

**Packet Addition
for August 13, 2024,
Township Board Regular Meeting**

**Correspondence by Craig Haddix
for Peninsula Shores SUP #123,
Amendment #5**

Becky Chown

From: chaddox75@gmail.com
Sent: Monday, August 12, 2024 8:58 AM
To: Becky Chown
Subject: Peninsula Shores Amendment 5
Attachments: Proposed Findings of Fact Peninsula Township.docx

The Planner's August 5, 2024 Memo in your packet on Peninsula Shores amendment 5 makes two comments that I wanted to address.

The proposal to place a condition on the developer moving the lot lines of units 11 and 29 is of no comfort and little value. That will not stop the developer from coming back and amending the SUP to add another lot between units 11 and 29. The developer provided open space buffers by our property to get the project initially approved. Then, after several years had passed and memories and community outrage had faded, he applied for amendment 1 which included relocating a lot into the open buffer space by our properties. When that would not pass as he wanted, he removed the lot relocation from amendment 1. Then he applied for that lot relocation under amendment 2. When that would not pass as he wanted, he withdrew amendment 2. Then when a new Planner arrived, he applied yet again for the lot relocation in amendment 3, and with the benefit of the Meihn advice was able to get it passed. Approval of amendment 5 will be precedence allowing him to move additional lots by us or other neighbors. I assume any condition can be undone by another amendment. You may say we won't allow that, but the history of this project shows that this is far from guaranteed given the passage of time and changes in personnel. I believe the developer was asked to grant a scenic/conservation easement over the land between units 11 and 29 (for which he could get a tax deduction) so that he could not build on it, but he refused. If that is correct, that is very telling that he wants to retain the possibility of building on this area. The only way to stop this scope creep and not dilute the substantial improvement standard is to deny amendment 5.

The Planner also stated that the original findings of fact did not require that the project configuration remain unchanged in perpetuity. Does that mean that anything not required by the original findings of fact can be changed by an amendment? Of course not. The issue is whether amendment 5 meets the ordinance standards.

The main issue is how to apply the "substantial improvement to property in the immediate vicinity and to the community as a whole" standard to a residential development under the SUP section of the ordinance. **This is a unique standard, as no other type of Township zoning has this standard.** The SUP ordinance allows an application to be approved that otherwise would not be allowable under the zoning ordinance, but the application must also be a substantial improvement to neighboring properties and the community as a whole.

The developer's amendment 5 application states no improvements to neighboring properties. He only states improvements to his development. The PC and Planner did not address whether amendment 5 is an improvement or a detriment for neighboring properties or how the original improvements to neighbors were affected. The PC and Planner seem to rely on advice they received from attorney Greg Meihn that lots in an SUP can be moved by an amendment, and the impact on neighbors is irrelevant. This advice was discussed in a PC meeting while considering amendment 3, so the PC and Planner were well aware of this advice.

Mr. Meihn advised that an SUP can be amended to move lots anywhere within the project so long as no lots are added and the open space percentage is met. If that were true, why is the substantial improvement for neighbors standard in the ordinance to begin with? Under his approach, developers can design projects that complement, buffer, and retain views for neighbors in order to get initial approval, then later move lots wherever they want regardless of the impact on neighbors.

In the original approval of this project, the lots were clustered in the middle of the development. There were large buffers of open space along Boursaw Road and along the neighboring properties to the west and north. The Board's original findings of fact under the substantial improvement to neighbors standard is found on pages 198 and 199 of your packet. In (iii) on page 198 the Board found that the development should not negatively impact neighbors because the developer **designed the housing sites to complement the existing residential use pattern**. In (iv) on page 198 and 199 the Board noted how the **lot locations were located sufficiently within the interior of the project site**, and that **the open space was a substantial improvement which benefited the properties within the immediate vicinity**. The Board later found in the first paragraph of page 213 that the preservation of views from surrounding properties was a reason to approve this project. **Lot location mattered in the original approval. Open space location mattered in the original approval.**

The Planner now says that for amendments, however, 65% open space and house density are what matter, and it does not matter where the houses and open space are located. That's also what the Meihn letter said. **That was not the approach taken in the initial PUD approval.** Is that how the substantial improvement for neighbors standard should now be applied to this and other developments in the future?

One trustee said that since the proposed amendment 5 was a substantial improvement to the development, the standard had been met. **That's a change from the past where the improvement had to be for neighboring properties, not just the development.**

Amendment 3 provided substantial improvements to the properties to the south and east of the development. Amendment 5 is different from amendment 3 – it will take away improvements for neighbors which were a basis of the original approval and will add no new improvements for neighbors.

If you approve amendment 5, **you will be setting a precedent** that house location does not matter in SUPs/PUDs, but instead only density and open space percentage matter under the substantial improvement requirement. You will be **setting a precedent** that the substantial improvement requirement does not need to apply to neighboring properties, but can be met by improvements to properties only within the development. If those are now the township's policies, that's very unfortunate for existing and future residents.

The attached proposed findings of fact are our proposed findings for the fifth amendment indicating that two standards of the ordinance are not met. Please review these carefully. We believe they follow the ordinance language, the precedent set with amendment 4, and the intent and balance of the original SUP approval much better than the findings recommended by the Planner and PC. Equally important, they do not set new precedents to the detriment of existing and future township residences.

Thanks for your consideration.

Craig Haddock

4150 Trevor Road

Proposed Findings of Fact

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 underlying zoning of the development is R-1A-Rural and Hillside Residential and R-1B- Coastal Zone Residential. Both zone districts allow for single-family residential uses and approval of a Planned Unit Development via a Special Use Permit per Sections 6.2.4. and 6.3.2. of the Peninsula Township Zoning Ordinance.

The surrounding area is also zoned and developed similarly (R-1A and R-1B) with the property adjacent to the northwest corner being zoned A-1-Agricultural that allows for residential development to support agriculture. Thus, the intended character of the approved PUD and surrounding area is predominately residential in nature.

The Peninsula Shores Planned Unit Development (PUD) was approved for 41 single-family residential units with 65% open space. The requested amendment maintains the number of single-family residential units and slightly increases the required 65% open space. To increase the required 65% open space, lot lines have been adjusted.

Although the proposed use of the property for single-family residences does not change because of the requested amendments to modify the PUD, the character of the original approval is eroded. The original approval clustered 5 smaller lots adjacent to the shoreline between 12,888 square feet and 18,295 square feet. The remaining 36 lots are between 22,044 square and 37,684 square feet. Unit 41 was originally approved at 30,565 square feet. As proposed Units 41(15,702 sq. ft.) and 1 (19,515 sq. ft.) are now smaller lots located randomly at the top of the development adjacent to larger lots (Unit 40 = 25,018 sq. ft.). They are also located closer to the western property line and reduce the buffer which was an improvement to adjacent properties. As such, the existing character of the development as originally approved has changed.

The Township Board finds that this standard 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.*

A residential use adjacent to another residential use is generally compatible, however, the proposed amendment departs from the reasons why the SUP/PUD was originally approved -that approval furthered the objectives of having the housing sites designed to complement the existing residential use pattern, increasing open space for the benefit of the properties within the immediate vicinity, and reducing density by the properties within the immediate vicinity.

When the original SUP/PUD was approved it was found that a 41-unit single-family residential development with 65% open space was a substantial improvement to property in the immediate vicinity and to the community as a whole because the alternative was the potential for 55 units with no requirement for open space, because the housing sites were designed to complement the existing residential use pattern, and because the proposed open space benefitted properties within the immediate vicinity.

The fifth proposed amendment will slightly increase the same open space in exchange for reconfigured lot sizes, but it would reduce open space at the north and west ends of the development and move it to the middle of the property where it only benefits property within the development. The proposed amendment also will cause an increase in housing density along the north property line and the west property line that will result in increased traffic, lighting and noise. The proposed amendment reduces the open space by neighboring properties that was a basis for finding that this substantial improvement requirement was met in the original approval. The Board finds that these increases in density and reductions in open space by neighboring properties erode the substantial improvement to property in the immediate vicinity that was achieved in the original SUP/PUD approval.

Further, the proposed amendment provides no tangible benefits to properties neighboring the development. Moving the open space to the center of the development provides an additional bay view for some lots in the development. However, that open space is of no benefit to neighboring properties. Amendment 3 approved moving a lot and open space and eliminating a water access which was an improvement to properties to the south and east of the development. However, the proposed movement of two units to the north and west sides of the development from the interior of the development is not a substantial improvement for property in the immediate vicinity and is contrary to and inconsistent with the original findings of fact.

The approval of this amendment would also make this development a detriment rather than a substantial improvement to neighboring properties when compared to build by right. The proposed amendment would result in two houses being densely situated at the top of the hill by the common area of the properties to the north where there is no natural tree screening. The build by right would have only one house in this location, with the other houses on the

north end being screened by significant natural tree screening. The housing density under the proposed amendment and under build by right from Units 1 and 41 to the north property line is about the same as the housing density in the same area in the build by right. Most importantly, the two Units added to the north and west under the proposed amendment will increase traffic over the north end of the property by 20 vehicles per day over what is now approved, but will result in the traffic over the north end of the development being approximately 110 to 120 more vehicles per day than there would have been under build by right.

That amendments to the SUP/PUD were previously approved by the Township does not mean that there is any requirement to approve this proposed amendment, as each amendment stands on its own. Approval of this amendment would erode the justifications of the original SUP/PUD approval and impact the balancing of the PUD provisions that warranted approval of the project in the first instance. Reducing open space and increasing the density of the development by neighboring rural properties would not be consistent with the spirit and intent of the original approval.

In addition, Township records of prior approvals related to the SUP/PUD and neighbor input for this amendment demonstrate considerable resistance from neighbors, which further shows that increasing the density of the development on the northern and western portions of the development would be disturbing and/or not a substantial improvement to the property in the immediate vicinity.

While PUDs can certainly be amended, such amendments should further carry out of the objectives of the PUD and pay due regard to the impact on the intent and balance of the original approval.

The Township Board finds that this standard has not been met.

Reappointments to Township Boards and Committees

The following people have expressed interest in being reappointed through August 31, 2027:

Planning Commission:

- Randy Hall
- Larry Dloski

Zoning Board of Appeals:

- Wesley Cowan

Parks Committee:

- Dave Murphy

The following people have not gotten back to me as to whether or not they are interested in being reappointed through August 31, 2027:

Parks Committee:

- Michele Zebell

The following positions are open and need to be filled:

Zoning Board of Appeals:

- Member – three-year term through August 31, 2027
- ZBA Alternate – three-year term through August 31, 2027

Parks Committee:

- Member – one-year term through August 31, 2025
- Member – one-year term through August 31, 2025