

Exhibit C

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

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

PRESENT: Leak; Wunsch; Serocki, Couture and Hornberger

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

ABSENT: Rosi & Maguire (excused)

APPROVAL OF THE AGENDA

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

MOTION PASSED

REVIEW FOR CONFLICT OF INTEREST

None

PLANNER REPORT

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

PUBLIC COMMENT - (OTHER THAN AGENDA ITEMS)

None

CONSENT AGENDA

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

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

MOTION PASSED

NEW BUSINESS

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

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

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

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

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

1. General Findings of Fact

1.1 Property Description-

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

1.2 Action Request-

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

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

1.3 Zoning/Use-

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

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

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

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

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

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

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

- b. That all required information has been provided.

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

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

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

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

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

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

Control approval is not required.

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

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

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

This standard HAS been met.

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

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

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

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

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

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

This standard HAS been met.

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

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

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

Motion to Approve the Findings of Fact.

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

MOTION PASSED

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

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

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

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

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

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

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

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

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

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

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

Edward Shipman
14735 Shipman Road
Traverse City, MI 49686

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

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

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

Will electric lines be along our border?

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

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

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

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

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

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

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

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

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

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

MOTION PASSED

OLD BUSINESS

None

PUBLIC COMMENT

None

ADJOURNMENT

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

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

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

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
May 18, 2015**

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

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

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

ABSENT: None

APPROVAL OF THE AGENDA

MOTION: Rosi/Hornberger to approve the Agenda as presented.

MOTION PASSED

BRIEF CITIZEN COMMENTS – FOR ITEMS NOT ON THE AGENDA

None

CONFLICT OF INTEREST

Maguire said he has a conflict with AT&T Wireless Communications Tower. Maguire will recuse himself from that item on the agenda.

CONSENT AGENDA

1. Reports and Announcements (Township Board report to Planning Commission was added)
2. Correspondence (as provided in packet)
3. Meeting Minutes
April 20, 2015 – Regular Meeting

MOTION: Rosi/Serocki to approve the consent agenda as presented.

MOTION PASSED

NEW BUSINESS

Preliminary Plat Review – The 81 Development Company, LLC (introduction, discussion and schedule public hearing)

Joe Quandt, 412 S. Union, Traverse City, said this is an introduction to the project. Staff comments have been provided. Staff and counsel will have to meet to discuss the Subdivision Control Ordinance the Township adopted in 1979 and the Land Division Act adopted in 1997. The Land Division Act substantially amends what can be done in respect to plats under the Subdivision Control Act. The applicant is not asking for any action tonight other than to set a Public Hearing. **Rosi** asked Mr. Quandt to explain a plat. *Quandt* said a plat under the Land Division Act is a specific design that is proposed by a developer that under Section 109 of the Land Division Act says if it meets certain dimensional requirements then the municipality would

be required to approve it if it meets all the geometric and density of the underlying zoning district. There would be a public hearing at the Planning Commission level and the Planning Commission would make a recommendation to the Township Board in respect to action. The Township Board, once the preliminary plat is reviewed and approved, would give the applicant a year to go through the approvals with the other governmental jurisdictions to provide comment. Once all the other issues are identified and addressed in respect to the other agencies, the applicant would come back to the Township for final approval. The Commission has probably not had a plat and a Planned Unit Development plan under consideration at the same time. There is nothing in the Ordinance that prohibits that process. The developer needs to know that he has predictable pathway for the development of this land. He would rather develop the PUD because he thinks it is a better plan. If the PUD process becomes too cumbersome or meets extraordinary legal challenge the applicant would have to consider his options. If a plat process has already gone through the approval process then that would be a default plan in lieu of the PUD.

Hornberger asked if this plan has two points of egress. *Quandt* said yes. **Reardon** and **Wendling** reminded the Commission that the plat and the PUD are two separate applications and should be processed and reviewed separately. **Rosi** said there is no reference to elevation on the plat. *Quandt* said that would be provided at preliminary plat review. **Rosi** asked the size of parcels created through the plat. **Reardon** said approximately a minimum of an acre. **Rosi** asked about water frontage. **Reardon** said 15 units have private water front. There is no shared access as part of this plat. **Rosi** asked if Master Plan concerns apply to plat. *Quandt* said the Master Plan is important document that helps develop comprehensive land use strategies. The reality is the applicant whether under the PUD or the plat process is required to comply with the Zoning Ordinance because all of the requirements of the Master Plan are coalesced in the Zoning Ordinance.

MOTION: Rosi/ Hornberger to have Public Hearing on this item on June 15, 2015 at the next Planning Commission regular meeting.

MOTION PASSED

SUP #124 – AT&T Mobility Wireless Communication Tower (introduction and discussion)
Maguire left the Commission and sat in audience.

Walley Haley, AT&T Wireless, said Steve Wells is also here tonight with Schnelz Wells. The application is back with minor changes. The original application was in 2013. There were numerous meetings and there were numerous changes based on those meetings. The application came back before the Commission and at that time the Commission voted to recommend denial to the Township Board of the AT&T Special Land Use (SUP) application. Prior to going back before the Township Board AT&T pulled the application. January AT&T sat down with members of the Township Board, Planning Commission and other concerned citizens to stress the importance of the site to AT&T and to listen to the Township's concerns. The application before the Commission now is the result of the re-filing on April 6, 2015. Haley submitted a letter that is now before the Commission that addresses some of the administrative items. The applicant will be filing a soil erosion permit. Plans have been sent to MDOT for preliminary

**PENINSULA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
June 15, 2015**

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

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

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

ABSENT: Wunsch

APPROVAL OF THE AGENDA

Reardon asked to add to the Consent Agenda under Reports and Announcements the ZBA Report to the Planning Commission dated June 11, 2015 and the Township Board Report to the Planning Commission from June 2015. Reardon also asked to add to the Consent Agenda under Correspondence an email from Mansfield dated June 15, 2015 and a letter from the Township Engineering dated June 11, 2015.

Serocki asked about the Preliminary Plat Review – The 81 Development Company, LLC business item that was schedule for a Public Hearing tonight. Reardon said the applicant asked to have the item held. Preliminary Plat Review – The 81 Development Company, LLC was added as Business Item #3.

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

MOTION PASSED

BRIEF CITIZEN COMMENTS – FOR ITEMS NOT ON THE AGENDA

Emerson Hilton, Olson, Bzdok & Howard, respectively asked the Planning Commission to consider accepting public comment on SUP #123 – The 81 on East Bay Planned Unit Development. Wendling said the Planning Commission had a public hearing on this item and advised the Planning Commission is acting as advisory board only. The Township Board will have another Public Hearing on this item.

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (~~none~~) as provided
2. Correspondence (as provided in packet)
3. Meeting Minutes
 - May 18, 2015 – Regular Meeting
 - Hornberger page 5 – “under of hoists.” should be “number of hoists.”
 - page 6 – “sited” should be “cited”

MOTION: Couture/Serocki to approve the consent agenda with amended minutes.

MOTION PASSED

NEW BUSINESS

SUP #111 1st Amendment – Mission Point Lighthouse Gift Shop (introduction and potential recommendation)

Reardon said this was in front of the Planning Commission in the same form and recommended for approval to the Township Board. The Township Board denied the amendment. The Township Board has since met with the Park Commission and had several open meeting discussions. The result of those meetings the Park Commission has resubmitted the amendment. The Park Commission changed nothing in the application. **Rosi** said the Township Board went to the Lighthouse to see the Gift Shop. The members of the Township Board that went were impressed with the facility. The Board felt it was appropriate to send the amendment back to the Planning Commission for a recommendation.

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

SPECIAL USE PERMIT FINDINGS OF FACT

**SUP #111-1st Amendment, Mission Point Lighthouse (Gift Shop)
June 15, 2015**

1. General Findings of Fact

1.1 Property Description-

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

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use approval to allow the Mission Point Lighthouse to amend the retail operations in the existing gift shop by requesting the following: (1) additional items to be authorized for sale; (2) additional display space within the existing gift shop; and (3) alternate storage space for back stock product within the existing lighthouse building. (Exhibits 3, 4)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park of the Peninsula Township Zoning Ordinance. (Exhibits 2, 4)

1.3 Zoning/Use-

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

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

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

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

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

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

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

- b. That all required information HAS been provided.

1) The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided final site plans. The applicant will be required to submit all necessary permits (i.e. soil erosion, driveway, health department) prior to commencement of operation. (Exhibit 3)

This standard HAS been met.

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

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

This standard HAS been met.

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

Michigan Department of Transportation- Site access is from a pre-existing drive on the M-37/Center Rd. right-of-way and there are no anticipated changes to said access.

Grand Traverse County Sheriff's Department- Sheriff's Deputy Suhy has indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Peninsula Township Fire Department- Assistant Chief Rittenhouse has indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Grand Traverse County Construction Code Office- Rick Frederick, Building Plan Examiner has indicated no issues with the proposed changes in an email dated February 9, 2015.

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

Grand Traverse Soil Erosion & Sedimentation Control Department- Soil Erosion & Sedimentation Control approval is not required.

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

This standard HAS been met.

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

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

This standard HAS been met.

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

1) The Board finds that no external changes are proposed to the existing structure and no construction as part of this application. (Exhibits 3, 4)

This standard HAS been met.

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

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact flood ways or flood plains. (Exhibits 3, 4)

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

3) The Board finds that the retail use directly supports the maintenance and upkeep of the Township's public land.

This standard HAS NOT been met.

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

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

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

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

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

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

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

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

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

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

MOTION: Serocki/Maguire the General Findings of Fact, Specific Findings of Fact and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park Regulations the standards have been met.

MOTION PASSED

MOTION: Serocki/Hornberger to recommend approval of the petition SUP #111-1st Amendment, application for Mission Point Lighthouse Gift Shop, located in Section 23 of Peninsula Township, and as legally described, based upon the general and specific findings of fact applied to the standards contained in this Zoning Ordinance, the following reasoning and subject to accompanying conditions:

Reasoning:

1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park.
2. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.

MOTION PASSED

SUP #123 – The 81 on East Bay Planned Unit Development (discussion and potential recommendation)

Leak said any recommendation should be conditional on items in Gourdie-Fraser letter dated June 11, 2015. **Maguire** said SUP Section 8.1.3 (1) (2) requires the Township to impose safeguards for the welfare of the community and protection of individual property rights. The only thing known about the developer is that it is an LLC which means the principles and investors are shielded from claims from outside. The developer will have some major expenses developing this property. At the last meeting Maguire asked if about capitalization and financing and the developer said he is self-financed. Maguire also asked what assurances the developer could give the Township that this project would be completed. The developer said his passion. Maguire is concerned about viability of this high-end residential development over the next 10 years so far from Traverse City. If the development stalls or fails it would adversely affect the community. There have been several high-end residential developments in this area that have stalled or failed. Just look to the south, that project has languished for years. In Old Mission there used to be a residential development that failed and is now Kelley Park. Out M72 on the way to Empire there is a development that has 100 home sites but only 2-3 homes. Out M22 toward Glen Arbor overlooking Good Harbor, there are 50-60 lots with only 5-6 homes. We all know about Lochenheath. Finally on M204 outside of Suttons Bay overlooking the Bay 50-60 home sites and 5-6 new homes boarded up. Maguire would like to see supporting financials on this property. **Rosi** said a parcel over by Bowers Harbor that is now being purchased by DNR was also approved for development. **Wendling** said the ordinance does not contain specific bonding or letter of credit requirements. If the Planning Commission made a recommendation to go forward with the project, the Commission could also recommend to the Township Board a

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

Reardon said she would like the Commission to direct staff and the Fire Chief to be involved in the final discussion between the developer and the Trevor Rd neighbors about the emergency egress to make sure what is proposed is in compliance with zoning and meets Chief Ronk's concern for access. **Couture** and **Rosi** commented on the increased vehicle traffic and safety. **Reardon** said county road commissions are aware of zoning and possible density and plan for that possible density. **Rosi** said in a letter received, one person was concerned that the Master Plan does not speak to this project. The PUD must follow the Zoning Ordinance. This is ~~awake~~ a wakeup call for the Township. **Rosi** hopes the developer recognizes the values of the community. The Zoning Ordinance does not protect those values. **Hornberger** said we are basing our decisions on zoning ordinance. It is only fair thing to do. **Maguire** said he feels strongly about a letter of credit or performance bond being a condition of recommendation of approval. **Quandt** understands concern but asked Commission to make the condition an appropriate financial assurance mechanism.

Maguire said for clarification we are working from the Findings of fact dated June 10, 2015.

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

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
June 10, 2015

PENINSULA TOWNSHIP PLANNING COMMISSION

DECISION AND ORDER

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

Hearing Date: May 18, 2015 and June 15, 2015

PROPERTY DESCRIPTION

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

APPLICATION

The applicant is asking for review by the Peninsula Township Planning Commission for the development of a forty-one (41) unit condominium subdivision planned unit development

(PUD) within the Rural and Hillside (R-1A) and the Coastal Zone Single and Two-Family (R-1B) zoning districts.

The Commission having considered the Application, a public hearing having been held on May 18, 2015, after giving due notice as required by law, the Commission having heard the statements of the Applicant and agents, the Commission after having considered letters submitted by members of the public and comments by members of the public, the Commission having considered 29 Exhibits, and the Commission having reached a decision on this matter, states as follows:

1. General Findings of Fact

1.1 Property Description-

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

1.2 Action Request-

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

1.3 Zoning/Use-

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

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

- a. **North-** The land adjacent to the north of the subject properties is zoned R-1A, Rural & Hillside and is primarily residential in use.
- b. **South-** The properties adjacent to the south are zoned R-1B, Coastal Zone Single and Two Family. The Cove, a residential subdivision, and other residential uses are prominent.
- c. **East-** The property is bound by East Grand Traverse Bay to the east.
- d. **West-** The property located west of the subject is zoned R-1A, Rural & Hillside with the exception of a 12-acre parcel at the Northwest corner of the subject site that is zoned A-1, Agriculture district. The land is primarily low-density residential not including the active agriculture land at the northwest corner previously mentioned.
- e. The Commission finds that the future land use plan identifies the subject location as an area designated for rural agricultural usage. The objective of the rural agriculture use category is to preserve the important natural resources of the Township while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. (Exhibit 2)
- f. The Commission finds that development of property as single family residential is a use by right in the R-1A, Rural and Hillside residential zoning district as well as the R-1B, Coastal Zone Single and Two Family residential district. (Exhibits 1 & 19)
- g. The Commission finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, Michigan Department of Environmental Quality, and the Army Corps of Engineers.

MOTION: Serocki/Hornberger to accept the General Findings of Fact.

MOTION PASSED

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

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

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

- i. The Commission finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Exhibits 3, 19 & 22)
- ii. The Commission finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Exhibits 1, 2, 8 & 19)
- iii. The Commission finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Exhibits 1, 29 & 22)
- iv. The Commission finds that under the master plan, chapter 3, Land Use and Zoning Map No.4 depicting existing land use, shows that the existing land use for The 81 property is residential regardless of the fact that the property is located in both the R-1A, Rural and Hillside and R-1B, Coastal Zone Single and Two Family Zoning Districts. As such, the proposed PUD is harmonious and appropriate in appearance with the existing use and character of the vicinity. (Exhibits 1, 2 (land use map no. 4), 8, 19.2 & 22)
- v. The Commission finds that the intent and purpose of the Rural and Hillside Residential District (R-1A) is to contain standards for the continued development of very low density residential properties, inclusive of fragile hillside areas and to interface these areas between more intensive residential uses and agricultural land uses. The district includes existing low density residential developments as well as areas within which such development appears both likely and desirable. The Commission finds that the Coastal Zone Residential District (R-1B) provides additional standards for residential development and lakeshore drive areas and areas of high scenic value where more intensive development would deteriorate the peninsula environment and less intensive development is not essential to maintenance of the established environment. The Commission finds that the proposed PUD provides for a buffer zone along the property's border with East Grand Traverse Bay of 1500 feet which will remain as an undeveloped setback other than the dock area and that the PUD itself by preserving 65% of the property, being 54 acres, as open space conforms with the intention of both districts by decreasing the density which would otherwise be allowed in these districts should the property be developed in a manner otherwise allowed under the zoning ordinance. (Exhibits 1 –section 6.3.1 Intent and Purpose, section 6.5.A.1, & 19.2)

This standard HAS been met.

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

- i. **The Commission finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Exhibits 2, 8, 19.2, 19.7 & 22)**
- ii. **The Commission finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Exhibits 1, 2, 8, 19.2, 19.7 & 22)**
- iii. **The Commission finds that the development of the proposed PUD should not negatively impact adjacent neighbors. The applicant has designed the housing sites to complement the existing residential use pattern which incorporates 54 acres of the site in open space. (Exhibits 2, 8, 19.2, 19.7 & 22)**
- iv. **The Commission finds that the PUD as submitted preserves open space, keeping 65% of the site undeveloped, inclusive of 1500 lineal feet of waterfront preserved as common open space, for the proposed project. The Commission further finds that the lot locations, regardless of the slopes in the area, are located sufficiently within the interior of the property of the project site such that view sheds are sufficiently preserved both landside from township public roads as well as from the water. The Commission further finds that there is no evidence that the development would disturb existing or future uses of the land within the vicinity. The Commission further finds that the preservation of the open space is a substantial improvement over other non-PUD development rights as provided in the Peninsula Township Zoning Ordinance which, in turn, benefits the properties within the immediate vicinity and the community as a whole. (Exhibits 1 – land uses allowed in the R-1A and R-1B zoning districts, 2 – map no. 4, 8, 19.2, 19.5, 19.7, 19.9 & 22)**

This standard HAS been met.

- c. **Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.**
 - i. **The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1 – section 7.10, 19.7. & 23)**
 - ii. **The Commission finds the development will be served by a community septic facility and private septic system and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer to ensure they are compliant with all applicable regulations. (Exhibits 15 & 19.10.iii)**

- iii. **The Commission finds the development shall be compliant with the Peninsula Township Storm Water Ordinance. The plans shall be reviewed and approved by the Township Engineer prior to the issuance of the SUP. (Exhibits 13, 19.7, 19.10.i, 19.10.iv, 20 & 21)**
- iv. **The Commission finds that the County Sheriff has conducted a review of the submitted plans and offered comments. The Sheriff finds no issues with the proposed plan. (Exhibits 13 & 19.10.iv)**

This standard HAS been met.

- d. **Not create excessive additional requirements at public cost for public facilities and services.**
 - i. **The Commission finds that the applicant will be responsible for any improvements required as part of this proposal. (Exhibit 19)**
 - ii. **The Commission finds that the development as presented will not create excessive additional requirements at public cost for public facilities and services given that development of single family residential properties is allowed in the zoning districts in which the property is located. The Commission further finds that the applicant will be incorporating adequate service roads within the development and there is otherwise no evidence of any excessive additional requirements at public cost for public facilities and services on the record. (Exhibits 11, 12, 19.3, 19.7, 19.10, 20, 21, 22 & 23)**
- e. **Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.**
 - i. **The Commission finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibit 19)**
 - ii. **The Commission finds that the very nature of residential development is not the type that results in a use generating fumes, glare or odors. The Commission further finds that there has been no evidence presented that the proposed development will result in negative activities or uses which would compromise the general welfare of township citizens as a result of fumes, glare or odors. (Exhibits 11, 12, 19, 21 & 22)**

This standard HAS been met.

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

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

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

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

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

This standard HAS been met.

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

This standard HAS been met.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.
 - i. The Commission finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Exhibit 19)
 - ii. The Commission finds that each individual unit will be subject to the land use permitting process to ensure all structures comply with the Special Use Permit and the requirements of the Ordinance. (Exhibits 1, 19 & 22)

- iii. The Commission finds the proposed PUD shall be designed in accordance with section 8.3 of the Ordinance as discussed in section 3.2 of these findings. (Exhibits 1, 19 & 21)
- iv. The Commission finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1 – section 7, 19 & 22)
- v. The Commission finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Exhibits 1, 19, 21 & 22)
- vi. The Commission finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Exhibits 19, 21 & 22)
- vii. The Commission finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Exhibits 1, 19, 21 & 22)
- viii. The Commission finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Exhibits 1, 11, 12, 14, 19.10.ii, 20 & 21) (10, 19.10.iii)

This standard HAS been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
 - i. The Commission finds that a permit to construct the private road curb cut from the Grand Traverse County Road Commission shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibit 1)
 - ii. The Commission finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated January 22, 2015 that department has indicated they have no objections to the plan. (Exhibit 13)
 - iii. The Commission finds that a soil erosion permit for a forty-one (41) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval for a thirty-six (36) unit Planned Unit Development has been granted at this time. Please see the letter dated January 23, 2015 from the Grand Traverse County Soil Erosion – Sedimentation Control Department for the specifics related to this review. (Exhibits 14 & 19.10.i)

- iv. The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 12 & 14)
- v. The Commission finds that the site plan shall meet all necessary requirements related to the Great Lakes waterfront as mandated by the Michigan Department of Environmental Quality and the Army Corps of Engineers. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibits 9 & 29)
- vi. The Commission finds that storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Exhibits 19.10.ii, 20 & 26)
- vii. The Commission finds that the Grand Traverse County Health Department (GTCHD) has preliminarily reviewed the community septic and private septic system and individual septic systems for units 1-4. They have provided initial comments for the thirty-six (36) unit plan. Please see the email dated February 18, 2015 from Daniel Thorell for specifics related to this ongoing review. All required well and community septic permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibit 10)

This standard HAS been met.

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
 - i. The Commission finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the issuance of the SUP. (Exhibits 9, 10, 11, 13, 15, 18, 19.10.i-vii, 20 & 22)

This standard HAS been met.

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

- i. **The Commission finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development under the zoning ordinance, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site. (Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20, 21 & 22)**

This standard HAS been met.

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

This standard HAS been met.

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
 - i. **The Commission finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township**

Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Exhibits 11, 14 & 19.10.i-iv, 19.11)

- ii. The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)**
- iii. The Commission finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.**
- iv. The Commission finds that the applicant shall provide a confirmation by a qualified consultant for the wetland delineation shown on the plans as requested by the Township Engineer. (Exhibit 11)**

This standard HAS been met.

- i. That the proposed development will not cause soil erosion or sedimentation problems.**
 - i. The Commission finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Exhibits 14 & 19)**
 - ii. The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)**
 - iii. The Commission finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP.**

This standard HAS been met.

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

This standard HAS been met.

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

- i. **The Commission finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other options available for development, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site, per se. (Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20, 21 & 22)**
- ii. **The Commission finds that the development of the road appears to be reasonable in the context of the existing topography and existing drainage patterns. (Exhibit 19)**
- iii. **The Commission finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Exhibits 11 & 14)**
- iv. **The Commission finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP.**

This standard HAS been met.

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

This standard HAS been met.

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

This standard HAS been met.

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

This standard HAS been met.

- o. That landscaping, fences or walls may be required by the Commission in pursuance of the objectives of this Ordinance.
 - i. **The Commission finds that the site shall have the required landscaping per the Zoning Ordinance. Specifically, the residential units shall have street trees as required by section 6.9.3.5 of the Ordinance. The site shows the appropriate buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. The shared waterfront shall be subject to section 7.4.4 of the Ordinance ensuring appropriate screening of the site from the water. (Exhibits 1 & 19)**

This standard HAS been met.

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - i. **The Commission finds there is one (1) parking area located on the west side of 81 Ave to accommodate the shared waterfront as required by section 7.4.2 (c) and (c). These**

spaces are in compliance with the Ordinance and are outside of the private road right-of-way. This layout will allow traffic to flow uninhibited within the site and will not impact traffic off-site. (Exhibits 1 & 19)

This standard HAS been met.

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - i. **The Commission finds that there is no pedestrian infrastructure proposed as part of this development. (Exhibit 19)**
 - ii. **The Commission finds that the proposed PUD will develop a private road built to the Peninsula Township private road standards. This private road shall be reviewed and approved by the Township Engineer. (Exhibits 1, 15, 18 & 19)**
- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
 - i. **The Commission finds that there are no proposed refuse containers as part of the general proposal. Each unit will provide for individual garbage removal and shall be subject to Ordinance #43 Solid Waste of Peninsula Township. (Exhibit 19)**

This standard HAS been met.

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
 - i. **The Commission finds that this the largest waterfront undeveloped parcel left in the township. The Commission recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-1B) zoning districts. While the Commission recognizes that development is going to cause disturbance to the land, the Commission finds that the PUD as proposed preserves 54.23 acres as undeveloped open space. The Commission further finds that although narrow, a setback along the coast of East Grand Traverse Bay of 1500 lineal feet of undeveloped property (exclusive of dockage facilities), is beneficial and in accord with the purpose and spirit of the ordinance as well as sound planning principles. The Commission further finds given that there are other options available for development which could be much more intensive, the plan as presented with the preservation of open space meets the objectives of land use planning under the zoning ordinance. (Exhibits 1 ,2, 19, 20, 21, 22 & 30)**

This standard HAS been met.

MOTION: Couture/Hornberger to adopt the supportive Specific Findings of Fact – Section 8.1.3 (Basis for Determination) and the standards have been met.

MOTION PASSED

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

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

- a. To provide more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets.
 - i. The Commission finds that the preservation of 54.23 acres of open space as well as the preservation of 1500 lineal feet of East Grand Traverse Bay frontage will preserve the natural character of the open fields largely contained within the open space areas as proposed. While the Commission is mindful that the development will result in some grading of slopes and removal of trees, given other development options under the zoning ordinance, the development as proposed provides for a desirable living environment for future purposes of units within the development both with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds and having negative impacts upon the lakeshore and other natural assets of the property. (Exhibits 10, 11, 12, 14, 19, 20 & 22)
***THIS PARTICULAR STANDARD VIEWS ONLY THE PROPERTY ITSELF AND WHETHER OR NOT THE DEVELOPMENT AS PRESENTED PROVIDES FOR A MORE DESIRABLE LIVING ENVIRONMENT FOR THOSE WHO WOULD BE PURCHASING UNITS WITHIN THE DEVELOPMENT.
 - ii. The Commission finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Exhibit 19)

This standard HAS been met.

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

This standard HAS been met.

- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.

- i. **The Commission finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used a shared waterfront as opposed to individual unit private frontage. (Exhibit 19)**
- ii. **The Commission finds that the zoning regulations contained in the zoning ordinance for zoning districts R-1A and R-1B provide a multitude of options for development at this site. Given the available options that the applicant has, the PUD does provide for the preservation of substantial open space, to wit; 54.22 net acres of undeveloped property as well as a strip of 1500 (lineal?) feet of East Grand Traverse Bay waterfront that will also remain largely undeveloped excepting the boat dock area. As such, the Commission finds that when balancing market demands for desirable residential parcels in conjunction with the preservation of at least 65% of the property, the PUD as presented is a more creative and imaginative approach to the development of this parcel for residential purposes than what would otherwise be allowed under the Peninsula Township Zoning Ordinance. (Exhibits 1 –section 6.2, 6.3, 6.5.A; 11, 12, 13, 19, 20, 22 & 23)**

This standard HAS been met.

- d. To provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.
- i. **The Commission finds that the applicant's plans do preserve 1500 (lineal) feet of waterfront property from direct development, excepting dockage facilities while also maintaining open space along Boursaw Road which results in minimal aesthetic changes viewed along the road corridor. The Commission further finds that the small wetlands area on the portion of the property will remain preserved, resulting in an attractive development for residential housing. (Exhibits 19 & 22)**

This standard HAS been met.

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

This standard HAS been met.

- f. To provide for the retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.
 - i. **The Commission finds the parcel is subject to residential zoning and is currently vacant and not being utilized for farmland. The Commission further finds that this development does not impact farmland utilized in the township directly adjacent to the development or within the vicinity of the development. The Commission further finds that the 65% open space will remain as fallow land. (Exhibits 1, 19 & 22)**
 - ii. **The Commission finds that the layout of the plan preserves 65% of the land for open space as confirmed by the Township Engineer. (Exhibits 19 & 30)**

This standard HAS been met.

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

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

This standard HAS been met.

- b. The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts. Individual planned unit developments may include land in more than one zone district in which event the total density of the project may equal but not exceed the combined total allowed density for each district calculated separately.
 - i. **The Commission finds that the proposed development includes forty-one (41) units. This is less than the allowable number of units should the property be developed outside of the PUD ordinance as determined by the underlying zoning district regulations. The Commission further finds that the property is zoned R-1A and R-1B. (Exhibits 1 & 19)**

This standard HAS been met.

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

- i. **The Commission finds the development will be served by a community septic and private septic facility and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer of Record (Engineer) to ensure they are compliant with all applicable regulations. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Exhibits 1, 10 & 19)**

This standard HAS been met.

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

This standard HAS been met.

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

This standard HAS been met.

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

reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)

This standard HAS been met.

- g. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.
- i. The Commission finds that the proposal meets Section 8.3 of the Ordinance in these findings and below. (Exhibits 1 & 19)
 - ii. Section 8.3.4, PUD Uses that may be permitted: The Commission finds that the applicant is proposing single family dwellings, open space in accord with Section 8.3.6 and a sign.
 - iii. Section 8.3.5, PUD Lot Size Variation Procedure: The Commission finds that proposal reduces the size of the forty-one (41) units below the minimum lot size required by the underlying zoning according to the following calculations and within the allowances provided by the Ordinance as detailed here. The Site Acreage for density calculation is 82.63 acres less the fifteen (15) percent for the R-1A and R-1B requirement and is equal to 70.24 acres. Per the underlying zoning districts 92% (64.63 acres) of the Site Area Computation is subject to R-1A zoning 8% (5.61 acres) of the Site Area Computation is subject to R-1B zoning. Therefore the site will allow a maximum of 73 units to be developed. These units can be reduced in area below the minimum lot size required by the zone district in which the PUD development is located provided that the total number of units does not exceed that which is allowed by the underlying zoning. These calculations have been confirmed by the Township Engineer. (Exhibits 1, 19 & 30)
 - iv. The Commission finds that the building envelopes are shown on the site plan and are not included as open space. These calculations have been confirmed by the Township Engineer. (Exhibits 1, 19 & 30)
 - v. The Commission finds that the minimum lot area is 11,633.17 square feet as indicated in the application. (Exhibit 19)
 - vi. The Commission finds that the maximum permissive building height for residential structures shall be 2.5 stories and not greater than 35 feet and accessory structures shall not exceed 15 feet. (Exhibit 1)
 - vii. Section 8.3.6, PUD Open Space: The Commission finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the

41
units

82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Exhibits 1, 19 & 30)

- viii. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: The Commission finds that the maximum percentage of lot area covered by all structures is proposed to be 14% of the net acreage of the site as permitted by this section. This reflects an average permitted lot coverage of 47% of the individual units. (Exhibits 1 & 19)
- ix. Section 8.3.8, PUD Affidavit: The Commission finds that the applicant shall record an affidavit with the register of deeds as required by this section of the Peninsula Township Zoning Ordinance.
- x. The Commission finds the Article VII of the Ordinance requires The 81 to address the following items:

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

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

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

Section 7.4, Supplemental Great Lakes Shoreland Regulations: The Commission finds that the proposal includes an approximately 1,500 lineal foot shared waterfront with a community dock and thirty (30) shore stations. The proposal as presented meets the Shared Waterfront and Removal of Shore Cover standards as outlined in Section 7.4, Supplement Great Lakes Shoreline Regulations. The Michigan Department of

Environmental Quality and the Army Corps of Engineers will review the plan to ensure compliance with applicable Township and State regulations. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. A permit from these agencies shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibits 1, 9, 19 & 29)

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

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

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

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

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

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

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

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

This standard HAS been met.

MOTION: Couture/Hornberger the Specific Findings of Fact – Section 8.3 (Planned Unit Developments) the standards have been met.

MOTION PASSED

MOTION: Maguire/Couture (approval of these Findings) to make a recommendation to the Township Board for approval The 81 PUD and SUP development subject to the following conditions:

1. Requirement of a Performance Bond or other enforceable appropriate financial mechanism to ensure the PUD will be completed as planned in accordance with SUP #123.
2. Compliance with all jurisdictional agencies.
3. Wetland delineation submitted to Planning and Zoning and reviewed and approved by Township Engineer.
4. The management of hoist/shore stations outlined in by-laws.
5. Open Space area shall have no steps permitted.
6. Reduction of fertilizer and pesticides in Common Areas and also additional restrictions through the by-laws
7. Chief Ronk and Township Planning Staff be involved the egress final discussion and maintenance of either side if egress be maintained year round and formalized through agreement.
8. The entrance sign be re-located to 15 setback as required by ordinance and the second sign be removed as required by ordinance.

MOTION PASSED

Preliminary Plat Review – The 81 Development Company, LLC

MOTION: Rosi/Serocki to remove item from table.

MOTION PASSED

Applicant withdrew application.

CITIZEN COMMENTS

Kadee Tseitlin, 3900 Sean Robinson Ct., dismayed about the recommendation for approval to the Township Board for The 81 on East Bay.

BOARD COMMENTS

Rosi commented on Brys' proactive action decision to save vines/grapes as reported in Edible Traverse Magazine. **Rosi** also commented on her disappointment that applications do not require justification to Zoning Ordinance and also to the Master Plan. **Couture** said the Master Plan is an over arching plan has no legal significance. **Wendling** said if the Planning Commission and the Township Board feel the Master Plan and the Zoning Ordinance do not line up then further action through the Planner and the Planning Commission should be taken to change the sections of the ordinance.

ADJOURNMENT

MOTION: Maguire/Serocki to adjourn the meeting at 9:00 p.m.

MOTION PASSED

Respectfully Submitted,

Deb Hamilton, Recording Secretary

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

**PENINSULA TOWNSHIP BOARD
REGULAR MEETING
July 14, 2015**

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

PRESENT: Correia, Hoffman, Avery, Rosi, Byron and Witkop

ALSO PRESENT: Peter Wendling, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning and **Deb Hamilton**, Recording Secretary

ABSENT: Weatherholt (excused)

CHANGES/ADDITIONS TO AGENDA

MOTION: Byron/Rosi to approve agenda as presented.

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

None

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Edit lists of invoices & additions to the edit list of invoices
4. Meeting Minutes – June 9, 2015 – Regular Meeting
June 22, 2015 – Special Meeting
5. June 2015 Payroll
6. Peninsula Community Library Book Sale Sign (recommend approval)
7. Township Attorney Authorization to Sign Consent Judgment to revise a portion of the plat of Old Mission Harbor on behalf of the Township (recommend approval)

MOTION: Witkop/Avery to accept the Consent Calendar Agenda as submitted.

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

MOTION PASSED

BUSINESS

1. Mission Point Lighthouse - Public Hearing

Reardon reviewed the application.

Correia opened the public hearing at 7:10 pm

No comments.

Correia closed the public hearing at 7:10 pm

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

**SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #111-1st Amendment, Mission Point Lighthouse (Gift Shop)
July 14, 2015**

1. General Findings of Fact

1.1 Property Description-

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

1.2 Action Request-

- a. The Board finds that the applicant is seeking site plan and special use approval to allow the Mission Point Lighthouse to amend the retail operations in the existing gift shop by requesting the following: (1) additional items to be authorized for sale; (2) additional display space within the existing gift shop; and (3) alternate storage space for back stock product within the existing lighthouse building. (Exhibits 3, 4)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park of the Peninsula Township Zoning Ordinance. (Exhibits 2, 4)

1.3 Zoning/Use-

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

- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the proposed expansion efforts. (Exhibits 3, 4)

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

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

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

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

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

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

This standard HAS been met.

- b. That all required information HAS been provided.

1) The Board finds that the applicant HAS provided the required information as portrayed within the special use permit application and upon the provided final site plans. The applicant will be required to submit all necessary permits (i.e. soil erosion, driveway, health department) prior to commencement of operation. (Exhibit 3)

This standard HAS been met.

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

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

This standard HAS been met.

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

Michigan Department of Transportation- Site access is from a pre-existing drive on the M-37/Center Rd. right-of-way and there are no anticipated changes to said access.

Grand Traverse County Sheriff's Department- Sheriff's Deputy Suhy HAS indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Peninsula Township Fire Department- Assistant Chief Rittenhouse HAS indicated no issues with the proposed changes in a written statement dated February 14, 2015.

Grand Traverse County Construction Code Office- Rick Frederick, Building Plan Examiner HAS indicated no issues with the proposed changes in an email dated February 9, 2015.

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

Grand Traverse Soil Erosion & Sedimentation Control Department- Soil Erosion & Sedimentation Control approval is not required.

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

This standard HAS been met.

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

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

This standard HAS been met.

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

1) The Board finds that no external changes are proposed to the existing structure and no construction as part of this application. (Exhibits 3, 4)

This standard HAS been met.

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

1) The Board finds that no external changes are proposed and the proposed changes are not expected to impact flood ways or flood plains. (Exhibits 3, 4)

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

This standard HAS been met.

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

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

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

3) The Board finds that the retail use directly supports the maintenance and upkeep of the Township's public land.

This standard HAS NOT been met.

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

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

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

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

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

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

This standard HAS been met.

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

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

- Memorabilia and collectables such as lighthouse passports, magnets, cross stitch, walking stick medallions, key chains, shot glasses, thimbles, spoons, mint tin, key/bracelet charm, flash lights;

- Garments such as shirts, hoodies, fleece, vests, bags/totes;
- Travel bottles, cups;
- Crayons;
- Toys and games such as Frisbees, playing cards;
- DVDs;
- Prints done onto various media such as paper, metal, tile, canvas;
- Post cards, note cards, notepads;
- Posters, maps, guides, stickers;
- Snowy owl cards and prints; and
- Educational materials (books, games, objects) promoting appreciation of the vegetation and animal life of the area (aquatic, beach, forest), our maritime heritage, as well as the protection/conservation of our natural treasures.

This standard HAS been met.

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

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

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

1) The Board finds that this is a condition of approval should this amendment pass. (Exhibit 3)

This standard HAS been met.

MOTION: Hoffman/Witkop to accept the Findings of Fact for SUP #111, 1st amendment and to approve the petition SUP #111-1st Amendment, application for Mission Point Lighthouse Gift Shop, located in Section 23 of Peninsula Township, and as legally described, based upon the general and specific findings of fact applied to the standards contained in this Zoning Ordinance, the following reasoning and subject to accompanying conditions:

Reasoning:

1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination and Section 8.6.1 (4) Mission Point Lighthouse and Lighthouse Park.
2. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
3. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of governmental agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.

Roll Call Vote: Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes, Avery-yes and Rosi-yes

MOTION PASSED

2. The 81 on East Bay - Public Hearing

Reardon reviewed the application. The Planning Commission has reviewed the application and recommended for approval. The applicant has information on the secondary egress that has been placed in front of the Board tonight. The Township Engineer, Brian Boals has reviewed the geo-technical report and wetland delineation report. **Reardon** encouraged the Board to ask for Boals' comments.

Joe Quandt, Attorney for the Applicant, with him tonight is Jim Hirschenberger, Engineer from Mansfield and Associates, Petra Kuehnis from Mansfield and Associates and Kevin O'Grady, the property owner and developer. *Quandt* reviewed the application. The applicant is working out the terms of the easement for the second egress with the Trevor Road property owners just north of the project. *Quandt* also provided a rebuttal document to the information received recently. **Byron** asked what are the size limitations as of the homes to be built. *Quandt* said a minimum 2,000 sq. ft. to approximately 6,000 sq. ft. **Byron** asked the estimated cost of a home in the development. *Quandt* said it is a higher end development. **Rosi** asked about the size of lots 6-10 which are less than a ¼ acre. *Kuehnis* said the PUD ordinance allows for lots that are smaller as long as the project does not exceed maximum density. **Reardon** said the ordinance has a formula. Lots sizes can be reduced provided there is 65 % open space and no increase in density. **Witkop** asked **Reardon** to clarify R1B coastal zoning and does the 15% maximum lot coverage apply in a PUD. **Reardon** said a PUD as an overall maximum coverage which is 15% of the entire site. Each of these building lots could potentially have 47% of their building envelope covered and still be below the 15% coverage. **Witkop** said lots 6-10 are small lots with a minimum home size 2,000 sq. ft. there would be a larger percentage of lot coverage on a site very close to the water. It meets the 15% overall but that is concentrating the percentage right by the water which is not the point of R1B coastal zoning. **Reardon** said she understands the concern. Each lot will have to pull a soil erosion permit and may be subject to individual site plan storm water review when the LUP is pulled. **Byron** said she is struggling on percentage of lot coverage. The slope is where they are getting the additional space. The Township may need to look at the ordinance for lots on steep slopes. **Reardon** said as far as this review we have any opportunity to talk to the Township Engineer about this. *Quandt* said there is a lot of misinformation about how close the construction areas are to the toe of the slope. The construction areas are set back 40-100 ft. from the toe of the slopes. There is not the danger of slope stabilization that you have been led to be concerned about. **Avery** asked 10 lots will have private water access and 31 lots share docks. How the applicant plans on keeping people off the banks getting to and from the water? *Quandt* said the common area is the only area by permit and condo by-laws to use the dock permitted by Army Corp of Engineers. Only place there will be individual shore station is the individual lots that are at the south end of project. The Corp of Engineers permit the number of spaces and the condo documents will determine who gets the spaces. **Avery** asked about the shared septage treatment and will there a bond to guarantee operation. *Quandt* said the system is less than a 10,000 gallon system and the Township does not have to guarantee. The Planning Commission has recommended finance mechanisms for assurances. The applicant is prepared to address the issue. **Rosi** said if the residents from 11-41 units go down road to cul-de-sac, where are the cars going to park. *Quandt* said there is golf cart parking along cul-de-sac and parking in green space area along the road. **Witkop** said 30 shore stations are allowed. **Reardon**

said one dock with 30 access points. The individual waterfront lots can have their own dock. There could be 11 docks. **Witkop** said she is concerned about the restrictive covenants changing. **Quandt** said restrictive covenants cannot change without the approval of the Township. **Wendling** will review the condominium documents and insert provisions in a manner that they cannot be amended out of the condominium documents. **Witkop** asked does that require the Township to enforce the restrictive covenants. **Wendling** said the conditions of any approval would be part of the permit process therefore it would be a violation of the PUD permit and handled like any other violation of the permit. There are going to be situations that the Township will be involved. **Reardon** said the Township is asking the Developer to embed within the condominium documents those items within the ordinance they need to be aware of and build in mechanisms to assist in enforcement. **Witkop** said the ordinance allows for stairways to be built down to the shoreline but the restrictive covenants will not allow. How do we stop the stairways? **Quandt** said because there are four ways to enforce – any property owner can enforce, the Association can enforce, the Township can enforce the restrictive covenant in a lawsuit and the Township could revolt the PUD. **Reardon** said it applies to zoning because it is a condition of the SUP/PUD permit approvals. **Byron** asked if there is only one stairway for this entire development. **Quandt** said units 11-41 would have to access at the cul-de-sac. The other lots would have access that the Township would allow. **Reardon** said the grade is different at those lots. **Byron** said if there is one dock with 30 stations it will look like a baby marina. The Township has tried hard to not have this appearance. Are there any other developments that have anything that large? **Reardon** said yes The Bluffs. The plan was designed based on 7.4 which is the supplemental Great Lakes regulations. **Byron** asked about possible contamination on the property and an environmental assessment. **Reardon** said it is her understanding that the property as not been farmed in 30 years. This was discussed at the Planning Commission. There is nothing in the ordinance that the Township could compel an environmental assessment. **Wendling** said it is not a Township issue it is a Health Department issue. **Byron** said the Township is responsible for the health, safety and welfare so it is a Township issue. **Wendling** said yes but that is carried out through provisions in the zoning ordinance. **Byron** said we have been trying to change the zoning ordinance for at least five years now. As a Trustee, Byron has yet to see any revision. Byron does not see how the Township can have a Master Plan and ask the Planning and Zoning Department to enforce the ordinance when it does not support the Master Plan. The Township needs to step back and get the zoning ordinance in line with the Master Plan. It is not fair to our constituents who pay tax dollars to protect open space and farm land and then allow something like this development to happen. **Quandt** said farmed area will be land balanced and that is how to mediate lead arsenic. **Byron** said she concerned about the steep slopes. **Quandt** said agency reviews will have to be done and there are three layers of protection to address the steep slopes. **Rosi** said she is concerned how the terrain operates in regards to roads and driveways. **Quandt** said the Township has a robust private roadway ordinance. The roadways and driveways comply with the ordinance. **Rosi** asked what the slope percentage is currently. **Kuehnis** described explained the grading plan. There was also discussion about the trees that would be removed. **Witkop** asked if the restrictive covenants could restrict moorings. **Quandt** said they could insert something in the restrictive covenant to prohibit moorings however it is the bottomlands and at the jurisdiction of the Army Corp of Engineers. **Witkop** asked about the second point of egress. **Reardon** said for safety there should be a second point of egress but the ordinance does not require it. **Quandt** said it is not usually from what is elsewhere in the Township. The developer is working with the Trevor Rd. property owners for an emergency egress. Plan B is an emergency egress that comes between lots 40-41 and winds its way back down to the road. **Witkop** asked about the emergency access with Trevor Rd. because in the past these situations do not work well. **Quandt** said there will be a gate with a knox box. The association will maintain & plow the roadway. The goal is to unlock the gate and have one person plow the whole thing. **Witkop** would like to see that as a requirement not a goal.

Correia opened the public hearing at 8:15 pm

Jim Komendera, 4168 Rocky Shore Trail, said he lives on the bottom of the slope bordering this property. He and four of his neighbors are concerned about the runoff. A lot of the slope is being removed for those building sites. How much is the slope going to be pushed back? He does not think there is another 1,500 ft with this density. They are taking the total area of the open space and applying it to the whole development so they can squeeze these little lots on the water. He thinks the ordinance talks about discretion, discretion for the Township in applying the ordinance. Wendy mentioned coastal guidelines. Coastal guidelines would be a great compromise. The ordinance should give life to the Master Plan. Do you think our Master Plan is given life by this development? He does not think it is. Remember the word discretion because the Township has the discretion to decide on this. Taking 50% of the trees down is not protecting the natural setting. Mr. Komendera submitted letter from another resident.

Scott Howard, 420 E Front Street, said he represents property owners adjacent to the project. Mr. Howard encouraged to the Board to look at the documentation he submitted. This is PUD development which means it is asking for something than what they are allowed by right. The Board has discretion to ensure that what is being asked for is truly protecting the health, safety and welfare. This is an open space development that allows the developer to squeeze in almost all of the number of homes that would be allowed on that waterfront and on the ridgeline otherwise. This is packing more people and more activity on to the most sensitive natural features of the property. That is exactly what the ordinance says should not be done. The ordinance in Section 8.3.2 states "to provide a more desirable living environment by preserving the natural character of open fields, stand of trees, steep slopes, brooks, ponds, lake shore, hills, and similar natural assets." Section 8.3.2 also goes on to state "to provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project" and most importantly Section 8.1.3 states "that natural resources will be preserved to a maximum feasible extent." We have heard a lot about the grading and he hopes the Board listens carefully. Mr. Howard would like to see the rebuttal report to his submission.

Connie Boyd 13699 Bluff Rd., said she has shared frontage on lake and we tried to put dock to one side of property and was told could not do it. Now she sees a large dock being put out at the end of property. If this is a condominium, it looks like it is mixed use.

Margianne Alfonso, 3951 Boursaw Rd., said her back porch looks at this area that will be destroyed. 40 units plus two cars each plus a kid with care and friends will increase the traffic in this quiet area. She hates to see something this large and ugly in the place of an area we all love.

Jerry Balmer 12535 Bluff Rd., said spent a lot of time tonight talking about what is legal but what is right? He and his wife moved here four years ago for the pure water, cherry orchards, grape vines and an adequate amount of housing interspersed amongst the natural areas. This is a special part of the world and the Board is in charge of it as Trustees. He does not believe that proceeding down the slippery slope of high density housing is consistent with maintaining the pristine nature of area. The way the terraced structure is described tells him there is a high likelihood that it would contain Native American burials. He would like to see the State's Archeologist do an investigation.

Jolene Balmer, 12535 Bluff Rd., said she pleads with the Board to look ahead and protect our ground if not for us but for our children's children.

Kirk Hornburg, 3915 Smokey Ridge Rd., thanked the Board and the planners for the careful consideration of what the law states. The spontaneous outburst of the residents shows the emotion involved. He and his wife

moved to Peninsula Township for the character of the township. There was foresight to purchase development rights and develop a Master Plan. The challenge is the zoning ordinance takes precedent over the Master Plan because that is the letter of the law and that is what will stand up in court. It is unrealistic to say no one will be able to build however the density here is at odds with the density he could have gotten living in Traverse City. He is concerned because he voted with his wallet to purchase development rights. Yet on his drive down Smokey Hollow he will be looking at 40 houses in an extremely dense area. He also has concerns about runoff.

Ellen Barnes, 11243 Bluff Rd., said she is concerned about the effect of the construction traffic to get to this project. She asked if the Land Conservancy was contacted. **Correia** said yes.

Bernie Soutar, 15249 Bluff Rd., said when the plan was changed from 35 units to 41 units, the units along water were added. There are four lots that are around 15,000 sq. ft. normally a lot should be about 25,000 sq ft for a normal house. The PUD cannot be controlled by the zoning it will be controlled by the PUD requirements. The four small lots create a potential problem. The Zoning Board of Appeals has seen a lot of cases with small lots. This is the weakest link in the project that will create a future problem.

James Shrider, 13669 Bluff Rd., said many years ago when the millage was going to be passed to purchase development rights he petitioned his neighbors to vote for it. He is surprised to find that something like this is possible given the fact the residents expressed their desire for something else. If the zoning ordinance allows for this, he suggests changing the zoning ordinance. The millage was passed to buy development rights but if not accompanied by zoning ordinances of a similar nature it will invite more developments of this type.

Katherine Hardy, 11261 Bluff Rd., said she is concerned about the safety on Bluff Road and the traffic. Although Smokey Hollow Road is the quicker way to this development she feels people will still take Bluff Road because it is more relaxing and prettier. She also worries about the about wildlife and ecosystems that would be disrupted and filter out to other locations. A subdivision close to her that was a beautiful hard wood area was cleared and logging trucks went by her house week after week. It was disheartening. She hates to see what the peninsula stands for be altered.

Ray Musser, 3940 Smokey Ridge Rd., said he moved her last year from Virginia. He would like the Board to study this and look at where the Township wants to be 10-20 years from now. He left Virginia to come here for tranquility. He also thinks the infrastructure will not support these new developments.

Cyril McMaster, 12005 Bluff Rd., said he bought a lot in 1958. It was a dirt road. Now it is full of bicycles, 50 at a time. There is a curve by the bottom of his house and someone is going to be killed.

Marlis Easterling, 13700 Bluff Rd., said she thinks the Master Plan was created so things like this could not happen. All these houses could destroy the picture of this Peninsula. It is a piece of beauty not found so often.

Chris Ney, 3859 Smokey Cove Dr., said she is concerned about the roads. Who will be responsible for maintaining Smokey Hollow Road and Boursaw Road? Are all the homes in this development going to be built by the developer? The Cove only has only 10 of 22 lots with houses on them. They have had construction for 10 years.

Chris Fifarick, 13046 Center Rd., said three dimensional drawings and possible designs of homes would have helped. He submitted a letter. **Correia** said it was received. Larger lots should be explored. A taxable

assessment for the community of larger properties would bring in more revenue for the Township. This development makes him think of Lochenheath. Hopefully the economy is better now.

Mark Nadolski, 10 McKinley Rd., said he speaking as a resident and President of Protect the Peninsula. He believed the Township Board does have the authority and the obligation to its citizens to require the developer to do environmental studies to make sure land is safe for its intended use and the waters of Grand Traverse Bay are protected from this project. We cannot take the developer and his consultant at their word without these studies. The ordinance cannot spell out everything that is why the Master Plan should be used as a guide by the Township Board and the Planning Commission to make sure the health, safety and welfare of its current and future citizens is protected. He stated questions he feels the Board should be addressing 1) Has an environmental assessment been done for lead and arsenic on this farmland? 2) How will the developer address surface storm water runoff to the bay? 3) Are or were there any underground or above ground storage tanks used for agri-chemicals on the property? 4) Are or were there any underground or above ground storage tanks used for hydrocarbon fuel products or oil tanks? 5) Were there any storage barns for agri-chemicals on this property? 6) Will the developer drill test wells to determine if the water being used for the drinking water is safe? The Findings of Fact that were presented at the Planning Commission do not reflect the major issues.

Gordon Hayward, 17777 Shii Taki Trail, said until January 2010 he was employed by Peninsula Township as the Planner and the Zoning Administrator. He is addressing the Board with his personal concerns. He is concerned that the Planning Commission findings to do not include provisions for Section 6.9. The requirements of that Section should be addressed. 1) He understands that the Planning Commission feels certain portions of Section 6.9 are not applicable because they do not comply with Act 59 - State Condominium Act. If this is true the Township Board might consider a moratorium until the Planning Commission can recommend required changes to zoning ordinance. 2) The essential character of the area is large lot single family residential. 3) He feels it is irresponsible of the Township and the developer to place a burden on adjacent property owners to use Trevor Road as an access. 4) The ordinance requires that private roads do not end in a long cul-de-sac. 5) Some of the lot lines are not at right angles to the road. 6) Grading 7) Enforcement of open space uses is always a problem. 8) sewage disposal.

Correia closed the public hearing at 8:50 pm

Hoffman asked the lots under 20,000 sq. ft. can we have those house limited so they are not building lot line to lot line. **Wendling** said the setbacks still apply and would have to follow the ordinance. **Hoffman** asked if the Board had more discretion on a PUD. **Wendling** said just like the Planning Commission there are Findings of Fact. The Planning Commission could have utilized the Findings of Fact to move this project forward or make a recommendation to deny the request for the PUD. In this case there is more information coming into the Township because the Township Board is the final decision maker with respect to PUDs and SUPs. Wendling recommended the Board digest the information that has been received and also provide an additional period of time for people to submit additional materials should they wish to do so. Wendling does not recommend the Board make a decision tonight. There is record from the Planning Commission decision and will add to that record in the exhibits. Yes, the Board has discretion because there will be Findings of Fact that will either support some of these standards or not support based upon the information that has been received and may be received until deadline for submittals. As legal counsel he is not as concerned about what the decision is but more concerned about how the Board goes about making the decision. If the decision is based on competent material and substantial evidence is on the record then he can defend it. The Board can add or make additional requests for additional expert review. Once the Board makes the decision, it will be based on a record that includes all of the exhibits inclusive of the meeting minutes, letters submitted and expert reports from all sides.

Findings can be crossed out, changed or altered. If the Board comes up with own findings they need to be tied to an exhibit directly so it supports your statement. Another option is remanding this back to the Planning Commission. **Hoffman** said she is a firm believer in site visits. She is in favor of tabling this but would like the Board to visit the site. **Reardon** said the Planning Commission did a site visit and set up a 2-3 hour block and Commissioners can two at a time. Staff can set that up if the applicant is willing. Applicant said he is willing. **Quandt** said there has been a lot of discussion about density. It is important to understand that under the Township's zoning this is less than the 73 units allowed under the PUD ordinance it is also less than the 55 units available under use by right.

MOTION: Hoffman/Byron to table to the August 11, 2015 meeting for further deliberation. The record will close at July 27, 2015 at 5:00 pm.

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

MOTION PASSED

Rosi asked about the condition that Planning Commissioner Maguire added for financial assurance. **Wendling** said if the Board votes to approve the project that could be a condition.

3. Bond Refinance Resolution

Correia said Weatherholt met with bond counsel and the savings was in excess of \$220,000. It is privately bonded which was a recommendation of bond counsel.

MOTION: Hoffman/Byron to accept Resolution 2015-07-14 #1

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

MOTION PASSED

4. Lighthouse Grant Resolution

Reardon said this is a revised resolution. The original left off the program contact. Reardon checked with the Park Commission and they are comfortable with Reardon being the contact along with Maura Sanders.

MOTION: Byron/Rosi to accept Resolution 2015-07-14 #2

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

MOTION PASSED

5. CPO Agreement

Correia reviewed the agreement.

MOTION: Byron/Avery to approve revised CPO agreement and authorize Correia and Hoffman to sign the agreement.

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

MOTION PASSED

6. Homestead Hills Subdivision Streetlight Agreement with Township and Traverse City Light & Power

Hoffman said there was a street light on Homestead Road and it was turned off because their children got older. Now someone else is asking that it be turned back on but the Township has to have a contract with them.

Byron asked if the street light is Night Sky compliant. **Hoffman** said yes. **Witkop** asked if there is a majority in

the area that wants the light. **Hoffman** said it is one person is going to sign the contract and if no one else wants to help pay he will pay himself.

MOTION: Rosi/Byron to approve the street light agreement with Homestead Ct.

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

MOTION PASSED

7. Big Jon – Memo

Correia said there are items housed downstairs in the township offices for the Women's Club, Historical Society, Peter Dougherty Society and the Library. It is a mess downstairs and would like to get these items moved to the Big Jon building. The contract and lease at Big Jon is between the Park Commission and the Conversancy and Correia will get with the Park Commission Chair after getting the Board's opinion on this matter. The lease for the space for these groups would be \$7 per month. We do not charge them now. Correia asked how the Board feels about this. **Byron** said to charge \$1 so they understand it is a business transaction. **Rosi** asked about Bob Wilkinson. **Correia** said Wilkinson will pay his portion. **Hoffman** said she is all for this. There was Board consensus to move forward with this item.

8. Cleaning Township Building and Hall – Verbal

Hoffman asked if the Board will approve hiring someone with a certificate of liability to clean the common areas and the Townhall. There was Board consensus to move forward with this item.

9. Boystak Resolution & Richey Resolution

Akerely, Township Assessor, reviewed the two resolutions regarding the properties. There is a buyer for the Richey property and they are seeking assurance from the Township that the sale of a small piece property to the Voza's for road access purposes in 2003 does not violate the restrictive covenants and two potential building lots still remain on the Richey property. Voza's bought the parcel to relieve the Richey's of liability.

Wendling said this came about as result of buyer for the Richey property. The buyer's counsel was concerned because the restrictive covenant there are nuances that are different on parcels A-E. Most importantly on parcel E it states to not do a split except a split for two parcels for residential dwelling on each of those parcels. The split was approved through land division at the Township level in 2003 for that road. It probably would have been better if done as an easement but difficult to re-do. After discussions with Richey's attorney it recommended that the Township pass a separate resolution. Wendling recommends that the resolutions be passed to help the property owners. Byron is concerned that this may violate the American Farmland Trust. Wendling told the Richey's attorney it is their burden to talk to someone from the American Farmland Trust.

MOTION: Hoffman/Witkop to approve resolution 2015 -07-14 #3 Richey

Roll Call Vote: Rosi-yes, Witkop-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

MOTION: Hoffman/Witkop to approve resolution 2015-07-14 #4 Boystak

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

MOTION PASSED

CITIZEN COMMENTS

Chris Fifarick, 13046 Center Rd., said regarding The 81 acre parcel, it was tabled from the public stand point

what more are people able to do to voice do? **Hoffman** said submit letters up until July 27, 2015 at 5:00 pm. There questions asked by the public tonight when will they will answered. **Reardon** said anyone can submit questions or additional information. The Board will have that information for a week before the meeting and if it generates questions from Board they will ask.

BOARD COMMENTS

Avery said it would be good to know would the Township insurance step up to defend the Township decision on The 81. **Wendling** said that should not be part of the Board's consideration. The ordinance needs an escrow provision that allows the Planning Commission or the ZBA on bigger projects to take an escrow to cover the expenses. **Rosi** said look at The Orchards file because did require an escrow. The ordinance needs to be revised. **Byron** asked about the meeting regarding Bonobo. **Reardon** said if the Board would like a meeting about Bonobo she can setup a time with the owners so they can be present. **Bryon** asked Wending for information on intent. There is intent in the ordinance that fruit is planted that can be processed into wine. **Wendling** said the ordinance says crops. Unless the language is ambiguous the Township is stuck with the language those are the rules of statutory construction. **Rosi** asked how the Board can make certain that the language in the ordinance refers to fruit for wine making. **Reardon** said there are changes being put into the new winery language. **Witkop** asked what needs to be done to get the changes to the ordinance done. **Reardon** said if the Board would like to explore the option of bringing in additional help, staff welcomes additional help. **Wendling** said Reardon has been working hard on the ordinance. An overall fix needs to be done. There are outside planners that could be brought in on a contract basis. **Witkop** said she would like to see this topic on next agenda for at least further discussion.

MOTION: Avery/Rosi to adjourn at 10:03 p.m.

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for August 11, 2015

**PENINSULA TOWNSHIP BOARD
REGULAR MEETING
August 11, 2015**

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

PRESENT: Correia, Hoffman, Avery, Rosi, Byron, Weatherholt and Witkop

ALSO PRESENT: Peter Wendling, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning and **Deb Hamilton**, Recording Secretary

ABSENT: None

CHANGES/ADDITIONS TO AGENDA

MOTION: Rosi/Weatherholt to approve agenda as amended.

Avery asked to add Discussion Regarding Placement of Boat Dock as Business Item #6.

Byron asked to add Brush Pick-up as Business Item #7 and American Waste Contract as Business Item #8

Roll Call Vote: Rosi-yes, Witkop-yes, Weatherholt-yes, Correia-yes, Hoffman-yes, Byron-yes and Avery-yes

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

Marc McKellar, Grand Traverse Road Commission Board, 250 East River Rd, Traverse City, spoke about storm clean-up.

Scott Howard, 420 E Front Street, Traverse City, respectively requested the Board take public comment on items on the agendas. Correia respectively declined the request.

CONFLICT OF INTEREST

Byron said recused herself on Business Item #1 – The 81 on East Bay development due to a conflict of interest.

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Edit lists of invoices & additions to the edit list of invoices
4. Meeting Minutes – July 14, 2015 – Regular Meeting
July 27, 2015 – Special Meeting
5. July 2015 Payroll

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

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

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

MOTION PASSED

BUSINESS

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

Byron left the board to sit in audience.

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

have met twice with the Trevor Rd. neighbors. If the applicant cannot come to an agreement with the Trevor Rd., the applicant has provided the Township with an internal connection. **Reardon** said if there is a condition Reardon requests that the Township Board allow for reduction in lots or lot sizes to meet the PUD standard. Staff does not do minor amendments to SUP it would have to come before the Township Board. **Hoffman** said it is her understanding that the Trevor Rd. access would be gravel with grass on top of it. She does not believe that is good access. The road has to be gravel or paved. **Quandt** said fine with applicant but Trevor Rd. neighbors may not like it. It supports a firetruck and is wide enough. **Chief Ronk** said he has seen it done both ways. Whether it is gravel or not it will have to be marked and cleared. It has to support the fire trucks. **Correia** asked who will be maintaining the water storage tank. **Quandt** said the desire is to have the Fire Department to maintain it because they use it. The developer is not unwilling to be part of the process and fund. That can be part of the financial assurance mechanism. **Mansfield** said the applicant is willing to support it but think it is best for the Fire Department to oversee it. **Chief Ronk** has no issues with overseeing the water storage tank but who will be responsible if it fails 10 years from now. **Quandt** said an appropriate maintenance agreement can be a condition. **Correia** asked if roads are in the open space calculation. **Reardon** said no but when the final design of the egress is complete the open space calculation will have to be done again. **Avery** said the septage treatment program bonds are 5 year bonds. The key is to transfer it to the Association. Avery does not see any numbers or timeframes on that. **Quandt** said Section 4.5 of the bylaws cover that issue. **Hoffman** asked for an explanation about what exactly is going to be graded on top of the ridge. **Mansfield** said there are small hummocks and angulations on the top that will be cut off to work with roads, views, houses, sewer and storm systems. No house can be built within 60 ft. of where the slope breaks. Major grading will not go down the slope. **Quandt** said the natural contour of this property will remain the same. **Rosi** said the applicant is supposed to work with the environment to get a SUP. **Mansfield** said Rosi is comparing the PUD to a vacant landscape. The parcel has been reviewed by agencies. To compare the impact should compare to other uses permitted by right. Is this PUD saving more land than the Township protects to agriculture. Could the Township prevent the owner from terracing for grapes? No. The permitted use-by-right design meets the standards permitted by right and through plat the Township would have to approve this. **Reardon** said there were issues with this plat and it is a misrepresentation to say the plat would be approved. **Mansfield** said there is nothing in the Ordinance that would stand given the 1997 Land Division Act as amended that would protect this landscape. The developer is not protecting every ridge line or tree but is protecting a majority of it in perpetuity. **Quandt** said a PUD gives the Township a lot more options to control. When the ordinance speaks to preserving natural resources to the extent feasible it is talking about this project versus other uses. It does not mean comparing with what it is right now because it is not anything right now. If applied that analysis nothing could ever be built. **Quandt** said Mr. Weatherholt was not at the last meeting. Has he reviewed the materials and the minutes of the last meeting and have the ability to make a decision? **Weatherholt** said yes he has read the public comments and was not at the meeting but was still following it.

Peninsula Township Planning & Zoning Department

13235 Center Road
Traverse City, MI 49686

**SPECIAL USE PERMIT
FINDINGS OF FACT**

**SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
August 11, 2015**

**PENINSULA TOWNSHIP BOARD
DECISION AND ORDER**

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

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

PROPERTY DESCRIPTION

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

APPLICATION

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

The Board having considered the Application, a public hearing having been held on May 18, 2015 before the Planning Commission and July 14, 2015 before the Township Board after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered 15 Exhibits, and the Board having reached a decision on this matter, states as follows:

1. General Findings of Fact

1.1 Property Description-

- a. The Board finds that the subject parcel is located in Section 14 of the Township and has approximately 945 feet of road frontage on Boursaw Road. (Planning Commission Exhibits 1, 3 & 19 and Board Exhibit 3)

- b. The Board finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at roughly 82.63 acres. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)

1.2 Action Request-

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

1.3 Zoning/Use-

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

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

- a. **North-** The land adjacent to the north of the subject properties is zoned R-1A, Rural & Hillside and is primarily residential in use. (Board Exhibits 1 and 3)
- b. **South-** The properties adjacent to the south are zoned R-1B, Coastal Zone Single and Two Family. The Cove, a residential subdivision, and other residential uses are prominent.
- c. **East-** The property is bound by East Grand Traverse Bay to the east. (Board Exhibit 3)

- d. **West-** The property located west of the subject is zoned R-1A, Rural & Hillside with the exception of a 12-acre parcel at the Northwest corner of the subject site that is zoned A-1, Agriculture district. The land is primarily low-density residential not including the active agriculture land at the northwest corner previously mentioned. (Board Exhibit 3)
- e. The Board finds that the future land use plan identifies the subject location as an area designated for rural agricultural usage. The objective of the rural agriculture use category is to preserve the important natural resources of the Township while allowing other limited uses which are deemed to be compatible with agricultural and open space uses. (Planning Commission and Board Exhibit 2)
- f. The Board finds that development of property as single family residential is a use by right in the R-1A, Rural and Hillside residential zoning district as well as the R-1B, Coastal Zone Single and Two Family residential district. (Planning Commission Exhibits 1 & 19)
- g. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, Michigan Department of Environmental Quality, and the Army Corps of Engineers.

MOTION: Witkop/Hoffman the Board is satisfied with the General Findings of Fact.

MOTION PASSED (Rosi Opposed)

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

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

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

- i. The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibits 3 & 19 and Board Exhibit 3)
- ii. The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 1, 2, 8 & 19)
- iii. The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1 & 29 and Board Exhibit 3)
- iv. The Board finds that under the master plan, chapter 3, Land Use and Zoning Map No.4 depicting existing land use, shows that the existing land use for The 81 property is residential regardless of the fact that the property is located in both the R-1A, Rural and Hillside and R-1B, Coastal Zone Single and Two Family Zoning Districts. As such, the proposed PUD is harmonious and appropriate in appearance with the existing use and character of the vicinity. (Planning Commission Exhibits 1, 2 (land use map no. 4), 8 & 19.2 and Board Exhibits 3, 4, 5 & 6)
- v. The Board finds that the intent and purpose of the Rural and Hillside Residential District (R-1A) is to contain standards for the continued development of very low density residential properties, inclusive of fragile hillside areas and to interface these areas between more intensive residential uses and agricultural land uses. The district includes existing low density residential developments. The Board finds that the Coastal Zone Residential District (R-1B) provides additional standards for residential where more intensive development would deteriorate the peninsula environment and less intensive development is not essential to maintenance of the established environment. The Board finds that the proposed PUD provides for a buffer zone along the property's border with East Grand Traverse Bay

of 1500 feet which will remain as an undeveloped setback other than the dock area and that the PUD itself by preserving 65% of the property, being 54 acres, as open space conforms with the intention of both districts by decreasing the density which would otherwise be allowed in these districts should the property be developed in a manner otherwise allowed under the zoning ordinance. (Planning Commission Exhibits 1 –section 6.3.1 Intent and Purpose, section 6.5.A.1, & 19.2 and Board Exhibit 7)

This standard HAS been met. (5-1 Rosi)

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.**
 - i. The Board finds that the land surrounding the development is primarily single family residential with the exception of the northwest corner of the site which abuts actively farmed fruit producing land. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - ii. The Board finds that the site has been designed with the appropriate setbacks from agricultural land as required by section 7.7.1.1 (1). (Planning Commission Exhibits 1, 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - iii. The Board finds that the development of the proposed PUD should not negatively impact adjacent neighbors. The applicant has designed the housing sites to complement the existing residential use pattern which incorporates 54 acres of the site in open space. (Planning Commission Exhibits 2, 8, 19.2 & 19.7 and Board Exhibit 3)**
 - iv. The Board finds that the PUD as submitted preserves open space, keeping 65% of the site undeveloped, inclusive of 1500 lineal feet of waterfront preserved as common open space, for the proposed project. The Board further finds that the lot locations, regardless of the slopes in the area, are located sufficiently within the interior of the property of the project site such that view sheds are sufficiently preserved both landside from township public roads as well as from the water. The**

Board further finds that there is no evidence that the development would disturb existing or future uses of the land within the vicinity. The Board further finds that the preservation of the open space is a substantial improvement over other non-PUD development rights as provided in the Peninsula Township Zoning Ordinance which, in turn, benefits the properties within the immediate vicinity and the community as a whole. (Planning Commission Exhibits 1 – land uses allowed in the R-1A and R-1B zoning districts, 2 – map no. 4, 8, 19.2, 19.5, 19.7 & 19.9 and Board 3)

This standard HAS been met. (5-1 Rosi)

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

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

This standard HAS been met. (5-1 Rosi)

- d. Not create excessive additional requirements at public cost for public facilities and services.
 - i. **The Board finds that the applicant will be responsible for any improvements required as part of this proposal. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the development as presented will not create excessive additional requirements at public cost for public facilities and services given that development of single family residential properties is allowed in the zoning districts in which the property is located. The Board further finds that the applicant will be incorporating adequate service roads within the development and there is otherwise no evidence of any excessive additional requirements at public cost for public facilities and services on the record. (Planning Commission Exhibits 11, 12, 19.3, 19.7, 19.10, 20, 21, & 23 and Board Exhibit 3)**

This standard HAS been met. (6-0)

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.
 - i. **The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Planning Commission Exhibit 19)**
 - ii. **The Board finds that the very nature of residential development is not the type that results in a use generating fumes, glare or odors. The Board further finds that there has been no evidence presented that the**

proposed development will result in negative activities or uses which would compromise the general welfare of township citizens as a result of fumes, glare or odors. (Planning Commission Exhibits 11, 12, 19 & 21 and Board Exhibit 3)

This standard HAS been met. (6-0)

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

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

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

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

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

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

This standard HAS been met. (6-0)

- b. That all required information has been provided.**

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

This standard HAS been met. (6-0)

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

- i. The Board finds that the proposed PUD is planned as a single-family residential development with 65% open space including approximately 1,500 lineal feet of shared open waterfront. (Planning Commission Exhibit 19)**
- ii. The Board finds that each individual unit will be subject to the land use permitting process to ensure all structures comply with the Special Use Permit and the requirements of the Ordinance. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**
- iii. The Board finds the proposed PUD shall be designed in accordance with section 8.3 of the Ordinance as discussed in section 3.2 of these findings. (Planning Commission Exhibits 1, 19 & 21)**

- iv. The Board finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards to provide residential and adequate emergency access to forty-one (41) residential units. This private road shall be reviewed and approved by the Township Engineer. (Planning Commission Exhibits 1 – section 7 & 19 and Board 3)
- v. The Board finds that signs are regulated by section 7.11 of the Ordinance. Per this section the development is allowed to have one entrance way sign that is a maximum of nine (9) square feet in area, six (6') feet in height and setback fifteen (15) feet from the right-of-way. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)
- vi. The Board finds that the applicants sign located at the intersection of Boursaw and 81 Ave. is dimensionally in compliance with the Ordinance. (Planning Commission Exhibits 19 & 21 and Board Exhibit 3)
- vii. The Board finds that the proposed entrance (Boursaw and 81 Ave.) sign shall be relocated to meet the fifteen (15) foot setback as required by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 19 & 21 and Board Exhibit 3)
- viii. The Board finds that second proposed sign shall be removed as it is not allowed by section 7.11 of the Ordinance. (Planning Commission Exhibits 1, 11, 12, 14, 19.10.ii, 20 & 21) (10, 19.10.iii)

This standard HAS been met. (6-0)

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

- ii. **The Board finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated January 22, 2015 that department has indicated they have no objections to the plan. (Planning Commission Exhibit 13)**
- iii. **The Board finds that a soil erosion permit for a forty-one (41) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval for a thirty-six (36) unit Planned Unit Development has been granted at this time. Please see the letter dated January 23, 2015 from the Grand Traverse County Soil Erosion – Sedimentation Control Department for the specifics related to this review. (Planning Commission Exhibits 14 & 19.10.i)**
- iv. **The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 12 & 14)**
- v. **The Board finds that the site plan shall meet all necessary requirements related to the Great Lakes waterfront as mandated by the Michigan Department of Environmental Quality and the Army Corps of Engineers. The applicant has submitted a letter from the Michigan Department of Environmental Quality dated March 5, 2015 showing no permit is required from this agency as it pertains to the dock structure. The applicant has submitted a letter from the Army Corps of Engineers dated February 17, 2015 showing their review of the shoreline work is currently under review and more information from the applicant is necessary. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 9 & 29)**
- vi. **The Board finds that storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance. (Planning Commission Exhibits 19.10.ii, 20 & 26)**

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
 - i. **The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay**

waterfront, exclusive of dockage facilities. As such, given the other options available for development under the zoning ordinance, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)

This standard HAS been met. (4-2 Rosi & Witkop)

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

Department prior to the issuance of the SUP. (Planning Commission Exhibit 9)

This standard HAS been met. (6-0)

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
 - i. **The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that shall be protected to the extent required by governing regulations. (Planning Commission Exhibits 11, 14 & 19.10.i-iv, 19.11 and Board Exhibits 4, 5 & 6)**
 - ii. **The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14 and Board Exhibits 4, 5 & 6)**
 - iii. **The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Board Exhibits 4, 5 & 6)**
 - iv. **The Board finds that the applicant shall provide a confirmation by a qualified consultant for the wetland delineation shown on the plans as requested by the Township Engineer. (Planning Commission Exhibit 11)**

This standard HAS been met. (6-0)

- i. That the proposed development will not cause soil erosion or sedimentation problems.
 - i. **The Board finds that the proposal shall be reviewed and permitted by the Grand Traverse County Soil Erosion and Sedimentation Department and the Township Engineer. There is a wetland present on the site that**

shall be protected to the extent required by governing regulations.
(Planning Commission Exhibits 14 & 19 and Board Exhibits 4, 5 & 6)

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

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

This standard HAS been met. (6-0)

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

i. The Board finds that the applicant will be required to maintain all storm water runoff on site. The storm water control review is currently being completed by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance.
(Planning Commission Exhibits 19.10.ii, 20 & 26 and Board Exhibits 4, 5 & 6)

This standard HAS been met. (6-0)

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

i. The Board finds that any form of development is going to cause some disturbance to the site. Regardless, given that development of the parcel is allowed under the Zoning Ordinance under both the R-1A and R-1B Zoning Districts, the PUD as proposed preserves as undeveloped area 54.23 acres as open space. The plan also includes through a small setback, 1500 lineal feet of undeveloped East Grand Traverse Bay waterfront, exclusive of dockage facilities. As such, given the other

options available for development, the plan as presented and as developed, will leave areas undisturbed during construction and afterward as depicted on the site plan and at the site, per se. (Planning Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20 & 21 and Board Exhibit 3)

- ii. The Board finds that the development of the road appears to be reasonable in the context of the existing topography and existing drainage patterns. (Planning Commission Exhibit 19)**
- iii. The Board finds that the applicant shall submit a grading plan with sufficient details to evaluate the plan for protection of the steep slopes and vegetation present on site as requested by the SESC and the Township Engineer. (Planning Commission Exhibits 11 & 14)**
- iv. The Board finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP.**

This standard HAS been met. (5-1 Rosi)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.**
 - i. The Board finds that the site shall have the required landscaping per the Zoning Ordinance. Specifically, the residential units shall have street trees as required by section 6.9.3.5 of the Ordinance. The site shows the appropriate buffer zone as required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped. The shared waterfront shall be subject to section 7.4.4 of the Ordinance ensuring appropriate screening of the site from the water. (Planning Commission Exhibits 1 & 19)**

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (5-1 Rosi)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (4-2 Rosi & Witkop)

MOTION: Witkop/Avery all Specific Findings of Fact as provided in Section 8.1.3 the standards have been met.

MOTION PASSED (6-0)

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (5-1 Rosi)

- b. To provide open space options.**

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (4-2 Rosi & Witkop)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

development for residential housing. (Planning Commission Exhibit 19 and Board Exhibit 3)

This standard HAS been met. (4-2 Rosi & Witkop)

e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.

i. **The Board finds that The 81 has general design standards which allow for diversity in unit types. (Planning Commission Exhibit 19)**

This standard is NOT APPLICABLE.

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

i. **The Board finds the parcel is subject to residential zoning, is currently vacant and not being utilized for farmland. The Board further finds that this development does not impact farmland utilized in the township directly adjacent to the development or within the vicinity of the development. The Board further finds that the 65% open space will likely remain as fallow land. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)**

ii. **The Board finds that the layout of the plan preserves 65% of the land for open space as confirmed by the Township Engineer. (Planning Commission Exhibits 19 & 30 and Board Exhibit 3)**

This standard HAS been met. (6-0)

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

a. The planned unit development project shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the

project acreage requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of the land.

- i. The Board finds that the proposed project is 81+ acres. (Planning Commission Exhibit 19 and Board Exhibit 3)**

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

- i. The Board finds the development will be served by a community septic facility, individual septic systems and individual wells to services the additional residential sites. These systems shall be reviewed by the Grand Traverse County Health Department and the Township Engineer of Record (Engineer) to ensure they are compliant with all applicable regulations. All required permits shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. (Planning Commission Exhibits 1, 10 & 19)**

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

- f. For purposes of this Section 8.3, Opens Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81

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

This standard HAS been met. (6-0)

- g. The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1 and Article VII.**
 - i. The Board finds that the proposal meets Section 8.3 of the Ordinance in these findings and below. (Planning Commission Exhibits 1 & 19)**
 - ii. Section 8.3.4, PUD Uses that may be permitted: The Board finds that the applicant is proposing single family dwellings, open space in accord with Section 8.3.6 and a sign.**
 - iii. Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that proposal reduces the size of the forty-one (41) units below the minimum lot size required by the underlying zoning according to the following calculations and within the allowances provided by the Ordinance as detailed here. The Site Acreage for density calculation is 82.63 acres less the fifteen (15) percent for the R-1A and R-1B requirement and is equal to 70.24 acres. Per the underlying zoning districts 92% (64.63 acres) of the Site Area Computation is subject to R-1A zoning 8% (5.61 acres) of the Site Area Computation is subject to R-1B zoning. Therefore the site will allow a maximum of 73 units to be developed. These units can be reduced in area below the minimum lot size required by the zone district in which the PUD development is located provided that the total number of units does not exceed that which is allowed by the underlying zoning. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)**

- iv. The Board finds that the building envelopes are shown on the site plan and are not included as open space. These calculations have been confirmed by the Township Engineer. (Planning Commission Exhibits 1, 19 & 30 and Board Exhibit 3)
- v. The Board finds that the minimum lot area is 11,633.17 square feet as indicated in the application. (Planning Commission Exhibit 19 and Board Exhibit 3)
- vi. The Board finds that the maximum permissive building height for residential structures shall be 2.5 stories and not greater than 35 feet and accessory structures shall not exceed 15 feet. (Planning Commission and Board Exhibit 1)
- vii. Section 8.3.6, PUD Open Space: The Board finds that a PUD application shall include provisions for Open Space as required by Section 8.3.6 of the Ordinance. The 81 proposes to have 65% of the site be preserved as Open Space Dedicated for Private Use ((Section 8.6.3 (1)). The application indicates that there are 54.22 acres of the 82.63 acres (net acreage) site, or 65.63%, is dedicated to this Open Space. The Township Engineer has independently reviewed the acreage calculations and has determined there are 54.12 acres, 65.50 %, dedicated to open space. (Planning Commission Exhibits 1, 19 & 30 and Exhibit 3)
- viii. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: The Board finds that the maximum percentage of lot area covered by all structures is proposed to be 14% of the net acreage of the site as permitted by this section. This reflects an average permitted lot coverage of 47% of the individual units. (Planning Commission Exhibits 1 & 19 and Board Exhibit 3)
- ix. Section 8.3.8, PUD Affidavit: The Board finds that the applicant shall record an affidavit with the register of deeds as required by this section of the Peninsula Township Zoning Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

This standard HAS been met. (6-0)

MOTION by Avery, seconded by Weatherholt, based upon the general findings of fact and the specific findings of fact under sections 8.1.3 and 8.3 of the Peninsula Township Zoning Ordinance, SUP #123 is approved for both the Special Use Permit and the Planned Unit Development with the following conditions:

Conditions:

1. The Development shall meet adequate safety standards for fire protection subject to the Peninsula Township Fire Department review and approval including the provision of an additional egress for emergency purposes at either Trevor Rd or within The 81 proper. If provided within The 81 proper Staff shall be allowed to permit a reduction in lot size as warranted and based on the mathematical calculation for open space under the ordinance. The second egress should it be provided with The 81 proper shall be gravel or paved per review of Peninsula Township Fire Chief.
2. Proof of Compliance with all Federal, State, County, Township and other governmental regulations relative to the establishment of a Condominium Subdivision Planned Unit Development shall be submitted to the Peninsula Township Planning and Zoning Department prior to issuance of the Special Use Permit.
3. No material earth movement other than soil borings until the Special Use Permit is issued.
4. Requirement of a Performance Bond or other enforceable appropriate financial mechanism to ensure the construction and long term maintenance of the private roads, community septic system, fencing/landscaping, and emergency water tank as planned in accordance with SUP #123 based upon the recommendation of the Township Engineer and Accountant as required by statute.
5. Maintenance of the water tank will the responsibility of The 81 developer and Homeowners Association in the long-term and shall be verified annually to the satisfaction of the Peninsula Township Fire Department.
6. Detailed grading plans shall be supplied to the Township Engineer for the Township Engineer's review and approval prior to SUP issuance.
7. The management of the shared waterfront hoist/shore stations shall be defined and outlined within the condominium bylaws as per current zoning standards.
8. The shared water front open space shall allow one set of steps to the water and this shall be outlined in the condominium bylaws.
9. Relocate the entrance sign to be complaint with Section 7.11 of the Ordinance.
10. Review of Master Deed and Bylaws and site plan by Township Attorney to ensure compliance with these conditions and the SUP/PUD.

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

MOTION PASSED

EXHIBIT LIST
TOWNSHIP BOARD MEETING AUGUST 11, 2015
THE 81 ON EAST BAY

1. Peninsula Township Zoning Ordinance, as amended through May, 2015
2. Peninsula Township Master Plan, as presented and amended through May, 2015
3. Updated site plan drawing of The 81 by Mansfield preliminary (last updated 4/27/15) with open space revised calculations, received May 7, 2015 (**this exhibit was listed as #22 for the PC hearing on June 11, 2015, however, the exhibit could not be located at that time, and is being added now as it was used at the TB public hearing on July 14, 2105).**
4. Motion as passed by the Planning Commission on June 15, 2015
5. Revised Findings of Fact dated June 17, 2015 based on the Planning Commission's motion of June 15, 2015
6. Minutes from the Planning Commission meeting held on June 15, 2015
7. Correspondence from citizens to the Township:
 - a. Undated letter from Shelly Drew
 - b. July 8, 2015 letter from Christopher Fifarek
 - c. July 13, 2015 letter from Brian Hyslop, M.Arch
 - d. July 13, 2015 letter from Grobbel Environmental & Planning Associates
 - e. July 13, 2015 letter from James Kevin Schrider
 - f. July 14, 2015 letter from Wendell Wayne Woodard
 - g. July 14, 2015 letter from Alan Blair
 - h. July 14, 2015 letter from Gordon L. Hayward
 - i. July 14, 2015 letter from Kadee Tseitlin
 - j. July 14, 2015 letter from Scott Howard (Olson, Bzdok & Howard)
 - k. July 14, 2015 letter from Dave Chapman
 - l. July 14, 2015 letter from Mansfield & Associates
 - m. July 16, 2015 letter from Pat Sharpnack
 - n. July 20, 2015 letter from Wes Benner
 - o. July 20, 2015 letter from Dr. Laurence M. Phillips
 - p. July 24, 2015 letter from Bill & Lois Byrne
 - q. July 24, 2015 letter from Louis Katz
 - r. July 24, 2015 letter from Jon & Maggi Steele
 - s. July 26, 2015 letter from Cathy Ross and Lillie Reed
 - t. July 27, 2015 letter from James Komendera
 - u. July 27, 2015 letter from Loren & Nancy Wolf
 - v. July 27, 2015 letter from Scott Howard (Olson, Bzdok & Howard)
 - w. July 27, 2015 letter from Mark Mullinax
8. Drawing of The 81 Development Company, LLC Emergency Access Exhibit dated 7-14-15
9. Peninsula Township Board Agenda from July 14, 2015
10. 14016 Plan Trevor Road Access Exhibit

11. 14016 Plan 16-color (without houses)
12. 10406 Plan Road PUD-41 Impact Study (not to scale)
13. July 27 2015 letter to the Township Board from Mansfield & Associates
14. August 4, 2015 email exchange from Petra Kuehins to Steve Ronk
15. July 14, 2015 Peninsula Township Board meeting minutes

Jill Byron left the meeting 10:07 p.m.

2. Ban Sky Lanterns

Tabled to Township Board's second regular meeting on August 24, 2015.

3. Set up interviews for Planning Commission and Zoning Board of Appeals Members

Hoffman asked the Board to extend the deadline for applications. Deadline was extended to August 20, 2015 at 4:00 p.m.

4. Villa Mari – Natural Disaster Relief Request

MOTION: Hoffman/Weatherholt to approve Villa Mari – Natural Disaster Relief Request.

MOTION PASSED

5. Research New Phone System – Verbal

Tabled to Township Board's second regular meeting on August 24, 2015.

6. Discussion Regarding Placement of Boat Dock

Tabled to Township Board's second regular meeting on August 24, 2015.

7. Brush Pick-up

Tabled to Township Board's second regular meeting on August 24, 2015.

8. American Waste Contract

Tabled to Township Board's second regular meeting on August 24, 2015.

CITIZEN COMMENTS

Cristin Hosmer, 17593 Shii Taki Trail, said on June 29, 2013 the road standards were discussed and they were supposed to be updated. She would like a report as to where the Township is on updating the road standards.

BOARD COMMENTS

Witkop asked about the progress of hiring a consultant to work on the Ordinance.

Weatherholt said the flag pole needs to be replaced.

Wendling said Subdivision Control Ordinance is not usable because created before the major amendments to the Land Division Act in 1997. There was Board consensus to have Township Attorney look at the issue.

MOTION: Witkop/Hoffman to adjourn at 10:30 p.m.

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for September 8, 2015

Regular Town Board Meeting
Christina Deeren, Recording Secretary

PENINSULA TOWNSHIP BOARD
October 25, 2017
7:00 p.m.
Special Meeting – Different Location
St. Joseph Church, Parish Hall, 12675 Center Rd., Traverse City MI

1. **Call to Order**
2. **Pledge**
3. **Roll Call:** Manigold, Westphal, Achorn, Bickle, Sanders, Wunsch, Wahl
4. **Brief Citizen Comments:** None
5. **Approve Agenda:** Motion by Sanders; second by Wunsch. No Discussion
Passed Unam
6. **Conflict of Interest** – None
7. **Business:**
 1. The 81 on East Bay – Public Hearing with the following steps:
 - A. Presentation by Applicant
 - B. Public Comment
 - C. Deliberation by Township Board regarding only those issues that were remanded to the Township Board in the Circuit Court Order of 1/15/16 in Circuit Court File No. 2015031218AA. Deliberations may include questions to the applicant, public or Township planner or other professionals.

Manigold; Open Public Hearing.

Jim Young, Attorney for the Township: Scope of review decision by previous Board in 2015. Decision was appealed to Circuit Court and a portion of that decision was set aside remanded back to the Township. Key Concepts: In conclusion the court finds that the Board will lawfully exercise its discretion under the ordinance when it determines:

1. That the natural resources will be preserved to maximum extent feasible.
2. The open space meets the requirement of the ordinance.
3. The proposed Special Use SUP/PUD meets the objective set forth in the ordinance.

The issues delegated to the Peninsula Township Fire Department and the Engineer for review and approval including the location and functionality of the emergency access road and whether the Standards for soil erosion, grading and storm water have been met are remanded to the Board for further proceedings constant with this decision and order. This hearing tonight is the further proceedings. Conceptually the court in its remade had two general comments:

1. Location and functionality of the emergency access road.
2. Whether the standards for soil erosion, grading and storm water have been met.

When the court refers to standards it is referring to the standards in the zoning ordinance. Those standards have to be met. Understand that the scope of the review tonight is limited. It is limited by the Court remade. The Board is to gather facts the burden is on the applicant to show that the standards have been met.

Westphal; Question directed to Attorney; Of the two items that you have identified that were remanded if the Board finds a significant problem with one or more of them does this mean that this whole Special Use Permit process would start over?

Jim Young; Number one all standards have to be met and not a majority. If you find that there are sufficient facts to conclude that one of the standards have not been met or there are insufficient facts that decide whether all of the standards have been met then it would be denied. Then at that point the applicant has two options. One is to appeal the decision to Circuit Court and second to file a new application to try and eliminate any deficiencies that might be found. Under the law if the facts established by clear and convincing evidence that the standards have been met you must approve it. If there are insufficient facts to make a conclusion or if the facts indicate that the standards cannot be met and have not been met then you are obligated to deny the request.

Bickle; The components that we have are very limited as all the rest have been prior approval. This is understood. Is it not correct that regardless of what the decision is the applicant still has to come before the Town Board as the previous Board approved 29 pages of conditions but the applicant still has to come back to satisfy those conditions. Is that not a correct understanding once we get through the process?

Jim Young; The applicant must meet the conditions that you set forth to the extent that there were conditions imposed in the 2015 decision that are not impacted by the Court remade those still remain in effect. If you decide to impose additional conditions that relate to standards then those would supplement what was decided in 2015. If an applicant proceeded and violated those conditions then that would be a violation of the zoning ordinance and you would take enforcement action like you would with any other zoning violation.

Presentation presented by Applicants Representation:

Brian Etzel, Miller Law Firm; 950 West _____ Dr. Suite 300, Rochester, MI; Attorney for the 81 Development. This is a unique project that will complement the adjoining areas and the Township as a whole. As our presenters will discuss the project has been meticulously planned and is in all respects an environmentally safe and sound project. The applicant, the 81 Development was formed and founded by Kevin O'Grady who is present with family. Kevin is a Township resident, land owner and taxpayer, just like most of you in attendance. We are asking that the 81 Development be afforded the fair and unbiased decision based on the merits of the application and based on the facts. Free of personal animist and free of prejudice. We ask that the 81's application be held to the same standards and the

same level of scrutiny that similarly situated applicants have been held to. No more and no less. The Township Board approved the 81 Developments original Special Land Uses permit application on August 11, 2015. The Townships approval of the 81's permit was appealed to the Circuit Court by an adjacent land owner. The Circuit Judge, Judge Rodger's rejected the appeal and upheld the Township Boards approval. The Judge determined that the 81's development plan met "met all of the objectives set forth in the Special Land Use Ordinance". "The project will preserve the natural resource of the area to the maximum feasible extent." Judge Rodger's remanded two issues to the Board for further proceedings.

1. The location of a fire access road
2. Whether the standards for soil erosion, grading and storm water have been met.

Judge Rodger's found that the previous Board designated / delegated these issues to the Fire Chief and Township Engineer and that the Board itself needs to make independent findings on these two narrow issues. Reading from the Township's brief filed in late 2015: "The standard for SUP/PUD logically takes into consideration what is allowed under the ordinance and what is being proposed as part of the Special Use permit. It cannot be viewed in a vacuum as proposed by the Appellants. Given the type of grading and construction on this site which could occur given the current zoning classifications as a Use by Right on this property the proposed PUD presents a less intensive alternative than what would otherwise be allowed. The whole point of the PUD is to compare what is being proposed in a PUD to what is otherwise allowed as a Use by Right." The central issue tonight certainly from the Townships perspective is whether this project will adversely impact neighboring and adjacent property owners especially any soils from this project. Given that focus it is important to keep in mind how this property could be used as by right without a permit. It could be used as dairy farm, cattle livestock farm, orchard, vineyard or a far more intense development with up to 55 home sites.

Doug Mansfield, 830 Cottage View Dr., Traverse City, MI 49685; Outline existing property; I have been working on this property since 2006 when it was held for another company. Provided a layout outlining the highest and best use for appraisal purposes. (Visual Board) This is the Use by Right plan for 82.63 gross acres from the center of right of way, property lines to the water's edge. Removing the right of way takes the acreage to 81 acres of land thus sets the name 81. The property is dual zoned: R1A (Rural and Hillside) 1 acre lots & R1B (Coastal Zone Residential) – there are density calculations in the zoning ordinance that provide for what you can do with this property. This plan physically shows the geometry of this property provides for 55 lots, we have a small common area surrounding a wetland which cannot be touched. Beyond that there is no other open area on this project. This project meets every standard of the ordinance and was approved by the previous Board as a tentative plat. That has since lapsed at the request of the Planning Commission and the Township Board. The zoning ordinance would allow up to 62 lots per the PUD allowance in the zoning ordinance this lot could achieve 72 separate lots. This could be with duplexes or single family homes but that is an allowable density in the ordinance. The owners had another dream and another vision for this project and chose to go with the Planned Unit Development. It has been somewhat of a surprise the process that we have been through as I have been involved in several Planned Unit Developments within the Township. I have never run into the standards that we are being held to. I have never had to have experts brought into this. I just finished another PUD Vineyard Ridge which was approved by this Board. It is a single family development just

like this one. It is a total of 29 acres with 47 units. This is 2 xs to 3x the density. When we look at the PUD are we protecting the land more through the PUD than can be possible through the Use by Right the plat. This plat provides for single family lots they would have septic and wells. The plat process is governed by the State Law. The Land Division Act is yet another process of divining and conveying land this project would have 13 land divisions available in the 81 acres. Land division is the bases of land conveyance of subdivisions in the State and is meant to be a speedy non-public participatory program for a limited number of lots. I could create 13 land divisions meeting the zoning ordinance of 1 acre, I could meet the road ordinance and I could meet the requirements of the Health Department, Soil Erosion just as we have and basically those 13 lots could be taken along the lakeshore. The State Law provides that after the 13 lots have been divided I have the right to go back through the Plat Act or the Site Condominium Act and sub-divide the entire remainder of the property. None of those require for us to provide any open space for public benefit or common areas. This is a Use by Right Michigan is a property oriented State. (New Visual Board) – This is the same scale plan of the same property with the development shown on it. Explains the outline of the property: There are 41 proposed lots this is 40% less than what the PUD would allow. The proposed lots are about ½ acres in size apiece the majority of these lots will be serviced by a community septic system so they will not have individual septic systems on each parcel. Green area on visual board is all open space & 1500 ft. of shoreline not to be developed or purchased by individual buyers preserving it in the state that it is in today. The only two requested variances in this PUD –Reduce lot size and lot width to lots that are 100 feet / ½ acre in size. Not asking for higher density, multi-family or commercial use. The property will be served by a private road that will be maintained by the association. The second entrance will serve as a fire access only entrance that comes out to Smokey Hollow Rd. This plan provides the developer with more view lots, not waterfront lots. By reducing the width along the ridge line it creates more view lots. Only 10 of the lots will have waterfrontage and they will be 25 feet short of the ridge line. We are providing a 30,000 gallon underground water tank with an automatic refill to service this rural part of the Peninsula that will also be open to the public this is to maintain at the cost of the association. We have received and maintained preliminary approval from the Road Commission for the entrance on Burrsow and the fire entrance off of Smokey Hollow. We have received preliminary approval from the County Health Dept. for the lots and community system. We have received storm water approval from the Township Engineer as well as private road design approval. We have maintained a fully recommended and certified soil erosion and sedimentation control from the County Construction Code office. We have an \$80,000 surety with the posted with the County strictly for use by the County should anything happen they can tap into that resource. We have joint Army Corps and MDEQ permit for a community dock for 36 slips we also have a MDEQ waste water community permit. We also have unanimous approval from the Peninsula Township Planning Commission and the Township Board. The fire access road had been reviewed by the interim Fire Chief, Randy Rittenhouse and found that it met the criteria of the Fire Protection code a private engineering company was hired to review the auxiliary road as well as the new Fire Chief. County Construction Code in this County provides for soil erosion control and permitting. Site grading this was a farm at one time the valley lies between the ridge and the tree line. We have provided detailed grading plans for the road and for the sites. We have a letter from the Engineer stating that it meets the standards of the ordinance. Doug outlined the construction process and phasing of this development. Using visual boards of the area and enhanced sections of the property.

Recommended that this project be done in three separate phases so the property is not opened up all at once. Installation of a mud map to help keep soil on the property, silt fencing protection around storm water basins and around the wetlands. Monitoring that everything was installed and report to the County Construction Code and Township. Tree and stump removal, stacking top soil in a mound and seeding, grading of road and lots. Reaching the base grade of the elevation would cease the first phase. Concerns with the property previously being used as an orchard. This site goes in a shallow grade from north to south removing the knolls it will keep a shallow grade along the ridge line. The old road will be widened out in order to meet the condition of the ordinance. We are not trying to snake down those roads at all. When we approach the ridge line we need to undercut which is done with an excavator. We have experience with these developments with ski slopes.

Westphal; Steep slope that runs 25-48% slope referring to the soil survey. So you are going to tell me that you are smooth that out and remove the vegetation and not expose a highly sandy soil, highly erode that is already classified as an F2 and you will not have any problem with any saltation, soil creep erosion likelihood listed in the soil survey. **Mansfield;** This has a sincere break in the ridge there is a bluff line there and there are humming's along that bluff line we are just notching those off and smoothing them out. We are not getting into the break of this ridge with the grading plan. We are working from the back and drawing it away from the bay. We have a permit from the authority that oversees this. In the Use by Right there is no protection for the slope and no control. Property owners own 25 feet from the ridge line and will not be able to build until another 30 feet. The houses will not be 50-60 feet before they can start to build, same characteristics as building on critical dunes. These are some of the most beautiful water lots still existing on East bay. They are larger lots that will be serviced with septic and well. They exhibit a driveway, septic, well and structure. Lots 2-10 will be filled and the structures placed on that filled out. **Achorn;** When walking this area lots 6-10 the drop was 15-20 feet it was explained that the area would be filled and then structures placed on top of the fill. How can you prevent that extra 15-20 feet of fill from going into the water? **Mainsfield;** It varreis first of all. There are cross sections that identify what it will look like. We use retaining walls, structure and basements down to a natural grade. There are many methods to do this and not impact the land at all. Practical construction standards.

Andy Smits; : 402 Beavertail Traverse City, MI 49686; This illustration that I put up here on the board tonight outlined in red shows the 81 property and the property in yellow highlights shows the historic remainder township properties. These are all residential subdivisions now where people are living. Eastern elementary used to be an orchard, all the homes around it used to orchards. Old Mission Peninsula School used to be an orchard. This is a very common historic land use in our community. I was retained because of my expertise in about the time that it was identified that there were these remanded additions related to soil erosion and sedimentation control. I am Geological Engineer I am also a State Certified Storm Water Operator. Someone is certified and trained to inspect storm water control. I have done over the past 25-30 years in the private engineering practice worked with developments and re-developments with properties like this. So I have some germane expertise that led me to conclude that my choice of place to live where I send my kids to school and play on the playground is perfectly suitable. I did not see any adverse impact on my son who is now living in Ann

Arbor. That is a little bit of a side bar that I use in introducing myself. Being brought into this subject by a team to evaluate the remanded issues I needed to spend some time understanding the property and I walked it, visited it by boat and I have visited it on a number of occasions. I have reached its history as you can see. To determine what the prior land uses were and I have researched the materials from prior studies. I have researched the materials that the Board is used previously to make its determination. I have read most of the materials subsequent to that. I have also read the environmental study that was done on the property well before the issues were remanded back. This one that is called Phase 1 environmental site assessment study which was not done by myself but rather done by a firm from downstate the study is quite common which are used to evaluate what are called recognized environmental conditions and recognized environmental conditions in the context of the Phase 1 site assessment are used to direct property owners or interested parties owners in property as to whether or not there are concerns that are identified in the first phase of inquiry that are warranted for further site. The conclusions in that first Phase 1 site did not identify the agricultural use of this property. That study is part of your materials you can look at the conclusions and find that it is not recognized as part of the condition. That's natural because if it was then you would have literally hundreds of thousands of acres of Michigan land that would be deemed to be environmentally hazardous or risks or regulated as some would suggest it should be. That is not to suggest that one should not be concerned about what has been applied to the land historically. There are conditions, very few of which under the Michigan _____ part 201 standards which would in some cases it could apply to agricultural properties would apply. If you had pesticide use and you had a spill concentrated application of regular application of pesticides, herbicides or agrichemicals where such a regulation should apply. Where such a regulation should apply but not to Ag land like this. There is no record of it until the studies have been taken by Phase 1 level nothing to suggest that there has been an industrial accident with pesticides or misuse. This land is much like any other acre of land around the Peninsula and elsewhere in Northern and Western Michigan. It just has had a history of agricultural use. Looking to whether or not there has been an adverse impact based on my experience is germane because for an adverse impact to occur it would seem that first you would have to have movement of soil which is where the residents exist today from one property to another. If they are all agricultural use how does that become adverse? How can that adversely impact when the uses are essentially the same it just defies logic. Maybe the conditions outside of this property are actually worse. We don't know this is a unique property that has under gone such scrutiny and detailed study. We have gone well beyond the Phase 1 study with this property. None the less the adverse impact will moved off the site during construction the movement of soil off the site is by more and more maybe by erosive forces of precipitation or it could be by moving around of equipment, physically moving it through grading or it could be wind. The Soil Erosion Sedimentation Control Act considers all of this. Soil erosion is defined by movement of soil particles. So in evaluating the record here, the record that the prior Board relied on it is clear that not only did the design engineer consider soil erosion and that professional deemed that the measures were appropriate. The Townships Engineer did also. Not just on one occasion but on several. While it may not have been evident at the time that there were historic agricultural uses of the land certainly revisiting such decisions is warranted and in doing so one would have to say what is about applying agricultural chemicals to soil that would make them more **mobile** than if I would have not applied them at all. In this case we are talking about lead arsenic it is a pesticide that was used commonly not just in Michigan but throughout the world.

Before more common organic pesticides that are of better of use today. In fact it was spray applicate some places didn't spray in fact some places out east fixed irrigation more commonly through our community some sprayers as some of you might know what those are like. You might live near currently tiled or cultivated properties and can hear them at night spraying mist. If you do then you know that when sprayers move around despite best efforts the wind and weather can take the applied substances and transport them to places other than where there intended to go. So to assume that activities that have happened here just happened here I think that everyone who has lived near agricultural properties knows that is probably not the case. Due to natural activities wind gust whatever was applied here or there didn't stay here or there it was probably transported to the adjacent properties as well which also makes adverse impact of properties problematic in evaluation. How can it be more adverse when properties are essentially the same? None the less after the design engineer and the reviewing engineer made the determinations that the soil control measures were adequate that meant movement of soil particles off the property. The developer applied for a soil erosion sedimentation control permit. That permit followed the application process and the control measures that were planned were reviewed by a person trained and qualified to review those plans and they came to the same conclusion. So I am the fourth engineer or the fourth trained person to come and look at these records and try to make a determination as to whether or not there is any reason to believe that there is an adverse impact based on the record for this proposed development. My conclusion is that I can't find any possible reason to find adverse impact. None the less in this process of trying to get the land use permit or special use permit approved through discussion with the Township Counsel and Township developer it was agreed that further study beyond the Phase 1 study would be undertaken. I guess I should take a cue from Doug (Mansfield) who made sure the audience had a change to look at the figure to. Additional study was done on this property beyond the Phase 1 to evaluate the potential for adverse impact to other properties that had the same chemicals applied. That study included very detailed work, work planned that was reviewed by the experts from the Township and found to be adequate that characterized the property. There were chemicals there at unusual levels the results of the study revealed that there were chemicals there that consistent with historic use of the property. Much like dozens and dozens of other properties that have been developed. Including the results that you have for other properties you have in the Township that are similarly situated properties. Properties where special use permits have been granted without the level of study and consideration that this one has suffered. The results showed especially with comparing the nature of the properties that the range in concentration of these compounds is essentially the same. Exhaustive statistical analysis were done and simply taking the results and looking at the lowest level and the highest levels and the ranges in between yields a finding in my opinion that this is consistent with many other properties in this County that show that the levels are roughly the same in some cases lower and in some cases higher kind of what you would expect from long term application, lawful application of agricultural chemicals. So again after all that comparison of other similarly situated properties and considering the topography here and the fact that natural slopes and the development plan promote the retention of water on the property and not runoff. Water would actually have to run uphill for erosion to take this water off the property in some places.

Wahl; What about the erosion into the water that the water runs into the properties?

Smits; Which water are you talking about?

Wahl; You said that the water would have to go uphill to affect other properties but if the water is running into the water then it seems that the water would go to other properties into the lake along the shoreline properties.

Smits; Again I go back and I think my analysis was pretty clear that I relied on the work that three other engineers and the soil erosion control officer has relied upon design wise for shoreline protection. There is no development runoff to get up this hill to get over the crest. The development plans that you have shown how the natural and naturally maintained storm water on the property within the useful illustration in response to that question.

Doug Mansfield; Speaking to the existing nature of the site from the west to the middle of the site goes downhill. This goes downhill from here this buffer zone of trees over here. This wasn't used as agriculturally over here and this ridge wasn't used agriculturally where the agricultural exist was in the middle. The way we created this site is also from the middle of the houses at basically a 2% grade from the ridge we are moving the water into the site then there is a notch into here where it breaks two percent. Two percent is basically the grade of a barrier free parking spot. You cannot get water to move over asphalt at one percent so understand the level of that grade to the ridge line here. What Andy Schmidt should probably say also is that the arsenic lies in the first top two feet? **Andy Smits:** A foot. **Doug Mansfield;** If it gets embraced by the soils at the level then it doesn't go down into it but we are taking that off the other thing is that this wasn't orchard area. So you might have had some over sprays but the concentrated levels are all in the middle of this site so transporting that arsenic that isn't there anymore and was never there anymore first of all isn't allowed by our soil erosion permit. Number one it's not allowed so we can't do it. They have an \$80,000 surety that they can cash in if something happens but it should not by the natural containment of this land ever happen. There you are water does not go uphill.

Speaker; If you can draw your finger around the area where the historical agricultural use ended or ends so they can see that the ridge line is not part of that area.

Mansfield; Again here is the ridge line. That is this area here and the orchard went up to this top property line and then followed about the base of the knolls and then down into the base of the property where more of the operations were.

Smits; Doug reminded me that one of the important things to convey with respect to agricultural chemicals that were used historically in this region and evidently from the studies considerable studies of this property is the nature of it. The compound that had been detected here includes pesticides and herbicides that were used back in the 40's and 50's and 30's commonly lead arsenic and that is one of the reasons we test Phase 2 study for arsenic and lead. I made very briefly those results were details of those study itself design and those results are part of the record. The compound themselves were led by implication, arsenic a naturally occurring element in the earth crust. So when we test lead and arsenic in soil we don't differentiate what is naturally occurring or what is a result of a manmade process of agricultural we just measure the total amount. That is an important thing to convey for a

number of different reasons. The most important is that arsenic in particular is present in nature in a number of different states different species if you will and only some of them are harmful. When we measure for total arsenic we are comparing results assuming it is all the worse stuff that is almost never the case. In fact many studies have shown that only a fraction of the total that is harmful. The nature of these compounds themselves are heavier than the soil particles themselves so they tend to immobilize. They are not as transportable as soil itself. Soil in Michigan particularly this part of the state of the glacier lows are sandier and are not as dense as more silica as metals lead and arsenic are both metals so they are heavy so they tend to concentrate in the upper part of the soils they don't dissolve readily from precipitation or snow melt so they just reside there in the soil heavier than the soil so generally less mobile than the soil itself. That is just an important point that I want to convey.

Doug Mansfield; Slope stability as it comes to the site again it is governed or measured certified by the County Soil Erosion permit which we have. Construction of the houses and stability of the soils is actually governed by County Construction Code which embodies Michigan building code. Michigan building code has standards for how much pressure the soil needs to provide for a house to sit on and that is measured especially when we get into a larger house. Many of the houses out here on the Peninsula we test the soil for its bearing capacity and strength. When we approach a house with a slope like this where there is a diagonal influence from the foundation through the soil about 30 degrees down and as it goes down into the ground the weight of that dissipates among the weight of the soil. So the Michigan Building Code looks at the house you want to build. On the ground you want to build it says you have to be so far away from any ridge line where you can't have a bearing pressure that intersects the slope. It seems very complicated but actually it is extremely simple. Basically it backs the houses away from the ridge due to the size of them. Now one of the dangers of this slope is that we are taking weight off this slope, a lot of weight by removing those knolls out here. **Westphal;** which area are you talking about Doug? **Mansfield;** All along the bluff line. **Westphal;** the beach, along the beach the eastern side what about the western side? **Mansfield;** The western side frankly has slopes that we built a lot of houses on in this community and in this region of the state. We would use the same standards for those but frankly that slope being in the 20 to 30 percent range wouldn't be considered the bluff range that we have on the lakeside. **Westphal;** I find that very hard to believe. Let me just quote something from the Soil Conservation Service booklet. **Mansfield;** Okay. **Westphal;** "This land" and it is talking specifically about the F2 Leneelau, Kalkaska soils which make up those two slope areas. "This land is too sandy, too steep and too severely eroded for uses other than woodland and wildlife habitat because slopes are unfavorable and the sandy material is frequently shifted by wind the surface is difficult to stabilize. Native plants establish themselves naturally on some of the smaller areas and on islands of less eroded soils that are included in some places. On larger and more open areas however artificial seeding or planting is needed to stabilize the shifting soil material and in a few places other practices are required. Scotch pine and jack pine can be planted if the sandy surface is partly protected by weeds, grasses or shrubs. Consult a Soil Conservation Service for assistance in selecting and applying practices needed in these specific areas". I know you have had three or four engineers on this did you have any registered certified Soil Scientist on this project as consultants? Did you? I am asking because these are tough_____. **Mansfield;** I am going to hand this over to Roger Malby because he is a

licensed insured Geo Technical Engineer. **Westphal**; Is he a registered Soil Scientist? **Mansfield**; I will let him answer that.

Roger Malby; I am not a registered Soil Scientist, I am a professional Engineer. The question is can you build in this areas. The surficial stuff that you are talking about should be stabilized after the fact in conjunction with soil erosion permitting. The part that I took a look at is the stability of the slopes. Can you build in these areas and are they safe to build in, and that has jurisdiction by the Michigan Building code. The Michigan Building Code dictates specifically where you can build on slopes and it talks about setbacks. You cannot build on those sites until you get other regulatory permits beyond what the Township would provide for. That is a building permit to build a house and you have to adhere to the Michigan Building code and soil erosion as well. In taking a look at those things our conclusion or opinion of the setbacks of these steep slopes most of the sites that we looked at are buildable. You have to take into account the stipulations that are in the building code, setbacks from the crest of those slopes. So that is the perspective of an Engineer not a Soil Scientist. **Westphal**; I cannot imagine that those codes would allow on 25-48 percent slopes significant residential building without modification of the land form. **Mansfield**; That is exactly what we are talking about in the restrictions that we have. Again, what your ordinance does not provide for in the Use by Right or in any farming practice is that I can't knock those slopes right down to nothing. Your ordinance does not protect those slopes under a by a Use by Right scenario and that is what you have to put this against. We are looking at using technologizes and foundations designs and bearing capacities that allows you to build on this. We are saying that we are going to preserve about 50% of the slope in its natural state. (Referencing visual board) – Does this provide for more protection of the character of the landscape than this one does. I will tell you that that does not provide for any type of protection of any part of that ridge. If you look at subdivisions that are platted around the area, and I have done several of them. By the time you meet Road Commission standards for design, Fire Department standards, sewer standards and water standards, Cherry Land Electrics bench, DTE's bench, we have properties that don't even resemble what they looked like not due to the intent of the developer but the rules that we have to live by. I can build this road to your restrictions and you cannot protect those trees through any of your codes. This is providing, volunteering protection of 50% of that slope. **Westphal**; But the other 50% of the trees, vegetation , wildlife habitat and yes, knoll and little ridges that provide habitat will be covered over exposed and as this soil survey suggest become very susceptible for additional soil erosion unless you very quickly get cover back onto that landscape. **Mansfield**; That is what this soil erosion permit requires. We will have to pull a soil erosion permit not only for this project but we will also have to pull a permit for every lot in this development independent. Every lot in this development will have its own site plan, its own grading plan, its own restoration plan and most likely its own surety. **Westphal**; What does it matter if you already scarified it and leveled it out so that all you're doing is setting a series of corner post on it to mark one lot from another. **Mansfield**; What we are dealing with is development, land development. This land was a farm and at one time other trees were taken off and scarified and it was an orchard then for years, for decades. Now it is going to be developed as a residential development. (Pointing to visual boards) – We have to decide if we are going to do it like this or like this. I will tell you that this is a lot more sensitive than that is exhibited and guaranteed by the clearing limits exhibited on this plan and the ownership limits exhibited on this plan. The Conservation Board is a

great community of people their books have been exhibits for farmers but frankly the building code does not recognize those exhibits. I am sorry that you feel they should. I will say that the person that did the slope stability study with Mr. Malby is extremely close to the Conservation District a former lead officer and took the context of that land in mind when he wrote his report. **Gordon Hayward;** Roger, could you give me an indication of what the slope is on what I am calling the lower slope in the middle and the upper but what's the slope on lots 2, 3 and 4 between the home sites? **Malby;** You mean along the lakeshore? **Hayward;** The top of the bluff down to them water. **Malby;** Those are steep slopes. **Hayward;** Any idea what that grade is? **Malby;** No, not without looking back. 30%. **Hayward;** So if I were to say from the toe to the top of the bluff somewhere around 50 feet? I would say it would be 60% slope if it were 30 feet high and 50 feet from the water on a horizontal line that would be a 60% slope. **Malby;** Right, but the building code addresses that. **Hayward;** My question is that but what is the slope on the upper bluffs? Let's call it the middle bluff. **Mansfield;** First of all your throwing out numbers that are incorrect so I need to stop you 2,3 and 4 are 15-20 feet above the total slope so when you talk about 30 to 60 feet you can count the contours of graph that is certified. You talk grade it's probably up to 30 verses vertical elevation is 15-20 percent. Slope verse distance. **Hayward;** from the ordinary high water line to the top of bluff on 2, 3 and 4 what is the height? **Mansfield;** Your asking a different question. From the water's edge there is a beach that rises up to about 10 feet and there is a distance of about 30 feet. Then it breaks there is a 15-20 foot ridge line along there. That is probably about 30 percent. Then it flattens out on top again our program does not get into that. Our building area is at 2-5 percent. Those are parking lot grade that is where our building area goes across this envelope of development. **Hayward;** Maybe someone else here could tell me what that is? What the height from the bluff to the water, to the ordinary high water. **Malby;** It varies up to maybe 25 feet as a maximum from the water to that first plateau. **Westphal;** On this site it is 29 on this lot 2 up to the bluff part. **Bickle;** I am actually going to take a sharp turn here for a second and I am going to ask our staff or our Legal Counsel, I may be misinformed so I am hoping that you can inform me. If I recall at one point when we had observed during prior presentations to the Township the A or B, B or A on the Use by Right high density map that Mr. Mansfield is showing us aren't there not some complexities or additional cost due to state requirements that would have to be met if they did B the Use by Right high density houses like roads to a certain standard. I guess the question in general is what are the greater complexities and greater regulations and or hurdles that would have to be gone through that could actually take plan B much longer than or more time than what is in front of us tonight? **Hayward;** I will take a stab at that. I believe what you are talking about was the plat that was submitted to the Planning Commission and ultimately withdrawn. It would have to comply with our subdivision control ordinance. So there are a lot of other standards that would come into play beyond just a flat because you would have deal with slopes, storm water, grading, erosion all the things that you have to deal with on this site. Just as a general statement they could not come in and ask for that and get approval in one night. It would have to comply with the subdivision control ordinance. **Bickle;** For the Plan B. **Hayward;** They are operating under the Condominium Act. There are three ways of developing property. Land Division which are limited numbers, Condominium Act or Sub-Division Control Act all of those have their own standards of review through the Planning Commission and Town Board. **Mansfield;** If you meet the standards you must approve it. That is governed by the State and you can't treat different conveyance methods or approval methods under Use by Right scenario differently than the Township process. Township can

control land use and not conveyance. So just remember that. The Township Engineer having this project for two years came to us in a letter I got yesterday at about 4 pm in the afternoon, questioning the ability of lots 2-4 to sustain the info-structure for a home, driveway, septic and wells. Those lots are serviced by septic and wells. Lots 2-4 are the lake access lots. The buildable area on those lots outside the setbacks is in a flat area, generally a flat area. The slope on that area is generally 2-5 percent again I will say that 2-5 percent is any parking lot that you have driven on. It is not very steep. They break down to the beach 20-25 percent anywhere from 20-30 feet. They are beautiful bayside lots. They are about a ½ an acre in size actually over 30,000 square feet an acre is 43,560 square feet about 3 quarter of an acre. You have had since 2015, the Engineer signed off on them individual lot diagrams for those lots. We have approval from the Health Department that we can facilitate septic fields on those lots. We have grading plans on those lots with many floors the letter from the Engineer states that there is not enough detail to determine if those lots can sustain that development. So we have a lot ½ acre wide, the Health Department signed off. We show a house, driveway and well in its appropriate isolation zone. There is not a whole lot more that goes into a permit for a house. I have delivered to the Planning Commission a composite drawing of a house, driveway septic field and well on the existing terrain with a finished floor. I could hand this in as soon as I have land use approval to County Construction Codes and get a Soil Erosion permit and I could go to the Health Department and get a well and septic permit with this. The question is does this meet the criteria? I will say yes it does and you are going to say that I don't believe you. Here is the truth and it is what interests me the most. This exhibit shows our property (visual board) this property down here is known as the Cove. It is a single family residential development, private roads, lots ½ acre in size or 100 feet wide. So they are smaller than our lots and generally the same slope pretty flat. Done by the Township Engineer and approved by the Township in 2012. It fits a house, driveway, septic field and well so the question can those lots sustain that development, yes by the Township Engineers own experience. I wish I would have had more time having this for years as I would have had the permits in hand for the septic field, house and the soil erosion permit. I could have gone in the day of this approval and actually got my land use permit. Lots 2-4 facilitate everything they need to sustain development just as the Cove has for 6 or 7 years.

Westphal; I think that part of the question is that we did not get a chance as the new Town Board to go in and be on the site until just recently and it was clear that some of the site that you have especially 2, 3 and 4 are so close to that steep slope embankment that goes down to the bay that there was concern over brining in heavy equipment to establish a foundation for those houses and then also to do the other work that was a part of grading on those particular sites would in fact enhance and possibly speed the sedimentation or sloping that would occur off of that steep slope embankment that is why the Engineer asked to see it the amount of distance between your foundation and that slope is relatively small. **Mansfield;** Roughly 30 feet. **Westphal;** Well if you would have provided a scale on your drawing then we would be able to establish that. **Mansfield;** Your Engineer has scaled drawings and has since 2015. **Westphal;** I am sorry but you just handed this out without a scale on it and you expect us to be able to read it. **Manigold;** As JoAnne has indicated we were allowed to walk the property a few weeks ago with our Engineer, it was quite an experience. Now you have heard from the applicant you have heard reference to the Fire Chief. We have hired another Fire Chief to review the road. We also have Dr. Harless in the audience tonight our expert witness for the Township. Could you please give your report?

Dr. James Harless; 4398 Blvd _____, MI; I was retained for my environmental expertise initially to evaluate if there could be an adverse effect on adjoining or neighboring properties from the breaking of activities that are going to occur on the property and to evaluate Section 8.1.3.3 (a) of the ordinance. My initial review was the historical area photographs that showed that indeed there were orchards on the site. Personal experience as well as research indicates that there is a high likelihood in orchards for residual pesticides, arsenic and lead chlorinated phosphorous is by far the most difficult. Ultimately the presence of arsenic at higher levels than you would expect in that ground were confirmed on the site. Arsenic is a regulated human carcinogen by the Occupational Safety and Health Administration. It is a known human carcinogen under International Agency of Research for Cancer, (IARC). It is compounds that will potentially give adverse effects to people that are exposed to it. Not everybody, regulated carcinogens like this will increase the risk of a negative medical condition for people. If you lived on this site a higher percentage of people are likely to be impacted. The interesting part about current regulations is that because this was a pesticide legally applied the Environmental Regulations of Michigan don't regulate it on an agricultural property. The same level of arsenic that we found which is above the levels that are safe for residential use by Michigan Department of Environmental Quality and a large number of Environmental Regulatory Agencies in other states around the country. Because it is on agricultural land it is not regulated from an exposure stand point. So you can have this level of arsenic on an adjoining piece of property that was used for industrial purposes or a dump and you could not do unlimited residential development of the property, because this happens to be agricultural land that doesn't apply. According to the law and the court's interpretation is that there is nothing that you can do about it. However, if the material is taken off the property and put some place else that would be regulated as a release. Once it got onto the other property now it can be regulated. The issues that we have here are there is a risk so if this material escapes the property it can certainly have adverse effects. One of the things that was brought up earlier, "Hey who cares because the adjoining properties were used for the same thing they are most likely similarly contaminated". That is like tell the people of Flint that you have lead in your water but a little bit more won't hurt. The reality is that even if those adjoining properties have similar contamination any erosion any dust from this property is going to add to the contaminate level. That is an adverse effect. If it was any place else you would incur more cost for cleanup. One of the things that were also said was that the contamination on site is 12 inches. That is true, but the samples that were collected were not any deeper than 12 inches. So we really do not know, in a number of the samples there was a higher concentration at 12 inches than 3-6 inches. In all the samples there was an elevated concentration in the shallow but it was also deeper and we found a lot of them, we don't know where it is. We can't regulate it on site but off site you have the issues some of these adjoining properties that have been redeveloped that are residences. There is no evidence that there is any impact at the surface. If erosion takes the soil from the site and puts it over there then you may very well be adding contamination at the surface where there isn't now. So adverse effect, yes there is a very strong potential for adverse effect. There is an easy solution keep the soil on the site. If it can't get off site then it is not going to have any adverse effect. How do you do that? That is for other experts to talk about that is not my area of expertise. The idea that arsenic particles are heavier than soil and that they are going to stay on site while the soil moves off site no that is not going to work chemically what happens is that the arsenic adheres on to the soil particles. It is spray applied whatever carrier a liquid water carrier evaporates and

leaves the arsenic behind and it leads onto the soil and it is going to go with the soil. It is not going to stay behind because it is heavier and denser. That density does not apply in this situation so it is not only important to have a good design with the soil erosion program soil erosion plan but it is going to be really important for a contaminated site like this to make sure that it is implemented well. The Soil Erosion Ordinance says, "That to ensure that soil erosion and sedimentation control facilities are properly designed constructed and maintained so as to provide water quality and protection and prevent the conveyance of sediment via wind and storm water runoff." Not minimize, not most of the time, prevent any movement of the soil from the site. I have a fair amount of experience visiting construction sites. Over the past 20 years I have been involved in redevelopment of contaminated sites in Michigan and in other states around the mid-west. My concern and it can be managed if it is done properly the reality of construction is most of these sites if not all of these sites have to have this permit. They have to have soil erosion controls. When you drive by a site like I did a few weeks ago a former prison in south-east Michigan there were dust clouds everywhere. I would bet that the soil erosion permit said that that kind of thing couldn't happen. I have been to many sites that I was consulting on where the silt fences had been knocked over, they were not effective and they had not been repaired. My recommendation to you is to make sure that their using really good detailed plan about how the dust is going to be controlled, track out is going to be controlled and how the storm water runoff is going to be controlled to maintain sediment on site. Just the track out stone pads that are commonly used may not be enough to keep the soil from tracking out off site. We had those on a site in Jackson that just so happened to be under the windows of the DEQ and I received calls about every three days that it wasn't working so they had to put a street sweeper out there and about every two hours they had to sweep the streets. There are ways to do this it is just a matter that the plan needs to be really detailed and needs to bring all these issues into account. On top of that it needs to be inspected to make sure that it happens. One of the things the Township may want to do is to have an independent party inspect that daily to make sure that work is proposed is what is really taking place. Are there any questions? **Wunch;** I just have a question about the 212 section. My understanding of the 212 section is that it exist for situations where agricultural chemicals were used legally but if it came to light that a farmer used led arsenic after it was banned would that change the regulatory status? **Dr. Harless;** The exemption states that it has to be legally applied according to manufacture specifications now that is the application if you had evidence at some point there was a spill on the site. Very often you will find higher concentrations were the chemicals were mixed on the site. The exemption does not apply to that but assuming that it was applied to the orchards and to the crops with manufactures specks then it applies. **Bickle;** Dr. Harless a couple of questions; This is from your October 20th findings under the site assessment you set up the premise that though the number of samplings performed were less than you recommended you made reference that this false negative. What is a false negative mean is it that you don't have enough samplings it was a unique term. **Dr. Harless;** What was conducted here was an environmental screening approach. The goal of this assessment was not so much to delineate where the impact was but it was a yes / no. Are there residual pesticide materials that are there and above the concentration that could potentially cause risk. If you went out and did three samples the reality is that you didn't do enough sampling so you would have a false negative determination. It was false that there was nothing there. You do your best to screen the site as soon as you do find impact it really doesn't matter how many samples you have answered the yes / no question. **Bickle;** In your

professional opinion do you feel that enough samples were taken too gathered to provide certainty in any false negative situation. **Dr. Harless;** The fact that they found elevated levels of arsenic is necessary and sufficient for deposits being affirmative determination. **Bickle;** Page 5 of your report you do mention in the first sentence that you agree with Mr. Malby's statement from Jan 16, 2017 letter if the soils can be managed and he makes certain reference to certain components to the agreement. You go on to say however, in my opinion the submitted plans do not demonstrate that they meet Mr. Malby's performance criteria or section 11.5 objective preventing the conveyance of sediment via wind and soil water runoff. Further this deficiency should be a concern with respect to Section 8.1.3.3 (k). Could you explain further? **Dr. Harless;** When I had written that letter it had an adequate description of the track out control. That particular sheet did not address the sedimentation control, silt fencing detail and also did not include anything about dust control. I have since seen sheet C 1.7 which has more detail on it but I don't think that there is enough detail for an expert in erosion control or the Township to really make a determination whether that would prevent the adverse effect. As I said earlier that is for Civil Engineers and people that are versed in designing these controls to determine what are going to be appropriate. An example would be wetting the soil, wet it down once a day if you are doing work in the summer and you have wind it will dry the soil out pretty quickly. There are other ways to wet soil and keep dust down you can use calcium chloride solutions. I don't know what is going to be best. If you use water then how many times a day will you have to put it on. You can do a performance evaluation if you see dust you do it. It depends on how fast you react. That is where that site monitoring comes in to make sure whatever is used is used appropriately. **Westphal;** Dr. Harless, would you say that one of the most effective ways of minimizing arsenic of getting off of the site would be to maintain a maximum plant cover on that site especially in terms of the ground cover. So minimize the footprint of the disrupted soil area for the building foundation. **Dr. Harless;** Obviously the smaller the area that you grade the less likely that you will have erosion but as soon as you start grading anywhere you will have this issue to deal with. It is independent from the area that you are doing. **Westphal;** If you are dealing with certain lots like 1-3. 2, 3 and 4 the ideal lakeshore lots which are relatively flat all though they do slope towards East Bay verse the lots that are up on the western ridge area which slopes the 25-48 percent and you level parts of that particular land form would you not want to get a ground cover on that as fast as you could as you did the leveling moving down the roadway opening each individual lots as you had to as a construction site. **Dr. Harless;** I am not an expert in how you manage these erosion obviously once you get ground cover on it then it will help with any erosion, but you still have to deal with as you are opening that up. I am sure that there are a number of techniques to help keep that soil stabilized and not going into the wind even if you seed it will take weeks before that seeding is effective enough to really control the soil. **Achorn;** I have a question on the emergency access road. Is it safe to assume the same arsenic and pesticides would be on that road way or would you require additional testing for that area? **Dr. Harless;** The developers representatives were saying that the orchards all around there are similarly contaminated. The access road goes almost completely through former areas that were orchards. So I would say yes that it is a reasonable assumption that area is similarly contaminated. Unless it is proven otherwise. **Achorn;** and the same protective measures would be needed in the construction of that road. **Dr. Harless;** Absolutely.

Manigold; introducing the next person to speak on behalf of the Township. Joe Asti

Joe ASTI Environmental, 10448 Citation Dr., Suite 100; We were charged with developing a soil management plan to address the adverse impact of soil erosion onto adjoining neighboring properties. In full disclosure we were brought into this about a week ago. I am not very clear of the site other than reviewing the plans that we have and some of the historical documentation. What we did with our soils management plan was to try apply best management practices produced by the DEQ as well as EPA and apply them to this site. To try to control arsenic contaminated soil from leaving the site and adversely impacting neighboring properties. **Bickle;** In your professional opinion the things that you proposed here would you say would satisfy any concerns that pertains to the drifting of the dirt and to silt fencing. How many recommendations do you have here? **Joe;** I believe that there are 12 points. I believe it is a total of 16 pages of additional requirements. A plan is generally as good as the paper it is written on. A lot of it comes down to implementation, inspection, documentation and record keeping. The final section in our program is for setting up monitoring and inspection developing that in order to satisfy some of the concerns that have been brought up here. Especially in respect to wind born dust carrying contaminated dust across properties as Dr. Harless said if you are working in hot weather you are going to need someone fulltime inspecting those areas. To make sure that you don't start to generate making dust. That they are getting the right treatments, frequency and that those are being documented so people can look back and certify that what was said was being done was what was actually done. **Bickle;** Are these considered to be the best practices in the United States that are out there and as they are implacable to this project? **Joe;** These are the best practices as produced by the Michigan Department of Environmental Quality or the EPA. Specifically we sent this out for review there was a question about silt fencing we looked at the DEQ's regulations for silt fencing and I understand that the EPA is more stringent. We included a reference to the EPA best management practice. It is included as an attachment in the plan. **Achorn;** most of us have not had a chance to review your plan because it was received so late but could you briefly outline the procedures that are in your plan? **Joe;** Some of the procedures that we have, I think that there are 12 different sections. The first is a development of a health and safety plan for not only protection of site personal but also for protection which extends off site to other people that are not going to be on the property. Dust control measures we give some recommendation measures as far as speed limitation site setting up and maintaining that dust protection program. Different suggestions on application of water or calcium chloride or other accepted methods as long as they don't pollute. A suggestion to have someone on site that can determine to capacity of omissions as they are being generated. We used other general recommendations for sweeping road ways if any dust is generated. Having a qualified trained person that is method 9D which is determination of opacity. Making sure that geo-tech fabrics and other materials are used to prevent the generation of dust during wind events and ceasing operations if there is a high wind event. Anything over 25 miles per hour. Environmental monitoring program, excavation monitoring, soil erosion handling and ground water handling storm water handling, track out soil, soil stabilization, more detail on access roads with specific specifications for those. Grading management and dealing with spoil piles or soil piles on the property and silt fencing management. **Manigold;** In your expertise we have discovered that there is a high level of led arsenic but is it manageable if we keep it on site? **Joe;** It is manageable as long as it is managed correctly. A robust program or plans to manage the control of that are suggested. Not only in this plan but also in the soil erosion and sedimentation control plan. That they are monitored and documented so people can refer to those to make sure it is being followed.

Managing soil per the ordinance. **Manigold**; it is a manageable problem but we don't want it to leave the site.

Brian Etzel; We have a SASC permit conditions that we have to comply with. What soil containment measures are you recommending that we do over and beyond requirements of our permit and virtue of the plans that we are required by virtue to follow that the Township Engineer already approved? **Joe**; One of the key items was perimeter monitoring. I don't recall seeing that in the plan. To ensure at the property boundary that there is no transfer of soil. **Brian**; so that is the only difference that you are aware of? **Joe**; No, also silt fence the silt fence tied into the EPA best practice requirements. We are trying to identify the best management practices. From the DEQ and EPA. What kinds of practices would try to prevent adverse impact on the neighboring properties? **Brian**; And you have never personally visited the site? **Joe**; I have not. **Brian**; We have a silt fence so how is your silt fence different from our silt fence? **Joe**; That is a good question I would have to go back and review the two. **Brian**; If we were going to till this property as some kind of orchard would any of the other measures that you are offering come into play? **Joe**; Our charge was to look at the ordinance and to prevent adverse effects and adverse impacts on the adjoining properties. That is what we were looking at we took that ordinance and reference and we tried to design a plan that would address that ordinance. **Brian**; About 5-6 months ago with similar intensity to our development called Vineyard Ridge there was also a phase 2 report to suggest that there were contaminants agricultural that were also used historically on that site do know any measures similar to what you are proposing that were in place for Vineyard Ridge? **Joe**; I have not reviewed those plans. **Wunsch**; I would like to address as to what I see being the difference between Vineyard Ridge and the 81 project. The slopes on the 81 development are much steeper than they were on Vineyard Ridge. Personally I have concerns about the possibility of erosion going into the east arm of East Bay and to the adjacent properties. So while Vineyard Ridge was another project approved by this Board there are substantial differences between the two of them. **Brian Etzel**; Did you have an Environmental Consultant for Vineyard Ridge? Did the Township hire an Environmental Consultant? **Wunsch**; No, we did not. The topography is a significant difference. **Westphal**; A major difference is the proximity to East Bay the 81 verses Vineyard Ridge. **Manigold**; We are not going to do the cross examination here. We need to have a Phase 1 and a Phase 2. **Brian Etzel**; That is fine. **Andy Smits**; Just one follow up question is it possible that there are conditions naturally occurring conditions of geography of the site the maintenance of the wood lot along bluff that would possibly give you due cause to consider whether or not further monitoring is not necessary. Not necessary to the degree that you have proposed. **Joe**; Once again not knowing the site we had to try to be as protective as possible of neighboring properties. We tried to figure out a way that we could demonstrate that impacts were not crossing property boundaries. That is where we came up with the idea of some kind of perimeter monitoring that would not only inform concerned citizens that there is not a problem but also the developer, the Township that would have something documented that there is not arsenic contaminated dust. It is possible seeing the site and if we have not understood the conditions correctly that there could be different conclusions that are made. Once again given the data that we had and trying to be as protective as possible to prevent an adverse impact on adjoining properties. That was the best suggestion that we could come up with.

Manigold; opens up for public comment

Mark Noldowski, 10 McKinley Rd., Traverse City, MI 49686; Speaking as President of Protect the Peninsula for those that don't know we have been around since about 1978. Our concern is in respect to the integrity of what goes on around the Peninsula. Concerned about the future of the Peninsula and its history and maintaining the quality of life. That we have come to expect on the Peninsula and in the Township that is unique to our Country. This is not meant to say anything negative about the developer. But I have some information here that might be interesting. There were pictures taken of Kevin O'Grady's personal house and his building on Bluff Rd., The pictures show what happens when you build on a site that should never have been built on. In order to build this house the site was excavated a 125 feet of vegetative hill bluff the hill has a steep slope to the water's edge. Somehow in 2014 he received at least 3 variances from the Zoning Board of Appeals. Which included cut backs into the hill on the waterside. I have a picture that was taken from the water this last August of his house and it shows the erosion that is taking place because of the three variances that were given to excavate into the side of the hill. As a result he has had to rebuild that hill with sand and retaining blocks. As the pictures show there has been continuous erosion of the slope towards East Grand Traverse Bay. As a result of that erosion a massive retaining wall has been built to hold back the erosion while using sand as a fill. I am not a civil engineer but common sense says that sand and the wall are not going to stand up over time. It may eventually jeopardize the foundation of the house. Why am I bringing this information up? Because the same thing only worse is going to happen if the project 81 development is built as the developer has planned. The development on Bluff Rd. and the hilltop call for the removal of trees on those bluffs and excavating approx. 20-25 feet of soil from the tops of those bluffs. All to put 28 home sites on those bluffs overlooking East Bay. I have a report here with the approval of Chris Grobbell who did this report back in July 2015 addressing this project and he has given me the approval to take experts from this report to read tonight. "The project was brought before review before the Peninsula Township Board on July 11, 2015". These are Chris Grobbell's comments not mine. application as provided the project should be denied. For the failure to comply with all of the requirements of the Peninsula Township Zoning Ordinance. Section 6.2.4 (r) 1 (a), Section 6.3.2 Coastal Residential District and now PUD R1A and R1B Districts as Special Land Uses. PUD objectives state objectives shall be considered in reviewing any application for a Special Land Use permit for Planned Unit Development. Documentation was read outlining the report that was written by Chris Grobbell. Do not let this happen the Township Board was elected and appointed to enforce the Master Plan as well as the Zoning Ordinance. The last administration did not exert their authority and protect our environment. We as citizens of Peninsula Township have confidence in you that you will exert your authority that was entrusted to you.

Amanda Yin, 3991 Boursaw Rd., Traverse City, MI 49686; Which makes my property the closest to this development. I just purchased it. I am a single mother with a school aged daughter I am also now taking care of my niece who is a medical sensitive young lady with a lot of difficult medical conditions that she is challenged with. I will just talk briefly and say that I hope you guys over there in your suits when you think about this led dust floating through the air with the arsenic in it that you are thinking about my daughter and my niece and them breathing in that and living next to that the whole time.

When you question whether special protect should be put up on this beautiful piece of land and you think about my kids. They are important and their health is important and this scares me to death. I am a single mom again taking care of my daughter and a medically sensitive niece that is staying with me. I don't have the money to move I was lucky to find this property next to my mom so she can help us out. I hope that you think about that when you go through this process.

Tim Boursaw, 12875 Bluff Rd., Traverse City, MI 49686; I just want to add a little clarification for everybody here. This is not the only agriculture in the center of this property. This last ridge was also farmed. Most of it up there anything up to the tree line where the slope starts in the flat ground up there to the west of that ridge was all farmed. Even the back slope to where the pine trees are to the west line early on was all corn plantations. I don't know if that changes things but you should be made aware that this western part was also all orchards and agricultural use when it was referred that this center piece and everything was going to flow into the center and that was the only thing to be concerned about because that is where the agriculture was but it was also all along the west line.

Christopher Grobell, 8288 E. Northwood Trail Lake Leelanau, MI; (Grobell Planning Associates). I have been an Environmental professional for more than 30 years having worked for the DEQ. Taught topic of environmental law policy as well as environmental impact assessment and environmental planning management at Michigan State for many years. I have been in private practice for several years. I have been the Planner of record for a number of communities in our region including Torch Lake and a number of others. First of all in the interest of time I will not repeat anything from any other reports a number of those issues are really not on the table anymore. I want to talk about what we do know the change since we were here just a few years ago. That is we have the results of soil sampling and as a lay person I would imagine it is a little dough ting trying to figure out what it all means. You have heard about the toxicity of arsenic. We have 27 of 32 sample locations at this property that exceed relevant DEQ criteria for human health and the environment. We have 62.5% that exceed direct contact. The direct contact numbers are based exposure pathways of white male's life time body burden or breathing dust over time it doesn't consider the most vulnerable. It doesn't consider kids that have a much faster respiration rate and are lower to the ground than most of us. We have to very importantly understand what the state regulations are and what your role is and how it all overlaps. The bottom line is that you have a key role to play to make sure that if this thing is approved or approved with conditions. We are going to have to make sure that it is done safely. The question about what happens when property is developed is essential the question of what happens during development is essential. I was the Planner of record for eleven years for Acme Township, I am not proud of it. I happened to be their Planner with the Village of Grand Traverse and Meijer development. We had massive losses of soil and four major plum events in the Acme creek. We had 400 year storm events during the time that they were trying to get their seeds established. All of which was under a Soil Erosion plan from the County. They couldn't get the grass to grow and we put every single best management practice plan known to man in place and it didn't work. Elmer's had 35 employees there within 24 hours of the first problem and they spent that \$80,000 in the first 6 hours. This went on for months. The State of Michigan stepped into enforces who refused to enforce their own soil erosion ordinance. So we need to be realistic when the Main____ project the wind blew all

the sediment top soil off that site and onto US 31 for two weeks. Do you remember? When the golf course went in. For two weeks they were trying to scrape it off the highway. Similarly the Leaneau Lawrence recently same thing off site transport sediment into wetlands all of which were under plans approved by the development agencies all of which promised the Townships that this would not happen. Very important to realize your role. The storm water runoff dust particular matter tracking is very serious concerns. You have been told a lot of information. Unfortunately the public has not had much of a chance here tonight. I do not know what our time frame is but you need to listen to the public about the realistic concerns. I agree with the Townships consultant that there are very significant issues with the adjoining property owners and a high level of impact off site. We have extraordinary steep slopes all through this area which are really challenging and they are planning the development in those areas. The nice broad areas are going to be left alone as open space. The developable part. The number one rule of good land use planning is to look at the site and preserve what needs to be preserved and you develop the stuff that is flat and easy. This is inverted and flip flopped completely ridiculous plan. They are developing the worse locations because they are the best for economic return. There are many things that can be done by way of best management practices. All of which are based upon implantation, monitoring and daily oversight. Problems will occur upsets will occur. The implacability of part 201 keeps coming up. What is the State's role here? There is an agricultural exemption under part 201 it was put in with amendments 20 years ago and it says: "If agricultural chemicals are applied in accordance with label instructions and mixed in accordance with label instructions then there may be an exemption." Now there are a lot of these properties out her in Old Mission, Leaneau, as the conservancies has purchased old orchards about 60% of the time the DEQ makes us do something about it. About 40% of the time it is a private transaction where it misses the DEQ. So I would want to make sure that there is a very clear communication between you all and them as to whether there is an exemption. Is there an exemption when this goes into residential use as there shouldn't be as that is not agriculture. Is there an exemption today that it is not in agriculture. Working on behalf of the City of Petoskey we had to excavate for their new trail which derailed the trail project because of lead and arsenic where the railroads used it as well as herbicide that was sprayed on the back of their cars. The fact that it exist does not mean that it is not important. It is extremely important. I would encourage you to get that definitive answer from the DEQ. You are going to have to make sure this development is safe during construction. We have had Monday and Tuesday 40-50 mile winds. I recorded over 7 inches of rain at my house on those days this week. That is two month worth of rain in 48 hours. The weather patterns are changing whether you agree with the big picture patterns or not. We get very strong high intensity events these days. I have only lived here 30 years but that has been my experience so far. Gave history of Acme Township and the issues that occurred with the Meijer store and the issues that occurred with the soil erosion.

Susan McMann, 4114 Trevor Rd., Traverse City, MI 49686; Our property is to the north of this property. Explained health issues with her husband and the chemicals that he was exposed to during his time in the service and . The pesticides will affect the people in the Community.

Missy Holch Kimable, 1566 Smokey Hollow Rd., Traverse City, MI 49686; Our property is adjacent to the projected 81 project. Our east line property adjoins 340 feet to the west line to the 81. Read letter of

concerns. Increase of traffic on the roads, equipment, removal of trees and cutting into the ridge line. Home and family will be directly impacted by this development by noise, dirt and pollutants. Numerous references with the Peninsula Township Master Plan with protection to the land and environment. Would request that the development be denied as the impact on the community. The property is perfect as is. Do not allow a developer to desimate the property.

Monnie Peters, 1425 Neahatawanta Rd., Traverse City, MI 49686; I am coming to point out something that has not been addressed about this property. If you look at it by the assessing database or the various plans there are piles of rock s all the way along the shore line. The bluffs by the houses on lots 2-4 what is going to be done with the plans on how to protect the bluffs from the shoreline. Keeping water runoff going into effective watercourses this is an important subject for you the Board to think about. DEQ is saying that the best way to preserve shorefront property is by planting trees and shrubs. Does not seem that they are planning deeply rooted trees and plants the shoreline is a whole other area that has not been discussed. Our ordinance states you cannot cut 30% of the shoreline trees and vegetations.

Terry Goodell, 10876 Bluff Rd., Traverse City, MI 49686; I would like to thank Mr. Mansfield. It was a great presentation. I have heard some slanderous statements regarding Mr. O'Grady. Everything he has said he has done.

Paula Kelley, 4375 Woodland Rd., Traverse City, MI 49686; We have spent a lot of time listening to professional people talk about soil erosion. 8.1.3 (k) – Grading and filling will not destroy the character of the surrounding properties. I would like to know where the certified Harborist is in this process what trees are being removed and in what time of year will be cutting down oaks which may or may not have oak wilt and if they do how will they be transported and contained. What about invasive speicies? Is that all that will be left or will there be traditional native trees left? Any development should have a certified Harborist throughout the whole process. Not all trees play well together.

John Fisher, 10493 Center Rd., Traverse City, MI 49686; I have lived on Center Rd. and traffic now is terrible. It is a matter of time before the road will be required to be widened. Center Road has a ton of traffic and this project will create more trucks and more traffic. It will not go down Center Road and not Bluff Rd.

Jim Komendera, 4168 Rocky Shore Trail, Traverse City, MI 4968; President of Preserve Old Mission - Soil level of containments were mentioned earlier. Concerns of weather events and what will happen. Gave report to the Board. The developer is fighting hard to getting this PUD approved as it will financially benefit him. All about someone making a profit but not at the cost of the environment.

Scott Howard, 420 E. Front St., Traverse City, MI 49685; Gave Township Board handouts. Outlined that they were Proposed Findings of Fact the developer has submitted their Findings of Fact. Went over three specific issues with reviewing the application. The ordinance states that the proposed development will not cause soil erosion or sedimentation problems. Outlined concerns with the soil

erosion and sedimentation issues that have occurred in other areas in the state comparing it with the development site.

Mark Noldowski, 10 McKinley Rd., Traverse City, MI 49686; If Mr. O'Grady want to be a hero and most respected person in the community maybe he would sell this property to the Township. A park would do wonders to the community.

Manigold; closed public Hearing and brought back to the Board for discussion.

Adjournment: Motion by: Wunsch to adjourn until the November 8, 2017 meeting / 2nd by Westphal.
10:42 pm

Pass unam

Town Board Special Meeting
December 12, 2017, 6pm
St. Joseph's Catholic Church
Minutes

1. **Call to Order** by Manigold
2. **Pledge**
3. **Roll Call** Present: Manigold, Westphal, Bickle, Achorn, Wunsch, Sanders. Also present: Greg Meihen, Township Attorney.; Gordon Hayward, Assistant to the Planning and Zoning Director; Brian VanDenBrand, Planning and Zoning Director, Joe Buetler of ASTI, Dr. Harless, and Jennifer Hodges of GFA
4. **Brief Citizen Comments-for items not on the agenda** None
5. **Approve Amended Agenda**
Motion to approve the agenda as presented by Wunsch, with a second by Westphal.
Passed Unam
6. **Conflict of Interest** None
7. **Business**
 - a. Closed session pursuant to MCL 15.268(h) to consider and discuss written attorney- client privileged communication and legal opinion, which is exempt from disclosure under MCL 15.243(g), relating to scope of issues for consideration on The 81 Development, LLC special land use application (SUP#123) following the remand order in Circuit Court Case No. 2015-31218-AA

Motion to go into closed session by Wunsch, with a second by Sanders. Roll call vote.
Passed Unam
(Closed Session)
8. **Citizen Comments** None.
9. **Board Comments** None.
10. **Adjournment** Motion to adjourn by Wunsch; seconded by Wahl. **Passed Unam**
Meeting adjourned: 6:47 pm

Town Board Meeting
December 12, 2017, 7:00pm
St. Joseph's Catholic Church
Regular Meeting Minutes

1. **Call to Order** by Manigold at 7 p.m.

2. **Pledge**

3. **Roll Call** Present: Manigold, Westphal, Bickle, Achorn, Wunsch, Sanders, Wahl.

Also present: Greg Meihn, Township Attorney; Gordon Hayward, Assistant to the Planning Director; Brian VanDenBrand, Planning Director; Joe Buetler of ASTI; Dr. Harless, Expert Witness; Jennifer Hodges, Engineer, with Gordie Fraser & Associates

4. **Brief Citizen Comments-for items not on the agenda** None

5. **Approve Amended Agenda**

Motion to approve the agenda by Sanders; seconded by Wunsch.

Passed Unam

6. **Conflict of Interest** None

7. **Business**

Supervisor Manigold closed Regular Meeting and Opened Public Hearing for 81. Township Attorney, Greg Meihn gave a brief presentation instructing the Board and the public that the only items which were remanded back to the Township by Judge Powers were to be addressed. He advised that the two dates to keep in mind for the Board are August 11, 2015, when the Township Board approved the application for the 81 Developments Special Use Permit (SUP) and January 15, 2016, when the Circuit Court, Judge Rodgers remanded issues back to the Township. He also stated that a lawsuit was filed by a citizen group against the approval of the 81's SUP. It is the specific remanded issues that are the reason for this public hearing. This is not the time or the place to review whether back in 2015, this entire project was properly approved. The limited scope of this hearing and the limited scope of the decisions that the board will make tonight has to do with the limited remanded sections. It was found that the board had improperly delegated several issues related to the emergency access road and the grading plans related to soil erosion and storm water management to the fire department and the township engineer, respectively for review and approval, and the Board did not independently determine that the proposed SUP met the ordinance requirements pertaining to those issues. That is issue number one on this remand that the board is required to make a decision on. Item number two, the board delegated approval of the grading plans to the township engineer in respect to the approval of the grading and storm water plans. In Footnote #46 of the court findings, statements of the Board were not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water had been met. The court remanded that issue back to the Board for further consideration. The court concluded as follows: "The issues delegated to the Peninsula Township Fire Department and the Township Engineer for review and approval including the location and functionality of the emergency access road and whether the standards for soil erosion, grading and storm water have been met are remanded to the Board for further proceedings consistent with the decision of the Board".

Supervisor Manigold: The applicant has asked to make a short statement to the Board, and then we will ask Dr. Harless, and Joe Buetler from ASTI to make a short presentation. We will then open the floor to public comments, and when that is concluded, the Board will begin deliberations on the issues which were remanded back to the Board by the Circuit Court for further discussion. Manigold requested that the audience refrain from clapping since this is a business meeting. He thanked the

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public for attending the meeting and reaffirmed that the audience would have the opportunity to speak.

Meihn: Once the public hearing is closed and other presentations have concluded, the Board will go into its deliberations. At that time, all communication between the Board and the public ends, and only communication between the Board and its advisors can take place.

David Rowe, Attorney for the Developer ; 202 East State St., Suite 100, Traverse City, MI 49686. He introduced himself as co-counsel for the 81 Developer. This is the continuing hearing for the issues remanded by Judge Rodgers. This is the fourth public hearing, and at each hearing there has been extensive public comments and deliberation by this Board. The Petitioner's team has been present at each of the hearings to answer the Boards questions. Prior to each of those hearings, the 81 has submitted proposed findings of facts with substantial information. As a result there is a substantial record of materials surrounding the remanded issues which support approval of the 81's application. The only additional supporting information that has been supplied to this Board is the comparative slope evaluation report which was prepared by Inland Seas Engineering. We simply ask the Board to make a decision based on the findings of facts based on our plans and based on information received from the professionals that have prepared and reviewed these plans. There has been a lot of misinformation about his project and the remanded issues. Our team is here to point the Board to the facts and information that is in the extensive records. Hopefully we can eliminate once and for all, any confusion surrounding this development. The Township has hired no less than four outside consultants which have reviewed 81's application with respect to the remanded issues at a significant cost to the 81. All of these costs have been passed on to the applicant. This has never been done before. The Township will have conducted four full hearings on the remanded issues over the course of two years since Judge Rodgers upheld the prior Board's approval. I speak on behalf of our entire team, including Doug Mansfield who has 25 years of presenting applications like this including Peninsula Township. The amount of scrutiny given to these remanded issues has been extraordinary. No one in this room can appreciate the financial and emotional burden that this has placed on Mr. O'Grady and his family. He has waited over 853 days since Judge Rodger's upheld the prior Boards approval of their SUP/PUD. We are asking for the Board to make a decision today to approve the project, deny the project, or approve it with conditions. It is time to put this issue to an end.

Andy Schmidts, Geological Engineer with Inland Seas Engineering GEI Consultants. What you have in the public record from the applicant is a very short comparative evaluation between slopes of the 81 and slopes elsewhere in the area of the Township. These are public records in one location for you to review and provide some context to the concern that was expressed in regard the remanded issues pertaining to the steep slopes. The report shows that the deposits in this area are regional in nature and are generally uniform and are mapped over broad areas and are shown on the map. These are highlighted on the prior slope evaluation report done by Mawby PC. My work does nothing but review previous public records. The development of the 81 as proposed does a better job at protecting these steep slopes than other developments do nearby. Glacier deposits gave rise to the soils in this area; soils evolved from the glacier deposits through weather and climate changes and through plant growth. These deposits are called till which are hard as a brick. This sample is 11 feet down and taken with a geotechnical drilling grid within 2 miles of the 81. It is a material that is in a vast amount throughout the Peninsula. This is what gives us steep stable slopes. The developments that are shown in the exhibits show how home sites have been built in this material on the face of the slopes. The development proposal for the 81 respects those slopes and the natural areas by setting

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development back away from the crest of the slope. I think the concerns in regards to the steep slopes have been addressed by the developer, and the plans present a superior development style than those that have already been approved by the Township.

Doug Mansfield, President, Mansfield Land Use Consultants, 830 Cottage View Dr. Suite 201, Traverse City, MI 49686; I am here to address one of the conditions that we saw in the draft that came out Monday from the Township. The draft condition had to do with two of the fire gates that are at each end. One at the fire access roads is to the northwest corner of the site and then the other would be located at the southern entrance of the site. This fire access road has been established at the site for the years that this has been approved. We have had the two Fire Chief's from the Township review it, and a current acting Fire Chief review this as a consultant for the Township. We talk about fire gates which are allowed but not required in the NFPA Ordinance on the same road. Gates have never been required by any of the consultants or the Fire Marshal. I want you to picture having these two fire gates in place one at Smokey Hollow Road and the other on Bourse Road. The NFPA requires that the Fire Department respond in 6 to 9 minutes which is hardly achievable. Your ISO insurance ratings are based on this. Mansfield continues to give a descriptive outline of the difficulties involved responding for a fire call and the challenges that would occur if the gates were mandated to be placed on both road ends of the site. The engagement time to unlock two separate gates for emergency services is critical whether this be for a fire or first responder; these gates are not recommended by the Fire Marshal or any Fire Consultant personal. Gates impede time limits for emergency personal to respond to any type of call. Time is wasted opening gates that are not required or requested. It is now in a finding of conditions of this Town Board so I implore you to look at these gates. The only reason it was even discussed is because it became a nuisance to protect the Wells family. This road is posted with no trespassing, authorized vehicles only and no parking signs. It is a Federal Offense to break those laws. On the occasion that someone drives down there, it would be the Wells family that gave the easement to the 81 development. I know that this is a condition to the draft set of findings that I had and I don't know an emergency firefighter, ambulance or EMS that would say that they want impediments in the way of them getting to an emergency.

In comments provided from your council to our council were concerns of development and grading of lots 6-10 of the site. We have prepared individual lot grading plans for each site which is uncommon to a developer. Those were given the Township and passed along to the Township Engineer who reviewed all of them and then had some minor concerns which were addressed and then incorporated into the final plans. There still seems to be some questions with those lots so I am here to answer those questions. Mansfield presented exhibits of these lots blown up individually to show the grading of each separate lot. Mansfield goes into detail with an explanation of each lot and the grading to be conducted on each lot. The road will be built upon the existing farm trail as the base to the road that will support this development. The back slope will not be touched. Limits of extent of grading on the proposed lot measurements are taken from the top of the ridge 42'-67' away from the ordinary high water mark. The mandated set back from the wetland areas is 25'. These slopes will be a mow able slope with 4 inches of top soil and seed. There is a 1 foot in rise for every 3 feet of distance. (1 out of three is a practical slope). Lots 6-10 will be served by a community sewer system. We have shown with these cross sections that have been a part of the record for a year and a half that have also been approved by the Township Engineer as being acceptable so that with ease and practical development methods we can build on these lots. That was my understanding of the concerns that were brought forth from this counsel.

Manigold introduced Township Planner Brian VanDenBrand, Assistant Planner Gordon Hayward, Township Attorney Greg Meihn, Dr. James Harless, and Joe Buhler of ASTI, and Jennifer Hodges,

Dr. James Harless, of S&E. I was retained by the Township to take a look at the site and evaluate the potential for adverse effects. This was requested because of the history of the property which was that it was used for orchards. It is well known in the environmental business that property that was previously used for orchards is often contaminated with residuals of the pesticides that were used. It is not uncommon to find arsenic, lead and potentially mercury. There had not been any assessment done on the property at the time. The consultant for the developer had appropriately recommended to them initially, that the property was not subject to part 201, based on a MDEQ recommendation, because it was to be retained in agriculture. [Editor's note: there is a portion of the statute that exempts agricultural property from clean-up requirements if herbicide and pesticide products were appropriately applied; under those conditions, the contaminants would not be considered a "release"]. MDEQ has interrupted that part of the state law by establishing an exemption to part 201, which is the part of the Michigan statute that regulates contamination which in essence states that you have to clean it up or you don't. The developer did do an assessment of the property and did confirm that arsenic is present on the site. It was found that the levels would exceed standards for people coming into contact with the soil while working and living on the site. With that being said, with this project the levels of contamination cannot be regulated or controlled unless the contaminated soil leaves the property and is deposited on any of the neighboring properties or sites. It is interesting that we are not as concerned with exposure of people on-site or the dust being generated from this project, it is the material that could come off site that will track out on vehicles and be discharged as dust generated from construction activities or that may run off the site during storm water discharge and become deposited on the adjoining properties. We don't have regulatory control but the risk to adjoining properties can be mitigated if the material remains on site. The challenge is to come up with performance criteria that states, as a condition of doing work, they would keep the contaminated soil on-site. The second challenge is determining how you do this and that would be a soil management plan that is put in place, prior to any excavating occurring. A plan was put together by ASTI that calls for the use of the best management practices to keep that material on the site. This will never occur at 100% because it is not technically feasible. Best management practices can help to keep this to a minimal in terms of erosion and discharge with air borne products and storm water runoff, but they can never prevent 100% of the material from going off-site.

Joe Buetler, ASTI (expert witness for the Township) 10448 Citation Dr., Brighton, MI. ASTI was tasked with developing a soil management plan based upon section 8.1.3.3(k) of the Peninsula Township Ordinance. This part of the ordinance specifies that grading and filling will not adversely affect the adjacent or neighboring properties. ASTI reviewed prior documentation that identified arsenic on the property due to historic orchard operations. We reviewed development plans, soil erosion sedimentation control plans, and we walked the property with the developer. ASTI understands that the primary transport mechanisms during grading and filling operations are storm water erosion, wind borne dust, and equipment egress or ingress specifically at the access roads. ASTI has provided additional detail that goes above and beyond what is outlined in the soil erosion and sedimentation control plan with respect to the following: health and safety, dust control, river monitoring, excavation soil handling, dewatering of soil, storm water handling, soil track out, and soil stabilization, access roads, grading, soil piles, and silt fencing. Additionally we recommend that a third party inspector or designated enforcing agent be retained by the Township to monitor compliance with soil management plan as well as the soil erosion and sedimentation plan. ASTI believes that the soil management plan is a reasonable approach and that by following this plan the developer would be in compliance with section 8.1.3.3 (k). **Bickle;** the report that is before us looks

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like there were 12 individual documents that your company reviewed. These documents set up baseline information and established basic premises; they also provided best management practices which are in sections 4.0 through 5.0, and 6.0. Those recommendations are the results of the best case practices and your discoveries that were in those documents. **Buetler**; that is correct. **Bickle**; you make reference in your findings on page 8 about 20% opacity, what does that mean? **Buetler**; It means that if you are looking through clear air, it is not opaque but rather transparent. 20% opacity means that it is 20% opaque. There is a method referenced in the report that explains the measurement.

Manigold; All of the reports that we are referencing are available on our website and open for public audience comments.

Scott Howard; I agreed that this project has been a long road. This project is a big deal for the community. You all have taken this seriously. I represent residents and neighbors of Old Mission. We initially filed the lawsuit regarding this case. It was mentioned earlier that Judge Rodger's stated that the appeal was properly granted. The Judge ruled that the SUP was properly ruled and granted. I just want it to be clear that was not the case. The Judge said that certain findings were supported on the record, but certain findings were not. Certain findings were improperly delegated to Township staff to make findings. The Judge stated that these statements are not legally sufficient findings to support a conclusion for standards of soil erosion, grading and storm water have been met. We do not have a properly approved permit as of yet. That is part of your roll in this process. The Judge remanded for those specific considerations. The scope of the remand is soil erosion sedimentation, storm water and grading. Just to be clear, there is not a permit at this point.

I would like to touch on contaminated soils. I think it is important to understand that these soils are a focus of this discussion in my opinion for two reasons: what happens to those soils if they go off site, and how are we going to protect the future residents of this property from these contaminated soils? We don't want them to go off site but we also need to make sure that kids that are playing on this property or in the open spaces are not playing in contaminated soils. How are we going to do that? What is the plan to do that? I have not seen anything in the plans from the developer that indicates what they are going to do to protect the future residents of the property. I think that this is a critical component of your review. Again, 8.3.1 3 (h) states: That soil conditions are suitable for excavation and site preparation. Soils that are not suitable for development will be undisturbed or modified in an acceptable manner. So what are we doing with these soils even if we keep them onsite? The other important thing I would like to talk about is soil erosion. You have a magnificent geological feature on this site. It is a steep bluff that goes down to the water's edge. One of the bluffs is a little smaller than the other. I would like to focus on a document that is new to your packet, and I think substantial attention is required. It is entitled "Living on the Coast" (packet addition "E"). That document is crucial for your consideration of this project. We also looked at the slope stability report that was provided by the developer. This report is states: "Significant earth work is planned to achieve proposed grades including approximately a 30 foot cut along the ridge line of the upper bluff. The ridge will be leveled to achieve a desired view". That is what the slope stability report says. The Army Corps of Engineers document tells you to "Avoid removal of portions of sand dunes to improve the view of the lake or allow access to the water's edge. Such actions to remove the natural protections from wind and storms..." p 23. The Army Corps is telling you to do the exact opposite of what the developer is proposing to do. We have the sorts of conditions that are affected by erosion. The site has heavy clay material overlain with sandy material; the heavy material stays in place while the sandy material filters down or slides across it, filtering through voids in the soil

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structure. This leads to soil erosion and slope in-stability. Do we have those situations here? Absolutely, you can look at the developers own report. Mawby's report stated that there was a "slope safety factor"; this rating how likely the slope is going to erode. It rates the soils at about one. The Army Corps on page 12 of their document states that once the balance of forces in the safety factor is reduced to less than "one", slope failure is likely to occur. Again the question is do we have a potential problem here? The answer is absolutely we do. We have soil erosion officers in the County, and we rely on them. Here is what the Army Corps states regarding that; "Ordinances restricting how close buildings can be placed on the lake fronts edge, bluff or bank cannot be assumed to be sufficient to protect long term coastal investments. They further state "Governments incentive to avoid litigation has to be stronger than incentives to provide safe distances between buildings and the dynamic boundaries of the Great Lakes." The slope stability report states that we will take the top off the bluff and that will increase the slope stability because then there will be less weight on the bluff. Frankly that is an unsophisticated view of slope stability according to the Army Corps. If you look at page 22, another critical statement is "protections of a slope face typically involve vegetation controlling surface water runoff. Root able plants enhance the surface of a bluff that is already stable against deep slopes." This plan calls specifically for the removal of at least half of the vegetation on the property. Half of the trees will be gone; these trees are the ones along the bluff that block the view which will cause further instability. The "view" is what drives these types of projects and that can be summed up as "economic gain". The Army Corps address this on page 34. Here they explain the long term aspects of what is important, not the short term. If you do not take into consideration the long term hazards of erosion, it could have devastating consequences. I think this is a critical piece of information for this Board to take into consideration. What I would ask of the Township is for you to have your Attorney go back and provide you with both alternatives. What does an approval look like and what does a denial look like. The standard with which the Court reviews these types of approvals says: Is there competent material of substantial evidence on the record to support your decision. Would there be competent material on this decision to support a denial? Absolutely, take a look at the developers own report on slope stability. What is the analogy out there? Take a look at the Arcadia Golf Course; this project resulted in substantial soil erosion. Lastly I will state that we did provide the Board with some Findings of Fact. I would be happy to read these into the record. I think that you can make a decision tonight. However I believe the only decision that the records support is one denying this project. We can do better and the community can do better. You are the stewards that are here to protect the best interest of the community.

Greg Meihn; Overstated or understated, the Judge had ruled in terms of what the Board had lawfully and properly delegated; its discretion today lies with the remand issues that were stated.

Penelope Rosi, 2711 Old Mission Rd., Traverse City, MI 49686; I just spoke to Mr. Schmidts regarding a question that I had regarding his presentation, and I wanted to be clear. One of my concerns is with regard to this slope (referring to west bluff on the visual board), and how it will be maintained. What Mr. Schmidts said is that the soils in the area have a certain compound called "till". This characteristic helps to hold moisture so that there won't be a slump. He stated that he was looking at the other slope (easterly). I am concerned about the west slope. I know that the soil holds moisture but when you eliminate the trees for viewing on the upper area, the question is how this will affect the slopes on the west portion.

I also cannot understand why we have an additional access off of Smokey Hollow. Originally we talked about going off to the north, and then it was discouraged. Also if you live in lot #1 or lot #41, you will have lots of traffic that you are dealing with. Every house generates at least 10 trips per day,

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so there will be a lot of cars traveling by your home each day.

Mansfield; The NAPA Fire code requires that you have a distance between your two fire roads that is half the diagonal distance of the property. In this case, it is 2900 feet from corner to corner. We have to have 1450 feet separation between entrances.

Jim Komendera, 4168 Rocky Shore Trail, Traverse City, MI 49686; President of the non-profit to Preserve Old Mission. I do not think that we can give the Board any more information on this, and I admire that you have poured over this. We have many reports, expert testimony, findings and many people have stated that this is not a good project as proposed. As the Township Attorney has pointed out the number one ruling of the Judge was that soil erosion did not meet the ordinance requirements. It is your duty to go back and make sure that they meet it. If you look at the ordinance, this project goes against what the ordinance and what the master plan is for the Peninsula. Section 8: "All natural resources should be preserved to the maximum feasible extent"; this project is a joke when you look at our ordinance language. All the environmentally sensitive areas are the areas being developed and cut into, while all the buildable areas are not. I know that you have had meetings with your Township Attorney, and the Attorney that I am referring to is employed and represents the insurance company. I am sure he has given you wise advice but he still is the Township Attorney for an insurance company, and I think if I were an insurance company I would want to minimize the chance of a lawsuit. Whether intentionally or unintentionally, it may have influenced any advice that was given. I am asking you as Board Members that you do the right thing and not be bullied by the threat of a lawsuit that may lurk out there if you do not approve this thing. You know that you are overwhelmingly supported by the residents of the Township in opposing this.

Ann Rogers, 1236 Peninsula Drive, Traverse City, MI 49686; I am here representing Northern Michigan Environmental Action Council (NMEAC). We are a volunteer organization. We have been involved for the past 38 years with all things environmental in this northwest corner of the state. Several of us walked the property earlier when Mr. Komendera called and asked for us to help. The property is beautiful with the slopes and the forest area along the bluffs. You had a person from our Board at your last meeting and because public comment did not happen, the letter that we sent out did not get read into the record. I would like it be read into the record to reflect NMEAC's position.

David (no last name), 9988 Riley Road, Interlochen, MI; Doug Mansfield discussed firefighting ability and the access road. There are NFPS and ISO guidelines that you can cite that state how much water you must have. This is a rural fire department, you don't fight fires with only a 30,000 gallon tank. It is not be sufficient for a real fire. It is important that you are voting on numbers that are supported by standards, and not just what the Fire Chief thinks. The next couple of weeks the best roads will be challenging to get down. We do not want to condemn these houses due to the location of this project. In 5 years or 10 years down the road when issues come up, you do not want to address these same issues. You have minimum requirements to meet here. We have learned from mistakes. Today, we have fire hydrants and trucks that do come into play reflecting the sites we are trying to protect.

Monnie Peters, 1425 Neahtawanta Rd., Traverse City, MI 49686; I spoke before specifically about the shoreline concerns. I found that these reports, particularly when considering storm water runoff, were not well covered originally or even now. It is interesting that the wonderful one from ASTI did not show up until 9:30 this morning. I spent a couple of hours going through that most excellent report. I noticed that not every exhibit that was lettered was on the website. Of course

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additional correspondence came in throughout the day as I kept looking at the website. This has been a common problem. I think that the report from ASTI regarding the soil stabilization and grading was good. If you were to approve this project, it talks about the grading and different phases. One of the things that has not been emphasized enough is the recommendation from the Army Corps of Engineers regarding the role of plants and shrubs in stabilizing a shoreline. Doug Mansfield was disingenuous when he talked about setbacks for all houses being 50 feet or 70 feet from ordinary high water in the plans. It has been in our ordinance that you may not build a house within the 60 foot set back from ordinary high water mark. I think that Scott Howard and the booklet "Living on the Coast" from the Army Corps of Engineers, goes into detail about why that is. The point being, the further away that you get from the edge, the safer it will be. I think you need to look at on-site monitoring daily if you were to approve this project. Getting into the specific findings of fact: it either has or has not been approved. You need to look at 8.1.3.3 5 page 6 in our ordinances; there are bullet points defining the stabilization of soil. The stabilization needs to begin as soon as the trees come down. Soils need to be protected within a couple of days afterward; these are things that need to be addressed as you review the findings of fact. Care should be taken in the wetlands and the water bodies. Of course we need to stay away from the wetlands. I think the cutting of trees along the bluff is more severe than even staying away from the wetlands. The plans need to be designed well enough to avoid the issues that Acme had by considering whether our standards are good enough for 200 year storm events. I am not confident enough to state that they are. (See Letter from NMEAC in Packet Correspondence).

Kathy _?___, 11126 Bluff Rd.(Editor's Note: This address does not exist in our Assessor's records, so name could not be verified), **Traverse City, MI 49686**; I think that one issue that needs to be addressed is public safety. I live on Bluff Road, which is a recreational road. There are a ton of bikers that use this road. I feel that safety is a really big issue especially with this proposed development because it would increase the flow of traffic, especially with big trucks. This would put the recreational use at risk. I also work in the health care profession, and I do have additional concerns with the water runoff and health risks associated with soil erosion. How can the erosion and the containments on that property be controlled? Looking years down the road, do we know what risk this poses to the residents that live out here?

Shelly Drew??(Editor's note: Rachel Ellison owns property at this address in address; could not verify if this person was a renter). **3823 Smokey Hollow Dr., Traverse City, MI 49686**; I am a Board member for Preserve Old Mission. As a mother, I am concerned about the environmental impact of this project on my child's health. I come to you today for practical reasons with a practical concern, "how I protect my child"? Do I tell my child not to play in the lake or go outside? Even the experts say that you cannot contain the contamination, so what do I tell my child? How do I protect my child and what recourse do I have?

Mark Nodowski, President of Protect the Peninsula; This project has been going on since 2014; any project going on that long has to be a problem. Otherwise it would have gone through. We know the issues that were brought before the former Town Board. For all the reasons that have been brought up earlier, and those being presented today, especially by Scott Howard, all these reasons are all good reasons for denying this project. This is not a good project for the Peninsula; it is not who we are. People move out here to get away from these types of projects. It is too bad that these ideas were brought to this Township. The environmental issues that we deal with out here on the Peninsula on a daily basis are prime consideration for your decision. We have lived with the decisions that you make out here, and 90% of those issues deal with the environment, soil, traffic, and pollution. If you

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do the right thing, you will have the support of the residents here on the Peninsula.

Liz Hauge, 13505 Bluff Rd., Traverse City, MI 49686; I live in the Cove and this is the road that I live on. I am one of those people that just moved into the area from downstate; I lived in one of those subdivisions downstate. I wanted to get away from the traffic and was elated to find a piece of property that was surrounded by nature and beautiful East Bay. I look at this proposed site every day when walking my dogs; it is gorgeous. I also have two children that are 7 and 4, and I am concerned with the arsenic levels, mercury and lead on this site. I know that I live on a property that was also an orchard at one time, but I am concerned that there will be more arsenic, mercury and lead in the air and water that my children will be exposed to. When I purchased this property, I did not know that this could happen, or that that they could potentially be exposed to it. Like the Drew family, my children also swim just a few hundred feet away from this development. So what do I tell my children? Do I say that they can't swim because they are excavating this land, or that it's been raining a lot and contaminated soil is going to fall into East Bay? I am concerned as to what they are going to be exposed to.

Wendell Woodard, 17768 Smokey Hollow Rd., Traverse City, MI 49686; I do not know how many of you are aware that cutting down oak has a specific season or window in which it has to be done without running the major risk of oak wilt. If this project goes ahead without a stringent plan on cutting the oak, we can say good bye to a lot of oak on this side of the peninsula. It would not just affect this property but potentially many more properties.

Manigold, If you read the newsletter, we are going through this issue at Pelizzari Park right now, where the Park Commission is removing diseased oak in order to save the healthy ones.

Marilynn Elliot, 1811 Whispering Trail, Traverse City, MI 49686; As a Board, you have three choices with this project: denial, approval or approval with conditions. I do not know how to manage any conditions that you might place on this project if you approve it with conditions, nor do I have a sense of who will practically enforcement those conditions. All conditions are going to be difficult and very expensive to accomplish. There needs to be a coordination of efforts in stabilization of soils and slopes, with all these different agencies, and who pays for that? I am sure that there is an answer, and I hope you have that answer before you approve this project. Here is an example of the complexity of the issues. We have three phases of construction plans, but part of the first phase is to remove the trees from all of the phases. The previous gentleman stated that you don't just go cut trees because some can't be cut in certain times of the year. Already one sees that soil erosion is not the only issue. Furthermore, I do not think it would be physically possible to stabilize the site if all tree cutting occurs in phase one. I don't know if it is possible under our code to state that you cannot take all the trees off of the property because of the need for slope stabilization. I live on the shore line and stabilization is a very serious matter. Removing one rock out of the water or one shrub off of the shore or one tree from a bluff, creates real consequences for this type of behavior. For those of us that live along the shore, we know that makes a tremendous impact not just on us but also on the adjacent properties. To take all of the trees off of this property, does not make sense, and could seriously affect the value of the property.

Ted Schweitzer, 11328 Center Rd., Traverse City, MI 49686; I would like to know what plan B would be if this project gets developed but it is not successful due to economic change or it does not appeal to the buyers. Around 50% or more of the buyers do not want to go past Gray Rd., and the other 50% are retired and do not want to live in a subdivision. We do not have any subdivisions this

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far north so I would like to know what the plan would be after the trees get removed, and it has been developed but is not successful. I do not know if there is an answer but it may be nice to at least have an option for knowing what could be a long range effect of that.

Jill Byron, 2249 Twin Eagles Dr., Traverse City, MI 49686; I really do not think that this is the kind of subdivision that is common to the types of subdivisions that we have in this community. When we have had communities that are heavily wooded with steep slopes and a lot of shore line, we have worked with those properties to enhance the beauty and the value of the subdivisions. What this subdivision does is look like something that came from Oakland County. It has a cookie cutter layout, with a bunch of individual lots and desecrated trees. When former Town Board Trustee, Penny Rosi asked how many trees were going to be removed, she was totally blocked from any kind of answer from Attorney Quant at the time. I think that you have a significant responsibility today as the new Town Board, since our Board did not this plan to come back with a bonafide plan of action. If you allow this project to go forward, then you must specify what they can and cannot do, and then enforce it. The only way that you can protect this property is to be very detailed about what it that is this builder can develop since he and the land use planner have had several unsuccessful land use projects in this community..

Bernie Soutar, Bluff Rd., Traverse City, MI 49686; I am a Geographer. This site encompasses a drumlin field. Drumlins are unique geographic formations that with glaciation. When I heard about a till plain from Mr. Andy Smits, I thought that was very interesting. I know where till plains are, and we do not really have any till plains here. Till plains at the toe of a glacier, when a glacier retreats. It is a flat out washed surface. They are usually undifferentiated. You also have undifferentiated areas in these drumlins; some have rock in some places and other places do not within a drumlin. It would be hard to predict where rocks are going to be. Though I suspect that there are not huge boulders in these drumlins, since as they are usually left behind as the glacier retreats creating kettle lakes. If you take the tops of the ridges off (which are really the spine of the drumlin), what you will have left is undifferentiated material. You will have no soil left if you take off the tops of those ridge lines, and you will have no trees left. We already do not allow 30 foot of 100 feet of the shoreline to be revegetated. Taking the stumps will worsen the problem. Protecting the trees and their roots is the only way to protect the soil on the shoreline.

Susie Shipman, 14735 Shipman Rd., Traverse City, MI 49686; I do not want to repeat a lot of what has already been said but I would like to state that I support what has been said by others. In particular I would like to support Monnie's comments regarding the standards 8.1.3.3 (j,k) I feel that the material I see in the packet allows you to reject those standards and I would encourage you to do so. I do not think that this project is right for Peninsula Township.

Kevin Tasche, 13755 Bluff Rd., Traverse City, MI 49686; I would like to go back to what Ted stated as far as living that far out on the Peninsula. My family has been on the Cove since 1954. We have seen slow development; The Cove was vacant for the 20 years with only two homes on it. What happens if this project is not finished to completion? Look at Kelley Park out by Haserot Beach. That site was going to be developed for 15 homes; the owners even put up gazebos and fencing for marketing purposes. It finally was sold to the state for a boat launch. My question goes back to how far out do people really want to live, and who is going to do this within the time frame proposed especially if it sits vacant for 10 to 15 years. Another point is addresses how much erosion already has happened on its own? The lake levels are as high as I have seen them since 1984 -1986, and they may keep getting higher. With north and south winds, erosion is happening on its own. If you dig

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into that shoreline and remove trees, roots, and plants, this is going to accelerate the forces of Mother Nature moving it on her own. Anyone living on the Peninsula today has seen the issues with beach frontage occurring at the moment.

Manigold closed public hearing portion of the meeting and informed the audience that the remaining time of the meeting would be for the Township Board discussion.

Greg Meihn; Gave an overview of the findings of fact that were given to the Board Members from Attorney, Tim Wilhelm and a context for the documents that were presented to the Board. He proceeded through the document, page by page, giving the Board a description of each page and its contents. The report contains sections that the Board was required to address in the remand. Page 2 of the document contains Section 8.1.3 (1)(3): "Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools". He noted sub-paragraph I-6 that outlines the findings of fact that establishes whether this standard has been met. He directed Supervisor Manigold to make sure that the Board has reviewed the standard and that I-6 has a factual basis on which to support the decision and to ask any questions. At the end of the discussion, a motion will need to be made whether the standard has been met or not met.

Manigold, Have we all have been presented with this information and have read it correctly?

Board; Yes.

Manigold, Any questions on the document I-6

Westphal; I have a question about the storm water retention that is provided in (I). One of the requirements for the project deals with the nature of the soils that are present on the site. It appears that the land consultant is generally ignoring warnings of ground water contamination due to the high sand content of the soils series that are out on-site. I point specifically to the areas where they have placed the retention ponds and the septic fields. In my review of the documents, I feel that the storm water basin lacks a liner and the septic fields may pass effluent through too quickly which would contaminate ground water. I find this a real significant omission in the report which was provided by our Engineer when reviewing the Mansfield document. **Meihn;** Mr. Supervisor do any of the other Board members have any other concerns or questions or objections to I-6?

Achorn; I have a question (I) with respect to the drainage patterns. I was looking particularly at lots 2-6 the arrows are all going towards the water. I do not see any precautions for those areas close to the shore line to prevent storm water from going into the water which could potentially carry contaminants and perhaps even cause soil erosion.

Meihn; Mr. Supervisor I would ask if any of the other Board Members have any other objections to items I-6?

Board; No

Meihn; At this point I would ask that a motion to be made as to whether or not this standard has been met.

Manigold; I would ask for a motion that this standard has been met.

Bickle; Is that a simple "so moved" and "second"?

Meihn; Yes

Bickle; So moved/supported by Wahl that this standard has been met.

Roll Call Vote:

Achorn: No

Wunsch: Yes

Sanders: Yes

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Wahl: Yes
Bickle: Yes
Manigold: Yes
Westphal: No

Motion to approve items I-6 of the findings of fact, final vote: Yes – 5 No- 2 Passes

Meihn; Mr. Supervisor on page 3 for the record the second standard that you asked to consider section 8.1.3(3)(d): That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services. Below that are 1-3 factual bases, indicating that this standard has been met.

Manigold; Are there any questions about 1-3 on this standard?

Westphal; I can't find where the storm water retention capabilities with the soils on this site have been met; these have been ignored by developer. There is question as to whether or not they have the capacity to retain storm water at all without soil erosion and other factors. The fact that these soils will be carrying arsenic and lead into receiving water bodies is a possibility and for those reasons I feel that the standard has not been met.

Manigold; anyone else share that view?

Achorn; For most of the calculations, it appears that they have been met. The exception is the shore lots 2-4 and 5-10, I do not think that the applicant has provided sufficient information as to show that the lake is protected from storm water drainage.

Sanders; Can I ask a question? Jennifer, as our Engineer for Gordy Fraser, can you make a comment regarding this subsection?

Jennifer Hodges; I have interceded myself and have been appointed as the contact person and I'm here for Peninsula Township. So I did take the liberty recently to just go through and peruse a lot of the documents and familiarize myself with the site, and in particular to review as it pertains to storm water ordinance 33 and soil erosion ordinance 25. I guess a couple of the comments as it pertained to this item in particular, and as far as -- and I was just kind of taking notes, so give me a minute. The concern that Trustee Westphal had brought to the attention with conveyance, basically I went through and looked at the ordinance and there is a unified storm water ordinance and there is a bunch of identified criteria, and I went through and looked at that ordinance and compared the calculations that were provided over the course of the past couple of years from the applicant's plans and submitted documentation. And a couple items that I had noted that I didn't have provided, from what I reviewed, was prevalent to conveyance. The basins themselves were sized 100 year back to back, and a lot of it is because they don't have enough over flow. But there is a considerable amount of ditching that's presented on the site along with the road and taking that into consideration to account for impervious and the site that was all reviewed from the storage value computation. But a couple of the criteria within the ordinance as it pertains to conveyance that I didn't see that I have documentation to support was to review flow velocities because there are some thresholds whether a grass waterway, it looked like it appeared to me from the plans that the applicant was proposing stone conveyance controls, so that kind of puts them at a different flow velocity characteristic and allows between 4 to 8 feet per second. And any time we see exceeding soils of that nature then we like to see some type of dissipation feature, such as check dams, which I did see some of those things proposed. But there was some uncertainty on the plans from what I saw. I didn't have any computations to support that there was compliance with the ordinance to address those. And the reason those criteria are in there for those specific reasons is to address erosion and soil. Does that answer some of your questions? **Sanders;** Yes. Thank you.

Manigold; any other questions on items 1-3?

Moved by Wunsch/Supported by Bickle that the standard has been met.

Roll Call Vote followed:

Achorn; No

Wunsch; Yes

Sanders; No

Wahl; No

Bickle; No

Manigold; No

Westphal; No

(This motion was voted down per Jennifer Hodges responses, and the advice of Legal Counsel to vote down the motion made by Wunsch/supported by Bickle.)

Wahl questioned if a new condition could be added. Then asked Jennifer what other information would you need to have provided to you to ensure that there is adequate run off from what you just stated?

Jennifer Hodges; It will depend on how the ordinance is written. One of the conditions that should be provided is a valuation of open channel flow, and there are certain equations that are to be provided with that requirement to demonstrate what the flow for these ditches are collecting. The storm water will depend on the range of volume they are designed for; they may have to construct them differently, as I have indicated.

Meihn; how do you want to put that in legal language as to what would be required.

Jennifer Hodges; to ensure that the ditch can handle a proposed 24 hour rain event and provide those flow velocity calculations. I do not have the documentation to support the criteria. The documentation that I do have accounts for having a storage volume area but there are also other conditions. Let's say that the soils are frozen; it is a conveyance measure criterion in the ordinance which requires us to evaluate it as a conveyance and not just for storage. Again, I do not have any documentation that has been provided to me that I saw from the multiple packets from the applicant.

Wahl; I request approval upon the condition that we have adequate insurance provided that there is ditch flow capacity calculations to ensure that the ditch can accommodate a 10 year, 24 hour event.

Westphal; questioned Hodges about how many other documents are incomplete or lacking that the engineer felt the Board should have before the Board can make intelligent decisions. "Are there any other documents missing dealing with storm water, water drainage, alignment of the roads or anything that is in this standard 8.1.3(3)(d)".

Jennifer Hodges; I have taken some notes so I will go through those. I have created a basic standard check list which follows the ordinances. From my perspective and review of the plans, there are outstanding items that I did not find that should have been provided, or that at this point have not been specifically addressed by the developer. One of these items was dealing with surface water runoff. In this case, the basin sizing that the ordinance requires that the watershed collection area is supposed to be outlined on the plans. I did not see any illustrations defining that specific watershed. All of the computations relied on it, but the ordinance specifically requested it, and it was not provided. It is always nice to see that outlined for graphical purposes. It is not necessarily that they coincide with each other but they have not been illustrated so I do not have a full picture to look at. The overall drainage areas were not illustrated on the drawings. You are looking at it from a pre- and post-development computation. As far as the network piping itself, there is an open ditch but there should be storm piping as well that is proposed along The 81's primary developments. There are also

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criteria in the ordinance that makes you look at these specifications from a 25-year event perspective, to ensure that you do not have an increase in water elevation so that you are not flooding out your structures. I did not see this valuation provided that looks at the 25-year event which would ensure you do not have flooding. I did not have this data to compare against the ordinance to see if they would be compliant in that or not.

Westphal; A 25-year storm event is pretty standard on plans like this, right?

Jennifer Hodges; Correct. It is a part of standard ordinance language that many townships have.

Westphal; Should we be going to a larger storm event like 100- or 200-storm event years as Dr. Grobbel suggested?

Jennifer Hodges; It would depend on who you ask. It is a difficult question; we are obviously seeing changes in our weather. I am not the person to make that decision. That is why you ask for the 25 year event, so that you can ensure that you are not flooding or creating any adverse effects on the surrounding sites. The ordinance states the standard and then the worst case scenario. I did have some concerns with the east 81 road and the cul-de-sac at the end, along with the ditching. The way it stands right now that cul-de-sac is designed with asphalt and at the end, there is a stone basin. If this stone basin becomes inundated with rainwater, I would be concerned with an overflow situation since there is nothing at the end of the ditching to indicate that there is anything stabilizing the basin.

Manigold; Basically, what you have done is go through the entire project, and you have fly-specked it. Your fly-specking of the entire project has resulted in these concerns as things that were not shown on the drawings; with approval of the project, you would recommend that they be provided to you as conditions of approval.

Jennifer Hodges; Correct. I am not saying that this project is permit-unlikely, but for me to be able to make that recommendation and ensure everything is compiled correctly within the ordinance, there are some short falls. Some discrepancies and clarifications need to be made.

Wahl; In asking for this information, is this stuff that we have requested from the developer in the past? Have we asked this of other property owners?

Meihn; Whether you have asked this of all property owners in the past is irrelevant; you should be following the ordinances to the T.

Rowe; Can I just make one comment?

Meihn; You cannot.

Achorn; my concerns are the shore lots 2-4 and 5-10, have you looked at those lots and the drainage patterns as shown on the plans? It appears that storm-water moves towards the water in the bay and not the road. Have you reviewed this aspect of the plans in respect to the shore line?

Jennifer Hodges; I looked at the soil aspect (editor's note: "aspect" is the compass direction that a slope faces) of the area that you had indicated. On the plan, what we have are some red arrows. It was apparent that those were not included in accounting for storm water measures that are proposed for the site. I did review some supporting documentation from the past. How this will be addressed is that each of these lots will be subject to its own storm water review and soil erosion permit. There were some proposed grading plans that were provided as conceptual plans for each lot. My understanding is that each lot will be addressed individually as the lots are being built.

Manigold; This was approved by Brian Boles (previous Township Engineer); however we did ask Jennifer to review the information. These are her recommendations for approval.

Bickle; the four items that were offered up: watershed delineation, storm piping, 25-year storm event, and ditching-flow capacity, if these were provided on the plans, would that satisfy your questions or concerns or both?

Westphal; given the shortness of time in which we have engaged our new Engineer and looking at these documents I would say no. It is clear that our previous Engineer and Mr. Mansfield have overlooked a number of important pieces of information that should be on the plans but are not on

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the plans. I think these are significant enough given the nature of the lots, especially the ones Marge Achorn has been addressing, that the plans really need to be reviewed in my opinion.

New motion; Westphal moves that the standard has not been met / Supported by Sanders
Manigold; No
Bickle; No
Wunsch; No
Wahl; No
Achorn; No
Sanders; Yes
Westphal; Yes

Motion that the standard has not been met final vote: Yes – 2 No- 5 Motion Failed

Moved by Bickle that the standard has been met with incorporating the four items: the water, shed, storm piping, 25 year plan vs. 10 year plan and the ditching. Supported by Wunsch.

Manigold; Yes
Bickle; Yes
Wunsch; Yes
Wahl; Yes
Achorn; Yes
Sanders; No
Westphal; No

Motion that the standard has been met final vote: Yes- 5 No-2 Motion passes.

Meihn, Mr. Supervisor on page 4 Section 8.1.3 (3)(h): That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner. There are 6 findings of fact that the standard requires in order to be met.

Manigold; With this section is there anyone concerned with these standards?

Westphal; I would just like to say that having the limits of all construction work a minimum of 25 feet outside of the existing wet lands is truly a minimum in today's standards and most other advisory boards like Tip of the Mitt would suggest at least 100 feet back from the wetland to protect that wet land. I find that this is one of the conditions that we need to change in our ordinances in the future.

Achorn; In regard to The 81, the Board finds that the soils within the project construction limits are generally classified under loamy sands. I am not a soil expert or engineer, but I have been reading a lot regarding this. My conclusion is that I do not feel that these soils are suitable for excavation and development.

Westphal; I would like to also suggest to the Board that when you have a site with LkD2 soils (Leelanau-Kalkaska loamy sands), the slope will be a minimum of 12-18 percent (D) and it is already moderately eroded—that is what the number 2 indicates. LkF2 has a slope of 25-45 percent and the number 2 indicates that is already undergoing moderate erosion. These soils are not recommended due to erosion and where are most of those lots placed? On those types of soils, as soon as you start pulling the bank back and removing the vegetation, you will exacerbate problems with erosion. As a soil scientist I can tell you this. Also, the particular map that Mansfield provided is mislabeled; those soil types listed on the ledger have incorrect descriptions. I would like this to be

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noted.

Manigold; Any other questions or concerns?

Bickle; I have a question for Jennifer of GFA since we are talking about Section 8.1.3(3)(h) as it pertains to soil erosion, what were some of your findings?

Jennifer Hodges; not specific to the wetlands, I did look at the soil erosion permit. I did have a couple of additional comments. Sites 33-40 show some of the contours are misleading regarding the slopes; the contours suggest a ratio of 1 foot rise over 3 feet of distance (33%) slope, instead of 1 foot of rise over two feet of distance (50% slope). What I have recommended is instead of a mulch blanket is to do a turf reinforcement mat. For some of those areas that are steeper, this would be standard engineering practices. The grading and stabilization plan has to be provided by the contractor to County Soil Erosion for their review prior to construction.

Bickle; Let me stop you for just one second. You are saying that the grading and stabilization plan upon your review, in all the documents that you reviewed, did not exist.

Jennifer Hodges; It is not a condition of securing a County Soil Erosion control permit. This was stated by Soil Erosion when they did their preliminary review of the project. It is not included as part of the soil erosion permit. It would be my recommendation that you would include this as a requirement for a township special use permit.

Bickle; No grading and stabilization plan. The other thing that you stated was a turf reinforcement mat vs. a mulch blanket. In your opinion are there any other conditions that should be considered?

Jennifer; Correct. The recommendations would supplement the ASTI report. I support that report. The township needs to have a more involved approach, along with proper inspection measures and procedures. You do have the ability to retain a bond to ensure that the project is taking place as permitted. You do have the ability to site violations accordingly. Your ordinances already address some of this.

Westphal; I am really concerned with some of the things that you have brought up as it affects that west bank of houses with the 25-48 percent slope. If some of these houses are going to be on the 1:3 slope that we are told are the most stable from an engineering standpoint, but really has a 1:2 slope, are we are putting lives and investments at risk by approving this? These plans have been sloppily done. The hope is that the seven of us do not know enough to be able to look at them and critically evaluate them, causing us to be really reliant on our engineers and other experts to tell us that they are okay. Which is fine with me but in the final analysis there is an issue of honesty in the delivery of a set of plans for the applicant and for the Town Board. We are finding that there are omissions of significance in all different types of plans, from storm water to grading and stabilization aspects of the plans. I really think that we need to think about this as a group. I am sure that these homes will be lovely as Mr. O'Grady develops them. This is a big project that will have tremendous impact on each of the individual households that come in and are touched by it. I think that this sloppiness is not acceptable in Peninsula Township.

Meihn; Jennifer you said that the slopes are more than 1:2. They heard you say that the slopes are more like 1:2.

Jennifer Hodges; This is why I said that it would be a valid point to have the turf mat.

Wahl; Is the turf mat a recommendation or is this just a personal preference or is there some sort of supporting document?

Jennifer Hodges; It is incorporated as best management practices. It is supported by EPA, but a lot of it comes down to just the best engineering practices. When you look at lots 4-10, and some of your criteria in your ordinances, it states that fill must be stabilized accordingly to engineering practices. Some of it may be subjective, but once you get into that 1 foot rise for every 2 feet of distance range, then the turf mat is typically what our firm has utilized a lot of times. It is a recommendation at this point.

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Bickle; I raise the question: are there any other conditional items or best practices, and your answer was the turf mat for steep slopes and a grading and stabilization plan? Here we are December 12th, several years into this, and we have already had another re-review by GFA. We have everybody that has any responsibility as far as lining things up with our ordinances. I don't think that we can visit this thing any more than we already have. I don't think that we are going to discover anything new. The new components are what the best practices are. So those are the two items that you have offered up for our consideration.

Meihn; The only thing that I would add from a legal perspective is that you have asked her what her view would be in terms of whether the standard has been met. Remember, the comments that she makes, she will be held to those comments from now until eternity as I am and also all of you. I believe that what she is suggesting to the Board is that the standard has been met with the recommendation that there should be turf sheets and a grading/ stabilization plan provided and that there should be a performance guarantee. What she is doing is giving you the best advice that she can. The ordinances are broad enough to give you the discretion to do the right things for the safety and welfare of the public.

Wahl; I move that the standard has been met.

Bickle; My position is not a motion but I feel with these two additional conditions added to this that the standard has been met.

Meihn; Make a motion for Wahl to amend his motion for the standard and have a vote on the motion to amend and then we can go forward.

Bickle; Moves to amend Trustee Wahl's motion that the conditions of a turf reinforcement mat, a grading/stabilization plan, and a performance guarantee be conditions of this approval for the standard to be met. / Support by Wunsch.

Westphal; Question. Jennifer identified lots that are on the 1:2 slope (50%) ratio instead of 1:3 slope (33%) ratio; should this be corrected in the grading/stabilization plan?

Jennifer Hodges; Nothing in the ordinance prohibits that you can't have lots that steep.

Westphal; How does that increase the possibilities of slumping or having another situation like the Enclaves go sliding down into Franklin Woods, like we saw just a few years ago at the base of the Peninsula?

Jennifer Hodges; I think that is what the applicant is proposing to do is to find a measure to accommodate the slope to ensure stabilization by creating an impediment with the turf reinforcement mat.

Westphal; We think that is enough instead of having them re-grade it to a 1:3?

Jennifer Hodges; the ordinance does not prohibit building on a 1:2 slope; there is nothing in the ordinance that encourages this.

Sanders; We started this discussion on 8.1.3(3)(h) and then we mentioned 8.1.3(3)(i) I just want to clarify that we are on wetlands section (h).

Achorn; In regard to the wetlands, Lake Michigan is a wetland, and all those sites along the shore are relative to this section of the ordinance. It is important to recognize that not only are protections on the upper hill put in place but protection is more important along the shore line. What conditions would be necessary to prevent erosion into Lake Michigan?

Jennifer Hodges; Let me clarify that when I had stated that the comments I made regarding the soil erosion preliminary review was specific to that bluff, I also brought up the comment regarding the ditching for that cul-de-sac, which just terminated and did not address any potential overflow. The goal once the site is stabilized is to do a case by case review of each proposed lot to make sure that setbacks, a soil erosion control permit, and a storm water review will take place for each site. There

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will be another level of review that will take place above and beyond just this site itself once these become buildable. Also, they may not build all of them right in a row.

Manigold; Call for the question. **Yes**

Bickle; **Yes**

Wunsch; **Yes**

Wahl; **Yes**

Achorn; **Yes**

Sanders; **Yes**

Westphal; **No**

Motion that the standard has been met final vote: Yes- 6 No-1 Motion passes.

Meihn; Now that you have the motion to approve with amendments now you vote on the motion as amended.

Roll Call Vote on the Amended Motion:

Manigold; **Yes**

Bickle; **Yes**

Wunsch; **Yes**

Wahl; **Yes**

Achorn; **Yes**

Sanders; **Yes**

Westphal; **No**

Amended Motion that the standard has been met final vote: Yes- 6 No-1 Motion passes.

Meihn; Mr. Supervisor on page 5 Section 8.1.3(3)(i): That the proposed development will not cause soil erosion or sedimentation problems. Pages 5-8.

Manigold; Does anyone have comments on 1-13 on Section 8.1.3(3)(i)

Westphal; I do have questions on permit conditions dealing with soil erosion and sedimentation permit. This permit does not waive the necessity for obtaining all other federal, state or local permits. With the contamination levels that were found on the site, does this particular site have a brownfield designation?

Jennifer Hodges; Not that I am aware of. I can research that.

Manigold; In the last few meetings, the issue of oak wilt had come up I find that this is something that is really pressing in the area. It was suggested that we have an arborist look at this. Is this something that should be added to the conditions?

Meihn; As I understand it, you are speaking of having an arborist come out to assist or provide a recommendation on how to avoid that issue? I would indicate on page 8 no. 5 (read). My suggestion is that if this is a condition that you would like to see in this approval, then it is up to the Board to add it.

Manigold; It would just be a recommendation as to the timing as to when to cut the oak.

Bickle; I have questions for the staff along this same line of an arborist is one suggestion, as Manigold suggested. In our past experience and most recent especially with Pelizzari are there other alternative solutions that would at least provide the ability to assess and determine the trees and the things of that nature. I do not want to get too far out of the parameters of what we are here to do tonight.

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Hayward; I think that there are two issues that should be considered with the oak wilt. One would be to find out if there is any existing oak wilt on the site, and the second, if there is a window as to when you can oaks without the danger of spreading any oak wilt. The current soil erosion permit stated that they should be left in place until mass grading can be modified. Page 8

Manigold; Are there any other questions on this section?

Westphal; I have a question under the Roman numeral II on page 7: All stumps and underground organic material shall be completely removed with an excavator and hauled off the site. Why would we allow that? Why don't you leave them in place with the rest of the material that is above them.

Meihn; I'm just a lawyer but my guess would be that it is hard to build foundations on top of stumps and it provides for uneven grading.

Bickle; We have identified three issues with our previous approval that would also carry over to this with the mat, grading/stabilization plan, and a performance bond. I don't see there would be a need to add it again.

Jennifer; correct.

Manigold Moves to approve this standard to be met with a condition being added that an arborist would give a recommendation on the timing of removing the oak trees to be paid for by the developer / Support by Bickle

Achorn; I have read everything I can on this, and I do not care what you do to try to band-aide it. There is going to be soil erosion and sedimentation problems.

Roll Call Vote on the Motion:

Manigold; Yes

Bickle; Yes

Wunsch; Yes

Wahl; Yes

Achorn; No

Sanders; No

Westphal; No

Meihn; Mr. Supervisor on page 10 Section 8.1.3(3)(j): That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

Manigold; Anyone have concerns on these standards?

Sanders; I have a concern with every single one of them. I have read every single thing regarding this project even before I was on the Board. I have read everything from the experts for us and from the experts for the applicant and for Komendera. At some point I have to determine which of the expert is the expert. Relying on my education, I always turn towards to Corps of Army Engineers. I do know a few things about this, and I have always trusted the Army Corps because half of them were my professors in college. This project is on such a grand scale that I really have a problem separating that grand scale for one individual lot on the hillside vs. somewhere else on the Peninsula. I too am a licensed Real Estate Agent. I have seen a lot of stupid houses built over the past few years and I feel bad for those people who have bought them. They are going to have issues. I had friends that lost their houses in Southwest Michigan in the 80's when they rolled into the lake. I grew up on Lake Erie in Ontario where my cottage is no longer there because it went into the lake. The earth changes with soil erosion and storm-water run-off, not just water but also with snow. Just consider a

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couple of years ago with the incredible amounts of snow that we have had, what it did to the lake shore. There is a place for houses to be built, and there are places where houses should not be built. For this particular place that we are looking at and voting on with the best management practices and with all the expert advice, I am going to rely on the Army Corps of Engineers who I feel very comfortable with. There is no way that I could approve this project, even with conditions. It is on too big of a scale, and there is way too much involved. At stake is not just the health and safety of the immediate residents, but also with our lake shore which we need to protect because it is our neighbor as well.

Manigold; Okay. Would anyone else like to weigh in on this as well?

Westphal; I would like to weigh in on some of the statements that go with the standards number 4: The property's proximity to the East Bay of Traverse Bay requires State oversight under MDEQ National Pollution Discharge Elimination System (NPDES) during construction and will require weekly reports of site conditions. We seem to have a little bit of a problem with even getting the DEQ to enforce its own rules much less the County, so who is going to do these weekly reports? We don't seem to have the support in the State and County to be able to monitor anything. It calls for weekly reports of site conditions, so who is going to pay for that?

Meihn; There is no way that is part of the responsibility of the MDEQ.

Manigold; Skipping ahead that is why we are recommending or telling the developer to have an onsite person using the guidelines watching the grading and watching anything that is going on to be turned in. I think that is the safety valve that ties this whole thing together. We will have somebody on site. I would entertain a motion

Sanders moves that the standard has not been met 8.1.3(3)(j) / Support by Westphal

Meihn; Before you do the roll call I would substantially ask the Board to outline the reasoning. I know that we have the Army Corps of Engineers, which is contrary to all the other reports so the Board should at least discuss this condition. We have a standard to meet.

Bickle; I have a huge amount of respect for all of my colleagues and their experiences. The Army Corps of Engineers report, how does that really play into this? I do understand and have read all the documents, but I think what we are looking at specific items that are driven from our ordinances that have been reviewed a sufficient amount of times by our Attorneys and by our staff and twice by GFA so I am not sure about this component suggested by counsel. What is the basis for declining it? I have a different opinion.

Meihn; They have never looked at this project nor given any opinion on it other than the dock. It is what it is, and there is a manual out there. You had two of your Engineers look at the project. I do not know what Jennifer's view is, but I am sure she will let you know.

Sanders; Best practices start with the Army Corps of Engineers, but I see what you are saying, Brad. That report provides examples of what we are talking about. I would not use it as a personal expert. These are examples and pictures of stuff that has actually happened when projects like this have moved forward and the lake shore has not been taken into account.

Bickle; Could it not be respectfully argued that what we have before us is a culmination of all the best experts that are knowledgeable of this specific region? We have combined this information with our ordinances and advice from our Engineering Firm and staff. From my perspective, what we have before us is implacable items that should address that standard 8.1.3(3)(j). I respect that the article has examples in it, but how can you apply it to this piece of property?

Sanders; I respect your view but the reason that we are sitting here is to decide if something like this is planned well and well thought out. Three years to go, and I do see a lot of missing pieces in the plans. Some have been brought up tonight and that bothers me as they have had three years to turn

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this information into us. Perfect examples of what you have done in the region to show us how this is preventable because it is clearly not preventable and has happened in very local areas. There has been erosion and run off into the Bays. The reason that we are here to vote on this is to make a decision on which experts are correct. The conditions are great and applicable on some of the smaller pieces of this project, but in the greater scope of soil erosion and run off into the Bay and into the neighboring properties, I disagree with you Brad.

Bickle; Would it be a fair dialogue of what other items would otherwise help bolster or otherwise help make your decision?

Sanders; No, I think I have done my research, and I have done my due diligence and I am prepared to make my decision.

Achorn; I would like to add something. This section that we are looking at is in isolation; but once you combine it with vegetation and the removal of mass soil, I think that it piggy backs to add more problematic happenings. Based on what I have read, and I have read everything possible and have looked for other things to answer my questions, I think that the entire project is pushing this issue to catastrophe.

Westphal; I don't think that I have to add anything to that.

Meihn; You have not articulated any basis for your concerns, Marge? Any report that has been before you that supports the concerns that you have been raised? Maura, can you site anything in the Army Corps reports that supports your concerns as they apply to this project? Again, you have Jennifer here to ask questions. If you are not going to follow your own experts, then I understand that your concerns are well established. The factual basis for your concerns is what is important.

Sanders; I believe that we are following our experts. They have clearly shown us that this has great potential to be a major issue. What you are suggesting is that we follow the conditions.

Meihn; It is what you are required to do on the remand.

Sanders; We are not required to follow the conditions, we are required to follow the remand. The conditions we are putting on ourselves.

Meihn; The remand is what the Judge has asked and that is to take a look at your ordinances and all the documents from your experts that have been provided, and determine whether or not the standard has been met. That is all we are instructed to do.

Saunders; I appreciate that, Greg, and I have done that, but I do not want you steering me or my colleges.

Meihn; I do not want to steer you.

Sanders; I know, but that is what it sounds like. We have all the experts here from all sides, and a lot of us have done our own research. I think that we need to vote, and then figure it out.

Meihn; I understand; all I was asking you to do is articulate the parts that you are disagreeing with because ultimately that is what I am going to be asked to do. I am going to be asked to say what caused the vote to veer. When I have nothing but air and beliefs, I get caught, and you have the information in front of you. That is all I want you to do. Could you just give me the manual or the information that you are relying upon. The Army's manual. Just state it for the record.

Sanders; "Living on the Coast Protecting Investments and Shore Property Around the Great Lakes." US Army Corps of Engineers: Detroit District. 2003.

Achorn; Dr. Grobbel's letter dated November 15, 2016 and Steve DeBrabanden, Shore Line Development Assistant. Mawby's letter dated October 26, 2016.

Wahl; I agree that there is a chance that this happens but no one has given me a percentage of what that chance could be. All we have heard from our experts is that it is possible but not likely.

Westphal; Using supporting documentation from Dr. Grobbel's report dated August 2, 2016.

Bickle; Jennifer, there are items contained in this specific remand that I would like verification of its

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truth as of tonight under bullet point 2 (read bullet point 2). Does this remain true today per your personal assessment?

Jennifer; It does, the review I looked at was limited to your ordinance which was outside of the Army Corps and MDEQ materials. The goal was to capture what additional things were required to be in compliance with the ordinances.

Sanders moves that the standard has not been met 8.1.3(3)(j) / Support by Westphal

Roll Call Vote on the Motion:

Manigold; No (have been met)

Bickle; No (have been met)

Wunsch;No (have been met)

Wahl;No (have been met)

Achorn; Yes (has not been met).

Sanders; Yes (has not been met)

Westphal; Yes (has not been met).

Motion that the standard has not been met final vote: Yes- 3 / No-4 Motion failed

New Motion: Moved by Bickle that the standards of 8.1.3(3)(j) have been met / Supported by Wunsch.

Roll Call Vote on the Motion:

Manigold; Yes

Bickle; Yes

Wunsch; Yes

Wahl; Yes

Achorn; No (has not been met).

Sanders; No (has not been met)

Westphal; No (has not been met).

Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passed

Meihn; Mr. Supervisor, on page 11 Section 8.1.3(3)(k): That the grading or filling will not destroy the character of the property of the surrounding area, and will not adversely affect the adjacent or neighboring properties. Support for this are items 1-26.

Manigold; Anyone have any issues with items 1-26?

Westphal; Under item 6, “The board finds that, based on the soil assessment and Dr. Harless’ review, the reported sampling methodology and the chemical analysis was consistent with the standard of care for the contaminants being tested for and the soil assessment performed and the soil assessment of the property was sufficient to determine whether contamination is present.” That is true, but I would just like to point out that it might be sufficient to know the extent of the contamination because of the limited number of samples that were taken. That should be on the record.

Manigold; For the record, we are treating the entire site and not just the portion that formally was used as the agricultural area, so the ASTI guidelines cover the entire site. Anyone else have any questions?

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Bickle; This gives acknowledgement to the ASTI report dated December 6, 2017 which was the newer of the reports and comprehensive plan. ASTI had an invitation per the developer to come onto the property and was able to provide more clarity. Should both of these reports be added as a condition to this standard?

Meihn; I would add and not subtract information. I would add the October 25th meeting information, and the new one that you have recently received.

Westphal; I plan to pursue that "character of the property question" just a little further, because this property has some very unique glacier characteristics. It has an esker, and the applicant's plan is to reduce it nearly 50 feet in elevation by the mass grading proposed along that east slope. As this and the drumlins referred earlier in the public discussion are removed and/or altered dramatically, clearly the character of the property is going to be changed, and as a consequence the surrounding area will also be changed. Then there is the issue of airborne soil and other factors that will be a part of that mass grading, again this will dramatically change the character of the property and its surroundings. If we go back into the literature and consult the visual management plan from the US Forest Service there are five qualities that determine the character of a property landform, rock form, water form, vegetative form, and cultural form Meihn interrupts statement.

Meihn; I lead you down the wrong path, apologizing. The only thing that was subject to the remand was that it will not adversely affect the adjacent or neighboring properties. Not the character. Apologizing to the Clerk.

Westphal; Then let's go to the second part of this sentence: Will not adversely affect the adjacent or neighboring properties. We are on loamy sand and not a sandy loam. This type of soil is subject to saltation. Saltation is the bumping along on the surface of sand grains and the disbursement of silt and clay that they hit in the process. If we have a site that is contaminated with arsenic which coats the soil particles, this presents an adverse condition to neighboring properties. The prevailing winds up here are out of the Southwest. They will go right up that valley and into the next subdivision. I think that this particular standard cannot be met, even with monitoring for opacity of the air and other factors because of the mass grading being proposed and other modifications of the land form.

Manigold; our expert Joe Buehler from ASTI has determined how to keep everything on-site. That is what will be built into this. There will be someone on-site; it goes with the phase grading. Many of the things that people spoke about tonight are built into these safe guards.

Bickle; That is why I think that it is important that we incorporate the additional report from ASTI that was published on December 6, 2017; it is a very comprehensive bullet point of items and containment is clearly one of those issues. This report provides a very detailed plan for our consideration.

Joe Buhler; I do understand that there are concerns. We did put in very detailed information to comply with Section 8.1.3(3)(k), which included regular monitoring and source monitoring when it comes to fugitive dust. We would recommend that you have an agent working with the Township. We believe that this plan provides those protections.

Sanders; The fugitive dust information that I have read seems to be for spring, summer and fall. I imagine that a great part of that property will be sitting idle through the winter, with possible snow coverage. I understand that the entire property will not be blanketed with the geo-tech materials. How do you mitigate that from moving with the fierce winter weather that we are having?

Joe Buhler; One of the ways that we set up in this plan is to have that agent right on site. One of the requirements is that when they excavate the soils, they get a covering on it immediately if it is going to be left in place. Soil Erosion and sedimentation control permits will have to be followed along with the best management practices. The options of coverage are seeding, turf covering, geo- tech style covering. The third party consulting agent would be able to cite any defaults, discrepancies or non-compliance issues immediately to the township.

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Westphal; This is just one standard with criteria: Item 12 – The Board finds that Dr. Harless concluded that the submitted plans do not demonstrate that they meet Mr. Mawby's performance criteria or the Section 11.5 objective of preventing the conveyance of soil and sediment via wind and storm water runoff. My question to my fellow Board Members is: Why would we pass this?

Wahl; I do not understand why we are not requiring any of these restrictions upon any other developer or development within the Township. I drive past one development every single day, and I do not see any ground-covering placed.

Achorn; 6.0 Non-compliance. What happens if there is non-compliance; what happens then?

Joe; The three parties would come together and get the developer back into compliance. Reporting occurs first, then working with the Board and developer would follow.

Meihn; One of the concerns raised by one of your Board members is in regard to non-compliance between the time that you report to the Board and the time that you get a meeting together between Township and Developer. What is happening at the project during that time interval? I would suggest to the Board that we simply have a process as a condition or part of the motion, which is paragraph 11. This paragraph says that as part of the motion the SUP permit and enforcing agent shall promptly notify the Township Administrator of the non-compliance. The Board shall be able to take all permitted action to ensure that compliance is brought to bear on the project (page 16, number 11). One of the missing elements here is that if you have a problem, you should have a non-compliance buffer. Jennifer just indicated that what I have asked for is already in the ordinance.

Manigold; I would entertain a motion.

Bickle moves that the standard Section 8.1.3(3)(k) has been met / support by Manigold

Roll Call Vote on the Motion:

Manigold; Yes

Bickle; Yes

Wunsch; Yes

Wahl; Yes

Achorn; Yes

Sanders; No (has not been met)

Westphal; No (has not been met).

Motion that the standard has been met final vote: Yes – 5 / No-2 – Motion passed

Moved by Bickle to add the ASTI December 6, 2017 report/recommendations to be a part of the conditions for the SUP; Support by Wahl. Passed Unam

Meihn; Mr. Supervisor, on page 15 Section 8.1.3(3)(n), the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities.

Manigold; Anyone have any issues with this?

Westphal; I would just like to comment that I think that this is also one of those standards that the Planning Commission and the Board should consider things beyond public streets. We should be looking at pedestrian on-site and non-motorized thoroughfares in all of our subdivisions. This site plan has a perfect opportunity to join Boursaw Rd. to the cul-de-sac on the north boundary where the fire access road would link up to the next subdivision, creating additional recreational activities.

Manigold; Any other questions? I would entertain a motion please.

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Moved by Wahl that the standard for Section 8.1.3(3)(n) has been met / Support by Bickle

Roll Call Vote on the Motion:

Manigold; Yes
Bickle; Yes
Wunsch; Yes
Wahl; Yes
Achorn; Yes
Sanders; Yes
Westphal; Yes

Motion that the standard has been met final vote: Yes – 7 / No-0 – Motion passes

Meihn; Mr. Supervisor, Page 15 Section 8.3.3(7); The proposed planned unit development shall meet all of the standards and requirements outlined in this section 8.3 and also Section 8.1 and Article VII.

Manigold; Anyone have any comments or concerns regarding this section? I would entertain a motion.

Moved by Wahl that the standard for Section 8.3.3(7) has been met / support by Bickle

Roll Call Vote on the Motion:

Manigold; Yes
Bickle; Yes
Wunsch; Yes
Wahl; Yes
Achorn; No
Sanders; No
Westphal; No

Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes

Meihn; Mr. Supervisor, page 15 Section 7.2.5 Storm water detention: 1) When any land in the Township is developed or altered in any way which affects storm water runoff, the owner shall develop and submit to the Zoning Administrator for approval by the Township, a plan detaining any storm water runoff onto adjacent properties including roads and other rights of way. Such detention shall follow accepted storm water detention practices; and 2) the maximum amount of storm water runoff allowed shall not exceed that which existed prior to the development or improvement of the property.

Manigold; Anyone have concerns or comments on this? I would entertain a motion.

Moved by Wahl that the Standard for Section 7.2.5 Storm water Detention has been met / Support by Wunsch

Roll Call Vote on the Motion:

Manigold; Yes
Bickle; Yes

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Wunsch; Yes
Wahl; Yes
Achorn; No
Sanders; No
Westphal; No

Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes

Meihn: Page 16 is the proposed motion that is all of the things that you have just done along with the conditions 1-11. The only other thing that I would ask is that a motion would include all the other conditions that have been voted on, and approved, throughout this meeting.

that based upon the supplement findings above with respect to Sections 8.1.3(1)(c); 8.1.3(3)(d); 8.1.3(3)(h); 8.1.3(3)(i); 8.1.3(3)(j); 8.1.3(3)(k); 8.1.3(3)(n); 8.3.3(7) and 7.2.5 that the Applicant has met these standards and in conjunction with the Township Board's previous findings and approval of the SUP #123/PUD on August 11, 2015 along with these supplemental findings, as required pursuant the Court's Decision and Order dated January 15, 2016, all standards have been met and the Applicant's request for Special Use Permit and Planned Unit Development (SUP #123/PUD) is hereby approved subject to the following conditions:

Bickle; I would like to open this up for discussion with the Board. The way that this is being proposed right now is that: an enforcing agent, acceptable to the Township, shall be retained by or on behalf of the applicant/developer/contractor, at the applicant's sole cost. My only dialog is would it not be more beneficial if we were the ones that retain the acting enforcing agent, like we did on another recent development project. We would have to discuss the cost.

Manigold; Anyone care to make the motion? Motion to approve all the conditions.

Moved by Wahl to approve the conditions 1-11 and all of the other conditions stated on record / Support by Manigold

Achorn: No
Wunsch: Yes
Sanders: No
Wahl: Yes
Bickle: Yes
Manigold: Yes
Westphal: No

Manigold: I want to go on record to state that this process has been exhausting for everyone. Both the applicant and the residents have sued us. We have been over the same ground as the previous Town Board. If this project had come before us, I don't have any doubt that it would have been a totally different project. Mr. O'Grady actually told me that he wanted to keep some vineyards on-site, and he was told no by the Township. I do not know why he was told no. As we have gone through this thing, we have done is our best with the narrow scope that we had to deal with, to make it safe for everyone. When we look at our ordinances, we realize that a lot of our ordinances have to be beefed up so that we can be better stewards of the land. With that being said, I do support this motion.

Manigold: Yes

Regular Town Board Meeting
Christina Deeren, Recording Secretary
Joanne Westphal, Editor

Westphal; I would just like to say that over the years I have trained over 2,000 undergraduate students in landscape architecture and recreation resources to work competently in their fields and to have the confidence to challenge the status quo when the environment is challenged. I would defame the values of my profession and would cast myself into the role of a hypocrite to all of those young professionals that I have trained over the past 43 years that I have been in academia. For these reasons, I vote "no" on this project.

Westphal: No

Roll Call Vote on the Motion:

Manigold; Yes

Bickle; Yes

Wunsch; Yes

Wahl; Yes

Achorn; No

Sanders; No

Westphal; No

Motion that the standard has been met final vote: Yes – 4 / No-3 – Motion passes

Adjournment Motion to adjourn by **Sanders**; seconded by **Wahl**. **Passed Unam**

Meeting closed: 11:30 p.m.

**Peninsula Town Board
Regular Meeting
January 23, 2018, 7:00pm
Minutes**

1. Call to Order by Manigold at 7:03 p.m.

2. Pledge

3. Roll Call Present: Manigold, Westphal, Bickle, Achorn, Wunsch

Absent: Sanders, Wahl.

Also present: Gordon Hayward, Assistant to the Planner, and Planner Brian VanDenBrand,

4. Brief Citizen Comments-for items not on the agenda-None

5. Approve Agenda

Supervisor Manigold requested an amendment to the agenda to declare the old phone system as surplus at Item #7.

Motion to amend and approve the agenda by **Wunsch**, with a second by Bickle. **Passed Unanimously**

6. Conflict of Interest-None

7. Consent Agenda:

Any member of the Board, staff, or public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

1. Meeting Minutes Approval – Town Board Regular Meeting of December 12, 2017, Town Board Regular Meeting of January 9, 2017.
2. Reports and announcements (as provided in packet)
 - A. Officers
 - B. Staff
3. Correspondence
4. Edit list of Invoices (recommend approval)
5. Approve additional part time hires at the Fire Department (3 new Officers).
6. Approve 3 days of training on BS&A software for Clerk's & Treasurer's Office staff.
7. Declare old phone system surplus

Nancy Heller, 3091 Blue Water Rd, Traverse City, MI 49686: Questioned the cost and number of people that will be attending the BS&A software training consent agenda item number **Westphal**: The training will be at the Township Office's and it is for five people for three days for just slightly over \$3000.00.

Requested by **Achorn** to have the Town Board Regular meeting minutes of December 12, 2017, postponed until she has the chance to review these minutes. Also the list of Invoice at Item #4, she did not have time for a final review of those invoices.

Bickle: Subject to final review and approval of the invoices, may we move forward with approving the consent agenda items? **Achorn:** yes.

Moved by **Wunsch** to approve the consent agenda as amended, with a second by **Bickle**,

Passed Unam

Achorn: Also asked for a correction of the January 9, 2017 Regular Township Meeting Minutes. Page 3 says, "**Achorn:** as the project goes along"; what I said was "if the project goes long"...that is, if it took longer than anticipated.

8. Business:

1. Discuss Adoption of the Park Master Plan, presented by Brian VanDenBrand.

VanDenBrand: To bring you up to speed, the DNR requires a five year Parks and Recreation Plan when we apply for grants. The plan that is before you tonight is an update of our 2010 plan. There are not a significant number of changes from the 2010 plan, but what we have done is to shift the "Pelizzari section" to an appendix. This shortens the plan significantly. It also allows us to incorporate the Bowers Harbor Park Plan as Appendix B. The final appendix would be just the documentation of our public hearings and our minutes of the adoption. Again this is necessary to qualify for a number of grant funding sources. It is not a funding commitment or a budget commitment, but rather, a general outline of where we want to go with our parks. The Park Commission has been working with this for quite some time, and now they are ready to recommend adoption of it by the Township Board. I have included a Resolution to that effect which was not included in your packet. What this Resolution does is closely follow the DNR's recommended motion for Resolutions of this nature. So that is before you tonight. I know that the Park Commission is here tonight to answer any questions that you may have.

Manigold: Do any of you (i.e., Park Commissioners present) wish to make a statement?

Anne Griffiths: There are two changes that you may notice as you read through it. First, we included language which specified our interest in working with the DNR to produce a plan that would be satisfactory to all concerning the interactions between Kelly Park and Haserot Beach. All we are doing at this point is acknowledging that the DNR has expressed interest; we are expressing our interest back. We are not planning on asking for any legal or binding regulations or recommendations between us and the DNR, but we are expressing an interest to the DNR in working with us concerning Kelly Park as we go forward. The only other thing that is probably a little different from 2010 is that we have received a lot of input from trails people. They would like to see us working towards the situation of removing bikes and pedestrians off of the roads and on to a trail system to get up and down the Peninsula. This is to save their lives and avoid accidents. Overall, I think those are the only two

significant changes from the previous document. **VanDenBrand:** Ann pointed out the relationship between Haserot and Kelly Park and the public interest in a trail system. What we don't have is a detailed trail plan yet, which I would hope to work towards. It is important to realize that the point of this plan is to make sure that if a grant opportunity pops up, we can go for it. We can always amend this plan, a month out from now if necessary. This plan qualifies you for DNR grant funding opportunities.

Manigold; Any questions of the Park Board or of Brian?

Achorn: I have a question on page 13, it names Bowers Harbor Park. It says that the Township has explored the possibility of acquiring additional property adjacent to the Bowers Harbor Park. Where is that?

VanDenBrand: The Township has acquired additional property is what it is should say.

Achorn: On the Dougherty House, it reads "The Township has established an endowment fund for long term needs and programming at the home". I have not seen anything.

Manigold: That fund is at the Grand Traverse Regional Community Foundation.

Meihn: Correct.

Achorn: And then on page 17, in the right column, "the Lighthouse Park is now available by reservation for a fee for special events". I was not aware of that.

Griffths: There is no established fee mechanism for events. There used to be weddings, but weddings are no longer scheduled. There is no mechanism for anyone to have an event at the lighthouse.

Achorn: So this should be removed?

Griffith: Yes.

Griffths: Thank you. I would point out in the diagram on page 11, it list the "Recreation Commission" by name; it should read "Park Commission".

Westphal: I have a number of corrections as well. First of all where are the appendices that were referred to throughout this document?

VanDenBrand: Here is one; this is the Pelizzari Park Plan that was already adopted by the Board. We are incorporating this for reference.

Westphal; If that is an appendix document, then it needs to be incorporated in the Parks Master Plan document.

VanDenBrand; Here is a copy.

Westphal; Starting on page 4 of the Park Master Plan, under "Goals, Objectives and Action Program", there is a minor typo, but it stops with the bold face stuff and starts a new sentence. It is important that you stay consistent formatting a document like this. Use the format that you have in the above paragraphs.

VanDenBrand: I didn't get catch that could you please repeat that JoAnne.

Manigold; We have the time to make these corrections. The critical date for a Michigan Land Trust grant is April 1st. The good news is that we have going against many of the Township's throughout Michigan that are in bad financial states; they cannot come up with the 25 percent match. This puts us in a very good position. There has been talk about changing the toilets at the lighthouse; we have Bowers Harbor improvements that we can make a grant for monies. So it is important that we get this plan completed and submitted. We are going to be meeting in a study session tomorrow and the following Wednesday, so we could put it on one of those meetings, if you can get all the changes that were presented tonight. We can start working then on the grant proposals. That would be my suggestion.

Westphal; I think that it is more practical that instead of putting this on the agenda for the study session, which we can do, I would suggest that we try to target the first meeting in February that we have for the Town Board and have it done well.

Bickle; Or as soon as it is available before February.

Manigold; Greg said that the changes could be done very quickly so that is what I am saying. I don't want a half done job either. I want it perfect but we do have that week from tomorrow that we could put it on too.

Achorn; I suggest that since Jo knows so much about this type of publication that she work closely with the Park Commission to make those minor changes. She can review it again before our next board meeting, so at that board meeting it will be ready to go.

Wunsch; I have two minor changes. At the top of page 5, it should read Michigan Department of Natural Resources and the Michigan Department of Environmental Quality. You consistently used DNR throughout the rest of the document. One other suggestion is to include data on the high volume of tourists from outside our community that use our parks. That may improve the appeal to any DNR Commissioners who are not familiar with our area but are going to read this. DNR gives funds when applied in Northwest Michigan to help a much broader community when they have suburban parks downstate.

Achorn; We do have documentation as to how many people visit the lighthouse which is readily available.

Snow: It was approximately 46,000 this past year.

Achorn: That information could be incorporated into one of the appendices.

Westphal: Was that just the lighthouse?

Snow: Yes.

Bickle: Those are only the people that signed the guest book. That is a quantifiable number, and it is fair to assume that it could be another 10 to 15 thousand that are just casual tourists.

Westphal; You know that your guest registration book at the lighthouse could be expanded to your other park areas too. A lot of parks have these little entrance boxes that ask people to tell them where a person is from, with a slot in the box where they can put their information

in without other people seeing it. I think every one of your parks should have that at their entrances. I am stunned when I go by Pelizzari Park and there isn't a day or a time when I go by) that there isn't at least one car in the parking lot, if not ten. I have been amazed at the number of people that use that park at all times of the day, well into the evening, all days of the week and all season long. I think that would be really good data that you could gather and not spend any money, except for the registration stands, pencils, and papers for people to sign. I think it would help us document use. If you want to go to a survey format, then I would get Michigan State University's Recreation and Parks Department to help the Parks Commission do a survey.

Snow: That would help us document how well the parks are used in a quantified, accurate way would be very helpful.

Westphal: I also think that you also need to update your census data. Include the public hearing data that you have. Tell your potential funding agencies, about the people at the public hearings. What did they say? Who were they? What did they think you did well? You don't have to say what they thought you may not have done well. It shows that you're documenting what we are signing off on with the Resolution.

Manigold: I guess we will be requiring a motion to table?

Bickle: Do you want to say 'or as soon as available'? If this gets done in five days so I would do an amended motion.

Moved by **Wunsch** to table the Parks Plan until our next regular meeting or as soon as available, second by **Westphal**.

Passed Unam

2. Approval of the Written Findings of Fact and Motion on 'the 81" Public Hearing of 12/12/2017 (Meihn);

Meihn: As the Board will recall on December 12, 2017, I, in concert with Tim Wilhelm, put together a Findings of Fact. After each Findings of Fact, there was a vote.

At the end there was a motion that culminated in a vote on all of the Findings of Fact and the conditions that the Board had discussed in the workshop and other things to consider. We went through that meeting, item by item. With regard to each item, we also then indicated which conditions were going to be required. Those that voted 'Yes' voted that the Findings of Fact were true and accurate and had been approved. Those that voted 'No', to protect those people who objected, I attached the transcript. The only difference in the Findings of Fact that we have presented to you today for affirmation are the vote, who made the motion on each of the individual items, and the reference to the people that objected and as to each objection. We also made reference to conditions that are both in the transcript and at the end of the motion.

This is way a reader such as yourself or the public will see who voted yes or no or who objected. They know where to go to see what those objections are because it is in the transcript, and they will also know that there are conditions upon which that approval was made by the members that voted 'yes' and those conditions can be found in two places the transcript that is attached and at the end of the motion. I found as I did many different reiterations of this, that staying true to what was essentially presented to you on the 12th was what we needed to do. At the end, we have our motion with conditions that you articulated. Essentially what I am asking you to do today is to not to approve that which you have already approved on December 12, 2017, but to approve the document which reflects the decisions that you made and the changes that I had to make to the document that was submitted on the

12th. Again I just want everyone to know that this is not usual. I think that when you have an important vote like this, you attach the transcript. This allows the people that will take over for you in the future to see what you have done and to know why you have done it. For those that objected and wanted their voices heard and not to be lost in the midst of a motion, it is there; and those that have voted positively, who also asserted their reasons, it is there also. In addition if there is any appeal, of this will be immensely helpful to us. It was really designed to protect the public, the Board and everybody involved. I would respectfully ask the Board at this point and time to put forth a motion to reaffirm or affirm the document that has been presented to you as reflecting the decision of the Board that was made on December 12, 2017, and then to adopt that document. With that said, 'thank you'.

Manigold: The first question that I have is who ordered the other document? Did Judge Power do that?

Bickle: You mean the transcript. Did the Court order the transcriber?

Meihn: No. The transcript of our December 12th meeting was done by two people. It was done by Mr. Rowe and his people, and it was done by Mr. Meihn through the disk that was provided to me from Christina. I then sent it to a Court recorder to have it transcribed, so that we would have an actual paper record. This is because writings are more important than digital recordings. A disk will go away and is lost forever. I think that the transcript is more important.

Bickle: I think that you (Manigold) are asking about the woman that was actually taking the...

Meihn: That was not ordered by anybody. That was Mr. Rowe doing it for purposes, if I were Mr. Rowe, for purposes of being able to either defend any appeal if we voted negatively or to join us in defending any appeal that would be brought based upon the decision. And possibly worrying about whether our recording machine is working or if there were hidden or missing things like the Nixon 19 minutes that were missing on the tape or the disk. It is what most lawyers do on the other side to protect their clients.

Westphal: We do have page 87 missing that we did not receive in the transcript. So we do have a Nixon error?

Meihn: That is a scanning error. Thank you for pointing that out. I wasn't made aware of that. 'Thank you', I will make a note of that.

Westphal: So this was a product of Attorney Rowe and...

Meihn: No, it is a product of mine and my court recorder and Attorney Rowe's court recorder. I compared the two to go through the transcripts. Thank you for those questions, I really appreciate that. I will get you page 87.

Westphal: I have another question. On these Findings of Fact, were these are the ones that were developed and presented to us at the December 6th or 7th meeting before the December 12, 2017 public hearing?

Meihn: I don't believe so. It is the Findings of Fact that we provided to you the day before the hearing as being updated with the new information.

Bickle: Tim Wilhelm has provided us with information, and you merged into it, to streamline what we ended up with.

Meihn: Absolutely.

Westphal: Down at the base of page 1 and throughout the Findings of Fact document, "Township proposed Findings of Fact for 12-8-2018" can be found.

Meihn: That shouldn't be on the document, you have an old copy. You do not have the one that I sent this morning, but yes December 8th was the final one that we have provided to you. The one that I sent to you today, I removed that simply because it wasn't necessary from a tracking perspective any longer.

Bickle: In fairness to Jo, her Outlook was down. The thing that Brian just passed out to us Jo, is the cover sheet for the upgraded one that Mr. Meihn had sent this morning. Christina forwarded it to us, and that should be the final draft.

Deeren: That is the final draft.

Westphal: I am confused, as I have three of these now. The one I proofed and wrote in; and the one that I was given that says revised December 12th; and now I have the one that Christina just gave me. So will someone tell me which is the real document that I am supposed to review.

Deeren: The one in your hand is the final one that had all the corrections in it.

Meihn: All it had was four corrections in it. It had two typos and two votes that were wrong based upon transcripts.

Achorn: Did you give me a copy of the revised?

Bickle: I did. I printed it off for you Marge. Just to provide clarity, Mr. Meihn, when I received your memo from this morning at 9:50 from Christina, I made the point for my own record keeping providing a copy to Trustee Achorn where it says "revised". It is just a reminder that this is the document that we want to be working with or to do a comparison side by side.

Meihn: That is also why I included Ms. Westphal on the email with the revised part. I assumed that she had worked with somebody, or had at least would be able to see those four minor changes.

Achorn: For the record, I want the four documents to be "transcript from the public hearing", "Christina's minutes", "the document that we worked with at the December 12th meeting", and "Greg's copy that he had sent"; I have the red lined copy as I compared them all together. All four and then I gave them over to Christina with the documentation for what I thought were changes which she passed onto Greg, and that is how the final version or the next version came. I went through it once again with my red lined version to confirm that the changes had been made. I did not go through the revised version (the one that says revised December 12th), but I will if you want me to. I think it is the same as what we had received.

Meihn: It is the same. The only thing is that somebody put on the first page, as Brad had indicated, the word "revised". Like I said, all of your changes were made. In fact, I thanked you for the typos that somehow in the middle of the night, I did not catch after reading 250 pages of transcript. As you know, we had some crazy motions that did not go forward. We also addressed everyone's concerns over the direction of those conditions. I think that specifically Ms. Westphal and Mrs. Achorn had spent a lot of time ensuring that at least these conditions were appropriately made. If the Board were to look for just purposes of one last thing from an insurance perspective (in terms of being comfortable) if you would turn to page 17 for a moment; in page 17, is the motion to approve and deny which again is the same as it was on the 12th. On page 18 and 19 are the same as presented on the 12th except for me drawing out those additional conditions that you had made. Board Member Achorn had also requested for clarity purposes that the developer provide the Board information regarding the storm piping for 25 year event instead of a 10 year event, pursuant to Section 8.1.3(3)(d) of the following Findings of Fact. What this does is take you all the way back to 8.1.3(3)(d); when you look at that, you will see the vote and you will see the objection and you will see that vote was subject to the conditions, so you are able to match it all. You can then match it all to the transcript. So it is kind of a three way guarantee to ensure that your objections and vote were accurately reflected.

Manigold: I would also like to put on record that Marge went through her analysis of all four. If there was a question, we brought Christina to fly-speck it. If there are any questions, the ultimate source is the recording which I think will be attached to this document.

Meihn: Yup. If that is what you so choose to do.

Manigold: As an extra set of eyes I also asked Gordon to go through it as well.

Hayward: I did review it and the items that I caught were also caught by Christina and Marge, so I am confident that it is an accurate representation.

Bickle: Gordon, if I may ask, when you went through this review was it working off the document that was sent to the Supervisor, Clerk and Christina from Mr. Meihn this morning at 9:30? Was that the document that you worked off of?

Hayward: I worked off that and the other documents that were received. I found a couple of typos which I gave to Christina, and she then gave them to Greg.

Bickle: Thank you, Gordon.

Westphal: I have some corrections on this document as well, that go back to the transcripts that you provided us. They are on page 18 and 19 on the new revised edition. Starting with condition number 11, that "the developer provide to the Board assurance and calculations that the ditch can accommodate at 25-year, 24 hour event". That is what Jennifer suggested to the Board as a better solution or condition than the 10-year, 24 hour event, given the size of the pipe. That was on page 93 of the transcript. Then on number 13, another condition was "the developer provide for retention or some sort of structure at the end of the ditch to stabilize outlets and dissipate flow". That was page 95 of the transcript. It was another recommendation of Jennifer also made as a suggestion. This was one of her four suggestions.

Meihn: Let me stop you with number 11. If you look at condition number 12, I do not think number 11 is a change. It reads "the developer provide to the Board assurance and calculations that the ditch can accommodate a 10-year, 24 hour event". Number 12 the developer to provide to the Board, information regarding storm piping for a 25 year event instead of a 10 year. Eleven and twelve are two different conditions that were being asked of the developer, so I do not believe your correction with all due respect for number 10 as number 11, is appropriate, because what you are reading for number 11 for correction is in number 12.

Westphal: I disagree with you on that, but we can talk about this further. I do know that if we go to page 95 in the transcripts, Jennifer Hodges was not talking about ditching; she was talking about the end of the ditch and seeding the cul-de-sac (see pg. 95, lines 11-13). Her point was that there is nothing to retain the flow of the water coming through that ditch. That is directly against the ordinance in terms of the way that this is written. She was talking about a mechanism to stabilize outlets and dissipate the flow. She was concerned about that.

Meihn: The Board did not make every concern she raised a condition. She raised many concerns within her presentation as issues of concern. If you give me the page, I can follow through to see if the Board decided to make it a condition.

Westphal: Page 95, lines 11-13.

Meihn: Okay.

Westphal: The reason that I bring this up is because there was ditching there. The problem was there was nothing to slow the flow coming out of that ditch when it hits the cul-de-sac.

Meihn: If I recall correctly, but you may be right, there was not ditching there, which she thought it needed to be and on the edge. The transcript will say that, and that is why I referenced the transcript.

Westphal: That is why I am referencing the transcript too.

Meihn: The other one where we are disagreeing is 11 and 12. Remember 11 has nothing to do with 12. She wanted assurance and calculations that it could accommodate a 10 year, 24 hour event and then what she wanted was developer provide the Board information regarding storm piping for a 25 year event instead of a 10 year pursuant to that.

Westphal: You might be right.

Meihn: Let's check it; what page do you have for that?

Westphal: Page 93 of the transcripts for the 11th condition, and page 95 for the 12th condition.

Meihn: Wonderful. Thank you.

Westphal: Condition number 14—"the developer provide information regarding the watershed and capacity". Jennifer Hodges said that the plans "lacked an outline of the watershed" so it was difficult to determine the capacity of that watershed and subsequently, the volume of water that will be coming off of it. If you say in this particular Condition number 14, "the developer provide information regarding the watershed and capacity", it is inadequate.

Meihn: That is exactly why it was written like that. It was to give Jennifer the broadest scope of ability to control and to deal with the situation.

Westphal: But she asked for at least the minimum of knowing what the boundaries of that watershed were.

Meihn: Understood. This gives her the greatest capability of being able to ensure the watershed in that capacity.

Wunsch: It gives her flexibility to ask for more or less. Correct?

Meihn: That was what I was trying to avoid saying, but "yes". It gives her the full ability to operate instead of the limited ability under a minimum.

Westphal: Number 15, pg. 19: "the developer provide a standard mulch blanket to resolve soil movement." Hodges actually recommended a "turf reinforcement blanket" on those slopes that had a run of 2 over an elevation of one (2:1 slope, 50% grade). It is the type of slope where a standard mulch blanket would not be adequate to hold soil in place on that type of slope, pg. 108 and several other pages refer to the turf reinforcement blanket.

Meihn: Later on she does refer to a mulch blanket around trees, but I have noted your concern on that condition.

Westphal: On condition number 17, "developer to provide a standard performance guarantee to the Township to be negotiated by the Township and Developer". Hodges said on pg.111, lines 3-11, that she recommends "incorporating a performance guarantee where you have the ability to obtain a bond...ensuring you have the ability to ensure that the project is taking place per the plans provided on schedule, and...have the ability to issue violations accordingly."

Meihn: That was not put into the original conditions/negotiations, and I cannot put it in at this time.

Westphal: General question, about how this information is presented. Especially on items that talk about pg. 12, subsection 2ii: "the Board finds that the Township Engineer Brian Boles of Gourdie Frazer reviewed the grading plan and concluded that while the mass grading plan for the project is adequately designed from an erosion control and storm water management standpoint, but the grading and site construction have the potential to relocate and redistribute soil materials including arsenic on neighboring properties, depending on weather conditions which was also acknowledged by Dr. James Harless of SME." There are several of these statements in the Findings of Fact that talk about Brian Boles involvement as the Township Engineer, but we had a shift in engineers that provided other findings that are not being reflected here in these Findings of Fact.

Meihn: I would disagree in this regard. First and foremost, this vote is already done. It is inappropriate to go back on a vote that was already approved by other members of the Board. With that said, there are no other Findings of Fact by any other engineer that you have hired. Jennifer Hodges did not any other Findings of Fact or written documents; she provided an oral communication at the meeting about what she thought was defective and that was then put onto the conditions. Now, new information came from ASTI, and that is incorporated in the Findings of Fact and the conditions.

Westphal: One of the important things that Jennifer Hodges talked about that deals with Item 2, is the absence of a grading and soil stabilization plan, pg. 108, lines 12-24.

Meihn: That requirement is found in condition number 16, pg. 19, in the Findings of Fact document "Developer to provide a grading and stabilization plan..."

Westphal: I can live with that.

Manigold: Where are we now? One word change—"turf mulch".

Meihn: Yes. The final things or concerns, subject to Board Member Westphal's corrections, is 1) that she believed paragraph 11 should accommodate a 25 year storm event in 24 hours, pursuant to 8.1, and my reading of the transcript is to accommodate a 10 year, 24 hour storm calculation, and then paragraph 12 is what she wanted 11 to be, which reads "the developer to provide to the Board information regarding storm piping [sized] for a 25 year event instead of a 10 year event". [Note: Meihn missed the significance of the size of piping when summarizing this condition—Editor's note.]

2) Number 13, that **Westphal** wanted some additional measures added to the condition that included "engineering measures to stabilize the ditching outlet and dissipate the flow at the cul-de-sac area" as found in the transcripts, pg. 95, lines 11-13. I would like to look at the transcript real quick to resolve this condition.

3) Number 15, **Westphal** was correct the developer should provide a "turf reinforcement blanket" on slopes with a 1 foot rise to 2 foot run (50% slope).

She also wanted the clarification of who would be responsible for a standard performance guarantee. Since the Board did not make it explicit in the minutes who would pay for the performance guarantee, it clearly that the performance guarantee will come from the developer and cover for it. The Board did not make this explicit in the minutes or transcript but I do not think it is a prohibition to this. If our view is that they have to pay for it, and they don't meet that condition, then this does not proceed.

Manigold: Do you want to take a minute to review that?

Meihn: Yes, please. [Pause.] If you don't mind, I would just like to read it. And then I will read what we did in terms of our motion. This is the one that we tried did two motions and then modified. Pg. 94, line 25, and Pg. 95, lines 1-20 of transcripts:

"**Ms. Hodges:** I had some concern as far as the 81 private road and cul-de-sac at the end. I had talked about the ditching, and there is as it stands right now with the cul-de-sac as designed is the asphalt at the end of the cul-de-sac here, [with] a stone basin there, for all intents and purposes to capture that water. But the ditching itself, just looking at the plans and the drastic profile, it seems to end. So my concern is if that ditch becomes inundated with a significant rain event that it's just going to overflow. I saw nothing at the end of that ditching to prevent anything—to stabilize outlets, to dissipate any of that. So I was just looking for some clarification because right now that ditching just seemed to end with nothing at the outlet. Mr. **Manigold:** So is basically what you are doing is going through the entire project after flyspeck it because they all tie into everything, the drainage--. **Ms. Hodges:** They do."

Meihn: One more part here. This resolves one of our other issues too. This is me speaking on Pg. 96, line 12- 25 and Pg. 97, line 1, of transcripts,

“Mr. Meihn: So that your option then would be either a motion to find that condition is not met, or a motion to find that the condition is met pursuant subject to the condition such as, or conditions of information being provided to the board to meet the requirement as set forth by the board’s engineer, which are the watershed is supposed to be on the plans, illustrated, they are not. The storm piping, the condition being if you look at for 25 year instead of a 10 year. And then ditching at the cul-de-sac area it seemed like the ditch ends, there is no continuation or where that drainage of that water would go. And then ditch flow capacity calculations haven’t been provided. Those seem to be the four things...”

So to accommodate from a clarity perspective, raised by Board Member Westphal, is think that we would continue with the developer to provide ditching at the cul-de-sac area, ditch flow calculations, and plan for handling overflow. I believe that accurately reflects the concerns of Board Member Westphal, while accurately representing the transcripts provide.

Manigold: Any other questions? I entertain a motion to approve as amended.

Achorn: I move to approve as amended.

Bickle: I second.

Manigold: Any further discussion? Roll Call. Rob-yes; Westphal-Yes; Achorn-Yes; Wunsch-Yes; Bickle-Yes
Passed unam

Manigold: Can you tell us what the procedure is now for the record?

Meihn: We are done with this. I will make the corrections so effectively today the matter is concluded. There is no reason to go back to the Circuit Court unless one or more of the interested parties, such as David Rowe and his client O'Grady, or Scott Howard and his client who started the appeal, file an appeal on this. I am feel that you have put yourself in a great position to defend.

Manigold: I think both parties have called wondering where it is. I told them that it would be the 23rd that the Town Board would be dealing with the Findings of Fact and conditions. Can you get that to them?

Meihn: I will get it to them.

Manigold; Okay. What I will do is get it to the Board tomorrow morning with the corrections. I would like each of you to send me an email stating that you have seen the corrections. This is our final document. I want the Board to be comfortable with the final document.

9. Citizen Comments- None

10. Board Comments - **Manigold:** Michigan Township Association will be meeting in Acme this year. It would be good for people on the Boards and Commissions from the Township to attend some educational classes, without the added cost of travel.

Bickle: In fact Rob, I did make a copy of the information, and I put it in all of the Board members’ boxes.

Manigold: If somebody comes up for re-appointment, and they haven't been to a class, do we want to consider them for reappointment? It is kind of a tough, but we want to keep people going to continuing education classes.

Monnie Peters: May I suggest that you do some sort of email out for the other Boards, because I am finding that people are not checking their mail on a regular basis.

Manigold: Okay. That was the plan I just didn't know how forceful we wanted to be to get the word out.

Achorn: When we ran for office, we stated that we wanted everyone to be educated that way they would represent the Township to the best of their ability.

Manigold: Okay, we will put it out there for everybody tomorrow asking them to please sign up for something and to get back with us. Is there any other Board comments?

Westphal: I brought up to Rob, my concerns with dealing with the absenteeism of some of our elected officials at Board and Commission meetings. I think it weakens us as Boards and Commissions, in terms of having a full slate of elected officials when making decisions on crucial items of business here in the Township. I suggested that one of the things that we should consider is rescinding pay for Township officials when they fail to attend meetings without an excuse. I questioned whether or not we needed to have a policy dealing with attendance at the township meetings. If someone does not make a Town Board meeting, should they be paid for not going to the meeting if they are not excused? Furthermore, extensive absenteeism for a variety of reasons—for example going south for the winter or doing community service work—should not be an acceptable excused absence. We do have a choice with how we use our time as township officials, which means if you have an option to do something of personal interest like summer activity in the community that conflicts directly with a Board or Commission meeting, then you need to make it your business to avoid that type of conflict. I suggested to Rob that we have a fiduciary responsibility to our residents to represent them at meetings, and if we are not available to do so, we are failing our constituents and the teams that we agreed to be a part of when we ran for office.

Manigold: That is one of the topics for the study sessions that we hope to talk about, along with personnel. We are having a study session tomorrow at 9:00, and another one, each Wednesday (except the first Wednesday of a full week in a month). We are trying to get everyone's time schedule where we can deal with things like looking at escrows, permitting procedural issues, and other decision making processes that take discussion among various board and commission members.

Meihn: Just to add some information for you. As you go through this evaluation of your process and procedures, in my opinion, this is a very important thing. Tomorrow I will be downstate reviewing an audit of competitive bidding processes and qualified bidding processes in one of the Township's on the east side of the state. As you probably know, a lot of those Townships on the east side in Southern Michigan are under FBI review or investigation for the bidding process. It is good to have your policies and procedures known, and understood and followed. And it is important that you not only know what are, but that the people who are implementing these processes and procedures know what they are. The second thing addresses Board member Westphal's comment. State law provides for a remedy when there is a fiduciary duty not being fulfilled. My job is to make sure that you are knowledgeable about your responsibilities. I think that there is a good reason to have an attendance policy. Everybody needs to pull their weight. Those are the types of policies that are in play that are good to look at in terms of what you do.

Manigold: I would entertain a motion to adjourn.

Wunsch: I just have a couple of additions. The Planning Commission had a public hearing for the new library yesterday. And did we approve...?

VanDenBrand: We had an approved motion to direct staff for findings to support approval.

Regular Town Board Meeting
Christina Deeren, Recording Secretary
Joanne Westphal, Editor

Wunsch: We had a recommendation for some changes at the Planning Commission level and with our staff. We are also working on the junk and blight ordinance which you may remember. Members from the Planning Commission and Township Board are working on a sub-committee that are dealing with that issue today, along with short term rentals. We are looking at making any changes that we want to make to the B&B ordinance at the same time.

Adjournment: Motion to adjourn by Bickle, second by Wunsch.
Meeting adjourned at 8:30 p.m.

Passed Unam