

March 21, 2022
Planning Commission
Packet Addition

- **Amended Staff Report - Pages 9 and 10**
- **Public Comments**

1. ***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.*** Staff finds that the development area is still far more than 20 acres in size at ~81 acres.
2. ***The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts.*** Staff finds that the development area is still residential (R-1A and R1-B) and has an approved PUD by virtue of past approvals.
3. ***Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements.*** Staff finds that the proposed 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).*** Forty-one units were approved and 41 units still exist as a result of requested amendments. Approximately 55 units could have been developed using the standard land division process with no requirement for open space. Staff finds that the proposed amendments do not change past determinations of equivalent density.
5. ***Open space shall be provided according to Section 8.3.6.*** Staff finds that the proposed plan amendments positively change the open space configuration such that a larger tract of open space is provided at the entrance of the development.
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).*** Staff finds that the proposed amendments do not include building envelopes, parking lots and roads within the designated 65% open space.
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.*** Staff finds that the proposed amendments do not 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 for property zoned R-1A – Rural and Hillside Residential and R-1B – Coastal Zone Residential, with the above permitted use(s) on site as approved by the PUD, 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 Circuit Court and the Peninsula Township Board of Trustees remain in effect.
2. Approval of a Land Use Permit is required prior to any construction of residential units within the development. Such Land Use Permit will include review and approval of storm water management, soil erosion control, and Grand Traverse County Environmental Health requirements.
3. No fill shall be placed on Unit 1. The finished floor elevation of the residence on Unit 1 shall be no greater than two feet above the existing grade elevation of approximately 765.
4. The Master Deed shall be updated to be consistent with the approved amendments.

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.

STAFF FINDINGS AND RECOMMENDATION:

As outlined above, staff finds that the Peninsula Shores PUD, SUP #123, Amendment #3 located off of Boursaw Road meets all the standards of the Peninsula Township Zoning Ordinance related to both the Planned Unit Development process noted in Section 8.3 and the Special Use Permit process noted in Sections 8.1.3. The applicant has provided sufficient evidence that the proposed amendments are in compliance with original approvals and other review agencies with the conditions proposed above.

Staff recommends that the Planning Commission recommend approval of the Peninsula Shores PUD, SUP #123, Amendment #3 to the Township Board of Trustees.

EXHIBITS:

1. Original Application Materials + Additional Materials Provided by the Applicant since Introduction
2. Land Use Bubble Diagram Prepared by Staff
3. Summary of Environmental Monitoring
4. Public Comments

Jenn Cram

From: chaddox75@gmail.com
Sent: Monday, March 7, 2022 5:03 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
Cc: planner@peninsulatownship.com; 'Scott Howard'
Subject: Haddox/Peninsula Shores

Dear Planning Commission Members:

I had several thoughts I wanted to pass along after last Monday's meeting:

1. Please do not forget that this SUP barely passed the first time around. In fact, the final approval dated 12/12/17 and approved 1/23/18 passed by only a 4 to 3 vote (see page 24 of the Packet Addition to the 2/28/22 meeting). Please don't assume that if a standard was approved the first time around it is met this time around, particularly since the facts are different now. Many members of the Board of Trustees did not feel the standards were met the first time around.
2. Please remember that the ordinance standards you are applying do not apply to residential developments governed by the various residential zoning districts. These standards are unique to the Special Use Permit ordinance sections, and don't apply to property governed by the other land use authorization ordinances. Special Use Permits grant special rights to property owners, but the ordinances governing Special Use Permits also contain special protections for the benefit of neighboring properties that are not found under the residential zoning district ordinances. Section 6.1.5(3) of the Ordinance states that as to uses permitted by Special Use Permit, "Uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the Zone District, but could present potential injurious effects upon the primary uses and structures within the Zone District, therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole."
3. The reason no arsenic contamination was found going off site during initial subdivision infrastructure construction was that there was a detailed soils management plan in place then. I have not been able to confirm this with the township yet, but I understand that the soils management plan ended when that infrastructure construction was completed and that this soils management plan does not apply to the construction of any of the houses in this development. The proposed relocated house would be right next to Smokey Hollow Estates common areas and closer to our home than any other construction in the development. The prevailing winds on the Peninsula are from the south, and the removal of so many trees by the developer makes those winds even stronger from this development onto Smokey Hollow Estates properties. Since the proposed lot will have its own septic system rather than being connected to the central system, there will be much more dirt disturbed than will occur in the construction of many other houses in the development. We feel that these contamination issues may have been overlooked and ask that you please consider these issues further under the provisions of the Ordinance.
4. I was struck by the discussion at your last meeting about what certain words or phrases in the ordinance mean. These words have clear meanings. I respectfully suggest that if a convoluted definition other than their plain meaning is required to make a certain decision, that is probably the wrong decision to make.
5. The proposed lot relocation will not make this development better. The proposed lot would break up a large open space area, consuming a large portion of it and leaving smaller open spaces on either side. Currently all of the houses are in clusters. The proposed lot would be the only lot with open space on either side of it and would not be part of a cluster. The proposed lot would result in more traffic going by all the lower level lots, and more traffic going to the upper level. In the original approval, the Township felt that the views from Boursaw were adequately protected. The developer's goals for existing lot 1 can be met by selling the beach access to

the neighbor and having landscape screening at existing lot 1. Allowing lot 1 to be relocated does not need to be and should not be a part of any amendment.

6. I understand the Township Attorney will be providing certain legal opinions to you. We request that you share with us whatever legal opinions or authority you believe you want to rely on in making your recommendation so that we have a chance to respond prior to the March 21 meeting. Otherwise, any comments we have won't be presented or considered until this goes before the Board of Trustees.
7. There was discussion at the meeting about whether there was any legal obligation on or legal contract by the developer to keep the property by us as open space. We have never asserted there is any such legal obligation other than the need to comply with the Ordinance. The question of obligation has to do with moral obligations and good public policy. It has to do with whether a developer should be required to do what it said it would do when it received special privileges to develop the land, and whether the township will hold a developer to what it said it would do if later changes would be adverse to neighboring properties. When the developer applied for the SUP, the developer told the township and the community that this is how we will develop this property if you grant us these special rights, including having the open space on the north end. I think members of the community would be very surprised if the Township now says it doesn't feel the need to hold the developer to what it said it would do in order to get initial approval, particularly when the clear language of the ordinance says this lot relocation should not be approved. If the township approves this lot relocation, then Township residents need to be aware when considering their stance on any future SUP's that there is no commitment by the developer or the Township to keep any benefits or improvements for the community or neighboring properties the developer states it will make, that the Township feels it is not obligated to protect such benefits, and that those benefits can be given back to the developer at a later date even if that adversely affects neighboring properties.

Thank you for your consideration. Craig Haddox

Jenn Cram

From: chaddox75@gmail.com
Sent: Friday, March 18, 2022 5:07 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
Cc: planner@peninsulatownship.com; 'Scott Howard'
Subject: Haddox/Peninsula Shores

Please include the below in the packet for the 3/21/22 meeting:

Dear Planning Commission Members:

Having just seen a proposed findings of fact in the packet posted online, I wanted to provide some comments for your consideration since I assume the ability to make comments at the meeting will be limited. Our prior comments and concerns still stand, but these additional comments address some of the proposed findings of fact.

1. SUP's are to be a win-win-win for the developer, the neighboring property owners, and the community as a whole. Under 6.1.5, the ordinance makes it clear that SUP's require special consideration in relation to the welfare of adjacent properties and to the community as a whole. The other two categories under 6.1.5 (uses permitted by right and uses permitted under special conditions) do not contain such a requirement. Further, the SUP ordinances state that the effect on neighboring properties is a key criteria for SUP's. 8.8.1 states that the SUP ordinances are to protect the health, safety, convenience, and general welfare of Township inhabitants. The zoning ordinance does not contain such criteria for developments governed by the residential zoning districts – if the developer meets the requirements of those zoning districts, he can develop his property accordingly regardless of its impact on neighboring properties. That is not the case under the SUP ordinances.
2. Relying on the underlying zoning classifications is incorrect. Portions of the finding of facts rely heavily on the underlying zoning classifications, implying that since those classifications allow houses, one should be allowed in the open space next to Smokey Hollow Estates. However those zoning classifications have been superceded by the SUP. 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.”

The SUP approval, not the underlying zoning classifications, governs what can and can't be done here. The developer does not have any right to build a house in this open space due to the underlying zoning classifications. If he did, he would not need an amendment to the SUP. To find that this amendment meets the ordinance because of reliance on the underlying zoning classifications which no longer govern the property would mean that a developer with an SUP can later come back and build a house anywhere because of the underlying zoning classifications. Approving the lot relocation will set a bad precedent that other developers will use to say they can build houses anywhere on a residential SUP property (just like this developer earlier claimed and litigated that it needed to be treated the same way another SUP development was treated). Please do not rely on the underlying zoning classifications which are no longer the land use authorization for this property per the ordinance. You are analyzing changing property use from open space to a house lot under the SUP ordinances, not putting a house on property subject to the residential zoning classifications.

3. The appearance of the PUD will change substantially as viewed from surrounding areas. Staff states that the appearance of the PUD will not change substantially as viewed from surrounding areas. Most if not all of you

have visited our property. A house on the highest point of Peninsula Shores right next to our property as opposed to the existing houses that are much further away and at a lower elevation definitely substantially changes the view we will have of the development.

4. Please use the same open space versus house standard on both the existing lot 1 and the proposed lot relocation. The findings of fact say that converting existing lot 1 to open spaced improves the open space there and that is a reason why this lot relocation should be approved. If that is the case, then putting a house in the open space by us must be a detriment to that open space and those who view it (like us).
5. Substantial improvement to property in the immediate area standard. Neither the developer's submissions nor the finding of facts state how this standard has been met as to Smokey Hollow Estates.
6. Contamination issues. The proposed house site has not been subject to a soil analysis – only soils in the development that were to be disturbed by construction were sampled and tested, and there was not to be any construction where the proposed house will be located. I have tried to obtain more information about what was required and what was done with regard to contamination issues, but township representatives have been mostly unresponsive on this and several other information request we have made (even going so far as to still not provide us with information that they said in January they would provide to us). Therefore I can only state what I believe to be the case here. We know the area for the proposed house was an orchard and thus likely has contaminants in excess of various criteria which could be harmful to humans. My understanding is that a heightened soils management plan was required for the initial site grading and development, but that this plan is not required for individual house and septic system construction. It sounds like the quote from Mr. Mawby discusses what he thinks will happen if the heightened soils management practices will be used on the relocated house and septic system. Please ask staff to clarify if the heightened soils management requirements imposed on the initial site grading and development will apply to the construction of the relocated house and its septic system. If not, then you should not rely on the prior monitoring or on Mr. Mawby's statement as a basis for saying that no contaminated soils will blow onto our property.
7. Property rights. The developer has certain property rights, and so do the adjoining property owners. The developer could have developed this property by right or under the underlying residential zoning classifications, but instead he choose to apply for an SUP/PUD and to subject his property to the SUP ordinances. As such, he gained certain rights he would not otherwise have, but he also agreed to give up certain other rights and to have the use of this land be governed by the SUP ordinance provisions. By choosing the SUP/PUD approach, the developer agreed that the neighboring properties would receive certain benefits and protection under the SUP ordinances that would not have been available under the residential zoning classifications or development by right. Staff seems to be bending over backwards to find a way to approve this even though it is clearly contrary to the plain language of the ordinance. If you go along, you will be significantly weakening the protections and benefits for neighboring property owners that are part of the SUP ordinance. You will be setting a precedent that the SUP ordinances should be interpreted so that (a) there is no need for or value in buffer spaces with neighboring properties, and (b) developers can say in the initial SUP application that they are going to develop the property one way with certain benefits to neighboring properties, but they can come back later and eliminate all those benefits. Please stand up for our property rights (and the rights of neighbors of future SUP developments) which are set forth in the ordinance and deny this lot relocation.

Thanks for your consideration. Craig Haddox

OLSON, BZDOK & HOWARD

March 21, 2022

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

via Email to: planner@peninsulatownship.org

Re: Proposed PUD Amendment #3 for
Peninsula Shores (SUP #123)

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 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 Section 8.1.3). Please see my correspondence from 02/22/2022; 1/22/2022; 9/20/2020; 7/19/2020; 6/15/2020; and 8/16/2019, which are incorporated by reference.

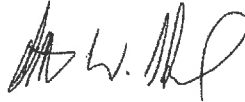
We continue to object to this change and maintain that it is not allowed under the standards of the Township’s zoning ordinance. In particular, we note that the proposed findings enclosed in the packet for tonight’s meeting are silent with regard to Section 8.1.3(1)(b)’s requirement that the proposed use “will be a substantial improvement to the property in the immediate vicinity and to the community as a whole.” The proposed amendment does not meet this requirement. The developer has not demonstrated that relocating Lot 1 would be a substantial improvement to the property in the immediate vicinity and the community as a whole, and we have presented ample evidence to the contrary. For example, we have provided written comments and testimony explaining how the existing viewshed of the neighboring property to the north would be negatively impacted with the relocation of the lot and the subsequent construction of a new home, as well as by increased construction and residential traffic and noise, and increased light at night from a house.

The plain language of the Section 8.1.3(b) is clear – you must determine that the proposed amendment “will be a substantial improvement to the property in the immediate vicinity and to the community as a whole.” The findings of fact in your packet *do not* address this standard. For reasons more fully explained in the attached Proposed Findings of Fact to Support a Denial of Peninsula Shores PUD #123 Proposed Amendment #3, which I have previously provided to you, the proposed amendment also does not meet the standards in Sections 8.1.3(1)(a) and 8.1.3(1)(f).

Planning Commission
March 21, 2022
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Thank you for your continued attention to this matter and your consideration of our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "S.W. Howard". The signature is stylized with a large, looped "H" and "W".

Scott W. Howard

Encl.: Proposed Findings of Fact to Support a Denial of Peninsula Shores PUD #123 Proposed Amendment #3

**Proposed Findings of Fact to Support a Denial of
Peninsula Shores PUD #123 Proposed Amendment #3**

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.*