted to a height not required to be lit.
4. Provide the Township with a Fall Zone Letter to ensure the safety of the property and surrounding land uses.
5. In the event of the catastrophic construction failure the impact to surrounding properties will be immediately remediated at the expense of the tower owner.
6. All wires and cables shall be underground.
7. Proof of compliance with all Federal, State, County, Township and other governmental regulations relative to the construction of an 80 foot monopine wireless communication tower shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the Special Use Permit.
8. The maintenance of tower appearance for duration of life.

PASSED UNAN

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
June 15, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Leak, Serocki, Rosi, Maguire, Couture and Hornberger

ALSO PRESENT: Michelle Reardon, Director of Planning and Zoning; **Elise Crafts**, Planning & Zoning Coordinator; **Peter Wendling**, Township Attorney and **Deb Hamilton**, Recording Secretary

ABSENT: Wunsch

APPROVAL OF THE AGENDA

Reardon asked to add to the Consent Agenda under Reports and Announcements the ZBA Report to the Planning Commission dated June 11, 2015 and the Township Board Report to the Planning Commission from June 2015. Reardon also asked to add to the Consent Agenda under Correspondence an email from Mansfield dated June 15, 2015 and a letter from the Township Engineering dated June 11, 2015.

Serocki asked about the Preliminary Plat Review – The 81 Development Company, LLC business item that was schedule for a Public Hearing tonight. **Reardon** said the applicant asked to have the item held. Preliminary Plat Review – The 81 Development Company, LLC was added as Business Item #3.

MOTION: Hornberger/Serocki to approve the Agenda as amended.

MOTION PASSED

BRIEF CITIZEN COMMENTS – FOR ITEMS NOT ON THE AGENDA

Emerson Hilton, Olson, Bzdok & Howard, respectively asked the Planning Commission to consider accepting public comment on SUP #123 – The 81 on East Bay Planned Unit Development. **Wendling** said the Planning Commission had a public hearing on this item and advised the Planning Commission is acting as advisory board only. The Township Board will have another Public Hearing on this item.

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (~~none~~) **as provided**
2. Correspondence (as provided in packet)
3. Meeting Minutes

May 18, 2015 – Regular Meeting

Hornberger page 5 – “under of hoists.” should be “number of hoists.”

page 6 – “sited” should be “cited”

MOTION: Couture/Serocki to approve the consent agenda with amended minutes.

MOTION PASSED

NEW BUSINESS

SUP #111 1st Amendment – Mission Point Lighthouse Gift Shop (introduction and potential recommendation)

Reardon said this was in front of the Planning Commission in the same form and recommended for approval to the Township Board. The Township Board denied the amendment. The Township Board has since met with the Park Commission and had several open meeting discussions. The result of those meetings the Park Commission has resubmitted the amendment. The Park Commission changed nothing in the application. **Rosi** said the Township Board went to the Lighthouse to see the Gift Shop. The members of the Township Board that went were impressed with the facility. The Board felt it was appropriate to send the amendment back to the Planning Commission for a recommendation.

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

**SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #111-1st Amendment, Mission Point Lighthouse (Gift Shop)
June 15, 2015**

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel, 20500 Center Road, is located in Section 23 of the Township and the total acreage utilized for the Mission Point Lighthouse site is measured at approximately five (5) acres. (Exhibits 3, 4)

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use approval to allow the Mission Point Lighthouse to amend the retail operations in the existing gift shop by requesting the following: (1) additional items to be authorized for sale; (2) additional display space within the existing gift shop; and (3) alternate storage space for back stock product within the existing lighthouse building. (Exhibits 3, 4)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park of the Peninsula Township Zoning Ordinance. (Exhibits 2, 4)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing one (1) parcel which conforms to local zoning. (Exhibits 1, 2)
- b. The Board finds that the Mission Point Lighthouse Gift Shop was approved under SUP no. 111 in 2009, and is currently in compliance with their approved SUP no. 111 (Exhibits 2, 3, 4)
- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the proposed expansion efforts. (Exhibits 3, 4)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence adjacent to the subject parcel per the date of this report. (Exhibits 3, 4)

- a. **North-** The subject parcel is bound on the northern property line by Grand Traverse Bay.
- b. **South-** The land to the south of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- c. **East-** The land to the east of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- d. **West-** The land to the west of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- e. The Board finds that the future land use plan, in regards to the subject property, suggests that the adjacent and surrounding land will be considered as a Public & Semi-Public Land. (Exhibit 1)

2. Specific Findings of Fact – Section 8.1.3 BASIS FOR DETERMINATIONS

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building. (Exhibits 3, 4)

2) The Board finds that no physical expansion of the gift shop interior space or lighthouse building is proposed and therefore the essential character of the area will not change. (Exhibits 3, 4)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building . (Exhibits 3, 4)

2) The Board finds that the existing approved retail operation use is not proposed to change and the applicant is not proposing to introduce any new uses on site. (Exhibits 3, 4)

This standard HAS been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

1) The Board finds that current operation areas should not require additional essential facilities or services and the applicant is working with all local permitting agencies to achieve compliance should a permit be required. (Exhibits 3, 4)

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

1) The Board finds that the applicant's request should not require excessive future essential facilities or additional public services. The Mission Point Lighthouse is not introducing any new uses on site which would trigger additional public infrastructure, public services, or public costs. (Exhibits 3, 4)

This standard HAS been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1) The Board finds that the proposed use of the site will not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibits 3, 4)

This standard HAS been met.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Board shall consider the following standards:

a. That the applicant may legally apply for site plan review.

1) The Board finds that the applicant is the owner's representative and operator of the petitioned property and Mission Point Lighthouse and gift shop operation and may legally apply for said review process. (Exhibits 3, 4)

This standard HAS been met.

b. That all required information HAS been provided.

1) The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided final site plans. The applicant will be required to submit all necessary permits (i.e. soil erosion, driveway, health department) prior to commencement of operation. (Exhibit 3)

This standard HAS been met.

c. That the proposed development conforms to all regulations of the zoning district in which it is located.

1) The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibits 2, 3, 4)

This standard HAS been met.

d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services:

Michigan Department of Transportation- Site access is from a pre-existing drive on the M-37/Center Rd. right-of-way and there are no anticipated changes to said access.

Grand Traverse County Sheriff's Department- Sheriff's Deputy Suhy has indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Peninsula Township Fire Department- Assistant Chief Rittenhouse has indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Grand Traverse County Construction Code Office- Rick Frederick, Building Plan Examiner has indicated no issues with the proposed changes in an email dated February 9, 2015.

Grand Traverse County Health Department- Health Department approval is not required.

Grand Traverse Soil Erosion & Sedimentation Control Department- Soil Erosion & Sedimentation Control approval is not required.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. All permits, if necessary, shall be obtained by the applicant prior to the issuance of a special use permit. (Exhibit 3)

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. (Exhibit 3)

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1) The Board finds that no external changes are proposed to the existing structure and no construction as part of this application. (Exhibits 3, 4)

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact flood ways or flood plains. (Exhibits 3, 4)

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact the existing drainage plan. (Exhibits 3, 4)

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

1) The Board finds that no external changes are proposed and no additional grading or filling is anticipated to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact air drainage systems. (Exhibits 3, 4)

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1) The Board finds that the proposed amendment is to occur in one phase. (Exhibits 3, 4)

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

1) The Board finds that no additional services or facilities are needed or anticipated on or off site to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Township Board in pursuance of the objectives of this Ordinance.

1) The Board finds that the existing landscaping and surrounding acreage separate the Mission Point Lighthouse operation from those surrounding neighbors. (Exhibits 3, 4)

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

1) The Board finds that the existing approved parking layout is not anticipated to change. (Exhibits 3, 4)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

1) The Board finds that the infrastructure servicing onsite pedestrian traffic appears to be functioning well and should be adequate for the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

1) The Board finds that there are no changes to the previously approved garbage and refuse storage. (Exhibits 3, 4)

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage of the site is consistent with the requirements of Section 8.6.1 (4) of the Ordinance. (Exhibit 2)

2) The Board finds according to the Future Land Use map from the Master Plan the subject property is classified as Public & Semi-Public Land use. (Exhibit 1)

3) The Board finds that the retail use directly supports the maintenance and upkeep of the Township's public land.

This standard HAS NOT been met.

3. SECTION 8.6.1 (4) MISSION POINT LIGHTHOUSE AND LIGHTHOUSE PARK REGULATIONS

The Board finds that under Section 8.6.1 (4), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. Items sold shall be limited to merchandise relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. Examples include items such as light house replicas, hats, t-shirts or sweatshirts, coffee mugs, pencils, pins, pens, prints, books, calendars, lapel pin, magnets, puzzles, patches, ornaments and bookmarks with lighthouse logos.

1) The Board finds that Section 8.6.4 (1) authorizes the Mission Point Lighthouse gift shop to sell items relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. (Exhibit 2)

2) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;
- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;

- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- b. The Township Board may authorize the sale of other items related to the lighthouse park.

1) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;
- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- c. Net proceeds from the gift shop shall be placed in a designated fund to be used for operation and maintenance of the Mission Point Lighthouse and Lighthouse Park.

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

- d. No general funds may be used for the operation of the gift shop.

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

MOTION: Serocki/Maguire the General Findings of Fact, Specific Findings of Fact and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park Regulations the standards have been met.

MOTION PASSED

MOTION: Serocki/Hornberger to recommend approval of the petition SUP #111-1st Amendment, application for Mission Point Lighthouse Gift Shop, located in Section 23 of Peninsula Township, and as legally described, based upon the general and specific findings of fact applied to the standards contained in this Zoning Ordinance, the following reasoning and subject to accompanying conditions:

Reasoning:

1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park.
2. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.

MOTION PASSED

SUP #123 – The 81 on East Bay Planned Unit Development (discussion and potential recommendation)

Leak said any recommendation should be conditional on items in Gourdie-Fraser letter dated June 11, 2015. **Maguire** said SUP Section 8.1.3 (1) (2) requires the Township to impose safeguards for the welfare of the community and protection of individual property rights. The only thing known about the developer is that it is an LLC which means the principles and investors are shielded from claims from outside. The developer will have some major expenses developing this property. At the last meeting Maguire asked if about capitalization and financing and the developer said he is self-financed. Maguire also asked what assurances the developer could give the Township that this project would be completed. The developer said his passion. Maguire is concerned about viability of this high-end residential development over the next 10 years so far from Traverse City. If the development stalls or fails it would adversely affect the community. There have been several high-end residential developments in this area that have stalled or failed. Just look to the south, that project has languished for years. In Old Mission there used to be a residential development that failed and is now Kelley Park. Out M72 on the way to Empire there is a development that has 100 home sites but only 2-3 homes. Out M22 toward Glen Arbor overlooking Good Harbor, there are 50-60 lots with only 5-6 homes. We all know about Lochenheath. Finally on M204 outside of Suttons Bay overlooking the Bay 50-60 home sites and 5-6 new homes boarded up. Maguire would like to see supporting financials on this property. **Rosi** said a parcel over by Bowers Harbor that is now being purchased by DNR was also approved for development. **Wendling** said the ordinance does not contain specific bonding or letter of credit requirements. If the Planning Commission made a recommendation to go forward with the project, the Commission could also recommend to the Township Board a

letter of credit or bond condition is applied to insure infrastructure or reclamation should the economic viability if the development failed. **Serocki** said she is concerned because it seems the steep slopes are being impacted. **Serocki** asked the Township Engineer if he recommended a plan on how to complete the mass grade and maintain stabilization, how he plans to monitor the project and what are his powers to make sure the plan is followed. *Boals, Township Engineering*, suggested as part of the final design process an engineer with geotechnical qualifications is retained. Moving forward he would like to see the final site grading on all of the building sites-how building sites would be achieved how driveway slopes would be handled, and how that will transition with the final slopes approaching the bluffs. **Serocki** asked if project is approved and excavation begins will Boals be at the site occasionally. *Boals* said he would be part of that process. **Serocki** asked how the shoreline will be handled when some is common and some is privately owned. **Reardon** said both would be subject to the part of the ordinance that regulates shoreline. **Serocki** said the Findings of Fact states over half the trees will be removed. How will that be determined? *Joe Quandt, Developer's Representative* said the estimate was garnered from where the mass grading and the road will take place. There will be select cutting for the viewsheds. The details are in the site plan. *Doug Mansfield, Mansfield Land Use Consultants*, said Section 7, Map C2 in the project binder shows the tree clearing. The upper ridge slope area 39% will be impacted and the shoreline bluff area 17% will be impacted. **Rosi** said she is concerned about the steep slopes. *Quandt* said most of the slopes are being retained. There are two natural terraces where the houses will be built and the roads do not exceed 12% grade. A geotechnical review of the project has been completed. It has been verified that there are no problems maintaining this development with those slope characteristics. **Maguire** said Grand Traverse Soil Erosion have forwarded a letter with more questions than answers. **Rosi** asked if Boals is comfortable with response. *Boals* said he is at this time but would like to see more detailed grading plans. It sounds like the applicant has retained a geotechnical report and he would like to see that report. *Quandt* said there will be a Part 91 soil erosion permit, the oversight of the Township Engineer and each LUP will need to a soil erosion permit. **Rosi** said this is an old agricultural parcel asked about contaminated soil. *Quandt* said it has not been looked at because the larger portion of this property was not farmed. The portion of the property that was farmed will be graded. It is not part of the ordinance criteria. **Rosi** said another concern is the wetlands. *Quandt* said there has been a second wetland delineation completed by a professional wetlands scientist and biologist that was acceptable to the Township Engineering. The wetland area has been flagged. **Rosi** asked about the dock system. **Reardon** said there is enough lineal feet measured at the Ordinary High Water Mark to have 30 in the joint dock system. Each individual waterfront owner would be allowed one dock and one hoist per 50 ft of lineal frontage as allowed by the ordinance. *Quandt* said the US Army Corp of Engineers regulates that and it is under final review. He believes they will say less than 30 slips. **Leak** asked the first plan had 36 lots and now 41 lots how were these lots added. *Mansfield* said took the lot width down by 4 ft on some of the lots and reduced lot depth to make up for the open space. **Leak** said the Fire Chief recommended another access. What provisions have been made for that access? *Quandt* said the applicant has come to possible agreement with the home owners to the north to make a connection to Trevor Rd. for an emergency egress. **Hornberger** asked to have something in writing in the condo documents that steps are not permitted and a restriction on fertilizer and herbicides. *Quandt* said yes a restrictive covenant can be put in the Master Deed.

Reardon said she would like the Commission to direct staff and the Fire Chief to be involved in the final discussion between the developer and the Trevor Rd neighbors about the emergency egress to make sure what is proposed is in compliance with zoning and meets Chief Ronk's concern for access. **Couture** and **Rosi** commented on the increased vehicle traffic and safety. **Reardon** said county road commissions are aware of zoning and possible density and plan for that possible density. **Rosi** said in a letter received, one person was concerned that the Master Plan does not speak to this project. The PUD must follow the Zoning Ordinance. This is **awake a wakeup call for** for the Township. **Rosi** hopes the developer recognizes the values of the community. The Zoning Ordinance does not protect those values. **Hornberger** said we are basing our decisions on zoning ordinance. It is only fair thing to do. **Maguire** said he feels strongly about a letter of credit or performance bond being a condition of recommendation of approval. **Quandt** understands concern but asked Commission to make the condition an appropriate financial assurance mechanism.

Maguire said for clarification we are working from the Findings of fact dated June 10, 2015.

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

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
June 10, 2015

PENINSULA TOWNSHIP PLANNING COMMISSION

DECISION AND ORDER

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

Hearing Date: May 18, 2015 and June 15, 2015

PROPERTY DESCRIPTION

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

APPLICATION

The applicant is asking for review by the Peninsula Township Planning Commission for the development of a forty-one (41) unit condominium subdivision planned unit development

(PUD) within the Rural and Hillside (R-1A) and the Coastal Zone Single and Two-Family (R-1B) zoning districts.

The Commission having considered the Application, a public hearing having been held on May 18, 2015, after giving due notice as required by law, the Commission having heard the statements of the Applicant and agents, the Commission after having considered letters submitted by members of the public and comments by members of the public, the Commission having considered 29 Exhibits, and the Commission having reached a decision on this matter, states as follows:

1. General Findings of Fact

1.1 Property Description-

- a. The Commission finds that the subject parcel is located in Section 14 of the Township and has approximately 945 feet of road frontage on Boursaw Road. (Exhibits 1, 3 & 19)
- b. The Commission finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at roughly 82.63 acres. (Exhibits 3 & 19)

1.2 Action Request-

- a. The Commission finds that the applicant is seeking site plan and special use permit approval to develop a Condominium Subdivision Planned Unit Development on site as permitted by Section 6.2.4 and Section 6.3.2 of the Peninsula Township Zoning Ordinance. (Exhibits 1, 3 & 19)
- b. The Commission finds that the final site plan and special use permit are subject to the requirements of 8.1.3 - Basis of Determination and 8.3 - Planned Unit Developments of the Peninsula Township Zoning Ordinance. (Exhibit 1)

1.3 Zoning/Use-

- a. The Commission finds that the proposed site is zoned R-1A, Rural & Hillside and R-1B, Coastal Zone Single and Two Family encompassing two (2) parcels which is considered conforming to local zoning. (Exhibits 1, 3 & 19)
- b. The Commission finds that the applicant is working with the local permitting agencies to obtain compliance for the site plan. (Exhibits 3, 4, 5, 6, 7, 8, 11, 12, 13, 14)

1.4 Land Use Pattern- The Commission finds the following land uses to be in existence on the date of this report adjacent to the proposed development.

- a. **North-** The land adjacent to the north of the subject properties is zoned R-1A, Rural & Hillside and is primarily residential in use.
- b. **South-** The properties adjacent to the south are zoned R-1B, Coastal Zone Single and Two Family. The Cove, a residential subdivision, and other residential uses are prominent.
- c. **East-** The property is bound by East Grand Traverse Bay to the east.
- d. **West-** The property located west of the subject is zoned R-1A, Rural & Hillside with the exception of a 12-acre parcel at the Northwest corner of the subject site that is zoned A-1, Agriculture district. The land is primarily low-density residential not including the active agriculture land at the northwest corner previously mentioned.
- e. The Commission finds that the future land use plan identifies the subject location as an area designated for rural agricultural usage. The objective of the rural agriculture use category is to preserve the important natural resources of the Township while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. (Exhibit 2)
- f. The Commission finds that development of property as single family residential is a use by right in the R-1A, Rural and Hillside residential zoning district as well as the R-1B, Coastal Zone Single and Two Family residential district. (Exhibits 1 & 19)
- g. The Commission finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, Michigan Department of Environmental Quality, and the Army Corps of Engineers.

MOTION: Serocki/Hornberger to accept the General Findings of Fact.

MOTION PASSED

2. Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)

2.1 General Standards- The Commission shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

- i. The Commission finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Exhibits 3, 19 & 22)
- ii. The Commission finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Exhibits 1, 2, 8 & 19)
- iii. The Commission finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Exhibits 1, 29 & 22)
- iv. The Commission finds that under the master plan, chapter 3, Land Use and Zoning Map No.4 depicting existing land use, shows that the existing land use for The 81 property is residential regardless of the fact that the property is located in both the R-1A, Rural and Hillside and R-1B, Coastal Zone Single and Two Family Zoning Districts. As such, the proposed PUD is harmonious and appropriate in appearance with the existing use and character of the vicinity. (Exhibits 1, 2 (land use map no. 4), 8, 19.2 & 22)
- v. The Commission finds that the intent and purpose of the Rural and Hillside Residential District (R-1A) is to contain standards for the continued development of very low density residential properties, inclusive of fragile hillside areas and to interface these areas between more intensive residential uses and agricultural land uses. The district includes existing low density residential developments as well as areas within which such development appears both likely and desirable. The Commission finds that the Coastal Zone Residential District (R-1B) provides additional standards for residential development and lakeshore drive areas and areas of high scenic value where more intensive development would deteriorate the peninsula environment and less intensive development is not essential to maintenance of the established environment. The Commission finds that the proposed PUD provides for a buffer zone along the property's border with East Grand Traverse Bay of 1500 feet which will remain as an undeveloped setback other than the dock area and that the PUD itself by preserving 65% of the property, being 54 acres, as open space conforms with the intention of both districts by decreasing the density which would otherwise be allowed in these districts should the property be developed in a manner otherwise allowed under the zoning ordinance. (Exhibits 1 –section 6.3.1 Intent and Purpose, section 6.5.A.1, & 19.2)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

- i. **The Commission finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Exhibits 2, 8, 19.2, 19.7 & 22)**
- ii. **The Commission finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Exhibits 1, 2, 8, 19.2, 19.7 & 22)**
- iii. **The Commission finds that the development of the proposed PUD should not negatively impact adjacent neighbors. The applicant has designed the housing sites to complement the existing residential use pattern which incorporates 54 acres of the site in open space. (Exhibits 2, 8, 19.2, 19.7 & 22)**
- iv. **The Commission finds that the PUD as submitted preserves open space, keeping 65% of the site undeveloped, inclusive of 1500 lineal feet of waterfront preserved as common open space, for the proposed project. The Commission further finds that the lot locations, regardless of the slopes in the area, are located sufficiently within the interior of the property of the project site such that view sheds are sufficiently preserved both landside from township public roads as well as from the water. The Commission further finds that there is no evidence that the development would disturb existing or future uses of the land within the vicinity. The Commission further finds that the preservation of the open space is a substantial improvement over other non-PUD development rights as provided in the Peninsula Township Zoning Ordinance which, in turn, benefits the properties within the immediate vicinity and the community as a whole. (Exhibits 1 – land uses allowed in the R-1A and R-1B zoning districts, 2 – map no. 4, 8, 19.2, 19.5, 19.7, 19.9 & 22)**

This standard HAS been met.

- c. **Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.**
 - i. **The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1 – section 7.10, 19.7. & 23)**
 - ii. **The Commission finds the development will be served by a community septic facility and private septic system and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Exhibits 15 & 19.10.iii)**

- iii. **The Commission finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
- iv. **The Commission finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Exhibits 13 & 19.10.iv)**

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.
 - i. **The Commission finds that the applicant will be responsible for any improvements required as part of this proposal. (Exhibit 19)**
 - ii. **The Commission finds that the development as presented will not create excessive additional requirements at public cost for public facilities and services given that development of single family residential properties is allowed in the zoning districts in which the property is located. The Commission further finds that the applicant will be incorporating adequate service roads within the development and there is otherwise no evidence of any excessive additional requirements at public cost for public facilities and services on the record. (Exhibits 11, 12, 19.3, 19.7, 19.10, 20, 21, 22 & 23)**
- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.
 - i. **The Commission finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibit 19)**
 - ii. **The Commission finds that the very nature of residential development is not the type that results in a use generating fumes, glare or odors. The Commission further finds that there has been no evidence presented that the proposed development will result in negative activities or uses which would compromise the general welfare of township citizens as a result of fumes, glare or odors. (Exhibits 11, 12, 19, 21 & 22)**

This standard HAS been met.

2.2 Conditions and Safeguards- the Commission may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. **Address, resolve and comply with the recommendations presented by the Peninsula Fire Chief.**
- b. **Proof of compliance with all Federal, State, County, Township and other governmental regulations relative to the establishment of a forty-one (41) unit Condominium Subdivision Planned Unit Development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the Special Use Permit.**
- c. **Relocate the entrance sign to be compliant with section 7.11 of the Ordinance.**
- d. **Remove the second proposed sign to be compliant with section 7.11 of the Ordinance.**

THE ABOVE FINDINGS ARE NOT REQUIRED AS THIS IS NOT A STANDARD, BUT RATHER AN ADVISORY STATEMENT. IF THE PLANNING COMMISSION APPROVES THE PROJECT THERE CAN CERTAINLY BE CONDITIONS RELATED TO THE STANDARDS CONTAINED IN THE ZONING ORDINANCE WHICH WOULD APPLY TO THE PROJECT.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Commission and the Township Commission shall consider the following standards:

- a. That the applicant may legally apply for site plan review.
 - i. **The Commission finds that the applicant is the owner/operator of the petitioned property and may legally apply for said review process. (Exhibit 19)**

This standard HAS been met.

- b. That all required information has been provided.
 - i. **The Commission finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided site plans. (Exhibits 19 & 21)**
 - ii. **The Commission finds that the applicant will be required to submit all necessary permits (i.e. soil erosion, health department, etc.) and has already submitted some of these permits all of which will need to be finalized and issued prior to the final approval of a Special Use Permit and PUD. (Exhibits 13, 15, 18 & 19)**

This standard HAS been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.
 - i. **The Commission finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Exhibit 19)**
 - ii. **The Commission finds that each individual unit will be subject to the land use permitting process to ensure all structures comply with the Special Use Permit and the requirements of the Ordinance. (Exhibits 1, 19 & 22)**

- iii. **The Commission finds the proposed PUD shall be designed in accordance with section 8.3 of the Ordinance as discussed in section 3.2 of these findings. (Exhibits 1, 19 & 21)**
- iv. **The Commission finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1 – section 7, 19 & 22)**
- v. **The Commission finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Exhibits 1, 19, 21 & 22)**
- vi. **The Commission finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Exhibits 19, 21 & 22)**
- vii. **The Commission finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Exhibits 1, 19, 21 & 22)**
- viii. **The Commission finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Exhibits 1, 11, 12, 14, 19.10.ii, 20 & 21) (10, 19.10.iii)**

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
 - i. **The Commission finds that a permit to construct the private road curb cut from the Grand Traverse County Road Commission shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibit 1)**
 - ii. **The Commission finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated January 22, 2015 that department has indicated they have no objections to the plan. (Exhibit 13)**
 - iii. **The Commission finds that a soil erosion permit for a forty-one (41) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval for a thirty-six (36) unit Planned Unit Development has been granted at this time. Please see the letter dated January 23, 2015 from the Grand Traverse County Soil Erosion – Sedimentation Control Department for the specifics related to this review. (Exhibits 14 & 19.10.i)**

- iv. **The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 12 & 14)**

- v. **The Commission finds that the site plan shall meet all necessary requirements related to the Great Lakes waterfront as mandated by the Michigan Department of Environmental Quality and the Army Corps of Engineers. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibits 9 & 29)**

- vi. **The Commission finds that storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Exhibits 19.10.ii, 20 & 26)**

- vii. **The Commission finds that the Grand Traverse County Health Department (GTCHD) has preliminarily reviewed the community septic and private septic system and individual septic systems for units 1-4. They have provided initial comments for the thirty-six (36) unit plan. Please see the email dated February 18, 2015 from Daniel Thorell for specifics related to this ongoing review. All required well and community septic permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibit 10)**

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
 - i. **The Commission finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the issuance of the SUP. (Exhibits 9, 10, 11, 13, 15, 18, 19.10.i-vii, 20 & 22)**

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

- i. **The Commission finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development under the zoning ordinance, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site. (Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20, 21 & 22)**

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.
 - i. **The Commission finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. (Exhibit 19)**
 - ii. **The Commission finds that the proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. (Exhibits 1 & 19)**
 - iii. **The Commission finds that the Michigan Department of Environmental Quality will review the plan to ensure compliance with applicable State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. A permit, if necessary, from this agency shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibit 29)**
 - iv. **The Commission finds that the Army Corps of Engineers will review the plan to ensure compliance with Federal regulations. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from this agency shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibit 9)**

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
 - i. **The Commission finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township**

Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Exhibits 11, 14 & 19.10.i-iv, 19.11)

- ii. The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)
- iii. The Commission finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.
- iv. The Commission finds that the applicant shall provide a confirmation by a qualified consultant for the wetland delineation shown on the plans as requested by the Township Engineer. (Exhibit 11)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.
 - i. The Commission finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Exhibits 14 & 19)
 - ii. The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)
 - iii. The Commission finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
 - i. The Commission finds that the applicant will be required to maintain all storm water runoff on site. The storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Exhibits 19.10.ii, 20 & 26)

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.
 - i. **The Commission finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site, per se. (Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20, 21 & 22)**
 - ii. **The Commission finds that the development of the road appears to be reasonable in the context of the existing topography and existing drainage patterns. (Exhibit 19)**
 - iii. **The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)**
 - iv. **The Commission finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP.**

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
 - i. **The Commission finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Exhibit 19)**

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.
 - i. **The Commission finds that the development of the site is to occur in one phase. (Exhibit 19)**

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
 - i. **The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1 – section 7.10, 19.7. & 23)**
 - ii. **The Commission finds the development will be served by a community septic and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Exhibits 15 & 19.10.iii)**
 - iii. **The Commission finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
 - iv. **The Commission finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Exhibits 13 & 19.10.iv)**

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Commission in pursuance of the objectives of this Ordinance.
 - i. **The Commission finds that the site shall have the required landscaping per the Zoning Ordinance. Specifically, the residential units shall have street trees as required by section 6.9.3.5 of the Ordinance. The site shows the appropriate buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. The shared waterfront shall be subject to section 7.4.4 of the Ordinance ensuring appropriate screening of the site from the water. (Exhibits 1 & 19)**

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - i. **The Commission finds there is one (1) parking area located on the west side of 81 Ave to accommodate the shared waterfront as required by section 7.4.2 (c) and (c). These**

spaces are in compliance with the Ordinance and are outside of the private road right-of-way. This layout will allow traffic to flow uninhibited within the site and will not impact traffic off-site. (Exhibits 1 & 19)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - i. **The Commission finds that there is no pedestrian infrastructure proposed as part of this development. (Exhibit 19)**
 - ii. **The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1, 15, 18 & 19)**
- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
 - i. **The Commission finds that there are no proposed refuse containers as part of the general proposal. Each unit will provide for individual garbage removal and shall be subject to Ordinance #43 Solid Waste of Peninsula Township. (Exhibit 19)**

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
 - i. **The Commission finds that this the largest waterfront undeveloped parcel left in the township. The Commission recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-1B) zoning districts. While the Commission recognizes that development is going to cause disturbance to the land, the Commission finds that the PUD as proposed preserves 54.23 acres as undeveloped open space. The Commission further finds that although narrow, a setback along the coast of East Grand Traverse Bay of 1500 lineal feet of undeveloped property (exclusive of dockage facilities), is beneficial and in accord with the purpose and spirit of the ordinance as well as sound planning principles. The Commission further finds given that there are other options available for development which could be much more intensive, the plan as presented with the preservation of open space meets the objectives of land use planning under the zoning ordinance. (Exhibits 1 ,2, 19, 20, 21, 22 & 30)**

This standard HAS been met.

MOTION: Couture/Hornberger to adopt the supportive Specific Findings of Fact – Section 8.1.3 (Basis for Determination) and the standards have been met.

MOTION PASSED

3. Specific Findings of Fact – Section 8.3 (Planned Unit Developments)

3.1 Objectives – The following objectives shall be considered in reviewing any application for a special use permit for planned unit development.

- a. To provide more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.
 - i. **The Commission finds that the preservation of 54.23 acres of open space as well as the preservation of 1500 lineal feet of East Grand Traverse Bay frontage will preserve the natural character of the open fields largely contained within the open space areas as proposed. While the Commission is mindful that the development will result in some grading of slopes and removal of trees, given other development options under the zoning ordinance, the development as proposed provides for a desirable living environment for future purposes of units within the development both with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds and having negative impacts upon the lakeshore and other natural assets of the property. (Exhibits 10, 11, 12, 14, 19, 20 & 22)
***THIS PARTICULAR STANDARD VIEWS ONLY THE PROPERTY ITSELF AND WHETHER OR NOT THE DEVELOPMENT AS PRESENTED PROVIDES FOR A MORE DESIRABLE LIVING ENVIRONMENT FOR THOSE WHO WOULD BE PURCHASING UNITS WITHIN THE DEVELOPMENT.**
 - ii. **The Commission finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Exhibit 19)**

This standard HAS been met.

- b. To provide open space options.
 - i. **The Commission finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)**

This standard HAS been met.

- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.
 - i. **The Commission finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Exhibit 19)**
 - ii. **The Commission finds that the zoning regulations contained in the zoning ordinance for zoning districts R-1A and R-1B provide a multitude of options for development at this site. Given the available options that the applicant has, the PUD does provide for the preservation of substantial open space, to wit; 54.22 net acres of undeveloped property as well as a strip of 1500 (lineal?) feet of East Grand Traverse Bay waterfront that will also remain largely undeveloped excepting the boat dock area. As such, the Commission finds that when balancing market demands for desirable residential parcels in conjunction with the preservation of at least 65% of the property, the PUD as presented is a more creative and imaginative approach to the development of this parcel for residential purposes than what would otherwise be allowed under the Peninsula Township Zoning Ordinance. (Exhibits 1 –section 6.2, 6.3, 6.5.A; 11, 12, 13, 19, 20, 22 & 23)**

This standard HAS been met.

- d. To provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.
 - i. **The Commission finds that the applicant’s plans do preserve 1500 (lineal) feet of waterfront property from direct development, excepting dockage facilities while also maintaining open space along Boursaw Road which results in minimal aesthetic changes viewed along the road corridor. The Commission further finds that the small wetlands area on the portion of the property will remain preserved, resulting in an attractive development for residential housing. (Exhibits 19 & 22)**

This standard HAS been met.

- e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
 - i. **The Commission finds that The 81 has general design standards which allow for diversity in unit types. (Exhibit 19)**

This standard HAS been met.

- f. To provide for the retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.
 - i. **The Commission finds the parcel is subject to residential zoning and is currently vacant and not being utilized for farmland. The Commission further finds that this development does not impact farmland utilized in the township directly adjacent to the development or within the vicinity of the development. The Commission further finds that the 65% open space will remain as fallow land. (Exhibits 1, 19 & 22)**
 - ii. **The Commission finds that the layout of the plan preserves 65% of the land for open space as confirmed by the Township Engineer. (Exhibits 19 & 30)**

This standard HAS been met.

3.2 Qualifying Conditions – Any application for a special use permit shall meet the following conditions to qualify for consideration as a planned unit development.

- a. The planned unit development project shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the project acreage requirement may be reduced by the Township Commission if the Commission determines that the proposed use is a suitable and reasonable use of the land.
 - i. **The Commission finds that the proposed project is 81+ acres. (Exhibit 19)**

This standard HAS been met.

- b. The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts. Individual planned unit developments may include land in more than one zone district in which event the total density of the project may equal but not exceed the combined total allowed density for each district calculated separately.
 - i. **The Commission finds that the proposed development includes forty-one (41) units. This is less than the allowable number of units should the property be developed outside of the PUD ordinance as determined by the underlying zoning district regulations. The Commission further finds that the property is zoned R-1A and R-1B. (Exhibits 1 & 19)**

This standard HAS been met.

- c. Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements. It is recognized that joining water and sewer ventures with contiguous or nearby land owners may prove to be expedient.

- i. **The Commission finds the development will be served by a community septic and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer of Record (Engineer) to ensure they are compliant with all applicable regulations. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibits 1, 10 & 19)**

This standard HAS been met.

- d. The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1 except as provided by Section 8.3.5 (1).
 - i. **The Commission finds that the proposed density of the site is no greater than if the project were developed with the lot area requirements within the R-1A and R-1B zoning districts. (Exhibits 1 & 19)**
 - ii. **The Commission finds that the density of the development is in compliance with Section 8.3.5 (1). The net acreage of the site is 82.63 acres. (Exhibits 1 & 19)**

This standard HAS been met.

- e. Open space shall be provided according to Section 8.3.6.
 - i. **The Commission finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)**

This standard HAS been met.

- f. For purposes of this Section 8.3, Opens Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. **The Commission finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently**

reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)

This standard HAS been met.

- g. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.
- i. **The Commission finds that the proposal meets Section 8.3 of the Ordinance in these findings and below. (Exhibits 1 & 19)**
 - ii. **Section 8.3.4, PUD Uses that may be permitted: The Commission finds that the applicant is proposing single family dwellings, open space in accord with Section 8.3.6 and a sign.**
 - iii. **Section 8.3.5, PUD Lot Size Variation Procedure: The Commission finds that proposal reduces the size of the forty-one (41) units below the minimum lot size required by the underlying zoning according to the following calculations and within the allowances provided by the Ordinance as detailed here. The Site Acreage for density calculation is 82.63 acres less the fifteen (15) percent for the R-1A and R-1B requirement and is equal to 70.24 acres. Per the underlying zoning districts 92% (64.63 acres) of the Site Area Computation is subject to R-1A zoning 8% (5.61 acres) of the Site Area Computation is subject to R-1B zoning. Therefore the site will allow a maximum of 73 units to be developed. These units can be reduced in area below the minimum lot size required by the zone district in which the PUD development is located provided that the total number of units does not exceed that which is allowed by the underlying zoning. These calculations have been confirmed by the Township Engineer. (Exhibits 1, 19 & 30)**
 - iv. **The Commission finds that the building envelopes are shown on the site plan and are not included as open space. These calculations have been confirmed by the Township Engineer. (Exhibits 1, 19 & 30)**
 - v. **The Commission finds that the minimum lot area is 11,633.17 square feet as indicated in the application. (Exhibit 19)**
 - vi. **The Commission finds that the maximum permissive building height for residential structures shall be 2.5 stories and not greater than 35 feet and accessory structures shall not exceed 15 feet. (Exhibit 1)**
 - vii. **Section 8.3.6, PUD Open Space: The Commission finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the**

82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)

- viii. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: The Commission finds that the maximum percentage of lot area covered by all structures is proposed to be 14% of the net acreage of the site as permitted by this section. This reflects an average permitted lot coverage of 47% of the individual units. (Exhibits 1 & 19)
- ix. Section 8.3.8, PUD Affidavit: The Commission finds that the applicant shall record an affidavit with the register of deeds as required by this section of the Peninsula Township Zoning Ordinance.
- x. The Commission finds the Article VII of the Ordinance requires The 81 to address the following items:

Section 7.1.2, Sanitation Requirements: The Commission finds the development will be served by a community septic and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. All required permits shall be submitted to Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibits 1 & 19)

Section 7.2.5, Stormwater Detention: The Commission finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Exhibit 20)

Section 7.2.6, Supplemental Setbacks for Planned Unit Developments, Mobile Home Parks, and other Group Housing Developments: The Commission finds that the site shows the necessary buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. (Exhibits 1 & 19)

Section 7.4, Supplemental Great Lakes Shoreland Regulations: The Commission finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. The proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. The Michigan Department of

Environmental Quality and the Army Corps of Engineers will review the plan to ensure compliance with applicable Township and State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from these agencies shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibits 1, 9, 19 & 29)

Section 7.6, Off Street Parking and Loading Regulations: The Commission finds that the proposal provides two (2) off street parking spaces for each dwelling unit as required by this section. (Exhibits 1 & 19)

Section 7.7, Developments Abutting Agricultural Lands: The Commission finds that the site plan shows the required 100 foot setback from agricultural lands found in section 7.7 of the Ordinance. (Exhibits 1 & 19)

Section 7.10, Road Standards: The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and developed according to the standards found in Section 7.10 of the Ordinance. (Exhibits 1 & 19)

Section 7.11, Signs: The Commission finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Exhibit 1)

The Commission finds that the applicants sign located at the intersection of Boursaw and 81 Ave.
is dimensionally in compliance with the Ordinance. (Exhibit 19)

The Commission finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Exhibit 19)

The Commission finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Exhibit 19)

Section 7.14, Exterior Lighting Regulations: The Commission finds that the applicant is not proposing any street lighting as part of this petition. All exterior lighting on the residential units shall comply with the standards set forth in this section at the time of application for a land use permit. (Exhibits 1 & 19)

This standard HAS been met.

MOTION: Couture/Hornberger the Specific Findings of Fact – Section 8.3 (Planned Unit Developments) the standards have been met.

MOTION PASSED

MOTION: Maguire/Couture (approval of these Findings) to make a recommendation to the Township Board for approval The 81 PUD and SUP development subject to the following conditions:

1. Requirement of a Performance Bond or other enforceable appropriate financial mechanism to ensure the PUD will be completed as planned in accordance with SUP #123.
2. Compliance with all jurisdictional agencies.
3. Wetland delineation submitted to Planning and Zoning and reviewed and approved by Township Engineer.
4. The management of hoist/shore stations outlined in by-laws.
5. Open Space area shall have no steps permitted.
6. Reduction of fertilizer and pesticides in Common Areas and also additional restrictions through the by-laws
7. Chief Ronk and Township Planning Staff be involved the egress final discussion and maintenance of either side if egress be maintained year round and formalized through agreement.
8. The entrance sign be re-located to 15 setback as required by ordinance and the second sign be removed as required by ordinance.

MOTION PASSED

Preliminary Plat Review – The 81 Development Company, LLC

MOTION: Rosi/Serocki to remove item from table.

MOTION PASSED

Applicant withdrew application.

CITIZEN COMMENTS

Kadee Tseitlin, 3900 Sean Robinson Ct., dismayed about the recommendation for approval to the Township Board for The 81 on East Bay.

BOARD COMMENTS

Rosi commented on Brys' proactive action decision to save vines/grapes as reported in Edible Traverse Magazine. **Rosi** also commented on her disappointment that applications do not require justification to Zoning Ordinance and also to the Master Plan. **Couture** said the Master Plan is an over arching plan has no legal significance. **Wending** said if the Planning Commission and the Township Board feel the Master Plan and the Zoning Ordinance do not line up then further action through the Planner and the Planning Commission should be taken to change the sections of the ordinance.

ADJOURNMENT

MOTION: Maguire/Serocki to adjourn the meeting at 9:00 p.m.

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for July 20, 2015.

**PENINSULA TOWNSHIP BOARD
REGULAR MEETING
July 14, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Correia, Hoffman, Avery, Rosi, Byron and Witkop

ALSO PRESENT: Peter Wendling, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning and **Deb Hamilton**, Recording Secretary

ABSENT: Weatherholt (excused)

CHANGES/ADDITIONS TO AGENDA

MOTION: Byron/Rosi to approve agenda as presented.

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

None

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Edit lists of invoices & additions to the edit list of invoices
4. Meeting Minutes – June 9, 2015 – Regular Meeting
June 22, 2015 – Special Meeting
5. June 2015 Payroll
6. Peninsula Community Library Book Sale Sign (recommend approval)
7. Township Attorney Authorization to Sign Consent Judgment to revise a portion of the plat of Old Mission Harbor on behalf of the Township (recommend approval)

MOTION: Witkop/Avery to accept the Consent Calendar Agenda as submitted.

ROLL CALL VOTE: Rosi –yes, Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

BUSINESS

1. Mission Point Lighthouse - Public Hearing

Reardon reviewed the application.

Correia opened the public hearing at 7:10 pm

No comments.

Correia closed the public hearing at 7:10 pm

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

**SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #111-1st Amendment, Mission Point Lighthouse (Gift Shop)
July 14, 2015**

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel, 20500 Center Road, is located in Section 23 of the Township and the total acreage utilized for the Mission Point Lighthouse site is measured at approximately five (5) acres. (Exhibits 3, 4)

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use approval to allow the Mission Point Lighthouse to amend the retail operations in the existing gift shop by requesting the following: (1) additional items to be authorized for sale; (2) additional display space within the existing gift shop; and (3) alternate storage space for back stock product within the existing lighthouse building. (Exhibits 3, 4)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park of the Peninsula Township Zoning Ordinance. (Exhibits 2, 4)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing one (1) parcel which conforms to local zoning. (Exhibits 1, 2)
- b. The Board finds that the Mission Point Lighthouse Gift Shop was approved under SUP no. 111 in 2009, and is currently in compliance with their approved SUP no. 111 (Exhibits 2, 3, 4)

- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the proposed expansion efforts. (Exhibits 3, 4)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence adjacent to the subject parcel per the date of this report. (Exhibit s 3, 4)

- a. **North-** The subject parcel is bound on the northern property line by Grand Traverse Bay.
- b. **South-** The land to the south of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- c. **East-** The land to the east of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- d. **West-** The land to the west of the subject property is zoned A-1, Agriculture and is host to public area and public park.
- e. The Board finds that the future land use plan, in regards to the subject property, suggests that the adjacent and surrounding land will be considered as a Public & Semi-Public Land. (Exhibit 1)

2. Specific Findings of Fact – Section 8.1.3 BASIS FOR DETERMINATIONS

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building. (Exhibits 3, 4)

2) The Board finds that no physical expansion of the gift shop interior space or lighthouse building is proposed and therefore the essential character of the area will not change. (Exhibits 3, 4)

This standard HAS been met.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

1) The Board finds that the requested amendment is to (a) expand upon the list of acceptable items for sale within the existing gift shop and (b) create additional spaces to sell and store those items within the existing lighthouse building . (Exhibits 3, 4)

2) The Board finds that the existing approved retail operation use is not proposed to change and the applicant is not proposing to introduce any new uses on site. (Exhibits 3, 4)

This standard HAS been met.

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

1) The Board finds that current operation areas should not require additional essential facilities or services and the applicant is working with all local permitting agencies to achieve compliance should a permit be required. (Exhibits 3, 4)

This standard HAS been met.

- d. Not create excessive additional requirements at public cost for public facilities and services.

1) The Board finds that the applicant's request should not require excessive future essential facilities or additional public services. The Mission Point Lighthouse is not introducing any new uses on site which would trigger additional public infrastructure, public services, or public costs. (Exhibits 3, 4)

This standard HAS been met.

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

1) The Board finds that the proposed use of the site will not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibits 3, 4)

This standard HAS been met.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.

1) The Board finds that the applicant is the owner's representative and operator of the petitioned property and Mission Point Lighthouse and gift shop operation and may legally apply for said review process. (Exhibits 3, 4)

This standard HAS been met.

- b. That all required information HAS been provided.

1) The Board finds that the applicant HAS provided the required information as portrayed within the special use permit application and upon the provided final site plans. The applicant will be required to submit all necessary permits (i.e. soil erosion, driveway, health department) prior to commencement of operation. (Exhibit 3)

This standard HAS been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

1) The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibits 2, 3, 4)

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services:

Michigan Department of Transportation- Site access is from a pre-existing drive on the M-37/Center Rd. right-of-way and there are no anticipated changes to said access.

Grand Traverse County Sheriff's Department- Sheriff's Deputy Suhy HAS indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Peninsula Township Fire Department- Assistant Chief Rittenhouse HAS indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Grand Traverse County Construction Code Office- Rick Frederick, Building Plan Examiner HAS indicated no issues with the proposed changes in an email dated February 9, 2015.

Grand Traverse County Health Department- Health Department approval is not required.

Grand Traverse Soil Erosion & Sedimentation Control Department- Soil Erosion & Sedimentation Control approval is not required.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. All permits, if necessary, shall be obtained by the applicant prior to the issuance of a special use permit. (Exhibit 3)

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies HAS been obtained or is assured.

1) The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. (Exhibit 3)

This standard HAS been met.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

1) The Board finds that no external changes are proposed to the existing structure and no construction as part of this application. (Exhibits 3, 4)

This standard HAS been met.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact flood ways or flood plains. (Exhibits 3, 4)

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact soil erosion or sedimentation control measures. (Exhibits 3, 4)

This standard HAS been met.

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact the existing drainage plan. (Exhibits 3, 4)

This standard HAS been met.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

1) The Board finds that no external changes are proposed and no additional grading or filling is anticipated to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact air drainage systems. (Exhibits 3, 4)

This standard HAS been met.

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

1) The Board finds that the proposed amendment is to occur in one phase. (Exhibits 3, 4)

This standard HAS been met.

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

1) The Board finds that no additional services or facilities are needed or anticipated on or off site to accommodate the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Township Board in pursuance of the objectives of this Ordinance.

1) The Board finds that the existing landscaping and surrounding acreage separate the Mission Point Lighthouse operation from those surrounding neighbors. (Exhibits 3, 4)

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

1) The Board finds that the existing approved parking layout is not anticipated to change. (Exhibits 3, 4)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

1) The Board finds that the infrastructure servicing onsite pedestrian traffic appears to be functioning well and should be adequate for the proposed changes. (Exhibits 3, 4)

This standard HAS been met.

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

1) The Board finds that there are no changes to the previously approved garbage and refuse storage. (Exhibits 3, 4)

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

1) The Board finds that the proposed usage of the site is consistent with the requirements of Section 8.6.1 (4) of the Ordinance. (Exhibit 2)

2) The Board finds according to the Future Land Use map from the Master Plan the subject property is classified as Public & Semi-Public Land use. (Exhibit 1)

3) The Board finds that the retail use directly supports the maintenance and upkeep of the Township's public land.

This standard HAS NOT been met.

3. SECTION 8.6.1 (4) MISSION POINT LIGHTHOUSE AND LIGHTHOUSE PARK REGULATIONS

The Board finds that under Section 8.6.1 (4), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. Items sold shall be limited to merchandise relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. Examples include items such as light house replicas, hats, t-shirts or sweatshirts, coffee mugs, pencils, pins, pens, prints, books, calendars, lapel pin, magnets, puzzles, patches, ornaments and bookmarks with lighthouse logos.

1) The Board finds that Section 8.6.4 (1) authorizes the Mission Point Lighthouse gift shop to sell items relating to the Mission Point Lighthouse, Michigan lighthouses, and local history. (Exhibit 2)

2) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;
- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- b. The Township Board may authorize the sale of other items related to the lighthouse park.

1) The Board finds that the applicant, Mission Point Lighthouse, is requesting the sale of the following items per this section of the Ordinance: (Exhibits 3, 4)

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;

- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

- c. Net proceeds from the gift shop shall be placed in a designated fund to be used for operation and maintenance of the Mission Point Lighthouse and Lighthouse Park.

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

- d. No general funds may be used for the operation of the gift shop.

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

MOTION: Hoffman/Witkop to accept the Findings of Fact for SUP #111, 1st amendment and to approve the petition SUP #111-1st Amendment, application for Mission Point Lighthouse Gift Shop, located in Section 23 of Peninsula Township, and as legally described, based upon the general and specific findings of fact applied to the standards contained in this Zoning Ordinance, the following reasoning and subject to accompanying conditions:

Reasoning:

1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park.
2. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
3. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of governmental agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.

Roll Call Vote: Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes, Avery-yes and Rosi-yes

MOTION PASSED

2. The 81 on East Bay - Public Hearing

Reardon reviewed the application. The Planning Commission has reviewed the application and recommended for approval. The applicant has information on the secondary egress that has been placed in front of the Board tonight. The Township Engineer, Brian Boals has reviewed the geo-technical report and wetland delineation report. Reardon encouraged the Board to ask for Boals' comments.

Joe Quandt, Attorney for the Applicant, with him tonight is Jim Hirschenberger, Engineer from Mansfield and Associates, Petra Kuehnis from Mansfield and Associates and Kevin O'Grady, the property owner and developer. *Quandt* reviewed the application. The applicant is working out the terms of the easement for the second egress with the Trevor Road property owners just north of the project. Quandt also provided a rebuttal document to the information received recently. **Byron** asked what are the size limitations as of the homes to be built. *Quandt* said a minimum 2,000 sq. ft. to approximately 6,000 sq. ft. **Byron** asked the estimated cost of a home in the development. *Quandt* said it is a higher end development. **Rosi** asked about the size of lots 6-10 which are less than a ¼ acre. *Kuehnis* said the PUD ordinance allows for lots that are smaller as long as the project does not exceed maximum density. **Reardon** said the ordinance has a formula. Lots sizes can be reduced provided there is 65 % open space and no increase in density. **Witkop** asked Reardon to clarify R1B coastal zoning and does the 15% maximum lot coverage apply in a PUD. **Reardon** said a PUD as an overall maximum coverage which is 15% of the entire site. Each of these building lots could potentially have 47% of their building envelope covered and still be below the 15% coverage. **Witkop** said lots 6-10 are small lots with a minimum home size 2,000 sq. ft. there would be a larger percentage of lot coverage on a site very close to the water. It meets the 15% overall but that is concentrating the percentage right by the water which is not the point of R1B coastal zoning. **Reardon** said she understands the concern. Each lot will have to pull a soil erosion permit and may be subject to individual site plan storm water review when the LUP is pulled. **Byron** said she is struggling on percentage of lot coverage. The slope is where they are getting the additional space. The Township may need to look at the ordinance for lots on steep slopes. **Reardon** said as far as this review we have any opportunity to talk to the Township Engineer about this. *Quandt* said there is a lot of misinformation about how close the construction areas are to the toe of the slope. The construction areas are set back 40-100 ft. from the toe of the slopes. There is not the danger of slope stabilization that you have been led to be concerned about. **Avery** asked 10 lots will have private water access and 31 lots share docks. How the applicant plans on keeping people off the banks getting to and from the water? *Quandt* said the common area is the only area by permit and condo by-laws to use the dock permitted by Army Corp of Engineers. Only place there will be individual shore station is the individual lots that are at the south end of project. The Corp of Engineers permit the number of spaces and the condo documents will determine who gets the spaces. **Avery** asked about the shared septage treatment and will there a bond to guarantee operation. *Quandt* said the system is less than a 10,000 gallon system and the Township does not have to guarantee. The Planning Commission has recommended finance mechanisms for assurances. The applicant is prepared to address the issue. **Rosi** said if the residents from 11-41 units go down road to cul-de-sac, where are the cars going to park. *Quandt* said there is golf cart parking along cul-de-sac and parking in green space area along the road. **Witkop** said 30 shore stations are allowed. **Reardon**

said one dock with 30 access points. The individual waterfront lots can have their own dock. There could be 11 docks. **Witkop** said she is concerned about the restrictive covenants changing. *Quandt* said restrictive covenants cannot change without the approval of the Township. *Wendling* will review the condominium documents and insert provisions in a manner that they cannot be amended out of the condominium documents. **Witkop** asked does that require the Township to enforce the restrictive covenants. **Wendling** said the conditions of any approval would be part of the permit process therefore it would be a violation of the PUD permit and handled like any other violation of the permit. There are going to be situations that the Township will be involved. **Reardon** said the Township is asking the Developer to embed within the condominium documents those items within the ordinance they need to be aware of and build in mechanisms to assist in enforcement. **Witkop** said the ordinance allows for stairways to be built down to the shoreline but the restrictive covenants will not allow. How do we stop the stairways? *Quandt* said because there are four ways to enforce – any property owner can enforce, the Association can enforce, the Township can enforce the restrictive covenant in a lawsuit and the Township could revolt the PUD. **Reardon** said it applies to zoning because it is a condition of the SUP/PUD permit approvals. **Byron** asked if there is only one stairway for this entire development. *Quandt* said units 11-41 would have to access at the cul-de-sac. The other lots would have access that the Township would allow. **Reardon** said the grade is different at those lots. **Byron** said if there is one dock with 30 stations it will look like a baby marina. The Township has tried hard to not have this appearance. Are there any other developments that have anything that large? **Reardon** said yes The Bluffs. The plan was designed based on 7.4 which is the supplemental Great Lakes regulations. **Byron** asked about possible contamination on the property and an environmental assessment. **Reardon** said it is her understanding that the property as not been farmed in 30 years. This was discussed at the Planning Commission. There is nothing in the ordinance that the Township could compel an environmental assessment. **Wendling** said it is not a Township issue it is a Health Department issue. **Byron** said the Township is responsible for the health, safety and welfare so it is a Township issue. **Wendling** said yes but that is carried out through provisions in the zoning ordinance. **Byron** said we have been trying to change the zoning ordinance for at least five years now. As a Trustee, Byron has yet to see any revision. Byron does not see how the Township can have a Master Plan and ask the Planning and Zoning Department to enforce the ordinance when it does not support the Master Plan. The Township needs to step back and get the zoning ordinance in line with the Master Plan. It is not fair to our constituents who pay tax dollars to protect open space and farm land and then allow something like this development to happen. *Quandt* said farmed area will be land balanced and that is how to mediate lead arsenic. **Byron** said she concerned about the steep slopes. *Quandt* said agency reviews will have to be done and there are three layers of protection to address the steep slopes. **Rosi** said she is concerned how the terrain operates in regards to roads and driveways. **Quandt** said the Township has a robust private roadway ordinance. The roadways and driveways comply with the ordinance. **Rosi** asked what the slope percentage is currently. *Kuehnis* described explained the grading plan. There was also discussion about the trees that would be removed. **Witkop** asked if the restrictive covenants could restrict moorings. *Quandt* said they could insert something in the restrictive covenant to prohibit moorings however it is the bottomlands and at the jurisdiction of the Army Corp of Engineers. **Witkop** asked about the second point of egress. **Reardon** said for safety there should be a second point of egress but the ordinance does not require it. *Quandt* said it is not usually from what is elsewhere in the Township. The developer is working with the Trevor Rd. property owners for an emergency egress. Plan B is an emergency egress that comes between lots 40-41 and winds its way back down to the road. **Witkop** asked about the emergency access with Trevor Rd. because in the past these situations do not work well. *Quandt* said there will be a gate with a knox box. The association will maintain & plow the roadway. The goal is to unlock the gate and have one person plow the whole thing. *Witkop* would like to see that as a requirement not a goal.

Correia opened the public hearing at 8:15 pm

Jim Komendera, 4168 Rocky Shore Trail, said he lives on the bottom of the slope bordering this property. He and four of his neighbors are concerned about the runoff. A lot of the slope is being removed for those building sites. How much is the slope going to be pushed back? He does not think there is another 1,500 ft with this density. They are taking the total area of the open space and applying it to the whole development so they can squeeze these little lots on the water. He thinks the ordinance talks about discretion, discretion for the Township in applying the ordinance. Wendy mentioned coastal guidelines. Coastal guidelines would be a great compromise. The ordinance should give life to the Master Plan. Do you think our Master Plan is given life by this development? He does not think it is. Remember the word discretion because the Township has the discretion to decide on this. Taking 50% of the trees down is not protecting the natural setting. Mr. Komendera submitted letter from another resident.

Scott Howard, 420 E Front Street, said he represents property owners adjacent to the project. Mr. Howard encouraged to the Board to look at the documentation he submitted. This is PUD development which means it is asking for something than what they are allowed by right. The Board has discretion to ensure that what is being asked for is truly protecting the health, safety and welfare. This is an open space development that allows the developer to squeeze in almost all of the number of homes that would be allowed on that waterfront and on the ridgeline otherwise. This is packing more people and more activity on to the most sensitive natural features of the property. That is exactly what the ordinance says should not be done. The ordinance in Section 8.3.2 states “to provide a more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.” Section 8.3.2 also goes on to state “to provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project” and most importantly Section 8.1.3 states “that natural resources will be preserved to a maximum feasible extent.” We have heard a lot about the grading and he hopes the Board listens carefully. Mr. Howard would like to see the rebuttal report to his submission.

Connie Boyd 13699 Bluff Rd., said she has shared frontage on lake and we tried to put dock to one side of property and was told could not do it. Now she sees a large dock being put out at the end of property. If this is a condominium, it looks like it is mixed use.

Margianne Alfonso, 3951 Boursaw Rd., said her back porch looks at this area that will be destroyed. 40 units plus two cars each plus a kid with care and friends will increase the traffic in this quiet area. She hates to see something this large and ugly in the place of an area we all love.

Jerry Balmer 12535 Bluff Rd., said spent a lot of time tonight talking about what is legal but what is right? He and his wife moved here four years ago for the pure water, cherry orchards, grape vines and an adequate amount of housing interspersed amongst the natural areas. This is a special part of the world and the Board is in charge of it as Trustees. He does not believe that proceeding down the slippery slope of high density housing is consistent with maintaining the pristine nature of area. The way the terraced structure is described tells him there is a high likelihood that it would contain Native American burials. He would like to see the State’s Archeologist do an investigation.

Jolene Balmer, 12535 Bluff Rd., said she pleads with the Board to look ahead and protect our ground if not for us but for our children’s children.

Kirk Hornburg, 3915 Smokey Ridge Rd., thanked the Board and the planners for the careful consideration of what the law states. The spontaneous outburst of the residents shows the emotion involved. He and his wife

moved to Peninsula Township for the character of the township. There was foresight to purchase development rights and develop a Master Plan. The challenge is the zoning ordinance takes precedent over the Master Plan because that is the letter of the law and that is what will stand up in court. It is unrealistic to say no one will be able to build however the density here is at odds with the density he could have gotten living in Traverse City. He is concerned because he voted with his wallet to purchase development rights. Yet on his drive down Smokey Hollow he will be looking at 40 houses in an extremely dense area. He also has concerns about runoff.

Ellen Barnes, 11243 Bluff Rd., said she is concerned about the effect of the construction traffic to get to this project. She asked if the Land Conservancy was contacted. **Correia** said yes.

Bernie Soutar, 15249 Bluff Rd., said when the plan was changed from 35 units to 41 units, the units along water were added. There are four lots that are around 15,000 sq. ft. normally a lot should be about 25,000 sq ft for a normal house. The PUD cannot be controlled by the zoning it will be controlled by the PUD requirements. The four small lots create a potential problem. The Zoning Board of Appeals has seen a lot of cases with small lots. This is the weakest link in the project that will create a future problem.

James Shrider, 13669 Bluff Rd., said many years ago when the millage was going to be passed to purchase development rights he petitioned his neighbors to vote for it. He is surprised to find that something like this is possible given the fact the residents expressed their desire for something else. If the zoning ordinance allows for this, he suggests changing the zoning ordinance. The millage was passed to buy development rights but if not accompanied by zoning ordinances of a similar nature it will invite more developments of this type.

Katherine Hardy, 11261 Bluff Rd., said she is concerned about the safety on Bluff Road and the traffic. Although Smokey Hollow Road is the quicker way to this development she feels people will still take Bluff Road because it is more relaxing and prettier. She also worries about the about wildlife and ecosystems that would be disrupted and filter out to other locations. A subdivision close to her that was a beautiful hard wood area was cleared and logging trucks went by her house week after week. It was disheartening. She hates to see what the peninsula stands for be altered.

Ray Musser, 3940 Smokey Ridge Rd., said he moved her last year from Virginia. He would like the Board to study this and look at where the Township wants to be 10-20 years from now. He left Virginia to come here for tranquility. He also thinks the infrastructure will not support these new developments.

Cyril McMaster, 12005 Bluff Rd., said he bought a lot in 1958. It was a dirt road. Now it is full of bicycles, 50 at a time. There is a curve by the bottom of his house and someone is going to be killed.

Marlis Easterling, 13700 Bluff Rd., said she thinks the Master Plan was created so things like this could not happen. All these houses could destroy the picture of this Peninsula. It is a piece of beauty not found so often.

Chris Ney, 3859 Smokey Cove Dr., said she is concerned about the roads. Who will be responsible for maintaining Smokey Hollow Road and Boursaw Road? Are all the homes in this development going to be built by the developer? The Cove only has only 10 of 22 lots with houses on them. They have had construction for 10 years.

Chris Fifarick, 13046 Center Rd., said three dimensional drawings and possible designs of homes would have helped. He submitted a letter. **Correia** said it was received. Larger lots should be explored. A taxable

assessment for the community of larger properties would bring in more revenue for the Township. This development makes him think of Lochenheath. Hopefully the economy is better now.

Mark Nadolski, 10 McKinely Rd., said he speaking as a resident and President of Protect the Peninsula. He believed the Township Board does have the authority and the obligation to its citizens to require the developer to do environmental studies to make sure land is safe for its intended use and the waters of Grand Traverse Bay are protected from this project. We cannot take the developer and his consultant at their word without these studies. The ordinance cannot spell out everything that is why the Master Plan should be used as a guide by the Township Board and the Planning Commission to make sure the health, safety and welfare of its current and future citizens is protected. He stated questions he feels the Board should be addressing 1) Has an environmental assessment been done for lead and arsenic on this farmland? 2) How will the developer address surface storm water runoff to the bay? 3) Are or were there any underground or above ground storage tanks used for agri-chemicals on the property? 4) Are or were there any underground or above ground storage tanks used for hydrocarbon fuel products or oil tanks? 5) Were there any storage barns for agri-chemicals on this property? 6) Will the developer drill test wells to determine if the water being used for the drinking water is safe? The Findings of Fact that were presented at the Planning Commission do not reflect the major issues.

Gordon Hayward, 17777 Shii Taki Trail, said until January 2010 he was employed by Peninsula Township as the Planner and the Zoning Administrator. He is addressing the Board with his personal concerns. He is concerned that the Planning Commission findings to do not include provisions for Section 6.9. The requirements of that Section should be addressed. 1) He understands that the Planning Commission feels certain portions of Section 6.9 are not applicable because they do not comply with Act 59 - State Condominium Act. If this is true the Township Board might consider a moratorium until the Planning Commission can recommend required changes to zoning ordinance. 2) The essential character of the area is large lot single family residential. 3) He feels it is irresponsible of the Township and the developer to place a burden on adjacent property owners to use Trevor Road as an access. 4) The ordinance requires that private roads do not end in a long cul-de-sac. 5) Some of the lot lines are not at right angles to the road. 6) Grading 7) Enforcement of open space uses is always a problem. 8) sewage disposal.

Correia closed the public hearing at 8:50 pm

Hoffman asked the lots under 20,000 sq. ft. can we have those house limited so they are not building lot line to lot line. **Wendling** said the setbacks still apply and would have to follow the ordinance. **Hoffman** asked if the Board had more discretion on a PUD. **Wendling** said just like the Planning Commission there are Findings of Fact. The Planning Commission could have utilized the Findings of Fact to move this project forward or make a recommendation to deny the request for the PUD. In this case there is more information coming into the Township because the Township Board is the final decision maker with respect to PUDs and SUPs. Wendling recommended the Board digest the information that has been received and also provide an additional period of time for people to submit additional materials should they wish to do so. Wendling does not recommend the Board make a decision tonight. There is record from the Planning Commission decision and will add to that record in the exhibits. Yes, the Board has discretion because there will be Findings of Fact that will either support some of these standards or not support based upon the information that has been received and may be received until deadline for submittals. As legal counsel he is not as concerned about what the decision is but more concerned about how the Board goes about making the decision. If the decision is based on competent material and substantial evidence is on the record then he can defend it. The Board can add or make additional requests for additional expert review. Once the Board makes the decision, it will be based on a record that includes all of the exhibits inclusive of the meeting minutes, letters submitted and expert reports from all sides.

Findings can be crossed out, changed or altered. If the Board comes up with own findings they need to be tied to an exhibit directly so it supports your statement. Another option is remanding this back to the Planning Commission. **Hoffman** said she is a firm believer in site visits. She is in favor of tabling this but would like the Board to visit the site. **Reardon** said the Planning Commission did a site visit and set up a 2-3 hour block and Commissioners can two at a time. Staff can set that up if the applicant is willing. Applicant said he is willing. **Quandt** said there has been a lot of discussion about density. It is important to understand that under the Township's zoning this is less than the 73 units allowed under the PUD ordinance it is also less than the 55 units available under use by right.

MOTION: Hoffman/Byron to table to the August 11, 2015 meeting for further deliberation. The record will close at July 27, 2015 at 5:00 pm.

ROLL CALL VOTE: Correia-yes, Hoffman-yes, Byron-yes, Avery-yes, Rosi-yes and Witkop-yes

MOTION PASSED

Rosi asked about the condition that Planning Commissioner Maguire added for financial assurance. **Wendling** said if the Board votes to approve the project that could be a condition.

3. Bond Refinance Resolution

Correia said Weatherholt met with bond counsel and the savings was in excess of \$220,000. It is privately bonded which was a recommendation of bond counsel.

MOTION: Hoffman/Byron to accept Resolution 2015-07-14 #1

ROLL CALL VOTE: Hoffman-yes, Byron-yes, Avery-yes, Rosi-yes, Witkop-yes and Correia-yes

MOTION PASSED

4. Lighthouse Grant Resolution

Reardon said this is a revised resolution. The original left off the program contact. Reardon checked with the Park Commission and they are comfortable with Reardon being the contact along with Maura Sanders.

MOTION: Byron/Rosi to accept Resolution 2015-07-14 #2

ROLL CALL VOTE: Byron-yes, Avery-yes, Rosi-yes, Witkop-yes, Correia-yes and Hoffman-yes

MOTION PASSED

5. CPO Agreement

Correia reviewed the agreement.

MOTION: Byron/Avery to approve revised CPO agreement and authorize Correia and Hoffman to sign the agreement.

ROLL CALL VOTE: Avery-yes, Rosi-yes, Witkop-yes, Correia-yes, Hoffman-yes and Byron-yes

MOTION PASSED

6. Homestead Hills Subdivision Streetlight Agreement with Township and Traverse City Light & Power

Hoffman said there was a street light on Homestead Road and it was turned off because their children got older. Now someone else is asking that it be turned back on but the Township has to have a contract with them.

Byron asked if the street light is Night Sky compliant. **Hoffman** said yes. **Witkop** asked if there is a majority in

the area that wants the light. **Hoffman** said it is one person is going to sign the contract and if no one else wants to help pay he will pay himself.

MOTION: Rosi/Byron to approve the street light agreement with Homestead Ct.

ROLL CALL VOTE: Rosi-yes, Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

7. Big Jon – Memo

Correia said there are items housed downstairs in the township offices for the Women’s Club, Historical Society, Peter Dougherty Society and the Library. It is a mess downstairs and would like to get these items moved to the Big Jon building. The contract and lease at Big Jon is between the Park Commission and the Conversancy and Correia will get with the Park Commission Chair after getting the Board’s opinion on this matter. The lease for the space for these groups would be \$7 per month. We do not charge them now. Correia asked how the Board feels about this. **Byron** said to charge \$1 so they understand it is a business transaction. **Rosi** asked about Bob Wilkinson. **Correia** said Wilkinson will pay his portion. **Hoffman** said she is all for this. There was Board consensus to move forward with this item.

8. Cleaning Township Building and Hall – Verbal

Hoffman asked if the Board will approve hiring someone with a certificate of liability to clean the common areas and the Townhall. There was Board consensus to move forward with this item.

9. Boystak Resolution & Richey Resolution

Akerely, Township Assessor, reviewed the two resolutions regarding the properties. There is a buyer for the Richey property and they are seeking assurance from the Township that the sale of a small piece property to the Vozza’s for road access purposes in 2003 does not violate the restrictive covenants and two potential building lots still remain on the Richey property. Vozza’s bought the parcel to relieve the Richey’s of liability.

Wendling said this came about as result of buyer for the Richey property. The buyer’s counsel was concerned because the restrictive covenant there are nuances that are different on parcels A-E. Most importantly on parcel E it states to not do a split except a split for two parcels for residential dwelling on each of those parcels. The split was approved through land division at the Township level in 2003 for that road. It probably would have been better if done as an easement but difficult to re-do. After discussions with Richey’s attorney it recommended that the Township pass a separate resolution. Wendling recommends that the resolutions be passed to help the property owners. Byron is concerned that this may violate the American Farmland Trust. Wendling told the Richey’s attorney it is their burden to talk to someone from the American Farmland Trust.

MOTION: Hoffman/Witkop to approve resolution 2015 -07-14 #3 Richey

Roll Call Vote: Rosi-yes, Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

MOTION: Hoffman/Witkop to approve resolution 2015-07-14 #4 Boystak

ROLL CALL VOTE: Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes, Avery-yes and Rosi-yes

MOTION PASSED

CITIZEN COMMENTS

Chris Fifarick, 13046 Center Rd., said regarding The 81 acre parcel, it was tabled from the public stand point

what more are people able to do to voice do? **Hoffman** said submit letters up until July 27, 2015 at 5:00 pm. There questions asked by the public tonight when will they will answered. **Reardon** said anyone can submit questions or additional information. The Board will have that information for a week before the meeting and if it generates questions from Board they will ask.

BOARD COMMENTS

Avery said it would be good to know would the Township insurance step up to defend the Township decision on The 81. **Wendling** said that should not be part of the Board's consideration. The ordinance needs an escrow provision that allows the Planning Commission or the ZBA on bigger projects to take an escrow to cover the expenses. **Rosi** said look at The Orchards file because did require an escrow. The ordinance needs to be revised. **Byron** asked about the meeting regarding Bonobo. **Reardon** said if the Board would like a meeting about Bonobo she can setup a time with the owners so they can be present. **Bryon** asked Wendling for information on intent. There is intent in the ordinance that fruit is planted that can be processed into wine. **Wendling** said the ordinance says crops. Unless the language is ambiguous the Township is stuck with the language those are the rules of statutory construction. **Rosi** asked how the Board can make certain that the language in the ordinance refers to fruit for wine making. **Reardon** said there are changes being put into the new winery language. **Witkop** asked what needs to be done to get the changes to the ordinance done. **Reardon** said if the Board would like to explore the option of bringing in additional help, staff welcomes additional help. **Wendling** said Reardon has been working hard on the ordinance. An overall fix needs to be done. There are outside planners that could be brought in on a contract basis. **Witkop** said she would like to see this topic on next agenda for at least further discussion.

MOTION: Avery/Rosi to adjourn at 10:03 p.m.

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for August 11, 2015

**PENINSULA TOWNSHIP BOARD
REGULAR MEETING
August 11, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Correia, Hoffman, Avery, Rosi, Byron, Weatherholt and Witkop
ALSO PRESENT: Peter Wendling, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning and **Deb Hamilton**, Recording Secretary
ABSENT: None

CHANGES/ADDITIONS TO AGENDA

MOTION: Rosi/Weatherholt to approve agenda as amended.

Avery asked to add Discussion Regarding Placement of Boat Dock as Business Item #6.

Byron asked to add Brush Pick-up as Business Item #7 and American Waste Contract as Business Item #8

Roll Call Vote: Rosi-yes, Witkop-yes, Weatherholt-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

Marc McKellar, Grand Traverse Road Commission Board, 250 East River Rd, Traverse City, spoke about storm clean-up.

Scott Howard, 420 E Front Street, Traverse City, respectively requested the Board take public comment on items on the agendas. **Correia** respectively declined the request.

CONFLICT OF INTEREST

Byron said recused herself on Business Item #1 – The 81 on East Bay development due to a conflict of interest.

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Edit lists of invoices & additions to the edit list of invoices
4. Meeting Minutes – July 14, 2015 – Regular Meeting
July 27, 2015 – Special Meeting
5. July 2015 Payroll

Hoffman added additional reports and addition to the edit list of invoices totaling \$42,794.92.

MOTION: Witkop/Weatherholt to accept the Consent Calendar Agenda as amended with items added by Hoffman.

ROLL CALL VOTE: Witkop-yes, Weatherholt-yes, Correia-yes, Hoffman-yes, Byron-yes, Avery-yes and Rosi-yes

MOTION PASSED

BUSINESS

1. The 81 on East Bay (tabled from July 14, 2015)

Byron left the board to sit in audience.

Joe Quandt, representing the developer, introduced developer Kevin O’Grady and his family and Doug Mansfield and Petra Kuehnis from Mansfield and Associates. **Wendling** said this is the deliberation portion of this request at this point the applicant will only be taking questions and not making a presentation. **Rosi** asked how many trees will be removed. *Mansfield* said approximately 10.5 acres. **Rosi** said at the Planning Commission, Tom Maguire, Planning Commissioner; discussed the question of performance bonds guaranteeing the completion of the project. *Quandt* said the applicant agreed to work with the Township to develop an appropriate financial assurance mechanism to ensure that the infrastructure development is completed. That can be a condition of the Township Board’s approval. There is already a provision in the Master Deed and the By-laws and also State law requires that a bond be posted with the Michigan Department of Environmental Equality for the completion and funding of the waste water treatment facility. **Rosi** said in the ordinance the definition of Cul-de-sac is a short road. The cul-de-sac in this development is almost a mile. **Rosi** asked why there is not another access on the west and eliminate the cul-de-sac. The house on Lot 1 could have 410 cars passing every day. There must be a way to get that road down to Boursaw Rd. *Quandt* said we are only asking to be treated the same way as other developments. There are 40 other developments that have this kind of road. If the road goes through more trees will be lost and there will be more topographical destruction. **Avery** asked how much dirt will be hauled away. *Mansfield* said none. **Hoffman** asked Reardon to address definition of cul-de-sac. **Reardon** said she worked with the Township Engineering and with the Township Attorney. **Wendling** said when looking at a zoning ordinance the definitions are meant to clarify as they apply to the regulations contained in the ordinance. Also have to look over time at the administration of the ordinance by the Township to see how that matches with both the regulation and the definition. Short/long it is not a specific definition. When these things occur do not have a good legal ability to shorten the cul-de-sac. **Witkop** said in the July 27, 2015 letter from Mansfield which depicted the use-by-right and the PUD, there was a second road connection in the use-by-right plan. Why not put the second road connection in the PUD plan? *Quandt* said in order to get a 12% grade out of the connection there would be a lot of dirt moved. If develop a use-by right-plan with 55 lots, trading off saving any trees or any of the topography for a second connection on Boursaw Rd. The Township’s main issue is safety and it has been addressed. **Witkop** asked if the applicant has the easement language in place today. *Quandt* said there are drafts of the cross easement agreement and they

have met twice with the Trevor Rd. neighbors. If the applicant cannot come to an agreement with the Trevor Rd., the applicant has provided the Township with an internal connection. **Reardon** said if there is a condition Reardon requests that the Township Board allow for reduction in lots or lot sizes to meet the PUD standard. Staff does not do minor amendments to SUP it would have to come before the Township Board. **Hoffman** said it is her understanding that the Trevor Rd. access would be gravel with grass on top of it. She does not believe that is good access. The road has to be gravel or paved. *Quandt* said fine with applicant but Trevor Rd. neighbors may not like it. It supports a firetruck and is wide enough. **Chief Ronk** said he has seen it done both ways. Whether it is gravel or not it will have to be marked and cleared. It has to support the fire trucks. **Correia** asked who will be maintaining the water storage tank. *Quandt* said the desire is to have the Fire Department to maintain it because they use it. The developer is not unwilling to be part of the process and fund. That can be part of the financial assurance mechanism. *Mansfield* said the applicant is willing to support it but think it is best for the Fire Department to oversee it. **Chief Ronk** has no issues with overseeing the water storage tank but who will be responsible if it fails 10 years from now. *Quandt* said an appropriate maintenance agreement can be a condition. **Correia** asked if roads are in the open space calculation. **Reardon** said no but when the final design of the egress is complete the open space calculation will have to be done again. **Avery** said the septage treatment program bonds are 5 year bonds. The key is to transfer it to the Association. Avery does not see any numbers or timeframes on that. *Quandt* said Section 4.5 of the bylaws cover that issue. **Hoffman** asked for an explanation about what exactly is going to be graded on top of the ridge. *Mansfield* said there are small hummocks and angulations on the top that will be cut off to work with roads, views, houses, sewer and storm systems. No house can be built within 60 ft. of where the slope breaks. Major grading will not go down the slope. *Quandt* said the natural contour of this property will remain the same. **Rosi** said the applicant is supposed to work with the environment to get a SUP. *Mansfield* said Rosi is comparing the PUD to a vacant landscape. The parcel has been reviewed by agencies. To compare the impact should compare to other uses permitted by right. Is this PUD saving more land than the Township protects to agriculture. Could the Township prevent the owner from terracing for grapes? No. The permitted use-by-right design meets the standards permitted by right and through plat the Township would have to approve this. **Reardon** said there were issues with this plat and it is a misrepresentation to say the plat would be approved. *Mansfield* said there is nothing in the Ordinance that would stand given the 1997 Land Division Act as amended that would protect this landscape. The developer is not protecting every ridge line or tree but is protecting a majority of it in perpetuity. *Quandt* said a PUD gives the Township a lot more options to control. When the ordinance speaks to preserving natural resources to the extent feasible it is talking about this project versus other uses. It does not mean comparing with what it is right now because it is not anything right now. If applied that analysis nothing could ever be built. *Quandt* said Mr. Weatherholt was not at the last meeting. Has he reviewed the materials and the minutes of the last meeting and have the ability to make a decision? **Weatherholt** said yes he has read the public comments and was not at the meeting but was still following it.

Peninsula Township Planning & Zoning Department

13235 Center Road
Traverse City, MI 49686

**SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
August 11, 2015**

**PENINSULA TOWNSHIP BOARD
DECISION AND ORDER**

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

Hearing Date: May 18, 2015, June 15, 2015, July 14, 2015 and August 11, 2015

PROPERTY DESCRIPTION

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

APPLICATION

The applicant is asking for review by the Peninsula Township Board for the development of a forty-one (41) unit condominium subdivision planned unit development (PUD) within the Rural and Hillside (R-1A) and the Coastal Zone Single and Two-Family (R-1B) zoning districts.

The Board having considered the Application, a public hearing having been held on May 18, 2015 before the Planning Commission and July 14, 2015 before the Township Board after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered 15 Exhibits, and the Board having reached a decision on this matter, states as follows:

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel is located in Section 14 of the Township and has approximately 945 feet of road frontage on Boursaw Road. (Planning Commission Exhibits 1, 3 & 19 and Board Exhibit 3)

- b. The Board finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at roughly 82.63 acres. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use permit approval to develop a Condominium Subdivision Planned Unit Development on site as permitted by Section 6.2.4 and Section 6.3.2 of the Peninsula Township Zoning Ordinance. (Planning Commission Exhibits 1, 3 & 19)
- b. The Board finds that the final site plan and special use permit are subject to the requirements of 8.1.3 - Basis of Determination and 8.3 - Planned Unit Developments of the Peninsula Township Zoning Ordinance. (Planning Commission and Board Exhibit 1)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned R-1A, Rural & Hillside and R-1B, Coastal Zone Single and Two Family encompassing two (2) parcels which is considered conforming to local zoning. (Planning Commission Exhibits 1, 3 & 19)
- b. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the site plan. (Planning Commission Exhibits 3, 4, 5, 6, 7, 8, 11, 12, 13, 14)

1.4 Land Use Pattern- The Board finds the following land uses to be in existence on the date of this report adjacent to the proposed development.

- a. **North-** The land adjacent to the north of the subject properties is zoned R-1A, Rural & Hillside and is primarily residential in use. (Board Exhibits 1 and 3)
- b. **South-** The properties adjacent to the south are zoned R-1B, Coastal Zone Single and Two Family. The Cove, a residential subdivision, and other residential uses are prominent.
- c. **East-** The property is bound by East Grand Traverse Bay to the east. (Board Exhibit 3)

- d. **West-** The property located west of the subject is zoned R-1A, Rural & Hillside with the exception of a 12-acre parcel at the Northwest corner of the subject site that is zoned A-1, Agriculture district. The land is primarily low-density residential not including the active agriculture land at the northwest corner previously mentioned. (Board Exhibit 3)
- e. The Board finds that the future land use plan identifies the subject location as an area designated for rural agricultural usage. The objective of the rural agriculture use category is to preserve the important natural resources of the Township while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. (Planning Commission and Board Exhibit 2)
- f. The Board finds that development of property as single family residential is a use by right in the R-1A, Rural and Hillside residential zoning district as well as the R-1B, Coastal Zone Single and Two Family residential district. (Planning Commission Exhibits 1 & 19)
- g. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, Michigan Department of Environmental Quality, and the Army Corps of Engineers.

MOTION: Witkop/Hoffman the Board is satisfied with the General Findings of Fact.

MOTION PASSED (Rosi Opposed)

2. Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

- i. The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)**
- ii. The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 1, 2, 8 & 19)**
- iii. The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1 & 29 and Board Exhibit 3)**
- iv. The Board finds that under the master plan, chapter 3, Land Use and Zoning Map No.4 depicting existing land use, shows that the existing land use for The 81 property is residential regardless of the fact that the property is located in both the R-1A, Rural and Hillside and R-1B, Coastal Zone Single and Two Family Zoning Districts. As such, the proposed PUD is harmonious and appropriate in appearance with the existing use and character of the vicinity. (Planning Commission Exhibits 1, 2 (land use map no. 4), 8 & 19.2 and Board Exhibits 3, 4, 5 & 6)**
- v. The Board finds that the intent and purpose of the Rural and Hillside Residential District (R-1A) is to contain standards for the continued development of very low density residential properties, inclusive of fragile hillside areas and to interface these areas between more intensive residential uses and agricultural land uses. The district includes existing low density residential developments. The Board finds that the Coastal Zone Residential District (R-1B) provides additional standards for residential where more intensive development would deteriorate the peninsula environment and less intensive development is not essential to maintenance of the established environment. The Board finds that the proposed PUD provides for a buffer zone along the property's border with East Grand Traverse Bay**

of 1500 feet which will remain as an undeveloped setback other than the dock area and that the PUD itself by preserving 65% of the property, being 54 acres, as open space conforms with the intention of both districts by decreasing the density which would otherwise be allowed in these districts should the property be developed in a manner otherwise allowed under the zoning ordinance. (Planning Commission Exhibits 1 –section 6.3.1 Intent and Purpose, section 6.5.A.1, & 19.2 and Board Exhibit 7)

This standard HAS been met. (5-1 Rosi)

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
 - i. **The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - ii. **The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1, 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - iii. **The Board finds that the development of the proposed PUD should not negatively impact adjacent neighbors. The applicant has designed the housing sites to complement the existing residential use pattern which incorporates 54 acres of the site in open space. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - iv. **The Board finds that the PUD as submitted preserves open space, keeping 65% of the site undeveloped, inclusive of 1500 lineal feet of waterfront preserved as common open space, for the proposed project. The Board further finds that the lot locations, regardless of the slopes in the area, are located sufficiently within the interior of the property of the project site such that view sheds are sufficiently preserved both landside from township public roads as well as from the water. The**

Board further finds that there is no evidence that the development would disturb existing or future uses of the land within the vicinity. The Board further finds that the preservation of the open space is a substantial improvement over other non-PUD development rights as provided in the Peninsula Township Zoning Ordinance which, in turn, benefits the properties within the immediate vicinity and the community as a whole. (Planning Commission Exhibits 1 – land uses allowed in the R-1A and R-1B zoning districts, 2 – map no. 4, 8, 19.2, 19.5, 19.7 & 19.9 and Board 3)

This standard HAS been met. (5-1 Rosi)

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.
 - i. **The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7.10, 19.7. & 23)**
 - ii. **The Board finds the development will be served by a community septic facility and private septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Planning Commission Exhibits 15 & 19.10.iii)**
 - iii. **The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning commission Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
 - iv. **The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Planning Commission Exhibits 13 & 19.10.iv)**

- v. **The Board finds that an emergency access to the site via Trevor Road allows for adequate fire and emergency access on the north side of the development to the standards of the Fire Chief. (Board Exhibit 10)**

This standard HAS been met. (5-1 Rosi)

- d. Not create excessive additional requirements at public cost for public facilities and services.
 - i. **The Board finds that the applicant will be responsible for any improvements required as part of this proposal. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the development as presented will not create excessive additional requirements at public cost for public facilities and services given that development of single family residential properties is allowed in the zoning districts in which the property is located. The Board further finds that the applicant will be incorporating adequate service roads within the development and there is otherwise no evidence of any excessive additional requirements at public cost for public facilities and services on the record. (Planning Commission Exhibits 11, 12, 19.3, 19.7, 19.10, 20, 21, & 23 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.
 - i. **The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the very nature of residential development is not the type that results in a use generating fumes, glare or odors. The Board further finds that there has been no evidence presented that the**

proposed development will result in negative activities or uses which would compromise the general welfare of township citizens as a result of fumes, glare or odors. (Planning Commission Exhibits 11, 12, 19 & 21 and Board Exhibit 3)

This standard HAS been met. (6-0)

2.2 Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. Address, resolve and comply with the recommendations presented by the Peninsula Fire Chief.**
- b. Proof of compliance with all Federal, State, County, Township and other governmental regulations relative to the establishment of a forty-one (41) unit Condominium Subdivision Planned Unit Development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the Special Use Permit.**
- c. Relocate the entrance sign to be compliant with section 7.11 of the Ordinance.**
- d. Remove the second proposed sign to be compliant with section 7.11 of the Ordinance.**

THE ABOVE FINDINGS ARE NOT REQUIRED AS THIS IS NOT A STANDARD, BUT RATHER AN ADVISORY STATEMENT. IF THE TOWNSHIP BOARD APPROVES THE PROJECT THERE CAN CERTAINLY BE CONDITIONS RELATED TO THE STANDARDS CONTAINED IN THE ZONING ORDINANCE WHICH WOULD APPLY TO THE PROJECT.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Commission and the Township Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.**

- i. The Board finds that the applicant is the owner/operator of the petitioned property and may legally apply for said review process. (Planning Commission Exhibit 19)**

This standard HAS been met. (6-0)

- b. That all required information has been provided.
 - i. The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided site plans. (Planning Commission Exhibits 19 & 21)**
 - ii. The Board finds that the applicant will be required to submit all necessary permits (i.e. soil erosion, health department, etc.) and has already submitted some of these permits all of which will need to be finalized and issued prior to the final approval of a Special Use Permit and PUD. (Planning Commission Exhibits 13, 15, 18 & 19)**

This standard HAS been met. (6-0)

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.
 - i. The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibit 19)**
 - ii. The Board finds that each individual unit will be subject to the land use permitting process to ensure all structures comply with the Special Use Permit and the requirements of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**
 - iii. The Board finds the proposed PUD shall be designed in accordance with section 8.3 of the Ordinance as discussed in section 3.2 of these findings. (Planning Commission Exhibits 1, 19 & 21)**

- iv. **The Board finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7 & 19 and Board 3)**
- v. **The Board finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)**
- vi. **The Board finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Planning Commission Exhibits 19 & 21 and Board Exhibit 3)**
- vii. **The Board finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)**
- viii. **The Board finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 11, 12, 14, 19.10.ii, 20 & 21) (10, 19.10.iii)**

This standard HAS been met. (6-0)

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
 - i. **The Board finds that a permit to construct the private road curb cut from the Grand Traverse County Road Board shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission and Board Exhibit 1)**

- ii. The Board finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated January 22, 2015 that department has indicated they have no objections to the plan. (Planning Commission Exhibit 13)**

- iii. The Board finds that a soil erosion permit for a forty-one (41) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval for a thirty-six (36) unit Planned Unit Development has been granted at this time. Please see the letter dated January 23, 2015 from the Grand Traverse County Soil Erosion – Sedimentation Control Department for the specifics related to this review. (Planning Commission Exhibits 14 & 19.10.i)**

- iv. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 12 & 14)**

- v. The Board finds that the site plan shall meet all necessary requirements related to the Great Lakes waterfront as mandated by the Michigan Department of Environmental Quality and the Army Corps of Engineers. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 9 & 29)**

- vi. The Board finds that storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Planning Commission Exhibits 19.10.ii, 20 & 26)**

vii. The Board finds that the Grand Traverse County Health Department (GTCHD) has preliminarily reviewed the community septic system and individual septic systems for units 1-4. They have provided initial comments for the thirty-six (36) unit plan. Please see the email dated February 18, 2015 from Daniel Thorell for specifics related to this ongoing review. All required well and community septic permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibit 10)

viii. The Board finds that an emergency access to the site via Trevor Road allows for adequate fire and emergency access on the north side of the development. (Board Exhibit 10)

This standard HAS been met. (6-0)

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
 - i. The Board finds that the applicant is cooperating with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the issuance of the SUP. (Planning Commission Exhibits 9, 10, 11, 13, 15, 18, 19.10.i-vii & 20 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
 - i. The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay**

waterfront, exclusive of dockage facilities. As such, given the other options available for development under the zoning ordinance, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)

This standard HAS been met. (4-2 Rosi & Witkop)

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.**
 - i. The Board finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. (Planning Commission Exhibit 19)**
 - ii. The Board finds that the proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. (Planning Commission Exhibits 1 & 19)**
 - iii. The Board finds that the Michigan Department of Environmental Quality will review the plan to ensure compliance with applicable State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. A permit, if necessary, from this agency shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Planning Commission Exhibit 29)**
 - iv. The Board finds that the Army Corps of Engineers will review the plan to ensure compliance with Federal regulations. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from this agency shall be submitted to the Planning & Zoning**

Department prior to the issuance of the SUP. (Planning Commission Exhibit 9)

This standard HAS been met. (6-0)

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
 - i. **The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Planning Commission Exhibits 11, 14 & 19.10.i-iv, 19.11 and Board Exhibits 4, 5 & 6)**
 - ii. **The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14 and Board Exhibits 4, 5 & 6)**
 - iii. **The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Board Exhibits 4, 5 & 6)**
 - iv. **The Board finds that the applicant shall provide a confirmation by a qualified consultant for the wetland delineation shown on the plans as requested by the Township Engineer. (Planning Commission Exhibit 11)**

This standard HAS been met. (6-0)

- i. That the proposed development will not cause soil erosion or sedimentation problems.
 - i. **The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that**

**shall be protected to the extent required by governing regulations.
(Planning Commission Exhibits 14 & 19 and Board Exhibits 4, 5 & 6)**

ii. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14 and Board Exhibits 4, 5 & 6)

iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.

This standard HAS been met. (6-0)

j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

**i. The Board finds that the applicant will be required to maintain all storm water runoff on site. The storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance.
(Planning Commission Exhibits 19.10.ii, 20 & 26 and Board Exhibits 4, 5 & 6)**

This standard HAS been met. (6-0)

k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

i. The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other

options available for development, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site, per se. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)

- ii. The Board finds that the development of the road appears to be reasonable in the context of the existing topography and existing drainage patterns. (Planning Commission Exhibit 19)**
- iii. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14)**
- iv. The Board finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP.**

This standard HAS been met. (5-1 Rosi)

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.**
 - i. The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Planning Commission Exhibit 19)**

This standard HAS been met. (6-0)

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.**
 - i. The Board finds that the development of the site is to occur in one phase. (Planning Commission Exhibit 19)**

This standard HAS been met. (6-0)

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.**

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7.10, 19.7. & 23)**
- ii. The Board finds the development will be served by a community and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Planning Commission Exhibits 15 & 19.10.iii)**
- iii. The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning Commission Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
- iv. The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Planning Commission Exhibits 13 & 19.10.iv)**

This standard HAS been met. (6-0)

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.**
 - i. The Board finds that the site shall have the required landscaping per the Zoning Ordinance. Specifically, the residential units shall have street trees as required by section 6.9.3.5 of the Ordinance. The site shows the appropriate buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. The shared waterfront shall be subject to section 7.4.4 of the Ordinance ensuring appropriate screening of the site from the water. (Planning Commission Exhibits 1 & 19)**

This standard HAS been met. (6-0)

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - i. **The Board finds there is one (1) parking area located on the west side of 81 Ave to accommodate the shared waterfront as required by section 7.4.2 (c) and (c). These spaces are in compliance with the Ordinance and are outside of the private road right-of-way. This layout will allow traffic to flow uninhibited within the site and will not impact traffic off-site. (Planning Commission Exhibits 1 & 19)**

This standard HAS been met. (6-0)

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - i. **The Board finds that there is no pedestrian infrastructure proposed as part of this development. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1, 15, 18 & 19)**

This standard HAS been met. (5-1 Rosi)

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that there are no proposed refuse containers as part of the general proposal. Each unit will provide for individual garbage removal and shall be subject to Ordinance #43 Solid Waste of Peninsula Township. (Planning Commission Exhibit 19)**

This standard HAS been met. (6-0)

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-1B) zoning districts. While the Board recognizes that development is going to cause disturbance to the land, the Board finds that the PUD as proposed preserves 54.23 acres as undeveloped open space. The Board further finds that although narrow, a setback along the coast of East Grand Traverse Bay of 1500 lineal feet of undeveloped property (exclusive of dockage facilities), is beneficial and in accord with the purpose and spirit of the ordinance as well as sound planning principles. The Board further finds given that there are other options available for development which could be much more intensive, the plan as presented with the preservation of open space meets the objectives of land use planning under the zoning ordinance. (Planning Commission Exhibits 1 ,2, 19, 20, 21 & 30 and Board Exhibit 3)**

This standard HAS been met. (4-2 Rosi & Witkop)

MOTION: Witkop/Avery all Specific Findings of Fact as provided in Section 8.1.3 the standards have been met.

MOTION PASSED (6-0)

3. Specific Findings of Fact – Section 8.3 (Planned Unit Developments)

3.1 Objectives – The following objectives shall be considered in reviewing any application for a special use permit for planned unit development.

- a. To provide more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the preservation of 54.23 acres of open space as well as the preservation of 1500 lineal feet of East Grand Traverse Bay frontage will preserve the natural character of the open fields largely contained within the open space areas as proposed. While the Board is mindful that the development will result in grading of slopes and removal of trees, given other development options under the zoning ordinance, the development as proposed provides for a desirable living environment for future purposes of units within the development both with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds and having negative impacts upon the lakeshore and other natural assets of the property. (Planning Commission Exhibits 10, 11, 12, 14, 19 & 20 and Board Exhibit 3)**
- ii. The Board finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Planning Commission Exhibit 19)**

This standard HAS been met. (5-1 Rosi)

- b. To provide open space options.

- i. The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30)**

This standard HAS been met. (6-0)

- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.
 - i. **The Board finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the zoning regulations contained in the zoning ordinance for zoning districts R-1A and R-1B provide a multitude of options for development at this site. Given the available options that the applicant has, the PUD does provide for the preservation of substantial open space, to wit; 54.22 net acres of undeveloped property as well as a strip of 1500 (lineal?) feet of East Grand Traverse Bay waterfront that will also remain largely undeveloped excepting the boat dock area. As such, the Board finds that when balancing market demands for desirable residential parcels in conjunction with the preservation of at least 65% of the property, the PUD as presented is a more creative and imaginative approach to the development of this parcel for residential purposes than what would otherwise be allowed under the Peninsula Township Zoning Ordinance. (Planning Commission Exhibits 1 –section 6.2, 6.3, 6.5.A; 11, 12, 13, 19, 20 & 23 and Board Exhibit 3)**

This standard HAS been met. (4-2 Rosi & Witkop)

- d. To provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. **The Board finds that the applicant’s plans do preserve 1500 (lineal) feet of waterfront property from direct development, excepting dockage facilities while also maintaining open space along Boursaw Road which results in minimal aesthetic changes viewed along the road corridor. The Board further finds that the small wetlands area on the portion of the property will remain preserved, resulting in an attractive**

development for residential housing. (Planning Commission Exhibit 19 and Board Exhibit 3)

This standard HAS been met. (4-2 Rosi & Witkop)

- e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
 - i. **The Board finds that The 81 has general design standards which allow for diversity in unit types. (Planning Commission Exhibit 19)**

This standard is NOT APPLICABLE.

- f. To provide for the retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.
 - i. **The Board finds the parcel is subject to residential zoning, is currently vacant and not being utilized for farmland. The Board further finds that this development does not impact farmland utilized in the township directly adjacent to the development or within the vicinity of the development. The Board further finds that the 65% open space will likely remain as fallow land. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**
 - ii. **The Board finds that the layout of the plan preserves 65% of the land for open space as confirmed by the Township Engineer. (Planning Commission Exhibits 19 & 30 and Board Exhibit 3)**

This standard HAS been met. (6-0)

3.2 Qualifying Conditions – Any application for a special use permit shall meet the following conditions to qualify for consideration as a planned unit development.

- a. The planned unit development project shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the

project acreage requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of the land.

- i. The Board finds that the proposed project is 81+ acres. (Planning Commission Exhibit 19 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- b. The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts. Individual planned unit developments may include land in more than one zone district in which event the total density of the project may equal but not exceed the combined total allowed density for each district calculated separately.

- i. The Board finds that the proposed development includes forty-one (41) units. This is less than the allowable number of units should the property be developed outside of the PUD ordinance as determined by the underlying zoning district regulations. The Board further finds that the property is zoned R-1A and R-1B. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- c. Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements. It is recognized that joining water and sewer ventures with contiguous or nearby land owners may prove to be expedient.

- i. The Board finds the development will be served by a community septic facility, individual septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer of Record (Engineer) to ensure they are compliant with all applicable regulations. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 1, 10 & 19)**

This standard HAS been met. (6-0)

- d. The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1 except as provided by Section 8.3.5 (1).
 - i. **The Board finds that the proposed density of the site is no greater than if the project were developed with the lot area requirements within the R-1A and R-1B zoning districts. (Planning Commission Exhibits 1 & 19)**
 - ii. **The Board finds that the density of the development is in compliance with Section 8.3.5 (1). The net acreage of the site is 82.63 acres. (Planning Commission Exhibits 1 & 19)**

This standard HAS been met. (6-0)

- e. Open space shall be provided according to Section 8.3.6.
 - i. **The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- f. For purposes of this Section 8.3, Opens Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. **The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81**

proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)

This standard HAS been met. (6-0)

- g. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.
 - i. **The Board finds that the proposal meets Section 8.3 of the Ordinance in these findings and below. (Planning Commission Exhibits 1 & 19)**
 - ii. **Section 8.3.4, PUD Uses that may be permitted: The Board finds that the applicant is proposing single family dwellings, open space in accord with Section 8.3.6 and a sign.**
 - iii. **Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that proposal reduces the size of the forty-one (41) units below the minimum lot size required by the underlying zoning according to the following calculations and within the allowances provided by the Ordinance as detailed here. The Site Acreage for density calculation is 82.63 acres less the fifteen (15) percent for the R-1A and R-1B requirement and is equal to 70.24 acres. Per the underlying zoning districts 92% (64.63 acres) of the Site Area Computation is subject to R-1A zoning 8% (5.61 acres) of the Site Area Computation is subject to R-1B zoning. Therefore the site will allow a maximum of 73 units to be developed. These units can be reduced in area below the minimum lot size required by the zone district in which the PUD development is located provided that the total number of units does not exceed that which is allowed by the underlying zoning. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

- iv. **The Board finds that the building envelopes are shown on the site plan and are not included as open space. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

- v. **The Board finds that the minimum lot area is 11,633.17 square feet as indicated in the application. (Planning Commission Exhibit 19 and Board Exhibit 3)**

- vi. **The Board finds that the maximum permissive building height for residential structures shall be 2.5 stories and not greater than 35 feet and accessory structures shall not exceed 15 feet. (Planning Commission and Board Exhibit 1)**

- vii. **Section 8.3.6, PUD Open Space: The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Exhibit 3)**

- viii. **Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: The Board finds that the maximum percentage of lot area covered by all structures is proposed to be 14% of the net acreage of the site as permitted by this section. This reflects an average permitted lot coverage of 47% of the individual units. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**

- ix. **Section 8.3.8, PUD Affidavit: The Board finds that the applicant shall record an affidavit with the register of deeds as required by this section of the Peninsula Township Zoning Ordinance.**

- x. The Board finds the Article VII of the Ordinance requires The 81 to address the following items:

Section 7.1.2, Sanitation Requirements: The Board finds the development will be served by a community septic facility, individual septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. All required permits shall be submitted to Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.2.5, Stormwater Detention: The Board finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Planning Commission Exhibit 20 and Board Exhibit 3)

Section 7.2.6, Supplemental Setbacks for Planned Unit Developments, Mobile Home Parks, and other Group Housing Developments: The Board finds that the site shows the necessary buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.4, Supplemental Great Lakes Shoreland Regulations: The Board finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. The proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. The Michigan Department of Environmental Quality and the Army Corps of Engineers will review the plan to ensure compliance with applicable Township and State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from these agencies shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Planning Commission Exhibits 1, 9, 19 & 29 and Board Exhibit 3)

Section 7.6, Off Street Parking and Loading Regulations: The Board finds that the proposal provides two (2) off street parking spaces for each dwelling unit as required by this section. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.7, Developments Abutting Agricultural Lands: The Board finds that the site plan shows the required 100 foot setback from agricultural lands found in section 7.7 of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.10, Road Standards: The Board finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and developed according to the standards found in Section 7.10 of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

Section 7.11, Signs: The Board finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Planning Commission Exhibit 1 and Board Exhibit 3)

The Board finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

The Board finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

The Board finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Planning Commission Exhibit 19 and Board Exhibit 3)

Section 7.14, Exterior Lighting Regulations: The Board finds that the applicant is not proposing any street lighting as part of this petition. All exterior lighting on the residential units shall comply with the standards set forth in this section at the time of application for a land use permit. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)

This standard HAS been met. (6-0)

MOTION by Avery, seconded by Weatherholt, based upon the general findings of fact and the specific findings of fact under sections 8.1.3 and 8.3 of the Peninsula Township Zoning Ordinance, SUP #123 is approved for both the Special Use Permit and the Planned Unit Development with the following conditions:

Conditions:

1. The Development shall meet adequate safety standards for fire protection subject to the Peninsula Township Fire Department review and approval including the provision of an additional egress for emergency purposes at either Trevor Rd or within The 81 proper. If provided within The 81 proper Staff shall be allowed to permit a reduction in lot size as warranted and based on the mathematical calculation for open space under the ordinance. The second egress should it be provided with The 81 proper shall be gravel or paved per review of Peninsula Township Fire Chief.
2. Proof of Compliance with all Federal, State, County, Township and other governmental regulations relative to the establishment of a Condominium Subdivision Planned Unit Development shall be submitted to the Peninsula Township Planning and Zoning Department prior to issuance of the Special Use Permit.
3. No material earth movement other than soil borings until the Special Use Permit is issued.
4. Requirement of a Performance Bond or other enforceable appropriate financial mechanism to ensure the construction and long term maintenance of the private roads, community septic system, fencing/landscaping, and emergency water tank as planned in accordance with SUP #123 based upon the recommendation of the Township Engineer and Accountant as required by statute.
5. Maintenance of the water tank will the responsibility of The 81 developer and Homeowners Association in the long-term and shall be verified annually to the satisfaction of the Peninsula Township Fire Department.
6. Detailed grading plans shall be supplied to the Township Engineer for the Township Engineer's review and approval prior to SUP issuance.
7. The management of the shared waterfront hoist/shore stations shall be defined and outlined within the condominium bylaws as per current zoning standards.
8. The shared water front open space shall allow one set of steps to the water and this shall be outlined in the condominium bylaws.
9. Relocate the entrance sign to be complaint with Section 7.11 of the Ordinance.
10. Review of Master Deed and Bylaws and site plan by Township Attorney to ensure compliance with these conditions and the SUP/PUD.

ROLL CALL VOTE: Weatherholt-yes, Correia-yes, Hoffman-yes, Avery-yes, Rosi-yes and Witkop-yes

MOTION PASSED

EXHIBIT LIST
TOWNSHIP BOARD MEETING AUGUST 11, 2015
THE 81 ON EAST BAY

1. Peninsula Township Zoning Ordinance, as amended through May, 2015
2. Peninsula Township Master Plan, as presented and amended through May, 2015
3. Updated site plan drawing of The 81 by Mansfield preliminary (last updated 4/27/15) with open space revised calculations, received May 7, 2015 (**this exhibit was listed as #22 for the PC hearing on June 11, 2015, however, the exhibit could not be located at that time, and is being added now as it was used at the TB public hearing on July 14, 2105).**
4. Motion as passed by the Planning Commission on June 15, 2015
5. Revised Findings of Fact dated June 17, 2015 based on the Planning Commission's motion of June 15, 2015
6. Minutes from the Planning Commission meeting held on June 15, 2015
7. Correspondence from citizens to the Township:
 - a. Undated letter from Shelly Drew
 - b. July 8, 2015 letter from Christopher Fifarek
 - c. July 13, 2015 letter from Brian Hyslop, M.Arch
 - d. July 13, 2015 letter from Grobbel Environmental & Planning Associates
 - e. July 13, 2015 letter from James Kevin Schrider
 - f. July 14, 2015 letter from Wendell Wayne Woodard
 - g. July 14, 2015 letter from Alan Blair
 - h. July 14, 2015 letter from Gordon L. Hayward
 - i. July 14, 2015 letter from Kadee Tseitlin
 - j. July 14, 2015 letter from Scott Howard (Olson, Bzdok & Howard)
 - k. July 14, 2015 letter from Dave Chapman
 - l. July 14, 2015 letter from Mansfield & Associates
 - m. July 16, 2015 letter from Pat Sharpnack
 - n. July 20, 2015 letter from Wes Benner
 - o. July 20, 2015 letter from Dr. Laurence M. Phillips
 - p. July 24, 2015 letter from Bill & Lois Byrne
 - q. July 24, 2015 letter from Louis Katz
 - r. July 24, 2015 letter from Jon & Maggi Steele
 - s. July 26, 2015 letter from Cathy Ross and Lillie Reed
 - t. July 27, 2015 letter from James Komendera
 - u. July 27, 2015 letter from Loren & Nancy Wolf
 - v. July 27, 2015 letter from Scott Howard (Olson, Bzdok & Howard)
 - w. July 27, 2015 letter from Mark Mullinax
8. Drawing of The 81 Development Company, LLC Emergency Access Exhibit dated 7-14-15
9. Peninsula Township Board Agenda from July 14, 2015
10. 14016 Plan Trevor Road Access Exhibit

11. 14016 Plan 16-color (without houses)
12. 10406 Plan Road PUD-41 Impact Study (not to scale)
13. July 27 2015 letter to the Township Board from Mansfield & Associates
14. August 4, 2015 email exchange from Petra Kuehins to Steve Ronk
15. July 14, 2015 Peninsula Township Board meeting minutes

Jill Byron left the meeting 10:07 p.m.

2. Ban Sky Lanterns

Tabled to Township Board's second regular meeting on August 24, 2015.

3. Set up interviews for Planning Commission and Zoning Board of Appeals Members

Hoffman asked the Board to extend the deadline for applications. Deadline was extended to August 20, 2015 at 4:00 p.m.

4. Villa Mari – Natural Disaster Relief Request

MOTION: Hoffman/Weatherholt to approve Villa Mari – Natural Disaster Relief Request.

MOTION PASSED

5. Research New Phone System – Verbal

Tabled to Township Board's second regular meeting on August 24, 2015.

6. Discussion Regarding Placement of Boat Dock

Tabled to Township Board's second regular meeting on August 24, 2015.

7. Brush Pick-up

Tabled to Township Board's second regular meeting on August 24, 2015.

8. American Waste Contract

Tabled to Township Board's second regular meeting on August 24, 2015.

CITIZEN COMMENTS

Cristin Hosmer, 17593 Shii Taki Trail, said on June 29, 2013 the road standards were discussed and they were supposed to be updated. She would like a report as to where the Township is on updating the road standards.

BOARD COMMENTS

Witkop asked about the progress of hiring a consultant to work on the Ordinance.

Weatherholt said the flag pole needs to be replaced.

Wendling said Subdivision Control Ordinance is not usable because created before the major amendments to the Land Division Act in 1997. There was Board consensus to have Township Attorney look at the issue.

MOTION: Witkop/Hoffman to adjourn at 10:30 p.m.

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for September 8, 2015

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

SPECIAL USE PERMIT
FINDINGS OF FACT
October 25, 2017

SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)

PENINSULA TOWNSHIP BOARD

SUPPLEMENTAL DECISION AND ORDER ON ISSUES REMANDED BY JUDGE RODGERS (UPDATED)

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

Hearing Date: May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17, 2016, and October 25, 2017

PROPERTY DESCRIPTION

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

SUPPLEMENTAL CONSIDERATION UPON REMAND

Introduction and Background

On August 11, 2015, the Township Board approved 81 Development’s application for a Special Use Permit and Planned Unit Development to build a 41 unit residential subdivision located on Bluff Road in Peninsula Township. An adjoining land owner appealed the decision to Grand Traverse County Circuit Court claiming that the approval of the application was (a) not supported by material evidence, (b) not authorized by law, and (c) *invalid* because of a single Trustee’s decision to recuse herself from the vote due to a conflict of interest. The Circuit Court (Judge Rodgers) denied the appeal and upheld the Township Board’s approval of 81 Development’s application. The Court found that the Board lawfully exercised its discretion under the Ordinance when it approved the application and determined that: (1) the natural resources will be preserved to the maximum feasible extent; (2) the open space meets the requirements of

Township Zoning Ordinance § 8.3.4(4) and § 8.3.6; and (3) the proposed SUP/PUD meets the objective set forth in Township Zoning Ordinance § 8.3.2.

Per Judge Rogers Decision and Order, the limited findings remanded to the Board for its independent determination pertain to (1) the location and functionality of an emergency access road and (2) whether the standards for soil erosion, grading, and storm water have been met. As the Township Attorney announced on November 17, 2016, “by order of the court, these are the only issues that the Township Board can lawfully consider. Any other issues or standards that the court did not specifically remand have [already] been decided” in favor of the applicant. (**Ex. 39, Nov. 17, 2016 Board Meeting Minutes, p. 3**)¹

The owners of 81 Development are entitled to a fair and unbiased decision – free of personal animus, bias, pre-judgment and favoritism. Indeed, the neutrality and impartiality of those who choose to vote on this application are essential to the fair, proper and unbiased administration of justice. The Peninsula Township Board Rules of Procedure require that a member of the Board **shall** disqualify himself/herself from deliberating and voting on a matter when the board member has made a public statement or taken action that would suggest that he/she has prejudged the matter or would in any way preclude him/her from affording the applicant and the public a fair hearing.

The trial court found that former Trustee Byron’s pre-hearing Facebook endorsement of an 81 Development opposition group disqualified her from “deliberating and voting” on 81’s application. Therefore, if any current Board members have publicly expressed opposition to the 81 Development, those members must (prior to “deliberating and voting” on the application) make a good faith determination that he/she can put aside their publicly stated opposition and decide this matter based on information produced at the hearing and according to the law.

Relevant Standards

The Board’s consideration of the remanded issues relate to the following standards of the Township Zoning Ordinance: Section 8.1.3(1)(c), Section 8.1.3(3)(d), Section 8.1.3(3)(h), Section 8.1.3(3)(i), Section 8.1.3(3)(j), Section 8.1.3(k), Section 8.1.3(3)(n), Section 8.3.3(7) and Section 7.2.5 of the Township Zoning Ordinance.

¹ Subsequent to Judge Rogers’ Decision and Order, the 81 Development and the Township were involved in litigation in the 13th Circuit Court for the County of Grand Traverse, Case No. 17-32081-CZ relating to Judge Rogers’ remand. All documents and exhibits of this litigation are publicly available and hereby incorporated by reference.

Board Action

The Township Board has properly scheduled and noticed a public hearing (held on October 25, 2017) to consider the remanded issues related to 81's application for Special Land Use and Planned Unit Development. After considering 81 Development's proposed findings and attached exhibits, papers, letters, statements and arguments at the hearing, as well as the letters and comments submitted by members of the public, the Township Board has reached a decision on this matter. After review and consideration of the testimony and material submitted by the petitioner and the public, we find, order and decide as follows:

THE BOARD'S DECISION AND ORDER OF AUGUST 11, 2015 IS SUPPLEMENTED AS FOLLOWS:

Section 8.1.3(1) General Standards:

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

The Board's findings and determination that the applicant met all of the requirements of Section 8.1.3(1)(c) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (See Exhibit 1, pp. 9-10).

The following supplemental findings concern the remanded issues of the "emergency access road" necessary for fire protection and "storm water" facilities:

- i. After reviewing the studies, reports, and letters of the Peninsula Township Engineer (Brian M. Boals) and an independent consultant retained by the applicant, the Township Board finds that the storm water drainage patterns and calculations as well as the storm sewer sizing and water retention plan are acceptable and comply with the Peninsula Township Storm Water Control Ordinance. (Exhibits 4, 7, 11)**
- ii. After reviewing the separate and independent findings and reports of the Peninsula Township Fire Department and an independent consultant retained by the applicant (Ron Taylor), the Board has determined that the emergency access road and water facilities contained in the site plan are acceptable and in compliance with applicable codes and other requirements. (Exhibits 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 23, 24)**
- iii. The Board finds that the site plan's provision for two separate fire apparatus access roads (one accessing Boursaw Road and the other accessing Smokey Hollow Road) complies with**

provisions in the International Fire Code requiring developments with more than 30 dwelling units be served by two separate fire apparatus access roads. (Exhibits 23, 24)

- iv. The Board has reviewed the applicant's fire lane plans and finds that emergency response units will have sufficient access to all of the dwelling units in the proposed development. (Exhibits 23, 24)
- v. The Board finds that the addition of the emergency access road will not increase traffic, that there will be no work performed within the county right of way and that the County Road Commission takes no jurisdiction over the 81's roads. (Exhibit 3)
- vi. The Board finds that although the Fire Department may incur additional costs associated with monitoring snow removal and maintenance of the emergency access road, any such additional costs would be offset by the increase in tax revenue and fire service funding for the Township. (Exhibits 12, 24)

This standard HAS been met.

Section 8.1.3(3)(d): That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

NOTE: The Board's findings and determination that the applicant met all of the requirements of Section 8.1.3(3)(d) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (See Exhibit 1, pp. 13-14).

The following supplemental findings concern the remanded issue of "soil erosion" and "storm water" drainage:

- i. After reviewing the studies, reports, and opinions of the Peninsula Township Engineer, the Township Board finds that the storm water drainage patterns and calculations as well as the storm sewer sizing and water retention plan submitted by the applicant comply with the Township Storm Water Control Ordinance. (Exhibits 4, 7, 11)
- ii. After reviewing the results of soil examination and testing undertaken by the relevant regulatory agencies (including Grand Traverse County Health Department/Environmental Health Division and the MDEQ), the Township Board finds that the soils within the project area are suitable for waste water dispersal. (Exhibits 19, 20, 21)
- iii. The Board finds that the development is fully compliant with the Peninsula Township Storm Water Ordinance. (Exhibits 7, 17)

This standard HAS been met.

Section 8.1.3(3)(h): That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

NOTE: The Board's findings and determination that the applicant met all of the requirements of Section 8.1.3(3)(h) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (See Exhibit 1, p. 16).

The following supplemental findings concern the remanded issues of soil erosion and grading:

- i. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 4, 7, 10, 17, 41)
- ii. After reviewing information submitted by the Township Engineer and the Grand Traverse County Soil Erosion and Sedimentation Department, the Township Board finds that the wetland present on the site will be protected to the extent required by governing regulations. (Exhibits 4, 7, 17, 18, 43).

This standard HAS been met.

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

NOTE: The Board's findings and determination that the applicant met all of the requirements for Section 8.1.3(3)(i) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (Exhibit 1, p 16)

The following supplemental findings concern the remanded issue of soil erosion:

- i. After reviewing information submitted by the Township Engineer and the Grand Traverse County Soil Erosion and Sedimentation Department, the Township Board finds that the wetland present on the site will be protected to the extent required by governing regulations. (Exhibits 4, 7, 17, 18, 43)
- ii. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on

site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 4, 7, 10, 17, 41)

This standard HAS been met.

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

NOTE: The Board's findings and determination that the applicant met all the requirements of Section 8.1.3(3)(j) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (See Exhibit 1, pp. 18).

The following supplemental findings concern the remanded issue storm water runoff.

- i. The Board finds that all storm water runoff resulting from the development's grading and filling activities will be maintained on the site. (Exhibits 4, 7, 10, 11, 26)**
- ii. The Board finds that the development is fully compliant with the Peninsula Township Storm Water Ordinance. (Exhibits 4, 7, 11, 26)**
- iii. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 7, 10, 17, 41)**

This standard HAS been met.

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

NOTE: The Board's findings and determination that the applicant met all the requirements of Section 8.1.3(3)(k) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference (See Exhibit 1, pp. 18-19), including but not limited to the following finding that was left in place by Judge Rodgers' Decision and Order:

"that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the

R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, give the other options available for development, the plan as presented and as developed will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site per se. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)."

The following supplemental findings concern the Court's remand that the Board evaluate the plan for whether the standards for soil erosion, grading and storm water have been met, including the protection of steep slopes and vegetation on the site:

- i. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 7, 10, 17, 41)**
- ii. The Board finds that the storm water calculations for the project have been previously reviewed by the Township Engineer and that they are acceptable with respect to drainage patterns, storm sewer sizing and storm water retention. (Exhibits 4, 7, 11, 26)**
- iii. The Board finds that the private road designs in the plans are acceptable with respect to grading, drainage patterns and pavement cross-section. (Exhibits 4, 7, 10, 11, 26)**
- iv. The Board finds, consistent with the Township Engineer's determination (on March 15, 2016 and August 15, 2016), that the grading plans, private road designs, and storm water management systems "are in conformance with Township Standards and Ordinances for engineering design purposes." (Exhibits 4, 7, 10, 11, 17, 26, 33, 34)**
- v. The Board finds that Mr. Boals was directed by the Township attorney in January 2017 to expand his review of the plans to determine whether "site grading for the project as proposed create [sic] an adverse impact as it relates to residuals form ... past chemical use." In a letter to the Township Planner dated January 31, 2017, Mr. Boals stated that his "understanding" was that the 81 property, given its past agricultural use, was subject to the State of Michigan Department of Environmental Quality (MDEQ) Part 201 clean-up criteria. (Exhibits 26, 46)**
- vi. The Board finds that its environmental consultant, James Harless, as well as the applicant's environmental engineers, Roger Mawby and Andy Smits, are in agreement that the MDEQ Part 201 clean-up criteria does not apply to the subject property. (Exhibits 33, 34, 43, 42)**

- vii. The Board finds that the Township Attorney has determined that the Township has never interpreted Section 8.1.3(3)(k) as requiring that an environmental/soils assessment be submitted by an applicant in order for the Township to determine whether there will be an adverse impact on adjacent or neighboring properties. (Exhibit 32)
- viii. The Board finds that notwithstanding the lack of any requirement in the Township Ordinance for an applicant to provide an environmental assessment/soils testing, and the inapplicability of MDEQ Part 201 to the subject property, the Township Attorney, Jim Young, specifically advised the 81 on February 14, 2017 that unless the 81 obtains an environmental assessment of its soils, then the “Township MUST, as a matter of law, find that this standard [8.1.3(3)(k)] has not been met and deny the SLU application.” (Exhibit 48)
- ix. The Board finds that although the 81 has expressed repeatedly that an environmental assessment of the property’s soils should not be a precondition to the Board approving its application, as neither the Township Ordinance nor any other statute/regulation requires such an assessment, the 81 has obtained a professional evaluation of the soils (consistent with Judge Power’s suggestion of “tasting the ground three or four different spots and let’s see if there’s anything really there” on June 21, 2017) by two environmental engineers, Roger Mawby and Andrew Smits, who have determined that:
- The environmental engineering firm of Otwell Mawby took samples from the subject’s soils at locations in a manner recommended by the Township’s environmental consultant, and the samples were analyzed for lead, arsenic and other phosphorous/chlorine-based organic compounds;
 - The property contains low concentrations of agricultural chemical residues, and that the range of agrichemicals reported (lead and arsenic) is typical of soils commonly found in Peninsula Township (including the neighboring properties), the Northern Michigan region, and other states where similar agricultural uses and practices have occurred;
 - The pesticide residues detected in the subject’s soil are generally immobile in nature and will not leave the subject property;
 - Based on a comparison of the 81’s soil assessment data with the soil assessment data of the recently (and unanimously) approved Vineyard Ridge project, the concentrations of lead and arsenic on these properties is similar;
 - The 81’s submittals contains ample information to conclude that the application’s soil erosion, grading and storm water management plans will not cause soil erosion, sedimentation control problems, undue runoff onto

neighboring property, and will not adversely affect the adjacent or neighboring properties.

(Exhibits 25, 27, 28, 29, 32, 33, 34, 35, 36, 37, 40, 41, 42, 44, 45, 47)

- x. The Board finds that the applicant has provided soils information and detail beyond what Vineyard Ridge provided to the Township when the Board unanimously approved the Vineyard Ridge SUP/PUD on April 25, 2017, as the Board did not request nor require Vineyard Ridge to provide an environmental/soils assessment, and opted to rely on an undated summary letter (without any of the underlying soils assessment data attached) prepared by Otwell Mawby discussing the soils on the property – property with historical agricultural use. (Exhibits 29, 30, 32, 33, 34, 37, 47)
- xi. The Board finds that the development’s existing topography and drainage pattern will adequately retain any residual agrochemicals on site during and after the proposed grading and filling activities. (Exhibits 4, 7, 10, 11, 17, 26, 27, 28, 29, 30, 33, 34)
- xii. The Board finds that that based on its review of historical aerial photographs of the area, including photographs supplied by the Township’s environmental consultant (James Harless), significant portions of the proximate properties were used as orchards or other agricultural uses. (Exhibits 33, 34, 40, 43)
- xiii. The Board finds that the plan as presented and developed will leave areas sufficiently undisturbed during construction and afterward, as depicted on the site plan’s soil erosion and sedimentation control plan (Exhibit 4, p. C3.0), including silk fencing, utilization of a stabilized construction entrance with gravel, sweeping as needed on the main roads, mulch blankets, staged/phased grading, regular watering of areas where construction work is taking place, seeding/mulching and revegetating as soon as possible. (Exhibits 4, 7, 10, 11, 17, 25, 26, 27, 28, 29, 30, 33, 34)
- xiv. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has independently reviewed the development and site plans and issued its permit (including a renewal of the permit in May 2017) with specific and detailed conditions for the protection of steep slopes and vegetation present on the site. (Exhibits 4, 10, 11, 17, 41)
- xv. The Board finds that the grading plans, private road designs and storm water management systems are in conformance with the Township Standards and Ordinances for engineering design purposes. (Exhibits 4, 7, 10, 11, 26)

xvi. The Board finds that the proposed grading plans are in conformance with the Township Private Road Ordinance with respect to grading, drainage patterns and pavement cross-sections. (Exhibits 4, 7, 10, 11, 26)

This standard HAS been met.

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

NOTE: The Board's findings and determination that the applicant has met all the requirements of Section 8.1.3(3)(n) as set forth in the Board's August 11, 2015 Decision and Order approving the 81 SUP/PUD, are restated and incorporated herein by reference. (See Exhibit 1, pp. 19-20).

The following supplemental findings concern the remanded issue water drainage at the site:

- i. **The Board finds that the development will be served by a community septic facility and private septic system and individual wells to service the additional residential sites and that they are compliant with all applicable regulations. (Exhibits 20, 21)**

This standard HAS been met.

Section 8.3.3(7): The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.

Section 7.2.5, Stormwater Detention: The Board finds the development has been reviewed by Brian Boals, the Township Engineer, with respect to the requirements of the Peninsula Township Storm Water Control Ordinance, and finds that the storm water calculations for the project are acceptable with respect to drainage patterns, storm sewer sizing and storm water retention. (Exhibits 4, 7, 11)

This standard HAS been met.

MOTION TO APPROVE/DENY

Motion made by _____, supported by _____ that based upon the specific findings of fact with respect to Section 8.1.3(1)(c), Section 8.1.3(3)(d), Section 8.1.3(3)(h), Section 8.1.3(3)(i), Section 8.1.3(3)(j), Section 8.1.3(3)(k), Section 8.1.3(3)(n), Section 8.3.3(7), that the applicant has met these standards and in conjunction with the Township's previous approval of this project on August 11, 2015 along with these supplemental findings of fact pursuant to Judge Rodgers' Decision and Order on Appeal dated January 15, 2016, all standards have been met and the applicant's request for Special Use Permit to a Planned Unit Development is hereby recommended to be approved.

Ayes:

Nays:

DECISION

Upon Motion, seconded and passed the Board RULED that the Applicant's variance request be ALLOWED / DENIED / TABLED.

TIME PERIOD FOR JUDICIAL REVIEW

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

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Date

Secretary

Town Board Meeting (Public Hearing)

November 17, 2016 7:00 p.m.

St. Joseph's Church - 12675 Center Road

Meeting called to order at 7:00 pm.

Present: **Avery, Byron, Westphal, Manigold, Weatherholt, Witkop, Rosi, Hayward. Jim Young.** Rachel Mavis, recording secretary.

Approve Agenda

Motion by Weatherholt / Westphal to approve agenda. Motion passed.

Brief Citizen Comments

Margaret Achorn - 11284 Peninsula Drive. Thank you to the board members who are leaving office - Penny, Wendy, Dave, Jill, and Mark. Thank you for your service. At the conclusion she'll be taking the oath of office to be a representative. She would like to remind the board members that when they were sworn in (election or appointment) each one made a pledge to the township. They took on a position of public trust, to manage the affairs of the township and the best interest of the public. Protect public health, safety, and welfare of persons and property in this township. She asks that they honor their oath and hold high their responsibility to the people of this community.

Conflict of Interest

Byron asked to recuse herself.

Avery asked to recuse himself. The information came to him just today, as well as when he arrived. One report attacks a client of his, so he feels he has a conflict of interest. (Manigold asked if the board could agree / disagree with board member's request to recuse themselves. Weatherholt thinks it's up to the board member. Witkop would like Jim Young to speak to it. Young said that the ethics code is what applies - there is no provision that board makes final decision. He respectfully suggests under ethics policy that it's a legitimate conflict of interest.)

New Business

Manigold - Will now close regularly scheduled meeting and open public hearing on The 81 project.

Summary of project - the board passed 81 and it went to court. The court decided the decisions made were valid, but sent two of them back. Those are the two that will be addressed this evening.

Young - the areas passed back to them can be summarized into four separate categories.

- adequate safety standards for fire protection (including emergency access road)
- soil erosion

- grading
- storm water

His recommendation that based on the planners the board works through the four issues. The public must understand that the board's decision is limited only to the issues that were remanded. The board cannot redo any prior decisions.

Manigold - will now begin public hearing - invitation for presentation.

Philip Settles, 5168 US 31 N. (attorney) - On August 15 the board approved the objectives of the ordinance and approved the general requirements and specific requirements and SUP. They left grading to be decided by township engineers; left emergency safety to fire chief. The judge said that the board has to listen to opinion of the expert and make their own decision, not depend upon the decision of the experts.

Engineering reports are at exhibits 7 & 11. There are four letters from the engineer (beginning in March '16) - confirms that open space, storm water, and road design were approved; also approved site grading. Fire road was developed from northwest portion of development that is in compliance with int'l fire code (more than 30 units requires secondary access). Exhibits 16 & 13 show that fire chief agreed. Engineer approved new fire road (exhibit 7) and East 81 (widened road). Reaffirmed in exhibit 11.

Next exhibit that relates with judge's remand is the SESC permits (exhibit 17). Those exhibits provide evidence for every standard in regards to grading and soil erosion.

In regards to the adequacy of fire access / fire protection plan - as of 8/9/16, fire chief had minor concerns about signs (exhibit 16). In this exhibit is also a letter from that same day, where the fire chief's approval is supported by fire code and reasoning is given. Exhibit 13 is the the chief's approval of East 81 (when road was widened, they needed chief's approval that it met fire code). Exhibit A supports these findings. In township's proposal there was a proposal to move the fire access road. Settles has a letter from Ron Taylor stating that option would not be compliant (too close to other entrance). If Appendix D of the int'l fire code is not necessary, then secondary access is not necessary. They've provided exhibits and reasoning to prove that they should have their PUD and SUP approved now.

Doug Mansfield - 830 Cottageview Dr. Ste. 201. He looked through township for dead end roads and how many lots were at the end of those roads. They found 40 dead end roads in Peninsula township alone. There are 2 or 3 lots all the way to 61 lots or more (Bluffs) where this is the case. Underwood Ridge, which has been given awards by this township, doesn't have a second road. His client pulled a permit on Chestnut Ridge where this is the case. (Recently approved by township.) If looking at past policy and history, dead end roads with a cul-de-sac is an appropriate land use. This parcel is 3-sided... one side was created in '92, and the other side also does not connect. Underwood has 5 cul-de-sacs with no outlets. They feel they have met the court remands.

Dave Petrov - 9988 Riley Rd., Interlochen. He's disappointed by Doug Mansfield. He has been a firefighter for 8 years. One of the things that the int'l fire code tries to do is find ways to overcome fires. They apply newer standards and get better (sprinklers, etc.) When you talk about the possibility of having blockage because of a fire, it's a remote case - the bigger issue is snow and ice prohibiting fire trucks from being able to get in. Think about it from what it's supposed to be, not the easiest way to get around it.

David Dapp - he is a confused citizen tonight. He wants to speak to the bigger picture. He wants to speak to the soil erosion plan because it was avoided prior to this issue. Any soil erosion should be accompanied by a baseline study. We've learned that toxic chemicals have been used in the past on the peninsula. Developer should provide soil testing. If you grade the soil, as the developer is planning, it can move the contaminants to another area. A thorough environmental study should be done. Second issue: the board has an issue to protect the health, safety, and welfare of its residents. Community septic may not be a viable system for this property.

Mark Nadowski - 10 McKinley Rd., president of Protect the Peninsula. He'd strongly recommend that the board tables this project until the new town board and new planning board take their place and have the time to study the information. The new board should demand that additional environmental studies be done since this doesn't conform to the master plan or other developments. At previous town hearings (2015), people were limited to 3 minutes - suppressing the voices of the people. The findings of fact were revised prior to the vote by the township attorney. It's clear that this project doesn't meet MP and zoning ordinances. It should go back to PC to make sure all concerns are addressed so new town board has all info to make proper decision. This and all future projects will protect - not destroy - Old Mission Peninsula.

Ann Rogers, 1236 Peninsula Dr. NMEAC. Dedicated to bringing education and protection of the environment to people in this area. They've been involved since '80. It's difficult to tell from agenda if there was supposed to be a vote tonight. It should be tabled until there is info on a lot of the critical issues that were brought up. NMEAC asked for an environmental impact statement at the first meeting last fall and still haven't received one. You can't put a bluff or trees back once they're cut back. It's not fair to saddle a new board with the consequences (intended / unintended).

Greig Reizig - co-chair of NMEAC. It's opposed to 81 Project. The proposal includes grading over steep ridges - including over 150-year-old trees. He is worried about the issues that could come out of that. They believe a complete environmental assessment should be done. They suggest tabling issue until new board is seated.

Wendell Woodard - 17768 Smokey Hollow. During the meeting that he attended, he was the last to speak regarding his concerns about the developer not testing the soil for toxicity. Each comment by citizens ahead of him were fundamentally sound and he supports them. Tonight he wants to reiterate his concern about the necessity of testing the soil, and the impact the development could have on the water table. Given the land restructuring this would take, would we want the runoff into the bay? Do we want to bequeath to our children and grandchildren a sprawl of wasteland, brought on by private wealth? You can't buy back an environment. When ecosystems are gone, they're gone for good. He humbly, respectfully, and supportively requests that the board not falter from the master plan for the peninsula and stay the course. It's not just the residents that will suffer, but the unique peninsula - both land and bay.

Ellen Barnes. 11423 Bluff Rd. She has been interested and amazed at development over last 20 years. The developers of Underwood Hills preserved the integrity of the hills. The same with Eagle's Landing - they've preserved the hills and valleys. Didn't change the contouring of the land.

Jim Floray 13617 Bluff Rd. - He's not heard data, facts, or costs based on environmental factors. We have a potential situation in front of us if the soil is contaminated. Grading should not be conducted until a soil test has been completed. The following is based on data, financial risk, and actual events across US - in state after state, old orchards that are being developed became an environmental issue b/c the soil was contaminated with lead and arsenic. Lead arsenate has been used in pesticides in the past. They were designed to be persistent, and it's that persistence that has caused issues for decades past their use. They bind tightly to the soil and separate into lead and arsenic. Lead arsenate can also be released in the soil when it's disturbed. It could be released into the bay. It was one of the most commonly used sprays used in fruit orchards. Arsenic and lead do not break down, but accumulate. Contaminated topsoil needs to be scraped away and removed - it can cost \$1 million per acre. In NC - a 500-acre orchard was turned into residential housing. 90 homes were built by '99. A local resident heard about birth defects in

babies born within this development. Testing was initiated and high arsenic and lead were found. An emergency removal was ordered. 31,500 tons of contaminated soil were removed - costing \$4 million. In NJ, soil samples showed elevated arsenic levels. \$500,000 to remove contaminated soil. In Fenton, MI - the developer found contaminated soil. 23 of the 90 lots have high arsenic - won't pose a health risk unless the soil is disturbed. He's provided data and financial implications - a thorough study needs to be done to analyze soil and ground water (for wells). Drinking water can't be an issue for those individuals.

Garrett Chase 15009 Bluff Rd. Question to developer and counsel - can you assure me and my children that you will never ask us to boil water or drink bottled water in years to come?

Jim Komendera - 4168 Rocky Shore Trail, President of Preserve Old Mission. So much has been said about soil testing - soil testing of another piece of local farm land showed 10x lead and 5x arsenic (2013). An alternate is a use by right. This proposed PUD does more to harm the environment than if the developer went and put in a regular platted sub (as he's allowed to do). The Moorings (in Elmwood township) is a soil erosion disaster. It was approved by their township.

Scott Howard, 420 E Front St., representing Preserve Old Mission. He wants to focus on the "remand issues" and put aside that the ordinance requires us to preserve natural features. Put aside that the ordinance tells developers to be creative with the natural features. Focus specifically on some of the soil erosion issues. 8.3.1 sub paragraph 3.i - has that standard been met? - that this proposed development will not create soil erosion problems? Is this the type of development that will not cause sedimentation problems? Anecdotally a few have been shared that have been approved and have caused problems (Moorings in Elmwood and Meijer in Acme). Look at what scientists have to say - you're dealing with steep slopes on this particular property, as well as sandy slopes (highly erodible). You're moving a massive amount of dirt on this site. There's 30 feet cut off of bluff, 5-20 feet of fill going in. Based on evidence on record, are you assured that this project will not cause problems? 8.3.1 paragraph 3.k - grading or filling will not affect character of property or neighboring properties. Be ok with re-grading the property or not ok with it, not just ok with one area, like developer is. When it comes to fire issues and how we talk about open space, there's the 65% open space preservation requirement. Their idea of "open space" includes the community septic system, strips of land between people's homes and road, and a parking area for golf carts down by beach - none of that is "open space" under the terms of the ordinance. It's approximately 5 acres off from what they claim is open space - 58%, not 65%. That's reason enough to deny this project. He's provided 10 pages of proposed findings of fact. Does this project meet those standards? If the answer in your heart is no, deny the project. The evidence is there, just adopt the motion.

Jack Kelly - he's the township supervisor for Elmwood. The Moorings is in Leelanau County, not Elmwood township. He's only here as an interested bystander, but it is in Leelanau County and NOT Elmwood township.

Jill Byron - 2249 Twin Eagles Drive - the engineering firm of this is the current president of the MI township association and the same engineer that forgot to put the additional acreage in the Bonobo plan. Do due diligence when looking at plans and considering if you'll approve. The judge told the board to go back to the drawing board on this plan and look at environmental impact. Residents have supplied evidence. You should deny the 81 plan. Thank you to the residents for continuing to fight for our beautiful home. This is not Oakland County, which is where the developer is from.

Susie Shipman - 14735 Shipman Rd. - She wanted to come up and raise her voice and support some of the comments from previous people. Honor the spirit of our township master plan and look very carefully at the scientific info that's available to us when decisions of this magnitude are being considered.

Philip Settles - he knows how important an environmental assessment would be. These orchards have been here. If it was fundamental, it would be in the code. The code is a reflection of the township's ideas of what's important. The township talks through it's code. The standards for PUDs don't talk about environmental assessments. The lack of fairness is that it's a moving object for the applicant. The applicant looks at the code - doesn't ask every resident for their opinion. Each lawyer has told their client to go to the township and look at the code before they buy. That's why they hire engineers to look at the codes. Soil erosion - will it not occur? If we have to make a decision based on what will 100% happen, we can't. Even experts make mistakes.

David Dapp - comment to lawyer... every township is delegated some responsibilities. There are agencies that have regulations. Due care responsibility (Dept. of Env. Quality) - if there is a suspected contamination, there is an obligation to test.

Manigold - Closed public hearing and returned to open meeting.

Young - as he mentioned earlier, the planner has prepared a list of standards that are intended to implement the judge's decision. Having the planner go through those with you is the most efficient way to do it. Based on one public comment - you have multiple proposed findings of fact. You are not obligated to accept any particular version of the facts. You can adopt any facts that you want - you are the fact finders. His suggestion is that Gordon walk us through the applicable standards.

Weatherholt - should we wait to go through the standards until the new board is in place? It is a poor use of time to go through all of them and then table it.

Rosi - with a public hearing, can't you receive information until 4:00pm that day? **Weatherholt** - yes, we had some come in 5 minutes before the hearing. It's so much info that we need to look at for a bit of time before we can make a logical decision. It's overwhelming, to say the least. **Rosi** agreed. She went through material yesterday and today. We know this site. We've been working on it for 2 years now. We know enough to make decisions, but we don't know how to express them in order to make it clear. She intended to come tonight and fulfill her responsibility as a board member, but once again is inundated with information. She appreciated everyone who spoke earlier. In regards to 8.3.2 - she had some confusion about this... there are 6 items called the objectives. She was told by the attorney that day that the objectives were not part of the decision-making. If they're not, why are they there? Those objectives are the things we care about as a community. The objectives are a part of our ordinance.

Witkop - has some questions... they are up to 4 findings of fact. What she finds interesting is that all of the comments have been about environment or soil erosion. When going to the findings of fact, there's nothing about environment. She feels uncomfortable as a board member with that disconnect. As far as open space - how does she as a board member know that the calculations weren't done right? Fire prevention - why is this there? In our township, the codes don't apply to single family homes. What do we do with the fact that the developer may have to change the plan? She doesn't think it's possible for the board to make a good decision tonight.

Westphal - having identified the 4 categories that the judge remanded us, it seems that the problems that they heard mostly were related to soil, slopes, and grading. In her opinion, they have the capacity to create a perfect storm on that site. They have the potential to directly affect human health. They have the capacity to degrade a natural and cultural ecosystem. If the developer was serious about making money, these things will affect the value of the home. In her opinion, based on the information given to them, all of these are coming together to create a perfect storm. Mr. Settles - have you ever purchased a house? (Settles: Yes.) When you go after a mortgage from a bank or credit union, are you not asked to provide an environmental assessment? Will they fund you without worrying about purchasing contaminated land? (Settles: They would tell me from the beginning.)

Manigold - there are too many contingencies from the beginning. First thing he did when he took office was to ask for an environmental study, but because of it already passing, there was nowhere to put it. He thinks the developer should take it back to the PC and come up with a clean project proposal (including an environmental assessment). He's heard the stories of the other communities - he grew up on a farm. Sometimes nothing shows up in the assessment. What he's hearing is that we table it until we get an answer... including what findings of fact we use. He wants to make sure they do the right thing. He doesn't think they can make a good decision tonight.

Doug Mansfield - As a board member, it's hard to go back and forth without direction. The remanded issues are permitted and approved by the agencies that you've handed them to.

Manigold - in fairness, a lot of the roads you pointed out were done a long time ago and Underwood has two emergency exits. **Witkop** - she sees what Doug is asking for. Can we get clarification... where do the environmental concerns fall into the remanded issue? There seems to be the opinion that they fall into soil erosion and grading. To walk out and table it without any direction to the developer seems unfair. What portion of our ordinance requires a second connecting road? Unless we can clarify some of these things, it's not fair to walk out of here and leave them unanswered.

Rosi - With the amount of trees being moved and the amount of soil being moved, we owe it to the community that we are going to deal with environmental issues. If the PC made a mistake or the previous planner, why would we not want to go back and deal with it? **Witkop** - she'd like to hear from Gordon and Jim... does an environmental study fall under what's remanded by the judge?

Young - It goes back to the findings that the board did in 8/15 and the judge's remanding. 8.1.3k - "the grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties." - adding a road and the grading that would come from that... but that's not the whole property. Imposing a condition with the secondary road - because that requires grading, an environmental study is necessary. There is nothing that stops the developer from voluntarily undertaking that assessment on their own. The bigger project needs serious research and something in writing. There are complexities with adjourning this - there will be new board members. Are they precluded from this? Can they review the record and minutes and participate? Does the MI statute that Mr. Howard brought up allow a community to request that study?

Witkop - where is the second road coming from? **Hayward** - when looking at the remand with the fire chief, the proposed access road to Smokey Hollow came into issue (snow, locked gates, etc.) **Witkop** - if the fire code doesn't apply, why is that second connection on their plan? **Hayward** - the fire code is a standard. The fire dept looks at standards for safety. In his opinion, it doesn't apply. They found the amended ordinance today - it exempts the R3 grouping (1-2 family homes). **Witkop** - Do you have an opinion if the environmental study falls into what the judge remanded? **Hayward** thinks it does for an additional access road only. They can't have an environmental assessment on the entire project - only what's been remanded back.

Witkop - If the board votes on what the developer has proposed, the environmental study can only be pertaining to the additional road. Will you (Jim) enter an opinion if the fire code applies? Young - he has no problem interpreting our ordinance as drafted. He needs historical application of ordinance from Gordon. That's what's important to the court. He needs background facts before he can provide an opinion.

Weatherholt - without giving the developer a clear path, he doesn't know how you can table it to a place unless you do something specific. **Witkop** - to just walk away is unfair to all involved. She doesn't think that the environmental study applies. **Rosi** - she thinks it will apply. She wants the attorney to look into it. **Weatherholt** - can you make your two points clear for a motion? **Witkop** - they feel inundated with material, including last minute material. In order to make an informed decision, they've had no chance to review. They would like a legal opinion on if an environmental assessment is lawfully required for the larger

area. They would like guidance from Gordon Hayward and Jim Young regarding the int'l fire code and it's application / basis of requirement for second access road. If it's turned down, an oath is taken by the board to protect the health, safety, and welfare - can board members turn it down for that reason? They'd like research to be done before a date is set.

Motion by Witkop / Weatherholt to adjourn for the deliberation to a date to be set by the planner. **Motion passed.**

Motion by Weatherholt / Witkop to bring Byron and Avery back. **Motion passed.**

Citizen Comments

Susie Shipman - 14735 Shipman Rd. She has somewhat of a conflict since she is a neighbor on the road where this issue is occurring. She thinks it's important that our community understands what's going on here and that the new town board understand some of the details on this case. In 2014 20 acres were parceled by former township supervisor Pete Correia into several lots. Neighbors requested that the township look into the division of land. Town board and ZBA were advised by the township legal not to look into it since it was past 30 days. Township assessor and surveyor added land (including land now submerged) in order for it to meet the 20 acre minimum. Prosecutor Bob Cooney took the case and is providing independent look into the matter. She would encourage town board and residents to read the information on this. Township attorneys are representing and defending both sides. Township is spending hours and taxpayer dollars on this. The township should be the enforcement of ordinances - and to defend the law, not find ways around it.

Board Comments

Avery - he's been involved in environment for 37 years. We've asked this developer to jump through hoop after hoop after hoop. Now we're going to create a new set of hoops. Dr. Komondera brought a lawsuit that was thrown out. Judge determined all but 4 things. The developer will bring another lawsuit and we'll lose. Thousands of dollars will go towards legal fees. Our job as a board member is to look at code and see if he complied.

Motion to adjourn by Byron / Witkop. Motion passed. Meeting adjourned at 9:24 pm.

Regular Town Board Meeting
Christina Deeren, Recording Secretary

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

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

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

Manigold; Open Public Hearing.

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

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

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

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

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

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

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

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

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

Presentation presented by Applicants Representation:

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

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

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

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

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

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

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

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

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

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

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

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

Smits; Which water are you talking about?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Manigold; opens up for public comment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pass unam

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

**SPECIAL USE PERMIT (SUP) / PUD
FINDINGS OF FACT AND CONCLUSIONS**

**SUP #123 (Amend. #1) The 81 on East Bay (Planned Unit Development Condominium
Subdivision)**

September 10, 2019

PENINSULA TOWNSHIP BOARD

Applicant: The 81 Development Company, LLC
 Kevin O’Grady, Owner
 901 S. Garfield Avenue
 Traverse City, Michigan 49686

Hearing Date(s): July 15, 2019 – Planning Commission
 September 10, 2019 – Township Board

PROPERTY DESCRIPTION

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

INTRODUCTION AND BACKGROUND

On August 11, 2015, the township board approved an application for a special use permit (SUP #123) and planned unit development (PUD) to build a 41-unit residential condominium development located on Bluff Road in Peninsula Township, subject to specific conditions. Subsequent court proceedings led to project approval pursuant to action taken by the township board on January 23, 2018.

On June 26, 2019, The 81 Development Company submitted an application (*EXHIBITS 1 AND 2*) to amend the approved SUP #123 with multiple proposed changes. Two proposed changes were subsequently eliminated at the planning commission meeting on August 19, 2019, and the following five proposed changes remained for consideration:

1. Relocate the road named Snug Harbour Court 25 feet to the west. This thereby enlarges the lots identified as units 10,9,8,7, and 6.
2. Lot widths for Units 2–10 were adjusted to provide more uniform distribution of width.
3. The landscaped area along Double Eagle Drive associated with units 11 and 5 is eliminated, thus enlarging these two lots.
4. Units 11–29 were shortened along the easterly lot line to achieve the 65% PUD open space requirement.
5. The fire department emergency access route located at the northwest corner of the development is re-aligned to conform to the adjacent landowner’s wishes. This access route is located outside of the 81 Development area.

APPROVED AT TOWNSHIP BOARD MEETING ON 9/10/19

The planning commission voted unanimously to approve the five changes listed above; these changes are reflected in the updated Site and Dimension Plan dated 8-19-2019 and provided in [EXHIBIT 2A](#).

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

General Standards: *The town board shall review each application for the purpose of determining that each proposed use meets the following standards, and, in addition, shall find adequate evidence that each use on the proposed location will:*

- (a) Be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed. ***The board finds that the proposed plan changes do not change the essential character of the vicinity as illustrated in the previously approved plan.***
- (b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole. ***The board finds that the proposed changes will not add any characteristics to the previously approved development plan that would be hazardous or disturbing to existing or future uses in the same general vicinity.***
- (c) Be served adequately by essential facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools. ***The board finds that the proposed changes to the development will not materially change essential facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools as previously defined in the original plan approval. The proposed changes to the emergency access roadway are negligible according to the township engineer (EXHIBIT 3).***
- (d) Not create excessive additional requirements at public cost for public facilities and services. ***The board finds that the proposed changes to the approved development plan will not create excessive additional requirements at public cost for public facilities and services.***
- (e) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors. ***The board finds that the proposed changes will not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors. The proposed changes to the emergency access roadway are considered negligible (EXHIBIT 3).***

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

Specific Requirements: *In reviewing an impact assessment and site plan, the town board and the planning commission shall consider the following standards:*

- (a) That the applicant may legally apply for site plan review. ***The board finds that the applicant may legally apply for the site plan review.***
- (b) That all required information has been provided. ***The board finds that applicant has provided all required information to review the proposed plan amendments. This includes an updated site plan showing the removal of "Parcel A" from the development (EXHIBIT 2A).***
- (c) That the proposed development conforms to all regulations of the zoning district in which it is located.
The board finds that the proposed plan amendments conform to the requirements associated with a PUD per Section 8.3. The road and lot line adjustments actually increase the amount of common open space compared with the previously approved plan (EXHIBIT 3).
- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services.
The board finds that the proposed plan amendments to the development conform to the requirements associated with a PUD per Section 8.3. The Peninsula Township fire chief has reviewed the proposed re-alignment of the emergency access road and finds no issues (EXHIBIT 4).
- (e) That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured. ***The board finds that the proposed plan amendments meet requirements or standards of other governmental agencies consistent with the original submission and approvals.***
- (f) That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se. ***The board finds that the proposed plan amendments do not negatively impact prior decisions with respect to natural resource preservation. The road and lot line adjustments actually increase the amount of common open space compared with the approved plan (EXHIBIT 3).***
- (g) That the proposed development property respects floodways and floodplains on or in the vicinity of the subject property. ***The board finds that the proposed plan amendments do not impact floodways and floodplains.***

- (h) That the soil conditions are suitable for excavation and site preparation and that organic, wet, or other soils that are not suitable for development will either be undisturbed or modified in an acceptable manner. ***The board finds that the proposed plan amendments do not negatively impact prior decisions with respect to soil suitability.***
- (i) That the proposed development will not cause soil erosion or sedimentation problems. ***The board finds that the proposed plan amendments do not negatively impact prior decisions with respect to soil erosion or sedimentation.***
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff and will not cause undue runoff onto neighboring property or overloading of water courses in the area. ***The board finds that the proposed plan amendments do not negatively impact prior decisions with respect to stormwater. The revisions to Snug Harbour Court appear to reduce impervious surfaces created by the roadway. The previously proposed storm water provisions will be implemented into the revised Snug Harbour and emergency access roadway configurations. Site-specific storm water reviews will be required for each lot. (EXHIBIT 3, AND APPROVAL CONDITIONS ON PAGE 7).***
- (k) That grading or filling will not destroy the character of the property or the surrounding area and will not adversely affect the adjacent or neighboring properties. ***The board finds that the proposed plan amendments will not destroy the character of the property or the surrounding area and will not adversely affect the adjacent or neighboring properties.***
- (l) That structures, landscaping, landfills, or other land uses will not disrupt air drainage systems necessary for agricultural uses. ***The board finds that the proposed plan amendments will not disrupt air drainage systems necessary for agricultural uses.***
- (m) That phases of development are in a logical sequence so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage, or erosion control. ***The board finds that the proposed plan amendments will not impact any project phasing.***
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities. ***The board finds that the proposed plan amendments will not materially change plans to expand existing facilities such as public streets, drainage systems, and water sewage facilities.***
- (o) That landscaping, fences, or walls may be required by the town board and planning commission in pursuance of the objectives of this ordinance. ***The board finds that the proposed plan amendments will not change any requirements for fences or walls.***
- (o) That parking layout will not adversely affect the flow of traffic within the site or to and from the adjacent streets. ***The board finds that the proposed plan amendments will not adversely affect the flow of traffic within the site or to and from the adjacent streets.***

- (p) That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient. ***The board finds that the proposed plan amendments will not change vehicular and pedestrian traffic flow within the site.***
- (q) That outdoor storage of garbage and refuse is contained, screened from view, and located so as not to be a nuisance to the subject property or neighboring properties. ***The board finds that the proposed plan amendments will not change plans for addressing outdoor storage of garbage and refuse.***
- (r) That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this ordinance and the principles of sound planning. ***The board finds that the proposed plan amendments are in accord with the spirit and purpose of this ordinance.***

SECTION 8.3 PLANNED UNIT DEVELOPMENTS

FINDINGS – 8.3.2 OBJECTIVES

The following objectives shall be considered in reviewing any application for a special use permit for a planned unit development.

1. To provide a more desirable living environment by preserving the natural character of open fields, stands of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets. ***The board finds that the proposed plan amendments do not change the initial determination that the project creates a desirable living environment by preserving the natural character of open fields, stands of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.***
2. To provide open space options. ***The board finds that the proposed plan amendments do not change the initial determination that the project creates a desirable living environment by preserving the natural character of open fields, stands of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets. The road and lot line adjustments increase the amount of common open space compared with the approved plan. (EXHIBIT 3)***
3. To encourage developers to use a more creative and imaginative approach in the development of residential areas. ***The board finds that the proposed plan amendments do not change the initial determination that the development offers a more creative and imaginative approach in the development of residential areas.***
4. To provide for a more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project. ***The board finds that the proposed plan amendments do not change the initial determination that the development offers a more efficient and aesthetic use of open areas.***
5. To encourage variety in the physical development pattern of the township by providing a mixture of housing types. ***The board finds that the proposed plan amendments do not change the initial determination that the development offers variety in the physical development patterns.***
6. To provide for the retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters that are suitable for residential use and that keep the remaining agricultural land in production or fallow and available for production. ***The board finds that the proposed plan amendments do not change the initial determination that the development locates the allowed number of housing units on the agricultural parcels of land in clusters that are suitable for residential use and that keep the remaining agricultural land in production or fallow and available for production.***

FINDINGS – 8.3.3 QUALIFYING CONDITIONS

Any application for a special use permit shall meet the following conditions to qualify for consideration as a planned unit development:

1. The planned unit development project shall not be fewer than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. ***The board finds that the development area is far more than twenty (20) acres in size.***
2. The planned unit development project shall be located within a residential or agricultural district or a combination of the above districts. ***The board finds that the development area was residential (R-1A) and is now a PUD by virtue of past approvals.***
3. Water and waste disposal shall comply with the Peninsula Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements. ***The board finds that the proposed plan amendments do not change past approvals of water and waste disposal systems.***
4. The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1. except as provided by Section 8.3.5 (1). ***The board finds that the proposed plan amendments do not change past determinations of equivalent density.***
5. Open space shall be provided according to Section 8.3.6. ***The board finds that the proposed plan amendments positively change the open space calculations such that more open space is provided compared with the prior plan. (EXHIBIT 3)***
6. For purposes of this Section 8.3, open space does not include building envelopes, parking lots, and roads (roadbed width plus two-foot shoulders on each side). ***The board finds that the proposed plan amendments do not include building envelopes, parking lots, and roads or plans. (EXHIBIT 3)***
7. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1. and Article VII. ***The board finds that the proposed plan amendments change prior determinations that the proposed planned unit development meets the standards and requirements outlined in Section 8.3, Section 8.1. and Article VII.***

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township, and other governmental regulations relative to the establishment of a parcel zoned A-1, agricultural, with the above permitted use(s) on site, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road

Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing special land use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

APPROVAL CONDITIONS AND SAFEGUARDS:

Conditions and Safeguards: The board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions include:

1. All prior findings, conditions, and safeguards imposed by the Grand Traverse County Circuit Court and the Peninsula Township Board of Trustees remain in effect.
2. Site-specific storm water reviews continue to be required for each lot.

COMMENCEMENT AND COMPLETION

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use and accompanying site plan are enforceable and remedies available under Section 3.2 of the zoning ordinance.

EFFECTIVE DATE OF SPECIAL LAND USE:

The special land use shall be effective when the application has been approved by the Peninsula Township Board of Trustees, subject to the above conditions. The board approves by a vote of:

AYES	_____
NAYS	_____
ABSTAINING	_____
ABSENT	_____

The undersigned hereby certifies that she is the clerk for the Township of Peninsula, Grand Traverse County, Michigan, and that the foregoing special use permit was approved by the Peninsula Township Board of Trustees on September 10, 2019.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

Rebecca Chown, Peninsula Township Clerk

Approved by the Peninsula Township Board on September 10, 2019.

Rob Manigold, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF.

I hereby acknowledge that I have received a true copy of the special land use permit and I have been informed of said requirements of this special land use permit and of the requirements of the Peninsula Township Zoning Ordinance.

Kevin O'Grady, Owner
The 81 Development Company, LLC

APPROVED AT TOWNSHIP BOARD MEETING ON 9/10/19

PENINSULA TOWNSHIP

13235 Center Road, Traverse City, MI 49686

Ph: 231-223-7322 Fax: 231-223-7117

www.peninsulatownship.com

Planning Commission Special Meeting

Township Hall

June 25, 2019

7:00 p.m.

Meeting Minutes

Corrections made on 07/16/2019 by Beth Chan

1. **Call to Order:** 7:00 p.m. by Hornberger
2. **Pledge**
3. **Roll Call:** Present: Alan Couture, Larry Dloski, Donna Hornberger, Todd Oosterhouse, Susan Shipman, Isaiah Wunsch
Also present: Randy Mielnik, Christina Deeren, Jennifer Hodges
Present by phone: Attorney Meihn
4. **Review for Conflict of Interest:** None
5. **Brief Public Comments:** None
6. **Additions to Agenda/Approval:**
Couture: Revise to add e. under item 10 to include zoning rewrite update
Hornberger: Bowers Harbor Winery Chateau SUP should be #132 not #139
Moved by Diloski to add additions to the agenda, seconded by Wunsch
Pass unan
7. **Conflict of Interest:** None
8. **Consent Agenda:**
 - a. Approval of Meeting Minutes/Notes: PC Meeting Minutes-05/20/19, Bowers Harbor Subcommittee Notes-05/14/19, Bowers Harbor Subcommittee Notes-06/06/19
Hornberger: correction to May 20, 2019 minutes on page six from “does not want to see this” to “does not want to see this become the norm” Second correction on page two under Public Hearings, A. I. from Harbor Winery Chateau SUP to Bowers Harbor Winery Chateau SUP
Moved by Couture to accept consent agenda, seconded by Dloski
Pass unan
9. **Reports**
 - a. Zoning Board of Appeals (Couture)
Couture: the zoning board meeting was on May 21, 2019, where a variance request was considered for a residence on Peninsula Drive for an outside stairway access to an upper deck. It was denied because it encroached on the side setback.

- b. Bowers Harbor SUP Committee (Hornberger)
- c. MTA Training (Mielnik)
See material in the packet pertaining to the MTA training coming up soon
- d. Master Plan Steering Committee:
Mielnik: the first meeting is tomorrow night, **Suzanne SUSAN** and Isaiah from the planning commission are members on this committee. The first order of business will be to work on the community survey with the hired consultant with plans to have it out by the end of summer. Beyond the survey, next steps include public workshops. The meetings will be broadcast on Streamspot.

10. Business Items

- a. Bowers Harbor Winery Chateau SUP #132
Mielnik: A May 20, 2019 public hearing was held (last meeting) and there was a site visit with Bowers Harbor officials. On June 2, materials were received on these issues: parking, easement to the west and cold air drainage; more material was received from the applicant on June 19 and is in the packet. The packet material is up to date. Exhibit 11a was missing and is now in the packet. The list of proposed conditions of approvals and safeguards are provided, and have been partially addressed with new submitted material (such as the illustration of the property lines to the west). Favorable action from the Planning Commission means that this matter could go to the township board for consideration at their July 23, 2019 meeting for a potential public hearing.
Hornberger: asked if the applicant like to address the board at this time and go over changes since the May meeting
Sarah Kiever, Northview 22, P.O. Box 3342, Traverse City: Plans to go over the changes from the May meeting. Addendum C 1.0 proposes a three-car garage is now shown and it is for residential usage and will match exterior of the house, maintaining a twenty-five-foot set back. On C 1.1 shows the sixteen by sixteen-foot deck and is elevated with stairs for the use of the patrons. Updated the signage noted in C 1.1 and shows that some of the signs were removed due to relocation of the access drive and they were not needed. The updated pavilion expansion was originally two expansions and is now one expansion ten by one hundred and forty-six foot on the north side of the building. The sparkling wine facility will be built in the future but is now formally removed from the plan and application. The wine tasting setback with the township park is on the plan shown on 1.1 and 1.2, and is twenty-five feet, with concern to the township park. The limited agricultural equipment access easement brought up by the committee is not defined by a legal description and is limited to agricultural equipment use and it follows an existing two track road. It is showing up on the plan, but does not relate to a legal description. It is on C 1.0 and is not a secondary access. There is an update on C 1.1 to the parking plan. There was concern that there was not

enough parking. Going through review and analysis, and there was consensus on both sides for one hundred and fifty-three spaces utilizing existing parking, using farm roads for employee parking, a proposed row ~~on~~ NEAR the township park and additional parking on cold air drainage land. As an applicant, we will do what the ordinance allows, and provide parking for activities and events. Those are the changes from the last meeting.

Dloski: questioned the overflow parking area, and the associated twenty-six-foot elevation change, suggesting it is a long walk to the tasting room, and it seems that area would not be utilized. Would it be better to double load parking on the island by the residence?

Kiever: parking would not be achieved; it would be congested; the cold air drainage area would be utilized on occasion to not congest a well-traveled area. A grade of ten percent slope is acceptable, subject to subsequent review by Jennifer.

Milenik: there were also other comments about adding gravel at the turn around parking area

Hodges: with the steep slope, the transition from unpaved overflow to paved should be identified to ensure the ten percent. For the employee parking, there should be sufficient gravel for the parking turnaround. Suggested more review from the township engineer, as a condition of approval.

Kiever: The area along our main driveway will be widened and proposed to be paved. There is a provision for a paved surface to get on the overflow route. The farm access roads will be maintained as needed; they are currently hard pack.

Mielnik: the statement for compliance with township engineer's recommendation still stands

Shipman: this should be added with the conditions

Mielnik: it is there, it is number twelve

Hornberger: should the vote be handled item by item?

Mielnik: that is not necessary are there any findings that are of concern?

Shipman: encouraged the township to look into the buffer zone between the vines and the park and Devil's Dive, there is no buffer. That is an issue for the township to look at. Under item O is where it comes up, that is what the township should look at on page thirteen

Meihn: (via phone) agrees with that point and will be prepared for that

Hornberger: we do not need to add this to our recommendation

Shipman: the buffer is an item worth noting. The existing two track has no legal description; it is an access easement but there is no defined location. Asks Jennifer about this easement.

Hodges: I have not looked at it in my review

Meihn: (via phone) it is important to consider that in the future as it relates to Bowers Harbor Park.

Mielnik: Greg has copies of this information and the description of the easement

Meihn: stated he has a copy of the description of the easement

Shipman: the easement is not defined

Kiever: shows the location of the two track and reads legal description to Shipman and Mielnik

Meihn: (via phone) needs to look at the photos

Shipman: that clarifies the easement

Couture: has a question for Meihn, is this not something we are setting as a precedent, this is a unique situation and it is something to formalize so that a precedent will not be set and will not apply to all

Mielnik: Condition number thirteen addresses that point

Meihn: (via phone) full agreement, nothing else needs to be expanded

Hornberger: reads number thirteen that explains that it is not a precedent

Diloski: thanks Attorney Meihn for the memorandum on the Michigan Liquor Control issue

Hornberger: is there a motion to approve the Bowers Harbor SUP #132 to send on to the township board?

Moved by Dloski to approve Bowers Harbor Winery application #132 subject to the conditions and standards on page fifteen, supported by Couture

Roll Call: pass unan

- b. 81 Development-SUP #123 Amendment 1-Introduction

Kyle O'Grady, 81 Development: everyone has a copy of the first site plan approved. Introducing an amendment. The curbs are eighty-five to ninety percent in and the asphalt will go in in the next week. The first change is the emergency access road on the NW access road; neighbor Wells originally granted the easement, and in the original area he had planted grapes and asked that the easement be put on the southern part of the property. The second change is on the eastern road called Snug Harbor twenty-five feet to the west and that will affect lots number six through ten. Move it further from the water and the lot sizes would be bigger. References the blue spaces on the packet addition, the changes to remove portions of the lots, adding blue portions to common space: moving lot eleven to the north part of the property highlighted in yellow. Those are the proposed changes. Explained conversation with Mansfield on the changes to increase open space. Would like to proceed with the changes.

Hornberger: this is a first look at the changes, asks for questions

Wunsch: commented that the applicant has been asked that the plans be provided ahead of time, asked to table amendment until more information is provided

Mielnik: there is a window to schedule a public hearing and if the plans are to come in tomorrow; at that time we can schedule a public hearing for the July 15 meeting, our zoning code does not provide for an abbreviated process for amending an SUP.

Hodges: this is my first look, was involved in the first PUD. Wanted to suggest that findings of fact to ensure that compliance for storm water, private road, and open space. The township engineer should review. Asked O’Grady if they have done construction on Snug Harbor Court.

O’Grady: just the first thirty feet of curb has been installed

Hodges: per the original PUD for every home a storm water application would be required with each land use application; each lot would be reviewed every time

O’Grady: the goal for today was an introduction and plans to submit tailed PDF’s to Jennifer and will leave drawings

Hornberger: we will plan a public hearing for July 15 and a possible vote depending on how extensive the changes are and subject to engineering review.

c. Update on Winery Chateau/B&B Amendments-Discussion

Hornberger: at the last meeting we tabled the discussion on the Chateau/B&B amendments and now wish to un table the Winery Chateau/B&B amendments and we are not ready to discuss at this time

Mielnik: will continue discussion and will revisit and discuss

Hornberger: at this time, we will re table Winery Chateau/B&B amendments until July

Moved by Wunsch to retable the Winery Chateau/B&B amendments until July, seconded by Shipman pass unan

d. Election of Vice-Chairperson

Hornberger: we need a Vice-Chairperson

Shipman: states she would be Vice-Chairperson

Couture: nominates Shipman for the Vice-Chairman position

Moved by Couture to nominate Shipman for Vice-Chairperson, seconded by Wunsch pass unan

e. Zoning Re-write

Mielnik: there are a number of issues related to and changes to the ordinance; continue to look at issues and there are a few things to address

Dloski: based on the Bowers Harbor SUP, there is a need to look at the Winery Chateau ordinance very carefully

Hornberger: as we were doing the rewrite, there were red flags with some of the things on the Winery Chateau and Bed & Breakfast amendments, wants the community questionnaire to come back before a decision is made; a zoning re-write was not something to fix all of the issues related to this

Mielnik: goal to fix the structural elements, requirements and cross references and will add definitions, etcetera, because it hadn’t been updated in a long time

Discussion among the members about the parts that should be considered at in in-depth level

Couture: we did not get into this area purposely

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Dereen: there was a lot of structure, and skipping around to make it a better document

Discussion among board members on objectives to clarify

Mielnik: this is to build a foundation for future additions

11. **Public Comments:** None

12. **Other Matters or Comments by Planning Commission Members:** None

13. **Adjournment:**

Moved by Wunsch to adjourn, seconded by Shipman

Pass unan

Adjournment time: 7:50 p.m.

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Peninsula Township Planning Commission Meeting

Township Hall

July 15, 2019

7:00 p.m.

Meeting Minutes

1. **Call to Order:** 7:00 p.m. by Hornberger

2. **Pledge**

3. **Roll Call:** Present: Couture, Dloski, Hornberger, Hall, Mielnik, Oosterhouse, Shipman, Wunsch

4. **Review for Conflict of Interest:** None

5. **Brief Public Comments:**

Brad Lyman, 18420 Center Road: He is urging the planning commission to pass an amendment to the 1972 land use ordinance that does not allow (free-standing) solar panels. He needs a free standing, six hundred square foot solar panel which is not allowed in the 1972 ordinance. He is asking for language to allow solar panels for a residential application. He has contracted with Harvest Energy that has worked with Chateau Chantel which has a free-standing unit. He needs a small free-standing panel at his home.

6. **Additions to Agenda/Approval:** None

Moved by Dloski to approve agenda, seconded by Wunsch

pass unan

7. **Conflict of Interest:** None

8. **Consent Agenda**

a. Approval of Meeting Minutes: PC Meeting Minutes -June 25, 2019

Hornberger: Correction to the June 25, 2019 meeting minutes: change Suzanne to Susan and on the top of page three on the second line change "in the township park" to "near the township park."

Moved by Wunsch to approve consent agenda, seconded by Dloski

pass unan

9. **Reports**

a. Zoning Board of Appeals (Couture)

Couture: No ZBA meeting, therefore no report

b. MAP Award (Mielnik)

Mielnik: A letter has been received from the Michigan Association of Planning informing the township that it has received an award for the PDR program that the township administers for environmental planning. The township was one of the first adopters in the early nineties of the program and it has been in effect for three decades.

c. Master Plan Steering Committee (Mielnik)

Mielnik: Met on June 26, 2019, with the members focusing on the community survey and looking at the 2006 survey. Took time to ask the new members about what questions the new survey will be using, looking at what issues are relevant, what should be reframed, and what is new. The consultant from Epic MRA joined by Skype and will be joining in for the next meeting July 22, 2019. They will

make a draft at the next meeting dealing with the issues of methodology of the phone survey and the written survey.

d. Zoning Update (Mielnik)

Mielnik: There has been a revisit of the zoning code for some time (since 2016), a huge effort (seventy meetings) has taken place involving consultants and the committee, and this ended in December of 2018. There was not a drastic change but the zoning code and map were worked on. The zoning map and code will be converted to a digital platform. There is not a large departure from the code, but an effort was made to organize, add, and clarify so that in the future the township will have a better foundation when we get into a new master plan and zoning in the future. We are close to a public review scenario; asking Becky Chown for a review for edits. We are checking cross references. We are planning on public workshops to make the code available for public review before formal consideration. We plan on moving forward in the next thirty days.

Dloski: asked when will the zoning amendment will go to the town board and be published

Mielnik: we will have public hearings or workshops/open house; that will be a first preliminary step before formal deliberation on the code

Dloski: asking specifically because of the timing of the solar panel issue brought up this evening

Hornberger: hoping to talk solar panels at the end of the meeting

Mielnik: it depends on the public response and cannot clearly predict

10. Business Items

a. 81 Development-SUP #123 Amendment 1-Public Hearing

Hornberger closes regular meeting and opens public hearing

Hornberger: the 81 developer will give the changes to SUP #123

Mielnik: At the last meeting, we had an introduction to the changes to SUP #123, and at this time we will hear public comment on this proposed project. We do not have any staff report or findings of fact at this time.

Kyle O’Grady, 10860 Bluff Road, 81 Development: Explains the changes to the development: Starting with what used to be Lot One, shown in the light blue, the southern piece of the property. Proposing to change Lot One to the northern side of the property and keep that as open space. The entrance would include more open space. The next change is at the beginning of Snug Harbour Court, shown in the yellow areas, it was originally a landscaping plan, and now the plan is to make that part of those lots. Snug Harbour Court will move twenty-five feet to the west to allow more buildable area on those lots. The next change is on units ten through twenty-eight; they are shortened five feet to add to the open space. Next, the southern end of the site, shown in dark blue (the jetty to the water), it was originally Lot One’s sixty feet of water frontage is now removed entirely from the development, and it will be non-buildable with its own ID. It will eliminate the frontage from usage from the community. Finally, for the emergency access, the easement will be moved to the southern part of the property from the northern part of the (Wells) property.

Dloski: clarifies that the sixty feet of lake frontage will be taken out of the plan

O’Grady: yes, it will be taken out and have its own tax ID, and it will be non-buildable with a deed restriction

Dloski: how will that parcel be maintained?

O’Grady: it will be attached to a different home, not in the development, maintained by the property owner

Dloski: will it be sold to the subdivision across the street?

O’Grady: yes, we will attach it to another lot

Mielnik: the code does allow for that, the deed restrictions on that parcel will limit characteristics and use

Dloski: could the person that buys the property put in a dock or a fire pit?

Mielnik: for the benefit of one lot

O’Grady: remove for a single unit

Dloski: part of your request is to remove the parcel from the PUD

Mielnik; to clarify, this is a PUD, and there is a certain percentage of open space required, so there is a small increase in the amount of open space in the project.

Discussion among the members that the lot to the lake is not included, it is out of the open space, not part of the SUP permit

Mielnik: the township engineer will review the calculations and confirm that the numbers are correct

Dloski: at the next meeting, the plan will have this parcel removed

Mielnik: There will be a list of conditions and findings of fact at the next meeting that will encompass the changes, the township engineer could not attend the meeting tonight. She will review the calculations.

Dloski: for the lakefront parcel, questions if someone does not live near the development and buys the parcel, where would they park?

O’Grady: similar to when people have parcels across the street, there is a larger area before the ten feet to the water and they would use the gravel road

Hornberger: board is not prepared to make decisions tonight

Mielnik: this will go on the August agenda

Dloski: if assigned a parcel ID, does it need to conform to the zoning definition of a parcel

Mielnik: it may already have a parcel ID and it will be looked into it

Hall: what about a split land division?

Hornberger: should a parcel have a certain minimum acreage?

Mielnik: under the impression that it is an existing parcel

O’Grady: for a two parcel ID, the development will meet the requirements and the engineers will look into it, so it will meet the requirements

Hornberger: next month we will want to see a deed restriction on that

Hornberger closes the public hearing and opens the regular meeting

b. Update on Winery Chateau / B&B Zoning Amendments – Discussion

Mielnik: we had a meeting discussion in the context of PDR, the issue that John Wunsch brought to the board’s attention. It related to using PDR to compensate for extra rooms for BB/Winery Chateaus. It requires a legal opinion from the township attorney to address the PDR issue and the zoning, we do not have that yet, and it has not been completely resolved. There are many details when looking at the relationship between the PDR restricted land and the zoning code.

Hornberger: are you planning another meeting?

Mielnik: waiting for attorney’s opinion on the relationship between zoning and PDR

Land that is encumbered with a PDR easement has little development value. How this fact relates to required lot sizes is an unanswered question.

c. Submittal Deadlines – Potential bylaw amendment

Mielnik: there has been a pattern for the last six months for last-minute submittal of material for the planning commission meetings, and has been rushed so that the applicant does not have to wait for the next month for it to appear on the agenda. To be consistent with other township’s policies, the board will now require that for an actionable item, the item will have to be submitted two weeks ahead and

for an informational item, submittal will be required one week ahead of time. We should put this in the by-laws to be clear what the laws are.

Moved by Dloski to amend planning commission by-laws to insert paragraph nine regarding deadlines for submittal of materials according to a memo by Mielnik dated July 10, 2019, to the bylaws, seconded by Shipman pass unan

Couture: is there any other procedure for this?

Mielnik: an amendment to the bylaws

11. Public Comments: None

12. Other Matters or Comments by Planning Commission Members

Hornberger: it may be up to six months to wait for the zoning ordinance; we could do one of the band aids we have done in the past to help Mr. Lyman with his solar panels, which would be done in six months anyway. The language has been crafted already.

Mielnik: the issue isn't the solar panels on a roof but the freestanding element; there are height limits and setback requirements for freestanding solar panels. We can bring an amendment to the planning commission next month, with specific language, and what sections to amend in the current ordinance. This information from the current draft was provided in a letter from Mr. Lyman.

Hornberger: recently done with farm processing, this is not unheard of; fairly easy to look at. At this time, we will ask the planner to bring this to the meeting next month.

Mielnik: the solar panel issue is time sensitive with federal tax credits expiring

Dloski: we will see language and schedule a public hearing at that time

Hornberger: the board can vote and pass to the town board at the August meeting

Dloski: will it meet the minimum side yard setback requirements? What is the setback other than the residential fifteen feet?

Mielnik: minimum other than residential minimum fifteen feet, not sure about accessory structures

Dloski: minimum of fifteen feet

Mielnik: it falls under an accessory structure

Hornberger: landscaping and screening on all sides?

Dloski: do the solar panels make noise?

Mielnik: the large panels do when they have invertors (large solar fields with one hundred plus acres) and they make noise; does not know about the residential units

Dloski: mentions a noise study may be required

Mielnik: the larger applicants require a noise study, paid by the applicant

Dloski: and individual noise study may be required, not clear

Mielnik: will take a look at that issue

Shipman: delineation for ten kilowatts or less, should the engineer look at this, it is unclear

Board members discuss and agree that an engineer should look at this

Wunsch: would this restrict a winery or agricultural operation?

Hornberger: this is residential

Mielnik: this is intended to be an accessory use to a residential structure

Dloski: roofs, are all zoning districts

Hornberger: we want this only for residential

Mielnik: not utility grade which apply to one hundred plus acres; looking at residential only

Dloski: if approved, do they have to submit a site plan to the township?

Mielnik: yes, a land use permit is required

Peninsula Township
07-15-2019 Planning Commission
Beth Chan, Recording Secretary

13. Adjournment:

Moved aby Dloski, seconded by Wunsch

pass unan

Adjournment time: 7:45

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the clerk

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PENINSULA TOWNSHIP PLANNING COMMISSION MEETING

13235 Center Road

Traverse City, MI 49686

August 19, 2019

7:00 p.m.

1. Call to Order: 7:00 p.m. by Shipman

2. Pledge

3. Roll Call: Present: Dloski, Hall, Oosterhouse, Shipman, Wunsch. Also present, Randy Mielnik, Township Planner, and Christina Deeren, Zoning Administrator
Excused: Couture, Hornberger

4. Review for Conflict of Interest: None

5. Brief Public Comments: None

6. Additions to Agenda/Approval:

Shipman: strike item 7 as it is a repeat

Mielnik: The planning commission recommends an individual that also serves on the ZBA. Al Couture is interested in continuing in that role, that is the pleasure of the planning commission.

Shipman: adding ZBA Recommendation as Business Item f.

Moved by Wunsch to approve agenda as amended, supported by Dloski pass unan

7. Conflict of Interest: None

8. Consent Agenda

a. Approval of Meeting Minutes: PC Meeting Minutes – July 15, 2019

Moved by Dloski to approve meeting minutes for July 15, 2019 supported by Wunsch pass unan

9. Reports

a. Master Plan Steering Committee (Mielnik)

Mielnik: The next meeting is September 9, 2019. The members will review draft number four of the survey. Susan and Todd are on the committee. Once the draft undergoes revisions, it will be on the agendas of the planning commission, the township board, and will launch after that. We have made efforts to frame the survey questions well and plan to keep it brief.

b. Zoning Update (Mielnik)

Mielnik: Becky Chown is almost done with grammatical editing, it is expected to be released later this month. Tentatively, September 23rd is a targeted workshop date to answer any questions from the public and hear feedback on the draft.

10. Business Items

a. First Congregational Church SUP Amendment-Introduction

Jeff Parker, Jeffrey Parker Architects, on behalf of the church: We have just finished meeting with church neighbors and are here tonight to share plans for the church expansion. With a PowerPoint slide, he shows the aerial map of the church with the upper left showing the community garden and to the right, a kid's park. Down from the community garden is the retention pond. The Garden of Remembrance is also shown and is under an easement for protection. The church has not been updated for a while and there are two projects for the church. The first project is for children newborn to sixth grade. Currently, they compete for the same space. Plans are to build space in the area on top of the existing roof, shown as a rectangle on the upper right corner of the slide. Referring to the top and right of the addition, this would be made into a park complete with nice landscaping. The L shaped part of the property which loops around the kid's zone would be landscaped, and would entail lowering the grade, moving the ground to where the arrow is shown on the slide. That would balance the cut and the fill. A slide of the inside of the building is shown, and it is noted that the exterior appearance is seventeen feet tall.

The second phase is a Christian Life Center, intended to be used by the community with its own entrance. The interior would include an elevated walking path, meeting rooms and a multi-use gym. This will displace parking and a parking area would go where the fill would go for the first project. There are plans for a storage area to be built to the side of the sanctuary's chancel, and it will blend into the church architecture. The garden will include a twenty-four by forty-eight shed for use by the community garden. A slide is shown of the inside of the Christian Life Center and the front view with its own entrance. The next slide shows the Kid's Zone to the right and the Christian Life Center to the left, with a height of thirty feet.

Dloski: What is the frequency of use for the Christian Life Center?

Parker: introduces Pastor Chad Oyer of First Congregational Church

Pastor Oyer: The hours for the building are seven a.m. to six p.m. with sixty-five to eighty families using the daycare. In the evenings there are meetings and worship services. The building is used until ten at night. The church is used heavily by groups in the community and the Christian Center will be in step with those hours, seven a.m. to ten p.m. at night.

Deeren: What about Sunday, times of worship?

Pastor Oyer: Simultaneous worship services are held on Sundays from ten a.m. to eleven a.m., two services occur at that time. We have had staggered services in the past.

Shipman: What is your timeline for a formal submittal package?

Parker: I will introduce the civil engineer of Gosling Czubak Engineering Sciences for that timeline.

Bob Rochet, Gosling Czubak: We are working through plans with the church and we are hoping for the next meeting for submittal. The Kid's Zone and the storage area are important and necessitates amending the SUP.

Hall: Jeffrey indicated that there would be some land rebalancing, and parking lots would be reconfigured somewhat. Do you anticipate any problems with storm water management?

Bob: I do not. There is a large storm water basin currently in place. The Kid's Zone addition will fit over the existing footprint. We have not analyzed the Christian Life Center. There is existing storm water drainage there.

Oosterhouse: What is the timeline for the second phase, is the full package for both phases?

Parker: We will seek approval for both projects. At present, the church is undergoing a capital campaign. We want to do the projects well. The first project is the Kid's Zone addition, the park, the two storage areas, and renovating the tired areas of the church. The second phase is the Christian Life Center and it may be another year for that project.

Shipman: We will look for your packet.

Mielnik: The deadline is two weeks before the scheduled planning commission meeting to have the entire packet.

b. 81 Development – SUP# 123 Amendment

Kyle O'Grady, 901 South Garfield Avenue: I am here tonight seeking approval of Amendment One of PUD #123. It is my understanding that a small portion of this amendment has been opposed by property owners to the north of the development living on Trevor Lane. Specifically, their concern regarding the amendment is related to the public hearing notice and its wording. They have claimed this notice, published, June 29, 2019, mentioned all changes other than the movement of lot one to the north side of the property. They claimed they didn't attend the public hearing because they didn't know we planned on moving one of our lots. Although we believe that "adjustments of several lots" as stated in the public hearing notice adequately introduces the idea of moving the location of one of our lots to a different location on the property, we are willing to alter tonight's amendment request to include all previous changes and exclude moving lot one to the northern side of the property. This request, including lot change, has been thoroughly vetted and proved to be in conformance of the zoning ordinance by Jennifer Hodges.

Shipman: asks for a summary

O'Grady: We will move the road named Snug Harbour Court on the east side of the property about twenty-five feet to the west, as well, we are proposing to remove five feet of lot depth on lots eleven through twenty nine in order to make up for the open space. By request of the Well's family, the fire department emergency access route located at the northwest corner of the development is re-aligned. Those are the only changes for this amendment.

Dloski: wants to clarify, referring to page one of the introduction, the seven points, is number one part of your proposal?

O'Grady: yes

Dloski: So you are going to relocate the road Snug Harbor Court twenty-five feet to the west and this would enlarge units nine, eight, seven, six and five. Number two: lots one

through nine are adjusted. Number three: landscaping along Double Eagle Drive associated with unit ten and four is eliminated, enlarging those two lots. So, numbers four and five are deleted.

O'Grady: yes, we are going to delete number four, and delete number five.

Dloski: Units eleven through twenty-eight were shortened along the easterly lot line to achieve the 65% PUD open space requirement. Number seven, the fire department emergency access route located at the northwest corner of the development is re-aligned are included. To review one, two, three, six and seven are your requests and eliminate four and five?

O'Grady: yes

Wunsch: What range? Twenty-five? Will you modify number one to give a range to deal with?

O'Grady: We are asking for twenty-five feet exactly.

Shipman: Are you satisfied with the packet?

Mielnik: Yes, the issue set aside may come back.

Shipman: Is there engineering documentation from Jennifer Hodges?

Mielnik: There is a letter as an exhibit, and double checked today with regard that changing lot number twenty-nine as discussed still maintains compliance with the required open space calculations.

Shipman: We will take public comments at this time.

Scott Howard, Attorney on behalf of the Lewis family: We appreciate what has happened here tonight. We understand that the request for unit one to be unit twenty-nine and realize it may come back. Wanted it to be in the record that they strenuously object if this issue does come back.

Moved by Dloski to recommend to the township board approval of revision for SUP #123 items one, two, three, six and seven found on page one of the introduction and background sheet to the request, as amended, and the amendment is to delete the word about and to make it clear that it is twenty five feet, supported by Wunsch.

pass unan

Shipman: this will now go to the town board

c. Solar Zoning Amendment

Mielnik: At the last meeting, a resident pointed out that our ordinances do not address on site solar energy systems. It was the will of the board to include a draft zoning amendment. The zoning rewrite text (not released) included material that addressed this topic specifically, but several shortcomings were found in this material and edits were made to improve the draft language provided in the packet. Additionally, photos of different sizes of free-standing solar panels were included to provide a sense of scale. One change from the zoning rewrite text was to adjust the required setback given the size of the equipment. An additional two feet of setback is required for each kilowatt over one to a maximum of ten kilowatts. The planning commission can take action and schedule a public hearing to hear public and trade association input. A few areas need more attention and review.

Nancy Heller, 3091 Blue Water Road: The planner and applicant want to move forward but it needs more work before it goes to the public hearing. We need to know dimensions and see pictures. The concern is about the size of the ten-unit panel and size of the property it is put on. We need more information for the set area and roof. If it moves forward, people could request variances and her opinion is that it needs tightening up.

Deeren: For the request that came before me, the panel was a forty-seven feet long panel.

Dloski: What kilowatt was that?

Deeren: Ten kilowatts, and has seen fairly large lot coverage as well. We need to look at the size of the panels and the lot coverage.

Shipman: Yes, that is item C.

Hall: Why is the limitation expressed in terms of kilowatts instead of square footage of the panel, with advancing technology the panel could produce twenty kilowatts?

Mielnik: That is a good point, and perhaps there should be a limit set in terms of both kilowatts and the size. Going forward, the relative question is to decide to go to a public hearing now, or work on it more and delay a month?

Dloski: The gentleman asked that we come together because he could not put a solar panel in, and asked it to be considered, so he could have something to use. We should schedule a public hearing as is. I propose a motion to schedule this for a public hearing at the next meeting as is.

Wunsch: I would support a public hearing, but more research is in order. Ten kilowatts is good for the average, but would look at bumping up the square footage and look at setback requirements.

Mielnik: The area of concern is one size fits all. It would be lost on five acres, but prominent on a half-acre lot.

Oosterhouse: Put some acre definitions in there, and what the standard allows. What are the size requirements? There is a need to look at the standard to go by in 2019, what does the panel look like, and adjust it if technology improves.

Dloski: The pictures show two to ten kilowatts. We can see some perspective from the Central High School array.

Deeren: A field can be seen on M-72 as well.

Mielnik: Can come up with some drawings to show size but more input is needed

Shipman: Can we move forward to public hearing, knowing that issues will naturally come up? Do I see a motion on the floor?

Moved by Dloski for the Solar Zoning Amendment for on-site solar energy systems to go to public hearing, seconded by Wunsch pass unan

Shipman: This will go to public hearing.

John Bercini, 716 Walnut Ridge, serves on the board of directors for the

Groundwork Center for Resilient Communities: There is a new section 7.2.8, is that a replacement or addition to 6.3?

Mielnik: created a new section

Bercini: Regarding the three-foot height limit above the roof line, which is fine for a normal roof, how does that work on a flat roof? How do you measure three feet above a flat roof, is it the parapet or the floor of the roof? The parapet is the side wall and the standard solar panel is three feet wide and five feet tall. There will be variance requests. The other issue is a definition problem, for example, there could be a six kilowatt on the garage and a ground mount of six to eight that equals fourteen kilowatts. Many homes do not face dead south. The efficiency of the panels is changing. Three panels make a kilowatt. Ten kilowatts is thirty (three by five) panels. Also, you need to clarify the landscaping at the base. Is that a fence, pine trees, what do you mean?

Oosterhouse: In looking at the three feet above the roofline, are they at the most efficient level? There is a need to make sure that they are the right height.

Bercini: Most modern systems track and change the angle and degree. There is a need to consider given angle and the given panel as to the kilowatts generated.

Dloski: question about a flat roof, three feet seems easy

Bercini: You might want five, how do you measure the three feet from the base or the parapet? You will not see above the parapet.

Oosterhouse: If the roof does not have a parapet, five feet goes up, limiting the full use of what these panels could be.

Deeren: on the ground instead of the roof

Board discussion on flat roof verses ground and the variables of larger systems

Mielnik: to clarify, there is no language on landscaping in this draft

Brad Lyman, 18420 Center Road: He had requested that this item be considered. Urges not to allow perfect to get in the way of good. He has a south facing roof issue and cannot do anything. He requests a straight forward amendment for those who want to use solar.

d. Winery Chateau / B&B Zoning Amendments

Mielnik: Today, he found a section of the code that we were not aware of that speaks to part of it, in section 4.2.3, the proposed change. The question is how PDR easements impact the zoning code is significant. John Wunsch spoke a few months ago on the PDR land being included in Winery Chateaus, which spilled to bed and breakfasts, which spilled over into lot sizes. Section 4.2.3 needs additional work, but we can go forward and hold a public hearing on the bed and breakfast amendment. Not many communities have the PDR, it is important to clarify how PDR land is treated under the zoning code. For the most part, the zoning code trumps PDR.

Dloski: With a couple of very small revisions, 4.2.3 may get us where we want to be. However, there are additional discrepancies in the zoning ordinance that we need to attend to. Recommends to table and let committee meet one more time.

Moved by Wunsch to table the Winery Chateau Zoning Amendments, supported by Dloski
pass unan

e. Updated Bylaws Attached

Mielnik: this is not an action item, but informational

Hall: Looked at the bylaws and did not see a provision for indemnification of planning commission members, it is common to have this. Recommends to include one.

Dloski: On occasion, members can be sued individually, agree we should have a provision. Typically, the township insurance carrier has this to indemnify the board members.

Shipman: question to Randy Hall, did he research with the township staff on this issue about the insurance?

Hall: There is an insurance policy, but would want to ensure the planning commission members are insured/included. When individuals are sued, they do not have to hire an attorney at their own expense.

Dloski: question to Randy, do you have language?

Dloski: a copy should go to the planner and to the township attorney

Deeren: and check insurance carrier and name out individuals

Dloski: to backtrack, we need to move ahead on the B&B Zoning Amendment, item d., it can move forward to public hearing

Shipman: let's jump back to item d.

Mielnik: This had the provisions for additional guest rooms for larger sites and excluded PDR land to be counted as that. Currently the Bed and Breakfast ordinance says that the number of guest rooms is three guest rooms regardless of the lot size.

Motion by Dloski to schedule public hearing on B&B Zoning Amendment, supported by Hall **pass unan**

Mielnik: Therefore, there will be two public hearings next month, the Solar Amendment and the B&B Amendment

f. ZBA Recommendation

Shipman: Alan Couture has expressed interest in continuing.

Mielnik: Need for the planning commission to recommend someone to the township board. They will appoint that person in September.

Moved by Dloski to recommend Alan Couture as our ZBA recommendation to the town board, supported by Oosterhouse **pass unan**

11. Public Comments

Monnie Peters, 1425 Nehtawanta Road: Commented on the need to move forward with the zoning update as soon as possible.

Mielnik: There were many technical areas of the zoning rewrite that required more attention and review in recent months. The zoning map is actually part of the zoning ordinance and it requires attention as we move from a paper map to a digital map that can be updated easily going forward. It is important to have a solid product to present to the community.

12. Other Matters or Comments by Planning Commission Members

Shipman: will be absent next meeting

13. Adjournment:

Moved by Dloski, supported by Wunsch

pass unan

Adjournment time: 8:12 p.m.

Peninsula Township
Planning Commission Minutes
August 19, 2019
Beth Chan, Recording Secretary



PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

www.peninsulatownship.com

Township Board Regular Meeting

Township Hall

September 10, 2019, 7:00 p.m.

Minutes

Amended 10-22-19

1. **Call to Order** by Clerk Chown at 7:02 p.m.
2. **Pledge**
3. **Roll Call:** Manigold, Bickle, Wahl, Sanger, Wunsch, Achorn, and Chown
4. **Brief Citizen Comments (for agenda items only):** none
5. **Approve Agenda**

Bickle: re-submitted communication from the Grand Traverse County Road Commission that provided an update to the residents who drive Island View Road and Bower's Harbor Road [See attachment at the end of the minutes]. This also provides to the board his pursuit of funds that are still owed to the township in the amount of \$183,095.21

Chown: added an item to the consent agenda to reappoint Wunsch as the township board representative to the planning commission for a term to end December 2019 and to reappoint Wahl to the zoning board of appeals as the township board representative to conclude December 2019.

Moved by Wahl to approve the agenda as amended, seconded by Sanger.

Roll call: Manigold-yes, Bickle-yes, Wahl-yes, Sanger-yes, Wunsch-yes, Achorn-yes, Chown-yes.

Passed 7-0

6. **Conflict of Interest:** none
7. **Consent Agenda:** any member of the board, staff, or the public may ask that any item on the consent agenda be removed and placed elsewhere on the agenda for full discussion
 1. Invoices (recommend approval)
 2. Reports
 - A. Fire department report for August 2019
 - B. Ordinance enforcement report for January–July 2019
 3. Correspondence:
 - A. Bruce A. Fisher and Julie Adams
 - B. Lois Byrne
 - C. Follow-up from Charter Communications regarding Peninsula Township's request to remove lines from Consumer Energy poles
 - D. Letters from township residents regarding the DNR Waterways Grant, Kelley Park, and the Haserot Beach boat launch and parking lot improvement project
 4. Award from the 2019 DTE Energy Foundation Tree Planting Grant Program (recommend approval)
 5. Request from the Friends of Peninsula Community Library to use Charlie Doe's sign to announce the annual book sale to be held at the new library September 18–28 and to post their

banner at fire station #2 (recommend approval)

6. Minutes from August 27, 2019, township board meeting (recommend approval)
7. Request to reappoint Isaiah Wunsch as the township board representative to the planning commission for a one-year term to end August 2020 (recommend approval)
8. Re-appoint Wunsch to the Planning Commission and Wahl to the Zoning Board of Appeals until December 2019

Consent Agenda retroactively approved at 10-21-19 special 3:00 p.m. township board meeting.

8. Business

1. Public hearing on SUP 123 Amendment #1, The 81 on East Bay

Manigold: closed the regularly scheduled meeting and opened public hearing.

Meilnik: the application for the amendment was filed with the township back in June 2019. This was presented before the planning commission with a scheduled public hearing on July 15, 2019. There were no public comments at that time, but after the hearing, issues were raised by adjacent property owners regarding the relocation of one of the lots. This item was then removed from consideration, leaving us with the five items listed in the report in the findings of fact and conclusions. The planning commission at the August meeting recommended that it be presented to the township board. The controversial element of the project was removed, the relocation of one of the lots to the southerly portion of the subject site to a northerly portion of the site. There are five items for consideration that are minor in some respects.

Kyle O'Grady, 901 S. Garfield Ave.: this request has only a few simple changes from the original SUP 123 that was previously presented and approved by the township board.

No public comments were received.

Manigold: closed the public hearing.

Meihn: has reviewed the proposed changes and finds that everything is in conformance with the ordinance, state law, and customary practices.

Moved by Wunsch to approve the amendment to SUP 123, Amendment #1, as described in the attached findings of fact and conclusions, with the two conditions described therein. These conditions include 1) that all prior findings, conditions, and safeguards imposed by the Grand Traverse County Circuit Court and the Peninsula Township Board of Trustees remain in effect, and 2) that site-specific storm water reviews continue to be required for each lot, seconded by Chown.

Roll call: Wahl-yes, Sanger-yes, Wunsch-yes, Achorn-yes, Chown-yes, Manigold-yes, Bickle-yes. Passed 7-0

2. Public hearing on the DNR Waterways Grant, Kelley Park, and the Haserot Beach boat launch and parking lot improvement project

Manigold: closed the regularly scheduled meeting and opened the public hearing. There were many questions after the last meeting regarding this issue. [Manigold] tracked down some answers and information and will present them in a slideshow. The presentation is provided in the packet and can also be reviewed on Streamspot.

[Manigold began the slideshow.]

This is the document from when Kelley Park, also known as the Moorings, was a campground owned by the Nevingers. The land was sold from the Nevingers to an individual named Puto. On September 5, 1970, a permit was issued authorizing 17 mooring buoys, an 8 x 8-foot swimming dock, a 135-foot mooring dock, and a 12 x 50-foot steel boat ramp in that location. The dock was there for a number of years and had a gas pump at the end. When the inn sold, they came up with a different plan that allowed for the shorefront of that parcel to be divided. There was a campground that had two existing cottages that were removed and a store that sold everything from milk to minnows. The property contained 29 campsites. When this was sold by the Nevingers, Puto developed a site condominium with four shorefront lots and six more upland. He also applied to have a marina, which was accepted. This would have contained 10 boat slips that would have held 24-foot boats or more. When the lots did not sell, the owner was approached to go to the Michigan Natural Resources Trust Fund (MNRTF). The trust fund agreed to the acquisition of the project for a little over two million dollars.

At the DNR trust fund meeting on December 4, 2013, it was moved by Mr. Canale, supported by Mr. Charters, to approve 13-131 the Old Moorings place acquisition subject to local conflict uses being resolved and contingent upon the agreement of use patterns, both at Haserot Beach and the Old Moorings property. A local resolution by the township was to be passed indicating that the township had carefully considered the best way to resolve the use conflicts at the Haserot Beach site, and the boat launch would be installed at the location that best met the goal with consideration given to anticipated long-term maintenance costs. This motion passed without dissenting vote.

On May 13, 2014, at a public hearing with the planning commission and the park commission, per Michelle Reardon, our planner, it was noted that per the resolution approving the funds, the MNRTF had offered the township the opportunity to determine the best location for increased boater access to the Great Lakes while forming consensus related to the future use patterns in and around the Old Mission village area.

[Manigold presented photos highlighting the proposed former development and the current proposed boating access site development at Kelley Park.]

An agreement was fashioned regarding what Kelley Park would look like with a low impact boat launch. The land would be leased back to the township and the DNR would clean out the launch. The township would be responsible for the upkeep and maintenance of mowing, trash removal, and the bathroom area. Planting the area with wildflowers and dune grasses to keep the mowing minimized was discussed. The DNR did sign this but the township did not have title to the property at that time because it was still going through the conservancy.

[Manigold showed a picture of Haserot Beach, which was purchased by the township sometime in the late 1980s or early 1990s.]

This was previously Harry Britten's house. The beach area was expanded. Three parcels were part of the Haserot Company. The Haserot Company owned a place in Leelanau County and used this access to come over and pick up cherries from the farmers. When this operation failed, all of the property was disbursed by the Haserot family, and 280 feet was given to Peninsula Township for beach access. Two other pieces are now owned by the Laus or Gleasons; this is private property. They have very graciously allowed people over the years to use this property for beach access as well. There is also a little strip that back in the 1960s was the boat launch.

The DNR came up with this plan over the past few years as they realized there was a no development zone on the Hyslop property. They were proposing a two-ramp boat launch that later changed to a one-lane boat ramp and to begin to improve the parking. In the summer when days are hot, the beach is very congested. People then park down Bay Street and both sides of Swaney. Last year signs were put in. Rocks were placed by an individual but the road commission made them remove them from the right-of-way. The majority of the calls we receive are for keeping this area all swimming and keeping propellers away from swimmers.

The other area of concern is the parking along the roads. [Manigold] approached the Grand Traverse County Road Commission and was deferred to a sergeant of the state police. The road commission said it would allow a 90-day permit for no parking. The sergeant indicated that he did not see a problem there.

One thing that has been discussed is blocking the road off at the American Legion Hall and gating that and blocking the road off, which would require having the Grand Traverse County Road Commission abandon the road.

Joe Hagen inquired about incorporating the village of Old Mission; that is complicated and is not a feasible solution at this time.

People have questioned why the township does not purchase more beach access land. When you look at the property already preserved, 15,141 feet of beach is available. Some is secluded and some like Haserot is very congested. This does not include the road ends, of which there are at least five or six, but there are regulations for using the road ends.

Questions raised by the Hyslop family found that we do have an encroachment. When you read the document, the family has the right to take that part of the property back if something is done in violation of the agreement. Mr. Hyslop would like to work with us as it was his mother's dream to have this property preserved for the people of Old Mission. We have Haserot, which is 187 feet, and then 110 privately owned feet, and then 213 feet. The Old Moorings place is 500 feet. The DNR has been very specific about this land remaining in natural grasses and wetlands. They hired the conservancy to walk the property last year and identify all the sensitive plants. There were drainage issues last year. When the drain commissioner opened up the drain on the Old Mission side, this was also opened up by the DNR last fall. There will be limitations on what can happen on this site. Bill Hyslop came in with this shoreline schematic, which details the depths of the lake.

Chown: regarding the trees and the swale north of the existing launch at Haserot, someone raised the concern that perhaps the township would not be able to obtain a permit to remove those [and provide additional beach], but that does not seem to be an issue. Jennifer Hodges of GFA indicated this would be doable.

Manigold: we are proposing five different items that are also online in tonight's packet materials.

[Manigold read the memo of understanding to the audience.]

The board did check into moving the grant to Kelley Park, but the grant is site specific and therefore cannot be transferred to another location or property. Feels that Kelley Park could be developed into a low-key area, and the best thing would be moving all of the truck and boat trailer traffic over to this site. This would be an immediate improvement at Haserot and then we could

work to develop Haserot with the community and try to resolve the parking issues. If the road closure was successful, then volleyball courts could be added. We believe we could keep a two-and-a-half-foot draft in the launch with minimal dredging. Historically, the DNR has been willing to lease this property back to the township. The fear with the DNR is possible changes to the site. There was a lifeguard on duty at one time. Perhaps this is something we reestablish at Haserot. **Chown:** stressed that public comment will be taken on the design prior to any finalization of the project so that this will be an inclusive process between the public and the township board.

William Rudolph, 4784 Forest Ave.: last week my grandson was here who is five years old. He is the fifth generation of this lineage to be able to enjoy Old Mission and the waters here. We are not voters here, only part-time residents of the peninsula for six months of the year. Is interested in maintaining the ambiance of the Old Mission community to the best of our ability. There is a closeknit sense of community here. When you look at what happened with the residents here and [preserving] the Dougherty House, this is a special thing. We like the environment here along with the agricultural setting. We are also interested in the history as this is a special place with the Dougherty House and the Old Mission church. We do have some concerns here such as suburban-type development in the area. We know it is difficult to stop that type of development but it also breaks down community values. We are also concerned about overuse of our resources. We see this in the summertime with the encroachment of boaters into Old Mission Bay. Boats come from Elk Rapids and have parties. A larger boat ramp could cause even more congestion. Is encouraged by the memorandum that is being proposed but hoped it would be in the form of a resolution. Likes the way this is going in terms of a low-impact facility. Thinks the board is on the right track.

John Jacobs, 5290 Forest Ave.: thanked the board for listening to the comments from last month's meeting. Is refreshing having spoken before the previous administration to have a board that actually listens. As outlined, this plan has a lot of benefits that might be acceptable to a lot of people. As discussions continue, asks the board to keep in mind the parameters being offered: one lane, shallow water, no increase in parking, and retaining township control of the launch. Has a few concerns as Kelley Park has a lot of land and in a few years a different administration in the township or DNR could decide to make this a larger facility. Would like some assurance that what is being built will stay that way and that it won't become Disneyland. Bill Hyslop has done an admirable job of researching the lake levels and graphed this beautifully. Thinks it is also worth checking out with another source before moving forward just to ensure that you can float something larger than a paddleboat in a low water year. People swim at Kelley Park as well. One of the big motivations for moving the launch from Haserot to Kelley is to get the boats away from the swimmers but don't be fooled into thinking there won't be swimmers at Kelley too. You may want to be prepared to address that. Thank you for making this an ongoing discussion and for treating us like your friends and your neighbors.

Hannah Matthews, 18625 Mission Road: lives across from Kelley Park. Knows from personal experience living across Kelley Park since the DNR picked it up that the number of boats coming across from Elk Rapids has increased. We cannot control people's behaviors and attitudes but there is a lot of bad behavior and attitudes that come across. They do not respect the people who are there swimming; they turn their music up and let their dogs and kids out to do their business. In spite of nicely asking them to turn the music down, they are disrespectful. What is the point of bringing more people to the area that we love and cherish? Doubts there is any financial gain in bringing more people. Pure Michigan has done too good of a job of advertising Michigan. Would like to see this area stay as original as it was but realizes this may not be possible.

Manigold: regarding the boat launch, there would be buoys out there so the boaters would have to respect not going into a launch area but they would be able to access the swimming area. We are all here because we live here and we want to do what is right. In the construction, we can do everything possible to minimize any concerns. The best thing to do is to have ownership so that we maintain control.

Linda Keely, 19535 Brinkman Road: appreciates how much the board has listened to the people. Thinks it is a good plan to start with and that the board will continue to hold open hearings and receive input from the citizens. Is encouraged that the best plan will be put in place for all parties.

John Andrus, 19088 Eastern Road: has sat back and watched and listened to this process for several years now. Has heard a lot of stories and a lot of facts but very little to back them up. Has also heard a lot of personal interest being shoved into this thing but, again, very few facts. You keep stating that the parking is the problem on Swaney Road. You are even proposing to abandon Swaney Road to make more parking for a season that last between the middle of June to the middle of August. Does that make any sense? If parking is the problem and the swimmers and sunbathers who park there are causing the problem, then instead of taking a perfectly good boat launch that is exiting into deep water and moving it over into an area that the DNR does not want to put a launch in because it's been proven it will cost too much to dredge it, why wouldn't you just move the swimming area over there and leave the boat launch at the current site? You would not have to abandon anything and it wouldn't cost you anything. It's common sense.

Manigold: closed the public hearing and returned the issue to the board for comments.

Wahl moved to approve the five-step memorandum.

Chown: before we do that, my understanding of the intent of the land gift given to the township by the Hyslop family is that there cannot be a structure on that land, and right now the township is violating that agreement. Should the Hyslops wish to do so, they could enforce the agreement the township signed off on and have that land returned to them for non-compliance. So, if I understand this correctly, the boat launch does need to be moved from where it currently is at Haserot Beach.

Meihn: yes, you are right.

Chown: it means a great deal to honor the intent of that gift.

Meihn: you have to honor it or you're in violation of the agreement.

Chown: is very much in favor of eliminating that launch altogether and constructing a similar launch down the beach at Kelley Park with minimal impact consisting of a single lane, shallow draft, and minimal parking. Keep it low maintenance and low key in order to keep the character of Kelley Park the way it is currently. Wants to maintain the endangered grasses and low swale areas with one of the most scenic views in all of northern Michigan.

Bickle: thinks this is a starting point and the direction we are heading towards; it doesn't mean tomorrow there will be a new launch. There will be more public hearings and input; this is simply to inform the DNR that we are not going to take the grant for Kelley. With the direction of our residents, we are going to restart and revisit the process. This is very constructive and clear.

Meilnik: the removal of the ramp is part of the five-step process or description that was outlined.

John Andrus, 19088 Eastern Road: spoke with Mary Shultz who was the elected official in charge when the launch was moved from Bay Street. She was asked if a survey and engineering study had been done; she replied yes to both. If an engineering firm was paid to do a survey and study on where the launch should go and it got put in the wrong place, then why are we responsible for that financially and why after 25 years would the Hyslop family allow that?

[The board did not allow public debate.]

Manigold: was told by the family that they will not press anything, and they did sign off to allow a basketball court. This would be in their control if they were to take action, but, as indicated in many of their letters, they are happy to have the launch removed and relocated to Kelley.

Moved by Wahl to approve the memorandum to: 1. respectfully decline to sign the proposed grant agreement with MDNR in recognition of additional public input indicating significant opposition to the project location and the understanding that moving the project is not possible. 2. Acquire Kelley Park from the MDNR or enter into a long-term lease that retains township control of the park and its assets. 3. Develop plans for a similar but alternative project at Kelley park that includes a single lane shallow water launch accommodating up to a 2.5 foot draft, a launching area for non-motorized boats, low-impact vehicular movement/parking areas with minimal added parking, and signage. These plans would include identifying possible alternative and measures to minimize impacts on neighboring properties. 4. Present alternative project to area and township residents for feedback and plan design development. 5. Take steps to re-apply for MDNR funding (as early as spring 2000), sign a new agreement, and proceed to build all or a portion of the proposed project at Kelley Park. This project would include removing the existing boat ramp, riprap, and dock at Haserot and restoring the swimming beach, seconded by Bickle as read with all five points. Roll call: Manigold-yes, Bickle-yes, Wahl-yes, Sanger-yes, Wunsch-yes, Achorn-yes, Chown-yes.

Passed 7-0

9. Citizen Comments

Linda Keely, 19535 Brinkman Road: a long time ago when the launch was on the other side of Haserot and the property next to it was owned by the Brittens [Keely's ex-husband's grandparents], it was high entertainment to sit on the beach and watch cars and trucks try to launch boats from there. John Andrus's dad who always came with his tractor to pull people out, and he may have made money doing that.

[Board and audience laughter]

10. Board Comments

Wahl: thanked Fred [Gilstorff, the fire chief] and the fire staff who volunteered for the Ironman Triathlon. They gave a lot of support and were very encouraging. The only way it would have been better is if Old Mission Peninsula had been part of it but understands why it wasn't.

Manigold: received a proposal from Ginger [Schultz, the lighthouse manager]. Every once in a while, the township receives a proposal from someone wishing to use the property to shoot a commercial, and a request came in to use the lighthouse. They pay to use the grounds, and we have to make sure they have insurance coverage.

Chown: a few individuals think they've spotted piping plovers at the Moorings property. Did some research on this and will add this information to the minutes in an addendum.

Bickle: as treasurer, always wants to make sure that what is owed to the township gets paid.

Hodges: all projects have been closed out and the board has accepted them. All the documentation and paperwork was forwarded to the road commission back in June. Worked with Brad [Bickle, the treasurer] to reach out to Mr. Gillman, which expedited the process. In the past few weeks, has been in contact with the accountant for the road commission. Provided budget information along with the history, as this person is new. Have exchanged emails. This has been kicked back to the engineering department for their signoff.

11. Adjournment:

Moved by Wahl to adjourn, seconded by Sanger.

Passed unam

Adjournment: 8:02 p.m.

Treasurer

From: Treasurer <treasurer@peninsulatownship.com>
Sent: Tuesday, August 27, 2019 9:28 AM
To: 'Jason Gillman'
Cc: 'Jason Gillman'; 'Brad Kluczynski'; 'supervisor@peninsulatownship.com'; 'Jennifer Hodges'; 'Craig Goodrich'; 'Marge'; 'Becky Chown '
Subject: RE: Hello from Brad Bickle @ Peninsula Township - Road Projects left incomplete

Jason,

What is the latest update on my residents' concerns about the incomplete nature of Island View Road and Bowers Harbor road? I plan to speak to it tonight as it has been many months since I first asked you after a Town Board meeting to personally assess. I did receive your response below – but respectfully I really can't 'decipher' what is being stated.

Separately I have been asking Gordie Fraser the status of the \$183,095.21 that is obligation from the Road Commission as it pertains to all our Special Assessments Road and Drain commitments since 2017. Further our representative at GFA is providing me all the backup documents in which many attempts over the past 90 -120 + days to collect seem to be going ignored.

I plan to bring both items along with supporting documentation tonight at our Board Meeting in an effort to update them and our concerned residents.

All the best,

Brad Bickle
Peninsula Township Treasurer
13235 Center Road
Traverse City, MI 49686
Office (231) 223 – 4484
Fax (231) 223 - 7117

From: Jason Gillman [mailto:tech@icunet.net]
Sent: Monday, July 29, 2019 3:45 PM
To: Treasurer <treasurer@peninsulatownship.com>
Cc: Jason Gillman <jgillman@gtcrc.org>; Brad Kluczynski <bkluczynski@gtcrc.org>
Subject: Re: Hello from Brad Bickle @ Peninsula Township - Road Projects left incomplete

Brad, we have been following up on this, and in fact discussed it at length this last Thursday during our meeting. You can watch the discussion on upnorth media if you like. It is later in the meeting near the end.

The engineer is recommending an easement offer for a section of the property at this point to satisfy it more easily while providing the drainage for the road necessary for safety. I should note that we are not responsible (yet) for the MDOT portion which is clearly more of an issue, but we are attempting to make all parties satisfied just the same. We are looking forward to that eventuality as well.

Nancy should be hearing from someone soon if she has not already.

cc: MGR

Jason Gillman
Industrial Covert Unlimited LLC
PO Box 5449 Traverse City, MI 49696
231-932-9550

On 7/29/2019 2:33 PM, Treasurer wrote:

Jason,

Following up from our conversation after a recent board meeting during which I communicated that residents are unhappy about the current 'incomplete' state of Island View Road and Bowers Harbor Road. I trust you did take the time to drive them to see for yourself of what I am speaking to. Please advise me of when those roads are scheduled to be completed as I want to be able to answer residents when they ask. Feel free to call with any questions or clarifications as necessary.

All the best,

Brad Bickle
Peninsula Township Treasurer
13235 Center Road
Traverse City, Mi 49686
Office (231) 223 - 4484
Fax (231) 223 - 7117

Treasurer

From: Jason Gillman <tech@icunet.net>
Sent: Tuesday, August 27, 2019 10:00 AM
To: Treasurer
Cc: 'Jason Gillman'; 'Brad Kluczynski'; supervisor@peninsulatownship.com; 'Jennifer Hodges'; 'Craig Goodrich'; 'Marge'; 'Becky Chown '
Subject: Re: Hello from Brad Bickle @ Peninsula Township - Road Projects left incomplete

Brad, my apologies for any confusion.

To follow up on our phone conversation

Also after reviewing the email chain, I apparently had been thinking about the wrong intersection/road. I agree, the Island view road section for a stretch should be looked at with a little more discerning eye. We will follow up, and understandably those critically looking at our takeover of center road/M-37 are paying attention.

As for the \$183K, the invoices have not been on our radar, and this was the first I, or the manager had been apprised of the claim. Brad is following up on this as we speak, and we shall get to the bottom of it.

Jason

Jason Gillman
Industrial Covert Unlimited LLC
PO Box 5449 Traverse City, MI 49696
231-932-9550

<http://cul.com>

On 8/27/2019 9:43 AM, Jason Gillman wrote:

As for "incomplete nature" I am not sure what you are asking.

Deciphering: There is a drain that runs across M37 (center) there are things our engineers would like to do to complete this, and it may require additional easement from the property owner.

As for the status of \$\$\$ you mention, I am completely unfamiliar with this.

Jason

Jason Gillman
Industrial Covert Unlimited LLC
PO Box 5449 Traverse City, MI 49696
231-932-9550

Treasurer

From: Jason Gillman <tech@icunet.net>
Sent: Tuesday, August 27, 2019 12:17 PM
To: Treasurer
Cc: Jason Gillman; Brad Kluczynski
Subject: Island view, bowers harbor answers

From Brad:

Island View and Bowers Harbor were both wedged in preparation of a chip seal. Due to the shortage of aggregate, we have not completed all of our chip seals for this calendar year. Those that were chip sealed are now waiting on weather to be fog sealed and should be by the end of the week. If the chip seal has not been completed, we will be trying to still accomplish this in the first two weeks of September. If the aggregate does not make it in time, it will need to wait until spring to be chipped

As for the other, apparently the project was apparently never closed out. Brad will reach out to you later with more information.

Jason

Jason Gillman
Industrial Covert Unlimited LLC
PO Box 5449 Traverse City, MI 49696
231-932-9550

Addendum Regarding Possible Piping Plover Sighting at Kelley Park

Several residents I see regularly at Kelley Park have reported spotting piping plovers, which are on the endangered species list, along the shoreline this summer. I'm a big fan of piping plovers and have watched them with interest at Wilderness State Park over the years. Knowing this bird typically prefers wide, sandy, lonely stretches of beach with rocky areas to lay and camouflage their eggs in, I did some research and made a few phone calls.

I learned that, historically, piping plovers do not nest on the Old Mission Peninsula, although a different species, the semi-palmated plover, has been seen at Lighthouse Park over the years. That type of plover is not endangered. It looks a lot like the piping plover, as do sanderlings, Wilson's plover, and the snowy plover. In fact, these species look so much alike that it typically takes an ornithologist to tell them apart. You can see pictures of all these birds at the website allaboutbirds.org. You can also look up plovers and other endangered plants and animals online at the MI Natural Features Inventory.

I also learned that migratory season is now concluding for the piping plover. This season lasts from the third week of July to the second week of September, while nesting season goes from late April through the third week of July.

I'm not sure when the sightings first occurred, but people frequently bring dogs to Kelley Park, and the beach is narrow this year with few pebbles or rocks. This makes me wonder if the birds that were sighted might be piping plovers stopping here to forage while heading south during their lengthy migratory period or possibly a different species of plover altogether.

Thanks, everyone, for your interest and concern, and please chime in if you have any additional information or pictures.

Becky Chown

Schroeder B&B SUP

PENINSULA TOWNSHIP BOARD

DECISION AND ORDER

Applicant: Elizabeth Schroeder
11594 Peninsula Drive
Traverse City, Michigan 49686

Hearing Date(s): Planning Commission: December 20, 2021 (Introduction), January 24, 2022 (Public Hearing) and February 28, 2022 (Findings of Fact and Conditions)
Township Board: TBD

PROPERTY DESCRIPTION

Parcel ID#: 28-11-005-025-03
Total Acreage: 1.21 acres
Property Address: 11594 Peninsula Drive
Zoning: R-1B - Coastal Zone Residential
Adjacent Zoning: R-1B - Coastal Zone Residential to the north and south and A-1 Agricultural to the east
Water: Well
Sewage Disposal: On-site Septic
Access: Peninsula Drive

GENERAL INTRODUCTION AND BACKGROUND

The applicant requests the approval of a Special Use Permit to allow a Bed and Breakfast use in the existing finished space above an attached garage. The living space above the garage includes two bedrooms, a bathroom and sitting area. The proposed occupancy for the Bed and Breakfast is five (5). No exterior improvements or change in character to the single-family residence are proposed. Required parking for the proposed use will be accommodated in an existing parking area in front of the garage using the existing gravel driveway for access. Adequate water and sewage disposal also exist for the existing residence and proposed bed and breakfast use.

The submitted application (as revised) is attached in [EXHIBIT 1](#). A plot plan has also been included since the last public hearing that shows the location of the proposed bed and breakfast use on the property along with the location and dimensions of required parking spaces.

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

General Standards. The Peninsula Township Board of Trustees shall review each application for the purpose of determining that each proposed use meets the following standards, and, in addition, shall find adequate evidence that each use on the proposed location will:

- a) Be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

The character of the area surrounding the proposed bed and breakfast is primarily rural residential. There are no changes proposed to the exterior of the existing residence and attached garage in order to accommodate the use. The required additional parking (two spaces) can be accommodated in the gravel area in front of the existing garage. Thus, the visual character of the area will not change as a result of the use.

- b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

Per Section 8.7.2 (9), a bed and breakfast establishment is a use permitted in residential and agricultural zone districts. Per Section 8.7.3 (6)(b) 4, the residence shall be the principal dwelling unit on the property and shall be owner-occupied at all times. Thus, the use is a permitted use and any potential disturbance can be mitigated based on the fact that the owner shall be present at all times. The use will have no greater impacts than if the owners had family or friends visiting.

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

The proposed bed and breakfast use will be served adequately by essential services. The proposed use does not place any additional burden on adjacent roadways, public emergency services, public utilities, or schools.

The fire department has visited the property on several occasions and has worked with the property owner to meet the Fire Code. A letter from the Fire Chief, Fred Gilstorff, dated December 17, 2021 and updated January 19, 2022 is included in the packet in [\(EXHIBIT 2\)](#).

The property owner has included a copy of the certificate of occupancy for the living space above the attached garage. Staff had an opportunity to speak with the Chief Building Official for the Grand Traverse County Building Department to confirm that a bed and breakfast use is reviewed under the same building code as a single-family residence. A copy of the certificate of occupancy and applicable building code are included in [\(EXHIBIT 3\)](#).

A well and septic status form has been completed by the Grand Traverse County Health Department. The property has been approved to serve three (3) bedrooms. This is adequate to serve the two (2) bedrooms above the attached garage and one (1) bedroom in the primary residence. The form noted four (4) bedrooms originally. The applicant has confirmed that there are three bedrooms and this is what was approved. A copy of the approved status form is included in [\(EXHIBIT 4\)](#). A condition of approval has also been included for staff to verify the 3 total bedrooms prior to the commencement of the bed and breakfast use.

- d) Not create excessive additional requirements at public cost for public facilities and services.

The proposed bed and breakfast use does not create excessive additional requirements at public cost as the use will operate in an existing private residence with adequate facilities (access, parking, water and sewage disposal). Thus, the proposed use will not create the need for additional public facilities or services.

- e) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

The proposed bed and breakfast use does not include uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors.

As noted above, the use requires it be owner-occupied. It is not anticipated that the proposed impacts would be greater than if family and friends were visiting.

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

Specific Requirements. In reviewing an impact assessment and site plan, the town board and the planning commission shall consider the following standards:

- (a) That the applicant may legally apply for a special use permit. **The applicant is the owner of the property for the subject bed and breakfast use and has applied for a Special Use Permit (SUP). A plot plan and floorplan have been provided as part of the application that shows clearly where the proposed use is located on the property and the details including dimensions of the proposed rooms for rent within the existing residence/living space above the attached garage.**
- (b) That all required information has been provided. **All required information is provided as part of this application. (EXHIBIT 1).**
- (c) That the proposed development conforms to all regulations of the zoning district in which it is located. **The proposed development conforms to regulations of the R-1B zoning district, subject to the approval conditions listed on pages 6 and 7.**
- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services. **Gourdie-Fraser, Inc., Township Engineer has reviewed the submitted plans (EXHIBIT 1) along with other review agencies (EXHIBITS 2-4). Proposed conditions of approval have been included on pages 6 and 7 to address review agency comments.**
- (e) That the plan meets the standards of other governmental agencies, where applicable, and that the approval of these agencies has been obtained or is assured. **The proposed use, along with plans and relevant information, have been supplied to the necessary governmental agencies for review and approval. Communication from the Grand Traverse County Building Department and Environmental Health Department is provided (EXHIBITS 3 & 4).**
- (f) That natural resources will be preserved to a maximum feasible extent and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se. **As noted above, the property has already been developed with a single-family residence and attached garage with living space above. Parking for the existing residence and bed and breakfast use already exist in the gravel driveway and parking area in front of the garage. Thus, no additional disturbance is needed for the proposed use.**
- (g) That the proposed development property respects floodways and floodplains on or in the vicinity of the subject property. **The existing residence and attached garage with the proposed bed and breakfast use is not located within a floodway or floodplain.**

- (h) That the soil conditions are suitable for excavation and site preparation and that organic, wet, or other soils that are not suitable for development will either be undisturbed or modified in an acceptable manner. **Soil conditions were suitable for the construction of a single-family residence. A bed and breakfast is a use allowed within a single-family residence with the approval of a Special Use Permit.**
- (i) That the proposed development will not cause soil erosion or sedimentation problems. **The maximum disturbance area in total is less than one acre. See letter from GFA.**
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff and will not cause undue runoff onto neighboring property or overloading of water courses in the area. **The proposed use will not cause any increase in off-site storm water runoff. See letter from Gourdie-Fraser (EXHIBIT 1).**
- (k) That grading or filling will not destroy the character of the property or the surrounding area and will not adversely affect the adjacent or neighboring properties. **No grading is proposed as a result of the proposed use.**
- (l) That structures, landscaping, landfills, or other land uses will not disrupt air drainage systems necessary for agricultural uses. **The proposed use within an existing single-family residence with attached garage will not change the cold air drainage flow of the site.**
- (m) That phases of development are in a logical sequence so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage, or erosion control. **This project will not be developed in phases. The existing residence with attached garage with living space above do not require any modification to accommodate the proposed use.**
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities. **No expansion of public streets, drainage systems, or utility systems is proposed.**
- (o) That landscaping, fences, or walls may be required by the town board and planning commission in pursuance of the objectives of this ordinance. **No additional landscaping is proposed or required for the proposed use.**
- (p) That parking layout will not adversely affect the flow of traffic within the site or to and from the adjacent streets. **As noted above the required parking is located in an existing gravel parking area in front of the existing garage and accessed from an existing gravel driveway from Peninsula Drive. Trips generated by the proposed use are similar to that of a single-family residence with visits from family and friends.**
- (q) That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient. **Vehicular traffic will enter and exit the property from Peninsula Drive.**
- (r) That outdoor storage of garbage and refuse is contained, screened from view, and located so as not to be a nuisance to the subject property or neighboring properties. **The applicant has noted that trash containers are stored behind the house and out of view from the public right-of-way and neighbors.**
- (s) That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this ordinance and the principles of sound planning. **The proposed development meets the objectives of the ordinance and the principles of sound planning by maintaining the existing character of the subject parcel while providing opportunities for visitors to experience Old Mission Peninsula in a manner that is respectful to neighbors.**

FINDINGS - SECTION 8.7.3(6)(b) SPECIFIC REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS:

1. The minimum lot size shall be one (1) acre. **The property is 1.21 acres according to the Assessor's records and information provided in the application.**
2. Off-street parking shall be provided in accordance with Sections 7.6.3. and 7.6.4. of this Ordinance. **Per Section 7.6.3. (7) a proposed bed and breakfast requires *one (1) space per rental sleeping room in addition to the two (2) spaces required for owner/occupant.* The application provides the minimum of three (3) required parking spaces and can actually accommodate up to 5 cars easily in the garage and parking area in front of the garage. All parking spaces meet the dimensional requirements noted in Section 7.6.4. as well.**
3. The residence shall be the principal dwelling unit on the property and shall be owner-occupied at all times. **The existing residence on the property is the principal dwelling unit. The applicant/owner has noted that the bed and breakfast use will only take place when she and her husband the property owners are present. A general condition of approval is also included.**
4. The residence shall have at least two (2) exits to the outdoors. **The area proposed for rental as part of the bed and breakfast use are located above an attached garage. The two required exits are a door to the outdoors at the bottom of the stairway and a bedroom window that meets egress requirements. The Fire Department has inspected the property and proposed area for the bed and breakfast use and has found that it meets this requirement provided certain conditions are met including marking the door at the bottom of the stairs that leads to the garage as "Not an Exit" and providing rescue ladders for emergency exiting from egress windows. Thus, the requirement of the zoning ordinance has been met and approved by the Fire Chief, Fred Gilstorff. Zoning staff noted a concern with the use of rescue ladders based on the roof lines. The applicant has also installed grab bars to assist with emergency exiting. Staff has discussed this concern with the applicant and would like to note for the record that it is recommended that the applicant look at additional measures to provide for safe exiting from the sleeping rooms in the event of an emergency. In addition to meeting exiting requirements the bed and breakfast will be required to develop an emergency plan for the entire space that is subject to Fire Department approval. This and other items noted in the letter from the Fire Chief have been included as a condition of approval.**
5. No more than three (3) sleeping rooms in the residence may be used for rental purposes. **As noted, two (2) sleeping rooms are proposed for rental purposes.**
6. Not more than eight (8) overnight guests may be accommodated at any time. **The applicant is requesting a maximum occupancy of five (5) guests for the two rental sleeping rooms.**
7. The rooms utilized for sleeping shall be part of a dwelling that has received an occupancy permit prior to the application for a bed and breakfast. **The applicant has provided a copy of the certificate of occupancy for the living space above the garage proposed for the bed and breakfast use. In addition, staff has confirmed with the Grand Traverse County Building Department that the building code for a single-family residence and bed and breakfast are the same.**
8. The rental sleeping rooms shall have a minimum size of one hundred (100) square feet for each two occupants with an additional thirty (30) square feet for each occupant to a maximum of four (4) occupants per room. **The floor plan indicates that the two sleeping rooms are 100 square feet and 156 square feet.**
9. Proof of evaluation of the well and septic system by the Health Department and conformance to that agency's requirements shall be supplied by the owner/occupant. **As noted, the applicant has proved the signed and approved Well and Septic Status Form from the Grand Traverse County Environmental Health Department for 3 bedrooms.**
10. The Township Board shall require that a floor plan drawn to an architectural scale of not less than 1/8" = 1 foot be on

file with the Fire Department. **The applicant has provided a floor plan meeting these requirements that will be on file with the Fire Department and part of the public record for the application.**

Each owner/operator of a bed and breakfast establishment shall keep a guest registry which shall be available for inspecting by the Zoning Administrator, and police and fire officials at any time. **The applicant has agreed to this and a general condition of approval has been included.**

11. The length of stay for each guest shall not exceed seven (7) days within a thirty (30) day period. **Again, the applicant has agreed to this and a condition of approval is included.**
12. In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing and/or a planting buffer be constructed and maintained. **The existing residence meets required setbacks and there is open space between adjacent structures that exist to the east. It is not anticipated that the proposed bed and breakfast use in this location will generate a noise disturbance or encourage trespass. No fencing or landscaping is proposed or required at this time.**
13. Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment, in conjunction with the operation of the establishment shall be prohibited. **The applicant has noted that guests will have access to their dock, but will not be able to use/rent their boat. A condition of approval is also included that also limits guest use of the shore and dock to a maximum of five (5) persons that are registered as guests.**
14. A special use permit shall not be granted if the essential character of a lot or structure within a residential or agricultural district, in terms of use, traffic generation or appearance will be changed substantially by the occurrence of the bed and breakfast use. **As discussed above, the residential character of the existing single-family residence will not change as a part of the proposed use as a bed and breakfast. Traffic will be similar to that of the existing residence with visiting family and friends.**

Breakfasts shall be the only meals served to transient tenants. **The applicant agrees and a general condition of approval has also been included.**

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township, and other governmental regulations relative to the establishment of the special use for a parcel zoned R-1B, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Environmental Health Department (GTCHD). Zoning compliance is based on the governing special land use permit document, approved plot plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

APPROVAL CONDITIONS AND SAFEGUARDS:

Pursuant to Section 8.1.3 (2), the board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions and requirements for a land use permit include:

- 1) The use approved as part of this Special Use Permit shall be conducted within the existing residence/ attached garage with living space above for a bed and breakfast with a maximum guest occupancy of five (5) in two (2) sleeping rooms.
- 2) Prior to commencement of the bed and breakfast use the applicant shall allow Peninsula Township staff to verify the 3 total bedrooms.

- 3) The bed and breakfast use shall continue to be in compliance with all requirements of the Grand Traverse County Environmental Health Department and Construction Code in perpetuity.
- 4) There shall be no more than three (3) bedrooms on the property served by the existing well and on-site septic system.
- 5) No external illumination as part of the bed and breakfast use is allowed other than fixtures attached to the exterior of the building and compliant with Section 7.14.
- 6) The bed and breakfast use shall be in compliance with review requirements stipulated in the letter from Gourdie Fraser dated December 17, 2021 (EXHIBIT 1).
- 7) The bed and breakfast use shall be in compliance with all fire department review requirements stipulated in the updated letter dated January 19, 2022 (EXHIBIT 2). In addition, no flammable liquids shall be stored in the garage during rental periods unless they are in a flammable's cabinet approved by the fire department. The owners' boat may not be stored in the garage during rental periods.
- 8) The bed and breakfast use shall be in compliance with all standards of Section 8.7.3.(6) (b) as discussed above.
- 9) A maximum of five guests of the bed and breakfast use may have access to the shore and dock during their stay.
- 10) Any proposed signage shall meet the requirements of Section 7.11.
- 11) The applicant shall obtain a Land Use Permit for the change in occupancy prior to commencement of the bed and breakfast use.

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use permit and accompanying site plan are enforceable, and remedies are available under Section 3.2 of the zoning ordinance.

STAFF FINDINGS AND RECOMMENDATION:

As outlined above, staff finds that the Schroeder Bed and Breakfast SUP #140 located at 11594 Peninsula Drive meets all standards of the Peninsula Township Zoning Ordinance and has provided evidence that it is in compliance with other review agencies with the conditions proposed above. Staff recommends that the Planning Commission recommend approval to the Township Board of Trustees.

EXHIBITS:

1. Letter from Gourdie Fraser, Application and Plot Plan
2. Letter from Fire Department
3. Copy of Certificate of Occupancy and Construction Code
4. Well and Septic Status Form

Exhibit 1



Engineering
Surveying
Testing &
Operations

123 West Front Street
Traverse City, Michigan 49684
231.946.5874 
231.946.3703 

December 17, 2021

Susie Shipman, Planning Commission Chair
Peninsula Township
13235 Center Road
Traverse City, MI 49686
231-223-4484

RE: 11594 Peninsula Drive – Bed and Breakfast Application
Proposed Special Use Permit– Ordinance Plan Review Escrow

Dear Susie,

We have reviewed the supporting documents for the 11594 Peninsula Drive – Bed and Breakfast Application, dated 11/3/21 as completed the owner/applicant, Ms. Beth Schroeder. The applicant provided a packet that was deemed complete, including response to the Bed and Breakfast Application, SUP application form, Storm Water Application Form, Health Department well and septic information, and architectural floor plans for staff review. Our review consisted of examining the application for their impacts to utilities, stormwater management, and the general compliance with the Special Use permit and zoning ordinance criteria.

Subject Site

11594 Peninsula Drive is located 900-ft north the intersection Peninsula Dr. and Chimney Ridge Dr. The subject property has an existing use of single-family residence.

- Subject parcel: 11-005-025-03, frontage on Peninsula Rd. @ 1.21 acres
- Zoning Classification – R-1B Coastal Zone Residential
- Existing single-family use consists of 2-Story single-family residence that remodeled and expanded with a garage addition in 2019. The site currently has gravel driveway access Peninsula Road. The site is served by on-site private water well and septic system. Drainage of the existing site general slopes towards Peninsula Drive.



Purpose of Application

The application from Ms. Elizabeth Schroeder proposes a Special Use Permit for Bed and Breakfast Establishment.

Procedure

SUP applications are reviewed consistent to the process outlined in Article 8 of the ordinance.

Zoning

The zoning for the subject property – R-1B Coastal Zone Residential classification.

- The zoning allows for Bed and Breakfast Establishment use through Special Use Permit.
- North and south neighboring parcels have the same zoning. The neighboring parcel to the east is zoned A-1.



Review and Approval Criteria

Proposed Improvements:

According to the information in the application, work was completed in 2019 included remodeling and an addition to the existing single-family residence as well as some exterior work to accommodate the septic and storm water needs. The relevant modifications are listed below according to the above documents noted:

- Applicants Response to the Bed and Breakfast Application Form
 - Proposed 2-bedroom, 1 bath, 1 sitting space B&B located above the residence. Comprised of 156 sf + 100 SF bedrooms, 115 SF sitting room.
 - Parking provided in the current driveway.
- Architectural Floor Plans
 - Addition of a new attached garage with second floor office and bathroom
 - Remodeling existing home necessary second floor two bed rooms and bath.
 - Total building coverage scaled from PDF drawings equates to about 2,900 SF (1,100 SF Original Structure + 1,800 SF Garage addition)
- Health Department Well and Septic Info – Permit 38976
 - Addition of second septic tank. Constructed per as-built.
 - Planned Basin 1 near driveway for storm water handling. Not constructed per as-built and site visit.

Below are the noted sections of the ordinance as part of our general review and includes GFA's corresponding comments noting any deficiencies (underlined) lacking in the application that are needed to facilitate approval.

Overall Ordinance Compliance Review:

- Section 6.3 R-1B Coastal Zone Residential
 - 6.3.2 Uses Permitted – All uses permitted by “Special Use Permit” in R-1A
 - => 6.2.4 (A) Bed and Breakfast Establishments allowed.
- Section 6.8 Schedule of Regulations
 - Building requirements meet sizing/height constraints.
 - Building height not shown. Site visit shows similar to original structure height. Complies.
 - Building size scaled from plans complies with coverage constraints.
 - Setbacks not shown on plans
 - Front and Side setbacks comply per GT county mapper.
 - Rear setback is unclear for the garage addition. However, the proposed B&B utilized the structure previous approved and constructed in 2019. In addition, the B&B use is outside the 30' setback per the GT County Mapper. Therefore complies.
- Section 7.2 Supplementary Use Regulations
 - Stormwater Detention – *Reviewed in section below.*
- Section 7.6 Off-street parking
 - Gravel driveway was redone in 2019. Parking spaces are not shown on plans. 4 spaces are required for a 2-bedroom B&B. Three stall garage was installed in 2019. Therefore, adequate parking is apparent considering 2 outside the garage and 2 within. The gravel driveway improvements provided are more than enough area for this.



- 8.1.3 Basis of Determination
 - o 8.1.3.(1) – General standards response by applicant appears to meet the standards.
 - o 8.1.3.(3) – Specific Requirements
 - (d) - A letter from the Fire Department is required to be included with this application attesting to emergency access and overall acceptance. It is noted that an occupancy certificate was provided with the application packet.
 - (J) – Regarding drainage- *See comments detailed comments in next section.*
 - (k) – Regarding grading – *See comments detailed comments in next section.*
- Section 8.7.3. (6) Miscellaneous Special Uses Bed and Breakfast Establishments.
 - o (a) The applicant did not provide a direct response Statement of intent. However, we feel the applicant’s response to 8.1.3 suffices.
 - o (b) 8. Regarding bedroom square footage and maximum occupancy, the application lists the maximum of 8 is applied for. The bedrooms square footage alone can only provide occupancy for 5. A modification to the application should be provided to address this.

Engineering Review of Site Improvements

Storm Water Review:

GFA reviewed the Storm Water Permit App SW2019-06 provided from the 2019 project. Stone drains under the drip edges and a large basin, Basin 1, were designated to be installed. However, the as-built and our site visit indicate Basin 1 was not constructed. No information on the size/depth of the stone drains was provided.

As this is a smaller project, GFA ran a quick assessment of the storm water requirements. It appears the addition is approximately 1,800 SF. The driveway is gravel and can be considered negligible change from existing conditions. A simplified method would account for the 25-year design rainfall of 3.89” over the additions, which equates to 523 CF of runoff needing to be managed.

- The applicant should provide information on what was constructed and its capacity to manage the storm water. Additional details for Basin 1 should be provided if needed.
- A stormwater maintenance plan shall be recorded and copy provided to the Township.

Grading Review:

1. No details were provided for the grading proposed Basin 1
2. 1:3 maximum slopes restored with a proper vegetation cover is recommended.

Erosion Control Review:

Plans to satisfy the requirements of Ordinance 25 and to obtain a SESC permit should be provided if additional work to construct Basin 1 is necessary. These requirements would generally match those shown in the Storm Water Permit App SW2019-06 and should show the location of silt fencing and plans for maintenance and restoration of the work.

Utility Review:

The applicant provided adequate information to show the new use is served by the on-site septic and well facilities. No impacts to public utilities are imposed by this project. Please provide a letter received from the Health Department confirming this.



We request the applicant to reply with addition information or plans to address the storm water management requirements and confirmations from the Fire Department and Health Department. While detailed plans were not provided, there is sufficient information on the current set of plans to indicate the intent and ability to comply with the Ordinances. Overall, we feel the application is administratively complete and ready for public comment while the applicant reviews the above and provides additional information.

Please do not hesitate to contact me with any questions regarding this review.

Respectfully Submitted,
GOURDIE-FRASER

A handwritten signature in black ink, appearing to read 'Mark Maguire'.

Mark Maguire, PE
Project Engineer

A handwritten signature in black ink, appearing to read 'Jennifer Hodges'.

Jennifer Hodges, PE
Sr. Project Manager

cc: Ms. Elizabeth Schroeder

Peninsula Township Application for Special Use/Bed and Breakfast

Property Address: 11594 Peninsula Dr., Traverse City, MI 49686

Applicant Address: 11594 Peninsula Dr., Traverse City, MI 49686

Requirements for documents and information filled out in full by the applicant:

- (a) A statement of supporting evidence showing compliance with the requirements of Section 8.1.3

We intend to offer two bedrooms, one bathroom and a sitting space for short-term rentals. The space is fully integrated into our home and will not change the current appearance in any way. Guests will be limited to a maximum of 8 persons and parking will be available in our current driveway space. Therefore, we do not believe there will be any impact to the character of the house or the general vicinity in any way.

- (b) Our driveway and the entrance to the proposed rental space are on the north and northwest side of our home. The nearest residence to the north is ??? feet away. All parking and rental guest activity would primarily occur on the north and northwest side of the home. Therefore, there would be little to no impact to the neighbors to the south (that house is currently under construction).
- (c) As mentioned above, this space is already fully integrated into the home. Therefore, essential facilities and services are already available and this plan is expected to have no impact to those services. In addition, we will meet the requirement to file a floor plan with the fire department.
- (d) There will be no additional requirements at public cost.
- (e) This request will not be detrimental to any persons, property or general welfare in any way.

Bed and Breakfast Requirements:

1. Minimum lot size shall be one (1) acre.
 - a. Our lot size is 1.28 acres
2. Off-street parking
 - a. As mentioned above our current driveway will accommodate the additional vehicle(s)
3. The residence shall be the principal dwelling unit on the property and shall be owner-occupied at all times.
 - a. There is only one dwelling on the property and we intend to be in the residence during all of the rental periods.
4. The residence shall have at least two (2) exits to the outdoors.
 - a. There are two doors and 3 windows in the proposed rental space that would allow exit to the outdoors.
5. No more than three sleeping rooms may be used for rental purposes.
 - a. As mentioned, we intend to rent 2 bedrooms and a sitting space.
6. Not more than eight (8) overnight guests may be accommodated at any time.
 - a. We confirm, not more than 8 persons would be allowed at one time.

7. The rooms utilized for sleeping shall be a part of the primary residential use and not specifically constructed for rental purposes.
 - a. These rooms are already integrated into our home. They were not built for rental purposes. Rather we have found that we do not use them as often as originally intended.
8. The rental sleeping rooms shall have a minimum size of one hundred (100) square feet for each two occupants with an additional thirty (30) square feet for each occupant to a maximum of four (4) occupants per room.
 - a. Bedroom 2 is 156 sq ft, Bedroom 3 is 100 sq ft, sitting area is 115 sq ft (designations noted align with descriptions in the accompanying floorplan)
9. Proof of evaluation of the well and septic system by the Health Department and conformance to that agency's requirements shall be supplied.
 - a. Attached with this application
10. The Township Board shall require that a floor plan drawn to an architectural scale of not less than 1/8" = 1 foot be on file with the Fire Department
 - a. **Completed**
11. Each owner/operator of a Bed and Breakfast Establishment shall keep a guest registry which shall be available for inspecting by the Zoning Administrator, and fire and police officials at any time.
 - a. Understood and will implement upon approval
12. The length of stay for each guest shall not exceed seven (7) days within any thirty (30) day period.
 - a. Understood and will comply
13. In the event that the Township Board determines that noise generation may be disturbing to neighbors, or that the location of the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require fencing and/or planting buffer be constructed and maintained.
 - a. Understood
14. Rental of snowmobiles, ATBV's or similar vehicles, boats and other marine equipment, in conjunction with the operation of the establishment is prohibited,
 - a. Understood
15. A Special Use Permit shall not be granted if the essential character of a lot or structure within a residential or agricultural district, in terms of use, traffic generation or appearance will be changed substantially by the occurrence of the bed and breakfast use.
 - a. Understood. As mentioned earlier there will be no change in character to our home.
16. Breakfasts shall be the only meals served to transient tenants.
 - a. Understood

PENINSULA TOWNSHIP APPLICATION FOR SPECIAL USE PERMIT NO.

Parcel Code/s #28-11-005-025-03

Property Address: 11594 Peninsula Dr., Traverse City, MI 49686

Applicant Address: 11594 Peninsula Dr., Traverse City, MI 49686

Elizabeth Schaefer
Applicant's Signature

Review Fee \$1000 1532 11/8/21
Check No. Date

APPLICATION REQUIREMENTS

1. Each application is submitted through the Zoning Administrator, and shall be accompanied by a fee as established by the Peninsula Township Board.
2. The applicant will assume direct costs for any additional professional review determined necessary by the Planning Commission or the Township Board, subject to prior review and approval of the applicant.
3. No part of any fee is be refundable and no portion of the fee covers the cost of any individual land use permit that may be issued on any of the building sites located in a Planned Unit Development.
4. Requirements for documents and information filled out in full by the applicant:
 - (a) A statement of supporting evidence showing compliance with the requirements of Section 8.1.3.
 - (b) Site plan, plot plan, development plan, drawn to scale (preferable 1"=50'), of total property involved showing the location of all abutting streets, the location of all existing and proposed structures and their uses, and the location and extent of all above ground development, both existing and proposed.
 - (c) Preliminary plans and specifications of the proposed development.
5. This application, along with all required data shall be submitted to the Zoning Administrator.
 - (a) Upon receipt of a completed application and the required data by the Zoning Administrator, it is transmitted to the Township Planning Commission for review.
 - (b) The Planning Commission may hold a public hearing on the application.
 - (c) Following a study by the Planning Commission it is transmitted to the Township Board for consideration.
 - (d) The Township Board may deny, approve, or approve with conditions, a request for special land use approval.

6. Specific Requirements: In reviewing an impact assessment and site plan, the Town Board and the Planning Commission shall consider the following standards:

Ordinance Reference - Section 8.1.3

Include a statement of HOW the proposed project meets the standards:

Section 8.1.3 Basis for Determinations: Before making recommendation on a special use permit application, the Town Board shall establish that the following general standards, as well as the specific standards outlined in each section of this Article, shall be satisfied.

- (1) General Standards: The Town Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:
 - (a) Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.
 - (b) Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
 - (c) Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.
 - (d) Not create excessive additional requirements at public cost for public facilities and services.
 - (e) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.
- (2) Conditions and Safeguards: The Town Board may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.
- (3) Specific Requirements: In reviewing an impact assessment and site plan, the Town Board and the Planning Commission shall consider the following standards:
 - (a) That the applicant may legally apply for site plan review.
 - (b) That all required information has been provided.
 - (c) That the proposed development conforms to all regulations of the zoning district in which it is located.

- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
- (e) That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
- (f) That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
- (g) That the proposed development property respects floodways and flood plains on or in the vicinity of the subject property.
- (h) That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
- (i) That the proposed development will not cause soil erosion or sedimentation problems.
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
- (k) That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.
- (l) That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
- (m) That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
- (o) That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.
- (p) That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
- (q) That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

- (r) That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
 - (s) That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
7. A public hearing on a special land use request is held by the Township Board if:
- a. A public hearing is requested by the Township Board, the applicant for special land use authorization, a property owner, or the occupant of a structure located within three hundred (300) feet of the boundary of the property being considered for a special land use.
 - b. The decision on the special land use request is based on discretionary grounds.
8. Complies with Section 7.7 Developments Abutting Agricultural Lands.

STORM WATER APPLICATION PROCESSING

Peninsula Township Storm Water Control Ordinance No. 33

Peninsula Township

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

Permit No. SW2019-06

Parcel No. 11-005-025-03

DATE	DESCRIPTION: 11594 Peninsula Drive, Traverse City, MI 49686 Owner: James and Elizabeth Schroeder
06/27/2019	Check # 1148 \$500.00 June 27, 2019 Diamondwood Inc. RE: Storm Water Application Fee \$500.00 – Minor Review

Storm Water Facilities Retention Systems:

Design Criteria:

The subject site is located within 500 feet of West Bay. The property was originally improved with a one and a quarter story structure in 1920. A one story 14 ft by 32 ft addition that was added to the existing building in 1974 has been demolished and the remainder of the structure will be renovated with two story addition to be added along with an attached garage to the northerly and easterly portions of the property.

The properties soil conditions are a heavy gravel which will help aid in storm water drainage from the new construction. The installation of gutters with a downward spout with stone drains under roof drip edges is recommended to help prevent erosion from water runoff from the roof tops and will be included in the owners landscaping plans. Grass is to be re-established on the site to stabilize lands from erosion.

The subject site decreases in elevation from the structure east of Peninsula Drive westerly towards West Bay. The site changes in elevation from the existing structure west towards the water from an elevation of 597 feet to 591 feet.

The storm water pattern follows along the natural gravity of the landscape from east to west as the elevation of the site decreases from 597 ft above elevation to 591 ft above elevation in the westerly direction towards West Bay. There are natural basins between these elevation patterns and a large basin is designated between Peninsula Drive and the structure. Grand Traverse County Soil Erosion and Sedimentation Control have outlined specific requirements during the construction of the proposed addition which include and are not limited to the installation of silt fences to be placed in compliance with the site plan provided in the approved permit. All spoil and debris piles shall be stored behind the silt fence to prohibit sediment or debris from entering the flood plain or lake. Installation of erosion control-blankets should be used and staked down properly on any slopes with 3:1 or greater in order to control erosion and storm water runoff. Grading and sloping of the site to properly manage flow for surface water which is not collected by other control measures is required.

Conveyance Controls:

The placement of seeding and straw mulch shall be provided as soon as possible to establish vegetation to aid in mitigation of erosion created by the disturbance of soils from the excavation of the site for preparation the proposed addition. This shall be completed within five days of the completion of the final grading of the site. Silt fencing shall be in place and in tack throughout the process of the construction until final grading, straw mulch and seeding are properly placed on the site. There is to be no work within the ordinary high water. Any work below the ordinary high water mark requires a permit form the Michigan Department of Environmental Quality to be obtained first.



SOS ANALYTICAL

NEEDS BY 1PM FRI

4125 Cedar Run Road, Suite B
Traverse City, MI 49684
voice: (231) 946-6767
fax: (231) 946-8741

SOSanalytical.com

***** For Laboratory Use Only *****

SOS Analysis Number (To be assigned by laboratory):

184020

Received in lab by: C. Gerhard Date: 8/7/18 Time: 1:50 AM PM Temp: 16.40C

Payment Amount: \$ 80.00 Cash Check # Credit Card Bill to Account (Must be pre-approved)

THIS IS A LEGAL DOCUMENT. FILL IN ALL REQUESTED INFORMATION BELOW.

Report Results To:

Name: Catherine Bristol

Mailing Address: 9767 E CARTW Rd

City: Traverse City State: Mi Zip: 49684

Phone: (231) 409-6151 Fax: ()

E-mail Address: bristol Cathy@gmail.com

Check here if you would like SOS to report results to the Health Department

Site Information:

Owner or Company Name: Jim & Elizabeth Schroeder

Property Address: 11594 Peninsula Dr.

City: Traverse City State: Mi 49686

County: Grand TRAVERSE Township: Peninsula

Name of Sample Collector: Cathy Bristol

X3 if here
by used by
won (0/8) ...
me FRIDAY 8/10
questions? (SW)
JUST AS!

Collection Point / Sample ID	Date	Time	Partial Chem	Nitrate	Bacteria	Lead	Copper	Arsenic	Hardness	Iron	Fluoride
1 Well Head	8-7-18	1:15 AM		X	X			X			
Original SOS # if Retest: Sample contains chlorine		PM									
2		AM									
Original SOS # if Retest: Sample contains chlorine		PM									
3		AM									
Original SOS # if Retest: Sample contains chlorine		PM									

(x2 PUSH)

Complete this section only if reporting to a County Health Department

WSSN (Public Water Supply Serial Number): _____ Well Permit #: _____

Property Tax ID #: _____ Computer ID #: _____



4125 Cedar Run Rd., Suite B
 Traverse City, MI 49684
 Phone 231-946-6767
 Fax 231-946-8741
 www.sosanalytical.com

COMPANY:
 NAME: JIM & ELIZABETH ROE SCHROEDER
 PROJECT NO:
 WSSN:
 WELL PERMIT:
 TAX ID:
 LOCATION: 11594 PENINSULA DR
 TRAVERSE CITY
 MI
 COUNTY: GRAND TRAVERSE
 TWP: PENINSULA

SOS PROJECT NO: 184020 - 1
 SAMPLED BY: CATHY BRISTOL
 DATE RECEIVED: 8/7/2018
 TIME RECEIVED: 1:50 PM
 SAMPLE ID: WELL HEAD
 DATE SAMPLED: 8/7/2018
 TIME SAMPLED: 1:15 PM
 SAMPLE MATRIX: DRINKING WATER
 RUSH DUE FRI 8/10 BY 1PM

INORGANICS

<u>Analysis</u>	<u>Concentration</u>	<u>LOD</u>	<u>Units</u>	<u>Analyst</u>	<u>Date Completed</u>	<u>Drinking Water Reg Limit(MCL)</u>
ARSENIC - EPA 200.8	ND	0.002	mg/L (PPM)	MM	8/10/2018	0.010
NITROGEN, NITRATE - EPA 300.0	ND	0.1	mg/L (PPM)	KMJ	8/8/2018	10

SM9223 COLIFORM BACTERIA - PRESENCE/ABSENCE

	<u>SAMPLE RESULT</u>	<u>Drinking Water Reg Limit(MCL)</u>
TOTAL COLIFORM BACTERIA	ABSENT	ABSENT
E. coli BACTERIA	ABSENT	ABSENT

ND = NOT DETECTED
 LOD = LIMIT OF DETECTION
 SMCL = FEDERAL NON-ENFORCEABLE LIMIT
 MCL = MAXIMUM CONTAMINANT LEVEL

APPROVED BY: Shanna Shea
 SHANNA SHEA
 LAB MANAGER

GRAND TRVERSE COUNTY
 CONSTRUCTION CODE
 2650 LaFRANIER ROAD
 TRAVERSE CITY, MI 49686
 (231) 995-6044

CERTIFICATE OF OCCUPANCY

Building Permit
 Permit #: 45382
 Process Date 7/15/2019
 Receipt #s:

SITE

11594 PENINSULA DR
 TRAVERSE CITY MI 49686

Township: PENINSULA Property #: 28-11-005-025-03

Description:
 TO EXIST DWELLING, CONSTRUCT A 250 SF ADDITION ON CRAWL 962 SF ATT GARAGE W/546 SF FIN LIV ABOVE & INT ALTERATIONS TO 1ST & 2ND FLOORS.

Use Group: SFD Const Type: 5B

Proposed Use: 09 RESID-ADD
 Area (SF): 1758 Estimated Cost: \$150,179 Permit Fee: \$872

Signature: *Brent Wheat*

APPLICANT

DAVIS, ROBERT DAVID
 5280 BUTLER RD SW
 SOUTH BOARDMAN MI 49680

OWNER

SCHROEDER, JAMES & ELIZABETH
 130 MAPLE AVE
 HERSHEY PA 17033

DEPARTMENTAL APPROVAL FOR CERTIFICATE of OCCUPANCY and COMPLIANCE

To be filled in by each division indicated hereon upon completion of its final inspection.

TYPE	PERMIT #	APPROVED	DATE	REMARKS
BUILDING	B-45382	<i>Brent Wheat</i>	7-31-20	
PLUMBING	P-25653	<i>Corey Hooper</i>	7-13-2020	
ELECTRICAL	E-30118	<i>Mike Schmerl</i>	7-15-2020	
MECHANICAL	M-42397	<i>Kevin Peabody</i>	7-13-2020	
Env Health	38976	<i>Brent Wheat</i>	9-23-2019	
Soil Erosion	19-501	<i>Brent Wheat</i>	7-31-2020	

Robert
218-9399

Grand Traverse County Health Department

2650 LAFRANIER RD
TRAVERSE CITY, MI 49686
231-995-6051

ENTERED 9/23/19
SEPTIC TANK 9/23/19
WELL
COFO 9/23/19

GT #: **38976**

OWNER **JAMES & ELIZABETH SCHROEDER**
CURRENT MAILING ADDRESS **130 MAPLE AVE**
Hershey, PA 17033 PH. **989-860-2528**

SEPTIC PERMIT
WELL PERMIT

PROPERTY TAX # - **281100502503**

NEW No EXISTING Replacement
TYPE OF ESTABLISHMENT Residential
PROPERTY ADDRESS **11594 PENINSULA DR**
SUBDIVISION _____
CITY **TRAVERSE CITY** LOT # _____
TOWNSHIP **Peninsula Twp.** SECTION **5**

WATER SUPPLY INFORMATION

CITY _____ WELL X
WELL TYPE Existing
DEPTH _____
EXISTING WELL TO BE ABANDONED AND PLUGGED NO
APPROVED _____

SOIL: TOPSOIL 0-14"
SOIL TYPE TO A DEPTH OF 6" MEDIUM SAND 14"-48"
MEDIUM SAND WITH GRAVEL 48"-72"
DEPTH TO GROUND WATER >72

WATER SAMPLE RESULTS

BACTERIOLOGICAL _____ DATE SAMPLED _____
NITRATES _____ PPM DATE SAMPLED _____

WATER SAMPLING REQUIREMENT

(1) Before placing a new, repaired, or reconditioned water supply system into service, and after all traces of chlorine have been flushed out, 1 or more water samples shall be collected from the sampling faucet. Organisms of the coliform group shall not be present in the sample or samples.
(2) The water supply owner shall be responsible for collecting the water sample or shall arrange for the owner's designated representative to collect the sample. The well drilling contractor or pump installer shall notify the water supply owner of the owner's responsibility for collecting the water sample.

SEPTIC TANK SIZE EX 800g + NEW 800g NUMBER OF BEDROOMS **3**
PUMP CHAMBER - NUMBER OF BATHS **4**
EFFLUENT FILTER RECOMMENDED LAUNDRY **YES**
DRAIN BED _____ DISHWASHER **YES**
LINEAL FEET _____ GARBAGE DISPOSAL **YES**
SQUARE FEET _____ BASEMENT PLUMBING **NO**
TILE LINES ON _____ SEWAGE EJECTOR **NO**
TILE FIELD _____ EXISTING FUEL TANKS **NO**
TRENCH WIDTH _____ SHARED WELL **NO**
LINEAL FEET _____ OTHER _____

AGREEMENT

I HEREBY AGREE TO COMPLY WITH REQUIREMENTS OF THE SANITARY CODE FOR THE COUNTY OF GRAND TRAVERSE, AND THE APPLICABLE LAWS OF THE STATE OF MICHIGAN IN THE INSTALLATION OF A SEPTIC TANK SEWAGE DISPOSAL SYSTEM & /OR WELL INSTALLATION ON THE ABOVE DESCRIBED PROPERTY, AND TO CONSTRUCT THE SAME ACCORDING TO THE PLANS AND SPECIFICATIONS AS DESCRIBED AND APPROVED ABOVE; OTHERWISE I UNDERSTAND, THE PERMIT WILL BE VOID.

THE FINAL INSPECTION REQUIRED BEFORE COVERING. ONE DAY NOTICE SHALL BE GIVEN FOR INSPECTION.

SIGNED R. O. O. O. DATE 6-24-19
OWNER OR AGENT

THE SPECIFICATIONS AS STATED ON THIS PERMIT MEET WITH MINIMUM REQUIREMENTS OF THE SANITARY CODE. THE OWNER SHOULD BE ADVISED THAT ADDITIONAL CONSTRUCTION OPTIONS MAY BE AVAILABLE WHICH COULD EXTEND THE LIFE EXPECTANCY OF THE SEWAGE SYSTEM. CONSULT WITH THE HEALTH DEPARTMENT REGARDING THESE OPTIONS.

PERMIT TO INSTALL, CONSTRUCT OR REPLACE
EXPIRES 2 YEARS AFTER DATE OF ISSUE
PERMIT IS NON-TRANSFERABLE TO PERSON OR PLACE

SEE REVERSE SIDE FOR DRAWING AND CONSTRUCTION DETAILS

CERTIFICATION OF INSPECTION (PERMIT TO COVER)

SEWER SCH 40 SEPTIC TANK NEW 1000g SINGLE PUMP CHAMBER _____
MANUFACTURER OF SEPTIC TANK CONCRETE SERVICE
FINAL DISPOSAL EX 15'x50' ISOLATION DIST OK
NOTES TANK ONLY
INSPECTION BY B. O. W. H. A. DATE 8/5/19
CONTRACTOR _____
SEPTIC HILL CONSTRUCTION
WELL _____

ISSUED TO JAMES & ELIZABETH SCHROEDER
DATE 6/20/19 BY B. O. W. H. A.
HEALTH DEPT. REPRESENTATIVE

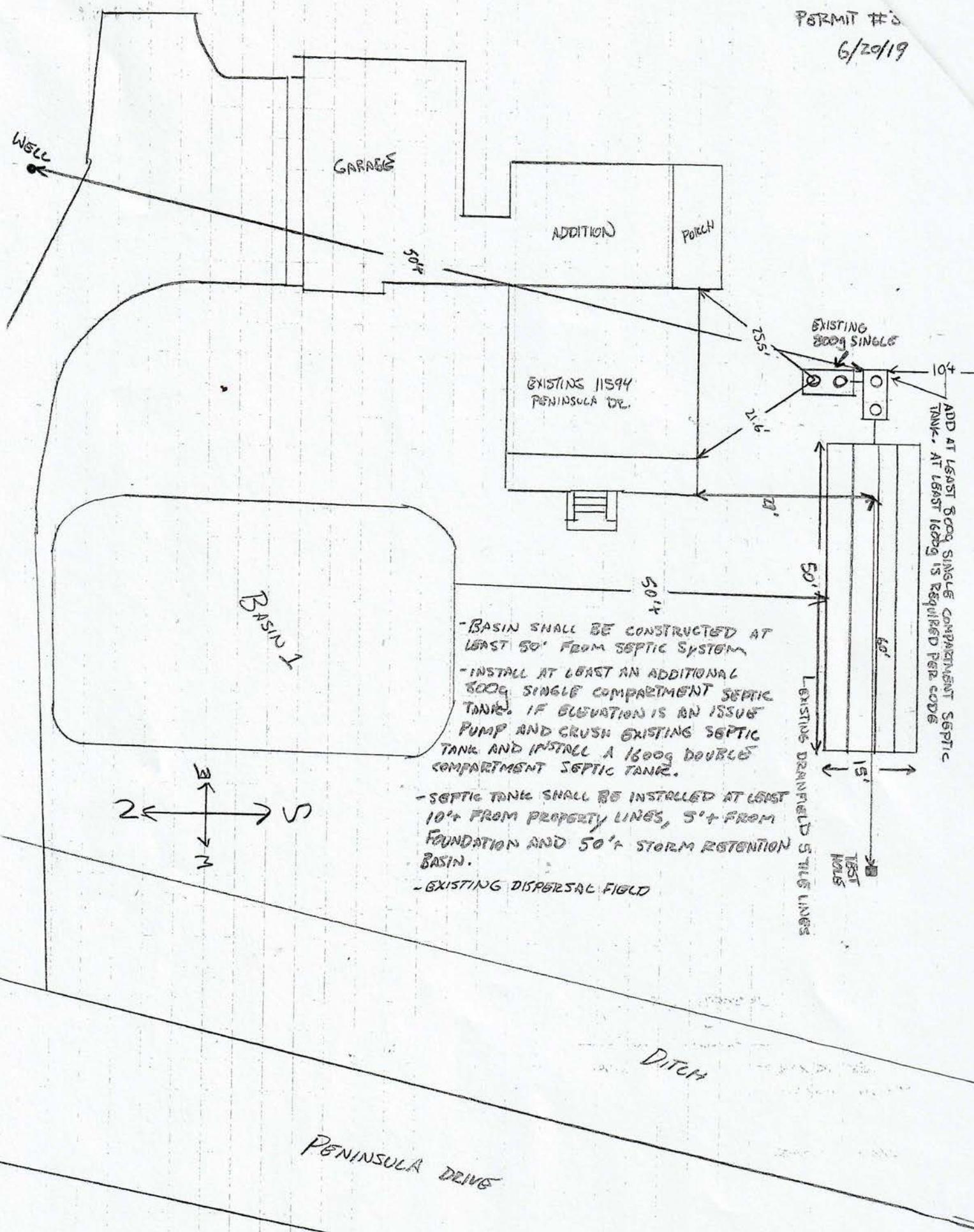
RECEIPT # 48334 DATE 6/24/19

RECEIVED
\$100.00 Septic Tank only permit

APPROVAL OF A PLAN AND THE INSTALLATION CANNOT BE CONSIDERED BY THE OWNER AS A GUARANTEE THAT SUCCESSFUL OPERATION IS ASSURED. THERE ARE MANY WAYS A SYSTEM CAN BE ABUSED CAUSING FAILURE.

mk

11594 PENINSULA
 PERMIT # 0
 6/29/19



- BASIN SHALL BE CONSTRUCTED AT LEAST 50' FROM SEPTIC SYSTEM
- INSTALL AT LEAST AN ADDITIONAL 800g SINGLE COMPARTMENT SEPTIC TANK. IF ELEVATION IS AN ISSUE PUMP AND CRUSH EXISTING SEPTIC TANK AND INSTALL A 1600g DOUBLE COMPARTMENT SEPTIC TANK.
- SEPTIC TANK SHALL BE INSTALLED AT LEAST 10' FROM PROPERTY LINES, 5' FROM FOUNDATION AND 50' FROM STORM RETENTION BASIN.
- EXISTING DISPERSAL FIELD

50' TANK. AT LEAST 800g SINGLE COMPARTMENT SEPTIC TANK. AT LEAST 1600g IS REQUIRED PER CODE



GRAND TRAVERSE COUNTY ENVIRONMENTAL HEALTH SEPTIC AND/OR WELL PERMIT APPLICATION

- BOTH
- SEPTIC PERMIT
- WELL PERMIT
- NEW CONSTRUCTION
- REPLACE EXISTING
- NON-FAILURE
- FAILURE (slow drainage, ponding, back-up, etc.)

PROPERTY ADDRESS: 11594 Peninsula Dr. TAX ID: 28-11-005-025-03
 CITY: Traverse City ZIP: 49686 TOWNSHIP: Peninsula SECTION: 5
 SUBDIVISION: _____ LOT #: _____

RESIDENTIAL COMMERCIAL NA TYPE OF FACILITY: _____
 BEDROOMS: 3 MAX EMPLOYEES/DAY: _____ MAX PEOPLE SERVED PER DAY: _____
 BATHROOMS: 4 BATHROOMS: _____ BUILDING SQUARE FOOTAGE: _____

GARBAGE DISPOSAL:	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	GEOTHERMAL:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
DISHWASHER:	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	FUEL OIL TANKS:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
LAUNDRY:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	WATER SOFTENER:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
BASEMENT PLUMBING:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	WALKOUT BASEMENT:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
SEWAGE EJECTOR:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	WHIRPOOL/HOT TUB:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
HVAC HUMIDIFIER:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	SHARED WELL:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
OLD WELL TO BE RETAINED FOR USE (requires health department approval):				<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO <input type="checkbox"/> N/A

OTHER: well replaced 2018 permit # 382165

OWNER NAME: James & Elizabeth Schroede.
 ADDRESS: 130 Maple Ave Hestrey
 APPLICANT NAME (if other than owner): Robert D. Davis
 ADDRESS: PO Box 20 South Bea

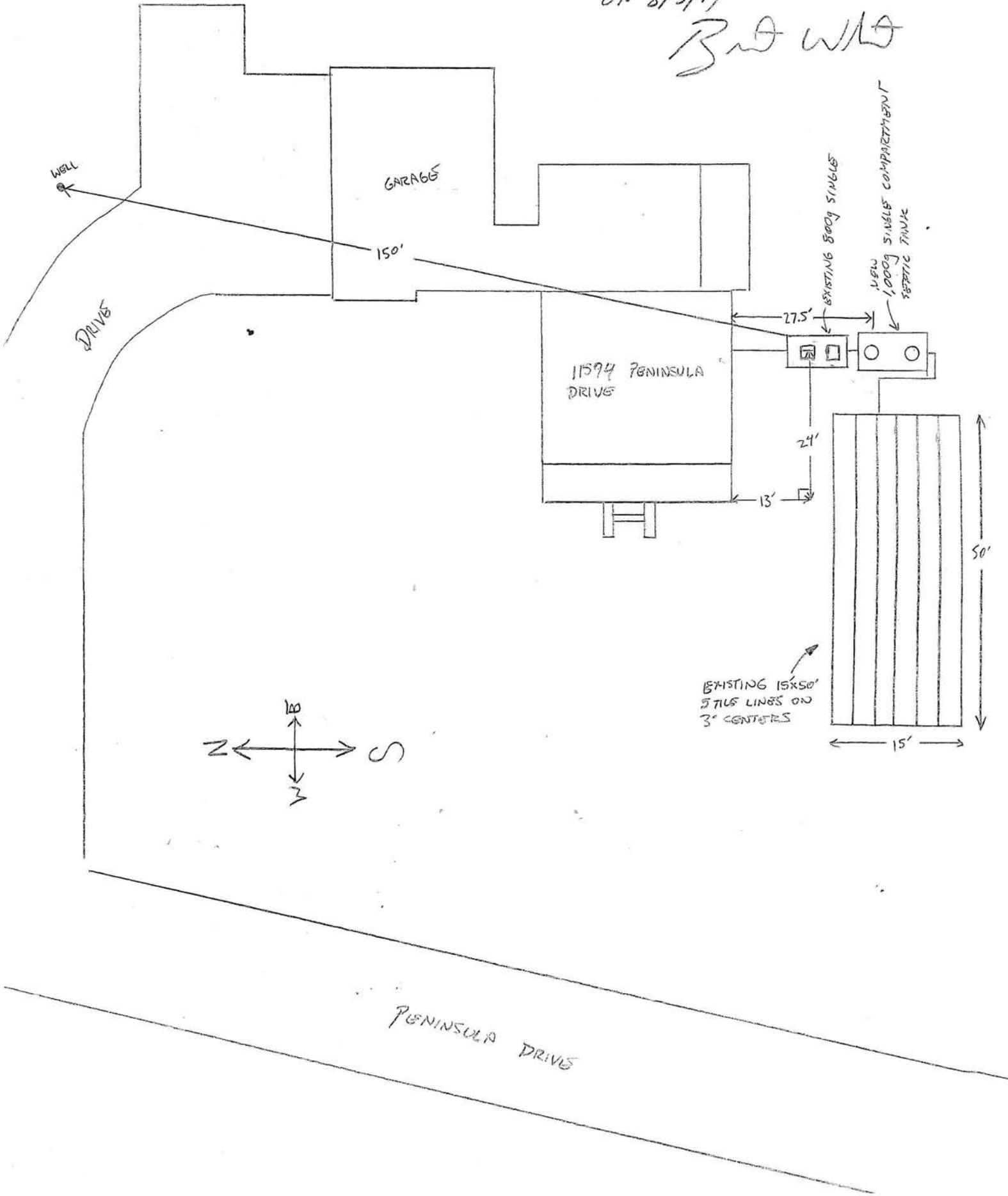
**ALL APPLICATIONS MUST BE ACCOMPANIED BY AN ACCURATE SITE PLAN
 NECESSARY OR YOU MAY USE THE BACK OF THIS PAGE TO DRAW A DI
 DRIVEWAY, ROAD NAMES AND DIRECTION, EXISTING AND/OR PRO**

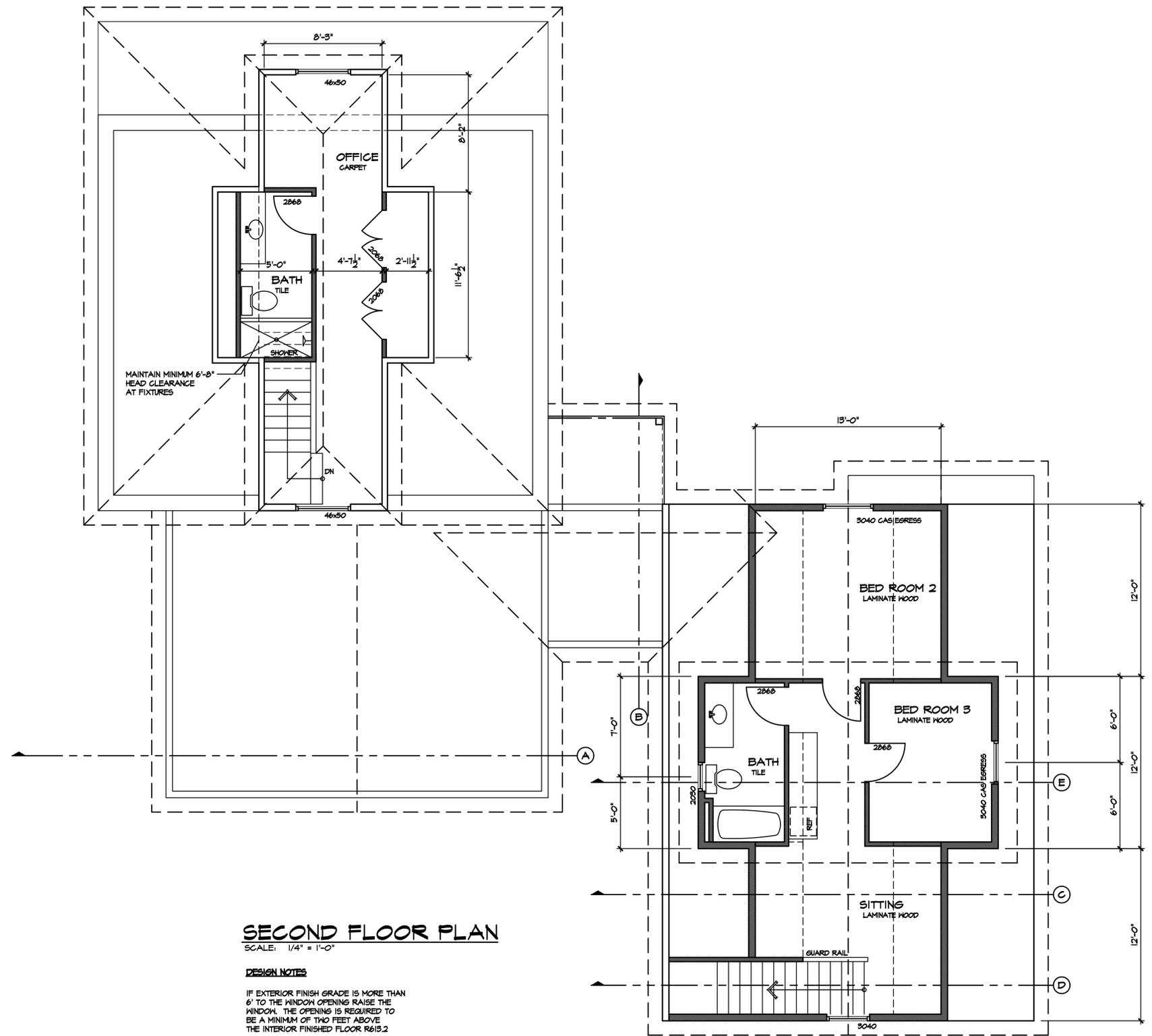
I hereby authorize Grand Traverse County Health Department to evaluate the above described development plans indicated, and to conduct such tests as may be necessary in order to obtain the information required for this evaluation. I also agree to comply with the Environmental Health Regulations for Grand Traverse County, and with the applicable laws of the State of Michigan.

SIGNATURE (owner or agent) R. D. Davis DATE: 6-7-19

11594 PENINSULA DR
PERMIT #38976
FINAL AS-BUILT BY HILL CONSTRUCTION
ON 8/5/19

B & W





SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

DESIGN NOTES

IF EXTERIOR FINISH GRADE IS MORE THAN 6" TO THE WINDOW OPENING RAISE THE WINDOW. THE OPENING IS REQUIRED TO BE A MINIMUM OF TWO FEET ABOVE THE INTERIOR FINISHED FLOOR R613.2

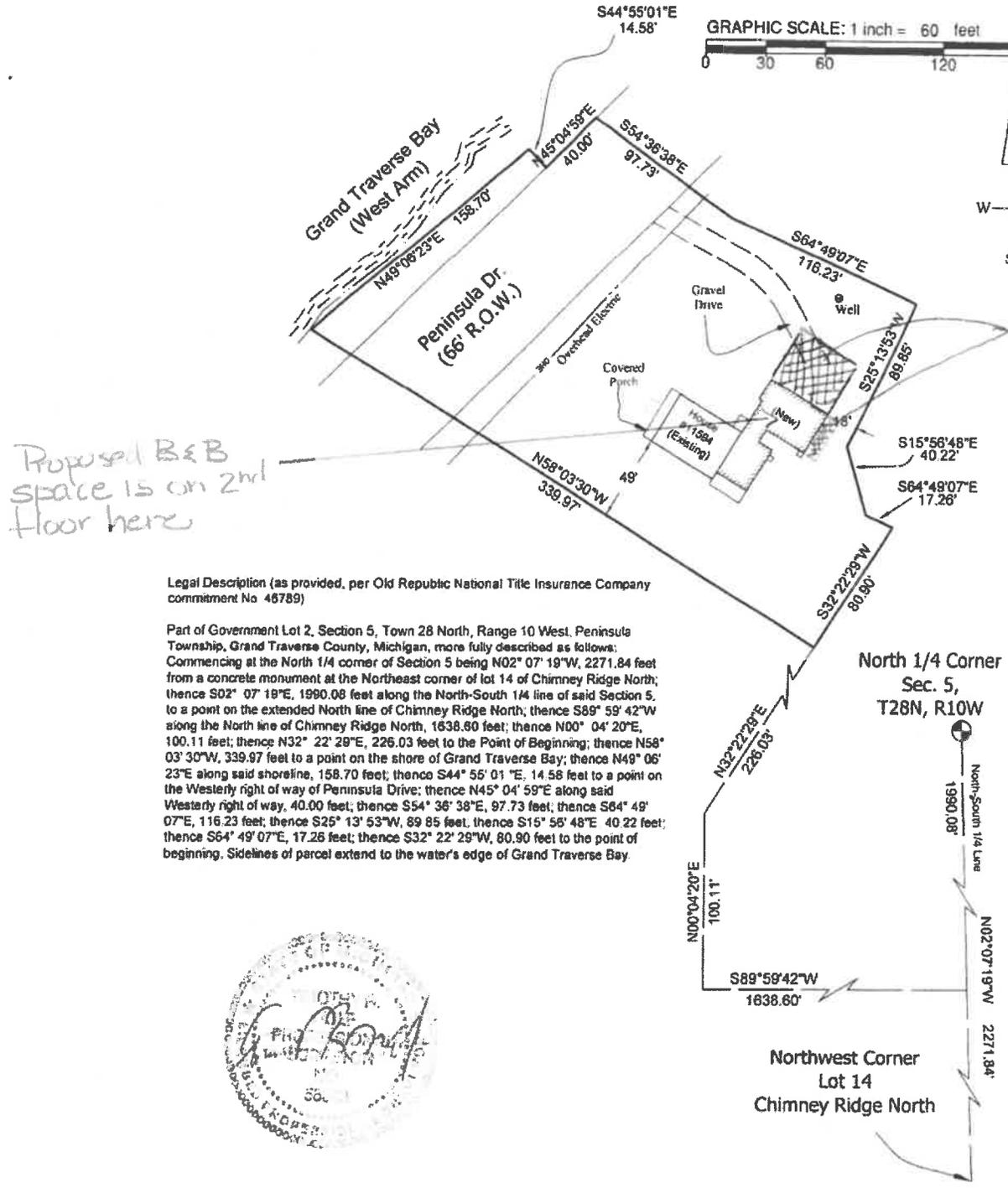
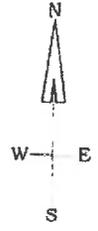
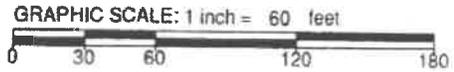
ADDITION / REMODEL

BETH AND JIM

PROJECT NO: -
 DATE: 5-18-2019
 DRAWN BY: RJM
 SCALE: AS NOTED

SHEET NO:
 A4

MORTGAGE REPORT



Legal Description (as provided, per Old Republic National Title Insurance Company commitment No. 46789)

Part of Government Lot 2, Section 5, Town 28 North, Range 10 West, Peninsula Township, Grand Traverse County, Michigan, more fully described as follows: Commencing at the North 1/4 corner of Section 5 being N02° 07' 19"W, 2271.84 feet from a concrete monument at the Northeast corner of lot 14 of Chimney Ridge North; thence S02° 07' 19"E, 1990.08 feet along the North-South 1/4 line of said Section 5, to a point on the extended North line of Chimney Ridge North; thence S89° 59' 42"W along the North line of Chimney Ridge North, 1638.60 feet; thence N00° 04' 20"E, 100.11 feet; thence N32° 22' 28"E, 226.03 feet to the Point of Beginning; thence N58° 03' 30"W, 339.97 feet to a point on the shore of Grand Traverse Bay; thence N49° 06' 23"E along said shoreline, 158.70 feet; thence S44° 55' 01"E, 14.58 feet to a point on the Westerly right of way of Peninsula Drive; thence N45° 04' 59"E along said Westerly right of way, 40.00 feet; thence S54° 36' 38"E, 97.73 feet; thence S64° 49' 07"E, 116.23 feet; thence S25° 13' 53"W, 89.85 feet; thence S15° 58' 48"E, 40.22 feet; thence S64° 49' 07"E, 17.26 feet; thence S32° 22' 28"W, 80.90 feet to the point of beginning. Sidelines of parcel extend to the water's edge of Grand Traverse Bay.

North 1/4 Corner
Sec. 5,
T28N, R10W

Northwest Corner
Lot 14
Chimney Ridge North



I hereby certify that I have examined the premises herein described, that the buildings are located as shown and that possible encroachments observed are shown hereon. This report, prepared for mortgage purposes only, does not represent a boundary survey, and is not to be used for the establishment of any fence, building or other improvements. The location of fences, walls or other indications of occupancy along or near boundary lines are not shown. All utilities and easements may or may not be shown. This report was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

Wolf Surveying
P.O. Box 1739
Traverse City, MI 49685
(231) 590-4528
wolfsurveying@gmail.com

Tim Wolf, Professional Surveyor

Part of Gov't Lot 2 Section 5, T28N, R10W Peninsula Township, Grand Traverse County, Michigan		James & Elizabeth Schroeder
		19.436
		12.9.19
DRN: tw	CKD: tw	
SHT 1 OF 1		

Exhibit 2



Peninsula Township Fire Department
14247 Center Rd.
Traverse City, Michigan 49686
PH: 231-223-4443
fire@peninsulatownship.com



Re: Jim & Beth Schroeder

December 17, 2021

Dear Township Planner and Planning Commission,

At the request of Beth Schroeder, I have inspected her home for the proposed application to use it as a bed and breakfast. The proposed space is above her current garage. After inspection, the following requirements are needed-

- Prepare an approved emergency plan for the entire space.
- Mount a 2A10 BC fire extinguisher in the common space near the stairwell exit.
- Mark the door into the garage as NOT AN EXIT.
- Provide emergency lighting in the common space, hallway and both bedrooms.
- Have an annual inspection of the area by the fire department.
- Limit amounts of combustible and flammable material in the garage space below the sleeping rooms.
- Perform regular checks of the smoke alarms and carbon monoxide alarm. Replace if over ten years old.
- Provide rescue ladders for emergency exiting from windows for the bedrooms.

Once all the above conditions are met, the fire department will re-inspect. Any questions, please feel free to contact us.

***Update as of January 19, 2022, all above requirements have been met after visual inspection.**

Respectfully,

Fire Chief Fred Gilstorff

Exhibit 3

GRAND TRVERSE COUNTY
 CONSTRUCTION CODE
 2650 LaFRANIER ROAD
 TRAVERSE CITY, MI 49686
 (231) 995-6044

CERTIFICATE OF OCCUPANCY

Building Permit

Permit #: 45382
 Process Date 7/15/2019
 Receipt #s:

SITE

11594 PENINSULA DR
 TRAVERSE CITY MI 49686
 Township: PENINSULA Property #: 28-11-005-025-03

Description:
 TO EXIST DWELLING, CONSTRUCT A 250 SF ADDITION ON CRAWL 96E SF ATT GARAGE W/54E SF FIN LIV ABOVE & INT ALTERATIONS TO 1ST & 2ND FLOORS.

Use Group: SFD Const Type: 5B

Proposed Use: 09 RESID-ADD
 Area (SF): 1758 Estimated Cost: \$150,179 Permit Fee: \$872

Signature: *Brent Wheat*

APPLICANT

DAVIS, ROBERT DAVID
 5280 BUTLER RD SW
 SOUTH BOARDMAN MI 49680

OWNER

SCHROEDER, JAMES & ELIZABETH
 130 MAPLE AVE
 HERSHEY PA 17033

DEPARTMENTAL APPROVAL FOR CERTIFICATE OF OCCUPANCY and COMPLIANCE

To be filled in by each division indicated hereon upon completion of its final inspection.

TYPE	PERMIT #	APPROVED	DATE	REMARKS
BUILDING	B-45382	<i>Brent Wheat</i>	7-31-20	
PLUMBING	P-25653	<i>Corey Hooper</i>	7-13-2020	
ELECTRICAL	E-30118	<i>Mike Schmerl</i>	7-15-2020	
MECHANICAL	M-42397	<i>Kevin Peabody</i>	7-13-2020	
Env Health	38976	<i>Brent Wheat</i>	9-23-2019	
Soil Erosion	19-501	<i>Brent Wheat</i>	7-31-2020	

(8) Before the Michigan building code, the Michigan residential code, the Michigan plumbing code, the Michigan mechanical code, the Michigan uniform energy code, and the Michigan rehabilitation code may be enforced, the director shall make each Michigan-specific code available to the general public for at least 45 days in printed, electronic, or other form that does not require the user to purchase additional documents or data in any form in order to have an updated complete version of each specific code, excluding other referenced standards within each code. This subsection does not apply to any code effective before April 1, 2005. If the Michigan residential code is updated on a 6-year cycle, then use of a material, product, method of manufacture, or method or manner of construction or installation provided for in an interim edition of the international residential code is authorized throughout this state and shall be permitted, but shall not be mandated, by an enforcing agency or its building official or inspectors. However, the enforcing agency or its building official or inspectors may require that if such a material, product, method of manufacture, or method or manner of construction or installation provided for in an interim edition of the international residential code is used, the use shall comply with all applicable requirements set forth in the interim edition of the international residential code.

History: 1972, Act 230, Eff. Jan. 1, 1973;—Am. 1978, Act 442, Imd. Eff. Oct. 9, 1978;—Am. 1980, Act 371, Imd. Eff. Dec. 30, 1980;—Am. 1995, Act 270, Imd. Eff. Jan. 8, 1996;—Am. 1999, Act 245, Imd. Eff. Dec. 28, 1999;—Am. 2004, Act 584, Imd. Eff. Jan. 4, 2005;—Am. 2012, Act 504, Eff. Mar. 28, 2013.

Popular name: Act 230

Popular name: Uniform Construction Code

Administrative rules: R 408.30101 et seq.; R 408.31070; R 408.31087 et seq. of the Michigan Administrative Code.

125.1504a Repealed. 1985, Act 220, Eff. Jan. 13, 1988.

Compiler's note: The report of the advisory committee's actions and recommendations, required by this section, was transmitted by the Director of the Department of Labor to the Clerk of the House of Representatives and the Secretary of the Senate by letters dated January 5, 1988. 1988 Journal of the House 9 (No. 1, January 13, 1988) and 1988 Journal of the Senate 5 (No. 1, January 13, 1988).

Popular name: Act 230

Popular name: Uniform Construction Code

125.1504b Bed and breakfast.

Sec. 4b. (1) A bed and breakfast is considered under the code to be a single family residential structure and shall not be treated as a hotel or other facility serving transient tenants. This section is effective throughout the state without local modification, notwithstanding the exemption provisions of section 8.

(2) This section does not affect local zoning, fire safety, or housing regulations.

(3) As used in this section, "bed and breakfast" means a single family residential structure that meets all of the following criteria:

(a) Has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(b) Serves meals at no extra cost to its transient tenants.

(c) Has a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor.

History: Add. 1987, Act 112, Imd. Eff. July 13, 1987;—Am. 1996, Act 292, Imd. Eff. June 19, 1996.

Popular name: Act 230

Popular name: Uniform Construction Code

125.1504c Installation of smoke alarms in existing buildings or structures; promulgation of rules required.

Sec. 4c. (1) Beginning 1 year after the effective date of the rules promulgated under subsection (2), the owner of an existing building or structure constructed before November 6, 1974 shall install 1 or more smoke alarms in that building or structure, as provided in those rules.

(2) The director shall promulgate rules that establish standards and requirements for the installation of smoke alarms in a building or structure described in subsection (1). The rules shall include both of the following:

(a) For a single family dwelling, 1 or 2 family detached dwelling, or multiple family dwelling, a requirement for the installation of at least 1 single-station smoke alarm in each dwelling unit.

(b) For a building or structure that is not a single family dwelling, 1 or 2 family detached dwelling, or multiple family dwelling, a requirement for the installation of smoke alarms as provided in the code.

(3) A building that is renovated, reconstructed, or added to or whose use or occupancy is changed shall meet the requirements contained in the code for installation of smoke alarms.

Exhibit 4



RECEIVED
DEC 20 2021
Environmental Health

GRAND TRAVERSE COUNTY ENVIRONMENTAL HEALTH WELL & SEPTIC STATUS FORM - \$25

- DEMOLITION
- CHANGE OF USE
- REMODEL/ ADDITION
- FILE REVIEW/OTHER S-T B&B
- HOME REPLACEMENT

Property Address: 11594 Peninsula Dr. Traverse City

Property Tax ID: 28-11-005-025-03 Township: Peninsula

Owner's Name: Elizabeth S. James Schroeder

Owner's Mailing Address: same City, State, Zip: _____

Owner's Phone: 248 501 3094 Owner's email: bethschroeder@aol.com

Applicant (if other than owner): _____
Applicant Address: _____ City, State, Zip: _____

Applicant Phone: _____ Applicant Email: _____

Brief summary of the proposed changes to the property: Proposed 2 BR/1 BA use as
sho beds breakfast (portion of home - homeowners
will be in residence

RESIDENTIAL

Current # of Bedrooms: 4 Current # of Bathrooms: 3 1/2

Proposed # of Bedrooms: 4 Proposed # of Bathrooms: 3 1/2

Garbage Disposal: YES NO

Other changes: _____

COMMERCIAL (please attach a brief business plan)

Type of Facility: _____

Current Max # of Employees: _____ Current # of Bathrooms: _____

Proposed Max # of Employees: _____ Proposed # of Bathrooms: _____

Max Customers Per Day: _____

Drinking Fountain: YES NO

Please note that additional information may be required depending on proposed change or use

Elizabeth Schroeder

12/20/21

Signature of Owner/Contractor

Date

(TO BE COMPLETED BY SANITARIAN)

Grand Traverse County Environmental Health WELL & SEPTIC STATUS FORM

EXISTING PERMIT AVAILABLE PERMIT # 10251/38976 DATE OF ISSUE: 1977/2019
 EXISTING PERMIT NOT AVAILABLE SEPTIC TANK ONLY

- Well shall be properly plugged according to Part 127 of Act 368, P.A. 1978, as amended. Abandoned well plugging record shall be submitted to the Health Department. A new well may be required.
- Septic tank(s) and any other tank(s) associated with the wastewater system shall be pumped by a licensed septage hauler, crushed, and filled or removed. A new wastewater system may be required.

- Existing well meets current well construction code requirements and is approved for use as an:
 - Private Residential Well
 - Irrigation Well
 - Public Well circle type: TYPE II TYPE III

- Existing septic system meets current design requirements for proposed use and meets all isolation requirements. Tank(s) Size(s): 1000 & 800 GAL Final Disposal: 750 #
Existing septic system will serve:
 - Residential home with 3 bedrooms Garbage Disposal: YES NO
 - Commercial facility with design daily flow of _____ gal/day
 - Other use with design daily flow of _____ gal/day
- Existing septic system does not meet current design requirements, but is considered "grand-fathered" for proposed use.

Comments: _____


Signature of Health Department Representative

12/20/21
Date

OFFICE USE ONLY		
Receipt Date: <u>12/20/21</u>	Receipt #: <u>54358</u>	Initials: <u>CH</u>