

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

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Township Board Special Meeting
October 16, 2024, 11:00 a.m.
Township Hall
Minutes

1. **Call to Order** by Wunsch at 11:00 a.m.

2. **Pledge**

3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown

4. **Citizen Comments:**

Craig Haddix, 4150 Trevor Road: the developer proposes conditions to eliminate one lot and maintain open space boundaries in perpetuity. How are these conditions any more binding on the developer than the site plan he originally submitted? We were told that what he agreed to originally was not a binding agreement but can be changed so long as he meets all the ordinance requirements. The same goes for these conditions. They are not binding. Can't he change these in the future so long as he meets the ordinance requirements? It will be hard for the township to claim that adding a lot in the future violates the ordinance when the township earlier found that 41 lots met the ordinance.

Amendment #5 is another example of scope creep. If approved, the developer can later ask that two lots in the upper level be combined and that proposed lot 1 near us be split into two lots. The planner's proposed findings for the original amendment #5 state that splitting one large lot into two smaller lots, resulting in two smaller homes rather than one large home, is an improvement. Under that approach, splitting lot one into two smaller lots would be an improvement. If amendment #5 is approved, future trustees might be hard pressed to deny that lot split, since the entire lot 1 area would already be removed from the open space and designated for development. The ordinance requires that the amendment application be a substantial improvement to property in the immediate vicinity and to the community as a whole. Substantial improvement to the community as a whole is not enough. There must also be substantial improvement to the property in the immediate vicinity. The elimination of open space due to the increased size of lot 1 is a detriment to the properties in the vicinity. The open space by those properties and the preservation of views were reasons why the township found the initial development met the ordinance standards. Approving proposed lot 1 would be contrary to the original findings of fact and the reasons why this project was initially approved.

The planner's proposed findings for original amendment #5 state that splitting one large lot into two smaller lots, resulting in two smaller homes rather than one large home, is an improvement. The opposite is now proposed. The original amendment #5 proposed two smaller homes by us, and the modified amendment #5 proposes replacing them with one larger home. Thus the modifications to amendment #5 are even worse for the neighboring properties than original amendment #5. As the original amendment #5 did not meet the substantial improvement

standard, the modified version does not meet it either. Please deny this amendment once and for all. Thank you for your consideration.

Joe Dierkies, 4150 Trevor Road: the developer's proposed findings state that amendment #5 will decrease traffic in the development and create a view of the bay from Boursaw. Please note that the exact opposite is true, as I described in my written comments. Traffic will increase and there is no bay view from Boursaw. This amendment does not meet the ordinance standards that each use on a proposed location will 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. Proposed unit 1 on the north end is a monster lot, almost twice as large as the other lots on the upper level. A huge house could be built on it, completely out of character and contrary in appearance with the other houses on the upper level, which, per the township website, are smaller than 2,000 square feet on average. Proposed unit 1 is essentially inconsistent, entirely inconsistent, with the other units on the upper level and changes its character. I'm sure there's attraction to the idea of one fewer unit and no more open space changes, even though that is illusory, as those items can be amended away in the future. However, that attraction does not eliminate the need for this amendment to meet the other requirements of the ordinance. This amendment does not meet the character standard, as it is not harmonious with the other lots and houses in the upper level, and it changes the character of the area. This amendment does not meet the substantial improvement to property in the immediate vicinity standard, as it provides no improvements to neighboring properties. Indeed, it is a detriment to neighboring properties and is contrary to the reasons why this project was approved to begin with. Please apply as written all the ordinance standards that were designed to protect and buffer existing residents from these mega projects. Stop the scope creep, respectfully refer to the original findings of fact, and deny the amendment.

Kyle O'Grady: I briefly want to address those comments and then I'll be available to answer any questions. In response to Craig Haddix, the original approval approved open space there to begin with. That was changed in amendment #3 to a unit. That was appealed by the neighbor and supported by Peninsula Township at court. The court found that we did indeed meet the ordinance, so this precedent has already been set, that we can relocate a lot or a buildable area into open space, with a few other amendments in Jenn's [Cram] history memo that she put together for you guys. So that's false.

The second gentleman who stood up mentioned that a huge lot will be approved in this new area for unit 1. I can't say I'm surprised, but it's pretty unbelievable that we have people standing up requesting a denial of a decrease in density. But needless to say, here we are. In regards to the lot being much bigger and larger than the other lots in the surrounding area, we're less than half the lot size of the immediate neighbor to the north, Craig Haddix. Not to mention lot 29 that already exists in that area is about 33,000 square feet. We had to consider, as well, these restrictions that we put on the setbacks as a concession to the township. Months ago, we agreed to change that 15-foot setback to a rear yard setback of 30 feet. This lot will require a lot of creativity and thoughtfulness to fit a house onto, and the home will certainly be in line with the rest of the homes of the subdivision. And frankly, if you look at the actual buildable area on the site plan and take into consideration those setbacks, it's going to be a pretty restrictive lot. It's going to be in line with the majority of the lots of the subdivision. Again, I'm available. We'll let you guys discuss and then be available for comment or questions as needed. Thank you very much.

Haddix: do I have a little bit of time left?

Wunsch: you used your three minutes. But if someone else wants to cede time to you, they may.

Dierkies: just in response to the reference to the size of the lot referred to as the Haddix property,

the actual building area is much smaller. The lot is bigger. There's a great deal of open space there.

5. Approve Agenda

Rudolph moved to approve the agenda as presented with a second by Shanafelt.

Roll call vote: yes – Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown, Wunsch **Motion passed by consensus**

6. Conflict of Interest

Becky Chown has a conflict of interest.

7. Consent Agenda: none

8. Business:

A. Peninsula Shores, SUP #123, Amendment #5 – Revised Proposal for Board Consideration

Sanders moved to recuse Chown with a second by Sanger. Motion passed by consensus

Cram: I did provide a history of the Peninsula Shores approval in the packet. This is a change to what was originally proposed for amendment #5. The applicant is offering to remove one unit of density from the development in perpetuity. Forty-one units were originally approved. With this proposal, 40 units are proposed. They are also proposing to maintain open space in its current configuration in perpetuity. That could be handled with a conservation easement or other mechanism that could be worked out with legal counsel. In addition, they are proposing to increase the total open space from 65.48 percent to 66.52 percent. I'll pull up the site plan from the packet. I did want to note that the master plan asks us to look at all measures to reduce the potential build out, so a decrease in density is supported by the master plan. Staff and legal counsel can work with the board if you believe that's a substantial benefit to the community as a whole and properties within the vicinity. We could draft findings of facts as you see fit. Everything we do should be driven by community desires and the vision represented in the master plan.

Kyle O'Grady: everybody had a chance to review the documentation we sent. I think what it boils down to is, we got the unanimous yes vote at the planning commission [PC]. We came before the township board, which kind of shook us and said, "Hey, show us something here. We hear the concerns of the neighbors. We hear the concerns of fellow board members. Show us what you can do here." Multiple board members said that we can meet the zoning ordinance to get this amendment across the finish line. We have thought long and hard and decided to propose the offer to you of the reduction of density and maintaining the boundary of open space in perpetuity, the maximum units in perpetuity. As Jenn [Cram] just mentioned, we took into consideration items such as the master plan that I know are continually discussed here at the township. Again, I am not surprised but very interested. I thought we had seen it all, but the proposal of reduction of density should be pretty much in line with the zoning ordinance and master plan and more than the original approval to begin with. If there are any questions, let me know. We would ask for your vote on this amendment as it sits in front of you with our offer as requested from the township board. Thanks for the consideration.

Shanafelt: is the septic field up there large enough to support that lot?

O'Grady: yes, we do have the approval from the health department.

Achorn: which lot is deleted?

O'Grady: we can assign a unit number to it, but with the change of how they're labeled for the purposes of the ease of congruency from units 1 through 40, we've removed the label of unit 41. It seemed to make the most sense to remove unit 41 and then address the other lots accordingly. So on the map, unit 41 was removed.

Achorn: can you point that out?

O'Grady: when I was before you last month, this was labeled 41 and 1. What was at the top was labeled 11 and 12. To keep congruency from an ascending standpoint of unit numbers, we have decided to relabel that as unit 1. At the bottom, we are removing the labeling units 41 and 1 and labeling that 11 and 12. To clarify, this site plan is exactly the same as you saw it last month. There are zero changes in lot lines. We did that with a purpose to not have any changes in front of you. We have the approval from the fire chief. We had the approval from the township engineer. That took place about five months ago. But from the perspective of what has changed since last month, there's been a reduction of one unit and everything else, all of the lot lines, have remained exactly the same.

Sanders: plus an increase in open space.

O'Grady: of more than 1 percent.

Cram: for further clarification, amendment #5, when first presented to the PC, was to relocate units 11 and 12 from this location. They moved up to the northeast corner. Staff and the PC found that was a benefit to the development because the open space as it exists right now in this northwest corner is a steep hill. It couldn't really be utilized by the development for actual [usable] open space. Moving the open space to this location opened up the view to the bay. It's also a flat area that will be planted, that can be enjoyed by the development. So we were exchanging open space that was essentially unusable to an area where it's more usable, and it creates a safer view corridor for vehicles turning off the lower drive onto Water's Edge.

I had a question in reviewing the history. I think amendment #1 was proposed because you had to change the emergency access. When I looked at the original plans that were approved, there was actually an emergency access that came off Trevor Court that was preferred because it increased emergency access to the Smokey Hollow Estates neighbors. If the emergency access had been there, there'd be no lots there. So why did it change?

O'Grady: it's not something I pointed out because I respect the opinions of the neighbors. This was during the original approval process. That emergency access was originally approved to go to Trevor Court. Through what can be discovered through minutes, essentially it just wasn't offered any longer to us. Therefore, we relocated that emergency access out to Smokey Hollow. This freed up that open space at the north side of the development and allowed us to continue with amendment #3, which moved unit 1 from the entrance of the subdivision up into this open space. Again, that was appealed by the neighbor and went to the 13th Circuit Court. That was upheld, defended by Peninsula Township. I haven't pointed that out very much, but that was the reason there weren't any lots to begin with there. And to Jenn's point, more open space, less density. We would hope that would be supported by the zoning ordinance and the master plan. I think it's important to not only point that out but to go further and say that these changes, a quarter mile of preserved shoreline, this open space that we're proposing at the middle of the development, these are all things that 40 residents, 41 currently proposed, get to utilize and enjoy, and it's preserved forever into the future. That corner between Shoreline Court and Water's Edge would be astronomically beneficial to how it exists today, with a buildable unit there, being that these are all members of the community who take their cars and golf carts down to the water. That increases the view line making that turn, increases the safety for the residents, among many other things that have been identified in front of you. But to answer your question, that's the reason for it.

Cram: thank you. I wasn't here for that, so I didn't understand why it moved.

Sanders: Chris [Patterson, township legal counsel], what would it look like to preserve that space and conservation easement within the development?

Patterson: we looked at this issue based on a question I believe you raised previously. My understanding from the applicant's position is that they're preserving it in perpetuity. But I don't

know if they've defined what that looks like. Based on what we've looked at in the zoning ordinance, when you think about perpetual conservation of the open space, it would come with two pieces. One is easier and there's less risk, a conservation easement as a condition of approval. Those who are within the development get access to it.

The second type of conservation easement would be one for which the open space would be available to the public. That would be a pretty large change from what has been previously allowed at this development. We are asking the developer as an incentive to provide an additional bundle of sticks that was not previously provided in the original approval or the prior four amendments. The easiest way would be a conservation easement that would be recorded with those defined boundaries of the current proposed open space and then having the beneficiaries, those who are within the development, being the ones who hold the ability to enforce that.

O'Grady: is a condition of approval insufficient for accomplishing the objective of maintaining the boundaries of the open space in your opinion?

Patterson: yes. There's been some pushback suggesting that if we put such a condition in place, it couldn't actually be perpetual because you could go in and subsequently amend it. If that is your intent to offer to the board, a condition gets us there, as far as the administrative mechanism. What would be most appropriate is to preserve it in an easement with those beneficiaries being locked in so they have the ability to preserve that moving forward regardless of who has the right to seek amendments in this PUD in the future.

O'Grady: okay, good. I think that's fair. If we wanted to make a condition of approval, not just mention the perpetuity but a condition of approval so it could satisfy that concern of coming back, then that's something I would encourage you to put in your conditions of approval.

Achorn: would that require a legally recorded easement?

O'Grady: yes, we could execute that between us and legal council.

Achorn: and it would be for the benefit of the residents?

O'Grady: correct, the benefit of the residents of Peninsula Shores. I'd be happy to work on a draft of that with Chris [Patterson] and get that reported.

Achorn: does open space mean you can't put anything like a pickleball court there? Does it all always have to be green?

Patterson: the open space piece is going to relate to limitations of improvements, not necessarily to whether it's green or not green or what type of vegetative cover is used. If that's a concern, it's within your purview to put in place as a condition. I think the open space piece is to ensure that actual infrastructure and development don't occur within that space. That you're protecting the ability of those within the development to be able to use it, access and walk on it, and there's not going to be homes and other items built.

Achorn: so they they could put a picnic [table], field, or basketball net or anything like that in the open space? Or a pickleball court?

Patterson: it depends on what's drafted in the language and acceptable to the board. My general experience is you would not fill open space with those types of amenities. I would consider that more common space, which is an area that's designed for those within the development to have recreational activities that include impervious surface. Generally in open space you try, to the extent that you desire, to maintain it in an undeveloped state.

O'Grady: I agree with Chris. This isn't some back way to get a pickleball court or basketball court. I respect the question, but I think it could come down to impervious service. We're not doing this as a means to an end to get anything else than what we've already got, which is the green open space. Hash it out in the language with Chris to mention impervious surface. We do not object, and we could outline exactly what that means, no impervious surface, to be maintained as open space,

undeveloped.

Achorn: I'm not for or against. I'm just trying to get a definition of what can go in the open space.

O'Grady: that's more than fair, and I think it could include items such as no impervious surface.

Sanger: how many of the 40 or 41 lots have been sold?

O'Grady: shooting from the hip, approximately half.

Sanger: how many are occupied?

O'Grady: residents come and go but about half.

Sanger: is there an active HOA?

O'Grady: yes, managed by a local management company, Schmidt-Rogers Management Company.

Sanger: I'm concerned. We have not heard from the HOA. We've heard from neighbors, but is there any input from the people who have already bought into the development in terms of this additional amendment?

Cram: we did have members of the neighborhood come forward and make public comment at the PC in support of amendment #5. I don't know if they were in a voting capacity on the HOA.

Sanger: my concern is that this is now amendment #5. People who bought lots with the understanding of the plan for the development understand who their neighbors will be in terms of a home or not a home. This is another change we're faced with, and I don't understand why we never hear from the people who are living in the development in terms of the continual change to the development and ultimately what it's going to be.

O'Grady: frankly, it's not a popularity contest. I've refrained from reaching out to people individually and asking for letters of support. There's a homeowner here today from the subdivision. You said people bought into the subdivision as it is. I respectfully disagree. People bought into the subdivision after comprehending and reading the condominium documents that specifically state that we're allowed to do something of this nature. And if you're interested in having this homeowner speak, I'm happy to do that. As Jenn mentioned, multiple people spoke at the PC in support of this. I respect your point.

Sanger: help me understand the logic. Amendment #3 gave you a lot, it was 11 or 12, now being called 1, correct? Amendment #3 moved a lot up to the hilltop?

O'Grady: correct; that was labeled unit 1.

Sander: what is your logic for increasing the size of that approved lot to something like 40,000 square feet?

O'Grady: to have an increased lot size, I suppose. We had that –

Sanger: what is the logic as a developer? Why do you want to increase the size of the already approved lot that is in the northern portion of the development?

O'Grady: to make it more buildable.

Sanger: can you supply evidence to the board in terms of the topographic map showing us the problem?

O'Grady: I don't think the problem caused any of our amendments. We work on the site, we study the plan, we study the site, and we come with a change we're looking to accomplish. I don't think that amendments are a result of a problem. The amendments are a proposal for what we're looking to accomplish on the site.

Shanafelt: I'm presuming, like most developments, [the] developer has control over the development until a certain number of lots are sold, and then that control slips over to the HOA. This is totally in line.

O'Grady: that's 100 percent correct.

Sanders: I've waffled back and forth on this. That onsite visit last time was helpful. I'm the one who originally proposed some workaround that will help all to come to an agreement, even though this

is obviously a negotiation. Will everybody be 100 percent happy all the time? No. I like the change you made. I like the 30-foot setback and limiting the square footage and design of the houses in the bottom left. It's a significant hillside. I'm prepared to move on this today. I don't know if the board is or if we need to have more discussion.

Wunsch: I don't think we have findings of fact either in favor or in opposition to the proposed amendment. We can provide staff with direction today, but we shouldn't vote on it until we have findings.

Sanders: I'm on the same page with the conservation easement. It doesn't make any sense to have it be an easement that allows the public in there. This is a private neighborhood, and we all understand that. I like the clarity of open space versus common space. I think that was helpful.

Shanafelt: I've changed my perspective. I think what you've done here makes sense. Specifically to your point, you've reduced density, which is central to the master plan. The concept of a conservation easement is perfect for achieving the open space desires of maintaining it in perpetuity. The last thing is, a one percent increase is less ground cover. That's important.

Sanders: keeping those open spaces in what used to be pieces of farms and/or forests is important. Get it in writing and part of the legal description going forward.

Rudolph: I still have a small issue. You guys gained your approval in 2015 for the planned unit development. There was a lot of controversy in the community prior to that. I think we all know that, right?

O'Grady: we used to move to bigger halls than this to fit everybody in. We're doing fine.

Rudolph: my problem is that I feel the original planned unit development, one of the primary compromises made by O'Grady at that point, was to keep that open space on the north end open. And I see you guys continuously trying to encroach on that area. The board at the time said, "We'll agree to this if you guys will agree to keeping this open." I don't understand why it's so attractive to encroach on that area.

Shanafelt: one reason we're here today is that amendment #3 swapped unit 1 from the south side of the property to the north side because it was a substantial improvement from a variety of perspectives. It's why we now have a house up there. It's not in isolation trying to put stuff up there. It happened because the PC approved amendment #3. This is an interesting evolution of what that led to, freeing up space below as open space. I don't agree that it improves it from outside the neighborhood, but overall it has a positive impact. That lot building envelope is interesting. It will be curious how you build on that. I appreciate the reduction in overall density. I think that's meaningful.

Cram: I now understand that the original approval in 2015 showed an emergency access there, so the original approval didn't commit to having that northwest corner as open space. There was going to be a road there, and then that evolved.

Rudolph: can you expand a little bit on what caused that emergency access to change?

Kevin O'Grady: from what I understand, there's four owners on Trevor Lane, whom I met with years ago. They essentially, in my opinion, put a carrot out there and egged us along. I don't want to misspeak; Mr. Haddix is shaking his head no. It's probably been fortunate that I wasn't at meetings where they've indicated I promised them something. I never promised them anything because I don't break promises, and I never made them a promise. They put a carrot out there to drag along the timeline for this development. It's a true story; I lived it. When it came time, we had the documents drafted, we had, "It's gonna be a dirt road. We'll do a little less dirt, put different pines right there."

"Well, we don't like the design of the gate. It's not quite right."

"Okay, I think we got it."

"We're gonna go to the meeting, and we'll sign that paperwork to give you that easement through there." The carrot was there. What was intended, in my opinion, was to offer this easement. And they pulled the carrot and hit me square in the nose. Ultimately, I ended up working with a neighbor to the west of us, nice people. I'm friends with the Wellses. I became good friends with them over the years and still am. Mr. Wells, I told him he could walk the property anytime he wants. He's a great gentleman. His son, Mike, we work with, he cleans our windows. They gave us an emergency access.

As I mentioned last time I spoke, there's a lot of negativity towards Peninsula Shores. There shouldn't be. I want to be neighbors. I live in this community. I want a, "Hi, how you doing?" I don't want people turning the other way when I go in the stores, whatever it might be. But the bottom line is, I have good intentions. There were bad intentions, my personal opinion, on their end, because it never was going to happen, and it never did happen, that emergency access. And there's rumors I paid off the neighbors. No. There was no paying off people. I worked with a neighbor who generously gave me an easement that is six times, 10 times, 15 times longer, well, probably closer to 20 times longer, with a lot more expense. They graciously, being the Wellses, gave us an easement. Mr. Haddix, who has continually been against this development, took this township to court over the development and lost.

Mr. [Rudolph], as far as your question, to be honest, we're not encroaching on our own property. An encroachment, in my opinion, is encroaching into the neighbors, into their physical property. We're utilizing our property. There's zero encroachment. That's my personal opinion, and I'm here to answer any questions. I have all day. I've spent years on this, and we're willing to take a lot off the table.

I believe Jane Boursaw is here. I've never... We might have bumped into each other and said "Hi." There's a question she'll ask people who are running for re-election or to be elected. One of her questions is, "Do you believe in large-scale developments?" It's not verbatim, such as "like Peninsula Shores, formerly known as 81 on East Bay." I think there's a common sense issue here in Peninsula Township. With the PDR, which I pay into with my taxes and all the tax dollars we pay, people don't want to hear about the taxes we pay. Well, it's quite a bit. Nearly a million dollars over the last 10 years of owning this particular property. So the bottom line is, do we want as community members... I mean, that question in all fairness is kind of... nobody wants large-scale developments in Peninsula Township. Peninsula Shores was zoned R1A and R1B coastal. We're willing to go to 40 lots when the original planner, Michelle Reardon, indicated that, with a PUD, planning and development, we were allowed 73 lots on our property, and we chose to try to make it the best it absolutely could be. And we've got people who are against it. I understand. There are opinions. We're asking to put a larger lot next to Mr. Haddix's large lot. I believe it's more than twice as big and then some perhaps in volume.

We're talking about us and our property. We're willing to have less density, more open space in perpetuity in that area. We're not going to come back and say, "Let's put a house, let's move this, move that." I think we've done a great job. My son has done a fabulous job. Kyle, I'm super proud of him and the relationship he's had with people at the township. As a property owner, we own the property. I've been in this business many years, and you try to work with the property owner and the community, especially according to the zoning ordinance, to get things across the finish line.

The reality is, we're willing to reduce units. I've never gone in front of a township board and asked for the reduction in units. I've been in this business since I was 18 years old. When I was in high school, I started my first flip, if you will. That was a long time ago. 1989 as a matter of fact. This has been a passion of mine. People don't want to hear about my passion. Well, it is. I live there. We're

willing to reduce a unit by one. I've never heard of such a thing, especially in such a phenomenal place as Peninsula Shores. But that's how we want to make the community that much better at the corner of Shoreline Court and Water's Edge Drive.

My boys came up with fabulous names for the roads. With that community space and open space within the community, we're talking about a substantial benefit to Peninsula Shores, not the community as a whole. It's what's been on the record. I'm here to answer any further questions. I've got all day. I'm happy to be here, and I'm happy to communicate with the township and not butt heads.

What we did here was put a proposal on the table for amendments. "Why do you come back for amendments?" In all fairness, the Boathouse Restaurant came back for amendments. The vineyards have come back time and time again. Seven Hills, love the place. It's a great asset to the community. They've already been back for amendment, maybe one, two, or three times. Maybe they'll be back 10 more times. But I don't hear everybody telling those other people to tap the brakes. There's somewhat of a prejudice towards my development. I'd like it to go away. We're members of this community. We enjoy it, and I want to enjoy the people, quite frankly, and the surrounding areas. So thank you very much. Kevin O'Grady, checking out for now.

Shanafelt: I don't think the board has ever said you can't bring amendments. The board doesn't have a problem with you proposing amendments.

Kyle O'Grady: to your point, Isaiah [Wunsch], we can't take a vote today, but I would like to ask you guys to work with staff to put together findings of fact for approval. Thanks for listening to us. If you have any questions, let us know. The passion must be evident. If it's not, you've got blinders on. Here is a resident; we're not just bringing someone in.

Dave Donie, 15714, Water's Edge Drive: good afternoon. Thank you for giving me two or three minutes. I won't go as long as Kevin. I just want to share that I lived on the Pacific Ocean in Huntington Beach, California. I lived on the Pacific Ocean on Laguna Beach. I lived on Vanderbilt Beach, the Gulf in Naples, Florida. Bonita Beach, Florida. Key Largo, the Atlantic, 12 inland lakes in between. And now I live on the Grand Traverse Bay at 15714 Water's Edge Drive. I've been here for four months. It took me a couple of years to get a deal done. It's a long story that I won't bore you with. I buried my son three years ago. My family has been through hell. I have to tell you that I think this development saved my life. My wife told me yesterday that she wants to sell her home in Naples and live here full time. There's something about this development. And I see the O'Grady family four times a day, outside with their trucks, working in that subdivision, getting dirt on their hands. When we bought the home, the O'Grady's took my wife and me to dinner. They had a genuine interest in knowing who we were, who was occupying a residence in the development. The passion I see from them is incredible. I guess the main point is, there's a lot of passion there. These are really nice people. They are really good people. That's all I have. I hope you consider their integrity and passion. Thank you for your time.

Haddix: will you or the developer allow me to speak again?

Wunsch: sure, go ahead.

Haddix: there's an ordinance that Mr. O'Grady ignores when he speaks of being able to do what he wants with his property. I also find it ironic that Mr. O'Grady talks about taking someone to court as a negative thing. Now, I wanted to clear up the emergency access issues and what happened there. First of all, they submitted an application to the township for this project initially that showed the emergency access easement going across our property without talking to us or seeing if we'd even be interested. We didn't find out about it until someone looked at one of those packages later and realized it was there. Jenn is shaking her head. Do you disagree?

Cram: I was just sitting here.

Haddix: I'm sorry. I thought –

Kevin O'Grady: Craig, we never spoke before. My name is Kevin O'Grady. We're neighbors. I live right on the top of the hill, lot 30. I saw your lights on this morning when I took my dog out at six o'clock a.m. So you're indicating to me that we were going to plan on just tying into Trevor Road, on private property.

Haddix: yes.

Kevin O'Grady: okay, well, at this point I don't know how believable you are because that's illegal.

Haddix: what's illegal?

Kevin O'Grady: going onto your property and setting a road from our property –

Haddix: I'm saying –

Kevin O'Grady: I don't believe what you say because you have indicated to board members at board meetings that I promised you something. I never promised you a damn thing.

Haddix: I did not say that, sir.

Kevin O'Grady: would you like to look at the at the minutes of the meetings?

Haddix: I'm happy to look at all the meetings. I have the emails. What I'm saying is that he submitted an application to the township showing this easement before even approaching us as to whether it was feasible. It's only when we found out about it later and contacted him that we talked about it. We were interested in doing that emergency access easement over the property, which, by the way, was not just that short little strip. It would have been private property going all the way out to Smoky Hollow Estates. It would have been a very long easement. Now we worked with them to try to come to a deal because we wanted that emergency access also. But we realized that this emergency access would cross the line that was running from our house to our septic field. We were concerned about damage to that septic line, and we asked the O'Gradys to agree to repair any damage. They did not want to do that. So we decided the risk of granting that easement was not worth that possible damage. Again, I have emails to back that up if you would like me to forward them to you.

The other comment I would add is that we told them we would not do that easement well before, months if not years before, the initial project was finally approved by the township. It's not like this was something that came up after township approval. This is the second time this access easement has come up at the last minute. First time on amendment #3, it was brought up at the trustees after we had spoken, and we didn't have a chance to comment on it. So I appreciate you giving me a chance to address it now. The other thing I want to add is that the building space on our lot is much smaller than the building space in proposed unit 1. We are also a PUD or an SUP condominium, and most of our two-acre lot is designated as open space. So when they say that we have a much bigger building area, that is incorrect. We just have a large proportion of designated open space. Thank you for allowing me to clarify.

Achorn: I sat in the meeting at St. Joe's church before we were elected eight years ago, Isaiah [Wunsch] and I and Maura [Sanders]. That emergency exit was discussed at that meeting by that current board. At that point, as I recall, they were discussing how they were going to get the easement through the Wells' property down to a main road. They had to enhance the road so that the fire trucks could go on it. There was cost involved in that change of plans. When I went up to see the property before our vote, I noted the detriments that were in the initial plans for the south lots. I think every change in those drawings was correct to ease the amount of housing that was on the south side. I also recall going up to the top where this new lot 1 is and seeing where the emergency access road was. I have not, although my name is mentioned in this packet, had any contact with the developer or legal counsel or staff or anybody related to this project. And to be truthful, I was against it in the beginning. I was fearful because of the topography of the land that

there would be problems with the bay if there was a heavy rain. It is the developers' right to move lots. The original drawings, there's nothing final about them. They're just placeholders. Once you start building, you realize the mistakes that were drawn in initially. You correct them based on what the actual topography is. I have no problem with moving lot 1 to the top of the hill. The reality is, we have to look at now. A developer reducing one lot is unheard of. The people in the Cove should be thrilled that they don't have the traffic coming out of the entrance on their roads. The traffic at the north end is negligible.

The first law of real estate is, if you like your view, you buy your view. And if you can't buy it, you put trees in so you don't see it. If you don't like the noise, you plant trees to deflect the noise. Just because you don't want your picnic disturbed by someone's backyard doesn't mean a development has to be stopped. We have to bring this to a conclusion so the developer can move on and build out what is legally allowed. My point to staff is to proceed so we can approve this once and for all.

Wunsch: when we're running for office, we're trying to win a popularity contest. But once you are a seated board member, your job is to administer the law as it's written. I have voted on this project, I think, since the start. I think it was on the agenda the second PC meeting I attended as a planning commissioner. The votes on this have always been tough. There's been consistent pushback by neighbors about the project. I think there's been quite a bit of frustration from the developer at times. What we've gotten to is a project that conforms with our laws as they're written. From my perspective, the PC took a looser interpretation of the community benefit aspect and defined its concept of community benefit to what was within the development. At the last board meeting, the consensus seemed to be that we wanted to see broader community benefit. While I would agree with you, Armen [Shanafelt], that that benefit is small, like a case that comes before the ZBA, if the developer is decreasing a lot by one and increasing open space by one percent, that might be a marginal benefit, but in my opinion, it's compliant with even the strict interpretation of what community benefit means. They're moving in the direction we've set for them. It's also important that we impose the conservation easement as a condition of approval. To the point that the neighbors have brought up, we want to make sure we don't have something in an SUP that then gets amended away if the idea is it's truly perpetual.

Sanders: I agree with you. How do we put all that into moving forward?

Wunsch: direct Jenn to draft findings of fact that support approval. That's the read I'm getting from the board. We could make a motion.

Sanger: I believe we should have another public hearing. This is a major change. What was before us in amendment #5 was two lots at the top of the hill. Let everybody have a chance to speak.

Shanafelt: I disagree.

Sanders: I disagree.

Shanafelt: we've had lots of public hearings. We've heard the issues. If they're going from one lot to two lots up there, sure, maybe a public hearing. But we're going from two lots to one lot.

Sanger: the point I have is that amendment #3 was approved. That approved one lot up the top of the hill. The developer is now saying he cannot build on that lot because there are some problems.

Shanafelt: no, he didn't.

Sanger: please. That's what I heard this morning. I have yet to hear from the developer why he could not build on the approved lot in amendment #3. It brings up the question of changing the character in this neighborhood by putting in a huge lot. If the developer wants to restrict the building envelope on that lot, that's a different story. We're dealing with changing the character. I'm concerned about the impact on the surrounding properties. Again, what is wrong with amendment #3?

Shanafelt: I won't debate that with you right now. However, we have had public hearings on this

already. This lot is really no bigger than other lots in the neighborhood, and we are reducing. There is no reason to have a public hearing about something internal to the development because a developer is in control of what can happen within the development. The only people who could maybe comment would be people in the development, and a few of them have come and commented. But, again, I don't think another public hearing is appropriate.

Cram: this would come back for the November meeting.

Wunsch: I would be fine with opening it up for public hearing ahead of the prepared...If the consensus of the board is that this is ready to go, if we want to provide an opportunity for the public to weight in at the last moment, I'm open to that. But I think it would be appropriate to move forward with conditions with legal work and findings of support. How much time do you need to [post for public hearing]?

Cram: I think the deadline is tomorrow.

Wunsch: does the board want to?

Shanafelt: I don't see the point.

Sanders: I think accepting comment during public comment is sufficient.

Sanger: I must object. All we've heard this election season is the need for open communication. I see a delay as not causing a problem. I think it's important that the public has an opportunity to speak on this matter.

Shanafelt: they have had the opportunity.

Sanders moved to request staff and legal counsel to draft revised findings for approval including discussion from today of the required conservation easement for board consideration for Peninsula Shore's Special Use Permit 123, Amendment #5 for the November board meeting with a second by Achorn.

Roll call vote: yes – Achorn, Sanger, Sanders, Rudolph, Shanafelt, Wunsch Motion approved by consensus.

Wunsch: staff and legal counsel will come forward with materials to support an approval at our next regularly scheduled board meeting.

Rudolph moved to return Chown to the board with a second by Sanders. Passed unan.

9. Citizen Comments:

Joe Dierkies, 4150 Trevor Road: the matter that concerns me is that the developer made various representations about doing things or not making changes in perpetuity. I think anything submitted to the board for approval needs to include discussion of what the developer has said they are willing to do and then whether that's going to be legally binding or not in the future. Any representations along those lines, in the long run, may solve problems with this board in having things coming back over and over. For example, let's say next year, if this is approved, the developer comes back and says, "Well, that big lot up there, we can subdivide that or expand it a little bit. Make some changes." I would hope that what is agreed on today, based on their own representations, they would be held to. They wouldn't be coming back trying to achieve the original version of number #5, which was two lots up there. Coming around a back door and doing the same thing. If I understand the board, you're agreeing there should be one lot up there. The original amendment #5 wanted two lots. I think counsel needs to be very clear as to the binding effects of the agreements made by the developer going into it.

Craig Haddix, 4150 Trevor Road: I would ask that the conservation easement, since I understood from Chris that it would be for the benefit of the development, which I think is entirely correct, to make sure that the developer or the unit owners in Peninsula Shores cannot later come back and amend that conservation easement to change those lines. Thank you.

10. Board Comments

Shanafelt: what struck me weirdly when I was reading through this latest set of information and listening to the discussion is that we have sort of drifted into a moral argument of right and wrong. It's subtle. This is about what is in the ordinance and applying the ordinance as stated as unemotionally as possible. I get both sides on these issues. I'm new here, so I'm not as affected by everything. It's easy for me to make this statement.

The other comment regarding amendments to SUPs is that one always can come forward with an amendment. It's whether or not it meets muster in the interpretation of those people who are in position to make that assessment.

Again, it's voting season, so my plug is for voting. Vote if you're worried about how a future board or PC might interpret something. Make sure the right people are elected so the interpretations and application of the law can be done in the best way possible. Do your homework and be comfortable that you're electing people who will act appropriately in the administration of their duties.

Sanders: I want to comment on the first thing you said. You're right. All of this is very emotional. We all live here. We have emotions for many different reasons. I'm guilty of that, at least in my thoughts. The guiding principle is always the master plan. Our zoning ordinance comes from that. So when the time to update [the] master plan or participate in community survey comes up, it is something that is obligatory for everybody to participate in.

Chown: it's another reminder that we do, in a very impactful way, need to update our zoning ordinance. We're still working with a 1972 version.

Cram: correct, with 204 amendments. This application has prompted the PC to make it a priority to look at amendments to section 8.1.3 to address substantial improvement. It does trip the PC and the board up. It's subjective. We have a subcommittee of the PC working on that right now. It is a priority of the PC to clean that language up, to make it clear when an original SUP comes forward what standards need to be met and how any amendment might impact them.

Chown: because the zoning ordinance as written does not necessarily reflect our master plan, yet we're stuck with it until we update it.

Cram: I don't know if it's in opposition to the master plan, but there is a lot of room for interpretation. We need to clean that up, make it objective rather than subjective.

Shanafelt: as much as possible. There will inherently be ambiguity. That's why it's such a joy being in these seats. Getting too specific just makes it easy to get around. There is necessary ambiguity to make a good law.

Cram: that standard is trying to address what the public benefits of allowing this use to happen are. And what are the public benefits of any amendments to that original thing?

Wunsch: in terms of land use, the fate of that property was essentially sealed, and it's kind of funky, given adjacent land uses, when the township board decided to allow property owners back in the 1970s to come in and decide which zoning they wanted to have applied to them. I've always been of the impression that the O'Gradys had the right to do what they wanted with that property. But it was an odd decision on the part of the board to stick a residentially zoned neighborhood down there just because the Boursaws came to the township hall and said they wanted their property to be zoned residential. It's incumbent upon the board to think about what's going to happen to these parcels 30–40 years from now to make sure zoning is sensible.

Shanafelt: to Maura's [Sanders] comment about the master plan, not having a master plan lets stuff like that happen. Having a clear master plan that aligns is important.

Cram: we want the PUD process to be an incentive for development on the peninsula, to look creatively on how to preserve larger chunks of open space and cluster development around that. The master plan says we want to reduce the potential for build out, and we're doing an excellent

job preserving the A1-zoned property through the PDR program. But there are a lot of parcels out there that could go through the State Platting Act, and there is a lot of density on the table. Having the PUD process as an incentive to minimize the potential build out and preserve 65 percent or more open space is the direction we want to go. We want to incentivize this approach.

Armen, like you, I wasn't here for the emotion. As the new planner, I look at this development and I see where it met the standards and how it was built, looked at the grading plans, read the minutes and the history of it, and came to conclusions based on the facts that were documented for anyone to read. I think the PUD process is excellent. I think that we can further incentivize it. I think we can clean up the language in our zoning ordinance so that we get the results we want.

11. Adjournment

Sanders moved to adjourn with a second by Shanafelt. Motion approved by consensus
Adjourned at 12:21 p.m.