

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP PLANNING COMMISSION AGENDA

December 18, 2023

7:00 p.m.

1. Call to Order
2. Pledge
3. Roll Call
4. Approve Agenda
5. Brief Citizen Comments (For Non-Agenda Items Only)
6. Conflict of Interest
7. Consent Agenda
 - a. Approval of Meeting Minutes: Planning Commission Regular Meeting November 20, 2023
8. Business
 - a. Special Use Permit (SUP) – Peninsula Shores Planned Unit Development (PUD) #123, Amendment #4 – Continued Discussion with Draft Findings of Fact and Conditions for Consideration and Possible Action (Waters Edge Drive and Shoreline Court)
9. Reports and Updates
 - a. Application Received for an Amendment to SUP #132 – Bowers Harbor Vineyard
 - b. Building Height Study Group Update and Policy Recommendations
 - c. Shoreline Regulations Study Group to Begin January 2024
10. Public Comments
11. Other Matters or Comments by Planning Commission Members
12. Adjournment

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

Minutes

PENINSULA TOWNSHIP

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Ph: 231.223.7322

PENINSULA TOWNSHIP PLANNING COMMISSION MINUTES

November 20, 2023, 7:00 p.m.

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

2. **Pledge**

3. **Roll Call:** Present: Shanafelt, Hall, Beard, Dloski, Hornberger, Shipman; Absent: Alexander;
Also present: Jenn Cram, Director of Planning and Zoning, Kyle O'Meara, Fahey Schultz
Burzych & Rhodes, and Beth Chan, Recording Secretary

4. **Approve Agenda:**

Shipman: asked to add item business item 8b, officer positions for the planning
commission

**Moved by Shanafelt to add business item 8b, officer addition, to the agenda, seconded
by Hall** **approved by consensus**

Moved by Hornberger to approve the agenda as amended, seconded by Hall
approved by consensus

5. **Brief Citizen Comments (For Non-Agenda Items Only):** None

6. **Conflict of Interest:** None

7. **Consent Agenda:**

a. Approval of Meeting Minutes: Planning Commission Regular Meeting October 16,
2023

Cram: correction to add the following comments to the discussion of Peninsula Shores
SUP #123, Amendment #4, by Alexander to the October 16, 2023 meeting minutes:
*appreciates the desire to move the lot lines back on the ones along Shoreline Drive-and
wondered if an SUP was needed to do that, if the homes could be moved back without
amending the lot lines. Also, homes of similar sizes are all grouped together. This change
would have smaller homes next to some of the largest, it does not flow well. Also, you
would be increasing the density of homes within the subdivision, and anytime that
happens it is not an improvement.*

Moved by Hornberger to approve the correction of the meeting minutes and the consent agenda as amended, seconded by Hall

approved by consensus

8. Business:

a. Special Use Permit (SUP)-Peninsula Shores Planned Unit Development (PUD) #123 Amendment #4-Continued discussion with Draft Findings of Fact and Conditions for Consideration and Possible Action (Waters Edge Drive and Shoreline Court)

Cram: summarized memo from the packet dated November 13, 2023, regarding Peninsula Shores PUD, SUP #123, Amendment #4-continued discussion. The applicant submitted additional information, which is in the packet under Exhibit D. The planner and legal counsel have not had sufficient time to review and analyze this information; the findings of fact were already drafted when this information was received. The packet also contains information from the original approval. Discussed process and timeline for additional information to be submitted for a complex SUP application. Staff, legal counsel, and the applicant agreed that no action be taken this evening due to the amount of information that is to be reviewed. Any additional information from the applicant should be received by Monday, December 4th for review to allow time to amend the findings of fact and conditions as needed, which would be available on Monday, December 11th. Requested this to be the normal timeframe, two weeks before the meeting in which it would be heard.

Discussion of the timeline for the submittal of additional information.

Cram: legal counsel from both sides are willing to answer questions to move this forward.

Hall: reads Section E9, on page six of the bylaws which states that action items are to be submitted two weeks or more before the meeting. This is an example of a situation with a voluminous amount of material and administration discretion could be a formal amendment to the bylaws in the future.

Further discussion of the timeline

Cram: discussed timeline and date with the applicant.

Beard: Asked to see in the revisions what is edited when the findings of fact are revised, to follow reasoning and logic.

Cram: will use track changes.

Beard: there are regular references to a fifty-five-lot scenario, should the planning commission consider that or the forty-one lots that were approved?

Discussion of the number of lots, what might have been achieved versus what was approved.

Cram: will discuss with legal counsel

O'Meara: there are some concerns and will continue reviewing and vetting of the submitted material.

Shipman: with reference to submitted information from the applicant, Exhibit D, part four: Vineyard Ridge is ten percent open space, it is a different standard. This is a comparison of apples and oranges with Peninsula Shores.

Cram: The site and the zoning are different; this is not a shoreline development. Regarding Seven Hills Development, the capacity had different factors for the C-1 Zoning, including sewage disposal and parking for a restaurant/tavern. Another memo will be presented at the December planning commission meeting and amendments to the findings of fact.

Shipman: the key to this discussion is from a legal perspective, comparing the beginning and last approved.

Shanafelt: there is no going back as they have built houses already.

Shipman: what happened during the original approval (PUD) resulted in tremendous public engagement. It is hard to go back to the start.

Kyle O'Grady, 901 South Garfield, Suite 202, Traverse City: introduced Todd Millar, Parker Harvey Law Firm.

Todd Millar, Parker Harvey Law Firm: understands the desire and need to wade through the information presented. Has reviewed the planning commission meeting minutes, has a list of questions including substantial improvement and how did we get from thirty-six to forty-one units.

b. Election of Officers/change

Shipman: stepping down from the chair position due to a planned travel absence in January and February; happy to continue in a different role. Consider Hall for the chair.

Hornberger: Shipman could be vice-chair.

O'Meara: section seventeen discusses election of officers, does not address vacating an office, bylaws do not address this issue. The chair and vice chair could vacate the positions and appoint a chair and vice chair or they could swap positions. Nothing prohibits switching positions.

Shanafelt moves to have Shipman switch roles with Hall, with Shipman as vice-chair and Hall as chair of the planning commission effective at the conclusion of this planning commission meeting, seconded by Beard.

Roll call: Beard-yes, Shipman-yes, Hornberger-yes, Dloski-yes, Hall-yes, and Shanafelt-yes
passed

9. Reports and Updates:

a. Discussion on the Intent and Purpose of Shoreline Regulations

Cram: asked the planning commission on October 16, 2023, to consider the intent and purpose of shoreline regulations; looked at existing intent and purpose. This evening the planning commission will look at how Peninsula Township deals with jurisdiction over land and not the water. How much land is needed for docks and hoists and other things

in the water? Suggested that photos and measurements should be taken. Suggested a study group. Looking for a spring deadline before docks and hoists are installed.

Hall: reviewed the three levels of jurisdiction categories for shoreline regulation. First is the Federal government, the Army Corp of Engineers concerned with navigable waters including the east and west bays. They do not have staff for permits for seasonal docks and do so when it is related to navigability. Second is the State of Michigan which owns the bottomlands, as you step off the shore. The state does not allow permanent structures, but instead, seasonal docks are generally permitted. Who is in charge of seasonal docks? The third is Peninsula Township which has authority over the size, location, and density of docks on the shoreline, derived from the township's jurisdiction on the land above the ordinary high water mark. Docks are in connection with the land/shoreline. Issues are dock location and size and shared water frontage.

Cram: the township receives phone calls from residents who are concerned about neighbors placing docks in front of their property. This interferes with utilizing the shoreline. Also, shared shoreline needs, parking space and storage space, this is an issue with the shoreline and how it relates to the water. Summarized the township's shoreline regulations with the issuing of Land Use Permits and the change in the FEMA base flood elevation maps. Presented information on the effects of the new FEMA floodplain map (April 2023) and how it intersects with zoning and land use.

Discussion of the formation of a study group, recruiting members to serve starting in January and possible outside agencies to assist.

10. Public Comments:

Mark Nadolski, 10 McKinley Road: does the township monitor the number of shore stations that each subdivision uses? It has been an ongoing battle, is the township involved?

Cram: staff resources are unavailable for thorough shore station ordinance enforcement in subdivisions. The township ordinance enforcement officer has not made a count for subdivisions and individual owners. Believes there are many violations out there.

Nadolski: is the township aware of the numbers each subdivision has?

Cram: we are aware if they were approved by a PUD/SUP; but enforced only by complaints.

Nadolski: have lived here since 1973, if the township can't control its shoreline what is the solution?

Shanafelt: this has to do with resource availability, funding, and personnel. There is a lack of capability to control this.

Nadolski: suggested hiring

Shanafelt: this involves money, which involves budget.

Nadolski: who polices this now?

Cram: the zoning administrator and ordinance enforcement officer via the zoning ordinance, gives authority to the township enforcement officer

Nadolski: people buy into a subdivision; they want to put a shore station in; there is not enough control by the subdivisions to enforce by-laws. The township needs to sit down with the HOA presidents for control.

Cram: some HOA presidents are more involved than others.

John Dolton, 10862 Eagles Landing Drive: to clarify, in Eagles Landing, our SUP specifies in both phases, the precise number of shore stations in the bylaws of the HOA. The township was responsive to the complaints from the HOA. A clear ordinance needs to be created so we have something that can be enforced. Encouraged the planning commission to adopt components, some are more time sensitive. Shoreline is very valuable; people pay for it; and it needs to be fair to all owners. These are big issues, the number of shore stations and where they can be placed, along with docks.

Cram: for inland lakes, property owners own the bottomlands, but for the great lakes the state owns the bottomlands.

Hall: a permanent structure cannot be placed on the Great Lakes.

11. Other Matters or Comments by Planning Commission Members:

Shipman: Julie Alexander sent some correspondence to be included in the packet; comments for the November record.

Cram: will share comments with the applicant and will put them in the packet for the next meeting.

Shipman: forward it to the members. Asks for attendance for December's planning commission meeting.

12. Adjournment: 8:17 p.m.

Moved by Dloski to adjourn, seconded by Hall

approved by consensus

November 16, 2023

To Planner, Planning Commission and Residents of Peninsula Township

I am writing to share my thoughts on Sup 123 Amendment 4 as I am unable to attend this meeting. Please read these into the record.

At our last meeting I expressed my agreement with the findings of fact and conditions. I feel that Sup 123 Amendment 4 does not meet the standards needed for approval.

My concerns are noted here:

In Section 8.1.3

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

Findings of fact state that this standard has not been met- I agree.

My concern is that lots of similar sizes are not all grouped together.

As stated in the findings of fact and conditions: the houses along the shoreline are all smaller lots in a harmonious grouping. The splitting of this lot would create two lots- much smaller in size than the ones abutting it and does not flow. In this manner I feel the intended character has been altered. If I owned the property abutting the split, I would be concerned about how this affected my property values.

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.

Oxford dictionary states the definition of the word Substantial is:

Of considerable importance, size or worth.

Merriam Webster has multiple definitions. I find this one the most appropriate:

Considerable in quantity : significantly great

I agree that this standard has not been met. The way the standard reads, this change would need to be an improvement that is considerable in quantity or of considerable importance.

Even the developer has argued that this change will produce very little change to the overall development and have a negligible impact on the residents already there.

If that is the case, then it is not a substantial improvement. The change would have to be so large it would be noticeable and greatly improve the lives of those in residence or the community to meet the standard.

I think about food in this case- (and most others if I confess)

If I am super hungry and want a substantial meal while traveling, I want the whopper with everything on it- the change after eating it would be huge- very noticeable and I would be satisfied- no longer hungry!

In the case of the development- This is NOT an improvement-anytime density is increased, which it is- here more houses in the same amount of space- More property under roof- lots are smaller which increases the density of the development and houses are not grouped in similar sizes as they are under the current configuration. Then there is also the addition of more lights, additional septic needs and more trips per household, not to mention the increase in traffic due to workmen, lawn care etc. Not an improvement by any means.

As to exhibit D-

I appreciate that we have been asked to not take action at this meeting- partly due to a large amount of information being presented very close to the date of our meeting. We do have a packet policy which clearly states the time constraints for information to be provided to the Planner and PC to give adequate time for us to process them. That policy is 8 days. The date of receipt was 7 days before our meeting. I believe that our planner is making every effort to accommodate the developer as well as ensure the process is adhered to with integrity. I hope her efforts are appreciated. I also wonder if the guidelines are present why are we not following them?

One point I would make is that in our process every amendment to an SUP requires due process and changes have to be considered on their merits – just because we have approved the development and or similar projects it does not mean all changes presented are in the best interest of the community as a whole or are keeping with the original intent of the project.

Thank you for allowing me to share my thoughts even though I am not able to be present. I hope to be there at our next meeting.

Sincerely- Julie Alexander

Business

Peninsula Shores PUD, SUP #123
Amendment #4

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

Special Use Permit (SUP)/Planned Unit Development (PUD) Amendment
DRAFT FINDINGS OF FACT AND CONDITIONS

SUP #123, Amendment #4 - Peninsula Shores (Formerly The 81) PUD Condominium Subdivision
December 18, 2023

PENINSULA TOWNSHIP BOARD

Applicant: The 81 Development Company, LLC
Kevin and Kyle O'Grady, Owners

Hearing Date(s): Planning Commission:
August 21, 2023 (Introduction),
September 18, 2023 (Public Hearing)
October 16, 2023 (Continued Discussion)
November 20, 2023 (Continued Discussion)
December 18, 2023 (Continued Discussion with Possible Action)

Township Board: TBD

PROPERTY DESCRIPTION

Parcel ID#: 28-11-609-001-00 through 28-11-609-041-00 and 28-11-609-900-00
Total Acreage: ~81-acres
Property Address: Waters Edge Drive and Shoreline Court
Zoning: R-1A – Rural and Hillside Residential & R-1B - Coastal Zone Residential
Adjacent Zoning: R-1A – Rural and Hillside Residential to the north and west (northwest corner = A-1 – Agricultural), R-1B - Coastal Zone Residential to the south and East Grand Traverse Bay to the east

Water: Individual Wells
Sewage Disposal: Community Septic Facility and Individual On-site Septic Systems
Access: Water's Edge Drive via Boursaw Road

INTRODUCTION AND BACKGROUND

In January of 2015, an application for a Special Use Permit (SUP #123) for a Planned Unit Development (PUD) to build a 36-unit single-family residential condominium development with 65% private open space located off Boursaw Road was submitted. The Township Board approved the application for a Special Use Permit (SUP #123) for a Planned Unit Development (PUD) with a maximum of 41 single-family residential units on August 11, 2015. The approval was subject to ten conditions of approval. Subsequent court proceedings led to another project approval pursuant to action taken by the Township Board on January 23, 2018. This review and approval were specific to grading, soil erosion and storm water plans, and an emergency access road only. There were two additional conditions of approval added to the original approval from 2015.

On September 10, 2019, the Township Board approved the first amendment to SUP #123 that included shifting the private road (currently Shoreline Court) to the west that enlarged Units 5-9, adjusting the lot widths of Units 1-9 to be more uniform, eliminating the landscaped area along the private road to enlarge Units 4 and 10, reducing the lot size of Units 11-28 along the easterly side to meet the 65% open space requirement, and realigning the emergency access to the south. No additional density was proposed or approved.

On May 10, 2022, the Township Board approved the third amendment to SUP #123 (The 2nd amendment was withdrawn.) The third amendment approved the relocation of Unit 1 from the southeast corner of the development to the northwest corner, removed Parcel A from the SUP/PUD eliminating the lakefront access from Unit 1, modified the sanitary easement for Unit 6 and adjusted the lot lines of Units 38-41. No additional density was proposed or approved.

The 81 Development Company has submitted an application and supporting materials attached as **(EXHIBIT 1)** to amend SUP #123 that will amend the approved PUD. This is the fourth proposed amendment. The current request for Amendment #4 is summarized below.

1. Lot line adjustments to Units 25-29 and 41.
2. Addition of one development site proposed as Unit 42.
3. Proposed sanitary easement for Unit 42.

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

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

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

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

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

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

Although the proposed use of the property for single-family residences does not change because of the requested amendments to modify the PUD, the character of the original approval is eroded. The original approval clustered 5 smaller lots adjacent to the shoreline between 12,888 square feet and 18,295 square feet. The remaining 36 lots are between 22,044 square feet and 37,684 square feet. Unit 41 was originally approved at 30,565 square feet. As proposed Units 41 (15,702 sq. ft.) and 42 (19,515 sq. ft.) are now smaller lots located randomly at the top of the development adjacent to larger lots (Unit 40 = 25,018 sq. ft.). They are also located closer to the western property line reducing the buffer to adjacent properties. As such, the existing character of the development as originally approved has changed.

Staff finds that this standard has not been met.

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

A residential use adjacent to another residential use is generally compatible, however, the proposed amendments depart from the reason why the SUP/PUD was originally approved and the reasons why prior amendments were approved—those approvals furthered the objective of increasing open space and reducing density.

When the original SUP/PUD was approved it was found that a 41-unit single-family residential development with 65% open space was a substantial improvement to property in the immediate vicinity and to the community as a whole because the alternative was the potential for 55 units with no requirement for open space.

The first amendment proposed no increase in density as no additional units were proposed or approved, nor did the third amendment. The third amendment was also found to be a substantial improvement to properties in the immediate vicinity and community as a whole as compared to the original approved SUP/PUD because relocating an approved unit for development preserved a scenic view from the public right-of-way to East Grand Traverse Bay and eliminated a steep access to the shoreline.

The fourth proposed amendment will maintain the same open space in exchange for reconfigured lot sizes causing an increase in density that will result in increased traffic, lighting and noise as well as require an additional on-site septic system. These increases erode the substantial benefit that was achieved in the original SUP/PUD approval with 41 units. While the proposed 42 units would be less than the 55 units that could have been developed, this does not necessarily mean that the development is a “substantial” improvement. It is appropriate for a line to be drawn somewhere and staff finds that a 42-unit development would only be a marginal improvement (not a substantial improvement) over a 55-unit development.

That amendments to the SUP/PUD were previously approved by the Township does not mean that there is any requirement to approve this proposed amendment, as each amendment stands on its own. Importantly, the Planning Commission indicated that 41 units was historically regarded to be the maximum number that was appropriate for the development incentive in exchange for the open space and original parcel configuration on this property. The Planning Commission further observed that the number of units in this type of PUD residential development is foundational to the development and remains one of the most critical parts of the development, as the balance between the number of units and the open space was a significant component of the intent behind approving the original SUP/PUD. The Planning Commission additionally stated that the increased expansion would erode the justifications of the original SUP/PUD approval and impact the balancing of the PUD provisions that warranted approval of the project in the first instance.

The findings of fact approving the third amendment to this SUP/PUD noted: "The spirit and intent of the original approval is also maintained with residential units clustered around larger tracts of open space." Adding residential units and increasing the density of the development would not be consistent with the spirit and intent of the original approval, given that the proposed fourth amendment does not otherwise increase open space or decrease density.

In addition, Township records of prior approvals related to the SUP/PUD demonstrated considerable resistance from neighbors throughout the prior amendments, which did not increase the density of the development like this proposed amendment does, which further shows that increasing the density of the development would be disturbing and/or not a substantial improvement to the property in the immediate vicinity.

The applicant has submitted letters and exhibits containing other land use decisions by the Township, as well as records of proceedings related to this development before the Grand Traverse County Circuit Court. Based on the Township Attorney's review of the materials and discussion during the Planning Commission's meetings, staff finds that the materials submitted by the applicant are not directly on point to the proposed amendment before the Planning Commission and do not support the applicant's position that the Planning Commission is required to approve the proposed amendment based on administrative precedent.

Lastly, the applicant has indicated to the Planning Commission that the sole reason for the proposed fourth amendment was to add an additional lot to the development. Staff finds that this purely financial motivation is not a sufficient reason to amend the SUP/PUD. While PUDs can certainly be amended, such amendments should further carry out of the objectives of the PUD, rather than maximize economic realization without regard to the impact on the intent of the original approval.

Staff finds that this standard has not been met.

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

The proposed amendments to the SUP/PUD will not materially change essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, or schools. One additional lot will utilize a well and individual on-site septic system if the request is approved.

Staff finds that this standard has been met.

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

The proposed amendments to the approved SUP/PUD will not create any additional requirements at public cost for public facilities and services.

Staff finds that this standard has been met.

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

The proposed amendments to the SUP/PUD will not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors. Nor is it anticipated that there will be any negative impacts from particulates leaving the property with proper dust suppression and storm water management practices that are required as part of the issuance of a land use permit for each individual residential unit to be constructed within the development.

Staff finds that this standard has been met.

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

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

- (a) ***That the applicant may legally apply for site plan review.*** The 81 Development Company as the property owner and developer/applicant may legally apply for an amendment to the SUP to modify the PUD site plan.

Staff finds that this standard has been met.

- (b) ***That all required information has been provided.*** The application for the requested amendments is complete along with additional requested information to assist staff, Planning Commission, and the Township Board of Trustees with their analysis of the proposed amendments.

Staff finds that this standard has been met.

- (c) ***That the proposed development conforms to all regulations of the zoning district in which it is located.*** The proposed amendments conform to the requirements of the R-1A and R-1B zone districts. Engineering has reviewed the open space calculations to confirm the 65% requirement is maintained. Comments are included as ***(EXHIBIT 2)***. However, the requested amendments do not conform to other requirements associated with a PUD per Section 8.3, particularly when viewed through the lens of the intent behind the original approval and prior approved amendments, as the proposed amendment negatively impacts aspects of the PUD that were the basis for those approvals. The proposed amendments, while not radical, are nevertheless negative.

Staff finds that this standard has not been met.

- (d) ***That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.*** Engineering has approved the preliminary storm water calculations (***EXHIBIT 2***). The fire chief has also provided comments and did not have concerns with the requested amendments (***EXHIBIT 2***). A proposed condition of approval has been included to ensure that fire department comments are addressed. Grand Traverse County Environmental Health has provided a letter noting that soils on Unit 24 are suitable for an individual on-site septic system (***EXHIBIT 1***).

Staff finds 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.*** As discussed above, the proposed amendments to the SUP/PUD meet the requirements or standards of other governmental agencies consistent with the original approval and subsequent amendments.

Staff finds 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.*** The proposed amendments do not negatively impact prior approvals with respect to natural resource preservation. The open space for the development as proposed will continue to meet the 65% requirement. The reconfiguration of Units 24-29 will move development further away from the bluff. The new unit will not result in the loss of trees or negatively impact the wetland within the development.

Staff finds 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.*** The proposed plan amendments do not impact flood ways or flood plains.

Staff finds 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.*** The proposed amendments do not impact prior approvals with respect to soil suitability.

Staff finds this standard has been met.

- (i) ***That the proposed development will not cause soil erosion or sedimentation problems.*** The proposed amendments do not negatively impact prior approvals with respect to soil erosion or sedimentation. A proposed condition of approval has been included that requires that the applicant receive a Land Use Permit prior to construction that covers these items.

Staff finds this standard has been met.

- (j) ***That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.*** The proposed amendments do not negatively impact prior approvals with respect to stormwater. As noted above, engineering has reviewed preliminary storm water calculations and had no concerns.

Staff finds 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.*** The proposed amendments will not destroy the character of the property or the surrounding area, as the area has already been developed with single-family residences.

Staff finds this standard has been met.

- (l) ***That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.*** The proposed amendments will not disrupt air drainage systems necessary for agricultural uses.

Staff finds 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.*** The proposed amendments will not impact any project phasing.

Staff finds 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.*** The proposed amendments will not require any changes to existing streets. Storm water control has been reviewed for compliance by our engineer. One new well and one additional individual on-site septic system will be utilized within the development if the requested amendments are approved.

Staff finds this standard has been met.

- (o) ***That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.*** The proposed amendments will not change any requirements for fences or walls. We do not believe that additional buffering is needed, but welcome input from the Planning Commission.

Staff finds 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.*** The proposed amendments will create additional traffic. Per national averages, one single-family residence generates approximately 10 vehicle trips per day. This is an approximately 2.4% increase to the estimated total trips generated from 41 single-family residences originally approved. This results in a cumulative increase to the approximately 410 vehicle trips generated by 41 single-family residential units. While this

increase is not severe, it will “adversely affect” the flow of traffic within the site due to additional residents, package deliveries, guests, and invitees, pushing the envelope too far beyond what was previously deemed acceptable.

Staff finds this standard has not been met.

- (q) ***That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.*** The proposed amendments will not change vehicular and pedestrian traffic flow within the development.

Staff finds 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.*** The proposed amendments will not change plans for addressing outdoor storage of garbage and refuse.

Staff finds 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.*** The proposed amendments are not in accord with the spirit and purpose of the Ordinance, as standard 8.1.3 (1)(b) and others have not been met. As such, the requested amendments are inconsistent with and contrary to the objectives sought to be accomplished by the Ordinance and principles of sound planning. The proposed amendments are also not in accord with the spirit of the original approval.

Staff finds this standard has not been met.

SECTION 8.3 PLANNED UNIT DEVELOPMENTS

FINDINGS – 8.3.2 OBJECTIVES

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

1. ***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.*** The proposed amendments do not change the initial determination that the project creates a 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. This is accomplished by clustering the residential development sites around large tracts of open space that meet the 65% requirement.

Staff finds this standard has been met.

2. ***To provide open space options.*** The proposed amendments do not change the intent of open space areas being preserved. The open space calculations have been confirmed to maintain 65% open space. Proposed amendments do not require the removal of mature tree stands.

Staff finds this standard has been met.

3. ***To encourage developers to use a more creative and imaginative approach in the development of residential areas.*** The proposed amendments do not provide for a more creative and imaginative approach in the development of residential areas. As proposed, one additional unit will be squeezed in, density will increase, along with traffic, lighting, noise, and the requirement for an additional on-site septic system. In addition, Unit 42 will be located closer to the western property line and the adjacent residential neighborhood. The findings of fact relative to this requirement for the third amendment stated that it did not “change the initial determination that the development offers a more creative and imaginative approach in the development of residential areas,” noting that the “proposed amendments do not increase density or reduce the amount of open space being preserved.” Unlike the third amendment, the proposed fourth amendment would increase density. In addition, the applicant indicated to the Planning Commission that the purpose of this proposed amendment was solely to add an additional lot to the development. Adding a new unit simply because the applicant finds the negative impacts from the additional unit to be marginal is neither creative nor imaginative.

Staff finds this standard has not been met.

4. ***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.*** The proposed plan amendments do not change the initial determination that the development offers a more efficient and aesthetic use of open areas.

Staff finds this standard has been met.

5. ***To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.*** The proposed amendments do not change the variety of housing types, nor provide for a mixture of housing types. One additional unit is proposed that modifies the approved physical development within the PUD plan. Unlike the variety in the physical development patterns of the original PUD and previously approved amendments, this proposed amendment offers nothing new in the way of physical development patterns that would move the proverbial needle regarding the approval of the overall PUD plan.

Staff finds this standard has not been met.

6. ***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.*** The proposed amendments do not change the initial determination that the development is clustered around 65% open space.

Staff finds this standard has been met.

FINDINGS – 8.3.3 QUALIFYING CONDITIONS

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

1. ***The planned unit development 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.*** The proposed development area is still far more than 20 acres in size at ~81 acres.

Staff finds that this standard has been met.

2. ***The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts.*** The development area remains residential (R-1A and R1-B) and has an approved PUD that allows the development of residential units by virtue of past approvals.

Staff finds this standard has been met.

3. ***Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements.*** The proposed amendments require one new well and one additional individual on-site septic system. Grand Traverse County has noted that soils are suitable for an on-site septic system. A well permit will be required prior to any construction.

Staff finds this standard has been met.

4. ***The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1. except as provided by Section 8.3.5 (1).*** Forty-one units were approved. Forty-two units are proposed. The proposed amendments change past determinations of acceptable density and associated traffic, noise, lighting etc., made regarding the original forty-one units and the project is negatively impacted by this change. The difference in density from the hypothetical fifty-five units that could have been developed is decreased against the intent of the Zoning Ordinance by adding one additional unit.

Staff finds this standard has not been met.

5. ***Open space shall be provided according to Section 8.3.6.*** The proposed plan amendments will provide the required 65% open space.

Staff finds this standard has been met.

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

amendments do not include building envelopes, parking lots and roads within the designated 65% open space.

Staff finds this standard has been met.

- 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.*** All standards within Section 8.3, Section 8.1. and Article VII have not been met.

Staff finds this standard has not been met.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission recommend denial of the requested amendments to the Township board as all the required standards have not been met satisfactorily.

If the Planning Commission finds that all standards have been met, we have included draft conditions of approval for consideration.

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township and other governmental regulations relative to the establishment for property zoned R-1A – Rural and Hillside Residential and R-1B – Coastal Zone Residential, with the above permitted use(s) on site as approved by the PUD, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), the Grand Traverse County Drain Commissioner (GTCD), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing special land use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

DRAFT APPROVAL CONDITIONS AND SAFEGUARDS:

Conditions and Safeguards: The Township Board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions include:

1. All prior findings, conditions and safeguards imposed by the Circuit Court and the Peninsula Township Board of Trustees that apply to the original approval and subsequent amendments remain in effect.
2. Forty-two (42) Units is the maximum number of units allowed.
3. Approval of a Land Use Permit is required prior to any construction of residential units within the development. Such Land Use Permit will include review and approval of dust suppression,

storm water management, soil erosion control, and Grand Traverse County Environmental Health requirements.

4. The Master Deed shall be updated to be consistent with the approved amendments.
5. All access roads, including the emergency access road shall be maintained in good working condition to allow for emergency access including snow removal.

COMMENCEMENT AND COMPLETION

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use and accompanying site plan are enforceable and remedies available under Section 4.2 of the zoning ordinance.

EXHIBITS:

1. Original Application Materials + Additional Materials Provided by the Applicant for the Introduction
2. Engineering and Fire Department Comments
3. New Information Received November 13, 2023, and December 4, 2023.

Exhibit 1


PENINSULA TOWNSHIP APPLICATION FOR SPECIAL USE PERMIT NO.

Section 8.1

Parcel Code/s 11-609-900-00

Property Address: Waters Edge Drive

Applicant Address: The 81 Development Co., 901 S. Garfield Ave., Ste. 202, TC, MI 49685

Nyle O'Grady 

Review Fee ~~\$500.~~

7/11/2023 Date

APPLICATION REQUIREMENTS Section 8.1.2

1. Each application is submitted through the Township Planner, and shall be accompanied by a fee as established by the Peninsula Township Board.
2. The applicant will assume direct costs for any additional professional review determined necessary by the Planning Commission or the Township Board, subject to prior review and approval of the applicant.
3. No part of any fee is be refundable and no portion of the fee covers the cost of any individual land use permit that may be issued on any of the building sites located in a Planned Unit Development.
4. Requirements for documents and information filled out in full by the applicant:
 - (a) A statement of supporting evidence showing compliance with the requirements of Section 8.1.3.
 - (b) Site plan, plot plan, development plan, drawn to scale (preferable 1"=50'), of total property involved showing the location of all abutting streets, the location of all existing and proposed structures and their uses, and the location and extent of all above ground development.
 - (c) Preliminary plans and specifications of the proposed development.
5. This application, along with all required data shall be submitted to the Zoning Administrator.
 - (a) Upon receipt of a completed application and the required data by the Zoning Administrator, it is transmitted to the Township Planning Commission for review.
 - (b) The Planning Commission may hold a public hearing on the application.
 - (c) Following a study by the Planning Commission it is transmitted to the Township Board for consideration.
 - (d) The Township Board may deny, approve, or approve with conditions, a request for special land use approval.

6. Specific Requirements: In reviewing an impact assessment and site plan, the Town Board and the Planning Commission shall consider the following standards:

- (a) That the applicant may legally apply for site plan review.
- (b) That all required information has been provided.
- (c) That the proposed development conforms to all regulations of the zoning district in which it is located.
- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
- (e) That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
- (f) That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
- (g) That the proposed development property respects floodways and flood plains on or in the vicinity of the subject property.
- (h) That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.
- (i) That the proposed development will not cause soil erosion or sedimentation problems.
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
- (k) That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.
- (l) That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
- (m) That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
- (o) That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.

- (p) That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
 - (q) That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
 - (r) That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
 - (s) That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
7. A public hearing on a special land use request is held by the Township Board if:
- a. A public hearing is requested by the Township Board, the applicant for special land use authorization, a property owner, or the occupant of a structure located within three hundred (300) feet of the boundary of the property being considered for a special land use.
 - b. The decision on the special land use request is based on discretionary grounds.

Special Use Permit - Planned Unit Development Checklist

Special Use Permit Number 123.

Parcel Code/s 11-609-900-00

Property Address: Waters Edge Drive

Applicant: The 81 Development Co.,

ARTICLE VIII

Ordinance Reference - Section 8.1.2 Permit Procedures:

8. Submission of Application:

1. \$500 Fee No part of any fee shall be refundable.

Please see the attached submittal for response to these questions - pages 1 and 2

9. Include a statement of HOW the proposed project will:

- a. ☒ Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.
- b. ☒ Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
- c. ☒ Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.
- d. ☒ Not create excessive additional requirements at public cost for public facilities and services.
- e. ☒ Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

Please see the attached submittal for response to these questions - pages 2 through 4

Ordinance Reference - Section 8.1.3

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

- a. Yes That the applicant may legally apply for site plan review.
- b. Yes That all required information has been provided.
- c. Yes That the proposed development conforms to all regulations of the zoning district in which it is located.
- d. Yes That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
- e. Yes 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. no change Grand Traverse County Road Commission
- ii. no change Grand Traverse County Drain Commissioner
- iii. no change County DPW standards for sewer and water if public.

- iv. as required Grand Traverse County Health Department for private systems
- v. no change State and Federal Agencies for wetlands, public sewer and water.
- f. Yes That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
- g. Yes That the proposed development property respects floodways and flood plains on or in the vicinity of the subject property.
- h. No change 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. No change That the proposed development will not cause soil erosion or sedimentation problems.
- j. Yes That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
- k. ✓ That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.
- l. N.A. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
- m. ✓ That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.
- n. No change That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
- o. No change That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.
- p. No change That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.
- q. No change That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.
- r. No change That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.
- s. ✓ That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.
4. **Present 8 copies of Site plan, plot plan, development plan**
 Drawn to scale (preferable 1"=50'), of total property involved showing:
- a. X the location of all abutting streets,
- b. NA the location of all existing and proposed structures and their uses
- c. X the location and extent of all above ground development, both existing and proposed including proposed Building Envelopes and setbacks. (Also see Section 7.2.6).
- d. Preliminary plans and specifications of the proposed development. *This preliminary plan shall be in a form that can be easily reproduced on transparencies that can be used for public presentation.*

Is the project to be developed in Phases? ___ Yes; X No.

5. If the project is to be phased, provide documentation that:
 - a. No change Upon completion, each phase will be capable of standing on its own in terms of the presence of services, facilities, and open space, and contains the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the project and the residents of the surrounding area.
 - b. No change Shows a proposed commencement date for each phase of the project.

Section 8.3 Planned Unit Developments:

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

Provide statements showing HOW the project meets the following Objectives:

1. see attached Provides a more desirable living environment by preserving the natural character of open fields, stand of trees, brooks, ponds, lake shore, hills, and similar natural assets.
2. see attached Provision of open space requirements.
3. see attached A more creative and imaginative approach in the development of residential areas.
4. see attached 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.
5. see attached Encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
6. see attached 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.

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

1. No change The planned unit development site shall not be less than twenty (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being planned and developed as one integral unit. PROVIDED that the site size requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of the land.
2. No change 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.
3. No change 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.
4. No change The proposed population density of the planned unit development shall be no greater than if the tract were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1.
5. see attached Open space shall be provided according to Section 8.3.6.
6. see attached For purposes of this Section 8.3, Open Space does not include building envelopes, parking lots and roads (roadbed width plus two (2) foot shoulders on each side).
7. ☒ The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1. and Article VII.

Section 8.3.4 Uses that May be Permitted: The following uses of land and structures may be permitted within planned unit developments, **Indicate the proposed uses in the Planned Unit**

Development:

1. ✓ Single family dwellings.
2. N.A. Two-family dwellings.
3. N.A. Group housing, row houses, garden apartments, or other similar housing types which can be defined as single-family dwelling with no side yards between adjacent dwelling units, Provided that there shall be no more than eight (8) dwelling units in any contiguous group.
4. ✓ Open space according to Section 8.3.6 Provided that only the following land uses may be set aside as common land for open space or recreation use under the provisions of this Section
 - a. N.A. Private recreational facilities (but not golf courses) such as pools, or other recreational facilities which are limited to the use of the owners or occupants of the lots located within the planned unit development.
 - b. N.A. Historic building sites or historical sites, parks and parkway areas, ornamental parks, extensive areas with tree cover, low lands along streams or areas of rough terrain when such areas have natural features worthy of scenic preservation.
 - c. N.A. Commonly owned agricultural lands.
5. No change Signs as allowed by Section 7.11.
6. No change Deed restricted Agricultural lands.
7. ✓ Garages and accessory buildings and uses exclusively for the use of residents of the planned unit development and for the proper maintenance thereof.

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

1. **Site Acreage Computation:**
 - a. 82.44 The net acreage proposed for a planned unit development shall be computed to determine the total land area available for development into lots under the minimum lot size requirements of the applicable zoning district in which the proposed planned unit development is located.
 - b. 12.36 Acreage not included:
 - i. N.A. Land utilized by public utilities as easements for major facilities, such as electric transmission lines, sewer lines, water mains, or other similar lands which are not available to the owner because of such easements.
 - ii. N.A. Lands below the Lake Michigan ordinary high water mark.
 - iii. N.A. Lands used for commercial purposes subject to the requirements of Section 6.8.
2. **Maximum Number of Lots and Dwelling Units:** After the net acreage has been determined by the above procedure, the maximum number of lots and/or dwelling units that may be approved within a planned unit development shall be computed by subtracting from the net acreage a fixed percentage of said total for street right-of-way purposes, and dividing the remainder by the minimum lot area requirement of the zoning district in which the planned unit development is located.
 - a. 12.36 The fixed percentages for street right-of-way purposes to be subtracted from the net acreage shall be fifteen (15) percent for the R-1A and R-1B residential districts, twenty (20) percent for the R-1C district and thirty (30) percent for multiple family development in the R-1D district. These percentages shall apply regardless of the amount of land actually required for street right-of-way.

- b. ☒ Under this procedure, individual lots may be reduced in area below the minimum lot size required by the zone district in which the planned unit development is located, PROVIDED that the total number of dwelling units and/or lots created within the development is not more than the maximum number that would be allowed if the project were developed under the minimum lot area requirements of the applicable zone district or districts in which it is located. Units may be distributed without regard to district boundaries.
3. Permissive Building Envelope: Building Envelopes shall be as shown on the Site Plan and not included as open space.
4. Permissive Minimum Lot Area: Minimum Lot Area shall be as determined by the Township Board and shown on the Site Plan.
5. Maximum Permissive Building Height: 2.5 stories but not exceeding 35 feet. Accessory buildings shall not exceed a height of 15 feet. Provided that the height of agricultural buildings may be increased pursuant to Section 7.3.3 Permitted Exceptions, Agricultural Districts.
6. Section 8.3.6 Open Space Requirements Option: The Township Board shall utilize one of the following four options for dedication of the provided open space:
7. Open Space Dedicated for Private Use: A residential planned unit development with a minimum of 65% of the net acreage kept as open space and owned by the Home Owners Association or Condominium Association. That open space land shall be set aside as common land for the sole benefit, use and enjoyment of present and future lot or home owners within the development.
- a. ☒ Such open space shall be conveyed by proper legal procedures from the project owner or owners to a home owners association or other similar non-profit organization so that fee simple title shall be vested in project lot owners as tenants in common.
- b. ☒ Documents providing for the maintenance of said land and any buildings thereon to assure that open space land remains open shall be provided to the Township Board for its approval. **will be provided upon approval of the requested amendment*
- c. ☒ The access and characteristics of the open space land are such that it will be readily available and desirable for the use intended.
8. Open Space Dedicated for Public Use: A Residential Planned Unit Development with a minimum of 10% of the net acreage dedicated to the Township. That open space land shall be dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board makes the following determinations:
- a. N.A. The location and extent of said land is not in conflict with the Master Plan of Peninsula Township.
- b. N.A. The access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended .
9. Open Space Dedicated for Deed Restricted Agricultural Land: A Planned Unit Development with a minimum of 65% of the net acreage as deed restricted agricultural land. That open space shall be retained in agricultural use as specified on the site plan with the following conditions:
- a. The Land shall be used exclusively for farming purposes.

- b. A conservation easement shall be granted to Peninsula Township that restricts uses to those that are allowed on deed restricted agricultural land subject to conservation easements purchased by Peninsula Township pursuant to the Purchase of Development Rights Ordinance No. 23.
 - c. A farmstead parcel consisting of a residence for the owner or operator of the farm along with any or all of the following outbuildings may be shown on the site plan if approved by the Township Board:
 1. Barns existing or proposed for uses necessary for agricultural production.
 2. Outbuildings existing or proposed for storage of machinery and equipment used for agricultural production.

N.A. If a farmstead is shown on the site plan it shall be counted as one of the allowed dwelling units in the Planned unit development.
 - d. The deed restricted agricultural land may be sold separately from the dwelling parcels.
10. Open Space Apportioned Between Private Use and Deed Restricted Agricultural Land: The Township Board may approve open space apportioned between Private Use and Deed Restricted Agricultural Land described in (1) and (3) above provided, that in addition to the provisions of (7) and (9) above, the Deed Restricted Agricultural Land portion:
- a. N.A. Shall be a minimum of five acres.
 - b. N.A. Shall be viable farmland as determined by the Township Board.
 - c. N.A. Irrespective of (9) above; no buildings shall be allowed.
11. Section 8.3.7 Maximum Percentage of Lot Area Covered by All Structures:
- a. see attached The maximum percent of lot area covered by all structures shall not exceed fifteen (15) percent of net acreage.
 - b. see attached A Building Envelope within which structures may be located shall be shown on the site plan for all existing or future structures.
 - c. see attached The maximum number of square feet to be covered by all structures for each building envelope shall be shown on the site plan or attached to it.
12. Section 8.3.8 Affidavit: The applicant shall record an affidavit with the register of deeds containing the legal description of the entire project, specifying the date of approval of the special use permit, and declaring that all future development of the planned unit development property has been authorized and required to be carried out in accordance with the approved special use permit unless an amendment thereto is duly adopted by the Township upon the request and/or approval of the applicant, or applicant's transferee and/or assigns. *Amedment will be recorded upon approval & signatures of authorized boards and personel.*
13. Section 7.7 Developments Abutting Agricultural Lands: Section 7.7.1 Agricultural Setback:. The following setbacks shall be required when a planned unit development, subdivision, condominium, mobile home park, or other group housing is developed; and on those metes and bounds parcels created after the effective date of this amendment, as provided below
- a. Section 7.7.1.1 Requirement Agricultural Setback:
 - i. No change A setback of 100 feet from the property line of the adjacent property shall be required for accessory uses, buildings or structures as follows:

- (1) When a planned unit development, subdivision, condominium, mobile home park, or other group housing is developed adjacent to land that is zoned A-1 Agriculture, and;
 - (2) When a planned unit development, subdivision, condominium, mobile home park, or other group housing is developed adjacent to land that is zoned Residential but is shown on the Agricultural Preserve Map of the Peninsula Township Comprehensive Plan as adopted and amended from time to time by the Planning Commission.
- ii. No change A setback of 50 feet from the property line of the adjacent property shall be required for those portions of metes and bounds parcels created after the adoption of this amendment that have a common line with land that is zoned A-1 Agriculture unless that A-1 Agriculture zoned land is being used for residential purposes.
 - iii. No change The setback areas required by (1) and (2) above shall not be used for accessory uses, buildings or structures.
 - iv. No change A setback of 100 feet shall be required when a planned unit development, subdivision, condominium, mobile home park, or other group housing is developed adjacent to land that is zoned Residential but is currently being used for agricultural production that includes the carrying on of usual soil practices of cultivation, spraying and fertilization.
- b. Section 7.7.1.2 Lot Designation: Subdivision Lots or Condominium Limited Common Elements adjacent to such agricultural lands shall have designated building sites shown on the preliminary and final plans. Residential and accessory uses shall be located within the designated areas. Plans accompanying applications for zoning permits shall show such designated sites.
- c. Section 7.7.1.3 Exceptions to Required Setbacks:
- i. ☒ The Township Board may, upon recommendation of the Planning Commission, decrease the required setback on any or all lots or limited common elements when the Township Board determines that one or more of the following conditions exist:
 - (1) No change The existence of topographic conditions i.e. steep slopes, changes in grade, wetlands etc. or other site conditions which make it:
 - (a) No change unlikely that any of the uses allowed in the agricultural district would be located on the adjacent agriculturally zoned land; or
 - (b) No change so that the properties are sufficiently separated to mitigate incompatibilities of use.
 - (2) N.A. There exists an easement such as a conservation easement on the land adjacent to the proposed plat that restricts agricultural uses in such a manner that protection to future homeowners is equal or better than that provided by the 100 foot setback.
 - (3) N.A. There are existing residential uses along the lot line of the agriculturally zoned property.

July 11th, 2023

Peninsula Township
Jenn Cram, Planner
13235 Center Rd.,
Traverse City, MI 49686

RE: Peninsula Shores, PUD #123
Application for Amendment #4

Dear Ms. Cram and Peninsula Township Planning Commission,

On behalf of the O'Grady family and the community at Peninsula Shores, please find the following information regarding the requested Amendment #4 to the Peninsula Shores PUD located at 3985 Boursaw Road, Traverse City, MI 49686.

Amendment #4 Application Requests

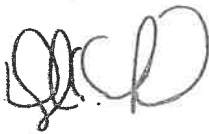
- Lot line adjustments to Units 25-29, and 41
- Add Unit 42
- Maintaining 65% open space

Supporting documents as part of this submittal request include:

- SUP Application
- SUP Development Checklist
- PUD Amendment Site Plan

Please feel free to call me at (231) 946-9310 should you have any questions or require any additional information. Thank you for your time.

Sincerely,



Doug Mansfield
President



Introduction to Amendment No. 4

Peninsula Shores SUP #123, Amendment No. 4

Requested actions and modifications to the Peninsula Shores development as part of this application for SUP #123, Amendment No. 4 are as follows:

- Reduce Lot 25 from .57 acres to .56 acres.
- Reduce Lot 26 from .61 acres to .58 acres.
- Reduce Lot 27 from .63 acres to .60 acres.
- Reduce Lot 28 from .65 acres to .62 acres.
- Reduce Lot 29 from .74 acres to .71 acres.
- Reduce Lot 41 from .65 acres to .36 acres.

Create a new Lot 42 to contain 19515 square feet or .44 acres.

ARTICLE VII

Ordinance Reference – Section 8.1.2 Permit Procedures:

STATEMENT OF HOW THE PROPOSED PROJECT WILL:

9.

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

The proposed amendment will not change the essential character of the originally approved PUD. Eastern lot lines of Lots 25-29 will be moved to the west, therefore resulting in slightly reduced lot sizes and home construction further from the ridge line. We are also proposing an additional lot – Lot 42. A slight increase in the previously approved lot line adjustments of Lot 41 will ensure a more than adequate building site for new proposed residence. This new lot will conform to the setback requirements of the PUD and will appear consistent with the overall character of the development. The resulting lot size of proposed Lot 41 will be no smaller than any existing lot.

(b) Not to 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.

This proposal will not have any negative impact on the overall subdivision nor will it cause more disturbance to the existing or future use. The construction of proposed Lot 42 will be largely taking place in the currently existing buildable envelope of Lot 41. This creation of a new lot will not have a negative impact on the surrounding neighborhood or the existing internal parcels.

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

Lots 25-29 and Lot 41 exist in compliance with this section. As outlined in the proposal, Lot 42 will be served by the community septic system. In order to accommodate this addition to the community septic system, we will be removing Lot 24 from the system – in turn, keeping that septic on its own lot – which is currently the case with a number of existing homes.

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

There will be no creation of any excessive additional requirements for one additional lot to be added to the site.

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

There are no proposed new uses, activities, processes, materials, and equipment or conditions of operation that will have any detrimental consequences to any person or property in the surrounding area or within the PUD.

ORDINANCE REFERENCE – SECTION 8.1.3

STATEMENT OF HOW THE PROPOSED PROJECT MEETS THE STANDARD:

10.

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

The applicant is the legal owner of the project site and has been since June 2014. Recorded deeds for the parcels listed below were provided to the Township in the original SUP/PUD application.

15634 Smokey Hollow Rd., (Tax ID 28-11-114-001-00)

15636 Bluff Rd., (Tax ID 28-11-114-002-00)

The applicant is still the majority share of Peninsula Shores HOA - owning 28 of the existing 41 lots within the PUD and therefore may still solely and legally apply for the requested amendment to the PUD per the development's Master Deed and Bylaws.

- b. That all required information has been provided.

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

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

The proposed amendment #4, will continue to meet the intent and requirements of the originally approved open-space community SUP#123.

Peninsula Shores SUP#123 as approved in 2017 consist currently of 41 lots, preserving 65% of the development to open space which includes 1,500 linear feet along East Grand Traverse Bay. The open space requirements will remain in conformance.

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

The requested amendment does not affect the site circulation and will not cause any changes to existing services within the PUD. All residential sites are served by private wells. Some sites are served by a private septic system and some sites are served by a community septic system. The existing permitted storm drainage will continue to meet all requirements. The storm water infrastructure was constructed as outlined in the Peninsula Township Stormwater Control Ordinance and has been operating successfully since installed. Each proposed land use permit will continue to be submitted to the Township with a storm water permit application. The proposed amendment does not have any negative impact on emergency services, use of the secondary emergency access, or the underground fire suppression water tank located in the center of the site.

- 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.

There are no changes to the overall development of the PUD; the agencies that are applicable to the development of these parcels will continue to be obtained through the permitting processes. The development's infrastructure was installed in 2018 which required permitting from the following governmental agencies:

- *Soil Erosion Sedimentation Control*
- *NDPES DEQ Notice of Coverage permit*
- *Grading and Stabilization plan*
- *Storm Water Control Permit – for the entire parcel and each individual site that has since been improved*
- *Sanitary and water final plan submittals*
- *DEQ Permits (part 41)*
- *Health Department Permits for individual wells and septic systems.*
- *Army Corps of Engineers permit for the seasonal community dock*
- *Private Road permit from Peninsula Township*
- *Grand Traverse County Road permit*
- *Private Road Name approved by the Township Board*

**Each lot that has been developed has also been permitted by Soil Erosion Sedimentation Control, Health Department (well and septic), Storm water permit from Peninsula Township, Land use permit from Peninsula Township and Grand Traverse*

County Construction permits.

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

The Peninsula Shores' PUD offers reduced residential density by preserving 65% open space, including wetlands, steep slopes, wooded acreage and 1,500 linear feet of shoreline. The proposed adjustment of Lot's 25-29 lot lines increases the natural buffer from residential homes and the existing ridgeline. There will be no increased level of disturbance as the result of the creation of Lot 42. The original PUD's intent of maximum preservation of natural resources remains the utmost focus.

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

The proposed amendment does not impact any floodways or flood plains on the subject property or in the vicinity of the subject property.

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

Consistent throughout the site, soil conditions are suitable for excavation and site preparation.

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

The overall site is developed and has not caused any adverse effects on soil erosion or sedimentation issues. The development of each site will continue to follow the measures outlined by Grand Traverse County Soil Erosion and Sedimentation and the Peninsula Township Storm water management procedures.

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

Stormwater infrastructure for the development is already constructed. The proposed amendment does negatively impact the drainage plan.

- 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.

This condition will continue to be met throughout the development of the site(s).

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

This is not applicable to this project.

- m. That the 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.

There are no remaining phases of development.

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

There are no necessary or required expansions of facilities.

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

Landscaping requirements of the entire site have been met.

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

This standard will continue to be 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.

This standard will continue to be 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.

This standard will continue to be 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.

This standard is met as this proposed amendment continues to comply with the original approval of the PUD and each subsequent amendment. As stated in the original PUD application, the development meets and exceeds the objectives of the Ordinance and the principles of sound planning by approval through a Planned Unit Development.

Section 8.3 Planned Unit Developments:

Section 8.3.2 Objectives:

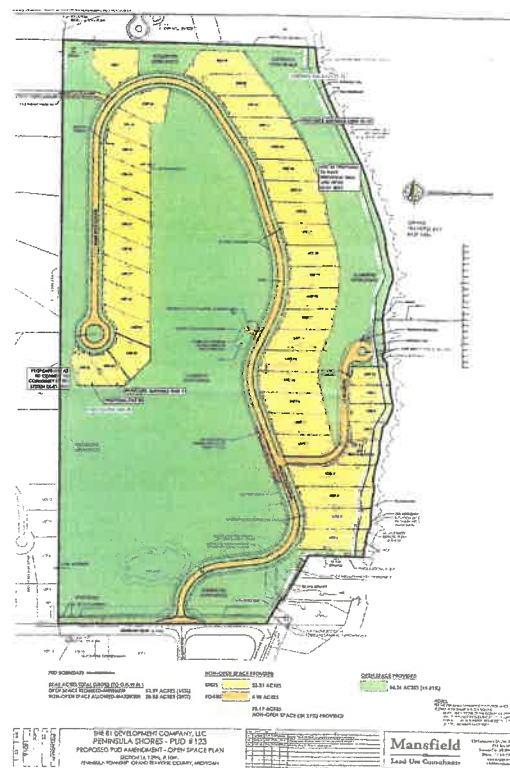
1. Provides a more desirable living environment by preserving the natural character of open fields, stand of trees, brooks, ponds, lake shore, hills, and similar natural assets.

The proposed changes do not alter the design or layout of the original PUD. The addition of a new lot will not have any negative impact on these objectives.

2. Provision of open space requirements
Will continue to be met and maintained. New calculations are provided in the packeted materials. The development continues to provide 65%+ (54.28 acres) of common open space for the use and enjoyment of Peninsula Shores residents.
3. A more creative and imaginative approach in the development of residential areas.
Not applicable. These lots already exist, and this proposal does not negatively affect the overall approach of the development nor the original intent of approved clustering and open space of the PUD.
4. More efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the by-passing of natural obstacles in the residential project.
There are no proposed changes to the open space areas or calculation of open space requirements.
5. Encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
The proposed amendment does not change the intent of the previously approved PUD for clustered development with community open space areas.
6. The retention of farmland by locating the allowed number of housing units on the agricultural parcels of land in clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.
Not applicable.

Section 8.3 Planned Unit Developments:

Section 8.3.2 Objectives:



Use-By-Right

Per Zoning/Michigan Land Division Plat Act

55 lots
1+ acre lot size
0% common open space (0 acres)
0 linear feet of East Bay preserved shoreline
No protection of forested areas
No protection of steep bluffs
55 individual septic systems with no oversight monitoring
maximum density / maximum traffic

Planned Unit Development

Peninsula Shores – an open space community

42 lots
½ acre to ¾ acre average lot size
65% common open space (54 acres)
1,500 linear feet of preserved shoreline
forested areas protected within open space
steep bluffs protected within open space
11 individual septic systems / 1 community permitted and monitored sewer system
reduced density / reduced traffic

The PUD plan provides the benefit of a 25% reduction of housing density and 65% preservation of open space including 1,500 linear feet of preserved shoreline along East Grand Traverse Bay.

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

1. The planned unit development site shall not be less than (20) acres in area, shall be under the control of one owner or group of owners, and shall be capable of being

planned and developed as one integral unit PROVIDED that the site requirement may be reduced by the Township Board if the Board determines that the proposed use is a suitable and reasonable use of land.

The existing development is 82.44 acres of land. The applicant is the majority shareholder of Peninsula Shores HOA and majority property owner and therefore may still legally apply for the requested amendment to the PUD.

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

The underlying zoning district is R-1A Rural & Hillside and R-1B Coastal Zone. The total possible density of the site is 66 one acre lots and five 25,000 square foot lots, equaling a total of 71 lots allowed, however, the practical number of buildable units is 55 based on a platted subdivision layout designed on the site. Peninsula Shores SUP#123 was approved with 41 units while preserving 54 acres of open space including wetlands, steep slopes and 1,500 linear feet of shoreline.

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

The requested amendment does not require any additional changes to the existing community infrastructure already in place within the development. Each of the proposed 42 units will have a private well. Units 1-4 and 24-29 will have individual sanitary systems, and units 5-23, 30-42 are serviced by an on-site community wastewater treatment system.

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

This amendment does not affect the residential density of the existing Peninsula Shores SUP #123 development. With the creation of an additional lot, we will continue to maintain 65.81% open space - which exceeds open space requirements. The site could have practically accommodated 55 residential lots with no requirement of preserved open space if developed as a use-by-right subdivision.

5. Open space shall be provided according to Section 8.3.6.

Open space is provided per Section 8.3.6(1) Open Space Preserved for Private Use. 65%+ (54 acres) of the site continues to be kept in open space owned by the Homeowners Association for the sole use and enjoyment of owners and residents within the PUD.

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

<i>Total project site</i>	<i>82.44 acres</i>
<i>Residential Lots</i>	<i>-23.21 acres</i>
<i>Roadway</i>	<i>-4.98 acres</i>
<i>Total remaining open space</i>	<i>54.25 acres or (more than 65%)</i>

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

Section 8.3.4 Uses that May be Permitted: The following uses of land and structures may be permitted within a planned unit developments, Indicate the proposed uses in the **Planned Unit Development:**

1. Single family dwellings.
Peninsula Shores SUP #123 is for the development of single family residential dwellings.
2. Two-family dwellings.
Not applicable for this application or request.
3. Group housing, row houses, garden apartments, or other similar housing types which can be defined as single-family dwellings with no side yards between adjacent dwelling units, Provided that there shall be no more than eight (8) dwelling units in any contiguous group.
Not applicable for this application or request.
4. Open space according to Section 8.3.6 Provided that only the following land uses may be set aside as common land for open space or recreation use under the provisions of this Section:
 - a. Private recreational facilities (but not golf courses) such as pools, or other recreational facilities which are limited to the use of the owners or occupants of the lots located within the planned unit development.
Not applicable for this application or request.
 - b. Historic building sites or historic sites, parks and parkway areas, ornamental parks, extensive areas with tree cover, low lands along streams or areas of

rough terrain when such areas have natural features worthy of scenic preservation.

Not applicable for this application.

- c. Commonly owned agricultural lands.

Not applicable for this application.

5. Signs as allowed by Section 7.11

There is no additional request to add or modify the existing signs that were part of the original approval of SUP #123.

6. Deed restricted Agricultural lands.

Not applicable for this application or request as there are no deed restricted agricultural lands within the PUD.

7. Garages and accessory buildings and uses exclusively for the use of residents of the planned unit development and for the proper maintenance thereof.

All garages and accessory buildings will be privately owned and located on the individual parcels within the PUD.

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

1. Site Acreage Computation:

- a. The net acreage proposed for a planned unit development shall be computed to determine the total land area available for development into lots under the minimum lot size requirements of the applicable zoning district in which the proposed planned unit development is located.

The net acreage of the site is 82.44 acres.

- b. Acreage not included:

- i. Land utilized by public utilities as easements for major facilities, such as electric transmission lines, sewer lines, water mains, or other similar lands which are not available to the owner because of such easements.

Not applicable for this application as there are no public easements.

- ii. Lands below the Lake Michigan ordinary high water mark.

Not applicable for this application as land below the ordinary high water mark are not part of the originally surveyed site and therefore are not included in the calculations for open space, parking, or individual parcels.

- iii. Lands used for commercial purposes subject to the requirements of Section 6.8
Not applicable to this application as none of the property was zoned C-1, Commercial.

2. Maximum Number of Lots and Dwelling Units: After the net acreage has been determined by the above procedure, the maximum number of lots and/or dwelling units that may be approved within a planned unit development shall be computed by subtracting from the net acreage a fixed percentage of said total for street right-of-way purposes, and dividing the remainder by the minimum lot area requirement of the zoning district in which the planned unit development is located.

a. The fixed percentage for street right-of-way purposes to be subtracted from the net acreage shall be fifteen (15) percent for the R-1A and R-1B residential districts, twenty (20) percent for the R-C district and thirty (30) percent for the multiple family development in the R-1D district. These percentages shall apply regardless of the amount of land actually required for street right-of-way.

82.44 times 15% = 12.36 acres

b. Under this procedure, individual lots may be reduced in area below the minimum lot size required by the zone district in which the planned unit development is located, PROVIDED that the total number of dwelling units and/or lots created within the development is not more than the maximum number that would be allowed if the project were developed under the minimum lot area requirements of the applicable zone district or districts in which it is located. Units may be disturbed without regard to district boundaries.

The included site plan for the Peninsula Shores amendment request includes each existing lot and proposed modifications to lots 25-29, 41 and newly requested lot 42.

3. **Permissive Building Envelope:** Building Envelopes shall be as shown on the Site Plan not included as open space.

The site plan outlines each building envelope for each individual lot including the newly including lot 42.

4. **Permissive Minimum Lot Area:** Minimum Lot Area shall be as determined by the Township Board and shown on the Site Plan.

Each lot is identified on the site plan distinguishing the total square footage for lots 1-42. No requested adjustment results in a lot area less than existing lots.

5. **Maximum Permissive Building Height:** 2.5 stories but not exceeding 35 feet. Accessory buildings shall not exceed a height of 15 feet. Provided that the height of agricultural buildings may be increased pursuant to Section 7.3.3 Permitted Exceptions, Agricultural Districts.

Each lot is permitted individually and conforms with these provisions.

6. Section 8.3.6 Open Space Requirements Option: The Township Board shall utilize one of the following four options for dedication of the provided open space.
7. Open Space Dedication for Private Use: A residential planned unit development with a minimum of 65% of the net acreage kept as open space and owned by the Home Owners Association or Condominium Association. That open space land shall be set aside as common land for the sole benefit, use and enjoyment of present and future lot or homeowners within the development.
- a. Such open space shall be conveyed by proper legal procedures from the project owner or owners to a homeowners association or other similar non-profit organization so that fee simple title shall be vested in project lot owners as tenants in common.
 - b. Documents providing for the maintenance of said land and any buildings thereon to assure that open space land remains open shall be provided to the Township Board for its approval.
Will be provided and submitted to county upon approval of the requested amendment.
 - c. The access and characteristics of the open space land are such that it will be readily available and desirable for the use intended.
The requested amendment does not change the characteristics of the open space nor the availability to the HOA as desirable usable land.

No. 8 listed below does not apply to this request as this is a privately owned development with a HOA and no existing or proposed dedication of land for a park or recreational purposes has been proposed as part of the original development.

8. Open Space Dedicated for Public Use: A Residential Planned Unit Development with a minimum of 10% of the net acreage dedicated to the Township. That open space land shall be dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board make the following determinations:
- a. The location and extent of said land is not in conflict with the Master Plan of Peninsula Township.
 - b. The Access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended.

NO. 9 listed below does not apply to this amendment request as the original parent parcels were not encumbered with any deed restrictions. The property has continued to maintain the originally designated zoning classification R-1A and R-1B.

9. Open Space Dedicated for Deed Restricted Agricultural Land: A Planned Unit Development with a minimum of 65% of the net acreage as deed restricted agricultural land. That open

space shall be retained in agricultural use as specified on the site plan with the following conditions:

- a. The Land shall be used exclusively for farming purposes.
- b. A conservation easement shall be granted to Peninsula Township that restricts uses to those that are allowed on deed restricted agricultural land subject to conservation easements purchased by Peninsula Township pursuant to the Purchase of Development Rights Ordinance No. 23.
- c. A farmstead parcel consisting of a residence for the owner or operator of the farm along with any or all of the following outbuildings may be shown on the site plan if approved by the Township Board
 1. Barns existing or proposed for uses necessary for agricultural production.
 2. Outbuildings existing or proposed for storage of machinery and equipment used for agricultural production.

If a farmstead is shown on the site plan it shall be counted as one of the allowed dwelling units.

- d. The deed restricted agricultural land may be sold separately from the dwelling parcels.

No.10 listed below does not apply to this amendment request as the Peninsula Shores existing SUP#123 is not encumbered with any deed restrictive land.

10. Open Space Apportioned Between Private Use and Deed Restricted Agricultural Land: The Township Board may approve open space apportioned between Private Use and Deed Restricted Agricultural Land described in (1) and (3) above provided, that in addition to the provisions of (7) and (9) above, the Deed Restricted Agricultural Land portion:

- a. Shall be a minimum of five acres.
- b. Shall be viable farmland as determined by the Township Board.
- c. Irrespective of (9) above; no buildings shall be allowed.

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

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

The maximum acreage area that is allowed to be built upon is 12.36 acres or 538,401 square feet which constitute fifteen (15) percent of the entire property within the SUP.

- b. A building envelope withing which structures may be located shall be shown on the site plan for all existing or future structures.

A site plan has been included in this submittal

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

Area calculations have been provided are included in the submittal of the application.

12. Section 8.3.8 Affidavit: The applicant shall record an affidavit with the register of deeds

containing the legal description of the entire project, specifying the date of approval of the special use permit, and declaring that all future development of the planned unit development property has been authorized and required to be carried out in accordance with the approved special use permit unless an amendment thereto is duly adopted by the Township upon the request and/or approval of the applicant, or applicant's transferee and/or assigns.

The required documentation for the approved amendment will be recorded upon approval & signatures of the authorized boards and agents of the township.

No. 13 (a through c) are not applicable to this development or the requested amendment as the property is surrounded by R-1A and R-1B residentially zoned districts and the setbacks from the adjacent property lines have already been established.

13. Section 7.7 Development Abutting Agricultural Lands: Section 7.7.1 Agricultural Setback:

The following setbacks shall be required when a planned unit development, subdivision, condominium, mobile home park, or other group housing is developed; and on those metes and bounds parcels created after the effective date of this amendment, as provided below.

August 11, 2023

Peninsula Township
Jenn Cram, Director of Planning & Zoning
13235 Center Road
Traverse City MI, 49686

**RE: Peninsula Shores, PUD #123
Application for Amendment #4**

Dear Jenn,

On behalf of the O'Grady family, please find the following additional information and exhibits in response to your June 24th and August 9th emails:

Open Space and Lot Coverage Calculation Update

Amendment #4 is a request to add one additional residential lot (lot 42) within the Peninsula Shores PUD. The request maintains the 65% (54.26 acres) of preserved common open space within the development by balancing the 4,652 additional square feet of area required to create lot 42 with a reduction of 4,718 square feet within lots 25-29 along the high bluff line. The result is an even swap of open space with the benefit of pushing the existing building envelopes for lots 25-29 farther back off the bluff line.

The following supporting documents are attached:

- Document A an open space exhibit and lot coverage calculations for all 42 lots as proposed, as well as calculations from the previously approved PUD amendment #3 with 41 lots for comparison.
- Document B detailed exhibits showing the additional square footage of the area to be preserved (4,718sf) along bluff edge near lots 25-29.
- Document C a detailed exhibit showing the additional square footage required (4,652sf) west of the existing lot 41 to create a new lot 42.

Soil Conditions and Suitability Update

A USDA soils map indicating that most of the project site consists of sandy and gravelly soils suitable for residential lot development and road construction was provided as part of the original PUD submittal package. A wooded wetland pocket along Boursaw Road near the entrance, a steep bluff and 1,500 lineal feet of East Grand Traverse Bay water frontage were preserved and remain undisturbed.

In 2015, geotechnical engineers, Otwell Mawby provided an analysis of slope stability of the site.

Over the years, numerous additional soil borings have been dug in relation to Grand Traverse County Health Department permitting, Township Storm Water permitting, and State/Federal Community Sanitary permitting. None have identified any concerning soil conditions for construction.

The following supporting documents are attached:

- Document D Grand Traverse County Soils Map
- Document E Construction Plan Sheet C6.0 dated 6/24/20 showing soil boring locations and soil boring log data
- Document F Otwell Mawby Geotechnical, P.C. Slope Stability Reconnaissance report dated June 15, 2015

Well and Septic Update

Lots 1-4 and 25-29 are serviced by individual on-site septic systems and private wells as permitted by the Grand Traverse County Health Department. Of these, lots 2-4 have obtained Land Use Permits and are in various stages of construction/completion.

Lots 5-24 and 30-41 are serviced by the community sewer system and private wells. Of these, lots 6, 8-10, 15-19, 22-23, and 30-38 and 40 have obtained Land Use Permits and are in various stages of construction/completion.

To facilitate this PUD amendment #4 request adding lot 42 to the residential development, existing lot 24 would be serviced by an individual on-site septic system so that lot 42 could be serviced by the community sewer system. The Grand Traverse County Health Department has provided preliminary approval of the location for a drain field. A new sanitary sewer easement south of lot 42 would accommodate the sewer lead connection from the new lot to the sewer main.

The following supporting documents are attached:

- Document G -Grand Traverse County Health Department preliminary approval for individual drain field on lot 24.
- Document H -Exhibit plan sheet, Peninsula Shores -PUD #123, Proposed PUD Amendment #4 Site Plan dated 8/10/23

Storm Water Update

Peninsula Shores PUD was issued Storm Water permit number SR 2018-03 in May 2018 and most recently updated and reviewed by the Township engineer in August 2019. The permitted Storm Water infrastructure includes grading for drainage, storm sewer, conveyance systems, and storm water detention basins seamlessly engineered for the entire PUD.

Storm water runoff is managed in two detention basins including one large basin located at the center of the site and a smaller basin located at the end of Shoreline Court. The existing stormwater infrastructure was designed to accommodate all roadways, driveways, residential homes on the upper ridge (lots 1, 30-41), and the west facing roof pitches of lots located along the waterfront (lots 2-10) and the high bluff (lots 11-29). Storm water generated by east facing roof pitches along the waterfront and bluff is retained in individual basins located on each lot and is permitted through the Land Use Permitting process for each individual lot.

The development site has no defined drainage outlet feature, only overland flow and ground infiltration into existing sandy soils so there is no danger of stormwater having any off-site impact. Site stormwater calculations indicate that the engineered basin provides an excess of storage of 1,112 cubic feet.

Stormwater runoff generated by the new lot 42 would be directed towards the large storm water basin at the center of the development site. It is most likely that all storm water generated by the impervious surface of this new lot 42 will have naturally infiltrated back into the ground as it flows over land 300+ feet through natural common open space area before ever reaching the storm water basin.

The following supporting documents are attached:

- Document I -Site Storm Water Calculations: PUD, dated 1/16/2015
- Document J -Lot 42 Hypothetical Storm Water Calculations, dated 8/11/23

Traffic Update

The addition of one residential lot within Peninsula Shores represents only a 2.44% increase in trip generation for the development.

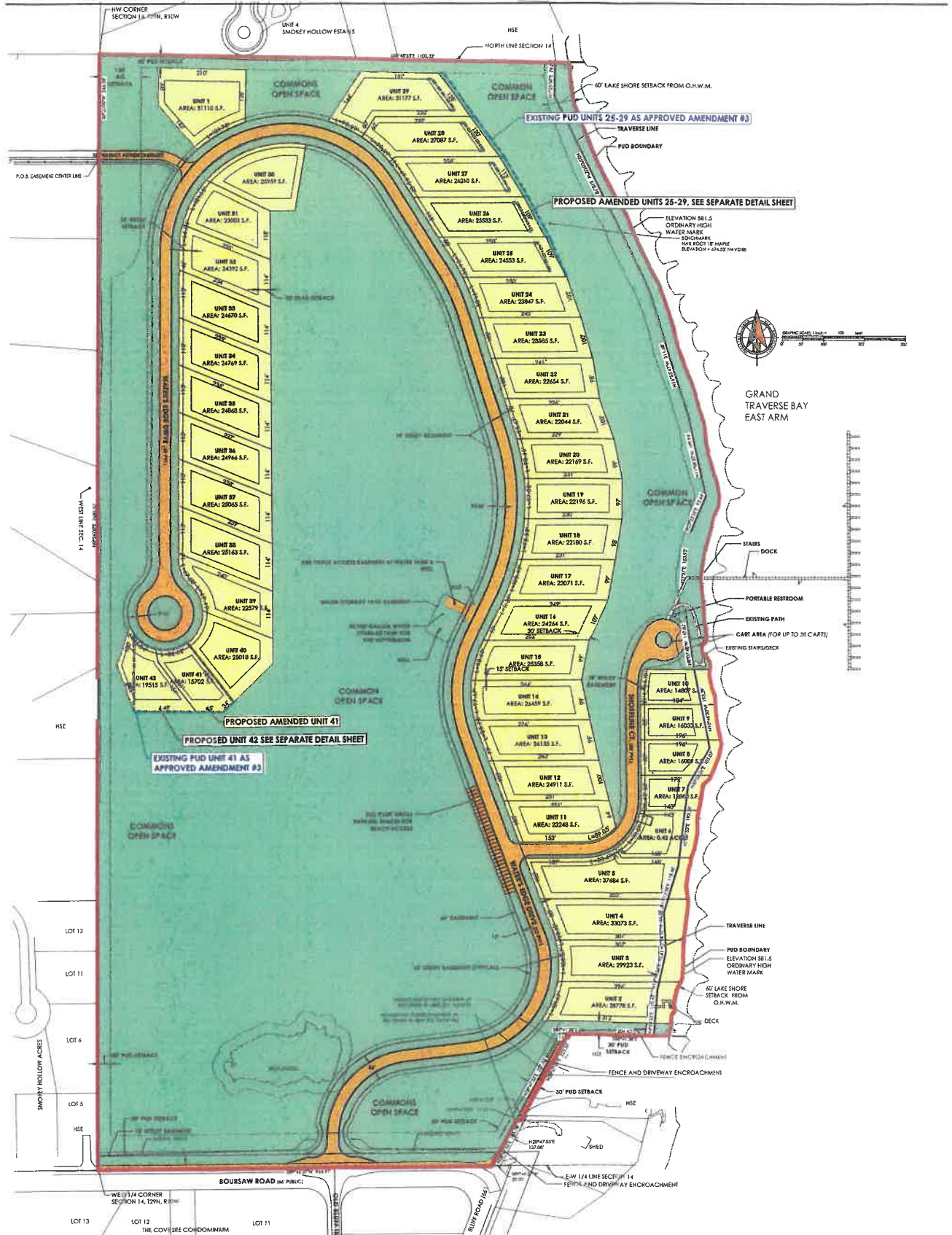
The following supporting documents are attached:

- Document K -Trip Generation Memo, dated 8/10/23

Please feel free to call me at (231) 946-9310 ext. 1003 should you have any questions or require additional information.

Sincerely,
Mansfield Land Use Consultants

Doug Mansfield



PUD BOUNDARY

82.44 ACRES TOTAL GROSS (TO O.H.W.M.)	
OPEN SPACE REQUIRED-MINIMUM	53.59 ACRES (65%)
NON-OPEN SPACE ALLOWED-MAXIMUM	28.85 ACRES (35%)

NON-OPEN SPACE PROVIDED

UNITS	23.21 ACRES
ROADS	4.98 ACRES

OPEN SPACE PROVIDED

54.26 ACRES (65.81%)

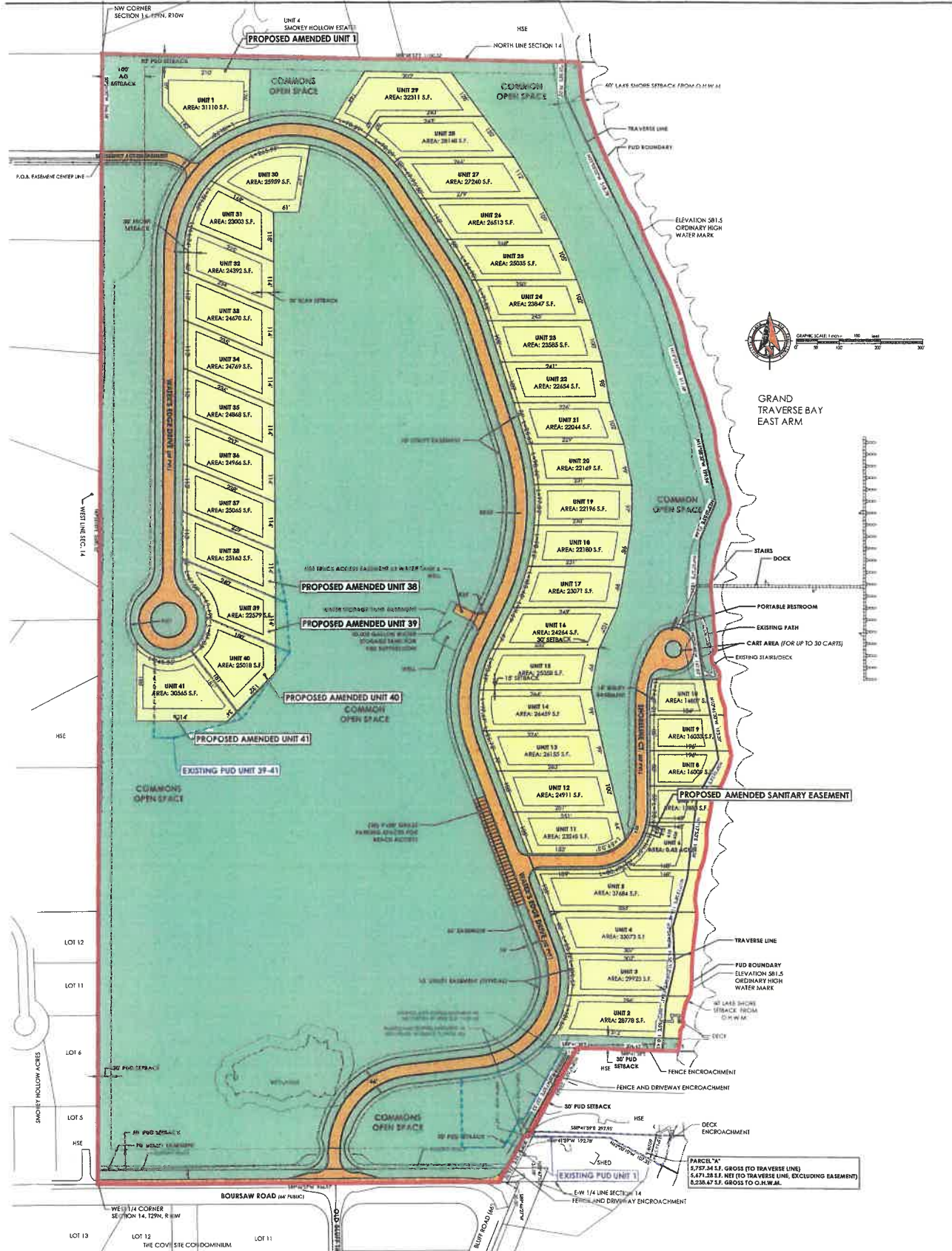
NOTES:
PER THE PENINSULA TOWNSHIP ZONING ORDINANCE.
SECTION 8.8.8 QUALIFYING CONDITIONS
(6) FOR THE PURPOSE OF THIS SECTION 8.3, OPEN SPACE DOES NOT INCLUDE BUILDING ENVELOPE PARKING LOTS AND ROADS. (ROAD BED PLUS TWO (2) FOOT SHOULDER EACH SIDE.)

THE 81 DEVELOPMENT COMPANY, LLC
PENINSULA SHORES - PUD #123
PROPOSED PUD AMENDMENT #4 - OPEN SPACE PLAN
SECTION 14, T.29N., R.10W.
PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN

Item	Date	QIS	QIS	QIS	QIS
41	10-25-21	PHK	MMH	PHK	Amend Units 1 & 36-41 and sanitary easement on Unit 6
42	03-10-22	PHK	MMH	PHK	Amend Units 1 & 36-41 and sanitary easement on Unit 6
43	05-01-23	PHK	MMH	PHK	Amend Units 25-29 & 41, add Unit 42
44	07-11-23	PHK	MMH	PHK	PUD Amendment #3
45	08-06-23	PHK	MMH	PHK	PUD Amendment #4

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Traverse City, MI 496
Phone: 231-946-93
www.maaeps.cc
info@maaeps.cc



PUD BOUNDARY
 82.44 ACRES TOTAL GROSS (TO O.H.W.M.)
 OPEN SPACE REQUIRED-MINIMUM 53.59 ACRES (65%)
 NON-OPEN SPACE ALLOWED-MAXIMUM 28.85 ACRES (35%)

NON-OPEN SPACE PROVIDED
 UNITS 23.21 ACRES
 ROADS 4.98 ACRES

OPEN SPACE PROVIDED
 54.26 ACRES (65.81%)

28.19 ACRES
 NON-OPEN SPACE (34.19%) PROVIDED

NOTES:
 PER THE PENINSULA TOWNSHIP ZONING ORDINANCE
 SECTION 8.8 QUALIFYING CONDITIONS
 60 FOR THE PURPOSE OF THIS SECTION 8.3, C
 SPACE DOES NOT INCLUDE BUILDING ENVELOPE
 PARKING LOTS AND ROADS. (ROAD BED PUD
 (2) FOOT SHOULDER EACH SIDE.)

1/18/2024
 14016
 PRELIMINARY

THE 81 DEVELOPMENT COMPANY, LLC
 PENINSULA SHORES - PUD #123
 PROPOSED PUD AMENDMENT - OPEN SPACE PLAN
 SECTION 14, T.29N., R.10W.
 PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN

DATE	BY	CHK	DESC
1/18/2024	MSH	MSH	Initial Units 18, 39-41 and sanitary easement on Unit 1
1/18/2024	MSH	MSH	Initial Units 18, 39-41 and sanitary easement on Unit 1

Mansfield
 Land Use Consultants

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 P.O. Box
 Traverse City, MI 49781
 Phone: 231-946-
 www.mansfieldllc.com
 info@mansfieldllc.com

Document



Peninsula Shores
Traverse City, Michigan

AMENDMENT #4
Updated 7-11-23

Open Space (Section 8.3.3(6)):

	<u>acres</u>	
Total project site net acres	82.44	
Residential Units	minus 23.21	
Parking Lot (waterfront access, grass)	minus 0.15	
Roads (roadbed +2' shoulder)	minus 4.83	
total remaining open space	54.25	= 65.81% open space provided
		65% open space required

Lot Coverage by Structures (Section 8.3.7(1)):

	<u>acres</u>	
Single Family Homes (area of building envelope)	11.63	
Total Lot Coverage	11.63	+ 82.44 acres = 14% lot coverage
		15% lot coverage allowed

The calculation above proves that the standard would be met even if every building envelope were completely covered with structures. In reality, the size of homes within the building envelopes would likely range from 2,500sf to 6,000sf, resulting in an actual expected lot coverage by structures of 3%-7%.

Lot Coverage by Structures (Section 8.3.7.(3)):

see chart on next page



Lot Coverage by Structures (Section 8.3.7.(3)):

Maximum allowable lot area covered by structures		Net acres in PUD 82.44
	Total lot size (S.F.)	Maximum allowable structure (S.F.) (building envelope excluding easements)
UNIT 1	31,109.56	17,023.29
UNIT 2	28,778.16	13,348.52
UNIT 3	29,922.85	14,559.84
UNIT 4	33,072.96	16,687.77
UNIT 5	37,684.03	18,707.39
UNIT 6	18,321.46	7,000.40
UNIT 7	12,882.93	4,107.61
UNIT 8	16,008.79	6,433.51
UNIT 9	16,032.63	6,616.98
UNIT 10	14,807.16	5,620.47
UNIT 11	23,247.97	11,439.23
UNIT 12	24,910.89	12,996.75
UNIT 13	26,154.69	13,878.04
UNIT 14	26,459.18	14,258.23
UNIT 15	25,358.22	13,390.51
UNIT 16	24,264.05	12,294.82
UNIT 17	23,071.28	11,726.32
UNIT 18	22,180.08	11,216.15
UNIT 19	22,195.79	11,285.88
UNIT 20	22,168.84	11,200.80
UNIT 21	22,044.02	10,994.71
UNIT 22	22,653.74	11,506.24
UNIT 23	23,585.49	12,100.06
UNIT 24	23,846.88	12,114.52
UNIT 25	24,553.01	12,477.12
UNIT 26	25,533.23	12,998.26
UNIT 27	26,210.27	13,399.02
UNIT 28	27,086.54	14,196.63
UNIT 29	31,177.14	17,258.39
UNIT 30	25,959.20	12,958.85
UNIT 31	23,002.82	11,752.83
UNIT 32	24,392.44	12,648.70
UNIT 33	24,670.40	12,758.69
UNIT 34	24,768.97	12,829.09
UNIT 35	24,867.54	12,899.50
UNIT 36	24,966.11	12,969.91
UNIT 37	25,064.67	13,040.31
UNIT 38	25,163.24	13,110.72
UNIT 39	22,579.28	10,241.84
UNIT 40	25,018.00	13,046.24
UNIT 41	15,701.56	7,720.95
UNIT 42	19,515.14	9,950.16
Total S.F.	1,010,991.21	506,765.25
Total Acres	23.21	11.63
% of net total site	28%	14%



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

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

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

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

Section 8.3.7

Maximum Percentage of Lot Area Covered by all Structures

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

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

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

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

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

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

23 acres

12 acres buildable area

82 acres total project site

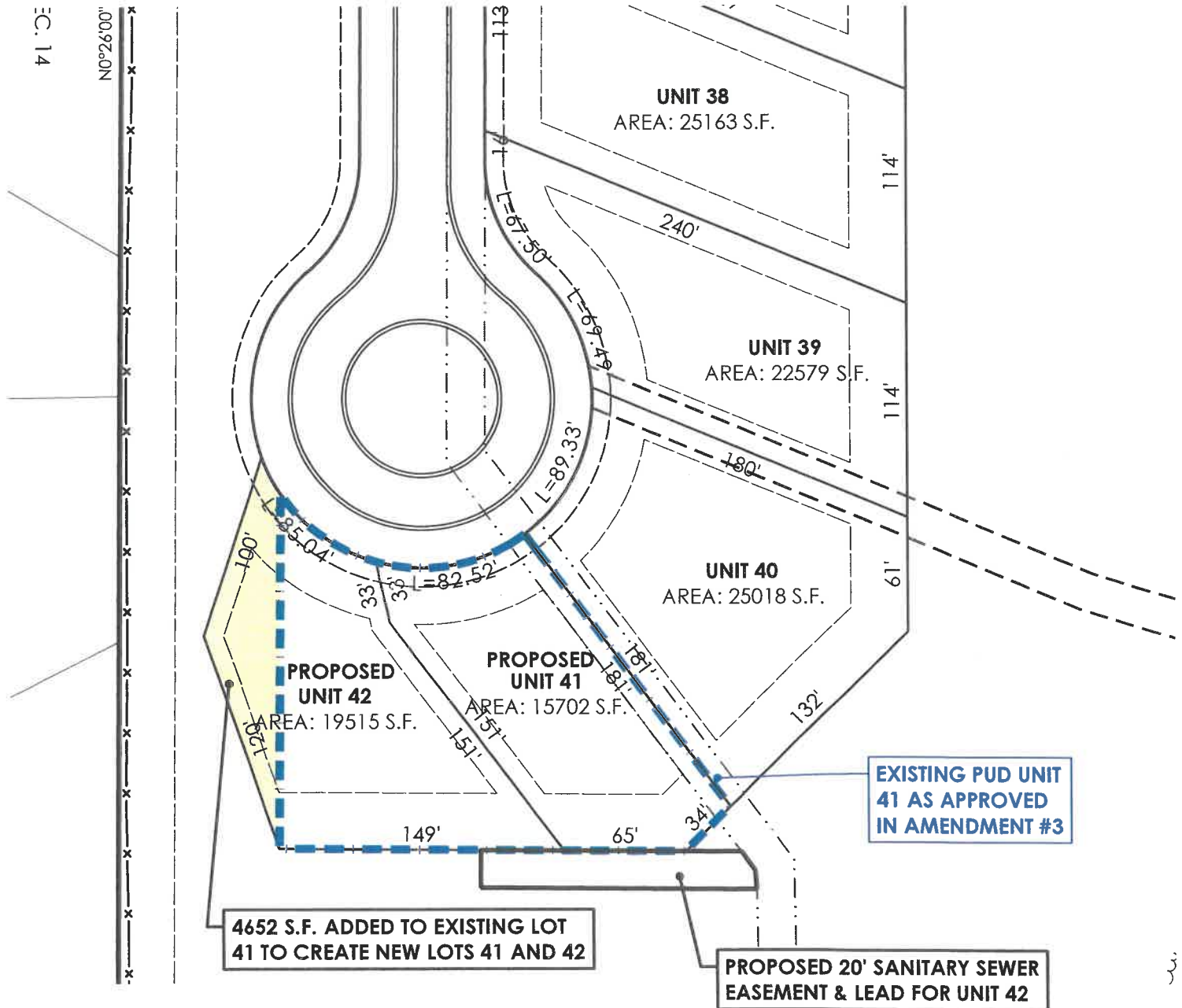
14% of the site is buildable area

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



EXHIBIT UNITS 24-29 SIZE REDUCTION
PROPOSED PUD AMENDMENT #4
Peninsula Township, Grand Traverse County, Michigan

DRN: mmm CKD: phk
08.08.23
14016
SHT 1 OF 2



GRAPHIC SCALE: 1 inch = 80 feet
0' 40' 80' 160'

Mansfield
Land Use Consultants

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PENINSULA SHORES-PUD #123

DRN:mmm CKD: phk

EXHIBIT PROPOSED UNIT 42 DETAIL
PROPOSED PUD AMENDMENT #4

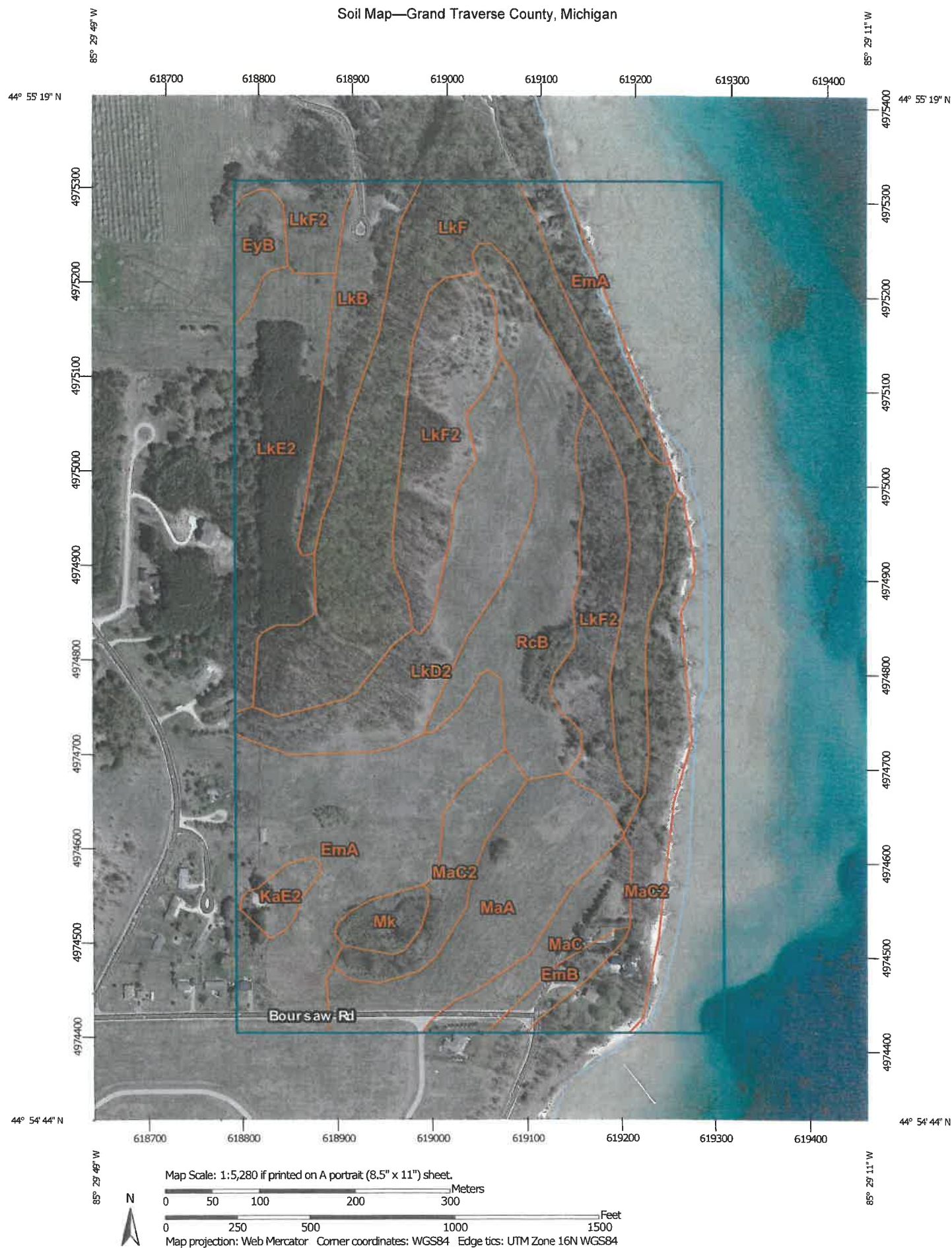
Peninsula Township, Grand Traverse County, Michigan

08.08.23

14016

SHT 2 OF 2

Soil Map—Grand Traverse County, Michigan



MAP LEGEND

Area of Interest (AOI)		Area of Interest (AOI)	
Soils		Soil Map Unit Polygons	
		Soil Map Unit Lines	
		Soil Map Unit Points	
Special Point Features		Water Features	
		Streams and Canals	
		Transportation	
		Rails	
		Interstate Highways	
		US Routes	
		Major Roads	
		Local Roads	
		Background	
		Aerial Photography	
			
			
			
			
			
			
			
			
			
			
			
			

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:15,800.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Grand Traverse County, Michigan
Survey Area Data: Version 7, Dec 18, 2013

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Data not available.

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Grand Traverse County, Michigan (MI055)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
EmA	East Lake-Mancelona loamy sands, 0 to 2 percent slopes	15.4	13.4%
EmB	East Lake-Mancelona loamy sands, 2 to 6 percent slopes	1.1	1.0%
EyB	Emmet sandy loam, 2 to 6 percent slopes	1.4	1.2%
KaE2	Kalkaska loamy sand, 18 to 25 percent slopes, moderately eroded	0.9	0.8%
LkB	Leelanau-Kalkaska loamy sands, 2 to 6 percent slopes	4.3	3.7%
LkD2	Leelanau-Kalkaska loamy sands, 12 to 18 percent slopes, moderately eroded	8.0	7.0%
LkE2	Leelanau-Kalkaska loamy sands, 18 to 25 percent slopes, moderately eroded	8.3	7.2%
LkF	Leelanau-Kalkaska loamy sands, 25 to 45 percent slopes	17.1	14.8%
LkF2	Leelanau-Kalkaska loamy sands, 25 to 45 percent slopes, moderately eroded	12.7	11.0%
MaA	Mancelona gravelly sandy loam, 0 to 2 percent slopes	7.5	6.5%
MaC	Mancelona gravelly sandy loam, 6 to 12 percent slopes	2.9	2.6%
MaC2	Mancelona gravelly sandy loam, 6 to 12 percent slopes, moderately eroded	9.2	8.0%
Mk	Adrian muck, 0 to 1 percent slopes	1.2	1.0%
RcB	Richter loams, 2 to 6 percent slopes, overwash	9.6	8.3%
Subtotals for Soil Survey Area		99.7	86.4%
Totals for Area of Interest		115.5	100.0%



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info@mansfpc.com

SCALE: 1"=100' H

CONSTRUCTION

14016

C6.0

Document E



Otwell Mawby, Geotechnical, P.C.
Consulting Engineers

June 15, 2015

Mr. Doug Mansfield
Mansfield Land Use Consultant
P.O. Box 4015
Traverse City, Michigan 49685

EMAIL: doug@maaeps.com

**RE: THE 81 ON EAST BAY
SLOPE STABILITY RECONNAISSANCE, G 15-118**

Dear Doug:

In response to your request, Otwell Mawby, Geotechnical, P.C. has completed a geotechnical reconnaissance for the proposed 81 on East Bay development. The objective of the geotechnical reconnaissance has been to explore the concerns for slope stability related to relatively steep slopes located within the development near the current and former shorelines of East Bay. Included herein is a description of our project understanding, site observations, and discussion.

Project Understanding

We have been provided the following information for our project understanding:

- Preliminary Open Space Plan, dated April 27, 2015, indicating proposed lot locations, drives, and setbacks.
- Preliminary Overall Grading Plan, dated April 27, 2015, indicating proposed lot locations with existing and proposed ground surface contours.
- Water Well Log dated March 5, 2015.

The 81 on East Bay is proposed to include a total of 41 lots within a PUD. The majority of the development will be provided as open space (65.63 percent). The site includes an upland area with rolling to hilly topography terminating at a bluff leading down to the shoreline. The bluff has a relatively level terrace for most of the length of the property approximately 20 ft above the lake level. The bluff is relatively steep from the terrace down to the beach level. The bluff is also steep extending up from the terrace to the upland level. The upper bluff is higher, extending up to approximately 90 ft above the terrace. The upper bluff is also relatively steep, on the order

of 35 to 40 degrees based on the provided topographic information. A ridge is present along portions of the bluff.

Building lots will be located primarily near the upper bluff (approximately Sites 11 through 29), along a lower area of the bluff and the terrace (Sites 1 through 10), and in the upland area (Site 30 through 41). Significant earthwork is planned to achieve the proposed grades including up to approximately 30 ft of cut along the ridgeline of the upper bluff. The ridge will generally be leveled to achieve desired views and individual site topography. Balancing the cut will require placement of fill generally grading up and away from portions of the bluff at a relatively shallow slope. The maximum proposed fill depth is on the order of 5 ft within 50 ft of the bluff. Approximately 15 to 20 ft of fill is also proposed to establish grades for the access drive down to the waterfront.

Site Reconnaissance

Melzar L. Coulter, P.E. completed a site reconnaissance on June 7, 2015 that included a site walk of the beach, lower terrace, bluff ridge, and upland. The water front generally consisted of a narrow, sand beach protected by rock jetties. The jetties were located on approximate 75 to 100 ft spacing along the shoreline and were constructed of cobble and boulder (likely native). The south half of the development's shoreline was protected with imported, quarried stone and boulders. The stone was overgrown though an erosion control blanket was occasionally evident behind the material. The bank was relatively steep up to the lower terrace with signs of surface instability including leaning or down trees, curvilinear growth, undermined roots or sod, etc. The frequency of downed trees was higher to the north where the shoreline was not protected with imported stone and it was frequently difficult to walk along the shoreline. Where exposed in several locations on the bank, the soil varied from clay to sand. Two existing stairways were present leading down to the waterfront and both were abandoned and in disrepair. A ramp had been cut into the slope and protected with additional stone near the northernmost stairway. Figure No. 1 below shows the typical condition of the waterfront area where the toe of the slope is protected.



Figure No. 1 – Waterfront, Toe of Slope Protected with Imported Stone

The terrace between the upper bluff and the slope to the lake was typically wooded with mature deciduous trees, hemlock, etc. A two-track drive was present from the beach ramp extending south along the terrace. The ground surface of the terrace was relatively level, sloping up dramatically at the toe of the upper bluff. The upper bluff was also wooded with mature deciduous trees. The bluff was steep with a relatively uniform grade, culminating in a ridge with a well-defined crest. The ground surface also sloped down to the west but at a gentler grade. Sand and gravel was present at the ground surface of the ridge. The ridge is shown in Figure No. 2 below.



Figure No. 2 – Ridgeline, Looking North

The ridge became less prominent to the north where the terrain became more rolling. Trees were frequently leaning, exhibiting curvilinear growth, or exhibited undermined root systems at the edge of the bluff. The rolling terrain extended south through the upland portion of the property with additional hilly areas present in the northwest quadrant of the development. The areas of rolling terrain were generally grass covered with occasional mature trees. Aspen was present at the margins of the wooded areas.

Discussion

The prominent terrace and uniform, steep slope are characteristic of wave-cut bluffs formed by erosion due to current or former lake levels. The Map of Quaternary Geology of Southern Michigan indicates that the upland areas of the site are characterized as coarse textured glacial till, consisting of non-sorted glacial debris dominated by sandy clay loam, sandy loam, or loamy sand texture; however, clay deposits were present in exposed areas of the bluff and were also encountered in the water well. The Map also indicates a former shoreline corresponding with the lower terrace level, possibly of Glacial Lakes Algonquin or Nipissing.

As the toe of the bluff was eroded by lake action, slope failures occurred followed by subsequent erosion to establish the existing topography. In consideration of this geology and observations of the slope and vegetation, the existing slope is considered to have a slope stability factor of safety near 1.0 and is marginally stable. The relatively steep slope (approximately 35 to 40 degrees) indicates that the soil has relatively good strength properties (angle of internal friction, cohesion). Failure surfaces that extend from the toe to points farther behind the crest will have increasing slope stability factors of safety.

The proposed units above the upper bluff (Units 11 through 29) will have a minimum 30 ft “backyard” setback from the lot line adjacent to the bluff. Additionally, the lot lines are located 10 ft or more behind the crest, effectively adding to the distance from the crest to the dwelling. The Michigan Residential Code addresses setbacks from descending slopes (R403.1.7.2). The descending slope setback requirement is that the face of the footing be a minimum of $\frac{1}{3}$ of the slope height behind the slope at the corresponding elevation (Figure No. 3 below); however, the distance need not exceed 40 ft ($H/3$ but need not exceed 40 ft max). In consideration of the observed conditions and the building code, we expect that these lots will be buildable in accordance with building code and accepted engineering practice. Including the “backyard” setback and the distance from the lot lines to the crest, the effective setback is expected to be 40 ft or more – equal to or greater than required by code. Grade changes above the upper bluff will primarily consist of cut, and removal of the soil weight will increase slope stability. Where fill is planned, the fill depth is expected to increase gradually from the existing crest and is not expected to substantially affect the slope stability as far back as the residences. Due to the current marginal stability, shallow (surficial) slope failures and erosion should be expected to continue.

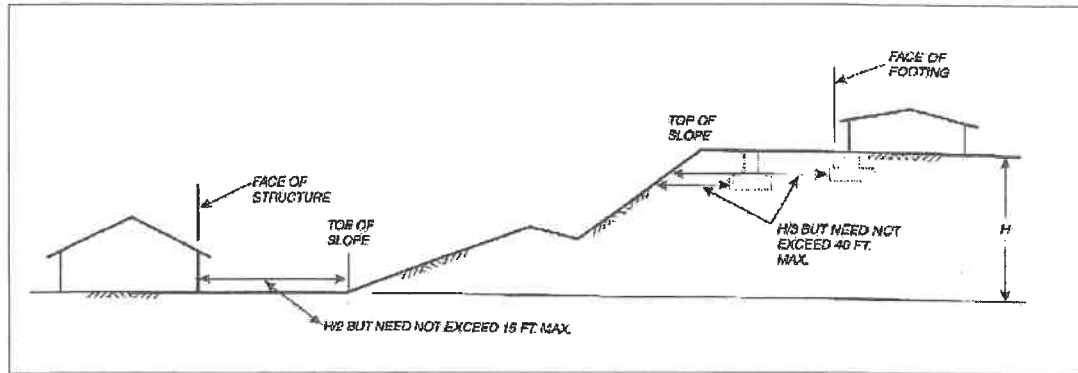


Figure No. 3 – Building Code Requirements for Slopes

Units 2 through 15 will be located on the terrace above the lower ridge and setback requirements for ascending and descending slopes will apply. Alternate setback requirements are permitted subject to the approval of the Building Official. A further consideration for units sited above the lower bluff is that additional erosion may occur as the lake level rises. The shoreline in front of these units is protected with imported stone; however, the shoreline should be monitored and additional protection may be needed in the future. Units 6 and 7, with dwellings likely to be constructed at the terrace level, will include significant fill placement to allow for construction of the drive. The fill slope is expected to be shallower than 1 unit vertical for 3 units horizontal and therefore the setback for descending slopes ($H/2$ but need not exceed 15 ft max, shown in Figure No. 3) will not apply.

Closure

This reconnaissance and review has been performed to provide general comments regarding slope stability for the proposed development. Setback beyond the code requirement will achieve a higher factor of safety for individual units. This document is not a geotechnical report and there will be earth related considerations that will be unique to each site, such as requirements for placement of engineered fill beneath structures. It is recommended that prospective purchasers of each unit review geotechnical conditions with respect to the proposed construction.

Very truly yours,

OTWELL MAWBY GEOTECHNICAL, P.C.

Melzar L. Coulter, P.E.
Senior Geotechnical Engineer

Roger L. Mawby, P.E.
President

August 11, 2023

Re: Suitability of On-Site Wastewater Disposal System, Lot 24, Peninsula Shores Condo Development

On August 1st, 2023, the Grand Traverse County Environmental Health Department met O'Grady Development Co. at Lot 24 in Peninsula Shores Site Condo Development to assess Lot 24's suitability for an on-site wastewater disposal system. Currently, this parcel is approved as part of the community septic system. O'Grady Development Co. is requesting that this parcel be approved for an on-site septic system instead of hooking to the community septic system. A perk test was completed on August 1st, 90 ft east of Waters Edge Dr centerline and 70 ft north of the southern lot line. Soil conditions were found to be 12 inches of topsoil followed by 60 inches of loamy sand. The soils were found to be suitable for on-site wastewater disposal. The well on Lot 23 is located on the southeast portion of the property, and thus, the septic system on Lot 24 will be required to be on the western portion of the lot with the well on the eastern portion of the lot in order to meet the 50 ft minimum isolation distance between the septic system and the well. Lot 24 is approved by Grand Traverse County Environmental Health Department for on-site wastewater disposal.

A handwritten signature in black ink that reads "Brent Wheat".

Brent Wheat

Environmental Health Director

EXISTING INDIVIDUAL WELL

PROPOSED INDIVIDUAL WELL

EXISTING INDIVIDUAL DRAIN FIELD

PROPOSED INDIVIDUAL DRAIN FIELD

UNITS ON COMMUNITY DRAIN FIELD

UNITS 5-23

UNITS 30-42



Document 1

The 81 Development Company, LLC
 Peninsula Shores - PUD
PROPOSED PUD AMENDMENT #4 - SITE PLAN
 Section 14, Town 29 North, Range 10 West
 Peninsula Township, Grand Traverse County, Michigan

[illegible]

Mansfield
—  —
Land Use Consultants

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Traverse City, MI 49681
Phone: 231-946-9311
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info@maaeps.com

Mansfield

Land Use Consultants

Site Storm Water Calculations: PUD

Project: **The 81 on East Bay**
 Project No.: **14016**
 Location: **Peninsula Township, Grand Traverse County**
 Client: **Insight Building Company**

Rational = $Q = C i A$

Intensity = $i =$ 2-yr, 24-hour duration = **2.09 in** (Bulletin 71)

Intensity $i =$ **0.087 in/hr**

Coefficient = $C =$ weighted C (Per Table 2: Runoff Coefficients)

Area = $A =$ varies per drainage area (ac.) (Based on Grading, Storm and Drainage Plans)

Unit Conversion = 86,400

Soils Type = **Predominant USDA Soils: Em (Emmet loamy sands), Lk (Leelanau-Kalkaska loamy sands) & Ma (Mancelona gravelly sandy loam)**

Project Area Prior to Development

Area (Total) =	3511807 sft	OR	80.62 ac.
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PREDEVELOPMENT CONDITIONS						
NO.	Area Type	C	i	A (ac.)	conversion	Q (cft)
1	Pavement	0.98	0.087	0.00 ac.	86,400	0 cft
2	Brick	0.85	0.087	0.00 ac.	86,400	0 cft
3	Roof	0.95	0.087	0.00 ac.	86,400	0 cft
4	Lawns, Sandy, Avg.	0.15	0.087	17.04 ac.	86,400	19231 cft
5	Lawns, Sandy, Steep	0.20	0.087	35.68 ac.	86,400	53691 cft
On-Site Total =				52.72 ac.	Total Q =	72923 cft

SPECIAL NOTES:

The site soils range from somewhat poorly drained to somewhat excessively drained sands with permeability rates from 0.57 to 19.98 in/hour. The location for stormwater collection is within the EmA soil type with permeability rates of 5.95 to 19.98 in/hr and a depth to water table ≥ 80 inches. There are no areas of drainage concern on the site in the area of the proposed storm water basin. The existing property has no defined drainage outlet feature, only overland flow and ground infiltration into existing sandy soils and also a small wetland area contained on-site within the commons area. A portion of the site drains off-site due to the steep terrain along a large portion of the site perimeter. There is a large ridge line and steep terrain relief down to East Bay.

Site Storm Water Calculations: PUD

Project & No.: **The 81 on East Bay**

Project No.: **14016**

Location: **Peninsula Township, Grand Traverse County**

Client: **Insight Building Company**

Rational = $Q = C i A$

Intensity = $i =$ 100-yr, 24-hour duration =

5.08 in (Bulletin 71)

Intensity $i =$ **0.212 in/hr**

Coefficient = $C =$ weighted C (Per Table 2: Runoff Coefficients)

Area = $A =$ varies per drainage area (ac.)

(Based on Grading, Storm and Drainage Plans)

Unit Conversion = 86,400

Soils Type = **Predominant USDA Soils: Em (Emmet loamy sands), Lk (Leelanau-Kalkaska loamy sands) & Ma (Mancelona gravelly sandy loam)**

Infiltration Rate = **5.95 in/hr** (1.00"/12") ft x 24-hr x A (sft) = cft

POSTDEVELOPMENT CONDITIONS: 100-yr, 24-hour duration						
NO.	Area Type	C	i	A (ac.)	conversion	Q (cft)
1	Pavement	0.98	0.212	4.06 ac.	86,400	72764 cft
2	Brick	0.85	0.212	0.00 ac.	86,400	0 cft
3	Roof	0.95	0.212	2.26 ac.	86,400	39264 cft
4	Lawns, Sandy, Avg.	0.15	0.212	16.03 ac.	86,400	43973 cft
5	Lawns, Sandy, Steep	0.20	0.212	34.06 ac.	86,400	124578 cft
On-Site Total =				56.41 ac.	Total Q =	280580 cft

Required 2x 100-yr Post Development Total Q = **561160 cft**

SPECIAL NOTES:

The site soils range from somewhat poorly drained to somewhat excessively drained sands with permeability rates from 0.57 to 19.98 in/hour. The location for stormwater collection is within the EmA soil type with permeability rates of 5.95 to 19.98 in/hr and a depth to water table \geq 80 inches. There are no areas of drainage concern on the site in the area of the proposed storm water basin. The existing property has no defined drainage outlet feature, only overland flow and ground infiltration into existing sandy soils and also a small wetland area contained on-site within the commons area. A portion of the site drains off-site due to the steep terrain along a large portion of the site perimeter. There is a large ridge line and steep terrain relief down to East Bay.

Pre Development Q = **72923 cft**

Required Storage = **488237 cft**

Provided Storage = **489349 cft**

Excess Storage = **1112 cft**

Peninsula Shores PUD Amendment #4

8/11/23

Storm Water Update for an additional lot #42

The development site has no defined drainage outlet feature, only overland flow and ground infiltration into existing sandy soils exist at the large basin, so there is no danger of stormwater having any off-site impact.

Stormwater runoff generated by the new lot 42 would be directed towards the large storm water basin at the center of the development site. The basin is sized to accommodate full build-out of the 41-unit PUD with an excess storage capacity of 1,112 cubic feet. However, it is most likely that all storm water generated by the impervious surface of this new lot 42 will have infiltrated back into the ground as it flows 300+ feet over land through the naturally vegetated common open space area before ever reaching the storm water basin.

8/10/2023

Storm Water Run-Off Calculations for Unit 42 (hypothetical based on unit 39 volumes)

Rainfall Intensity for (2x) 100-yr/24-hour events = 10.16 in/48hrs = 0.21 in/hr

Volume = CiA = 0.98 x 0.21 in/hr x ___ acres x 86,400 conversion factor

Soil Type: Loamy sand and sandy loam

Infiltration Volume Reduction: 1" per hour over the wetted area of containment.

Infiltration= (1"/12") ft x 24 hours x area sft = cft

Roof

3,592sf of roof, patio, deck, sidewalk

300ft long x 2ft wide overland flow to large basin

	C	i	A	86400	Q (cft)	
hard surface	0.98	0.21	0.0820	86400	1458	+
infiltration			600		1200	- infiltration volume
					258	<-- volume required

Driveway

1,515sf of driveway

300ft long x 2ft wide overland flow to large basin

	C	i	A	86400	Q (cft)	
hard surface	0.98	0.21	0.0348	86400	619	+
infiltration			600		1200	- infiltration volume
					-581	<-- volume required

Total cf volume Lot 42 = -323

NOTE:

Storm water from the upper ridge lots flows to the east and then south, over land through the grassy meadow open space towards the large/main storm water basin as engineered and permitted as part of the overall PUD. Although the basin is sized to accommodate full building-out of the PUD, it is most likely that all storm water generated by the impervious surface on these lots will have naturally infiltrated back into the ground before ever reaching the storm water basin.

Mansfield

Land Use Consultants

August 10, 2023

Peninsula Twp.
Jennifer Cram, Director of Planning & Zoning
13235 Center Road
Traverse City, Michigan 49686

RE: Peninsula Shores PUD Amendment #4
Traffic Generation

Dear Jennifer

The following is in response to your request for *"a narrative on existing traffic generated from the development and the estimated increase in traffic for adding Lot #42."*

The existing PUD includes 41 lots and is not currently fully developed. The amendment proposes to add 1 lot for a total of 42 lots, once fully developed.

Excluding construction traffic, the typical residential household, on average, generates just over 10 trips per day. Variances to that average exist; with variables such as occupancy, age, proximity to commercial and retail areas, distance from work, time of year, seasonal occupancy, weather, etc. The location of Peninsula Shores, with respect to work location, restaurants, grocery stores, distance from town, etc. is somewhat lengthy. The existence of lengthy trips tends to reduce the number of trips made per day per household. Therefore, it is assumed that on average the trips from Peninsula Shores would likely be at or below the national average, and not above.

Assuming the average, the proposed Lot #42 would generate approximately 10 additional trips per day for Peninsula Shores. That represents only a 2.44% increase in trip generation.

The original PUD "The 81" was also approved by the Twp. as a platted subdivision. A total of 55 lots were proposed within the preliminary plat. By comparison, the 55 lot subdivision, on average, would have produced ~31% more traffic (130 additional trips per day) than the proposed, amended Peninsula Shores PUD with 42 lots.

There is simply no practical reason for concern from the approximate 10 additional trips generated from the proposed Lot #42. Its impact would be no more and no less than any house proposed to be constructed on the Old Mission Peninsula between the lighthouse and the mainland.

If you have any questions, please feel free to call me at (231) 946-9310 ext. 1007.

Sincerely,
Mansfield Land Use Consultants



Jim Hirschenberger, P.E., Project Engineer

830 Cottageview Drive -Suite 201
P.O. Box 4015 Traverse City, MI 49685

p 231.946.9310
f 231.946.8926

Exhibit 2

Jennifer Cram

From: Fred Gilstorff
Sent: Thursday, September 28, 2023 4:12 PM
To: Jennifer Cram
Subject: Re: Peninsula Shores SUP #123 Amendment #4

Jen,

In response for the purposed amendment for the 81 project of adding another home site, the fire department does not see any issue from a code standpoint. We would recommend and it was in the initial site review when the project started, that the project owner and manager assure that the access roads and emergency access road be maintained at all times to allow proper fire department access. Of primary concern is the emergency access road during snow season. This road must be maintained clear of snow and in good working order for emergency vehicle use. According to department records and site visits, the project has complied with all other fire code requirements.

Any more questions on this topic, please feel free to contact me. Thank you.

Fire Chief Fred Gilstorff

Peninsula Township Fire Department

14247 Center Rd.

Traverse City, Michigan 49686

231-223-4443

Cell: 231-463-0330

From: Jennifer Cram <planner@peninsulatownship.com>
Sent: Thursday, September 14, 2023 6:28 AM
To: Fred Gilstorff <fire@peninsulatownship.com>
Subject: RE: Peninsula Shores SUP #123 Amendment #4

Fred, you are correct, we have looked at the site plan together and you noted that you did not have any major concerns with adding one lot. I would like an email from you noting that the requested amendment meets fire code and any conditions of approval that you might have for the record and thought you would like to have the complete submittal for review and response.

Hope you enjoy your time down state and I look forward to getting your comments next week. 😊

Jenn Cram

Peninsula Township Director of Planning and Zoning
13235 Center Road
Traverse City MI 49686



Engineering
Surveying
Testing &
Operations

123 West Front Street
Traverse City, Michigan 49684
231.946.5874 📞
231.946.3703 📠

October 6, 2023

Isaiah Wunsch, Supervisor
Peninsula Township
13235 Center Road
Traverse City, MI 49686
231-223-7322
supervisor@peninsulatownship.com

RE: Peninsula Shores, PUD #123 –Application for Amendment #2
Review of Revision: Relocate Unit 1 and minor dimensional changes

Dear Isaia,

We have reviewed the supporting documents for the Peninsula Shores – PUD #123 Application for Amendment #4, dated 7/11/23 as completed by Mansfield Land Use Consultants. These include updated SUP Application, SUP Development Checklist, Proposed PUD Amendment Open Space Plan, and stormwater calculations. Our review which consisted of reviewing the modifications for their impacts to utilities, stormwater management, and the general compliance with the special Use permit and zoning ordinance criteria.

According to Mansfield the modifications to the plan include the following dimensional shifts of the site plan layout:

- Lot line adjustments to Units 25-29, and 41
- Adding unit 42 by dividing and slight expansion of amendment 3 unit 41.

A summary of our review is contained below:

Utility Review

Per the submitted application, 8.1.2.9c comments on the proposed amendments effect on the existing facilities. Lot 42 will be connected to the community septic system with existing Lot 24 being removed from the system – a one to one switch. Lot 24 will have on-site septic subject to GTCHD permitting. This is acceptable.

Storm Water Review

According to the revised plans, no revisions to the storm water control design were required. There is a change in impervious surface with the addition of lot 42 and the typical impervious areas. Lot 42 is within the catchment of the stormwater management area. The submittal demonstrates excess storage was previously installed and supplemental infiltration associated with the long flow path to the basin is suitable to account for the new runoff from lot 42. Therefore, the previously proposed storm water provisions can area sufficient for the existing site and the proposed amendment.

T:\Projects\23029E\Peninsual Shores SUP#123 Amendment 4\Peninsula Shores- PUD Amendment 4 Review_Draft_100623.docx

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Private Road Review

According to the description of the modifications the revisions do not change the private road system.

Overall Ordinance Compliance Review

According to revised plans, a comparison to the original approved PUD Open Space Calculations along with confirmation of values was performed by GFA with the following results provided:

	Open Space	Non-Open Space
Approved P.U.D. Amendment 1	65.65% (54.05 AC.)	34.35% (28.28 AC.)
Proposed (Unit Shift and Dimensional changes)	65.81% (54.25 AC.)	34.19% (28.19 AC.)

The provided information shows the addition of Unit 42 causes no change in the calculated constraints to number of units. Unit 42 and the revision to Unit 41 appears to meet the dimensional requirements of the Township and the P.U.D. Project. The application indicates that legal documents reflecting open space will be updated pending approval.

Assuming no other changes have been made to the project plans as previously reviewed, our recommendation for engineering plan approval remains in place in accordance with our previous review letters and the Township SUP Conditions dated August 6, 2019. The following general items are noted:

1. The same approved Findings of Fact and SUP conditions apply including but not limited site-specific Storm Water Reviews for each lot.
2. Applicable revisions to the Master Deed to reflect the site changes are to be completed and a new document shall be signed and recorded with the Register of Deeds. A copy of this document shall be provided to the Township for their files.
3. An updated drawing shall be provided to account the water front strip known as Parcel "A" as it is our understanding this parcel is to be removed from the PUD and purchased by and adjacent property owner.

Please do not hesitate to contact me with any questions regarding this review.

Respectfully Submitted,
GOURDIE-FRASER

Jennifer Graham (Hodges), PE
Sr. Project Manager

cc: Dough Mansfield, Mansfield Land Use Consultants
Kyle O'Grady - The 81 Development Company

Exhibit 3

December 4, 2023

Peninsula Township
Jenn Cram, Planner
13235 Center Rd
Traverse City, MI 49686

Via Hand Delivery

RECEIVED
12/4/23
6PM JZ

Re: Peninsula Shores, PUD #123
Additional Information in Support of Amendment #4

Dear Ms. Cram and Peninsula Township Planning Commission:

As the Planning Commission is aware, my firm represents the O'Grady family and The 81 Development Company, LLC. My clients have a development in Peninsula Township that is known as Peninsula Shores. The purpose of this letter and its attachments is to supplement the letter my firm previously sent on November 13, 2023¹ in support of the Application for Amendment #4 for the Peninsula Shores Planned Unit Development. During the meeting held on November 20th, the Planning Commission and the applicant agreed to the Planner's request that all supplemental information supporting Amendment #4 be submitted to the Planner no later than December 4, 2023. This letter and its attachments are meant to be read in conjunction with the letter and attachments previously provided to the Township. If further information is requested from the Township, please contact my firm at the information stated at the end of this letter.

Importantly, the Planner submitted a new Findings of Fact and Conditions during the November 20th meeting. Contained in this new document are the eight standards that the Planner claimed were unsatisfied in her Findings of Fact issued on October 16, 2023, plus an additional standard claimed to not be met and additional reasons why some standards were unsatisfied.

Before explaining why each standard has indeed been met and continues to be met by Peninsula Shores, it is necessary to explain the history revolving my clients' PUD. This letter will explain the Circuit Court's decision on appeal and the remand to the Board in 2017. This letter will resolve issues that the Board has been focusing on, particularly when it comes to the number of units concerning the Peninsula Shores project and the prior public engagement of the project. Lastly, through consideration of the above, the 2015 Approval and relevant record minutes from the

¹ For ease of reference, a copy of the letter dated November 13, 2023 is attached hereto as Exhibit 8. If the Planner or the Planning Commission needs an exhibit to the previous letter, please contact my office and we will provide with it.

Board, Michigan law, other PUD and amendments approved by this Board, and Amendment #4 to Peninsula Shores, this letter clearly shows why Amendment #4 satisfies every condition of Peninsula Township's Zoning Ordinance.

I. HISTORY OF PUD #123

a. Appeal to Circuit Court.

Following the Township's approval of the Peninsula Shores PUD, Komendera and Preserve Old Mission filed an appeal to the Circuit Court challenging the Township's findings and approval of the PUD. On January 15, 2016, the Honorable Philip E. Rodgers, Jr., sitting for the Circuit Court for the County of Grand Traverse issued his opinion for Case No. 2015031218AA (leave to appeal denied by the Supreme Court on April 4, 2017). See Exhibit 1. On appeal, Komendera and Preserve Old Mission (the "Appellants"), argued the following:

(1) The Board's decision was not authorized by law because the Board incorrectly interpreted and applied the Peninsula Township Zoning Ordinance ("Ordinance") standards; (2) the Board's factual findings were insufficient to support its conclusions and were not supported by competent, material and substantial evidence on the record; and (3) the Board's recusal of Jill Byron ("Byron") at the Developer's insistence was inappropriate as no conflict of interest existed and Byron's participation in the project discussion potentially would have resulting [sic] in a different outcome for the Special Use Permit and Planned Unit Development findings.

See pg. 3 of Exhibit 1. Specifically, Appellants claimed that the Board's approval of the SUP was not authorized because: "(1) the Planned Unit Development does not preserve natural features on the property to the maximum feasible extent; (2) the Planned Unit Development does not protect 65% of the property as qualified open space; and (3) fact finding and ordinance interpretation were unlawfully delegated to staff." See pg. 4-5 of Exhibit 1.

The Court, relying on the standard outlined by this State's Constitution, considered whether the township's findings were "supported by competent, material and substantial evidence on the whole record." See pg. 4 of Exhibit 1.

Importantly, the Court explained:

The Site has 2500 lineal feet on the East Grand Traverse Bay and the property zoned R-1B could theoretically accommodate up to 35 individual lots. The property zoned R-1A could accommodate an additional 30 lots or more, depending on the configuration, elevation and grading and the Developer could remove as many trees as it felt necessary in order to market the lots. Presumably road development would be more intensive in order to support access to a minimum of 65 lots and multiple docks could be installed along East Grand Traverse Bay in the shoreline area.

Under the Ordinance, exercising the uses permitted by right would allow considerably more development on the Site, which undoubtedly would result in a decrease in open space and significant destruction with respect to grading and deforestation. Comparatively, the proposed SUP/PUD has 41 densely

clustered units with smaller lot sizes, approximately 54 acres of open space, limited road development and one main dock at the shoreline to consolidate boat traffic.

See pg. 7 of Exhibit 1 (emphasis added). As the Court explained, the Board found that the development would preserve natural resources to the maximum feasible extent:

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.**

Id (emphasis added). The Court found that the Board appropriately determined that the PUD satisfied the open space requirements of the Ordinance, and through consideration of the other issues on appeal, the Court held the following:

In conclusion, the Court finds that the Board lawfully exercised its discretion under the Ordinance when it determined that: (1) the natural resources will be preserved to the maximum feasible extent; (2) the open space meets the requirements of the Ordinance §8.3.3(5), §8.3.4(4) and §8.3.6; and (3) the proposed SUP/PUD meets the objectives set forth in the Ordinance §8.3.2. Further, the Court finds that Byron's recusal was proper pursuant to the Peninsula Township Board Rules of Procedure. The issues delegated to the Peninsula Township Fire Department and the Township Engineer for review and approval...are remanded to the Board for further proceedings consistent with this decision and order.

See pg. 16 of Exhibit 1. Accordingly, the application for Peninsula Shores PUD was remanded to the Board for additional review to a narrow set of issues.

b. 2017 Remand to the Board.

As provided in the Findings of Fact issued on December 12, 2017 following the remand from the Circuit Court, the Board explained the following:

The township Board's consideration of the remanded issues relates to the following Township Zoning standards: General Standard Section 8.1.3(1)(c); Specific Standards Section 8.1.3(3)(d); Section 8.1.3(3)(h); Section 8.1.3(3)(i); Section 8.1.3(3)(j); Section 8.1.3(3)(k); Section 8.1.3(3)(n); Section 8.3.3(7); and Section 7.2.5. Except for the reconsideration of these "Court-remanded" issues, all other portions of the Township Board's Decision and Order of August 11, 2015, including all findings and conditions, **remain unchanged**.

See pg. 2 of Exhibit 2 (emphasis added). Importantly, the Board's findings as to density and traffic remained unchanged by the Court's decision in *Komendera*. Contained in the 2017 Findings is the

Board's decision that both Sections 8.1.3(3)(n) and 8.3.3(7) were satisfied by Peninsula Shores. Specifically, when noting that 8.1.3(3)(n) was satisfied, the Board explained, in part: "The Board finds that the proposed on-site community septic system, individual wells, storm water system and roadways for the development meet the applicable ordinances, requirements and standards." See pg. 16 of Exhibit 2. Thus, the PUD was approved for Peninsula Shores.

II. PROPOSED ISSUES BY THE TOWNSHIP'S PLANNER

a. Number of Units.

During the November 20th meeting, some Board members raised concerns regarding the number of units for the PUD. This is due to the change in the number of units within Peninsula Shores. In the first set of documentation supporting the application for the PUD, my clients listed the number of units for the development as 36. Then, in subsequent documentation supporting the PUD application, the number of units was changed to 41.

This change was addressed during the meeting held on June 15, 2015, wherein the following discussion took place which is found on page 12 of the record minutes:

"**Leak** asked the first plan had 36 lots and now 41 lots [sic] 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."

No further discussion took place regarding the change from 36 to 41 units.

As shown in Section 8.3.3(4) of the Ordinance, "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)." Peninsula Shores development was sought under Section 8 of the Ordinance as a Planned Unit Development. As mentioned in my firm's previous letter, the approval submitted on August 11, 2015 contained the following language:

iii. Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that the 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) 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.**

See pg. 28 of Exhibit 3 (emphasis added). Accordingly, whether there was a change from 36 to 41 units should not be the center of focus when analyzing Amendment #4. It is clear from the record that the change from 36 to 41 units was not negotiated by the parties. As stated above, the Township

did not inquire further as to the change from 36 to 41 units. What should be the focus for Amendment #4 is the fact that, as Mansfield said in 2015, the lot widths of some units in the development have been adjusted which reduces lot depth to make up for the open space so the development continues to comply with the Ordinance.

All that matters is—pursuant to the determination of the Township Board and the Court’s order in *Komendera*—that Peninsula Shores is afforded a maximum of 73 units. The record clearly indicates that Peninsula Shores is expressly permitted to request additional units as long as the number of units does not exceed 73. To find otherwise strips (i) Peninsula Shores of their property rights, (ii) the soundness of the Township Board in 2015, (iii) the validity of the Township’s Ordinance, and (iv) the Court’s authority in *Komendera* and its bearing on our legal precedence. Accordingly, the Planner’s proposed condition of approval contained in the November 20 Findings is not permissible pursuant to the Ordinance and applicable law. See, MCL 125.3504.

III. OTHER PUD PROJECTS ARE RELEVANT REGARDLESS OF ZONING DISTRICT

During the Board meeting held on November 20, 2023, a few of the Board members stated their confusion concerning the relevancy between Peninsula Shores’ SUP and the SUPs and amendments for two other PUDs in Peninsula Township. Notably, the Board members claimed that these two other PUDs do not have any relevancy to Peninsula Shores due to the projects being in different zoning districts. While the two other PUDs were under other zoning districts, they all were developed under Section 8 of the Ordinance pertaining to Planned Unit Developments. Section 8 applies regardless of the zoning district.

So, an analysis of how the Board analyzed the subsections of Section 8 of the Ordinance as to the other developments *is relevant* since Section 8 is a separate section of the Ordinance and specifically applies to PUDs as a whole. Accordingly, this letter will defer to my firm’s previous letter discussing the Vineyard Ridge and 7 Hills project (see pgs. 6 & 10 of Letter) and the discussion contained in the following section of this letter.

IV. AMENDMENT #4 SATISFIES THE ZONING ORDINANCE

a. Section 8.1.3(1)(a)

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

The Planner stated in the Findings of Fact dated November 20, 2023, that Amendment #4 does not satisfy this section. Specifically, she reasoned that “the character of the original approval is eroded” and made no mention about the general vicinity nor whether the use proposed in the Amendment will change the essential area for where Peninsula Shores is located.

Interestingly, the Planner did address these essential elements of the section in her Findings of Fact issued for the 7 Hills development which is dated April 11, 2023, and attached hereto as Exhibit 4. In those Findings, the Planner made the following statements:

The character of the area surrounding the subject property is generally agricultural and rural residential in nature...The site has been commercially zoned since the Township adopted its zoning district map...The buildings meet required setbacks for the C-1 zone district. The proposed architecture, parking areas and landscaping are attractive. The approved and proposed uses conducted indoors should not negatively impact adjacent properties. However, the proposed outdoor uses could impact neighbors with the potential for noise to travel based on the surrounding topography. Negative impacts can be minimized by following the Noise Ordinance #40 as amended and with the establishment of reasonable hours of operation.

See pg. 2 of Exhibit 4.

Most importantly, the Board in 2015 (and the Court in *Komendera*) found that Peninsula Shores *did* satisfy this section. In the 2015 Findings, which is attached hereto as Exhibit 3, the Board made the following comments:

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).

iv. The Board finds that under the master plan, chapter 3...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.

v. ...The Board finds that 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.

See pg. 7 of Exhibit 3. Contrary to the Planner's findings, Amendment #4 does satisfy Section 8.1.3(1)(a). The buffer zone along the Bay has not decreased. Amendment #4 continues to preserve 65% of property as open space. And Amendment #4 continues to satisfy the requirements of both the R-1A and R-1B districts. This is because Amendment #4 is in line with the other amendments for Peninsula Shores and the original PUD.

b. Section 8.1.3(1)(b)

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

The Planner lists on the Findings of Fact that this section is not satisfied because the Amendment #4 "will increase density that will result in increased traffic, lighting and noise as well as require an additional on-site septic system."

First, the findings pertaining to Section 8.1.3(1)(b) are confusing when read in conjunction with the following section. Specifically, the Planner found that Section 8.1.3(1)(c) was satisfied *because* of the utilization of a well and installation of new septic system. How can the installation of a new septic system be the basis for denial for one section, but the basis for approval for the next? The obvious confusion highlights a directed attempt to list sections as not met for reasons not supported by the record.

Second, in the Findings of Fact for 7 Hills, all that was listed for this Section was the following:

[T]he proposed project will be attractive. There is no concern with the approved uses conducted indoors. The hours of operation for outdoor uses has been addressed with a recommendation condition of approval.

See pg. 3 of Exhibit 4. Now, as a reminder, the 7 Hills Finding of Fact was issued on April 11, 2023, to determine whether the second amendment to the 7 Hills SUP should be approved. The second amendment was to increase the capacity of the restaurant/tavern from 32 to 70. This amendment was for a substantial—not nominal—increase in traffic, lighting, and noise that was more than double of what the Board had previously approved. Amendment #4 presented for Peninsula Shores simply requests an increase from 41 to 42 units. How can an increase in one single family home be startling to the Board so as to find that it is “hazardous” or “disturbing” to the community, when an increase in over 50% of the capacity at 7 Hills (a tavern) is not? How can the Board find that Peninsula Shores’ increase in one unit not be a substantial improvement to the vicinity and community even when that means more taxpayer dollars to the township, when a substantial increase in pedestrians enjoying a tavern is?

Third, in the 2015 Findings, the Board found that Peninsula Shores satisfied this section for the following reasons, in part:

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.

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...The Board further finds that the lot locations...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.

See pg. 8 of Exhibit 3. Again, Amendment #4 clearly satisfies this standard since 65% of open space is still preserved, the view sheds are still sufficiently preserved, and 1500 feet of waterfront is still preserved. Notably, the Board in 2015 made the finding that the proposed PUD—with the

maximum units being 73—as not negatively impacting adjacent neighbors. Peninsula Shores was and is permitted to ask for up to 73 units at the property. Nothing is changing with Amendment #4 in regard to the findings that were at the center of discussion for the Board in 2015 and which should be the center of discussion for the Board when making its decision for Amendment #4.

Amendment #4 should not be read in isolation as to whether there is a substantial improvement; rather, substantial improvement should be determined by looking at Peninsula Shores in its entirety with the Amendment added.

c. Section 8.1.3(3)(c)

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

The Planner found that this section was not satisfied because:

The proposed amendments conform to the requirements of the R-1 A and R-1B zone districts. Engineering has reviewed the open space calculations to confirm the 65% requirement is maintained...However, the requested amendments do not conform to other requirements associated with a PUD per Section 8.3.

It appears that the Planner finds this standard was not met due to the PUD regulations not being satisfied. This fails for two reasons: (1) the Amendment does satisfy the PUD regulations, and (2) the language contained in Section 8.1.3(3)(c) says nothing about the PUD regulations—the section specifically requires an analysis of the regulations concerning the zoning district, which the Planner noted were satisfied by the Amendment. In addition, the Findings of Fact for the 7 Hills amendment submitted by the Planner listed that the 7 Hills amendment satisfied this section since “the proposed development conforms to regulations of the C-1 zoning district, subject to the conditions of approval noted on page 7.” See pg. 4 of Exhibit 4. There was no mention of whether the PUD regulations were satisfied.

This letter defers to the rest of the explanations contained on pages 4-6 of the November 13th letter previously sent by my firm as to why the Planner’s findings are improper as to this section.

d. Section 8.1.3(3)(p)

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

This letter defers to the explanations contained on page 6 of the November 13th letter previously sent by my firm as to why the Planner’s findings are improper as to this section. In addition, this letter directs the Board’s attention to the Vineyard Ridge Findings of Fact dated January 23, 2017 and attached as Exhibit 5. When analyzing whether Section 8.1.3(3)(p) was satisfied for Vineyard Ridge, the Board stated: “the Board finds that the parking will be provided for each residential unit and no other parking areas are provided.”

There are no new parking spots alleged in Amendment #4 for Peninsula Shores. Therefore, the findings in 2015 concerning Section 8.1.3(3)(p) remain unchanged.

Perhaps most importantly, the Planner should be interpreting the zoning ordinance in the same manner as statutes, which is not evident in the Findings of Fact issued on November 20th. See, *City of Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452 (2020).

[T]he goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body. The most reliable evidence of that intent is the language of the ordinance itself, which must be given its plain and ordinary meaning. When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written.

Id at 458. It is clear that Section 8.1.3(3)(p) requires that the parking layout will not adversely affect the flow of traffic. It does not require an analysis of whether the traffic will increase in isolation—whether there is an increase in traffic is determinative of the parking layout. If the Township wanted to inquire about whether the flow of traffic by itself would increase, then it would have clearly done so. However, the Township did not do this. If this section is supposed to be read the way that the Planner is interpreting it in her recent Findings, then that means that no Planned Unit Development would be able to satisfy this standard because any change would increase traffic. The Planner’s interpretation means that an increase in traffic (even as small as adding one single family dwelling) is too cumbersome for the Ordinance. This analysis is not accurate. Nothing in this section of the Ordinance is ambiguous and thus an interpretation as is done in the November 20th Findings is clearly erroneous.

e. Section 8.1.3(3)(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 the principles of sound planning.

This letter defers to the explanations contained on page 6 of the November 13th letter previously sent by my firm as to why the Planner’s findings are improper as to this section. In addition, the Planner simply just states in the Findings on November 20th that the Amendment does not satisfy this section. However, the Planner does not support her reasoning by competent, material or substantial evidence.

Importantly, this letter directs the Board’s attention to the 7 Hills amendment. As found on page 6 of Exhibit 4, the Board explained why the 7 Hills amendment satisfied this section:

The proposed development meets the objectives of the ordinance and the principles of sound planning by improving the existing character of the subject parcel and providing opportunities for new commercial uses.

Again, like the Board analyzed the amendment for 7 Hills, the Board should analyze Amendment #4 for Peninsula Shores as whether the development in its entirety satisfies this section, not whether Amendment #4 in isolation does. In addition, Amendment #4 provides an additional taxpayer to the Township which will undoubtedly benefit the Township. Further, Amendment #4 proposes to erect only 42 homes, which is 31 less than what is permitted by the Ordinance. The

Amendment continues to preserve open space and continues to preserve the natural shoreline. Amendment #4 is clearly in accordance with the Ordinance and thus satisfies this section.

f. Section 8.3.2(3)

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

This letter defers to the explanations contained on pages 7-8 of the November 13th letter previously sent by my firm as to why the Planner's findings are improper as to this section. In addition, the Court in *Komendera* went through all six objectives outlined in Section 8.3.2 of the Ordinance. With regards to Objective #3, the Court explained,

[T]he Board indicated that the SUP/PUD preserves a substantial portion of the shoreline in a natural state to be used as shared waterfrontage, as opposed to individual unit private frontage. In addition, the Board found that when balancing market demands for desirable residential parcels in conjunction with the preservation of 65% of the property, the SUP/PUD is a more creative and imaginative approach to the development of the property for residential purposes.

See pg. 12-13 of Exhibit 1. Accordingly, the Court affirmed the Board's approval in 2015 showing that Peninsula Shores satisfied this section. The overall development of Peninsula Shores is not changing, nor is the character eroding, through the adoption of Amendment #4. Accordingly, the Board should uphold its prior findings and the Court's decision and find that the Amendment to the PUD satisfies Section 8.3.2(3).

g. Section 8.3.2(5)

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

This letter defers to the explanations contained on page 6 of the November 13th letter previously sent by my firm as to why the Planner's findings are improper as to this section. In addition, as shown on page 25 of the 2015 Approval attached as Exhibit 3, and as affirmed by the Court in *Komendera*, the Board specifically found that:

This standard is NOT APPLICABLE.

(emphasis in original). If this standard was not applicable in 2015, then it is not applicable when determining whether Amendment #4 satisfies the Ordinance.

h. Section 8.3.3(4)

The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or district which it is located subject to the provisions of Section 8.1. except as provided by Section 8.3.5(1).

This letter defers to the explanations contained on page 9 of the November 13th letter previously sent by my firm as to why the Planner's findings are improper as to this section.

i. 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.

This letter defers to the explanations contained on pages 9-10 of the November 13th letter previously sent by my firm as to why the Planner's findings are improper as to this section.

V. CONCLUSION

As clearly stated by our Legislature, "A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes." MCL 125.3504(3). For the reasons stated herein, and for the reasons stated in my firm's letter dated November 13th, Amendment #4 to the Peninsula Shores Planned Unit Development does satisfy the standards in the zoning ordinance. Accordingly, the Amendment should be approved as written.

This Board should also consider the approach the Board took when considering the 7 Hills Amendment and the Vineyard Ridge PUD. The Michigan Zoning Enabling Act provides, in part: "The planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions." MCL 125.3503(3). As noted above, there have been decisions made that are clearly arbitrary when contrasting the Findings of Fact for Peninsula Shores to those for the 7 Hills and Vineyard Ridge developments.

Importantly, Amendment #4 has been approved by the Township's engineer, which is attached as Exhibit 6, and the Fire Chief, which is attached as Exhibit 7.

As a reminder, the Planning Commission is required to make its decisions "supported by competent, material and substantial evidence on the whole record." Const. 1963, art. 6, § 28. And as provided in the Court's decision in *Komendera*, consideration must be given to "the overall context of a project" and "overall plan." See pg. 12 of Exhibit 1. The Board should not consider Amendment #4 in isolation.

We look forward to meeting with the Planning Commission on December 18, 2023, and further explaining why Amendment #4 to the Peninsula Shores PUD #123 should be recommended for approval by the Planning Commission.

Very truly yours,



Todd W. Millar

TWM:

Enclosures

cc: Kyle O'Grady (via email)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JAMES KOMENDERA, an individual, and
PRESERVE OLD MISSION PENINSULA,
a domestic non-profit corporation

Appellants,

v

File No. 2015031218AA
HON. PHILIP E. RODGERS, JR.

PENINSULA TOWNSHIP,

Appellee,

and

THE 81 DEVELOPMENT CO., LLC, a
Michigan limited liability company,

Intervening-Appellee.

Scott W. Howard (P52028)
Katherine E. Redman (P74030)
Attorneys for Appellants

Peter R. Wendling (P48784)
Attorney for Peninsula Township

Joseph E. Quandt (P49739)
Edgar Roy (P36809)
Marc S. McKellar (P78367)
Attorneys for 81 Development Co

DECISION AND ORDER ON APPEAL

On January 5, 2015, The 81 Development Company, LLC ("Developer") submitted to Peninsula Township an application for a Special Use Permit to construct a Planned Unit Development on two parcels of property commonly known as 15634 Smokey Hollow Road and 15636 Bluff Road.¹ The Peninsula Township Planning Commission ("Commission") held a

¹ The two parcels, Tax Id Nos. 11-114-001-00 and 11-114-002-00, shall collectively be referred to as the "Site." The Site contains steep slopes, primary ridgelines, wetlands, lakes and is rural area not designated for Agricultural Preserve areas. See Peninsula Township Planning & Zoning Department Staff Report (May 13, 2015), § 2.9.

public hearing on the application for Special Use Permit and Planned Unit Development on May 18, 2015.² On June 15, 2015, the Commission deliberated and unanimously recommended approval of the Special Use Permit and Planned Unit Development. On July 14, 2015, after receiving the findings from the Commission, the Peninsula Township Board ("Board") held an additional public hearing on the application for Special Use Permit and Planned Unit Development. On August 11, 2015, based upon the general findings of fact and specific findings under Ordinance Sections 8.1.3 and 8.3, the Board³ approved the Special Use Permit and Planned Unit Development subject to certain conditions.⁴

Additionally, the Site is surrounded by developed residential properties to the north and south and both properties are primarily zoned R-1A, pursuant to the Peninsula Township Zoning Ordinance. R-1A Zoning discussed, *infra*. The Bluff Road parcel is partially zoned as an R-1B Coastal Zone Residential District. R-1B zoning is intended for the development of residential properties of a semi-rural character along lakeshore drives and areas of high scenic value where more intensive development would deteriorate the peninsula environment and less invasive development is not essential to maintenance of the established environment. Ordinance § 6.3.1. R-1B districts allow for the same uses permitted by "Right," "Under Special Conditions" or by "Special Use Permit" as the R-1A Districts and also allow for two-family dwellings. Ordinance § 6.3.2.

² Once a special use permit application is submitted to Peninsula Township, the application along with all required data is transmitted to the Township Board for consideration after referral to a study by the Planning Commission. The Planning Commission may hold a public hearing on the application. Upon receipt of a recommendation from the Planning Commission, the Township Board shall publish in a newspaper having a general circulation in the Township, not less than five nor more than 15 days before the date the application will be considered, one notice that a request for special land use approval has been received. The notice shall be delivered to all persons whom real property is assessed within 300 feet of the boundary in question. Ordinance § 8.1.2(3).

³ See Board Minutes for August 11, 2015, approved September 8, 2015. Board members Weatherholt, Correia, Hoffman, Avery, Rosi and Witkop voted to approve the SUP and PUD. Board member Jill Byron did not participate in the discussion or vote on August 11, 2015. Discussed *infra*.

⁴ The conditions are as follows: "(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 [sic] 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 issues of the SUP; (3) No material earth movement other than soil borings until the SUP is issued; (4) Requirement of a Performance Bond or other enforceable appropriate financial mechanism to ensure the construction and long terms maintenance of private roads, community septic system, fencing/landscaping, and emergency water tank as planned in accordance with SUP #123 based on the recommendation of the Township Engineer and Accountant as required by statute; (5) Maintenance of water tank will be 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) Relocated entrance sign to be compliance with Section 7.11 of the Ordinance; and (10) Review of Master Deed and Bylaws and site plan by Township Attorney to ensure compliance with these conditions and the SUP/PUD."

James Komendera owns real property adjacent to the Site. Preserve Old Mission Peninsula (POMP) is a domestic nonprofit that was incorporated on October 7, 2015.⁵ Komendera and POMP, collectively the Appellants, filed a Claim of Appeal on October 8, 2015.⁶ Appellants make three major arguments on appeal. Appellants claim that: (1) the Board's decision was not authorized by law because the Board incorrectly interpreted and applied the Peninsula Township Zoning Ordinance ("Ordinance") standards; (2) the Board's factual findings were insufficient to support its conclusions and were not supported by competent, material and substantial evidence on the record; and (3) the Board's recusal of Jill Byron ("Byron") at the Developer's insistence was inappropriate as no conflict of interest existed and Byron's participation in the project discussion potentially would have resulting in a different outcome for the Special Use Permit and Planned Unit Development findings. The Court heard oral arguments by the parties on December 21, 2015, took the matter under advisement, and now issues this written decision and order affirming, in part, and reversing, in part, the decision of the Board.

Each organized Michigan township shall be a body corporate with powers and immunities provided by law.⁷ The township board of an organized township in this state may provide by zoning ordinance for the regulation of land development.⁸ Municipalities have the authority to regulate land use through zoning pursuant to the Michigan Zoning Enabling Act.⁹ The Zoning Enabling Act provides that a local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of one or more districts, which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other public facilities and facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation and other public service and facility and to promote public health, safety and welfare.¹⁰ The Act also provides that

⁵ See Michigan Department of Licensing and Regulatory Affairs <<http://www.dleg.state.mi.us>> (accessed January 5, 2016).

⁶ James Komendera, as an adjacent property owner to the Site, is affected by the approval of the SUP/PUD and clearly has standing to pursue this appeal. Therefore, the issue of whether POMP also has standing to pursue this appeal is moot and will not be addressed by the Court.

⁷ Const 1963, art 7, § 17.

⁸ *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 198; 550 NW2d 867 (1996).

⁹ MCL § 125.3101 *et seq.*

¹⁰ *Id.*

regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.¹¹

The Michigan Constitution states that:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.¹²

Substantial or substantive evidence is evidence that a reasonable person would accept as sufficient to support a conclusion, while this requires more than a scintilla of evidence it may be substantially less than a preponderance.¹³ Substantial evidence includes facts based on inferences that are legitimate and supportable.¹⁴ The substantial evidence test is not whether a contrary decision could have been supported by substantial evidence, but whether the decision the agency actually made was supported by substantial evidence.¹⁵ Meaningful judicial review of whether there was competent, material and substantial evidence on the record requires knowledge of the facts justifying the agency's conclusion and courts should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably different views.¹⁶ A board's decision should be affirmed unless: (1) it is contrary to law, (2) based on improper procedure, (3) not supported by competent, material and substantial evidence on the record, or (4) an abuse of discretion.¹⁷

Appellants claim that the Board's approval was not authorized by law because: (1) the Planned Unit Development does not preserve natural features on the property to the maximum feasible extent; (2) the Planned Unit Development does not protect 65% of the property as

¹¹ *Id.*

¹² Const 1963, art 6, § 28.

¹³ *Tomczik v State Tenure Comm*, 175 Mich App 495, 499; 438 NW2d 642 (1989); *Barak v Drain Comm'r for Co of Oakland*, 246 Mich App 591, 597; 633 NW2d 489 (2001).

¹⁴ *In re Payne*, 444 Mich 679, 690-691; 514 NW2d 121 (1994).

¹⁵ *Badder v Dep't of Human Services*, unpublished opinion per curiam of the Court of Appeals, issued February 8, 2011 (Docket No. 294245).

¹⁶ *Reenders v Parker*, 217 Mich App 373; 551 NW2d 474 (1996); *Dignan v Mich Pub School Employees Retirement Bd.*, 253 Mich App 571; 659 NW2d 629 (2002). Deference is afforded to an agency's choice between two alternative views because of the agency's administrative expertise.

¹⁷ *Badder, supra*.

qualified open space; and (3) fact finding and ordinance interpretation were unlawfully delegated to staff. Appellants further claim that the Board's factual findings were insufficient to support its conclusions and were not supported by competent, material and substantial evidence on the record. Specifically, Appellants argue that: (1) the Board failed to make sufficient findings to support its determination that natural resources will be preserved to a maximum feasible extent; (2) the Board did not determine that the proposed open space met the standards set forth in § 8.3.4(4); (3) the grading plan was not reviewed prior to the Board's approval of the Planned Unit Development; and (4) the Board failed to elucidate how the proposed development satisfies the objectives for a Planned Unit Development project.

Pursuant to the Ordinance R-1A, Rural and Hillside Residential Districts are zoned for the continued development of (1) rural areas suited to very low density residential development; (2) fragile hillside areas; and (3) interface areas between more intensive residential uses and agricultural land uses.¹⁸ The uses permitted by right in R-1A districts include single family dwellings, customary uses and structures, public recreation, storage of trailer units, the keeping of domestic pets, general farming and horticultural uses, family day care homes and group day care homes.¹⁹ Additionally, Planned Unit Developments are permitted by Special Use Permit (SUP) in R-1A districts.²⁰ The Ordinance states that the following objectives shall be considered in reviewing any application for a SUP for a PUD:

- (1) 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.
- (2) To provide open space options.
- (3) To encourage developers to use a more creative and imaginative approach in the development of residential areas.
- (4) 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.
- (5) To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
- (6) To provide for the retention of farmland by locating the allowed number of housing units on the agricultural units on the agricultural parcels of land in

¹⁸ Ordinance § 6.2.1.

¹⁹ Ordinance § 6.2.2.

²⁰ Ordinance § 6.2.4(1); § 6.5A *et seq.* A Planned Unit Development (PUD) is defined as a land area which has both individual building sites and common property, such as a park, and which is designed and developed under one (1) owner or organized group as a separate neighborhood or community unit. Ordinance § 3.2.

clusters which are suitable for residential use and keep the remaining agricultural land in production or fallow and available for production.²¹

Qualifying conditions for a SUP include that: (1) the PUD project shall not be less than 20 acres in area; (2) the PUD shall be located within a Residential or Agricultural District, or combination of Residential and Agricultural Districts; (3) water and waste disposal shall comply with the Township Master Plan; (4) the proposed density of the PUD 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; and (5) open space shall be provided.²² The four options for dedication of the provided open space include:

- (1) Open Space Dedicated for Private Use: A residential PUD with a minimum of 65% of the net acreage kept as open space and owned by the Home Owners Association or Condominium Association. That open space land shall be set aside as common land for the sole benefit, use and enjoyment of the present and future lot or home owners within the development.
- (2) Open Space Dedicated for Public Use: A Residential PUD with a minimum of 10% of the net acreage dedicated to the Township.
- (3) Open Space Dedicated for Deed Restricted Agricultural Land: A PUD with a minimum of 65% of the net acreage as deed restricted agricultural land.
- (4) Open Space Apportioned Between Private Use and Deed Restricted Agricultural Land.²³

Section 8.1.3(3)(f) of the Ordinance states that, in reviewing an impact assessment and site plan, the Board and Commission shall consider the specific requirement 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. By definition, "maximum" is the "greatest quantity or value attainable,"²⁴ "feasible" means "capable of being put into effect or accomplish; practicable, or capable of being successfully utilized; suitable"²⁵ and "extent" is the "range, distance, or space that is covered by something or included in something."²⁶

Appellants argue that § 8.1.3(3)(f) requires an analysis and determination of whether there are other practicable alternatives that would preserve more natural features at the Site. The

²¹ Ordinance § 8.3.2.

²² Ordinance § 8.3.3.

²³ Ordinance § 8.3.6.

²⁴ Merriam-Webster Dictionary <<http://merriam-webster.com>> (accessed January 7, 2016).

²⁵ *Friends of Crystal River v Kuras Properties*, 218 Mich App 457, 466; 554 NW2d 457 (1996).

²⁶ Merriam-Webster Dictionary <<http://merriam-webster.com>> (accessed January 7, 2016).

Board similarly concluded that § 8.1.3(3)(f) necessitates a comparison of potential development alternatives. However, the Board found it more pertinent to compare the proposed SUP/PUD with the type of development permitted at the Site by right under the Ordinance.

The Site has 2500 lineal feet on East Grand Traverse Bay and the property zoned R-1B could theoretically accommodate up to 35 individual lots. The property zoned R-1A could accommodate an additional 30 lots or more, depending on the configuration, elevation and grading and the Developer could remove as many trees as it felt necessary in order to market the lots. Presumably road development would be more intensive in order to support access to a minimum of 65 lots and multiple docks could be installed along East Grand Traverse Bay in the shoreline area. Under the Ordinance, exercising the uses permitted by right would allow considerably more development on the Site, which undoubtedly would result in a decrease in open space and significant destruction with respect to grading and deforestation.²⁷ Comparatively, the proposed SUP/PUD has 41 densely clustered units with smaller lot sizes, approximately 54 acres of open space, limited road development and one main dock at the shoreline to consolidate boat traffic.

Ultimately, the Board determined that natural resources will be preserved to the maximum feasible extent, stating:

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.²⁸

In addition to comparing the SUP/PUD with potential development by right, the Board asked engineers at Gourdie-Fraser if the natural resources would be preserved to the maximum feasible extent, given the proposed SUP/PUD. Gourdie-Fraser responded:

²⁷ Preservation of natural resources and open space are both objectives to be considered in reviewing a SUP/PUD. Ordinance § 8.3.2.

²⁸ See Board Minutes for August 11, 2015. To support this conclusion, the Board relied on Commission Exhibits 1, 8, 9, 11, 12, 14, 19.2, 19.3, 19.7, 19.9, 19.10, 20, 21 and Board Exhibit 3.

In general, we believe this to be the case with the proposed plan...the intent of the private road and drain system design concepts appear to be reasonable in the context of the existing topography and existing drainage plan.²⁹

The Revised Staff Report, dated May 13, 2015, also indicated that “the layout is utilizing the natural topography of the site in an effort to reduce the impacts on the natural resources at the site.”³⁰ The Commission and subsequently, the Board, rationally relied on the information provided by Gourdie-Fraser and staff in concluding that natural resources would be preserved to the maximum feasible extent.

This is a situation where substantial evidence was produced both to support and oppose the proposed SUP/PUD and where alternative findings could have been made based on the evidence. However, courts must give due deference to the agency’s regulatory expertise and may not invade the province of exclusive administrative fact-finding by displacing an agency’s choice between two reasonably differing views.³¹ A court may not aside findings of an administrative agency merely because alternative findings also could have been supported by substantial evidence on the record.³² Relying on competent, material and substantial evidence on the record, the Board lawfully exercised its discretionary authority in determining that the standard required by § 8.1.3(3)(f) was satisfied. Thus, the Court must affirm the Board’s finding that natural resources will be preserved to the maximum feasible extent.

The Ordinance defines “open space” as an area that is open to the sky exclusive of roads, parking lots and building envelopes.³³ Any application for a SUP shall provide for an open space option, such as open space dedicated for private use, open space dedicated for public use, open space dedicated for deed restricted agricultural land or open space apportioned between private use and deed restricted agricultural land.³⁴ When open space is dedicated for private use, a minimum of 65% of the net acreage must be kept as open space and owned by the Home Owners Association or Condominium Association.³⁵ Private use open space land shall be set aside as common land for the sole benefit, use and enjoyment of the present and future lot or

²⁹ See Commission Exhibit 11, Gourdie-Fraser Report, dated May 4, 2015.

³⁰ See Revised Staff Report, dated May 13, 2015, § 2.9.

³¹ *Badder, supra*.

³² *Hughes v Almenda Twp*, 284 Mich App 50; 771 NW2d 453 (2009).

³³ Ordinance § 3.2.

³⁴ Ordinance § 8.3.6.

³⁵ *Id.*

home owners within the development.³⁶ However, only the following land uses may be set aside as common land³⁷ for open space or recreation use:

- (a) Private recreational facilities (but not golf courses) such as pools, or other recreational facilities which are limited to the use of the owners or occupants of the lots located within the PUD.
- (b) Historic building sites or historical sites, parks and parkway areas, ornamental parks, extensive areas with tree cover, low lands along streams or areas of rough terrain when such areas have natural features worthy of scenic preservation.
- (c) Commonly owned agricultural lands.³⁸

The SUP application indicated that the PUD would include open space dedicated for private use and the Board found that the PUD, as submitted, preserves open space, keeping 65% of the site undeveloped, inclusive of the 1500 lineal feet of waterfront preserved as common open space.³⁹

Appellants suggest that the proposed development does not protect 65% of the Site as qualified open space because preservation of a large open field does not meet the definition of qualified open space. Conversely, Appellees claim that parks and parkway areas are permissible land uses to be set aside as common land for open space.

“Parks” and “parkway areas” are not defined under the Ordinance. However, by statute, “park” means an area of land or water, or both, dedicated to one or more of the following:

- (i) Recreational purposes, including but not limited to landscaped tracts; picnic grounds; playgrounds; athletic fields; camps; campgrounds; zoological and botanical gardens; swimming, boating, hunting, fishing, and birding areas; foot and bridle paths.
- (ii) Open or scenic space.
- (iii) Environmental, conservation, nature, or wildlife areas.⁴⁰

The portion of the Site designated as open space undeniably encompasses open or scenic space, nature or wildlife areas and areas dedicated to recreational purposes, such as swimming and boating. Clearly, the Ordinance permits parks to be set aside as common land for open space or recreation use and, while the Board did not specify that the undeveloped 54 acres of open space would be dedicated to “parks” and “parkway areas,” it can legitimately be inferred that the

³⁶ *Id.*

³⁷ Common land is defined as a parcel or parcels of land together with the improvements thereon, the use, maintenance and enjoyment of which are intended to be shared by the owners and occupants of the individual building units in a planned unit development. Ordinance § 3.2.

³⁸ Ordinance § 8.3.3(5) and § 8.3.4(4).

³⁹ Board Minutes for August 11, 2015, pages 7, 8, 12, 15, 18.

⁴⁰ MCL § 141.321.

open space qualifies as a “park.” The Board’s determination was lawful, based on proper procedure, supported by competent, material and substantial evidence on the record and not an abuse of discretion. Therefore, this Court affirms the Board’s finding that the open space meets the requirements of Ordinance § 8.3.3(5), § 8.3.4(4) and § 8.3.6.

Township boards may receive assistance in the review process of a PUD, including the gathering of information or the making of a recommendation by another body, so long as such assistance is not precluded by township ordinance.⁴¹ Review by a planning commission of PUD applications is not expressly prohibited by the Michigan Zoning Enabling Act.⁴² When an ordinance designates a township board as the final review body and decision maker, and the planning commission’s report is merely a recommendation, case laws indicates that the township board must independently determine whether the proposed PUD meets the ordinance requirements.⁴³ While a planning commission may conduct a public hearing, review the PUD application and its preliminary site plan and submit a report with recommendations to the township board, the township board has the ultimate authority to review and approve the PUD.⁴⁴

The Board implemented the following conditions on August 11, 2015:

(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 [sic] The 81 proper shall be gravel or paved per review of Peninsula Township Fire Chief.

(6) Detailed grading plans shall be supplied to the Township Engineer for the Township Engineer’s review and approval prior to SUP issuance.

Appellants claim that, by implementing the above conditions, the Board unlawfully delegated final fact finding and ordinance interpretation to staff members. Appellees argue that the Board does not have engineering expertise to ensure that the emergency access plan, as set forth in the application, is built in a manner which ensures functionality.⁴⁵ Therefore, the Board

⁴¹ *Hughes, supra.*

⁴² *Id.*; MCL §125.3101 *et seq.*

⁴³ *Hughes, supra.*

⁴⁴ *Id.*

⁴⁵ Using the same rationale, it is reasonable to assume that the Board would also rely on the Township Engineer to review and comment upon a grading plan for the Site.

relies upon its engineers and other qualified staff to ensure that the application and site plan standards, as approved, are properly engineered and constructed.

The Court acknowledges that Board members do not possess the same knowledge or expertise that a professional engineer or fire chief might. Specific zoning concerns like drainage, grading, emergency access and storm water control should, and may, be reviewed by skilled professionals who can provide informed opinions and reasonable recommendations to the Board. The gathering of information and the making of recommendations by experts/professionals is appropriate and not unlawful. However, complete delegation of authority and approval to said experts/professionals, without review, is unlawful. The Board may review recommendations and reports submitted by experts/professionals, such as the Township Engineer and the Fire Chief, and may choose to rely on any endorsements within, but the Board cannot approve expert findings that have not yet been made.

In this case, the location for the additional egress for emergency purposes was undecided at the time the Board voted to approve the SUP/PUD. The location and functionality of an emergency access road are zoning issues that may, and should, be reviewed by a professional organization like the Peninsula Township Fire Department. The Board could rely on any recommendations as to location and functionality *after* reviewing the findings of the Fire Department. Instead, the Board delegated the determination of the location and functionality to the Peninsula Township Fire Department and preemptively approved the Fire Department's findings. Similarly, the Board delegated approval of the grading plan to the Township Engineer.

Reliance on expert/professional recommendations is permitted, so long as a township board independently determines that a proposed PUD meets ordinance requirements. Here, the Board did not "independently determine" that the proposed SUP/PUD met the ordinance requirements because it delegated authority to the Fire Department and the Township Engineer to provide approval on certain zoning standards. The Court finds that the Board improperly delegated authority to staff and remands this issue for further consideration consistent with this decision and order.⁴⁶

⁴⁶ The Ordinance has required standards relating to soil erosion, grading and stormwater. In its findings and conclusions, the Board indicated that the Developer "shall submit a grading plan with sufficient details to evaluate the plan for protection of steep slopes and vegetation present on site as requested by the SESC and the Township Engineer." Similarly, the Board found that "storm water control review is currently being contemplated by the Township Engineer and the site shall comply fully with the requirements of Storm Water Control Ordinance." These

The requirement that the Board review expert findings and recommendations prior to approving an SUP/PUD is not a mere technicality. Recommendations and opinions of experts may be scientifically sound, but be undesirable in the overall context of a project. Also, those opposed should have the opportunity to confront such opinions in a public hearing or provide additional substantive information that may cast doubt on their efficacy in the overall plan before the Board. Ultimately, on matters of lay and expert opinion, it is the Board that must make final, accurate and independent determinations on all issues before them.

The Ordinance states that the following objectives shall be considered in reviewing any application for a SUP/PUD:

- (1) 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.
- (2) To provide open space options.
- (3) To encourage developers to use a more creative and imaginative approach in the development of residential areas.
- (4) 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.
- (5) To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
- (6) To provide for the retention of farmland by locating the allowed number of housing units on the agricultural 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.⁴⁷

With regard to Objective (1), the Board found that the preservation of 54.23 acres of open space and 1500 lineal feet of shoreline will preserve the natural character of the open fields largely contained within the open space. Further, the SUP/PUD provides a desirable living environment for future purposes of units 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. With regard to Objective (2), the Board noted that 54.22 acres, or 65% of the property would be dedicated to open space. With regard to Objective (3), the Board indicated that the SUP/PUD preserves a substantial portion of the shoreline in a natural state to be used as shared waterfrontage, as opposed to

statements are not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water have been met and the Court remands these issues for further consideration by the Board.

⁴⁷ Ordinance § 8.3.2.

individual unit private frontage. In addition, the Board found that when balancing market demands for desirable residential parcels in conjunction with the preservation of 65% of the property, the SUP/PUD is a more creative and imaginative approach to the development of the property for residential purposes. With regard to Objective (4), the Board found that the SUP/PUD preserves 1500 lineal feet of waterfront from direct development and maintains open space along Boursaw Road which results in minimal aesthetic changes from the road corridor. Additionally, the wetlands on the property will remain preserved. With regard to Objective (5), the Board found that the SUP/PUD has general design standards which allow for diversity in unit types. Finally, with regard to Objective (6), the Board found that the property is subject to residential zoning, is currently vacant and is not being utilized for farmland. Further, the SUP/PUD does not impact farmland utilized in the Township directly adjacent to the Site or within the vicinity of the Site. In addition, the Board indicated the likelihood that 65% of the open will remain fallow land.

The Appellants claim that the proposed SUP/PUD does not meet the objectives for a PUD project. However, this claim appears to rely on the Appellants' subjective understanding and interpretation of the required objectives. As outlined above, the Board went through each Objective and provided reasoning, on the record, as to how and why the individual Objective was satisfied. While the Appellants may not agree with the Board's reasoning, it is clear that there was competent, material and substantial evidence on the record to support the Board's finding that each Objective was met. As stated above, courts must give due deference to the agency's regulatory expertise and may not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views.⁴⁸ A board's decision should be affirmed unless: (1) it is contrary to law, (2) based on improper procedure, (3) not supported by competent, material and substantial evidence on the record, or (4) an abuse of discretion.⁴⁹ As such, the Court affirms the Board's findings that the SUP/PUD meets the objectives for a PUD project.

According to the Developer, Byron articulated a strong opposition to the PUD project and was, in effect, "prejudging the project before the public hearing process was complete and well

⁴⁸ *Badder, supra.*

⁴⁹ *Id.*

before deliberations on the merits of the project.”⁵⁰ Specifically, the Developer notes that Byron endorsed, via a “Like” on a Facebook page, a group opposing the proposed PUD.⁵¹ Prior to the August 11, 2015 meeting, the Developer requested that the Board address Byron’s potential conflict of interest and suggested that she may need to withdraw or recuse herself from consideration of the PUD project, stating “Byron’s endorsement of an opposition group unequivocally demonstrates her conflict of interest and the conflict of interest could be utilized as a legal basis to challenge the Township Board’s future decision, regardless of the final vote/decision.”⁵²

Byron did not participate in the deliberation or voting process on August 11, 2015. On appeal, Appellants state that the Township required Byron to abstain from participating at the behest of the Developer, that no conflict of interest existed and that Byron’s recusal was improper. Appellees maintain that Byron recused herself because she recognized the possible appellate issue which could be raised by the Developer if she were to participate in the deliberation and voting on the SUP/PUD.

The neutrality and impartiality of members to a zoning proceeding are essential to the fair and proper operation of a zoning body, and the evil to be avoided is the creation of a situation tending to weaken public confidence in the zoning process.⁵³ In a zoning proceeding, bias can take the form of favoritism toward one party or hostility toward the opposing party, that is, personal bias or prejudice that imperils the open-mindedness and sense of fairness that a zoning official is required to possess.⁵⁴ An administrative officer is generally disqualified from acting as a decision maker if he or she has a personal or pecuniary interest in the proceedings.⁵⁵ The decision as to whether a particular interest is sufficient to disqualify a member of a zoning

⁵⁰ See Correspondence from Joseph E. Quandt to Pete Correia, dated August 10, 2015. Other than the Facebook endorsement, discussed *infra*, the Developer does not provide additional evidence to support its claim that Byron “articulated a strong opposition” to the project.

⁵¹ On its Facebook page the opposition group, Save the 81, indicates that its intent is to save, preserve and protect Old Mission Peninsula from over development and destruction. Byron “liked” a post on August 4, 2015, that requested individuals sign an online petition at www.stoptc.org. The home-page for the petition states, “Your shoreline is about to change!! There is a request before the township to build 41 ‘site’ condominiums on 25ft of East Bay shoreline, with some lots less than 100ft. wide! Add to that a dock for 40 boat slips! Please ask your Board members not to approve this development as proposed! Save The Outstanding Peninsula!”

⁵² *Supra*, FN 33.

⁵³ 4 ALR6 263, § 2.

⁵⁴ *Id.*

⁵⁵ *Id.* However, it has also been held that the law does not require that members of zoning bodies have no opinion concerning the proper development of their communities and local governments would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official.

proceeding is necessarily a factual one and depends upon the circumstances of the particular case.⁵⁶ As a general rule, as long as a rational basis exists for the zoning decision, the purpose or motive of the ordaining body becomes irrelevant to any inquiry into its reasonableness.⁵⁷

Pursuant to the Peninsula Township Code of Ethics:

When making discretionary, administrative decisions, including but not limited to land use decisions, township officials shall refrain from making statements or taking any actions outside the formal decision-making process that would suggest they have prejudged the matter before them or would in any way preclude them from affording the applicant and the public a fair hearing.⁵⁸

The Peninsula Township Board Rules of Procedure indicates that a member of the Board shall declare a conflict in connection with a zoning matter pending before the township board and shall disqualify himself or herself from deliberating and voting on the matter when the board member has made statements or taken any action outside the formal decision-making process that would suggest that he or she has prejudged the matter or would in any way preclude him or her from affording the applicant and the public a fair hearing.⁵⁹ Further, a Board member may disqualify himself or herself from deliberating and voting after a good faith determination that because of prior business or personal relationships with the applicant or with other participants in the public hearing process, or for other reasons, that he or she cannot afford the applicant and the public a fair hearing.⁶⁰

By itself, choosing to “Like” a group’s Facebook page can hardly be considered strong and vigorous advocacy by an individual. The fact that a member participating in a zoning proceeding may have taken a tentative position on the subject of the proceeding does not necessarily establish that the member had predetermined the issue and the law does not require that members of zoning bodies have no opinion concerning the proper development of their communities and local governments.⁶¹ However, by a plain reading of the Peninsula Township Board Rules of Procedure, when a Board member has made statements or taken *any* action outside the formal decision-making process, that member must declare a conflict of interest and

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Peninsula Township Code of Ethics, § A ¶ 13.

⁵⁹ Peninsula Township Board Rules of Procedure, § 9.2(4).

⁶⁰ Peninsula Township Board Rules of Procedure, § 9.2(6).

⁶¹ 4 ALR6 263, § 2.

disqualify himself or herself from deliberating and voting on the relevant issue.⁶² Here, Byron acted by “liking” a group opposing the proposed PUD. This act, while minor, did occur outside the formal decision-making process, appears to endorse a specific participant-group and suggests potential bias or prejudice against the Developer. Therefore, pursuant to the Peninsula Township Code of Ethics and the Peninsula Township Board Rules of Procedure, Byron’s recusal was proper.⁶³

In conclusion, the Court finds that the Board lawfully exercised its discretion under the Ordinance when it determined that: (1) the natural resources will be preserved to the maximum feasible extent; (2) the open space meets the requirements of Ordinance § 8.3.3(5), § 8.3.4(4) and § 8.3.6; and (3) the proposed SUP/PUD meets the objectives set forth in Ordinance § 8.3.2. Further, the Court finds that Byron’s recusal was proper pursuant to the Peninsula Township Board Rules of Procedure. 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 this decision and order.

IT IS SO ORDERED.



01/15/2016
03:57PM

PHILIP E. RODGERS, JR., CIRCUIT COURT JUDGE, P29082

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

⁶² See Peninsula Township Board Rules of Procedure, § 9.2(4). Emphasis added by Court.

⁶³ Appellants’ claim that Byron’s participation in the project discussion potentially would have resulting in a different outcome for the SUP/PUD findings is mere speculation. Even if Byron had participated in the deliberation and voting on August 11, 2015, her vote would not have been outcome determinative.

APPROVED ON JANUARY 23, 2018

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

SPECIAL USE PERMIT
SUPPLEMENTAL FINDINGS OF FACT ON REMAND
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
December 12, 2017

PENINSULA TOWNSHIP BOARD

DECISION AND ORDER ON REMAND

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

Hearing Date(s): May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17,
2016, October 25, 2017, December 12, 2017

PROPERTY DESCRIPTION

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

INTRODUCTION AND BACKGROUND

On August 11, 2015, the Township Board approved Applicant The 81 Development's application for a Special Use Permit (SUP #123) and Planned Unit Development (PUD) to build a 41-unit residential condominium development located on Bluff Road in Peninsula Township subject to specific conditions. An adjoining land owner appealed the decision to Grand Traverse County Circuit Court (Case No. 15-31218-AA) claiming the Board's approval was (a) not supported by material evidence, (b) not authorized by law, and (c) invalid because of a single Trustee's decision to recuse herself from the vote due to a conflict of interest. The Applicant intervened in the appeal as an appellee.

On January 15, 2016, the Circuit Court (Judge Rodgers) issued his Decision and Order concluding that, while the Township had lawfully and properly exercised its discretion as to many of the Zoning Ordinance requirements relating to the SUP and PUD standards, it had improperly delegated several issues relating to the emergency access road and the grading, soil erosion and storm water plans to the Fire Department and Township Engineer for review and approval and did not independently determine that the proposed SUP/PUD met the ordinance requirements pertaining to those issues. On page 11 of its Decision regarding Condition No. 1, the Court stated, "In this case, the location for the additional egress for emergency purposes was undecided at the time the Board voted to approve the SUP/PUD." The Court continued as to Condition No. 6, "Similarly, the Board delegated approval of the grading plan to the Township Engineer." With respect to the review and approval of the grading and storm water plans, the Court found that the Board improperly delegated the review and approval to the Township

Engineer, and explained, in footnote 46, that the Board's statements "were not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water have been met and the Court remands these issues for further consideration by the Board." The Court concluded its Decision and Order 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 this decision and order."

RELEVANT STANDARDS ON REMAND

The Township Board's consideration of the remanded issues relates to the following Township Zoning standards: General Standard Section 8.1.3(1)(c); Specific Standards Section 8.1.3(3)(d); Section 8.1.3(3)(h); Section 8.1.3(3)(i); Section 8.1.3(3)(j); Section 8.1.3(3)(k); Section 8.1.3(3)(n); Section 8.3.3(7); and Section 7.2.5.

Except for the reconsideration of these "Court-remanded" issues, all other portions of the Township Board's Decision and Order of August 11, 2015, including all Findings and Conditions, remain unchanged.

FURTHER PROCEEDINGS ON REMAND

Pursuant to the Circuit Court's January 15, 2016 Decision and Order in Case No. 15-31218-AA remanding specific issues for further proceedings, the Township Board properly scheduled, noticed, and held public hearings on SUP #123/PUD on May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17, 2016, October 25, 2017, December 12, 2017. The Board conducted the further proceedings ordered by the Court, and having heard the statements of the Applicant and its agents and considered documents submitted on the Applicant's behalf, and having considered the statements of the public and documents submitted by them and all Exhibits, which are part of the record in this matter, the Board has reached a decision on this matter which is based on the entire record regardless of whether all relevant Exhibits have been cited or even incorrectly referenced, and states as follows:

SUPPLEMENTAL FINDINGS OF FACT ON REMAND

SECTION 8.1.3(1) GENERAL STANDARDS:

Section 8.1.3(1)(c): Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the storm water retention standard of providing volume for "back-to-back" 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design and the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula

Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)

- ii. The Board finds that because the proposed development will contain more than 30 one-family residential dwelling units, the International Fire Code (IFC) (2012 Ed) Appendix D107.1 requires it to be served by two (2) separate approved fire apparatus access roads, and that pursuant to Appendix D104.3 the two (2) fire apparatus access roads "shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses." (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iii. The Board finds that based on the reports provided by Peninsula Township Fire Chief Rittenhouse, Fire Chief Dundas, retained on behalf of the Township, and Ron Taylor of Nederveld, a consultant retained by the Applicant, the proposed development contains two (2) fire apparatus roads: 1) 81 Avenue connecting to Boursaw Road; and 2) the emergency access road connecting the northwest corner of the site and to Smokey Hollow Road (see drawing sheets "Fire Lane: Overall Site, SESC & Drainage Plans pp 1-3 Mansfield Project No. 14016 revised 9/7/16) through an Emergency Access Easement recorded in the Grand Traverse County Register of Deeds as Document 2016R-09726 meets the requirements of IFC Appendix D107.1 and D104.3. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iv. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found that it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- v. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- vi. The Board finds that Peninsula Township Fire Chief Rittenhouse provided additional written information dated October 20, 2017 relating, in part, to the security gates for the emergency access road, and indicated that the security gates would not be required unless raffic on he emergency access road becomes a nuisance and it is used for non emergency purposes. (Township Exhibit: Fire Chief Rittenhouse Letter 10/20/17)

Motion was made by Board member Bickle and second by Board member Board member Wunsch that the findings of facts are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	Yes

The transcript setting forth Board members Achorns' and Westphal's objections to the finding of facts and the standard having been met are attached hereto.

SECTION 8.1.3(3) SPECIFIC STANDARDS:

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.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)
- ii. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found that it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- iii. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)

Motion was made by Board member Bickle and second by Board member Board member Wunsch that the findings of facts are correct and the standard has been met, with the conditions set forth specifically in the transcript attached, and reduced to writing in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes

Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board members Sanders' and Westphal's objections to the finding of facts and the standard having been met are attached hereto.

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.

- i. The Board finds that the Applicant provided a Wetland Delineation Report for the site dated June 15, 2015, prepared by GEI Consultants which identified and delineated one regulated wetland located in the southern portion of the site and the wetland boundaries were flagged and sequentially numbered in the field and surveyed using GPS information and incorporated into the site plans for the proposed development. (Applicant Exhibit 18)
- ii. The Board finds that the project site plans for the proposed development, Sheet C3.0, contains the following notes:
 - a. "The limits of all construction work shall be a minimum of 25 feet outside of the existing wetlands."
 - b. "Protect the exiting wetland from construction activities. Place silt fence at 25 feet offset from the wetland perimeter." (Applicant Exhibits 4, 18)
- iii. The Board finds that, based on the information submitted regarding the wetland boundaries on the site and the note that construction limits will be, at a minimum, 25 feet outside of the wetland boundaries, the wetland on the site will be undisturbed. (Applicant Exhibits 4, 18, 41; Township Exhibits: Applicant's SUP Application).
- iv. The Board finds that the soils within the project construction limits are generally classified under Hydrologic Group A, well-drained sands or gravel, and the soils on the site are suitable for excavation and development. (Applicant Exhibits 4, 7, 10, 18, 41; Township Exhibits: Applicant's SUP Application)

Motion was made by Board member Wahl that the findings of fact are correct and the standard has been met. Motion was amended by Board member Bickle to add conditions as set forth in the attached transcript and reduced to writing later in the joint motion. Board member Wunsch second the motion as amended. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	Yes

The transcript setting forth Board member Westphal's objection to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(i): That the proposed development will not cause soil erosion or sedimentation problems.

- I. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the proposed development plans and issued SESC Permit #24013 which contains the following Permit, General and Specific Conditions:

Permit conditions:

- The permitted activity shall be completed in accordance with the approved plans and specifications, and the following general conditions;
- This permit does not waive the necessity for obtaining all other federal, state or local permits;
- Permittee shall notify the permitting agency within one week after completing the permitted activity or one week prior to the permit expiration date, whichever comes first;

General conditions:

- In accordance with Rule 1709 promulgated under the authority of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act 1994 PA 451, as amended, and in addition to the information on the attached Plan(s) and special conditions, the following general conditions apply to the earth change authorized by this permit:
- Design, construct and complete the earth change in a manner that limits the exposed area of disturbed land for the shortest period of time.
- Remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
- Temporary or permanent control measures shall be designed and installed to convey water around, through or from the earth change at a non-erosive velocity.
- Install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and maintain the measures on a daily basis. Remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. (Stabilized means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.)
- Complete permanent soil control measures for the earth change within five calendar days after final grading or upon completion of the final earth change. If it is not possible to permanently stabilize the earth change, then maintain

temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

Specific Conditions:

- This permit is approved according to the site plan received on April 8, 2016, and revised on May 3, 2016, from Mansfield Land Use Consultants Job No. 14106 with the following requirements:
- Follow all prescribed soil erosion and sedimentation control measures on page C3.0 of the revised Site Plan.
- Phasing must be followed according to the schedule. Each phase must be stabilized as described before moving to the next phase. Any change in the schedule must be approved by this office.
- Install silt fence according to the Site Plan, properly entrenched in 6" deep and end stakes wrapped. Double rows are required as specified. Silt fences must be inspected regularly. It is imperative to inspect all fences during and after spring snow melt.
- Construct all storm ditches/swales with no greater than 3:1 slopes and stabilize as shown on page C1.2.
- The storm water detention basin must be stabilized with erosion control blankets as indicated. All outlets must be stabilized with rock rip wrap as shown in the engineer site plan.
- Construct wooden stairs as shown. Stabilize all disturbed areas around the post holes with woody mulch or other non-erosive ground cover.
- Any vegetation must be established and show significant growth in order to final this permit.
- Construct stone construction entrance as shown. Do not allow sediment to be tracked onto the street. If tracking does occur, sweep the street at the end of the work day.
- Install a culvert in the road ditch under the entryway. The ends of the culvert must be stabilized so that erosion does not occur in the road ditch.
- The storm water operator, licensed by the MDEQ, must submit weekly reports to the County enforcing agent.
- Submit a copy of the MDEQ Notice of Coverage to this office.
- The engineer of record must submit a letter of certification stating that the project is built according to the site plan in order to final this permit.
- Permit, green card and site plan must be posted at the project site at all times until permit has final approval from this office.

Amend 08-12-16 fire lane access from Smokey Hollow Road:

- Install silt fence as shown on the amended site plans submitted from Mansfield Land Use Consultants, Job No.: 14016.
- Install mats on ditches as shown on the engineer's site plan.
- Check dams should be installed immediately upon shaping the ditches.
- Install rip rap at all outlets as shown.

- Install stone construction entrance to prevent tracking onto Smokey Hollow Road. If tracking does occur, the road must be swept by the end of the day.
- All vegetation must be re-established and this road completely stabilized in order to final the permit.

(Applicant Exhibit 17, 54; see also Applicant Exhibits 4, 7, 10, 25-26, 41, 43-44)

ii. The Board finds that the project plans contain the following construction notes on Sheet C3.0:

- Silt fence shall be installed before the construction begins and shall be maintained throughout the project duration until permanent vegetation is established and the site is stabilized. The contractor must remove the silt fence upon completion.
- All stumps and underground organic material shall be completely removed with an excavator and hauled off the site.
- All stumps, logs and chips will be hauled off the site to a licensed landfill/pit. Nothing shall be buried on site.
- The contractor will obtain a temporary access permit for access onto Boursaw Road. The temporary construction access, culvert and sediment sumps shall be maintained throughout the duration of construction.
- Stock piles shall be located inland, away from the existing wetlands and lakeside bluffs. Dorman stock piles shall be seeded to prevent sedimentation and airborne erosion.
- The storm basis and sedimentation forebay shall be constructed prior to the construction of the storm sewer and ditching.
- Final construction shall meet the requirements of the approved SESC permit from Grand Traverse County.
- Care should be taken to prevent material movement into adjacent wetlands and water bodies.
- Care should be taken to maintain existing roadside drainage via culvert installation, without sediment pump placed downflow of culvert.
- The limits of all construction work shall be a minimum of 25' outside of the existing wetlands.
- Slopes 3:1 or steeper shall be restored with mulch blanket, as necessary.
- The contractor shall use water or dust palliative to control dust on and adjacent to the project site. Maintain the Boursaw Road entrance by regular sweeping, as necessary until the site is permanently stabilized.
- Minimize disturbance to all existing vegetation along the lakeside bluffs and the lakeshore community areas, except where noted otherwise.

(Applicant Exhibit 4)

iii. The Board finds that Sheet C3.0 of the project plans contains the following notes pertaining to grading and soil erosion and sedimentation control measures:

- Install a double row of silt fence along the waterfront, TYP. (Phase 3 – down by the water.)

- Install a double row of silt fence along the bluff, TYP. (reference to middle bluff)
- Leave existing vegetation in place as long as possible to maintain a stabilized slope along the bluff. After completion of grading, stabilize with new vegetation as soon as possible to prevent elongated exposure to erosion.
- Mass grading shall be completed to prevent erosion of the existing lakeside bluffs. Minimize disturbance of existing vegetation to maintain a stabilized bluff. The mass grading along the bluff shall be carefully completed to prevent any excavated material from sliding down the bluff. The ridge shall be excavated by undermining on the valley side such as all material may be pulled away from the bluff to prevent any loss of material or erosion down the bluff.
- Internal soil stock pile location to be determined by the contractor. Seed long term stock piles to prevent airborne erosion and sedimentation. No work shall be completed in the area of the proposed primary and reserve septic fields to preserve their natural state and soils. The contractor shall identify these areas prior to grading operations and provide a visual and/or physical barrier to keep construction equipment out of these areas.

(Applicant Exhibit 4)

- iv. The Board finds that Sheet C3.0 of the project plans also contains stabilized construction access specifications to minimize tracking of sediment on to public roadways and to minimize disturbance to vegetation. (Applicant Exhibit 4)
- v. The Board finds that in addition to implementing soil erosion and sedimentation control measures, existing vegetation on the upper bluff (in the area of proposed lots 11-29) will be left in place until mass grading can follow directly afterward to ensure the soil is exposed for the shortest duration possible and the mass grading on the upper bluff will be completed by pulling material away from the bluff to prevent. (Applicant Exhibits 4, 7, 10, 17, 41; Township Exhibit: Mansfield Letter 3/5/15)
- vi. The Board finds that the Applicant's slope stability report dated October 26, 2016, prepared by Otwell Mawby, PC, states that significant earthwork is planned to achieve the proposed grades, including the grading on the upper bluff and ridge which will be accomplished by removing vegetation and pulling the earth back and away from the crest of the bluff and the resulting grades will slope gently away from the bluff. (Applicant Exhibit 10)
- vii. The Board finds that the proposed grading and earth work on the bluffs generally will remove soil burden on steep slopes and improve soil stability. (Applicant Exhibit 4, 10)
- viii. The Board finds that the project plans, specifically Sheet C3.0, provide for mass grading and site construction to take place in three (3) phases. The first phase generally includes the entrance to the site off of Boursaw Road, a portion of roadway (81 Avenue) from the entrance back to Lot 29, the community septic system and storm water basin, and the areas for Lots 2-4, 11-29. The second phase generally includes the remainder of 81 Avenue and the areas for Lots 30-41. The third phase includes 81 East roadway and the areas for Lots 5-10. Each grading phase must be completed and stabilized before grading in the next phase can begin. (Applicant Exhibit 4).

- ix. The Board finds that, based on the information provided, after grading and leveling along the bluffs is completed and the areas stabilized, structures will be located in compliance with applicable setback requirements in Michigan Residential Code R403.1.7.2 for descending and ascending slopes which requires the face of the structure footing be a minimum of 1/3 of the slope height behind the slope at the corresponding elevation, but need not exceed 40 feet. (Applicant Exhibit 10)
- x. The Board finds that the Township Engineer has reviewed the proposed grading plan for the development, including the additional grading information and details for the building sites on Lots 1-41 which are included in the overall project plan set, and found they meet applicable Township ordinances, standards and requirements and recommended engineering approval. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance. (Applicant Exhibit 7; Township Exhibit: Township Storm Water Control Ordinance)
- xi. The Board finds that the Township Engineer reviewed the design of the proposed roads (including the emergency access road to Smokey Hollow Road) for compliance with applicable requirements regarding grading, drainage, and pavement cross sections and recommended engineering approval. (Applicant Exhibit 7)
- xii. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 4, 7, 10, 17, 41)
- xiii. The Board finds that, as designed, the development plans meet the applicable Township and County storm water standards, and if the grading, soil erosion, sedimentation, and storm water control measures in the plan and in SESC Permit #24013, including its conditions, are properly installed, implemented, monitored and enforced, the proposed development will not cause soil erosion or sedimentation problems. (Applicant Exhibits 4, 7, 10, 17, 25-26, 41; Township Exhibits: individual grading plans and cross-section details and other information for Lots 1-41)

Motion was made by Board member Manigold and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Sander's, and Board member Achorn's objections to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(f): 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 drainage facilities for the proposed development maintain the intent of the natural on-site drainage patterns. (Applicant Exhibits 4, 7, 17; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the paved roadways are curbed with drain structures that convey storm water to a basin located in the interior of the property, and that the storm water basin is properly sized and meets the applicable Township and County Storm Water Ordinances and requirements and is sufficient to ensure that neighboring properties will not be impacted by additional runoff from the proposed development. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 17; Township Exhibits: Applicant's SUP Application, Township and County Storm Water Control Ordinances).
- iii. The Board finds that based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project and have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance and the proposed development will not cause undue runoff onto neighboring properties or overload water courses in the area. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 11; Township Exhibits: Township and County Storm Water Control Ordinances)
- iv. 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. (Township Exhibit: Mansfield Ltr 4/13/16)

Motion was made by Board member Bickle and second by Board member Wunsch that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Achorn, and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(k): That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

- i. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the project and issued SESC Permit #24013 which remains valid until May 2018. (Applicant Exhibit 17)
- ii. The Board finds that the Township Engineer, Brian Boals of Gourdie-Fraser, 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. (Applicant Exhibits 4, 7, 26, 43)
- iii. The Board finds that the Otwell Mawby soil assessment dated August 29, 2017, submitted on behalf of the Applicant entailed soil samples collected from the upper 12 inches of the soil column at 15 sample locations on the Property that were historically used as agriculture and which would be disturbed during grading and site construction. Samples were taken from two depths at each location, and each sample was analyzed for arsenic, lead and three composite samples were analyzed for pesticides. (Applicant Exhibits 34, 51)
- iv. The Board finds that the soil assessment for the Property shows the presence of arsenic at concentrations greater than the current (7,600 µg/kg) and proposed (9,000 µg/kg) State generic residential human direct contact criterion in 17 samples at 10 of the 15 sampling locations. Arsenic exceedances of criteria were reported in samples from all areas of the Property where samples were collected and in over one-half of the deepest samples collected, but arsenic was not present in any sample greater than the current or proposed generic residential particulate inhalation criteria. (Applicant Exhibit 34, 51)
- v. The Board finds that the soil assessment of the property showed that neither lead nor the other target pesticides tested for were reported at concentrations above the current or proposed generic residential human direct contact or particulate inhalation criteria. (Applicant Exhibit 34, 51)
- vi. 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 that the soil assessment of the Property was sufficient to determine whether contamination is present on the site. (Applicant Exhibit 34, 51)
- vii. The Board finds that, based on Dr. Harless' review, the soil assessment shows that a significant mass of soil over a large area of the Property is contaminated with arsenic at levels above the published statewide default background level, the Michigan Glacial Lobe background level, and the State generic residential human direct contact criteria. (Applicant Exhibit 34, 51)

- viii. The Board finds that Dr. Harless reviewed the soil assessment for the property and other materials relating to the area within the emergency access easement and concluded that all of land which the emergency access road easement traverses from the western boundary of the Property to Smokey Hollow Road, and which will be disturbed during construction, appears to have been used historically as orchards and for agricultural purposes and recommends that the soils in the easement area either be assumed to be contaminated at levels similar to those on the property or be tested to determine that it is not contaminated. (Applicant Exhibit 34, 51)
- ix. The Board finds that Dr. Harless reviewed the soil assessment for the Property and concluded the levels of arsenic in soil on the property are sufficient to adversely affect the adjacent or neighboring properties if the soil escapes the site via wind, storm water runoff, or vehicle track-out during site grading and construction activities by either adding contaminated soil to land that is not contaminated at levels of concern or by increasing the contaminant load on properties that may have been previously impacted by contamination, and Section 8.1.3(3)(k) of the Township's Zoning Ordinance is designed to address both scenarios. (Applicant Exhibits 34, 51)
- x. The Board finds that Dr. Harless concluded that soil erosion on the property is likely to occur during grading and site construction on the property and in the emergency access easement and the potential for soil erosion during grading and earthwork was also acknowledged by Roger Mawby in his letter dated 1/16/17. (Applicant Exhibits 25, 51)
- xi. The Board finds that both Dr. Harless and Roger Mawby agree that, if the soils can be managed and contained on-site during grading and post grading operations, it can reasonably be concluded that the grading operations will not adversely affect the adjacent or neighboring properties. (Applicant Exhibits 25, 34, 51)
- xii. 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 II.5 objective of preventing the conveyance of soil and sediment via wind and storm water runoff. (Applicant Exhibits 4, 25, 34, 51; Township Exhibit: Township and County Storm Water Control Ordinances)
- xiii. The Board finds that, based on Dr. Harless' review, the level of detail in the project plans, including the Maintenance Plan and Budget, is inadequate to demonstrate that the erosion control measures for the proposed development will prevent the grading from adversely affecting the adjacent or neighboring properties. (Applicant Exhibit 51)
- xiv. The Board finds that Dr. Harless recommends that the silt fencing required for the project comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012). (Applicant Exhibit 51)
- xv. The Board finds that Dr. Harless recommends that the vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project be revised to include the following: "Sediment deposited in public rights-of-way shall be removed immediately and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction. (Applicant Exhibit 51)

- xvi. The Board finds that Dr. Harless recommends that a detailed, site-specific erosion control or soils management plan be prepared by a licensed professional engineer incorporating best management plans to prevent conveyance of soils and sediment via wind, storm water runoff, and vehicle track-out and that a performance monitoring, inspection, and enforcement program be implemented to prevent fugitive soil erosion emissions from the site during grading and site construction in order to ensure that adjacent or neighboring properties are not adversely affected. (Applicant Exhibit 51)
- xvii. The Board finds that the Township received a report dated October 25, 2017 from ASTI Environmental titled *Soil Management Plan the 81 on East Bay Peninsula Township, Michigan* which addresses the lack of soil erosion details in the project plans identified by Dr. Harless, and which contains a Soil Management Plan, including provisions pertaining to a health and safety plan, dust control measures, environmental monitoring, excavation soil handling, groundwater handling, storm water handling, track-out of soil, soil stabilization, access roads, grading management, spoil piles, and silt fencing, and a Proposed Performance Monitoring and Inspection Program in Section 5.0. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xviii. The Board finds that ASTI Environmental recommends that a number of specific dust control measures in Section 4.2 of the Soil Management Plan be implemented including, but not limited to, dust suppression measures such as, the application of water, calcium chloride or other acceptable compounds as frequently as necessary to ensure dust emissions do not exceed 20% opacity or cross the Subject Property boundaries, air quality testing during grading activities which shall be performed by a qualified person trained in conducting opacity measurements using EPA Method 9d. Additional dust control recommendations include the application of dust suppression compounds to the site roadways, sweeping of paved roads, ceasing earthwork when sustained winds exceed 25 mph, covering excavated soils during high winds, and monitoring and inspection recordkeeping. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xix. The Board finds that ASTI Environmental recommends that a number of specific measures should be implemented for managing excavated soils (Section 4.4) and spoil piles (4.11) during grading and site construction as part of the Soil Management Plan including, among others, excavated soils should be stockpiled on plastic sheeting or liner with proper erosion controls (e.g., covering, berms) to prevent wind borne soil erosion and runoff. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xx. The Board finds that ASTI Environmental recommends that a truck tire wash be installed near the construction entrance which shall be used as part of the Soils Management Plan to prevent contaminated soils from leaving the site through vehicle track-out. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxi. The Board finds that ASTI Environmental recommends that as the 3-phase grading plan is implemented, the next phase of grading cannot begin until the previous grading phase is completed and stabilized. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxii. The Board finds that ASTI Environmental recommends that the specifications and procedures for access roads during grading and site construction as listed in Section 4.9 be implemented as part of

the Soil Management Plan. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

- xxiii. The Board finds that ASTI Environmental recommends that an enforcing agent be retained to monitor and inspect grading and site construction activities for compliance with the Soils Management Plan and the project plans to prevent soil erosion. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxiv. The Board finds that ASTI Environmental recommends that a performance monitoring and inspection program to be implemented by an enforcing agent to ensure the soil erosion control and management measures contained in ASTI's Soil Management Plan, the project plans, and the SESC Permit are installed, implemented, monitored, and maintained as designed and required. (Applicant Exhibit 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxv. The Board finds that, based on the available information, if the ASTI Environmental Soil Management Plan is properly implemented, and all soil erosion control measures contained in it, the project plans and the SESC Permit are properly installed, implemented, and maintained subject to ongoing monitoring and inspection for compliance by an enforcing agent, the grading for the proposed development will not adversely affect the adjacent or neighboring properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxvi. The Board finds that, based on the information from Dr. Harless and ASTI Environmental and other sources, the hiring of an enforcing agent or consultant, acceptable to the Township, at the Applicant/Developer's cost, to implement the monitoring and inspection program outlined in the ASTI Environmental Soils Management Plan, including the monitoring and inspection program, and to determine whether, when and what soil management measures should be used is integral to the effectiveness of the ASTI Environmental Soil Management Plan and ensuring that the grading and site construction activities on the Property will not adversely affect the adjacent or neighboring properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

Motion was made by Board member Bickle and second by Board member Manigold that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

Motion was made by Board member Bickle and supported by Board member Wahl that compliance with the ASTI Report dated December 6, 2017 be a condition of the approval of the above-mentioned standard and be a condition of approval as set forth later in this document. The vote was unanimous. MOTION PASSED.

Section 8.1.3(3)(n): That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

- i. The Board finds that there are no existing public facilities in the vicinity of the property, and the proposed on-site community septic system, individual wells, storm water system and roadways will be privately owned and maintained by the developer and/or the homeowners association. (Applicant Exhibit 4; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the proposed on-site community septic system, individual wells, storm water system and roadways for the development meet the applicable ordinances, requirements and standards. (Applicant Exhibits 3, 4, 7, 17, 19-22, 55)

Motion was made by Board member Wahl and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	Yes
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	Yes

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.

- i. The Board finds that, for the reasons stated above, the requirements of Sections 8.3 and 8.1 and Article VII have been met.

Motion was made by Board member Wahl and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes

Dec 12, 2017 Approval

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:

Insight 1. Break-away security gates with a Knox locking system and signage, as referenced in Fire Chief Rittenhouse's letter dated 10/20/17, shall be installed at each end of the emergency access road.

Mansfield 2. The project plans shall be revised and resubmitted to the Township to show the security gates, Knox locking system and signage.

Insight/
Bylaws 3. The emergency access road, gates, and signage shall be maintained by the developer or homeowners association so that the emergency access road is accessible and can be used by any and all Township Fire Department emergency apparatus and equipment.

Insight/
Bylaws 4. The roads, including the emergency access road, must be maintained and kept reasonably clear of snow, at all times.

Mansfield
already done? 5. The individual grading plans for Lots 1-41 shall be and are incorporated into the project plans and Applicant shall be revise and resubmit a set of project plans containing these individual lot grading plans, including cross-sections. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance.

Insight 6. Silt fencing required for the project shall comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012).

? G.T.
Soil? 7. Any and all reports from the licensed storm water operator to the Grand Traverse County Soil Erosion and Sedimentation Control Department or other agencies relating to the project shall also be provided to the Township Planning Department.

Insight 8. Construction activities on the property, including grading, earthwork and excavation, shall comply with all notes in the project plans and SESC Permit No. 24013.

Mansfield?
4. Insight 9. The vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project shall be revised to include: "Sediment deposited in public rights-of-way shall be removed immediately and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer shall have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction.

10. The ASTI Environmental Soil Management Plan dated October 25, 2017 and December 6, 2017 is hereby incorporated into the project plans and grading and site construction

Dec 12, 2017 cont.

activities shall be subject to and governed by the ASTI Environmental Soil Management Plan, pursuant to Section 8.1.3(3)(k) of the Findings of Fact.

mansfield 11. That Developer provide to the Board assurance and calculations that the ditch can accommodate at 25-year, 24 hour event, pursuant to Section 8.1.3(3)(d), of the Findings of Fact.

mansfield 12. The Developer to provide to the Board information regarding storm piping for a 25 year event instead of 10 year event, pursuant to Section 8.1.3(3)(d) of the Findings of Fact.

mansfield 13. Developer provide for ditching at the clu-de-sac area, and perform ditch flow calculations along with producing plan for handling potential overflow issues, Section 8.1.3 (3)(d) of the Findings of Fact.

mansfield 14. Developer provide information regarding the watershed and capacity.

Insight 15. Developer provide a turf reinforcement blanket to resolve soil movement, pursuant to Section 8.1.3(3)(h) of the Findings of Fact.

mansfield 16. Developer to provide a grading and stabilization plan to Township engineer to be approved by Township engineer, pursuant to Section 8.1.3(3)(h). -matt Algers to provide

Insight/Twp 17. Developer to pay for and provide a standard performance guarantee to the Township to be negotiated by the Township and Developer, pursuant to Section 8.1.3(3)(h) of the Findings of Fact. -mailed Sam Drexler 3/1

Insight 18. Developer to hire and pay for an Arborist to provide recommendation on the removal of the Oak Trees and what is to be done with the stumpage, pursuant to Section 8.1.3(3)(i) of the Findings of Fact.

Insight 19. A qualified third party enforcing agent, acceptable to the Township, shall be retained by or on behalf of the Applicant/Developer/Contractor, at its sole cost, to implement the ASTI Environmental Soil Management Plan, including the monitoring and inspection program outlined in Section 5.0. The enforcing agent shall be responsible for monitoring and inspecting the grading and site construction activities on the property for compliance with the Soils Management Plan, the project plans, and the SESC Permit to ensure the grading will not adversely affect the adjacent or neighboring properties. In the event of non-compliance with the foregoing requirements, the enforcing agent shall promptly notify the Developer, contractor and the Township of the noncompliance, and work with the Developer and contractor to address and eliminate the non-compliance.

that is the only time we need to get notify Twp. they do not need to approve/enforce civil

Developer shall stop work until the issues raised by the third party enforcing agent are resolved to the satisfaction of the Township.

Nothing in this condition shall prevent the Township from taking all action to ensure compliance with the conditions set forth herein.

[NOTE: With the exception of Conditions 1 and 6 in the 8/11/15 Board approval which the Court deemed improper and insufficient, the conditions previously approved on 8/11/15 remain unchanged]

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Achorn, and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

TIME PERIOD FOR JUDICIAL REVIEW

Any party may appeal this decision within the appropriate time frames for filing such an Appeal. Depending on the public body and the decision being made, one or more of the time periods set forth below may apply for appealing such decisions by public bodies and more specifically this decision.

1. The Michigan Zoning Enabling Act, provides in pertinent part:

125.3606 Circuit court; review; duties.

Sec. 606.

(1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary

record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

(3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

(4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

125.3607 Party aggrieved by order, determination, or decision; circuit court review; proper party.

Sec. 607.

(1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.

(2) Any person required to be given notice under section 604(4) of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

2. Article 6, Section 28 of the Michigan Constitution states:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

3. MCR 7.103(A)(4) states, in relevant part, "The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following: . . . 4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law."

MCR 7.104(A) addresses the time for filing an appeal of right from an agency decision under Chapter 7 of the MCR:

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.103(A). Time is computed as provided in MCR 1.108. An appeal of right to the circuit court must be taken within:

(1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or

(2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was filed within:

(a) the initial 21-day period, or

(b) further time the trial court or agency may have allowed during that 21-day period.

(3) If a criminal defendant requests appointment of an attorney within 21 days after entry of the judgment of sentence, an appeal of right must be taken within 21 days after entry of an order:

(a) appointing or denying the appointment of an attorney, or

(b) denying a timely filed motion described in subrule (2).

SUPPLEMENTAL TOWNSHIP EXHIBITS FOR SPECIAL BOARD MEETING – DECEMBER 12, 2017

- a. All previous exhibits of record for "The 81 on East Bay" SUP #123/PUD
- b. Draft Condominium Master Deed and Bylaws
- c. February 15, 2015 Hirschenberger letter 2/15/15 to Reardon re: Lot Plans for 41 sites and updated design plans sewer and water plans per Ronk for water tank and fire lane
- d. S.E.S.C. Plan – Sites 1-41 dated 2/5/16
- e. Publication USACE "Living on the Coast"
- f. 1/31/17 Boals Letter regarding environmental assessment
- g. 3/13/16 Township resolution declining sewer system - for the record
- h. 6/9/16 Emergency Access Road Easement including Exhibits A, B and C
- i. Township Fire Prevention Ordinance
- j. International Fire Code (2012 Edition)
- k. 11/15/16 Grobbel Environmental and Planning Associates. Pg 3 water quality degradation within the nearshore environment of East Grand Traverse Bay
- l. 10/25/17 ASTI Environmental (Soil Management Plan) Mansfield #50
- m. Township Storm Water Control Ordinance 33
- n. Grand Traverse County SESC and Stormwater Control Ordinance 6/20/2012
- o. Grand Traverse County Soil Survey
- p. Water well Lot 16 permit with notes re nitrates and arsenic.
- q. Maintenance Plan and Budget (storm water)
- r. Fire Chief Rittenhouse Letter 10/20/17
- s. Applicant's SUP Application
- t. Mansfield Letter 3/5/15
- u. US EPA *Stormwater Best Management Practices, Silt Fences* (EPA 833-F-11-008, April 2012)
- v. Mansfield Letter 4/13/16

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, 19.10.1-vii & 20 and Board Exhibit 3)

This standard HAS been met. (6-0)

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

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

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

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

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

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

MOTION PASSED (6-0)

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the preservation of 54.23 acres of open space as well as the preservation of 1500 lineal feet of East Grand Traverse Bay frontage will preserve the natural character of the open fields largely contained within the open space areas as proposed. While the Board is mindful that the development will result in grading of slopes and removal of trees, given other development options under the zoning ordinance, the development as proposed provides for a desirable living environment for future purposes of units within the development both with respect to views and the preservation of the same from surrounding properties without significantly hindering viewsheds and having negative impacts upon the lakeshore and other natural assets of the property. (Planning Commission Exhibits 10, 11, 12, 14, 19 & 20 and Board Exhibit 3)**
- ii. The Board finds that the proposed development preserves a substantial portion of the shoreline in a natural state to be used as 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 as 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 Tseiflin
 - 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 Shil Taki Trail, said on June 29, 2013 the road standards were discussed and they were supposed to be updated. She would like a report as to where the Township is on updating the road standards.

BOARD COMMENTS

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

Weatherholt said the flag pole needs to be replaced.

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

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

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

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

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

SPECIAL USE PERMIT
EXHIBIT LIST

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

October 25, 2017

1. Peninsula Township Board's Decision and Order Regarding SUP #123 dated 8/11/15
2. Supplemental Information submitted by Mansfield Land Use Consultants dated 8/16/17
3. Email from Grand Traverse County Road Commission dated 6/10/17
4. Plan sets updated to include an Emergency Access Road Revised 7/8/16 and East 81 Road widened to 26' Revised 9/7/16
5. Meeting Notes regarding meeting between Township Planner (Hayward) and Township Fire Chief (Rittenhouse) dated 10/26/16
6. Notes from meeting between Township Engineer (Boals) and Township Planner (Hayward) dated 11/10/16
7. Township Engineer Brian Boals' letters to former Township Planner, Michelle Reardon dated 3/8/16, 3/15/16, 8/15/16, and 9/27/16
8. Ron Taylor Fire Code Compliance Reports of 7/26/16, 8/15/16, 10/11/16 and Taylor's Curriculum Vitae
9. Proposed Grand Traverse County Road Name and related email dated 10/28/2016
10. Otwell Mawby letter to D. Mansfield dated 10/26/16 re: "Slope Stability Reconnaissance, G15-118"
11. Letter from Brian Boals to Township Planner Hayward dated 10/18/16 re: "Review of Revised East Road Design/Open Space Calculations"
12. Budget Report for Peninsula Township Fire Fund – Calculations as of 03/31/2016
13. E-mail from Peninsula Township Fire Chief Randy Rittenhouse dated 11/1/16 discussing Fire Code (Chapter 5) applied to fire apparatus access roads
14. Memo from Township Planner to Township Board dated 11/10/16 re: "Locked Emergency Access Gates"
15. Letter from Brian Boals to Township Planner Hayward dated 11/10/16 re: "Review of Fire Lane Plan"

16. Letters from Township Fire Chief Randy Rittenhouse to former Township Planner Reardon dated 8/9/16 and 8/16/16
17. Soil Erosion and Sedimentation Control Permit with Conditions, Issued May 9, 2016;
Amended on August 22, 2016 re Fire Road; Amended on September 19, 2016 re widening E 81; renewed on May 9, 2017 (Expires on May 9, 2018)
18. Wetland Delineation Report by GEI Consultants of Michigan, PC dated 6/15/15
19. Daniel Thorell email dated 2/18/15 to former Planner Reardon
20. Daniel Thorell e-mail dated 3/10/15 to former Planner Reardon
21. Letter from Robyn Schmidt, MDEQ Water Resources Division, dated 3/5/15
22. Letter from Charles M. Simon, US Department of Army Corps of Engineers, dated 7/21/15
23. Ron Taylor Report dated 11/16/16 re: "Relocating Fire Access Apparatus Access Road"
24. Letter from Doug Mansfield dated 11/16/16 re: "Response to the November 17, 2016 Findings of Fact for SUP #123"
25. Otwell Mawby letter dated 1/16/17 regarding discussion of 8.1.3(3)(k)
26. Brian Boals letter dated 1/31/17 to Township Planner Brian VanDenBrand regarding Review of Site Environmental Concerns
27. Phase II Environmental Assessment for Habrecht Property (Vineyard Ridge) dated 12/23/09 prepared by Otwell Mawby, PC
28. Baseline Environmental Assessment and Section 7A Compliance Analysis for Habrecht Property (Vineyard Ridge) dated 2/15/10 prepared by Otwell Mawby, PC
29. Environmental Summary of Habrecht Property (Vineyard Ridge) prepared by Otwell Mawby, PC submitted to the Township Board on April 25, 2017
30. Decision and Order dated 4/25/17 regarding Special Use Permit #127 (Vineyard Ridge)
31. Decision and Order on Appeal dated 1/15/16 issued by the Hon. Philip E. Rodgers, Jr.
32. Email from James Young to James Harless (SME) dated 3/2/17 regarding Township's historical interpretation of 8.1.3(3)(k)
33. Soil Assessment Report, Review and Professional Opinion of Andrew Smits, PE dated 9/5/17
34. Soil Assessment prepared by Otwell Mawby, PC (Roger Mawby) dated 8/29/17
35. Transcript from hearing before Judge Thomas Power, 13th Circuit Court Judge, on 6/21/17
36. Memo from D. Mansfield dated 6/19/17 regarding Project comparison of Vineyard Ridge PUD/SUP to The 81 on East Bay PUD/SUP

37. Peninsula Township Board Meeting Minutes dated 4/25/17
38. Peninsula Township Board Meeting Minutes from 8/11/15
39. Peninsula Township Board Meeting Minutes from 11/17/16
40. Phase I Environmental Site Assessment of the 81 property dated 4/24/14
41. Letter from Grand Traverse County Soil Erosion – Sedimentation Control (SESC) Department dated 1/23/15 requesting grading and stabilization plan for steep slopes
42. MDEQ's file for OM RE, LLC's Petition for Baseline Environmental Assessment Determination
43. Letter from James Harless (SME) to Brian Boals dated 3/15/17
44. Letter from James Harless (SME) to Timothy Wilhelm dated 8/8/17
45. Letter from Brian Etzel to Timothy Wilhelm dated 10/12/17
46. Email from Brian Boals to James Harless dated 2/10/17, including Jim Young's suggested language for "expanded review" regarding adverse impact
47. Email from Brian VanDenBrand to Dusty Christensen and D. Mansfield dated 4/25/17 regarding "Previous EAs for Vineyard Ridge."
48. Email from Jim Young to David Rowe dated 2/14/17 regarding "81 & environmental testing ..."



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

SPECIAL USE PERMIT (SUP)
FINDINGS OF FACT AND CONDITIONS
SUP #35, Amendment #2 - 7 Hills Redevelopment
May 23, 2023

PENINSULA TOWNSHIP BOARD

Applicant: OMP Seven Hills Development, LLC – (Troy Daily, Jay Milliken and Jordan Valdmanis)
13795 Seven Hills Road
Traverse City, Michigan 49684

Hearing Date(s): November 21, 2022 – Introduction to Planning Commission
December 19, 2022 – Public Hearing with Planning Commission
March 6, 2023 – Draft Findings of Fact and Conditions at Planning Commission
April 11, 2023 – Public Hearing with Township Board
May 9, 2023 – Public Meeting with Township Board
May 23, 2023 - Public Meeting with Township Board

PROPERTY DESCRIPTION

Parcel ID#: 28-11-128-002-00
Property Address: 13795 Seven Hills Rd
Zoning: C-1 Commercial District

GENERAL INTRODUCTION AND BACKGROUND

Special Use Permit (SUP) #35 was approved on February 9, 1993. The original approval included four buildings for various professional offices and related storage.

The first amendment to SUP #35 was approved on May 11, 2021. The approval of amendment #1 was for a redevelopment of the property that reduced the total number of buildings to two. The uses approved within the two buildings included a restaurant/tavern in the front or eastern building and retail, offices, and storage in the back or western building, along with associated parking, drainage facilities, lighting and landscaping.

The applicants have requested a second amendment to expand the capacity of the restaurant/tavern from 32 to 70 and to allow outdoor uses in a defined area that includes seating, consumption of food and beverages,

DRAFT _ TOWNSHIP BOARD – May 23, 2023

yard games such as corn hole, fitness classes and gatherings. Proposed outdoor uses may utilize amplified sound.

The subject property is zoned C-1 and is 2.05 acres. The property has an existing improved access from Seven Hills Road.

All previously approved and proposed uses are allowed within the C-1 zone district with the approval of a Special Use Permit.

The submitted application (as revised) is included in EXHIBIT 1.

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

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

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

The character of the area surrounding the subject property is generally agricultural and rural residential in nature. The land directly adjacent to the subject property is mostly wooded, and Bowers Harbor Vineyard is located to the north and west.

This site has been commercially zoned since the Township adopted its zoning district map and has been utilized with allowed commercial uses.

The buildings meet required setbacks for the C-1 zone district. The proposed architecture, parking areas and landscaping are attractive. The previously approved and proposed indoor uses should not negatively impact adjacent properties. The proposed outdoor uses have the potential to negatively impact neighbors with regard to light and noise. Negative lighting impacts can be minimized with an approved lighting plan under Section 7.14 of the Zoning Ordinance, and negative noise impacts can be minimized by following Noise Ordinance #40, as amended, along with the establishment of reasonable hours of operation.

The applicants have noted that they intend to abide by all requirements of the Peninsula Township Noise Ordinance as amended. In addition, they have proposed that outdoor uses will be conducted during winter hours Sunday – Thursday until 9 p.m. and Friday-Saturday until 10 p.m. Summer hours for outdoor uses are proposed to be Sunday – Thursday until 10 p.m. and Friday-Saturday until 11 p.m.

Staff have investigated the hours of operation for other commercial restaurant/taverns with outdoor seating and/or uses on the peninsula and found that most close by 9 pm both winter and summer. Staff understands that the property is zoned C-1 and commercial uses are permitted, but because this property is surrounded by rural residential uses there is a concern that later hours for outdoor uses have the potential for noise to be disturbing to neighbors and not be harmonious with the surrounding area. Please see the attached aerial with the distance of surrounding residential uses for reference, attached as EXHIBIT 2.

The Planning Commission discussed the proposed hours of operation for outdoor uses at a special meeting on March 6, 2023. Minutes from that meeting are attached for reference, attached as EXHIBIT 3. The Planning Commission unanimously approved a motion to recommend approval of the requested amendment with a condition that the hours of operation for outdoor uses cease at 10 p.m. seven days a week and that the applicants abide by the Noise Ordinance as amended.

- 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.

As noted above the proposed project will be attractive. There is no concern with the approved uses conducted indoors. The hours of operation for outdoor uses have been addressed with a recommended condition of approval.

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

The proposed uses will be served adequately by essential services. The proposed uses do not place any additional burden on adjacent roadways, public emergency services, public utilities, or schools, as proposed by the Applicant and with additional mitigation measures noted below.

A detailed analysis on traffic generation was performed by Fleis & Vandenbrink during the review process of the first amendment in 2021. A condition of approval was included and will carry forward that notes that the OMP Seven Hills Development, LLC understands, agrees and acknowledges that as part of the board's approval of the requested amendments that at any time it is determined by Peninsula Township that the impact and/or intensity of the use of the roads to and from the subject site has increased in a meaningful way that they will pay for an additional traffic study and work with the township to reasonably mitigate and/or relieve the impact of the increased intensity to the roads to and from the subject site.

The Fire Department has conducted a site inspection and noted that they do not have concerns with the proposed increase in capacity and outdoor uses, provided that all of the requirements noted in their letter from the first amendment approval, dated February 10, 2021, have or will be met. (EXHIBIT 4). Compliance with Fire Department requirements is included as a proposed condition of approval.

The Grand Traverse County Health Department has reviewed the proposed increase in capacity and outdoor uses and has noted that the maximum number of patrons for the restaurant/tavern both indoors and outdoors is appropriate for the capacity of the on-site septic system as currently designed (EXHIBIT 5). The applicants hold a Michigan Liquor Control Commission (MLCC) manufacturer license, but they have asserted in testimony before the Township Board and a letter to the Township Board that actual manufacturing will not occur on site, due in some part to the septic system being inadequate for such a use. Continued compliance with current Health Department requirements is dependent on the absence of any manufacturing use related to the MLCC license and is included as a proposed condition of approval.

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

The revised site plan dated February 15, 2023, provides the required number of parking spaces (55) for all uses on the property. However, the Planning Commission noted concerns with parking overflow onto Seven Hills Road. Staff reached out to the Grand Traverse County Road Commission to see if no parking signs could be placed on Seven Hills Road at the owners' expense to discourage this. Unfortunately, the Road Commission noted that this can only be accomplished if there is documented proof that there is an ongoing issue with cars parking on the roadway (EXHIBIT 6). Staff discussed placing signage near the exit of the property to encourage their patrons to come back another time if parking is full, as no parking on the road is allowed and people will be ticketed and towed. The applicants are agreeable to this action and a proposed condition of approval has been included.

With proposed signage in place, the Applicants are doing their best to minimize the potential impact on the local road system and need for enforcement. Thus, the proposed uses do not increase the need for public facilities or services.

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

As stated above, the applicants hold a MLCC manufacturer license, which could create the potential for harmful fumes or odors if manufacturing took place at the facility under a MLCC license. The applicants, however, have agreed to refrain from MLCC license-based manufacturing on site, which is fundamental to ensuring the absence of offensive fumes and/or odors. Based upon applicants' agreement, the proposed uses do not include uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors.

Storage accessory to the uses on the property is proposed. A condition of approval is that all storage of materials on-site comply with all applicable local ordinances, County ordinances, OSHA regulations, EPA regulations, the International Fire Code, and state of Michigan regulations including but not limited to EGLE and MLCC regulations.

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

***Specific Requirements.** In reviewing an impact assessment and site plan, the town board and the planning commission shall consider the following standards:*

- (a) That the applicant may legally apply for site plan review.
The Assessor's records show that the applicants are the owners of the subject property and may apply for an amendment to the SUP.
- (b) That all required information has been provided.
All required information is provided as part of this application. (EXHIBIT 1).
- (c) That the proposed development conforms to all regulations of the zoning district in which it is located.
The proposed development conforms to regulations of the C-1 zoning district, subject to the conditions of approval noted on pages 7 and 8.
- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services.
Gourdie Fraser Engineers has reviewed the submitted plans for compliance with storm water control regulations and parking layout. They noted that one additional ADA compliant parking space is required for the proposed number of parking spaces (EXHIBIT 7). A condition of approval has been proposed to address this.

The Grand Traverse County Health Department has also provided comments (EXHIBIT 5). They have no concerns with the proposed increase in capacity provided that the restaurant/tavern is limited to 70 total patrons both indoors and outdoors. The County Health Department, however, has not evaluated the facility for septic capacity related to manufacturing under a MLCC license, and Applicants have agreed to not manufacture on-site under a MLCC license. Additionally, the County Health Department has not evaluated the facility for septic capacity related to the processing proposed by the Applicant. Outdoor uses should also allow for evaporation over the drain field and not be compacted by heavy weight. Proposed conditions of approval have been included on both issues. A proposed condition of approval has also been included on the issue of updating the Health Department review.

The fire chief is comfortable with the plan, provided that proposed pervious pavers meet the specifications noted in his email dated February 16, 2023, and conditions of approval from the first amendment continue to be met (EXHIBIT 4). A proposed condition of approval has been included on this issue.

- (e) That the plan meets the standards of other governmental agencies, where applicable, and that the approval of these agencies has been obtained or is assured.
The proposed uses, along with plans and relevant information, have been supplied to the necessary governmental agencies for review and approval. In addition to the agencies noted above, the Grand Traverse County Building Department/Construction Code noted that they have no concerns with the increased capacity as long as they are provided with a copy of the approved SUP amendment and/or Land Use Permit (EXHIBIT 8).

- (f) That natural resources will be preserved to a maximum feasible extent and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
The subject property is largely developed and will remain as such. There will be less building mass on the site after the project is complete since the number of buildings was reduced as part of the approval of the first amendment. The footprint of the restaurant/tavern was also reduced after approval of the first amendment. The use of pervious pavers in some areas also helps to reduce impervious surfaces.
- (g) That the proposed development property respects floodways and floodplains on or in the vicinity of the subject property.
There are no floodways or floodplains in the vicinity of this site.
- (h) That the soil conditions are suitable for excavation and site preparation and that organic, wet, or other soils that are not suitable for development will either be undisturbed or modified in an acceptable manner.
The soils are suitable for construction activities. Soil types are identified on page 2.0 of the drawings submitted (EXHIBIT 1).
- (i) That the proposed development will not cause soil erosion or sedimentation problems.
Gourdie Fraser Engineers have reviewed the plans for soil erosion control and have no concerns. (EXHIBIT 7).
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
The proposed uses will not cause any increase in off-site storm water runoff. The site plan illustrates a stormwater detention basin. See letter from Gourdie Fraser Engineers (EXHIBIT 7).
- (k) That grading or filling will not destroy the character of the property or the surrounding area and will not adversely affect the adjacent or neighboring properties.
Proposed grading is limited to the north of the site and is associated with drainage and septic system activities. The general character of the site remains essentially unchanged.
- (l) That structures, landscaping, landfills, or other land uses will not disrupt air drainage systems necessary for agricultural uses.
Proposed grading as part of this project will not change the general cold air drainage flow of the site.
- (m) That phases of development are in a logical sequence so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage, or erosion control.
According to the application, this project will not be developed in phases.
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities.

No expansion of public streets, drainage systems, or utility systems is required or proposed.

- (o) That landscaping, fences, or walls may be required by the town board and planning commission in pursuance of the objectives of this ordinance.

A landscape plan was approved with the first amendment that shows new trees and shrubs throughout the site. Implementation of this plan is a condition of approval.

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

The required number of parking spaces has been provided for all proposed uses at 55 total spaces. The parking lot layout is like the layout approved with the first amendment except for the conversion of two bus parking spaces to four regular parking spaces and the addition of three new spaces on the north side of the eastern parking area. Those three spaces include the use of pervious pavers. Drive aisles have also been increased to a minimum of 20 feet as required by the Fire Department.

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

Vehicular traffic will enter and exit the property on Seven Hills Road. Grand Traverse County Road Commission requirements noted as part of the approval of the first amendment have been completed (EXHIBIT 9).

- (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.

One single dumpster is located behind the proposed restaurant/tavern. The submitted plans show that this location includes a dumpster enclosure – sheet 3.0. (EXHIBIT 1).

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

The proposed development, under the conditions set forth on pages 7 and 8 of this Special Use Permit, meets the objectives of the ordinance and the principles of sound planning by improving the existing character of the subject parcel and providing opportunities for new commercial uses.

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township, and other governmental regulations relative to the establishment of the special use for a parcel zoned C-1, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), Michigan Liquor Control Commission (MLCC), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing special land use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

APPROVAL CONDITIONS AND SAFEGUARDS:

Pursuant to Section 8.1.3 (2), the board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions and requirements for a land use permit include:

- 1) Uses approved as part of this SUP amendment only include the following:
 - a. Restaurant/Coffee Shop with a Market/Retail
 - b. Tasting Room/Bar/Tavern
 - c. Professional Offices
 - d. Single Chair Salon
 - e. Artist Studio/Retail
 - f. The following outdoor uses: Seating/Consumption, Games, Fitness Classes, and Gathering, all with the potential for amplified sound that is compliant with Noise Ordinance #40, as may be amended from time to time.
 - g. Indoor storage of materials accessory to on-site uses
- 2) The approved uses above do not include the manufacturing of products under an MLCC license. The approved uses above may include processing under an MLCC license on site, only if the processing is limited to blending, bottling, and labeling of product brought in from an off-site bonded facility. The proposed use shall not produce any offensive fumes or odors that are detectable beyond the property lines of the property.
- 3) The maximum number of patrons for the Restaurant/Coffee Shop with a Market/Retail space and Tasting Room/Bar/Tavern within the eastern building and outdoor use areas, as depicted on the application site plan, at any time both indoors and outdoors is seventy (70).
- 4) Outdoor uses shall cease at 10 p.m. seven days a week.
- 5) All use of the property shall comply with the Peninsula Township Noise Ordinance #40, and as may be amended in the future. OMP Seven Hills, LLC acknowledges that as part of the Board's prior approval of Amendment #1 to SUP #35, that the noise level at the property line was to be no greater than normal conversation as perceived by a reasonable person. OMP Seven Hills, LLC agrees that the noise condition of Amendment #1 carries through to the approval of this amendment, to the extent that noise levels at the edge of the property will not exceed normal conversation noise, as perceived by a reasonable person.
- 6) One additional ADA compliant parking space will be striped and signed for a total of three ADA parking spaces on site. The site plan shall be amended to show the additional ADA Parking space and submitted to the Director of Planning and Zoning for review and approval prior to issuance of a Land Use Permit.
- 7) Continued compliance with permitting necessary with the Grand Traverse County Health Department and Construction Code is required, to include the absence of any manufacturing under an MLCC license. Additionally, Applicant must confirm with the Department of Health that the proposed "processing" on site under the MLCC license does not negatively impact the current septic capacity of the facility. If Applicant seeks to add any additional licenses or uses or expand any uses in a manner that might impact the current septic approval, Applicant is required to get an updated septic evaluation from the Health Department that shows septic capacity for those changes.
- 8) No outside storage of contractor equipment or construction materials is permitted.
- 9) All existing and proposed lighting shall be compliant with Section 7.14 of the Township Zoning

- Ordinance. Final exterior lighting details will be reviewed at Land Use Permit.
- 10) Existing signage near Seven Hills Road is reduced to one sign no taller than 5 feet and no larger than 30 square feet.
 - 11) The applicant shall install signage at their cost near the exit that notes that no parking is permitted on Peninsula Township roads.
 - 12) Full implementation of the landscape plan (Sheet 5.0) as approved with the first amendment is required.
 - 13) The outdoor use areas shall be clearly designated on site, to meet the requirements of the Michigan Liquor Control Commission (MLCC). The approved landscape plan shall be amended to be consistent with MLCC requirements and submitted to the Director of Planning and Zoning for review and approval prior to issuance of a Land Use Permit.
 - 14) All storage space shown on the plans shall comply with all applicable OSHA regulations, EPA regulations, state of Michigan (EGLE) regulations, the International Fire Code and MLCC regulations.
 - 15) Full compliance with all Fire Department review requirements stipulated in the letter dated February 10, 2021, and email dated February 16, 2023, are required, see (EXHIBIT 4).
 - 16) Compliance with the review requirements stipulated in the letter from Gourdie Fraser Engineers is required, see (EXHIBIT 7).
 - 17) Continuing to provide and accommodate access to the property to the south from the drive/parking area is required. Access to the property to the south was established from the drive/parking area pursuant to SUP #35 in order to eliminate the need for an additional access point on Seven Hills Road.
 - 18) OMP Seven Hills, LLC understands, agrees, and acknowledges that as part of the board's approval of the requested amendment to SUP #35 that at any time it is determined by Peninsula Township that the impact and/or intensity of the use of the roads to and from 13795 Seven Hills Road has increased in a meaningful way as a result of the approved uses on the property, OMP Seven Hills, LLC or the subsequent owner of the property shall pay for an updated traffic study. OMP Seven Hills, LLC, or subsequent owner also understands, agrees and acknowledges that if the updated traffic study demonstrates that the intensity of the use of roads has increased from what was represented in the Fleis & Vandenbrink traffic study, reviewed and acknowledged as part of the approval of the first amendment of this SUP, that OMP Seven Hills, LLC or subsequent owner shall work with the township to reasonably mitigate and/or relieve the impact and/or increase in intensity to the roads to and from the subject property.
 - 19) This SUP amendment shall expire one year after the final date of approval unless a Land Use Permit is applied for and issued for the increased occupancy and change of uses on the property.

COMMENCEMENT AND COMPLETION

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use permit and accompanying site plan are enforceable, and remedies are available under Section 3.2 of the Zoning Ordinance.

EFFECTIVE DATE OF SPECIAL LAND USE:

The special land use shall be effective when the application has been approved by the Peninsula Township Board of Trustees, subject to the above conditions. By resolution, the Township Board approved this Special Use Permit by a vote of:

AYES
NAYS
ABSTAINING
ABSENT

The undersigned hereby certifies that she is the clerk for the Township of Peninsula, Grand Traverse County, Michigan, and that the foregoing special use permit was approved by the Peninsula Township Board of Trustees on _____.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

Rebecca Chown, Peninsula Township Clerk

Approved by the Peninsula Township Board by and through a resolution on _____

Isaiah Wunsch, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF.

I hereby acknowledge that I have received a true and correct copy of this second amendment of Special Land Use Permit #35, and I have been informed of said requirements of this amended permit and of the requirements of the Peninsula Township Zoning Ordinance.

OMP Seven Hills, LLC – (Jordan Valdmanis, Brian Peace, Troy Daily and Jay Milliken) 16330 Peninsula Drive



Peninsula Township Planning Commission,

DRAFT FINDINGS FOR 10% OPEN SPACE DEDICATED FOR PUBLIC USE

Gordon L. Hayward
Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

SPECIAL USE PERMIT
FINDINGS OF FACT
SUP #127, Vineyard Ridge (Planned Unit Development Condominium Subdivision)
DATE 1-23-2017

PENINSULA TOWNSHIP PLANNING COMMISSION

DECISION AND ORDER

Applicant: Vineyard Ridge, LLC
Ken Schmidt, Owner
522 E. Front Street
Traverse City, MI 49686

Hearing Date: DATE January 23, 2017

PROPERTY DESCRIPTION

Parcel ID#: 28-11-336-071-00 & 28-11-336-072-00

APPLICATION

The applicant is asking for review by the Peninsula Township Board for the development of a forty-seven (47) unit condominium subdivision planned unit development (PUD) within the Suburban Residential Single and Two-Family (R-1C) zoning district.

The Commission having considered the Application, a public hearing having been held on July 18, 2016 before the Planning Commission 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 NUMBER OF 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 36 of the Township and has approximately 674 feet of road frontage on Center Road. (Exhibit 3)
- b. The Board finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at 27.87 acres. (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 6.4.2 of the Peninsula Township Zoning Ordinance. (Exhibit 1)
- 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. (Exhibit 1)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned R-1C, Suburban Residential Single and Two Family encompassing two (2) parcels; 28-11-336-071-00 which is considered conforming to local zoning and 28-11-336-072-00 which is considered legal non-conforming to local zoning. (Exhibit 1)
- b. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the site plan. (Exhibit 3)

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 are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- b. **South-** The properties adjacent to the south are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- c. **East-** The properties adjacent to the East are Pelizzari Natural Area and other residential properties zoned R-1C, Suburban Single and Two-Family. (Exhibits 1, 2)
- d. **West-** The properties adjacent to the west are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- e. The Board finds that development of property as single family residential is a use by right in the R-1C, Suburban Single and Two-Family residential zoning district. (Exhibit 1)
- f. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, and Michigan Department of Transportation.

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the land surrounding the development is primarily single family residential with the exception of the east which abuts Pelizzari Natural Area zoned A-1. (Exhibit 2)
 - ii. The Board finds that the Zoning Ordinance Section 6.4.1 the intent and purpose of the Suburban Residential District (R-1C) is to encourage medium density residential development associated with proximate areas of Traverse City. Such development shall fall within the logical service pattern of the Regional Wastewater Treatment System, whether or not serviced by that system.
 - iii. The Board finds that the proposed PUD is planned as a single-family residential development with 10% open space dedicated for public use (Being Section 8.3.6 OPEN SPACE subsection (2) OPEN SPACE DEDICATED FOR PUBLIC USE); a RESIDENTIAL PLANNED UNIT DEVELOPMENT with a minimum of 10% of the net acreage dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board makes the following determinations: (Exhibit 1)
 - a. The location and extent of said land is not in conflict with the Master Plan of Peninsula Township.
 - i. The Board Finds that a Master Plan Goal (Ch. 4 - Future Land Use – Public & Semi-Public Land Use Goals and Actions) reads as follows: Provide a variety of parks, trails, recreational facilities and programs to serve all groups of citizens. (Exhibit 2)
 - b. The access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended.
 - i. The Board finds the land will be used for a public trail system along Mathison road on the west; Center road on the east and a connection between the two along the south line. The property will be dedicated to the township for a future public trail in a forty three foot wide dedicated parcel. (Exhibit 3)
 - ii. The board finds that the property dedicated for a future public trail will increase ability of the owners to enjoy the recreational opportunity of hiking and exercising.
 - iii. The Board finds that the proposed PUD provides for a 90 foot buffer zone along the property's boundary which will remain as an undeveloped setback except for the forty-three foot wide dedicated parcel above. (Exhibits 1, 2, 3)
- 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 detached residential with the exception of the Pelizzari Natural Area. (Exhibit 1)
 - ii. The Board finds that the development of the proposed PUD would have a positive impact because of their opportunity to use a public trail. The applicant has designed the housing sites to complement the existing residential use pattern in the area. (Exhibit 2)

- iii. The Board finds that the PUD as submitted includes a 90 foot buffer around the boundary of the property, is provided with public sewer and 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 project is a substantial improvement over 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, 2, 3) (Exhibit 3)
 - 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 the forty-seven (47) residential units. This private road shall be reviewed by the Township Engineer for compliance with Section 7.10 standards. (Exhibits 1, 3, 4)
 - ii. The Board finds the development will be served by public sewer and water. These systems shall be constructed by the owner and reviewed by the Grand Traverse County Department of Public Works and the Township Engineer to ensure they are compliant with all applicable regulations prior to the issuance of the SUP. (Exhibits 1, 2, 3, 4)
 - 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. (Exhibits 1, 3, 4, 5)
 - 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. (Exhibit 3)
 - 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. (Exhibit 3)
 - 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. (Exhibits 1, 2, 3, 4, 5)
 - iii. The public water and sewage disposal systems are managed by the County Department of Public Works and costs are paid by users. (Exhibit 4)
 - iv. The roads in the Development are private roads and are maintained by the Condominium Unit owners (Exhibits 1, 2)

- 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 residential 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 3)
 - ii. The Condominium Documents include provisions for the Association to regulate uses such as burning leaves or brush that might result in fumes, glare or odors. (Exhibit 3)

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. Review of the project 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-seven (47) 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. Remove the existing residential structure on Parcel 28-11-336-072-00.
- d. The signs shall be reviewed by staff to assure they meet lighting standards of the Zoning Ordinance.

THE ABOVE FINDINGS ARE NOT REQUIRED AS THIS IS NOT A STANDARD, BUT RATHER AN ADVISORY STATEMENT. IF THE PLANNING COMMISSION RECOMMENDS APPROVAL OF 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. (Exhibit 3)
- 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. (Exhibit 3)
 - 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. (Exhibits 3)

- 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 10% open space dedicated for public use (Exhibit 3)
 - ii. The Board finds that each individual units 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 2, 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. (Exhibits 2, 3)
 - iv. The Board finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards of Section 7.10 to provide residential and adequate access to forty-seven (47) residential units. This private road shall be reviewed by the Township Engineer for compliance with the above Section 7.10 standards. (Exhibits 1, 3, 4)
 - v. The Board finds that signs are regulated by section 7.11.3 (17) Signs approved in association with a Special Use Permit. In approving a Special Use Permit, the Township Board may approve any or all signs allowed in this Ordinance provided that the approved signs: (a) Are related to an approved use in the Special Use Permit; (b) the design , size , setback and lighting are shown on a scale drawing; and (c) the number and location of all signs are reasonably necessary to meet the intent of this Ordinance. (Exhibit 3)

This standard HAS/HAS NOT been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
- i. The Board finds that a permit to construct the private road curb cut from the Michigan Department of Transportation shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Further the Board finds that in an email dated April 4, 2016, Jeremy Wiest from MDOT indicated that the location of the proposed private road meets MDOT requirements. (Exhibit 3)
 - ii. The Board finds that a permit to construct the private road curb cut and the water main connection 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. The GTCRC has reviewed the proposal and provided comments in a letter dated August 24, 2016. (Exhibit 3)

- iii. The Board finds that approval to construct and connect the public water and sewer systems on site from the Grand Traverse County Department of Public Works shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to the issuance of the SUP. The DPW has provided initial review and approval for this proposal in an email dated June 2, 2016. (Exhibit 3)
 - iv. The Board finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated April 21, 2016 that department has indicated they have no objections to the plan. (Exhibit 3)
 - v. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted June 3, 2016 and email August 5, 2016. (Exhibits 3, 4)
 - vi. 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. (Exhibits 3, 5)
 - vii. The Board finds that the initial storm water control review was completed by the Township Engineer. (Exhibits 3, 5)
- 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. (Exhibits 3, 4)
- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
- i. The Board finds that any form of development is going to cause some disturbance to the site. Given that development of the parcel is allowed under the Zoning Ordinance under the R-1C District, the PUD as proposed preserves a 90 foot buffer around the development preserving a significant number of the older hardwood trees. 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. (Exhibit 3)

- 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 there are no flood ways or flood plains on or in the vicinity of the subject property. (Exhibit 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.
 - i. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted (Exhibits 3, 4, 5)
 - 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. (Exhibits 3, 4, 5)
 - iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Exhibits 1, 3)
- i. That the proposed development will not cause soil erosion or sedimentation problems.
 - i. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted at this time. (Exhibits 3, 4)
 - 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. (Exhibits 3, 4)
 - iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Exhibit 1, 3, 4)
- 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 and that the initial storm water control review was completed by the Township Engineer.. (Exhibits 3, 4)
- 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 the plan as presented and as developed, will leave areas undisturbed during construction and afterward and shall be depicted on the site plan and at the site, per se. (Exhibit 3)
 - ii. The Board finds that the development of the road is reasonable in the context of the existing topography and existing drainage patterns. (Exhibit 3, 4)
 - 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. (Exhibits 3, 4)
 - iv. The Board finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibit 1, 3)
- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
 - i. The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Exhibit 2)
- 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 water, sewer, roads, drainage and grading of each phase can stand on their own. (Exhibit 1, 3, 4)
- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
 - 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-seven (47) residential units. This private road shall be reviewed by the Township Engineer. (Exhibits 1, 3, 4)

- ii. The Board finds the development will be served by public sewer and water. The proposed plans have been reviewed by the Township Engineer and the site shall be developed in compliance with the regulating standards reviewed by the Township Engineer and DPW. (Exhibits 3, 4)
 - iii. The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. (Exhibit 3)
- 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 developer also proposes a 90' buffer along all property lines which is to be left in its natural vegetative state. (Exhibits 3)
- 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 that the parking will be provided for each residential unit and no other parking areas are provided. (Exhibit 3)
- 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. (Exhibits 3)
 - 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. (Exhibits 3, 4)
- 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 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. (Exhibit 3)

- 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 Board finds this property is allowed a residential development under the Suburban Single and Two-Family (R-1C) zoning district. The development is being developed as a Planned Unit Development with the open space option of 10 % of the property dedicated for public use. (Exhibits 2, 3)

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 Board finds this property is allowed a residential development under the Suburban Single and Two-Family (R-1C) zoning district. The development is being developed as a Planned Unit Development with the open space option of 10 % of the property dedicated for public use. (Exhibits 2, 3)
- 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. Vineyard Ridge proposes 10% open space dedicated for public use . Section 8.3.6 open space subsection (2) open space dedicated for public use; a residential planned unit development with a minimum of 10% of the net acreage dedicated to the Township. That open space land shall be dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board makes the following determinations: (a) The location and extent of said land is not in conflict with the Master Plan of Peninsula Township. (b) The access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended.
 - ii. The Board finds the open space will be used for a public trail system along Mathison Road on the north; Center Road on the east and a connection between the two along the south line. The property will be available for the township to construct a future public trail in a forty two (43) foot wide dedicated parcel. (Exhibit 3).
- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.

- i. The Board finds that when balancing market demands for desirable residential parcels in conjunction with the dedicated 10% of land for public use, 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, 2, 3)
 - 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 Board finds that the applicant's plans provide a ninety (90) foot buffer of existing trees along the southerly and westerly borders of the project. Houses are proposed to take advantage of the steep slopes in the center of the project by using walkout basements instead of major regrading of the sloped (Exhibit 3, 4)
 - e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
 - i. The Board finds that Vineyard Ridge will be providing a low maintenance single family home design which will diversify the housing stock available in Peninsula Township. (Exhibit 3)
 - 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. (Exhibit 3)
- 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 27.87 acres. (Exhibits 3)
- 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 further finds that the property is zoned R-1C. (Exhibits 1, 3)
- 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 public sewer and water systems which have been through initial reviews and will be constructed in compliance with regulating standards as per Township Engineer and DPW comments. (Exhibits 1, 3)
- 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-1C zoning district. (Exhibits 1, 3)
 - 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 27.87 acres. (Exhibits 2, 3)
- e. Open space shall be provided according to Section 8.3.6.
 - i. The Board finds that the PUD application includes provisions for 10% of the land to be dedicated for public use for a future public trail as provided by Section 8.3.6 Open Space. (Exhibits 1, 3)
- f. For purposes of this Section 8.3, Open Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. The Board finds that the PUD application includes provisions for 10% of the land to be dedicated for public use for a future public trail as provided by Section 8.3.6 Open Space. (Exhibits 1, 3)
- 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. (Exhibits 1, 3)

- ii. Section 8.3.4, PUD Uses that may be permitted: The Board finds that the applicant is proposing single family dwellings, in accord with Section 8.3.6. (Exhibits 1, 3)
- iii. Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that proposal reduces the size of the forty-seven (47) 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 27.87 acres less the fifteen (20) percent for the R-1C requirement and is equal to 22.3 acres. Per the underlying zoning district R-1C the minimum lot size is 20,000 square feet. Therefore the site will allow a maximum of 48 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. (Exhibits 1, 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. (Exhibits 1, 3)
- v. The Board finds that the minimum lot area/building envelope is 6,005.15 square feet as indicated in the application. (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. (Exhibit 1, 3)
- 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 Board finds that the proposed PUD with a minimum of 10% of the net acreage dedicated to the Township for park or recreational purposes by the project owner or owners (Being Section 8.3.6 OPEN SPACE subsection (2) OPEN SPACE DEDICATED FOR PUBLIC USE). (Exhibit 1)
- viii. The Board finds that the proposed PUD provides for a 90 foot buffer zone along the property's boundary which will remain as an undeveloped setback including within a forty three (43) foot wide dedicated parcel above. (Exhibits 1, 3)
- ix. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: Maximum permitted by Section 8.3.7 is 15%. The Board finds that the maximum percentage of lot area covered by all structures is proposed to be 13.10% of the net acreage of the site. (Exhibits 1, 3)
- x. 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. (Exhibit 3)

- xi. The Board finds the Article VII of the Ordinance requires Vineyard Ridge to address the following items:

Section 7.1.2, Sanitation Requirements: The Board finds the development will be served by public sewer and water. These systems shall be constructed by the owner and reviewed by the Grand Traverse County Department of Public Works and the Township Engineer to ensure they are compliant with all applicable regulations. (Exhibits 1, 3)

Section 7.2.5, Stormwater Detention: The Board finds that the initial storm water control review was completed by the Township Engineer. (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 proposes a 90 foot buffer along the perimeter of the site which exceeds the buffer zone required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped and includes dedicated land for public recreational purposes. (Exhibits 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.

Section 7.7, Developments Abutting Agricultural Lands: The Board finds, and the Planning Commission recommends, that the existence of Pelizzari Park on the adjacent A-1 property makes it unlikely that any of the uses allowed in the agricultural district would be located on the adjacent agriculturally zoned land so no Agricultural Setback is required. The Planning Commission recommends that pursuant to Section 7.7.1.3 (1) (a) 1. there is no Agricultural setback required. (Exhibit 1)

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-seven (47) residential units. This private road shall be reviewed and developed according to the standards found in Section 7.10 of the Ordinance (Exhibits 1, 3)

Section 7.11, Signs: The Board finds that signs are regulated by section 7.11.3 (17) of the Ordinance. The Board finds that the signs are related to an approved use in the Special Use permit; that the design, size, setback and lighting are shown on a scale drawing, and the number and location of all signs is reasonably necessary to meet the intent of this ordinance.

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.
(Exhibits 1, 3)

EXHIBITS

- 1. Peninsula Township Zoning Ordinance**
- 2. Peninsula Township Master Plan**
- 3. Mansfield Application Folder dated 1/9/17**
- 4. Vineyard Ridge Project Review dated 1/3/17**
- 5. Otwell Mawby Geo technical P.C. dated 1/9/17**



Engineering
Surveying
Testing &
Operations



123 West Front Street
Traverse City, Michigan 49684
231.946 5874
231 946 3703

October 6, 2023

Isaiah Wunsch, Supervisor
Peninsula Township
13235 Center Road
Traverse City, MI 49686
231-223-7322
supervisor@peninsulatownship.com

RE: Peninsula Shores, PUD #123 –Application for Amendment #2
Review of Revision: Relocate Unit 1 and minor dimensional changes

Dear Isaia,

We have reviewed the supporting documents for the Peninsula Shores – PUD #123 Application for Amendment #4, dated 7/11/23 as completed by Mansfield Land Use Consultants. These include updated SUP Application, SUP Development Checklist, Proposed PUD Amendment Open Space Plan, and stormwater calculations. Our review which consisted of reviewing the modifications for their impacts to utilities, stormwater management, and the general compliance with the special Use permit and zoning ordinance criteria.

According to Mansfield the modifications to the plan include the following dimensional shifts of the site plan layout:

- Lot line adjustments to Units 25-29, and 41
- Adding unit 42 by dividing and slight expansion of amendment 3 unit 41.

A summary of our review is contained below:

Utility Review

Per the submitted application, 8.1.2.9c comments on the proposed amendments effect on the existing facilities. Lot 42 will be connected to the community septic system with existing Lot 24 being removed from the system – a one to one switch. Lot 24 will have on-site septic subject to GTCHD permitting. This is acceptable.

Storm Water Review

According to the revised plans, no revisions to the storm water control design were required. There is a change in impervious surface with the addition of lot 42 and the typical impervious areas. Lot 42 is within the catchment of the stormwater management area. The submittal demonstrates excess storage was previously installed and supplemental infiltration associated with the long flow path to the basin is suitable to account for the new runoff from lot 42. Therefore, the previously proposed storm water provisions can area sufficient for the existing site and the proposed amendment.



Private Road Review

According to the description of the modifications the revisions do not change the private road system.

Overall Ordinance Compliance Review

According to revised plans, a comparison to the original approved PUD Open Space Calculations along with confirmation of values was performed by GFA with the following results provided:

	Open Space	Non-Open Space
Approved P.U.D. Amendment 1	65.65% (54.05 AC.)	34.35% (28.28 AC.)
Proposed (Unit Shift and Dimensional changes)	65.81% (54.25 AC.)	34.19% (28.19 AC.)

The provided information shows the addition of Unit 42 causes no change in the calculated constraints to number of units. Unit 42 and the revision to Unit 41 appears to meet the dimensional requirements of the Township and the P.U.D. Project. The application indicates that legal documents reflecting open space will be updated pending approval.

Assuming no other changes have been made to the project plans as previously reviewed, our recommendation for engineering plan approval remains in place in accordance with our previous review letters and the Township SUP Conditions dated August 6, 2019. The following general items are noted:

1. The same approved Findings of Fact and SUP conditions apply including but not limited site-specific Storm Water Reviews for each lot.
2. Applicable revisions to the Master Deed to reflect the site changes are to be completed and a new document shall be signed and recorded with the Register of Deeds. A copy of this document shall be provided to the Township for their files.
3. An updated drawing shall be provided to account the water front strip known as Parcel "A" as it is our understanding this parcel is to be removed from the PUD and purchased by and adjacent property owner.

Please do not hesitate to contact me with any questions regarding this review.

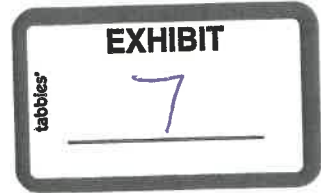
Respectfully Submitted,
GOURDIE-FRASER

Jennifer Graham (Hodges), PE
Sr. Project Manager

cc: Doug Mansfield, Mansfield Land Use Consultants
Kyle O'Grady - The 81 Development Company

Jennifer Cram

From: Fred Gilstorff
Sent: Thursday, September 28, 2023 4:12 PM
To: Jennifer Cram
Subject: Re: Peninsula Shores SUP #123 Amendment #4



Jen,

In response for the purposed amendment for the 81 project of adding another home site, the fire department does not see any issue from a code standpoint. We would recommend and it was in the initial site review when the project started, that the project owner and manager assure that the access roads and emergency access road be maintained at all times to allow proper fire department access. Of primary concern is the emergency access road during snow season. This road must be maintained clear of snow and in good working order for emergency vehicle use. According to department records and site visits, the project has complied with all other fire code requirements.

Any more questions on this topic, please feel free to contact me. Thank you.

Fire Chief Fred Gilstorff

Peninsula Township Fire Department

14247 Center Rd.

Traverse City, Michigan 49686

231-223-4443

Cell: 231-463-0330

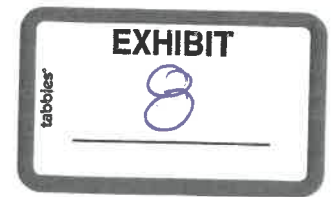
From: Jennifer Cram <planner@peninsulatownship.com>
Sent: Thursday, September 14, 2023 6:28 AM
To: Fred Gilstorff <fire@peninsulatownship.com>
Subject: RE: Peninsula Shores SUP #123 Amendment #4

Fred, you are correct, we have looked at the site plan together and you noted that you did not have any major concerns with adding one lot. I would like an email from you noting that the requested amendment meets fire code and any conditions of approval that you might have for the record and thought you would like to have the complete submittal for review and response.

Hope you enjoy your time down state and I look forward to getting your comments next week. 🍷

Jenn Cram

Peninsula Township Director of Planning and Zoning
13235 Center Road
Traverse City MI 49686



November 13, 2023

Peninsula Township
Jenn Cram, Planner
13235 Center Rd
Traverse City, MI 49686

Via Hand Delivery

Re: Peninsula Shores, PUD #123
Additional Information in Support of Amendment #4

Dear Ms. Cram and Peninsula Township Planning Commission:

My firm represents the O'Grady family and The 81 Development Company, LLC. I am writing to provide additional information in support of Application for Amendment #4 to the Peninsula Shores PUD. As you likely know, Amendment #4 to the Peninsula Shores PUD was filed on July 11, 2023. This amendment was introduced to the Planning Commission on August 21, 2023. The Planning Commission held its public hearing on September 18, 2023. On October 12, 2023, four days before the upcoming Planning Commission meeting to consider taking action on this amendment, Kyle O'Grady received indication from Ms. Cram that she did not find that the requested amendments met all standards of the zoning ordinance.¹ This was Mr. O'Grady's first notification that there were any issues with the proposed amendment. Based on that surprising revelation, Mr. O'Grady requested that the Planning Commission take no action at its meeting on October 16. This supplemental information is being provided to the township for its consideration at the upcoming November 20, Planning Commission meeting.

In the draft findings of fact and conditions dated October 16, 2023, Ms. Cram identifies eight specific areas that she believes the zoning ordinance standards are not being met by the proposed amendment. We will address each issue separately and articulate why the developer believes that the conclusion that the particular standard had not been met is incorrect. Throughout the course of this document, we will be referring to the draft findings of fact and conditions which the Planning Commission has already received. We will also be referring to the August 11, 2015, Special Use Permit findings of fact approving the Peninsula Shores PUD #123, the December 12, 2017, Decision and Order on remand concerning the Township Board's consideration of certain standards following remand from the Circuit Court as well as the May 10, 2022 Township Board approval of Amendment #3. Finally, we will make reference to the January 23, 2017, Special Use Permit findings of fact for SUP #127, Vineyard Ridge, and the May 23, 2023, Peninsula Township Board Findings of Fact and Conditions pertaining to Amendment #2 to the 7 Hills Redevelopment SUP. These documents are attached to this letter as exhibits for inclusion in the record.

¹ In the September 18 PC packet, Ms. Cram indicates that she is not clear on what the substantial improvement is. Why she waited until October 12 to notify the developer is unclear and a major question.

By way of background, on August 11, 2015, the Peninsula Township Board issued its Decision and Order approving this PUD. A copy of that document is attached to this letter as **Exhibit 1**. In their findings, the Board determined that this PUD is 82.63 acres. Development of the property as single-family residential housing 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 Districts. The project includes 65% open space including approximately 1,500 feet lineal feet of shared open waterfront. These two measures are not being altered by this amendment. It is important to note that the project put forth by the developer is significantly less dense than could be allowed. On page 28 of the 2015 Decision and Order, the Township Board concludes that the site would allow a maximum of 73 units.

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) (Emphasis Added)

Additionally, on page 29, the Township Board sets a minimum lot area of 11,633 feet. **Nowhere in the Decision and Order is there contained a maximum number of allowable units.** On September 10, 2019, The Township Board approved Amendment #1. On May 10, 2022, the Twp approved Amendment #3. Amendment #2 was withdrawn by the developer.

The purpose of Amendment #4 is to provide on-site septic for Lot 24, perform lot line adjustments to units 25-29 and 41 and add unit 42.² The depth of units 25-29 is being reduced which has the effect of increasing the bluff area that is being preserved by 4,718 square feet. 4,652 square feet is being added to the existing lot 41 in order to create lot 42. The net effect is an increase of preserved open space by 66 square feet. All setbacks are preserved. Previously approved amendments, the proposed amendment, and any future amendments maintains the 65% open space, 1,500 lineal feet of undeveloped property along the water and maintains the minimum lot square footage.

The first standard identified as not being met is Section 8.1.3(1)(b). In finding that this standard has not been met, the proposed findings of fact state that “the 4th proposed amendment will increase density that will result in increased traffic, lighting, and noise as well as require an additional onsite septic system. These increases erode the substantial benefit that was achieved in the original

² A concern raised in previous meetings has been whether or not additional amendment will be sought. In all candor, as this development matures, more amendments may be sought.

SUP/PUD approval with 41 units.” As stated above, Amendment #4 adds an additional home constituting a nominal increase in the number of homes without impacting open space or minimum lot sizes³. To suggest that adding a home to an already approved 41 home development erodes the substantial benefit that was achieved in the original approval would necessarily mean that if anyone were to seek to add a unit or a new use to a proposed PUD it must be denied.

Specifically referenced as concerns are traffic, lighting, and noise as well as the additional onsite septic system. As it relates to the onsite septic system, it should be noted that the very next standard is that the proposal be served “adequately by essential facilities and services” including “water and sewage facilities”. Staff proposes that that standard has been met. Therefore, there appears to be an internal inconsistency in the proposed findings.⁴

As it relates to traffic, lighting, and noise, the developer would suggest that adding a home to a 41-home subdivision will create an imperceptible impact. It is not logical to suggest that an additional home constituting a “nominal” increase in the number of homes would be enough to tip the scales of the analysis against the developer in this case. Additionally, the fact that substandards d and e are deemed met, and their nature, suggests that substandard b has in fact been met.

When the Township Board addressed this particular standard in 2015, it made the following findings in leading up to concluding that the standard had 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 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)

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⁴ On August 11, 2023, the Grand Traverse County Health Department approved Lot 24 for an on-site wastewater system. **Exhibit 2.**

- 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)

On May 10, 2022, the Township Board approved Amendment #3. **Exhibit 3.** In doing so, it had the following to say about this standard:

The Township Board finds that the proposed amendments will not be hazardous or disturbing to existing or future uses as the area allows for residential development and has been developed with single-family residences. The spirit and intent of the original approval is also maintained with residential units clustered around larger tracts of open space. **Furthermore, the amendments are a substantial improvement as they preserve a view to the bay for the entire community to enjoy, increase the size of the open space in the southeast corner for the benefit of the entire development, and preserves a sensitive area of steep shoreline.** (Emphasis Added)

The net effect of this proposed Amendment is a substantial improvement and attractive. For the reasons stated above, the developer respectfully requests that the Planning Commission conclude that this standard has been met because the Township Board has already concluded that this development meets the substantial improvement requirement. Nothing in this amendment changes that conclusion.

Section 8.1.3(3)(c) is arguably a repeat of the analysis contained in Section 8.1.3(1)(b). Additionally, the Staff comment is that the “amendments do not conform to other requirements associated with the PUD per Section 8.3” without any further explanation. Informative is what the Township Board had to say about this standard in 2015:

- 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)

Nothing in the proposed amendment changes these conclusions. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has in fact been met.

It is suggested that the amendment does not comply with Section 8.1.3(3)(p) due to an alleged increase in 10 vehicle trips per day. If this were in fact a basis to reject the addition of a home to a parcel of property then the first home in any development must be rejected because its occupants will likely want to drive vehicles on the road. As stated above, a 2.4% increase in anything related to this development will likely go unnoticed by any of the residents and the Township. More importantly, there appears to be no evidence to support the implication that an additional 10 vehicle trips per day in this development will exceed the design standards of its streets as well as nearby public roads. This proposed amendment has been approved by the Township engineers and Fire Department.

Additional guidance on why this standard has been met can be found in the approval of Amendment #2 to 7 Hills Redevelopment SUP approved on May 23, 2023, and attached at Exhibit 4. In that Amendment, the Township Board approved increasing the restaurant/tavern capacity from 32 to 70, more than doubling it. Granted this is zoned commercial, but the standards for approval are the same. Seven Hills Road and Boursaw Road are very similarly situated. The impact that such an increase in capacity of the restaurant/tavern, with transient customers coming and going throughout the day, will be a much more significant than adding one more home with 10 more daily vehicle trips.

Finally, there appears to be a disconnect between the application of this standard to the amendment and the application of this standard to the original application. Nothing in the application is changing any parking in the development except adding additional parking capacity at the new residence. In the 2015 application review, the Township Board was more concerned with parking designed to accommodate the shared waterfront. In its Decision and Order, the Township Board had the following to say:

- 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.Z (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 offsite. (Planning Commission Exhibits 1 & 19)

This standard HAS been met. (6-0)

Nothing in this amendment alters parking at the shared waterfront.

Section 8.1.3(3)(s) lacks any evidence or findings as to why this amendment is not in accord with the spirit and purpose of the Ordinance beyond stating that it doesn't comply with 8.1.3(1)(b). As stated above in the discussion relating to that section, the Township Board has already concluded that this development meets that standard. Revisiting the 2015 Decision and Order by the Township Board, it concluded as follows:

- 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 Board recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-18) 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)

Nothing contained in Amendment #4 changes any of the analysis employed by the Township Board in 2015. Therefore, the developer respectfully requests that this standard be approved.

Standard 8.3.2(3) is intended to encourage developers to use a more creative and imaginative approach in the development. Staff suggests that the standard is not met because "the proposed amendments do not provide for a more creative and imaginative approach in the development of residential areas." In 2015, the Township Board had the following to say about this standard:

- 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)

In considering Amendment #3, the Township Board held as it related to this standard as follows:

To encourage developers to use a more creative and imaginative approach in the development of residential areas. The Township Board finds that the proposed amendments do not change the initial determination that the development offers a more creative and imaginative approach in the development of residential areas. Furthermore, the open space at the entrance of the development is improved, potential disturbance to steep shoreline is removed and the clustering of residential development sites around larger tracts of open space is maintained. The overall density allowed by the approved PUD is less than what could have been achieved using the standard land division process. Proposed amendments do not increase density or reduce the amount of open space being preserved.

Clearly, the Township Board concluded that the proposed PUD containing 41 units, preserving 65% of the property as open space and a 1,500 foot strip of undeveloped property along the water was a significant improvement over what would otherwise be allowed under a more traditional development proposal. It seems illogical to suggest that adding a home to this already approved development, having met this standard, and carrying on the design standards and traditions of the development, fails to meet this standard. Nothing in the proposed amendment should cause the township to all of a sudden conclude that this standard is no longer being met with the addition of a home and the adjustment of various lot lines. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Section 8.3.2(5) encourages a variety of physical development pattern in the township by providing a mixture of housing types. Staff recommends that this standard not be met because the amendment did not change the variety types, nor provide for a mixture of housing types. As stated above, this

analysis appears illogical given the findings of the Township Board back in 2015 and the benefits of this development. Is is also inconsistent with the findings in 2022 as it relates to Amendment #3:

To encourage variety in the physical development pattern of the Township by providing a mixture of housing types. The Township Board finds that the proposed amendments do not change the initial determination that the development offers a variety in the physical development patterns. Forty-one residential units were approved with 65% open space where 55 units with no associated open space could have been developed under the Land Division Act.

Again, it seems illogical to suggest that adding a unit, which is consistent with the design standards and layout of the already approved 41-unit development, fails to meet this standard. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Section 8.3.3(4) is allegedly not met because 41 units were approved. As stated above, the only standard imposed by the Township Board in the 2015 approval was that no lot shall be less than 11,633 square feet. While it is true that only 41 units were originally sought, it is not unusual to have amendments to a development when the space is available. The main selling points of this development being 65% open space, 11,633 square foot minimum lot size, as well as a 1,500 foot strip of property along the water all remain unchanged. Staff determined that 55 units could have been developed using standard land division process with no requirement for open space. This standard has clearly been met.

In approving Amendment #3, the Township Board stated:

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 (I). Forty-one units were approved and 41 units still exist as a result of requested amendments. Approximately 55 units could have been developed using the standard land division process with no requirement for open space. The Township Board finds that the proposed amendments do not change past determinations of equivalent density.

Again, it defies logic to suggest that 42 units are greater than 55 units and that this standard is not met. The developer acknowledges that with Amendment #4, density is increased, but only negligibly and in a way that clearly meets all requirements of the zoning ordinance. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Lastly, Section 8.3.3(7) is claimed to not be met. For all of the reasons set forth above, this standard has been met. In 2015, the Township Board determined that the 41-unit development met this standard. This is the only applicable standard that was addressed by the Township Board on December 12, 2017, in its Decision and Order on remand. **Exhibit 5.** On page 16 of that

Decision and Order, the Township Board again concluded that the requirements of this section had been met by the original development. On May 10, 2022, the Township Board states that "the proposed amendments do not change prior determinations that the proposed planned unit development meets the standards and requirements outlined in Section 8.3, Section 8.1. and Article VII. Neither should Amendment #4.

Attached to this letter is **Exhibit 6** is a copy of the January 23, 2017, Decision and Order by the Township Board approving SUP #127, Vineyard Ridge. For those unfamiliar with that application, the developer was proposing 47 units on 27.87 acres. In that instance, the Board concluded that 10% open space was sufficient, and the development was approved. On page 14 of the opinion, the Board concludes that the proposed 47-unit development was one less than the maximum of 48 units that could have otherwise been developed on the property. While we acknowledge that no two developments are exactly the same, it is hard to understand why the township is objecting to adding a unit to a 41-unit, 83-acre parcel that could sustain 73 units when it has already approved a 47 unit development on 27.87 acres that will support no more than 48 units in total. The reasoning behind the approval of the Vineyard Ridge development is supportive of the conclusion that Amendment #4 satisfies the applicable standards and should be approved by the Planning Commission and Township Board.

We look forward to meeting with the Planning Commission on November 20th and further explaining why Amendment #4 to the Peninsula Shores PUD #123 should be recommended for approval by the Planning Commission.

Very truly yours,



Todd W. Millar

TWM:krs

Enclosures

cc: Kyle O'Grady (via email)



November 13, 2023

Peninsula Township
Jenn Cram, Planner
13235 Center Rd
Traverse City, MI 49686

Via Hand Delivery



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

On May 10, 2022, the Township Board approved Amendment #3. **Exhibit 3.** In doing so, it had the following to say about this standard:

The Township Board finds that the proposed amendments will not be hazardous or disturbing to existing or future uses as the area allows for residential development and has been developed with single-family residences. The spirit and intent of the original approval is also maintained with residential units clustered around larger tracts of open space. **Furthermore, the amendments are a substantial improvement as they preserve a view to the bay for the entire community to enjoy, increase the size of the open space in the southeast corner for the benefit of the entire development, and preserves a sensitive area of steep shoreline.** (Emphasis Added)

The net effect of this proposed Amendment is a substantial improvement and attractive. For the reasons stated above, the developer respectfully requests that the Planning Commission conclude that this standard has been met because the Township Board has already concluded that this development meets the substantial improvement requirement. Nothing in this amendment changes that conclusion.

Section 8.1.3(3)(c) is arguably a repeat of the analysis contained in Section 8.1.3(1)(b). Additionally, the Staff comment is that the “amendments do not conform to other requirements associated with the PUD per Section 8.3” without any further explanation. Informative is what the Township Board had to say about this standard in 2015:

- 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)

Nothing in the proposed amendment changes these conclusions. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has in fact been met.

It is suggested that the amendment does not comply with Section 8.1.3(3)(p) due to an alleged increase in 10 vehicle trips per day. If this were in fact a basis to reject the addition of a home to a parcel of property then the first home in any development must be rejected because its occupants will likely want to drive vehicles on the road. As stated above, a 2.4% increase in anything related to this development will likely go unnoticed by any of the residents and the Township. More importantly, there appears to be no evidence to support the implication that an additional 10 vehicle trips per day in this development will exceed the design standards of its streets as well as nearby public roads. This proposed amendment has been approved by the Township engineers and Fire Department.

Additional guidance on why this standard has been met can be found in the approval of Amendment #2 to 7 Hills Redevelopment SUP approved on May 23, 2023, and attached at **Exhibit 4**. In that Amendment, the Township Board approved increasing the restaurant/tavern capacity from 32 to 70, more than doubling it. Granted this is zoned commercial, but the standards for approval are the same. Seven Hills Road and Boursaw Road are very similarly situated. The impact that such an increase in capacity of the restaurant/tavern, with transient customers coming and going throughout the day, will be a much more significant than adding one more home with 10 more daily vehicle trips.

Finally, there appears to be a disconnect between the application of this standard to the amendment and the application of this standard to the original application. Nothing in the application is changing any parking in the development except adding additional parking capacity at the new residence. In the 2015 application review, the Township Board was more concerned with parking designed to accommodate the shared waterfront. In its Decision and Order, the Township Board had the following to say:

- 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.Z (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 offsite. (Planning Commission Exhibits 1 & 19)

This standard HAS been met. (6-0)

Nothing in this amendment alters parking at the shared waterfront.

Section 8.1.3(3)(s) lacks any evidence or findings as to why this amendment is not in accord with the spirit and purpose of the Ordinance beyond stating that it doesn't comply with 8.1.3(1)(b). As stated above in the discussion relating to that section, the Township Board has already concluded that this development meets that standard. Revisiting the 2015 Decision and Order by the Township Board, it concluded as follows:

- 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 Board recognizes that this property is subject to allow residential development under the Rural and Hillside (R-1A) and Coastal Zone (R-18) 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)

Nothing contained in Amendment #4 changes any of the analysis employed by the Township Board in 2015. Therefore, the developer respectfully requests that this standard be approved.

Standard 8.3.2(3) is intended to encourage developers to use a more creative and imaginative approach in the development. Staff suggests that the standard is not met because "the proposed amendments do not provide for a more creative and imaginative approach in the development of residential areas." In 2015, the Township Board had the following to say about this standard:

- 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)

In considering Amendment #3, the Township Board held as it related to this standard as follows:

To encourage developers to use a more creative and imaginative approach in the development of residential areas. The Township Board finds that the proposed amendments do not change the initial determination that the development offers a more creative and imaginative approach in the development of residential areas. Furthermore, the open space at the entrance of the development is improved, potential disturbance to steep shoreline is removed and the clustering of residential development sites around larger tracts of open space is maintained. The overall density allowed by the approved PUD is less than what could have been achieved using the standard land division process. Proposed amendments do not increase density or reduce the amount of open space being preserved.

Clearly, the Township Board concluded that the proposed PUD containing 41 units, preserving 65% of the property as open space and a 1,500 foot strip of undeveloped property along the water was a significant improvement over what would otherwise be allowed under a more traditional development proposal. It seems illogical to suggest that adding a home to this already approved development, having met this standard, and carrying on the design standards and traditions of the development, fails to meet this standard. Nothing in the proposed amendment should cause the township to all of a sudden conclude that this standard is no longer being met with the addition of a home and the adjustment of various lot lines. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Section 8.3.2(5) encourages a variety of physical development pattern in the township by providing a mixture of housing types. Staff recommends that this standard not be met because the amendment did not change the variety types, nor provide for a mixture of housing types. As stated above, this

analysis appears illogical given the findings of the Township Board back in 2015 and the benefits of this development. Is is also inconsistent with the findings in 2022 as it relates to Amendment #3:

To encourage variety in the physical development pattern of the Township by providing a mixture of housing types. The Township Board finds that the proposed amendments do not change the initial determination that the development offers a variety in the physical development patterns. Forty-one residential units were approved with 65% open space where 55 units with no associated open space could have been developed under the Land Division Act.

Again, it seems illogical to suggest that adding a unit, which is consistent with the design standards and layout of the already approved 41-unit development, fails to meet this standard. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Section 8.3.3(4) is allegedly not met because 41 units were approved. As stated above, the only standard imposed by the Township Board in the 2015 approval was that no lot shall be less than 11,633 square feet. While it is true that only 41 units were originally sought, it is not unusual to have amendments to a development when the space is available. The main selling points of this development being 65% open space, 11,633 square foot minimum lot size, as well as a 1,500 foot strip of property along the water all remain unchanged. Staff determined that 55 units could have been developed using standard land division process with no requirement for open space. This standard has clearly been met.

In approving Amendment #3, the Township Board stated:

The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1. except as provided by Section 8.3.5 (1). Forty-one units were approved and 41 units still exist as a result of requested amendments. Approximately 55 units could have been developed using the standard land division process with no requirement for open space. The Township Board finds that the proposed amendments do not change past determinations of equivalent density.

Again, it defies logic to suggest that 42 units are greater than 55 units and that this standard is not met. The developer acknowledges that with Amendment #4, density is increased, but only negligibly and in a way that clearly meets all requirements of the zoning ordinance. Therefore, the developer respectfully requests that the Planning Commission conclude that this standard has been met.

Lastly, Section 8.3.3(7) is claimed to not be met. For all of the reasons set forth above, this standard has been met. In 2015, the Township Board determined that the 41-unit development met this standard. This is the only applicable standard that was addressed by the Township Board on December 12, 2017, in its Decision and Order on remand. **Exhibit 5.** On page 16 of that

Decision and Order, the Township Board again concluded that the requirements of this section had been met by the original development. On May 10, 2022, the Township Board states that “the proposed amendments do not change prior determinations that the proposed planned unit development meets the standards and requirements outlined in Section 8.3, Section 8.1. and Article VII. Neither should Amendment #4.

Attached to this letter is **Exhibit 6** is a copy of the January 23, 2017, Decision and Order by the Township Board approving SUP #127, Vineyard Ridge. For those unfamiliar with that application, the developer was proposing 47 units on 27.87 acres. In that instance, the Board concluded that 10% open space was sufficient, and the development was approved. On page 14 of the opinion, the Board concludes that the proposed 47-unit development was one less than the maximum of 48 units that could have otherwise been developed on the property. While we acknowledge that no two developments are exactly the same, it is hard to understand why the township is objecting to adding a unit to a 41-unit, 83-acre parcel that could sustain 73 units when it has already approved a 47 unit development on 27.87 acres that will support no more than 48 units in total. The reasoning behind the approval of the Vineyard Ridge development is supportive of the conclusion that Amendment #4 satisfies the applicable standards and should be approved by the Planning Commission and Township Board.

We look forward to meeting with the Planning Commission on November 20th and further explaining why Amendment #4 to the Peninsula Shores PUD #123 should be recommended for approval by the Planning Commission.

Very truly yours,



Todd W. Millar

TWM:krs

Enclosures

cc: Kyle O’Grady (via email)

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.

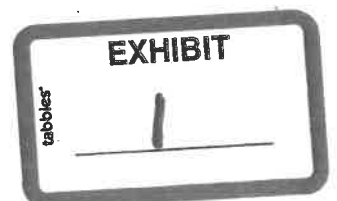
The Board having considered the Application, a public hearing having been held on May 18, 2015 before the Planning Commission and July 14, 2015 before the Township Board after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having 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)

August 11, 2015 Township Board



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

1.2 Action Request-

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

1.3 Zoning/Use-

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

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

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

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

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

MOTION PASSED (Rosi Opposed)

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

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

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

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

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

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

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

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

This standard HAS been met. (6-0)

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

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

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

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

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

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

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

This standard HAS been met. (6-0)

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

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

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

MOTION PASSED (6-0)

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

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

b. To provide open space options.

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

This standard HAS been met. (6-0)

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

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

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

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

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

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

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

This standard is NOT APPLICABLE.

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

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

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

This standard HAS been met. (6-0)

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

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

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

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

This standard HAS been met. (6-0)

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

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

This standard HAS been met. (6-0)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This standard HAS been met. (6-0)

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

Conditions:

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

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

MOTION PASSED

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

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

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

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

2. Ban Sky Lanterns

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

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

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

4. Villa Mari – Natural Disaster Relief Request

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

MOTION PASSED

5. Research New Phone System – Verbal

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

6. Discussion Regarding Placement of Boat Dock

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

7. Brush Pick-up

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

8. American Waste Contract

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

CITIZEN COMMENTS

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

BOARD COMMENTS

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

Weatherholt said the flag pole needs to be replaced.

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

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

MOTION PASSED

Respectfully Submitted,
Deb Hamilton, Recording Secretary

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

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

SPECIAL USE PERMIT
EXHIBIT LIST

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

October 25, 2017

1. Peninsula Township Board's Decision and Order Regarding SUP #123 dated 8/11/15
2. Supplemental Information submitted by Mansfield Land Use Consultants dated 8/16/17
3. Email from Grand Traverse County Road Commission dated 6/10/17
4. Plan sets updated to include an Emergency Access Road Revised 7/8/16 and East 81 Road widened to 26' Revised 9/7/16
5. Meeting Notes regarding meeting between Township Planner (Hayward) and Township Fire Chief (Rittenhouse) dated 10/26/16
6. Notes from meeting between Township Engineer (Boals) and Township Planner (Hayward) dated 11/10/16
7. Township Engineer Brian Boals' letters to former Township Planner, Michelle Reardon dated 3/8/16, 3/15/16, 8/15/16, and 9/27/16
8. Ron Taylor Fire Code Compliance Reports of 7/26/16, 8/15/16, 10/11/16 and Taylor's Curriculum Vitae
9. Proposed Grand Traverse County Road Name and related email dated 10/28/2016
10. Otwell Mawby letter to D. Mansfield dated 10/26/16 re: "Slope Stability Reconnaissance, G15-118"
11. Letter from Brian Boals to Township Planner Hayward dated 10/18/16 re: "Review of Revised East Road Design/Open Space Calculations"
12. Budget Report for Peninsula Township Fire Fund – Calculations as of 03/31/2016
13. E-mail from Peninsula Township Fire Chief Randy Rittenhouse dated 11/1/16 discussing Fire Code (Chapter 5) applied to fire apparatus access roads
14. Memo from Township Planner to Township Board dated 11/10/16 re: "Locked Emergency Access Gates"
15. Letter from Brian Boals to Township Planner Hayward dated 11/10/16 re: "Review of Fire Lane Plan"

16. Letters from Township Fire Chief Randy Rittenhouse to former Township Planner Reardon dated 8/9/16 and 8/16/16
17. Soil Erosion and Sedimentation Control Permit with Conditions; Issued May 9, 2016;
Amended on August 22, 2016 re Fire Road; Amended on September 19, 2016 re widening E 81; renewed on May 9, 2017 (Expires on May 9, 2018)
18. Wetland Delineation Report by GEI Consultants of Michigan, PC dated 6/15/15
19. Daniel Thorell email dated 2/18/15 to former Planner Reardon
20. Daniel Thorell e-mail dated 3/10/15 to former Planner Reardon
21. Letter from Robyn Schmidt, MDEQ Water Resources Division, dated 3/5/15
22. Letter from Charles M. Simon, US Department of Army Corps of Engineers, dated 7/21/15
23. Ron Taylor Report dated 11/16/16 re: "Relocating Fire Access Apparatus Access Road"
24. Letter from Doug Mansfield dated 11/16/16 re: "Response to the November 17, 2016 Findings of Fact for SUP #123"
25. Otwell Mawby letter dated 1/16/17 regarding discussion of 8.1.3(3)(k)
26. Brian Boals letter dated 1/31/17 to Township Planner Brian VanDenBrand regarding Review of Site Environmental Concerns
27. Phase II Environmental Assessment for Habrecht Property (Vineyard Ridge) dated 12/23/09 prepared by Otwell Mawby, PC
28. Baseline Environmental Assessment and Section 7A Compliance Analysis for Habrecht Property (Vineyard Ridge) dated 2/15/10 prepared by Otwell Mawby, PC
29. Environmental Summary of Habrecht Property (Vineyard Ridge) prepared by Otwell Mawby, PC submitted to the Township Board on April 25, 2017
30. Decision and Order dated 4/25/17 regarding Special Use Permit #127 (Vineyard Ridge)
31. Decision and Order on Appeal dated 1/15/16 issued by the Hon. Philip E. Rodgers, Jr.
32. Email from James Young to James Harless (SME) dated 3/2/17 regarding Township's historical interpretation of 8.1.3(3)(k)
33. Soil Assessment Report, Review and Professional Opinion of Andrew Smits, PE dated 9/5/17
34. Soil Assessment prepared by Otwell Mawby, PC (Roger Mawby) dated 8/29/17
35. Transcript from hearing before Judge Thomas Power, 13th Circuit Court Judge, on 6/21/17
36. Memo from D. Mansfield dated 6/19/17 regarding Project comparison of Vineyard Ridge PUD/SUP to The 81 on East Bay PUD/SUP

37. Peninsula Township Board Meeting Minutes dated 4/25/17
38. Peninsula Township Board Meeting Minutes from 8/11/15
39. Peninsula Township Board Meeting Minutes from 11/17/16
40. Phase I Environmental Site Assessment of the 81 property dated 4/24/14
41. Letter from Grand Traverse County Soil Erosion – Sedimentation Control (SESC) Department dated 1/23/15 requesting grading and stabilization plan for steep slopes
42. MDEQ's file for OM RE, LLC's Petition for Baseline Environmental Assessment Determination
43. Letter from James Harless (SME) to Brian Boals dated 3/15/17
44. Letter from James Harless (SME) to Timothy Wilhelm dated 8/8/17
45. Letter from Brian Etzel to Timothy Wilhelm dated 10/12/17
46. Email from Brian Boals to James Harless dated 2/10/17, including Jim Young's suggested language for "expanded review" regarding adverse impact
47. Email from Brian VanDenBrand to Dusty Christensen and D. Mansfield dated 4/25/17 regarding "Previous EAs for Vineyard Ridge."
48. Email from Jim Young to David Rowe dated 2/14/17 regarding "81 & environmental testing ..."



August 11, 2023

Re: Suitability of On-Site Wastewater Disposal System, Lot 24, Peninsula Shores Condo Development

On August 1st, 2023, the Grand Traverse County Environmental Health Department met O'Grady Development Co. at Lot 24 in Peninsula Shores Site Condo Development to assess Lot 24's suitability for an on-site wastewater disposal system. Currently, this parcel is approved as part of the community septic system. O'Grady Development Co. is requesting that this parcel be approved for an on-site septic system instead of hooking to the community septic system. A perk test was completed on August 1st, 90 ft east of Waters Edge Dr centerline and 70 ft north of the southern lot line. Soil conditions were found to be 12 inches of topsoil followed by 60 inches of loamy sand. The soils were found to be suitable for on-site wastewater disposal. The well on Lot 23 is located on the southeast portion of the property, and thus, the septic system on Lot 24 will be required to be on the western portion of the lot with the well on the eastern portion of the lot in order to meet the 50 ft minimum isolation distance between the septic system and the well. Lot 24 is approved by Grand Traverse County Environmental Health Department for on-site wastewater disposal.

A handwritten signature in black ink that reads "Brent Wheat".

Brent Wheat

Environmental Health Director



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

**Special Use Permit (SUP)/Planned Unit Development (PUD) Amendment
FINDINGS OF FACT AND CONDITIONS**

**SUP #123, Amendment #3 - Peninsula Shores (Formerly The 81) PUD Condominium Subdivision
May 10, 2022**

PENINSULA TOWNSHIP BOARD

Applicant: The 81 Development Company, LLC
Kevin and Kyle O'Grady, Owners

Hearing Date(s): Planning Commission: December 20, 2021 (Introduction), January 24, 2022 (Public Hearing), February 28, 2022 (Public Hearing Continued) and March 21, 2022 (Findings of Fact and Conditions)

Township Board: May 10, 2022

PROPERTY DESCRIPTION

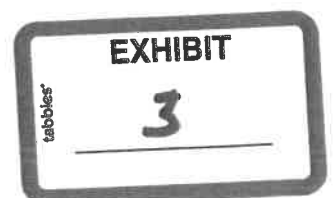
Parcel ID#: 28-11-609-001-00 through 28-11-609-041-00 and 28-11-609-900-00
Total Acreage: ~81-acres
Property Address: Waters Edge Drive and Shoreline Court
Zoning: R-1A - Rural and Hillside Residential & R-1B - Coastal Zone Residential
Adjacent Zoning: R-1A - Rural and Hillside Residential to the north and west (northwest corner = A-1 - Agricultural), R-1B - Coastal Zone Residential to the south and East Grand Traverse Bay to the east

Water: Individual Wells
Sewage Disposal: Community Septic Facility and Individual On-site Septic Systems
Access: Water's Edge Drive via Boursaw Road

INTRODUCTION AND BACKGROUND

On August 11, 2015, the Township Board approved an application for a Special Use Permit (SUP #123) for a Planned Unit Development (PUD) to build a 41-unit residential condominium development with 65% private open space located off of Boursaw Road. The approval was subject to ten conditions of approval. Subsequent court proceedings led to another project approval pursuant to action taken by the Township Board on January 23, 2018. This review and approval was specific to grading, soil erosion and storm water plans, and an emergency access road only. There were two additional conditions of approval added to the original approval from 2015.

On September 10, 2019, the Township Board approved the first amendment to SUP #123 that included shifting the private road (currently Shoreline Court) to the west that enlarged Units 5-9, adjusting the lot widths of Units 1-9 to be more uniform, eliminating the landscaped area along the private road to enlarge Units 4 and 10, reducing the lot size of Units 11-28 along the easterly side to meet the 65% open space requirement, and realigning the emergency access to the south.



The 81 Development Company has submitted an application and supporting materials attached as *(EXHIBIT 1)* to amend the approved SUP #123 that will amend the configuration of the approved PUD. This will be the third amendment, as the second amendment was withdrawn. The current request for Amendment #3 is summarized below.

1. Relocate Unit 1 from the southeast corner of the development to the northwest corner of the development.
2. Remove Parcel A from the SUP. This eliminates the lakefront access for existing Unit 1 in the southeast corner.
3. Modify a sanitary easement on Unit 6.
4. Adjust the lot lines of Units 38-41.

The Planning Commission recommended approval of the proposed amendments at their regular meeting on March 21, 2021. Minutes from that meeting are available on the Township website.

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

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

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

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

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

The Peninsula Shores Planned Unit Development (PUD) was approved for 41 single-family residential units with 65% open space. The requested amendment does not increase the proposed density of the development nor decrease the amount of the development that will be used as private open space. Thus, the proposed use of the property for single-family residences does not change as a result of the requested amendments to modify the configuration of the PUD.

The PUD process allows for flexibility in the physical development pattern in exchange for preserving open space. Had the property utilized the standard land division process the total density allowed on the ~81 acres was estimated at 55 units with no requirement to preserve

any open space. Per Section 8.3.2. one of the objectives of a PUD is to cluster the location of residential uses. As such, the approved development generally clustered the 41 residential units around the perimeter of a large tract of open space located centrally on the property. Open space was also maintained along the eastern side of the property to preserve an area of steep shoreline. Both locations of Unit 1, existing and proposed are located slightly outside of the cluster on the perimeter of the development. Relocating Unit 1 to the northwest corner is therefore negligible. Please see (*EXHIBIT 2*) prepared by staff that demonstrates how residential units are clustered around the larger tracts of open space.

In addition, the minimum setback for any new residence on Unit 1 as proposed in the northwest corner is 60-feet (30-foot PUD buffer + 30-feet from property line to building envelope), where 30 feet is the required rear setback in both the R-1A and R-1B zone districts. The applicant has also proposed to plant 6 evergreen trees within the northern 30-feet to provide a buffer to adjacent residences to the north. A condition of approval proposed by the Planning Commission on March 21st increased this buffer to a double row of mature evergreen trees to be planted eight to ten feet on center. The applicant has not objected to the condition.

The appearance of the PUD will not change substantially as viewed from the water or surrounding area as the elevation of any proposed residence will be similar to the surrounding area based on the approved grading plan and cross section provided by the applicant as part of (*EXHIBIT 1*). The high point in the northwest corner of the property and at the cul-de-sac at the end of Trevor Road is roughly at the elevation of 765. Any proposed residence will be consistent in elevation to the surrounding area. A condition of approval is included that no fill shall be used when siting the new residence and the finished floor elevation of the proposed residence shall be no greater than two feet above existing natural grade. The intent of this condition of approval is to site any new residence into the existing topography and not have a residence that towers over the other residences in the area.

The Township Board finds that the proposed amendments as summarized above, including the request to relocate Unit 1 from the southeast corner of the development to the northwest corner of the development, are harmonious and appropriate in appearance with the existing character of the general vicinity because single-family residential uses are allowed in the area and currently developed. Furthermore, the larger blocks of open space are still preserved and enhanced. A generous buffer between compatible residential uses is also proposed.

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

The proposed amendments will not change the overall character of the previously approved PUD. Therefore, the proposed amendments would not be hazardous or disturbing to existing or future uses in the same general vicinity, as a residential use adjacent to another residential use is compatible. Eliminating Parcel A from the development also minimizes potential disturbance to the shoreline.

The approval of the PUD allowed for the development of 41 residential units with the preservation of 65% open space. The density of residential development within the approved PUD does not change and therefore the intensity of the residential uses within the development remains the same. No additional disturbance is anticipated other than what is standard for the construction of one single-family residence.

Furthermore, a thorough soil analysis was conducted as part of the original approval process and air monitoring was performed by a third-party consultant during the initial site grading for the development. A summary of the environmental monitoring that was conducted is provided in *(EXHIBIT 3)*. Staff asked the consultant Roger Mawby, PE of Otwell Mawby PC if they anticipated that normal construction of a single-family residence would present any additional concerns and received the following response. *"Regarding construction of a single-family residence, if normal dust suppression and storm water management practices are instituted, they should be effective in preventing soil/dust from leaving the construction site. Dust suppression and storm water management were the techniques utilized in the mass grading phase of the development. Opacity testing and perimeter air monitoring testing completed during construction indicated that these methods were effective in managing particulates from leaving the property."* Staff has included a condition of approval that a Land Use Permit be obtained prior to construction of any new residence within the PUD that covers standard permitting for dust suppression, soil erosion and storm water management.

Section 8.3.2. encourages developers to use a more creative and imaginative approach in the development of residential areas. Relocating Unit 1 to the northwest corner creates a larger block of open space at the primary entrance to the development and preserves a view to the bay. This creates a more desirable and usable open space area for the development as opposed to being tucked in the northwest corner detached from the other open space areas. In addition, the existing access to the shoreline that is attached to the existing location of Unit 1 shown as Parcel A is eliminated. This removes potential disturbance to steep slopes along the shoreline.

The Township Board finds that the proposed amendments will not be hazardous or disturbing to existing or future uses as the area allows for residential development and has been developed with single-family residences. The spirit and intent of the original approval is also maintained with residential units clustered around larger tracts of open space. Furthermore, the amendments are a substantial improvement as they preserve a view to the bay for the entire community to enjoy, increase the size of the open space in the southeast corner for the benefit of the entire development, and preserves a sensitive area of steep shoreline.

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

The Township Board finds that the proposed amendments to the SUP/PUD will not materially change essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools, as previously defined in the original PUD approval.

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

The Township Board finds that the proposed amendments to the approved SUP/PUD will not create any additional requirements at public cost for public facilities and services.

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

The Township Board finds that the proposed amendments to the approved PUD will not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors. Nor is it anticipated that there will be any negative impacts from particulates leaving the property with proper dust suppression and storm water management practices that are required as part of the issuance of a land use permit for each individual residential unit to be constructed within the development.

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

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

- (a) *That the applicant may legally apply for site plan review.* The 81 Development Company as the property owner and developer/applicant may legally apply for an amendment to the SUP and PUD to amend the site plan.
- (b) *That all required information has been provided.* The Township Board finds that the application for the requested amendments to be complete along with additional requested information to assist staff, Planning Commission and the Township Board of Trustees with their analysis of the proposed amendments.

- (c) ***That the proposed development conforms to all regulations of the zoning district in which it is located.*** The Township Board finds that all existing approved uses and proposed amendments conform to the requirements of the R-1A and R-1B zone districts. The Township Board also finds that the requested amendments conform to the requirements associated with a PUD per Section 8.3 as discussed in detail below.
- (d) ***That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.*** The Township Board finds that the proposed amendments to the development conform to the requirements associated with a PUD per Section 8.3. There are no changes proposed that will impact fire and police protection, water supply, storm drainage or other public facilities and services. The proposed amendment to the sanitary easement on Unit 6 does not impact adequate sewage disposal or treatment.
- (e) ***That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.*** The Township Board finds that the proposed amendments to the SUP/PUD meet requirements or standards of other governmental agencies consistent with the original approval and subsequent amendment.
- (f) ***That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.*** The Township Board finds that the proposed amendments do not negatively impact prior approvals with respect to natural resource preservation. The open space for the development continues to meet the 65% requirement. The proposed relocation of Unit 1 to the northwest corner improves the open space at the entrance of the development and minimizes disturbance to a sensitive area with steep slopes.
- (g) ***That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.*** The Township Board finds that the proposed plan amendments do not impact flood ways and flood plains.
- (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.*** The Township Board finds that the proposed amendments do not impact prior approvals with respect to soil suitability.
- (i) ***That the proposed development will not cause soil erosion or sedimentation problems.*** The Township Board finds that the proposed amendments do not negatively impact prior approvals with respect to soil erosion or sedimentation. A condition of approval is proposed that requires that the applicant receive a Land Use Permit prior to construction that covers these items.

- (j) ***That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.*** The Township Board finds that the proposed amendments do not negatively impact prior approvals with respect to stormwater. Again, a condition of approval has been proposed that requires that the applicant receive a Land Use Permit prior to construction of a single-family residence on Unit 1 that covers storm water management. The Director of Zoning confirms that all required permits from Grand Traverse County have also been obtained that also includes soil erosion and sedimentation control.
- (k) ***That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.*** The Township Board finds that the proposed amendments will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties with regard to grading and filling. The underlying zoning allows for residential uses and the PUD as approved allowed for 41 residential units within the development. Construction of a single-family residence is normal for areas that allow for residential uses. A condition of approval is proposed that notes that no fill will be allowed and sets a reasonable finished floor elevation with existing natural grade. The area where Unit 1 is proposed to be relocated has a gradual slope and contains no mature tree stands that will be removed. The applicant has proposed a buffer of evergreen trees along the northern property line as well to improve the character of the area.
- (l) ***That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.*** The Township Board finds that the proposed amendments will not disrupt air drainage systems necessary for agricultural uses.
- (m) ***That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.*** The Township Board finds that the proposed amendments will not impact any project phasing.
- (n) ***That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.*** The Township Board finds that the proposed amendments will not change plans to expand existing facilities such as public streets, drainage systems and water sewage facilities.
- (o) ***That landscaping, fences or walls may be required by the Town Board and Planning Commission in pursuance of the objectives of this Ordinance.*** The Township Board finds that the proposed amendments will not change any requirements for fences or walls.
- (p) ***That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.*** The Township Board finds that the proposed amendments will not adversely affect the flow of traffic within the site, or to and from adjacent streets.

- (q) *That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.* The Township Board finds that the proposed amendments will not change vehicular and pedestrian traffic flow within the development. Eliminating Parcel A improves pedestrian circulation by minimizing disturbance to a sensitive area with steep slopes.
- (r) *That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.* The Township Board finds that the proposed amendments will not change plans for addressing outdoor storage of garbage and refuse.
- (s) *That the proposed site is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.* The Township Board finds that the proposed amendments are in accordance with the spirit and purpose of this Ordinance and past approvals of the SUP/PUD.

SECTION 8.3 PLANNED UNIT DEVELOPMENTS

FINDINGS – 8.3.2 OBJECTIVES

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

1. *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.* The Township Board finds that the proposed amendments do not change the initial determination that the project creates a 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. This is accomplished by clustering the residential development sites around large tracts of open space that meet the 65% requirement.
2. *To provide open space options.* The Township Board finds that the proposed amendments do not change the intent of open space areas being preserved. The relocation of Unit 1 to the northwest corner of the development improves open space at the entrance of the development and a view to the bay. Proposed amendments do not require the removal of mature tree stands.

3. ***To encourage developers to use a more creative and imaginative approach in the development of residential areas.*** The Township Board finds that the proposed amendments do not change the initial determination that the development offers a more creative and imaginative approach in the development of residential areas. Furthermore, the open space at the entrance of the development is improved, potential disturbance to steep shoreline is removed and the clustering of residential development sites around larger tracts of open space is maintained. The overall density allowed by the approved PUD is less than what could have been achieved using the standard land division process. Proposed amendments do not increase density or reduce the amount of open space being preserved.
4. ***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.*** The Township Board finds that the proposed plan amendments do not change the initial determination that the development offers a more efficient and aesthetic use of open areas. The Township Board further finds that the proposed amendments are a substantial improvement to the designated open space as the size of the open space in the southeast corner of the development is increased for the benefit of the entire development and preserves a sensitive area of steep shoreline.
5. ***To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.*** The Township Board finds that the proposed amendments do not change the initial determination that the development offers a variety in the physical development patterns. Forty-one residential units were approved with 65% open space where 55 units with no associated open space could have been developed under the Land Division Act.
6. ***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.*** The Township Board finds that the proposed amendments do not change the initial determination that the development locates the allowed number of housing units on the residentially zoned property in clusters which are suitable for residential use and keeps the remaining open space protected from development with residential uses. The 41 units are clustered around two large tracts of open space.

FINDINGS – 8.3.3 QUALIFYING CONDITIONS

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

1. ***The planned unit development 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.*** The Township Board finds that the development area is still far more than 20 acres in size at ~81 acres.

2. ***The planned unit development project shall be located within a Residential or Agricultural District, or a combination of the above Districts.*** The Township Board finds that the development area remains residential (R-1A and R1-B) and has an approved PUD that allows the development of 41 residential units by virtue of past approvals.
3. ***Water and waste disposal shall comply with the Township Master Plan and be approved by Grand Traverse County or State of Michigan requirements.*** The Township Board finds that the proposed amendments do not change past approvals of water and waste disposal systems.
4. ***The proposed density of the planned unit development shall be no greater than if the project were developed with the lot area requirements of the particular zone district or districts in which it is located subject to the provisions of Section 8.1, except as provided by Section 8.3.5 (1).*** Forty-one units were approved and 41 units still exist as a result of requested amendments. Approximately 55 units could have been developed using the standard land division process with no requirement for open space. The Township Board finds that the proposed amendments do not change past determinations of equivalent density.
5. ***Open space shall be provided according to Section 8.3.6.*** The Township Board finds that the proposed plan amendments positively change the open space configuration such that a larger tract of open space is provided at the entrance of the development.
6. ***For purposes of this Section 8.3, Open Space does not include building envelopes, parking lots and roads (roadbed width plus two (2) foot shoulders on each side).*** The Township Board finds that the proposed amendments do not include building envelopes, parking lots and roads within the designated 65% open space.
7. ***The proposed planned unit development shall meet all of the standards and requirements outlined in this Section 8.3 and also Section 8.1. and Article VII.*** The Township Board finds that the proposed amendments do not change prior determinations that the proposed planned unit development meets the standards and requirements outlined in Section 8.3, Section 8.1. and Article VII.

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township and other governmental regulations relative to the establishment for property zoned R-1A - Rural and Hillside Residential and R-1B - Coastal Zone Residential, with the above permitted use(s) on site as approved by the PUD, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing special land use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

APPROVAL CONDITIONS AND SAFEGUARDS:

Conditions and Safeguards: The Township Board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions include:

1. All prior findings, conditions and safeguards imposed by the Circuit Court and the Peninsula Township Board of Trustees that apply to this amendment remain in effect.
2. A landscape plan shall be submitted to the Director of Planning for approval that includes a double row of evergreen trees a minimum of 8-feet tall at planting that are spaced eight to ten feet on center to be located in the 30-foot PUD buffer north of Unit 1 prior to issuance of a Land Use Permit.
3. The easement from the former Unit 1 to the shoreline shall be sold to an adjacent property owner and/or extinguished.
4. Approval of a Land Use Permit is required prior to any construction of residential units within the development. Such Land Use Permit will include review and approval of dust suppression, storm water management, soil erosion control, and Grand Traverse County Environmental Health requirements.
5. No fill shall be placed on Unit 1. The single-family residence shall be sited to utilize the existing topography of the lot. The finished floor elevation of the residence on Unit 1 shall be no greater than two feet above the existing grade elevation of approximately 765.
6. The Master Deed shall be updated to be consistent with the approved amendments.

COMMENCEMENT AND COMPLETION

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use and accompanying site plan are enforceable and remedies available under Section 4.2 of the zoning ordinance.

TOWNSHIP BOARD FINDINGS:

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

RECOMMENDATION:

Staff and the Planning Commission recommend that the Township Board of Trustees approve the Peninsula Shores PUD, SUP #123, Amendment #3 based on the Findings of Fact and six conditions of approval.

SUGGESTED MOTION:

I move that we the Township Board of Trustees approve the Peninsula Shores PUD, SUP #123, Amendment #3 based on the Findings of Fact and six conditions of approval.

EXHIBITS:

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

EFFECTIVE DATE OF SPECIAL LAND USE:


The special land use permit for the Peninsula Shores PUD, SUP #123, Amendment #3 shall be effective when the application has been approved by the Peninsula Township Board of Trustees, subject to the above conditions. The board approves by a vote of:

AYES
NAYS
ABSTAINING
ABSENT

11/1
1/1
1/1
1/1

The undersigned hereby certifies that she is the clerk for the township of Peninsula, Grand Traverse County, Michigan, and that the foregoing special use permit was approved by the Peninsula Township Board of Trustees on May 10, 2008.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

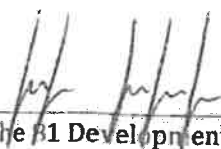

Rebecca Chown, Peninsula Township Clerk

Approved by the Peninsula Township Board on May 10, 2008


Rob Manigold, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF.

I hereby acknowledge that I have received a true copy of the special land use permit and I have been informed of said requirements of this special land use permit and of the requirements of the Peninsula Township Zoning Ordinance.



The B1 Development Company, LLC
Kyle O'Grady
901 S Garfield, Suite 202,
Traverse City, MI 49686

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

SPECIAL USE PERMIT (SUP)
FINDINGS OF FACT AND CONDITIONS
SUP #35, Amendment #2 - 7 Hills Redevelopment
May 23, 2023

PENINSULA TOWNSHIP BOARD

Applicant: OMP Seven Hills Development, LLC – (Troy Daily, Jay Milliken and Jordan Valdmanis)
13795 Seven Hills Road
Traverse City, Michigan 49684

Hearing Date(s): November 21, 2022 – Introduction to Planning Commission
December 19, 2022 – Public Hearing with Planning Commission
March 6, 2023 – Draft Findings of Fact and Conditions at Planning Commission
April 11, 2023 – Public Hearing with Township Board
May 9, 2023 – Public Meeting with Township Board
May 23, 2023 - Public Meeting with Township Board

PROPERTY DESCRIPTION

Parcel ID#: 28-11-128-002-00
Property Address: 13795 Seven Hills Rd
Zoning: C-1 Commercial District

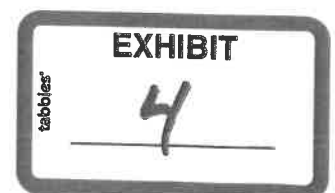
GENERAL INTRODUCTION AND BACKGROUND

Special Use Permit (SUP) #35 was approved on February 9, 1993. The original approval included four buildings for various professional offices and related storage.

The first amendment to SUP #35 was approved on May 11, 2021. The approval of amendment #1 was for a redevelopment of the property that reduced the total number of buildings to two. The uses approved within the two buildings included a restaurant/tavern in the front or eastern building and retail, offices, and storage in the back or western building, along with associated parking, drainage facilities, lighting and landscaping.

The applicants have requested a second amendment to expand the capacity of the restaurant/tavern from 32 to 70 and to allow outdoor uses in a defined area that includes seating, consumption of food and beverages,

DRAFT _ TOWNSHIP BOARD – May 23, 2023



yard games such as corn hole, fitness classes and gatherings. Proposed outdoor uses may utilize amplified sound.

The subject property is zoned C-1 and is 2.05 acres. The property has an existing improved access from Seven Hills Road.

All previously approved and proposed uses are allowed within the C-1 zone district with the approval of a Special Use Permit.

The submitted application (as revised) is included in **EXHIBIT 1**.

SECTION 8.1.3 BASIS FOR DETERMINATIONS

FINDINGS - SECTION 8.1.3 (1) GENERAL STANDARDS

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

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

The character of the area surrounding the subject property is generally agricultural and rural residential in nature. The land directly adjacent to the subject property is mostly wooded, and Bowers Harbor Vineyard is located to the north and west.

This site has been commercially zoned since the Township adopted its zoning district map and has been utilized with allowed commercial uses.

The buildings meet required setbacks for the C-1 zone district. The proposed architecture, parking areas and landscaping are attractive. The previously approved and proposed indoor uses should not negatively impact adjacent properties. The proposed outdoor uses have the potential to negatively impact neighbors with regard to light and noise. Negative lighting impacts can be minimized with an approved lighting plan under Section 7.14 of the Zoning Ordinance, and negative noise impacts can be minimized by following Noise Ordinance #40, as amended, along with the establishment of reasonable hours of operation.

The applicants have noted that they intend to abide by all requirements of the Peninsula Township Noise Ordinance as amended. In addition, they have proposed that outdoor uses will be conducted during winter hours Sunday – Thursday until 9 p.m. and Friday-Saturday until 10 p.m. Summer hours for outdoor uses are proposed to be Sunday – Thursday until 10 p.m. and Friday-Saturday until 11 p.m.

Staff have investigated the hours of operation for other commercial restaurant/taverns with outdoor seating and/or uses on the peninsula and found that most close by 9 pm both winter and summer. Staff understands that the property is zoned C-1 and commercial uses are permitted, but because this property is surrounded by rural residential uses there is a concern that later hours for outdoor uses have the potential for noise to be disturbing to neighbors and not be harmonious with the surrounding area. Please see the attached aerial with the distance of surrounding residential uses for reference, attached as EXHIBIT 2.

The Planning Commission discussed the proposed hours of operation for outdoor uses at a special meeting on March 6, 2023. Minutes from that meeting are attached for reference, attached as EXHIBIT 3. The Planning Commission unanimously approved a motion to recommend approval of the requested amendment with a condition that the hours of operation for outdoor uses cease at 10 p.m. seven days a week and that the applicants abide by the Noise Ordinance as amended.

- 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.

As noted above the proposed project will be attractive. There is no concern with the approved uses conducted indoors. The hours of operation for outdoor uses have been addressed with a recommended condition of approval.

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

The proposed uses will be served adequately by essential services. The proposed uses do not place any additional burden on adjacent roadways, public emergency services, public utilities, or schools, as proposed by the Applicant and with additional mitigation measures noted below.

A detailed analysis on traffic generation was performed by Fleis & Vandenbrink during the review process of the first amendment in 2021. A condition of approval was included and will carry forward that notes that the OMP Seven Hills Development, LLC understands, agrees and acknowledges that as part of the board's approval of the requested amendments that at any time it is determined by Peninsula Township that the impact and/or intensity of the use of the roads to and from the subject site has increased in a meaningful way that they will pay for an additional traffic study and work with the township to reasonably mitigate and/or relieve the impact of the increased intensity to the roads to and from the subject site.

The Fire Department has conducted a site inspection and noted that they do not have concerns with the proposed increase in capacity and outdoor uses, provided that all of the requirements noted in their letter from the first amendment approval, dated February 10, 2021, have or will be met. (EXHIBIT 4). Compliance with Fire Department requirements is included as a proposed condition of approval.

The Grand Traverse County Health Department has reviewed the proposed increase in capacity and outdoor uses and has noted that the maximum number of patrons for the restaurant/tavern both indoors and outdoors is appropriate for the capacity of the on-site septic system as currently designed (EXHIBIT 5). The applicants hold a Michigan Liquor Control Commission (MLCC) manufacturer license, but they have asserted in testimony before the Township Board and a letter to the Township Board that actual manufacturing will not occur on site, due in some part to the septic system being inadequate for such a use. Continued compliance with current Health Department requirements is dependent on the absence of any manufacturing use related to the MLCC license and is included as a proposed condition of approval.

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

The revised site plan dated February 15, 2023, provides the required number of parking spaces (55) for all uses on the property. However, the Planning Commission noted concerns with parking overflow onto Seven Hills Road. Staff reached out to the Grand Traverse County Road Commission to see if no parking signs could be placed on Seven Hills Road at the owners' expense to discourage this. Unfortunately, the Road Commission noted that this can only be accomplished if there is documented proof that there is an ongoing issue with cars parking on the roadway (EXHIBIT 6). Staff discussed placing signage near the exit of the property to encourage their patrons to come back another time if parking is full, as no parking on the road is allowed and people will be ticketed and towed. The applicants are agreeable to this action and a proposed condition of approval has been included.

With proposed signage in place, the Applicants are doing their best to minimize the potential impact on the local road system and need for enforcement. Thus, the proposed uses do not increase the need for public facilities or services.

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

As stated above, the applicants hold a MLCC manufacturer license, which could create the potential for harmful fumes or odors if manufacturing took place at the facility under a MLCC license. The applicants, however, have agreed to refrain from MLCC license-based manufacturing on site, which is fundamental to ensuring the absence of offensive fumes and/or odors. Based upon applicants' agreement, the proposed uses do not include uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare, or odors.

Storage accessory to the uses on the property is proposed. A condition of approval is that all storage of materials on-site comply with all applicable local ordinances, County ordinances, OSHA regulations, EPA regulations, the International Fire Code, and state of Michigan regulations including but not limited to EGLE and MLCC regulations.

FINDINGS - SECTION 8.1.3(3) SPECIFIC REQUIREMENTS:

Specific Requirements. In reviewing an impact assessment and site plan, the town board and the planning commission shall consider the following standards:

- (a) That the applicant may legally apply for site plan review.
The Assessor's records show that the applicants are the owners of the subject property and may apply for an amendment to the SUP.
- (b) That all required information has been provided.
All required information is provided as part of this application. (EXHIBIT 1).
- (c) That the proposed development conforms to all regulations of the zoning district in which it is located.
The proposed development conforms to regulations of the C-1 zoning district, subject to the conditions of approval noted on pages 7 and 8.
- (d) That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services.
Gourdie Fraser Engineers has reviewed the submitted plans for compliance with storm water control regulations and parking layout. They noted that one additional ADA compliant parking space is required for the proposed number of parking spaces (EXHIBIT 7). A condition of approval has been proposed to address this.

The Grand Traverse County Health Department has also provided comments (EXHIBIT 5). They have no concerns with the proposed increase in capacity provided that the restaurant/tavern is limited to 70 total patrons both indoors and outdoors. The County Health Department, however, has not evaluated the facility for septic capacity related to manufacturing under a MLCC license, and Applicants have agreed to not manufacture on-site under a MLCC license. Additionally, the County Health Department has not evaluated the facility for septic capacity related to the processing proposed by the Applicant. Outdoor uses should also allow for evaporation over the drain field and not be compacted by heavy weight. Proposed conditions of approval have been included on both issues. A proposed condition of approval has also been included on the issue of updating the Health Department review.

The fire chief is comfortable with the plan, provided that proposed pervious pavers meet the specifications noted in his email dated February 16, 2023, and conditions of approval from the first amendment continue to be met (EXHIBIT 4). A proposed condition of approval has been included on this issue.

- (e) That the plan meets the standards of other governmental agencies, where applicable, and that the approval of these agencies has been obtained or is assured.
The proposed uses, along with plans and relevant information, have been supplied to the necessary governmental agencies for review and approval. In addition to the agencies noted above, the Grand Traverse County Building Department/Construction Code noted that they have no concerns with the increased capacity as long as they are provided with a copy of the approved SUP amendment and/or Land Use Permit (EXHIBIT 8).

- (f) That natural resources will be preserved to a maximum feasible extent and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.
The subject property is largely developed and will remain as such. There will be less building mass on the site after the project is complete since the number of buildings was reduced as part of the approval of the first amendment. The footprint of the restaurant/tavern was also reduced after approval of the first amendment. The use of pervious pavers in some areas also helps to reduce impervious surfaces.
- (g) That the proposed development property respects floodways and floodplains on or in the vicinity of the subject property.
There are no floodways or floodplains in the vicinity of this site.
- (h) That the soil conditions are suitable for excavation and site preparation and that organic, wet, or other soils that are not suitable for development will either be undisturbed or modified in an acceptable manner.
The soils are suitable for construction activities. Soil types are identified on page 2.0 of the drawings submitted (EXHIBIT 1).
- (i) That the proposed development will not cause soil erosion or sedimentation problems.
Gourdie Fraser Engineers have reviewed the plans for soil erosion control and have no concerns. (EXHIBIT 7).
- (j) That the drainage plan for the proposed development is adequate to handle anticipated stormwater runoff and will not cause undue runoff onto neighboring property or overloading of water courses in the area.
The proposed uses will not cause any increase in off-site storm water runoff. The site plan illustrates a stormwater detention basin. See letter from Gourdie Fraser Engineers (EXHIBIT 7).
- (k) That grading or filling will not destroy the character of the property or the surrounding area and will not adversely affect the adjacent or neighboring properties.
Proposed grading is limited to the north of the site and is associated with drainage and septic system activities. The general character of the site remains essentially unchanged.
- (l) That structures, landscaping, landfills, or other land uses will not disrupt air drainage systems necessary for agricultural uses.
Proposed grading as part of this project will not change the general cold air drainage flow of the site.
- (m) That phases of development are in a logical sequence so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage, or erosion control.
According to the application, this project will not be developed in phases.
- (n) That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems, and water sewage facilities.

No expansion of public streets, drainage systems, or utility systems is required or proposed.

- (o) That landscaping, fences, or walls may be required by the town board and planning commission in pursuance of the objectives of this ordinance.

A landscape plan was approved with the first amendment that shows new trees and shrubs throughout the site. Implementation of this plan is a condition of approval.

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

The required number of parking spaces has been provided for all proposed uses at 55 total spaces. The parking lot layout is like the layout approved with the first amendment except for the conversion of two bus parking spaces to four regular parking spaces and the addition of three new spaces on the north side of the eastern parking area. Those three spaces include the use of pervious pavers. Drive aisles have also been increased to a minimum of 20 feet as required by the Fire Department.

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

Vehicular traffic will enter and exit the property on Seven Hills Road. Grand Traverse County Road Commission requirements noted as part of the approval of the first amendment have been completed (EXHIBIT 9).

- (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.

One single dumpster is located behind the proposed restaurant/tavern. The submitted plans show that this location includes a dumpster enclosure – sheet 3.0. (EXHIBIT 1).

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

The proposed development, under the conditions set forth on pages 7 and 8 of this Special Use Permit, meets the objectives of the ordinance and the principles of sound planning by improving the existing character of the subject parcel and providing opportunities for new commercial uses.

COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The petitioner shall comply with all state, county, township, and other governmental regulations relative to the establishment of the special use for a parcel zoned C-1, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), Michigan Liquor Control Commission (MLCC), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing special land use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

APPROVAL CONDITIONS AND SAFEGUARDS:

Pursuant to Section 8.1.3 (2), the board may require such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted. Specific conditions and requirements for a land use permit include:

- 1) Uses approved as part of this SUP amendment only include the following:
 - a. Restaurant/Coffee Shop with a Market/Retail
 - b. Tasting Room/Bar/Tavern
 - c. Professional Offices
 - d. Single Chair Salon
 - e. Artist Studio/Retail
 - f. The following outdoor uses: Seating/Consumption, Games, Fitness Classes, and Gathering, all with the potential for amplified sound that is compliant with Noise Ordinance #40, as may be amended from time to time.
 - g. Indoor storage of materials accessory to on-site uses
- 2) The approved uses above do not include the manufacturing of products under an MLCC license. The approved uses above may include processing under an MLCC license on site, only if the processing is limited to blending, bottling, and labeling of product brought in from an off-site bonded facility. The proposed use shall not produce any offensive fumes or odors that are detectable beyond the property lines of the property.
- 3) The maximum number of patrons for the Restaurant/Coffee Shop with a Market/Retail space and Tasting Room/Bar/Tavern within the eastern building and outdoor use areas, as depicted on the application site plan, at any time both indoors and outdoors is seventy (70).
- 4) Outdoor uses shall cease at 10 p.m. seven days a week.
- 5) All use of the property shall comply with the Peninsula Township Noise Ordinance #40, and as may be amended in the future. OMP Seven Hills, LLC acknowledges that as part of the Board's prior approval of Amendment #1 to SUP #35, that the noise level at the property line was to be no greater than normal conversation as perceived by a reasonable person. OMP Seven Hills, LLC agrees that the noise condition of Amendment #1 carries through to the approval of this amendment, to the extent that noise levels at the edge of the property will not exceed normal conversation noise, as perceived by a reasonable person.
- 6) One additional ADA compliant parking space will be striped and signed for a total of three ADA parking spaces on site. The site plan shall be amended to show the additional ADA Parking space and submitted to the Director of Planning and Zoning for review and approval prior to issuance of a Land Use Permit.
- 7) Continued compliance with permitting necessary with the Grand Traverse County Health Department and Construction Code is required, to include the absence of any manufacturing under an MLCC license. Additionally, Applicant must confirm with the Department of Health that the proposed "processing" on site under the MLCC license does not negatively impact the current septic capacity of the facility. If Applicant seeks to add any additional licenses or uses or expand any uses in a manner that might impact the current septic approval, Applicant is required to get an updated septic evaluation from the Health Department that shows septic capacity for those changes.
- 8) No outside storage of contractor equipment or construction materials is permitted.
- 9) All existing and proposed lighting shall be compliant with Section 7.14 of the Township Zoning

Ordinance. Final exterior lighting details will be reviewed at Land Use Permit.

- 10) Existing signage near Seven Hills Road is reduced to one sign no taller than 5 feet and no larger than 30 square feet.
- 11) The applicant shall install signage at their cost near the exit that notes that no parking is permitted on Peninsula Township roads.
- 12) Full implementation of the landscape plan (Sheet 5.0) as approved with the first amendment is required.
- 13) The outdoor use areas shall be clearly designated on site, to meet the requirements of the Michigan Liquor Control Commission (MLCC). The approved landscape plan shall be amended to be consistent with MLCC requirements and submitted to the Director of Planning and Zoning for review and approval prior to issuance of a Land Use Permit.
- 14) All storage space shown on the plans shall comply with all applicable OSHA regulations, EPA regulations, state of Michigan (EGLE) regulations, the International Fire Code and MLCC regulations.
- 15) Full compliance with all Fire Department review requirements stipulated in the letter dated February 10, 2021, and email dated February 16, 2023, are required, see (EXHIBIT 4).
- 16) Compliance with the review requirements stipulated in the letter from Gourdie Fraser Engineers is required, see (EXHIBIT 7).
- 17) Continuing to provide and accommodate access to the property to the south from the drive/parking area is required. Access to the property to the south was established from the drive/parking area pursuant to SUP #35 in order to eliminate the need for an additional access point on Seven Hills Road.
- 18) OMP Seven Hills, LLC understands, agrees, and acknowledges that as part of the board's approval of the requested amendment to SUP #35 that at any time it is determined by Peninsula Township that the impact and/or intensity of the use of the roads to and from 13795 Seven Hills Road has increased in a meaningful way as a result of the approved uses on the property, OMP Seven Hills, LLC or the subsequent owner of the property shall pay for an updated traffic study. OMP Seven Hills, LLC, or subsequent owner also understands, agrees and acknowledges that if the updated traffic study demonstrates that the intensity of the use of roads has increased from what was represented in the Fleis & Vandenbrink traffic study, reviewed and acknowledged as part of the approval of the first amendment of this SUP, that OMP Seven Hills, LLC or subsequent owner shall work with the township to reasonably mitigate and/or relieve the impact and/or increase in intensity to the roads to and from the subject property.
- 19) This SUP amendment shall expire one year after the final date of approval unless a Land Use Permit is applied for and issued for the increased occupancy and change of uses on the property.

COMMENCEMENT AND COMPLETION

The commencement and completion of special land uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the special land use permit and accompanying site plan are enforceable, and remedies are available under Section 3.2 of the Zoning Ordinance.

EFFECTIVE DATE OF SPECIAL LAND USE:

The special land use shall be effective when the application has been approved by the Peninsula Township Board of Trustees, subject to the above conditions. By resolution, the Township Board approved this Special Use Permit by a vote of:

AYES _____

NAYS _____

ABSTAINING _____

ABSENT _____

The undersigned hereby certifies that she is the clerk for the Township of Peninsula, Grand Traverse County, Michigan, and that the foregoing special use permit was approved by the Peninsula Township Board of Trustees on _____.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

Rebecca Chown, Peninsula Township Clerk

Approved by the Peninsula Township Board by and through a resolution on _____

Isaiah Wunsch, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF.

I hereby acknowledge that I have received a true and correct copy of this second amendment of Special Land Use Permit #35, and I have been informed of said requirements of this amended permit and of the requirements of the Peninsula Township Zoning Ordinance.

OMP Seven Hills, LLC – (Jordan Valdmanis, Brian Peace, Troy Daily and Jay Milliken) 16330 Peninsula Drive

APPROVED ON JANUARY 23, 2018

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

**SPECIAL USE PERMIT
SUPPLEMENTAL FINDINGS OF FACT ON REMAND
SUP #123, The 81 on East Bay (Planned Unit Development Condominium Subdivision)
December 12, 2017**

PENINSULA TOWNSHIP BOARD

DECISION AND ORDER ON REMAND

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

Hearing Date(s): May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17, 2016, October 25, 2017, December 12, 2017

PROPERTY DESCRIPTION

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

INTRODUCTION AND BACKGROUND

On August 11, 2015, the Township Board approved Applicant The 81 Development's application for a Special Use Permit (SUP #123) and Planned Unit Development (PUD) to build a 41-unit residential condominium development located on Bluff Road in Peninsula Township subject to specific conditions. An adjoining land owner appealed the decision to Grand Traverse County Circuit Court (Case No. 15-31218-AA) claiming the Board's approval was (a) not supported by material evidence, (b) not authorized by law, and (c) invalid because of a single Trustee's decision to recuse herself from the vote due to a conflict of interest. The Applicant intervened in the appeal as an appellee.

On January 15, 2016, the Circuit Court (Judge Rodgers) issued his Decision and Order concluding that, while the Township had lawfully and properly exercised its discretion as to many of the Zoning Ordinance requirements relating to the SUP and PUD standards, it had improperly delegated several issues relating to the emergency access road and the grading, soil erosion and storm water plans to the Fire Department and Township Engineer for review and approval and did not independently determine that the proposed SUP/PUD met the ordinance requirements pertaining to those issues. On page 11 of its Decision regarding Condition No. 1, the Court stated, "In this case, the location for the additional egress for emergency purposes was undecided at the time the Board voted to approve the SUP/PUD." The Court continued as to Condition No. 6, "Similarly, the Board delegated approval of the grading plan to the Township Engineer." With respect to the review and approval of the grading and storm water plans, the Court found that the Board improperly delegated the review and approval to the Township



Engineer, and explained, in footnote 46, that the Board's statements "were not legally sufficient findings to support a conclusion that the standards for soil erosion, grading and storm water have been met and the Court remands these issues for further consideration by the Board." The Court concluded its Decision and Order 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 this decision and order."

RELEVANT STANDARDS ON REMAND

The Township Board's consideration of the remanded issues relates to the following Township Zoning standards: General Standard Section 8.1.3(1)(c); Specific Standards Section 8.1.3(3)(d); Section 8.1.3(3)(h); Section 8.1.3(3)(i); Section 8.1.3(3)(j); Section 8.1.3(3)(k); Section 8.1.3(3)(n); Section 8.3.3(7); and Section 7.2.5.

Except for the reconsideration of these "Court-remanded" issues, all other portions of the Township Board's Decision and Order of August 11, 2015, including all Findings and Conditions, remain unchanged.

FURTHER PROCEEDINGS ON REMAND

Pursuant to the Circuit Court's January 15, 2016 Decision and Order in Case No. 15-31218-AA remanding specific issues for further proceedings, the Township Board properly scheduled, noticed, and held public hearings on SUP #123/PUD on May 18, 2015, June 15, 2015, July 14, 2015, August 11, 2015, November 17, 2016, October 25, 2017, December 12, 2017. The Board conducted the further proceedings ordered by the Court, and having heard the statements of the Applicant and its agents and considered documents submitted on the Applicant's behalf, and having considered the statements of the public and documents submitted by them and all Exhibits, which are part of the record in this matter, the Board has reached a decision on this matter which is based on the entire recording regardless of whether all relevant Exhibits have been cited or even incorrectly referenced, and states as follows:

SUPPLEMENTAL FINDINGS OF FACT ON REMAND

SECTION 8.1.3(1) GENERAL STANDARDS:

Section 8.1.3(1)(c): Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the storm water retention standard of providing volume for "back-to-back" 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design and the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula

Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)

- ii. The Board finds that because the proposed development will contain more than 30 one-family residential dwelling units, the International Fire Code (IFC) (2012 Ed) Appendix D107.1 requires it to be served by two (2) separate approved fire apparatus access roads, and that pursuant to Appendix D104.3 the two (2) fire apparatus access roads "shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses." (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iii. The Board finds that based on the reports provided by Peninsula Township Fire Chief Rittenhouse, Fire Chief Dundas, retained on behalf of the Township, and Ron Taylor of Nederveld, a consultant retained by the Applicant, the proposed development contains two (2) fire apparatus roads: 1) 81 Avenue connecting to Boursaw Road; and 2) the emergency access road connecting the northwest corner of the site and to Smokey Hollow Road (see drawing sheets "Fire Lane: Overall Site, SESC & Drainage Plans pp 1-3 Mansfield Project No. 14016 revised 9/7/16) through an Emergency Access Easement recorded in the Grand Traverse County Register of Deeds as Document 2016R-09726 meets the requirements of IFC Appendix D107.1 and D104.3. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- iv. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found that it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- v. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)
- vi. The Board finds that Peninsula Township Fire Chief Rittenhouse provided additional written information dated October 20, 2017 relating, in part, to the security gates for the emergency access road, and indicated that the security gates would not be required unless traffic on the emergency access road becomes a nuisance and it is used for non emergency purposes. (Township Exhibit: Fire Chief Rittenhouse Letter 10/20/17)

Motion was made by Board member Bickle and second by Board member Wunsch that the findings of facts are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	Yes

The transcript setting forth Board members Achorn's and Westphal's objections to the finding of facts and the standard having been met are attached hereto.

SECTION 8.1.3(3) SPECIFIC STANDARDS:

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.

- i. The Board finds that, based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance. (Applicant Exhibits 4, 7, 11; Township Exhibit: Peninsula Township Storm Water Ordinance)
- ii. The Board finds that the Township Engineer reviewed the plan for the emergency access road connecting the site to Smokey Hollow Road and found that it meets the requirements of the Township Private Road Ordinance with respect to alignment, grading, and drainage and recommended engineering approval. (Applicant Exhibit 7)
- iii. The Board finds that the proposed emergency access road connecting the development to Smokey Hollow Road meets the applicable Township ordinances and codes including IFC Sections 503.1.1, 503.2.1, 503.2.3, 503.2.5, Appendix D102.1, D103.2, D104.3, D107.1. (Applicant Exhibits 2-6, 8, 11-17, 23, 49, Township Exhibits: Peninsula Township Ordinance 32 – Fire Prevention- International Fire Code, IFC 2012 Chapter 5 and Appendix D, Fire Chief Rittenhouse Letter 10/20/17, Emergency Access Easement, Chief Dundas Report 10/20/17)

Motion was made by Board member Bickle and second by Board member Board member Wunsch that the findings of facts are correct and the standard has been met, with the conditions set forth specifically in the transcript attached, and reduced to writing in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes

Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board members Sanders' and Westphal's objections to the finding of facts and the standard having been met are attached hereto.

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.

- i. The Board finds that the Applicant provided a Wetland Delineation Report for the site dated June 15, 2015, prepared by GEI Consultants which identified and delineated one regulated wetland located in the southern portion of the site and the wetland boundaries were flagged and sequentially numbered in the field and surveyed using GPS information and incorporated into the site plans for the proposed development. (Applicant Exhibit 18)
- ii. The Board finds that the project site plans for the proposed development, Sheet C3.0, contains the following notes:
 - a. "The limits of all construction work shall be a minimum of 25 feet outside of the existing wetlands."
 - b. "Protect the exiting wetland from construction activities. Place silt fence at 25 feet offset from the wetland perimeter." (Applicant Exhibits 4, 18)
- iii. The Board finds that, based on the information submitted regarding the wetland boundaries on the site and the note that construction limits will be, at a minimum, 25 feet outside of the wetland boundaries, the wetland on the site will be undisturbed. (Applicant Exhibits 4, 18, 41; Township Exhibits: Applicant's SUP Application).
- iv. The Board finds that the soils within the project construction limits are generally classified under Hydrologic Group A, well-drained sands or gravel, and the soils on the site are suitable for excavation and development. (Applicant Exhibits 4, 7, 10, 18, 41; Township Exhibits: Applicant's SUP Application)

Motion was made by Board member Wahl that the findings of fact are correct and the standard has been met. Motion was amended by Board member Bickle to add conditions as set forth in the attached transcript and reduced to writing later in the joint motion. Board member Wunsch second the motion as amended. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	Yes

The transcript setting forth Board member Westphal's objection to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(i): That the proposed development will not cause soil erosion or sedimentation problems.

- i. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the proposed development plans and issued SESC Permit #24013 which contains the following Permit, General and Specific Conditions:

Permit conditions:

- The permitted activity shall be completed in accordance with the approved plans and specifications, and the following general conditions;
- This permit does not waive the necessity for obtaining all other federal, state or local permits;
- Permittee shall notify the permitting agency within one week after completing the permitted activity or one week prior to the permit expiration date, whichever comes first;

General conditions:

- In accordance with Rule 1709 promulgated under the authority of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act 1994 PA 451, as amended, and in addition to the information on the attached Plan(s) and special conditions, the following general conditions apply to the earth change authorized by this permit:
- Design, construct and complete the earth change in a manner that limits the exposed area of disturbed land for the shortest period of time.
- Remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
- Temporary or permanent control measures shall be designed and installed to convey water around, through or from the earth change at a non-erosive velocity.
- Install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and maintain the measures on a daily basis. Remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. (Stabilized means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.)
- Complete permanent soil control measures for the earth change within five calendar days after final grading or upon completion of the final earth change. If it is not possible to permanently stabilize the earth change, then maintain

temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

Specific Conditions:

- This permit is approved according to the site plan received on April 8, 2016, and revised on May 3, 2016, from Mansfield Land Use Consultants Job No. 14106 with the following requirements:
- Follow all prescribed soil erosion and sedimentation control measures on page C3.0 of the revised Site Plan.
- Phasing must be followed according to the schedule. Each phase must be stabilized as described before moving to the next phase. Any change in the schedule must be approved by this office.
- Install silt fence according to the Site Plan, properly entrenched in 6" deep and end stakes wrapped. Double rows are required as specified. Silt fences must be inspected regularly. It is imperative to inspect all fences during and after spring snow melt.
- Construct all storm ditches/swales with no greater than 3:1 slopes and stabilize as shown on page C1.2.
- The storm water detention basin must be stabilized with erosion control blankets as indicated. All outlets must be stabilized with rock rip wrap as shown in the engineer site plan.
- Construct wooden stairs as shown. Stabilize all disturbed areas around the post holes with woody mulch or other non-erosive ground cover.
- Any vegetation must be established and show significant growth in order to final this permit.
- Construct stone construction entrance as shown. Do not allow sediment to be tracked onto the street. If tracking does occur, sweep the street at the end of the work day.
- Install a culvert in the road ditch under the entryway. The ends of the culvert must be stabilized so that erosion does not occur in the road ditch.
- The storm water operator, licensed by the MDEQ, must submit weekly reports to the County enforcing agent.
- Submit a copy of the MDEQ Notice of Coverage to this office.
- The engineer of record must submit a letter of certification stating that the project is built according to the site plan in order to final this permit.
- Permit, green card and site plan must be posted at the project site at all times until permit has final approval from this office.

Amend 08-12-16 fire lane access from Smokey Hollow Road:

- Install silt fence as shown on the amended site plans submitted from Mansfield Land Use Consultants, Job No.: 14016.
- Install mats on ditches as shown on the engineer's site plan.
- Check dams should be installed immediately upon shaping the ditches.
- Install rip rap at all outlets as shown.

- Install stone construction entrance to prevent tracking onto Smokey Hollow Road. If tracking does occur, the road must be swept by the end of the day.
- All vegetation must be re-established and this road completely stabilized in order to final the permit.

(Applicant Exhibit 17, 54; see also Applicant Exhibits 4, 7, 10, 25-26, 41, 43-44)

ii. The Board finds that the project plans contain the following construction notes on Sheet C3.0:

- Silt fence shall be installed before the construction begins and shall be maintained throughout the project duration until permanent vegetation is established and the site is stabilized. The contractor must remove the silt fence upon completion.
- All stumps and underground organic material shall be completely removed with an excavator and hauled off the site.
- All stumps, logs and chips will be hauled off the site to a licensed landfill/pit. Nothing shall be buried on site.
- The contractor will obtain a temporary access permit for access onto Boursaw Road. The temporary construction access, culvert and sediment sumps shall be maintained throughout the duration of construction.
- Stock piles shall be located inland, away from the existing wetlands and lakeside bluffs. Dorman stock piles shall be seeded to prevent sedimentation and airborne erosion.
- The storm basis and sedimentation forebay shall be constructed prior to the construction of the storm sewer and ditching.
- Final construction shall meet the requirements of the approved SESC permit from Grand Traverse County.
- Care should be taken to prevent material movement into adjacent wetlands and water bodies.
- Care should be taken to maintain existing roadside drainage via culvert installation, without sediment pump placed downflow of culvert.
- The limits of all construction work shall be a minimum of 25' outside of the existing wetlands.
- Slopes 3:1 or steeper shall be restored with mulch blanket, as necessary.
- The contractor shall use water or dust palliative to control dust on and adjacent to the project site. Maintain the Boursaw Road entrance by regular sweeping, as necessary until the site is permanently stabilized.
- Minimize disturbance to all existing vegetation along the lakeside bluffs and the lakeshore community areas, except where noted otherwise.

(Applicant Exhibit 4)

iii. The Board finds that Sheet C3.0 of the project plans contains the following notes pertaining to grading and soil erosion and sedimentation control measures:

- Install a double row of silt fence along the waterfront, TYP. (Phase 3 – down by the water.)

- Install a double row of silt fence along the bluff, TYP. (reference to middle bluff)
- Leave existing vegetation in place as long as possible to maintain a stabilized slope along the bluff. After completion of grading, stabilize with new vegetation as soon as possible to prevent elongated exposure to erosion.
- Mass grading shall be completed to prevent erosion of the existing lakeside bluffs. Minimize disturbance of existing vegetation to maintain a stabilized bluff. The mass grading along the bluff shall be carefully completed to prevent any excavated material from sliding down the bluff. The ridge shall be excavated by undermining on the valley side such as all material may be pulled away from the bluff to prevent any loss of material or erosion down the bluff.
- Internal soil stock pile location to be determined by the contractor. Seed long term stock piles to prevent airborne erosion and sedimentation. No work shall be completed in the area of the proposed primary and reserve septic fields to preserve their natural state and soils. The contractor shall identify these areas prior to grading operations and provide a visual and/or physical barrier to keep construction equipment out of these areas.

(Applicant Exhibit 4)

- iv. The Board finds that Sheet C3.0 of the project plans also contains stabilized construction access specifications to minimize tracking of sediment on to public roadways and to minimize disturbance to vegetation. (Applicant Exhibit 4)
- v. The Board finds that in addition to implementing soil erosion and sedimentation control measures, existing vegetation on the upper bluff (in the area of proposed lots 11-29) will be left in place until mass grading can follow directly afterward to ensure the soil is exposed for the shortest duration possible and the mass grading on the upper bluff will be completed by pulling material away from the bluff to prevent. (Applicant Exhibits 4, 7, 10, 17, 41; Township Exhibit: Mansfield Letter 3/5/15)
- vi. The Board finds that the Applicant's slope stability report dated October 26, 2016, prepared by Otwell Mawby, PC, states that significant earthwork is planned to achieve the proposed grades, including the grading on the upper bluff and ridge which will be accomplished by removing vegetation and pulling the earth back and away from the crest of the bluff and the resulting grades will slope gently away from the bluff. (Applicant Exhibit 10)
- vii. The Board finds that the proposed grading and earth work on the bluffs generally will remove soil burden on steep slopes and improve soil stability. (Applicant Exhibit 4, 10)
- viii. The Board finds that the project plans, specifically Sheet C3.0, provide for mass grading and site construction to take place in three (3) phases. The first phase generally includes the entrance to the site off of Boursaw Road, a portion of roadway (81 Avenue) from the entrance back to Lot 29, the community septic system and storm water basin, and the areas for Lots 2-4, 11-29. The second phase generally includes the remainder of 81 Avenue and the areas for Lots 30-41. The third phase includes 81 East roadway and the areas for Lots 5-10. Each grading phase must be completed and stabilized before grading in the next phase can begin. (Applicant Exhibit 4).

- ix. The Board finds that, based on the information provided, after grading and leveling along the bluffs is completed and the areas stabilized, structures will be located in compliance with applicable setback requirements in Michigan Residential Code R403.1.7.2 for descending and ascending slopes which requires the face of the structure footing be a minimum of 1/3 of the slope height behind the slope at the corresponding elevation, but need not exceed 40 feet. (Applicant Exhibit 10)
- x. The Board finds that the Township Engineer has reviewed the proposed grading plan for the development, including the additional grading information and details for the building sites on Lots 1-41 which are included in the overall project plan set, and found they meet applicable Township ordinances, standards and requirements and recommended engineering approval. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance. (Applicant Exhibit 7; Township Exhibit: Township Storm Water Control Ordinance)
- xi. The Board finds that the Township Engineer reviewed the design of the proposed roads (including the emergency access road to Smokey Hollow Road) for compliance with applicable requirements regarding grading, drainage, and pavement cross sections and recommended engineering approval. (Applicant Exhibit 7)
- xii. The Board finds that the applicant has submitted a grading plan with sufficient details to evaluate the plan for protection of the steep slopes (including but not limited to those near the "vertical, wooded bluff which drops to water level in East Bay") and vegetation present on site as requested by the Grand Traverse County Soil Erosion – Sedimentation Control Department and the Township Engineer on January 23, 2015, and that Grand Traverse County has issued a SESC Permit (No. 24013), which remains in place. (Exhibits 4, 7, 10, 17, 41)
- xiii. The Board finds that, as designed, the development plans meet the applicable Township and County storm water standards, and if the grading, soil erosion, sedimentation, and storm water control measures in the plan and in SESC Permit #24013, including its conditions, are properly installed, implemented, monitored and enforced, the proposed development will not cause soil erosion or sedimentation problems. (Applicant Exhibits 4, 7, 10, 17, 25-26, 41; Township Exhibits: individual grading plans and cross-section details and other information for Lots 1-41)

Motion was made by Board member Manigold and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Sander's, and Board member Achorn's objections to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(i): 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 drainage facilities for the proposed development maintain the intent of the natural on-site drainage patterns. (Applicant Exhibits 4, 7, 17; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the paved roadways are curbed with drain structures that convey storm water to a basin located in the interior of the property, and that the storm water basin is properly sized and meets the applicable Township and County Storm Water Ordinances and requirements and is sufficient to ensure that neighboring properties will not be impacted by additional runoff from the proposed development. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 17; Township Exhibits: Applicant's SUP Application, Township and County Storm Water Control Ordinances).
- iii. The Board finds that based on the reviews and reports by the Township Engineer, Brian Boals of Gourdie-Fraser, and the Applicant's consultant, Mansfield Land Use Consultants, the proposed development plans provide for adequate storm water drainage facilities and the storm water calculations for the project and have been reviewed and found to be acceptable with respect to drainage patterns, storm sewer sizing and storm water retention provided and the storm water plans meet the Peninsula Township Storm Water Control Ordinance and the proposed development will not cause undue runoff onto neighboring properties or overload water courses in the area. The storm water retention standard of providing volume for back-to-back 100-year (one percent (1%) chance of occurrence) rainfall events has been followed in the project design. (Applicant Exhibits 4, 7, 11; Township Exhibits: Township and County Storm Water Control Ordinances)
- iv. 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. (Township Exhibit: Mansfield Ltr 4/13/16)

Motion was made by Board member Bickle and second by Board member Wunsch that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Achorn, and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

Section 8.1.3(3)(k): That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

- i. The Board finds that the Grand Traverse County Soil Erosion and Sedimentation Control Department has reviewed the project and issued SESC Permit #24013 which remains valid until May 2018. (Applicant Exhibit 17)
- ii. The Board finds that the Township Engineer, Brian Boals of Gourdie-Fraser, 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. (Applicant Exhibits 4, 7, 26, 43)
- iii. The Board finds that the Otwell Mawby soil assessment dated August 29, 2017, submitted on behalf of the Applicant entailed soil samples collected from the upper 12 inches of the soil column at 15 sample locations on the Property that were historically used as agriculture and which would be disturbed during grading and site construction. Samples were taken from two depths at each location, and each sample was analyzed for arsenic, lead and three composite samples were analyzed for pesticides. (Applicant Exhibits 34, 51)
- iv. The Board finds that the soil assessment for the Property shows the presence of arsenic at concentrations greater than the current (7,600 µg/kg) and proposed (9,000 µg/kg) State generic residential human direct contact criterion in 17 samples at 10 of the 15 sampling locations. Arsenic exceedances of criteria were reported in samples from all areas of the Property where samples were collected and in over one-half of the deepest samples collected, but arsenic was not present in any sample greater than the current or proposed generic residential particulate inhalation criteria. (Applicant Exhibit 34, 51)
- v. The Board finds that the soil assessment of the property showed that neither lead nor the other target pesticides tested for were reported at concentrations above the current or proposed generic residential human direct contact or particulate inhalation criteria. (Applicant Exhibit 34, 51)
- vi. 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 that the soil assessment of the Property was sufficient to determine whether contamination is present on the site. (Applicant Exhibit 34, 51)
- vii. The Board finds that, based on Dr. Harless' review, the soil assessment shows that a significant mass of soil over a large area of the Property is contaminated with arsenic at levels above the published statewide default background level, the Michigan Glacial Lobe background level, and the State generic residential human direct contact criteria. (Applicant Exhibit 34, 51)

- viii. The Board finds that Dr. Harless reviewed the soil assessment for the property and other materials relating to the area within the emergency access easement and concluded that all of land which the emergency access road easement traverses from the western boundary of the Property to Smokey Hollow Road, and which will be disturbed during construction, appears to have been used historically as orchards and for agricultural purposes and recommends that the soils in the easement area either be assumed to be contaminated at levels similar to those on the property or be tested to determine that it is not contaminated. (Applicant Exhibit 34, 51)
- ix. The Board finds that Dr. Harless reviewed the soil assessment for the Property and concluded the levels of arsenic in soil on the property are sufficient to adversely affect the adjacent or neighboring properties if the soil escapes the site via wind, storm water runoff, or vehicle track-out during site grading and construction activities by either adding contaminated soil to land that is not contaminated at levels of concern or by increasing the contaminant load on properties that may have been previously impacted by contamination, and Section 8.1.3(3)(k) of the Township's Zoning Ordinance is designed to address both scenarios. (Applicant Exhibits 34, 51)
- x. The Board finds that Dr. Harless concluded that soil erosion on the property is likely to occur during grading and site construction on the property and in the emergency access easement and the potential for soil erosion during grading and earthwork was also acknowledged by Roger Mawby in his letter dated 1/16/17. (Applicant Exhibits 25, 51)
- xi. The Board finds that both Dr. Harless and Roger Mawby agree that, if the soils can be managed and contained on-site during grading and post grading operations, it can reasonably be concluded that the grading operations will not adversely affect the adjacent or neighboring properties. (Applicant Exhibits 25, 34, 51)
- xii. 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 II.5 objective of preventing the conveyance of soil and sediment via wind and storm water runoff. (Applicant Exhibits 4, 25, 34, 51; Township Exhibit: Township and County Storm Water Control Ordinances)
- xiii. The Board finds that, based on Dr. Harless' review, the level of detail in the project plans, including the Maintenance Plan and Budget, is inadequate to demonstrate that the erosion control measures for the proposed development will prevent the grading from adversely affecting the adjacent or neighboring properties. (Applicant Exhibit 51)
- xiv. The Board finds that Dr. Harless recommends that the silt fencing required for the project comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012). (Applicant Exhibit 51)
- xv. The Board finds that Dr. Harless recommends that the vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project be revised to include the following: "Sediment deposited in public rights-of-way shall be removed immediately and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction. (Applicant Exhibit 51)

- xvi. The Board finds that Dr. Harless recommends that a detailed, site-specific erosion control or soils management plan be prepared by a licensed professional engineer incorporating best management plans to prevent conveyance of soils and sediment via wind, storm water runoff, and vehicle track-out and that a performance monitoring, inspection, and enforcement program be implemented to prevent fugitive soil erosion emissions from the site during grading and site construction in order to ensure that adjacent or neighboring properties are not adversely affected. (Applicant Exhibit 51)
- xvii. The Board finds that the Township received a report dated October 25, 2017 from ASTI Environmental titled *Soil Management Plan the 81 on East Bay Peninsula Township, Michigan* which addresses the lack of soil erosion details in the project plans identified by Dr. Harless, and which contains a Soil Management Plan, including provisions pertaining to a health and safety plan, dust control measures, environmental monitoring, excavation soil handling, groundwater handling, storm water handling, track-out of soil, soil stabilization, access roads, grading management, spoil piles, and silt fencing, and a Proposed Performance Monitoring and Inspection Program in Section 5.0. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xviii. The Board finds that ASTI Environmental recommends that a number of specific dust control measures in Section 4.2 of the Soil Management Plan be implemented including, but not limited to, dust suppression measures such as, the application of water, calcium chloride or other acceptable compounds as frequently as necessary to ensure dust emissions do not exceed 20% opacity or cross the Subject Property boundaries, air quality testing during grading activities which shall be performed by a qualified person trained in conducting opacity measurements using EPA Method 9d. Additional dust control recommendations include the application of dust suppression compounds to the site roadways, sweeping of paved roads, ceasing earthwork when sustained winds exceed 25 mph, covering excavated soils during high winds, and monitoring and inspection recordkeeping. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xix. The Board finds that ASTI Environmental recommends that a number of specific measures should be implemented for managing excavated soils (Section 4.4) and spoil piles (4.11) during grading and site construction as part of the Soil Management Plan including, among others, excavated soils should be stockpiled on plastic sheeting or liner with proper erosion controls (e.g., covering, berms) to prevent wind borne soil erosion and runoff. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xx. The Board finds that ASTI Environmental recommends that a truck tire wash be installed near the construction entrance which shall be used as part of the Soils Management Plan to prevent contaminated soils from leaving the site through vehicle track-out. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxi. The Board finds that ASTI Environmental recommends that as the 3-phase grading plan is implemented, the next phase of grading cannot begin until the previous grading phase is completed and stabilized. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxii. The Board finds that ASTI Environmental recommends that the specifications and procedures for access roads during grading and site construction as listed in Section 4.9 be implemented as part of

the Soil Management Plan. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

- xxiii. The Board finds that ASTI Environmental recommends that an enforcing agent be retained to monitor and inspect grading and site construction activities for compliance with the Soils Management Plan and the project plans to prevent soil erosion. (Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxiv. The Board finds that ASTI Environmental recommends that a performance monitoring and inspection program to be implemented by an enforcing agent to ensure the soil erosion control and management measures contained in ASTI's Soil Management Plan, the project plans, and the SESC Permit are installed, implemented, monitored, and maintained as designed and required. (Applicant Exhibit 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxv. The Board finds that, based on the available information, if the ASTI Environmental Soil Management Plan is properly implemented, and all soil erosion control measures contained in it, the project plans and the SESC Permit are properly installed, implemented, and maintained subject to ongoing monitoring and inspection for compliance by an enforcing agent, the grading for the proposed development will not adversely affect the adjacent or neighboring properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)
- xxvi. The Board finds that, based on the information from Dr. Harless and ASTI Environmental and other sources, the hiring of an enforcing agent or consultant, acceptable to the Township, at the Applicant/Developer's cost, to implement the monitoring and inspection program outlined in the ASTI Environmental Soils Management Plan, including the monitoring and inspection program, and to determine whether, when and what soil management measures should be used is integral to the effectiveness of the ASTI Environmental Soil Management Plan and ensuring that the grading and site construction activities on the Property will not adversely affect the adjacent or neighboring properties. (Applicant Exhibit 25, 51; Township Exhibit: ASTI Environmental Soil Management Plan dated October 25, 2017)

Motion was made by Board member Bickle and second by Board member Manigold that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

Motion was made by Board member Bickle and supported by Board member Wahl that compliance with the ASTI Report dated December 6, 2017 be a condition of the approval of the above-mentioned standard and be a condition of approval as set forth later in this document. The vote was unanimous. MOTION PASSED.

Section 8.1.3(3)(n): That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

- i. The Board finds that there are no existing public facilities in the vicinity of the property, and the proposed on-site community septic system, individual wells, storm water system and roadways will be privately owned and maintained by the developer and/or the homeowners association. (Applicant Exhibit 4; Township Exhibit: Applicant's SUP Application)
- ii. The Board finds that the proposed on-site community septic system, individual wells, storm water system and roadways for the development meet the applicable ordinances, requirements and standards. (Applicant Exhibits 3, 4, 7, 17, 19-22, 55)

Motion was made by Board member Wahl and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing later in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	Yes
Board member Achorn	Yes
Board member Manigold	Yes
Board member Sanders	Yes

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.

- i. The Board finds that, for the reasons stated above, the requirements of Sections 8.3 and 8.1 and Article VII have been met.

Motion was made by Board member Wahl and second by Board member Bickle that the findings of fact are correct and the standard has been met, with the conditions set forth in the attached transcript and reduced to writing in the joint motion. A roll call vote was held:

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes

Dec 12, 2017 Approval

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:

Insight 1. Break-away security gates with a Knox locking system and signage, as referenced in Fire Chief Rittenhouse's letter dated 10/20/17, shall be installed at each end of the emergency access road.

Mansfield 2. The project plans shall be revised and resubmitted to the Township to show the security gates, Knox locking system and signage.

Insight/Bylaws 3. The emergency access road, gates, and signage shall be maintained by the developer or homeowners association so that the emergency access road is accessible and can be used by any and all Township Fire Department emergency apparatus and equipment.

Insight/Bylaws 4. The roads, including the emergency access road, must be maintained and kept reasonably clear of snow, at all times.

Mansfield 5. The individual grading plans for Lots 1-41 shall be and are incorporated into the project plans and Applicant shall be revise and resubmit a set of project plans containing these individual lot grading plans, including cross-sections. Final construction details and grading for individual building sites are subject to further review and permitting under the Township Storm Water Control Ordinance.

Insight 6. Silt fencing required for the project shall comply with US EPA publication - *Stormwater Best Management Practices – Silt Fences* (EPA 833-F-11-008, April 2012).

? G.T. Soil 7. Any and all reports from the licensed storm water operator to the Grand Traverse County Soil Erosion and Sedimentation Control Department or other agencies relating to the project shall also be provided to the Township Planning Department.

Insight 8. Construction activities on the property, including grading, earthwork and excavation, shall comply with all notes in the project plans and SESC Permit No. 24013.

Mansfield 9. The vehicle track-out and stabilized construction access specifications included in the site soil erosion plan for the project shall be revised to include: "Sediment deposited in public rights-of-way shall be removed immediately and returned to the construction site. Remove sediment in the sumps and maintain swept roads." And that the developer shall have street sweeping equipment on site and ready to respond to observed track-out conditions at all times during construction.

10. The ASTI Environmental Soil Management Plan dated October 25, 2017 and December 6, 2017 is hereby incorporated into the project plans and grading and site construction

Dec 12, 2017 con't

activities shall be subject to and governed by the ASTI Environmental Soil Management Plan, pursuant to Section 8.1.3(3)(k) of the Findings of Fact.

mansfield 11. That Developer provide to the Board assurance and calculations that the ditch can accommodate at 25-year, 24 hour event, pursuant to Section 8.1.3(3)(d), of the Findings of Fact.

mansfield 12. The Developer to provide to the Board information regarding storm piping for a 25 year event instead of 10 year event, pursuant to Section 8.1.3(3)(d) of the Findings of Fact.

mansfield 13. Developer provide for ditching at the clu-de-sac area, and perform ditch flow calculations along with producing plan for handling potential overflow issues, Section 8.1.3 (3)(d) of the Findings of Fact.

mansfield 14. Developer provide information regarding the watershed and capacity.

Insight 15. Developer provide a turf reinforcement blanket to resolve soil movement, pursuant to Section 8.1.3(3)(h) of the Findings of Fact.

mansfield 16. Developer to provide a grading and stabilization plan to Township engineer to be approved by Township engineer, pursuant to Section 8.1.3(3)(h). -matt Alpe's to provide

Insight/Twp 17. Developer to pay for and provide a standard performance guarantee to the Township to be negotiated by the Township and Developer, pursuant to Section 8.1.3(3)(h) of the Findings of Fact. emailed Sam Brooks 3/1

Insight 18. Developer to hire and pay for an Arborist to provide recommendation on the removal of the Oak Trees and what is to be done with the stumpage, pursuant to Section 8.1.3(3)(i) of the Findings of Fact.

Insight 19. A qualified third party enforcing agent, acceptable to the Township, shall be retained by or on behalf of the Applicant/Developer/Contractor, at its sole cost, to implement the ASTI Environmental Soil Management Plan, including the monitoring and inspection program outlined in Section 5.0. The enforcing agent shall be responsible for monitoring and inspecting the grading and site construction activities on the property for compliance with the Soils Management Plan, the project plans, and the SESC Permit to ensure the grading will not adversely affect the adjacent or neighboring properties. In the event of non-compliance with the foregoing requirements, the enforcing agent shall promptly notify the Developer, contractor and the Township of the noncompliance, and work with the Developer and contractor to address and eliminate the non-compliance.

that is the only time we need to get notify Twp. if they do not need to approve/enforce case

Developer shall stop work until the issues raised by the third party enforcing agent are resolved to the satisfaction of the Township.

Nothing in this condition shall prevent the Township from taking all action to ensure compliance with the conditions set forth herein.

[NOTE: With the exception of Conditions 1 and 6 in the 8/11/15 Board approval which the Court deemed improper and insufficient, the conditions previously approved on 8/11/15 remain unchanged]

Board member Bickle	Yes
Board member Wunsch	Yes
Board member Wahl	Yes
Board member Westphal	No
Board member Achorn	No
Board member Manigold	Yes
Board member Sanders	No

The transcript setting forth Board member Westphal's, Board member Achorn, and Board member Sander's objections to the finding of facts and the standard having been met is attached hereto.

TIME PERIOD FOR JUDICIAL REVIEW

Any party may appeal this decision within the appropriate time frames for filing such an Appeal. Depending on the public body and the decision being made, one or more of the time periods set forth below may apply for appealing such decisions by public bodies and more specifically this decision.

1. The Michigan Zoning Enabling Act, provides in pertinent part:

125.3606 Circuit court; review; duties.

Sec. 606.

(1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary

record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

(3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

(4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

125.3607 Party aggrieved by order, determination, or decision; circuit court review; proper party.

Sec. 607.

(1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.

(2) Any person required to be given notice under section 604(4) of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

2. Article 6, Section 28 of the Michigan Constitution states:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

3. MCR 7.103(A)(4) states, in relevant part, "The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following: . . . 4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law."

MCR 7.104(A) addresses the time for filing an appeal of right from an agency decision under Chapter 7 of the MCR:

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.103(A). Time is computed as provided in MCR 1.108. An appeal of right to the circuit court must be taken within:

(1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or

(2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was filed within:

(a) the initial 21-day period, or

(b) further time the trial court or agency may have allowed during that 21-day period.

(3) If a criminal defendant requests appointment of an attorney within 21 days after entry of the judgment of sentence, an appeal of right must be taken within 21 days after entry of an order:

(a) appointing or denying the appointment of an attorney, or

(b) denying a timely filed motion described in subrule (2).

SUPPLEMENTAL TOWNSHIP EXHIBITS FOR SPECIAL BOARD MEETING – DECEMBER 12, 2017

- a. All previous exhibits of record for "The 81 on East Bay" SUP #123/PUD
- b. Draft Condominium Master Deed and Bylaws
- c. February 15, 2015 Hirschenberger letter 2/15/15 to Reardon re: Lot Plans for 41 sites and updated design plans sewer and water plans per Ronk for water tank and fire lane
- d. S.E.S.C. Plan – Sites 1-41 dated 2/5/16
- e. Publication USACE "Living on the Coast"
- f. 1/31/17 Boals Letter regarding environmental assessment
- g. 3/13/16 Township resolution declining sewer system - for the record
- h. 6/9/16 Emergency Access Road Easement including Exhibits A, B and C
- i. Township Fire Prevention Ordinance
- j. International Fire Code (2012 Edition)
- k. 11/15/16 Grobbel Environmental and Planning Associates. Pg 3 water quality degradation within the nearshore environment of East Grand Traverse Bay
- l. 10/25/17 ASTI Environmental (Soil Management Plan) Mansfield #50
- m. Township Storm Water Control Ordinance 33
- n. Grand Traverse County SESC and Stormwater Control Ordinance 6/20/2012
- o. Grand Traverse County Soil Survey
- p. Water well Lot 16 permit with notes re nitrates and arsenic.
- q. Maintenance Plan and Budget (storm water)
- r. Fire Chief Rittenhouse Letter 10/20/17
- s. Applicant's SUP Application
- t. Mansfield Letter 3/5/15
- u. US EPA *Stormwater Best Management Practices, Silt Fences* (EPA 833-F-11-008, April 2012)
- v. Mansfield Letter 4/13/16

Peninsula Township Planning Commission,

DRAFT FINDINGS FOR 10% OPEN SPACE DEDICATED FOR PUBLIC USE

Gordon L. Hayward
Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

**SPECIAL USE PERMIT
FINDINGS OF FACT**

SUP #127, Vineyard Ridge (Planned Unit Development Condominium Subdivision)

DATE 1-23-2017

PENINSULA TOWNSHIP PLANNING COMMISSION

DECISION AND ORDER

Applicant: Vineyard Ridge, LLC
Ken Schmidt, Owner
522 E. Front Street
Traverse City, MI 49686

Hearing Date: DATE January 23, 2017

PROPERTY DESCRIPTION

Parcel ID#: 28-11-336-071-00 & 28-11-336-072-00

APPLICATION

The applicant is asking for review by the Peninsula Township Board for the development of a forty-seven (47) unit condominium subdivision planned unit development (PUD) within the Suburban Residential Single and Two-Family (R-1C) zoning district.

The Commission having considered the Application, a public hearing having been held on July 18, 2016 before the Planning Commission 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 NUMBER OF 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 36 of the Township and has approximately 674 feet of road frontage on Center Road. (Exhibit 3)
- b. The Board finds the total acreage utilized for the Condominium Subdivision Planned Unit Development (PUD) measured at 27.87 acres. (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 6.4.2 of the Peninsula Township Zoning Ordinance. (Exhibit 1)
- 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. (Exhibit 1)

1.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned R-1C, Suburban Residential Single and Two Family encompassing two (2) parcels; 28-11-336-071-00 which is considered conforming to local zoning and 28-11-336-072-00 which is considered legal non-conforming to local zoning. (Exhibit 1)
- b. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the site plan. (Exhibit 3)

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 are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- b. **South-** The properties adjacent to the south are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- c. **East-** The properties adjacent to the East are Pelizzari Natural Area and other residential properties zoned R-1C, Suburban Single and Two-Family. (Exhibits 1, 2)
- d. **West-** The properties adjacent to the west are zoned R-1C, Suburban Residential Single and Two-Family and are residential in use. (Exhibits 1, 2)
- e. The Board finds that development of property as single family residential is a use by right in the R-1C, Suburban Single and Two-Family residential zoning district. (Exhibit 1)
- f. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code, and Michigan Department of Transportation.

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

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

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

FINDINGS WHICH WOULD RESULT IN THIS STANDARD BEING MET.

- i. The Board finds that the land surrounding the development is primarily single family residential with the exception of the east which abuts Pelizzari Natural Area zoned A-1. (Exhibit 2)
 - ii. The Board finds that the Zoning Ordinance Section 6.4.1 the intent and purpose of the Suburban Residential District (R-1C) is to encourage medium density residential development associated with proximate areas of Traverse City. Such development shall fall within the logical service pattern of the Regional Wastewater Treatment System, whether or not serviced by that system.
 - iii. The Board finds that the proposed PUD is planned as a single-family residential development with 10% open space dedicated for public use (Being Section 8.3.6 OPEN SPACE subsection (2) OPEN SPACE DEDICATED FOR PUBLIC USE); a RESIDENTIAL PLANNED UNIT DEVELOPMENT with a minimum of 10% of the net acreage dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board makes the following determinations: (Exhibit 1)
 - a. The location and extent of said land is not in conflict with the Master Plan of Peninsula Township.
 - i. The Board Finds that a Master Plan Goal (Ch. 4 - Future Land Use – Public & Semi-Public Land Use Goals and Actions) reads as follows: Provide a variety of parks, trails, recreational facilities and programs to serve all groups of citizens. (Exhibit 2)
 - b. The access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended.
 - i. The Board finds the land will be used for a public trail system along Mathison road on the west; Center road on the east and a connection between the two along the south line. The property will be dedicated to the township for a future public trail in a forty three foot wide dedicated parcel. (Exhibit 3)
 - ii. The board finds that the property dedicated for a future public trail will increase ability of the owners to enjoy the recreational opportunity of hiking and exercising.
 - iii. The Board finds that the proposed PUD provides for a 90 foot buffer zone along the property's boundary which will remain as an undeveloped setback except for the forty-three foot wide dedicated parcel above. (Exhibits 1, 2, 3)
- 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 detached residential with the exception of the Pelizzari Natural Area. (Exhibit 1)
 - ii. The Board finds that the development of the proposed PUD would have a positive impact because of their opportunity to use a public trail. The applicant has designed the housing sites to complement the existing residential use pattern in the area. (Exhibit 2)

- iii. The Board finds that the PUD as submitted includes a 90 foot buffer around the boundary of the property, is provided with public sewer and 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 project is a substantial improvement over 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, 2, 3) (Exhibit 3)
- 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 the forty-seven (47) residential units. This private road shall be reviewed by the Township Engineer for compliance with Section 7.10 standards. (Exhibits 1, 3, 4)
 - ii. The Board finds the development will be served by public sewer and water. These systems shall be constructed by the owner and reviewed by the Grand Traverse County Department of Public Works and the Township Engineer to ensure they are compliant with all applicable regulations prior to the issuance of the SUP. (Exhibits 1, 2, 3, 4)
 - 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. (Exhibits 1, 3, 4, 5)
 - 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. (Exhibit 3)
- 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. (Exhibit 3)
 - 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. (Exhibits 1, 2, 3, 4, 5)
 - iii. The public water and sewage disposal systems are managed by the County Department of Public Works and costs are paid by users. (Exhibit 4)
 - iv. The roads in the Development are private roads and are maintained by the Condominium Unit owners (Exhibits 1, 2)

- 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 residential 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 3)
 - ii. The Condominium Documents include provisions for the Association to regulate uses such as burning leaves or brush that might result in fumes, glare or odors. (Exhibit 3)

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. Review of the project 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-seven (47) 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. Remove the existing residential structure on Parcel 28-11-336-072-00.
- d. The signs shall be reviewed by staff to assure they meet lighting standards of the Zoning Ordinance.

THE ABOVE FINDINGS ARE NOT REQUIRED AS THIS IS NOT A STANDARD, BUT RATHER AN ADVISORY STATEMENT. IF THE PLANNING COMMISSION RECOMMENDS APPROVAL OF 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. (Exhibit 3)
- 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. (Exhibit 3)
 - 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. (Exhibits 3)

- 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 10% open space dedicated for public use (Exhibit 3)
 - ii. The Board finds that each individual units 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 2, 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. (Exhibits 2, 3)
 - iv. The Board finds that the proposed PUD will develop a private road which shall be built to the Peninsula Township private road standards of Section 7.10 to provide residential and adequate access to forty-seven (47) residential units. This private road shall be reviewed by the Township Engineer for compliance with the above Section 7.10 standards. (Exhibits 1, 3, 4)
 - v. The Board finds that signs are regulated by section 7.11.3 (17) Signs approved in association with a Special Use Permit. In approving a Special Use Permit, the Township Board may approve any or all signs allowed in this Ordinance provided that the approved signs: (a) Are related to an approved use in the Special Use Permit; (b) the design , size , setback and lighting are shown on a scale drawing; and (c) the number and location of all signs are reasonably necessary to meet the intent of this Ordinance. (Exhibit 3)

This standard HAS/HAS NOT been met.

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.
 - i. The Board finds that a permit to construct the private road curb cut from the Michigan Department of Transportation shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Further the Board finds that in an email dated April 4, 2016, Jeremy Wiest from MDOT indicated that the location of the proposed private road meets MDOT requirements. (Exhibit 3)
 - ii. The Board finds that a permit to construct the private road curb cut and the water main connection 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. The GTCRC has reviewed the proposal and provided comments in a letter dated August 24, 2016. (Exhibit 3)

- iii. The Board finds that approval to construct and connect the public water and sewer systems on site from the Grand Traverse County Department of Public Works shall be required to be submitted to the Peninsula Township Planning & Zoning Department prior to the issuance of the SUP. The DPW has provided initial review and approval for this proposal in an email dated June 2, 2016. (Exhibit 3)**
- iv. The Board finds that at this time the Grand Traverse County Sheriff's Department has reviewed the submitted plans. In a letter dated April 21, 2016 that department has indicated they have no objections to the plan. (Exhibit 3)**
- v. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted June 3, 2016 and email August 5, 2016. (Exhibits 3, 4)**
- vi. 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. (Exhibits 3, 5)**
- vii. The Board finds that the initial storm water control review was completed by the Township Engineer. (Exhibits 3, 5)**
- 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. (Exhibits 3, 4)**
- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.**
 - i. The Board finds that any form of development is going to cause some disturbance to the site. Given that development of the parcel is allowed under the Zoning Ordinance under the R-1C District, the PUD as proposed preserves a 90 foot buffer around the development preserving a significant number of the older hardwood trees. 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. (Exhibit 3)

- 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 there are no flood ways or flood plains on or in the vicinity of the subject property. (Exhibit 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.
 - i. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted (Exhibits 3, 4, 5)
 - 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. (Exhibits 3, 4, 5)
 - iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Exhibits 1, 3)
- i. That the proposed development will not cause soil erosion or sedimentation problems.
 - i. The Board finds that a soil erosion permit for a forty-seven (47) unit development shall be submitted to the Peninsula Township Planning & Zoning Department prior to issuance of the SUP. Conceptual approval has been granted at this time. (Exhibits 3, 4)
 - 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. (Exhibits 3, 4)
 - iii. The Board finds that the required SESC permits shall be submitted to the Planning & Zoning Department prior to issuance of the SUP. (Exhibit 1, 3, 4)
- 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 and that the initial storm water control review was completed by the Township Engineer.. (Exhibits 3, 4)
- 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 the plan as presented and as developed, will leave areas undisturbed during construction and afterward and shall be depicted on the site plan and at the site, per se. (Exhibit 3)
 - ii. The Board finds that the development of the road is reasonable in the context of the existing topography and existing drainage patterns. (Exhibit 3, 4)
 - 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. (Exhibits 3, 4)
 - iv. The Board finds that the request SESC permits shall be submitted to the Planning & Zoning Department prior to the issuance of the SUP. (Exhibit 1, 3)
- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.
 - i. The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Exhibit 2)
- 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 water, sewer, roads, drainage and grading of each phase can stand on their own. (Exhibit 1, 3, 4)
- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.
 - 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-seven (47) residential units. This private road shall be reviewed by the Township Engineer. (Exhibits 1, 3, 4)

- ii. **The Board finds the development will be served by public sewer and water. The proposed plans have been reviewed by the Township Engineer and the site shall be developed in compliance with the regulating standards reviewed by the Township Engineer and DPW. (Exhibits 3, 4)**
 - iii. **The Board finds that the County Sheriff has conducted a review of the submitted plans and offered comments. (Exhibit 3)**
- 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 developer also proposes a 90' buffer along all property lines which is to be left in its natural vegetative state. (Exhibits 3)**
- 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 that the parking will be provided for each residential unit and no other parking areas are provided. (Exhibit 3)**
- 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. (Exhibits 3)**
 - 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. (Exhibits 3, 4)**
- 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 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. (Exhibit 3)**

- 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 Board finds this property is allowed a residential development under the Suburban Single and Two-Family (R-1C) zoning district. The development is being developed as a Planned Unit Development with the open space option of 10 % of the property dedicated for public use. (Exhibits 2, 3)

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 Board finds this property is allowed a residential development under the Suburban Single and Two-Family (R-1C) zoning district. The development is being developed as a Planned Unit Development with the open space option of 10 % of the property dedicated for public use. (Exhibits 2, 3)
- 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. Vineyard Ridge proposes 10% open space dedicated for public use . Section 8.3.6 open space subsection (2) open space dedicated for public use; a residential planned unit development with a minimum of 10% of the net acreage dedicated to the Township. That open space land shall be dedicated to the Township for park or recreational purposes by the project owner or owners provided that the Township Board makes the following determinations: (a) The location and extent of said land is not in conflict with the Master Plan of Peninsula Township. (b) The access to and the characteristics of the open space land is such that it will be readily available to and desirable for the use intended.
 - ii. The Board finds the open space will be used for a public trail system along Mathison Road on the north; Center Road on the east and a connection between the two along the south line. The property will be available for the township to construct a future public trail in a forty two (43) foot wide dedicated parcel. (Exhibit 3).
- c. To encourage developers to use a more creative and imaginative approach in the development of residential areas.

- i. **The Board finds that when balancing market demands for desirable residential parcels in conjunction with the dedicated 10% of land for public use, 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, 2, 3)**
- 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 Board finds that the applicant's plans provide a ninety (90) foot buffer of existing trees along the southerly and westerly borders of the project. Houses are proposed to take advantage of the steep slopes in the center of the project by using walkout basements instead of major regrading of the sloped (Exhibit 3, 4)**
- e. To encourage variety in the physical development pattern of the Township by providing a mixture of housing types.
 - i. **The Board finds that Vineyard Ridge will be providing a low maintenance single family home design which will diversify the housing stock available in Peninsula Township. (Exhibit 3)**
- 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. (Exhibit 3)**

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 27.87 acres. (Exhibits 3)**
- 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 further finds that the property is zoned R-1C. (Exhibits 1, 3)
- 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 public sewer and water systems which have been through initial reviews and will be constructed in compliance with regulating standards as per Township Engineer and DPW comments. (Exhibits 1, 3)
- 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-1C zoning district. (Exhibits 1, 3)
 - 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 27.87 acres. (Exhibits 2, 3)
- e. Open space shall be provided according to Section 8.3.6.
 - i. The Board finds that the PUD application includes provisions for 10% of the land to be dedicated for public use for a future public trail as provided by Section 8.3.6 Open Space. (Exhibits 1, 3)
- f. For purposes of this Section 8.3, Open Space does not include building envelopes, parking lots and roads (roadbed plus two (2) foot shoulders on each side).
 - i. The Board finds that the PUD application includes provisions for 10% of the land to be dedicated for public use for a future public trail as provided by Section 8.3.6 Open Space. (Exhibits 1, 3)
- 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. (Exhibits 1, 3)

- ii. Section 8.3.4, PUD Uses that may be permitted: The Board finds that the applicant is proposing single family dwellings, in accord with Section 8.3.6. (Exhibits 1, 3)
- iii. Section 8.3.5, PUD Lot Size Variation Procedure: The Board finds that proposal reduces the size of the forty-seven (47) 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 27.87 acres less the fifteen (20) percent for the R-1C requirement and is equal to 22.3 acres. Per the underlying zoning district R-1C the minimum lot size is 20,000 square feet. Therefore the site will allow a maximum of 48 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. (Exhibits 1, 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. (Exhibits 1, 3)
- v. The Board finds that the minimum lot area/building envelope is 6,005.15 square feet as indicated in the application. (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. (Exhibit 1, 3)
- 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 Board finds that the proposed PUD with a minimum of 10% of the net acreage dedicated to the Township for park or recreational purposes by the project owner or owners (Being Section 8.3.6 OPEN SPACE subsection (2) OPEN SPACE DEDICATED FOR PUBLIC USE). (Exhibit 1)
- viii. The Board finds that the proposed PUD provides for a 90 foot buffer zone along the property's boundary which will remain as an undeveloped setback including within a forty three (43) foot wide dedicated parcel above. (Exhibits 1, 3)
- ix. Section 8.3.7, PUD Maximum Percentage of Lot Area covered by All Structures: Maximum permitted by Section 8.3.7 is 15%. The Board finds that the maximum percentage of lot area covered by all structures is proposed to be 13.10% of the net acreage of the site. (Exhibits 1, 3)
- x. 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. (Exhibit 3)

- xi. The Board finds the Article VII of the Ordinance requires Vineyard Ridge to address the following items:

Section 7.1.2, Sanitation Requirements: The Board finds the development will be served by public sewer and water. These systems shall be constructed by the owner and reviewed by the Grand Traverse County Department of Public Works and the Township Engineer to ensure they are compliant with all applicable regulations. (Exhibits 1, 3)

Section 7.2.5, Stormwater Detention: The Board finds that the initial storm water control review was completed by the Township Engineer. (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 proposes a 90 foot buffer along the perimeter of the site which exceeds the buffer zone required by section 7.2.6 and this area shall be occupied by plant materials and appropriately landscaped and includes dedicated land for public recreational purposes. (Exhibits 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.

Section 7.7, Developments Abutting Agricultural Lands: The Board finds, and the Planning Commission recommends, that the existence of Pelizzari Park on the adjacent A-1 property makes it unlikely that any of the uses allowed in the agricultural district would be located on the adjacent agriculturally zoned land so no Agricultural Setback is required. The Planning Commission recommends that pursuant to Section 7.7.1.3 (1) (a) 1. there is no Agricultural setback required. (Exhibit 1)

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-seven (47) residential units. This private road shall be reviewed and developed according to the standards found in Section 7.10 of the Ordinance (Exhibits 1, 3)

Section 7.11, Signs: The Board finds that signs are regulated by section 7.11.3 (17) of the Ordinance. The Board finds that the signs are related to an approved use in the Special Use permit; that the design, size, setback and lighting are shown on a scale drawing, and the number and location of all signs is reasonably necessary to meet the intent of this ordinance.

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.
(Exhibits 1, 3)

EXHIBITS

- 1. Peninsula Township Zoning Ordinance**
- 2. Peninsula Township Master Plan**
- 3. Mansfield Application Folder dated 1/9/17**
- 4. Vineyard Ridge Project Review dated 1/3/17**
- 5. Otwell Mawby Geo technical P.C. dated 1/9/17**

Building Height Study Group



PENINSULA TOWNSHIP

MEMO

To: Planning Commission
From: Jenn Cram, AICP, Director of Planning and Zoning
Date: December 12, 2023
Re: Building Height Study Group Policy Recommendation

During the special joint meeting and public hearing with the board on November 14, 2023, a study group was formed to assist staff and the planning commission with recommendations for possible revisions to the zoning ordinance to clarify how building height is measured.

The Building Height Study Group consists of 13 people including staff and three members of the planning commission. The study group includes residents, architects, and builders. A list of participating members is attached as Exhibit A.

The first meeting of the study group took place on November 29, 2023. The agenda for that meeting is attached as Exhibit B. A comprehensive packet of material was provided to the study group including an American Planning Association report, existing zoning ordinance language and examples of zoning ordinance language related to building height from neighboring jurisdictions in Grand Traverse County and Leelanau County.

The second meeting of the study group took place on December 6, 2023. The agenda for that meeting is also attached under Exhibit B.

Both meetings were very productive, and all participating members contributed their expertise and/or experience openly and respectfully. The public was welcome to listen and provide comments at the end of each study session. I am happy to report that the group came to a unanimous consensus on policy direction.

The primary goals for proposed amendments to the zoning ordinance related to building height are to develop a clear and concise method for measuring building height that considers safety, supports community character, and allows flexibility for the varied terrain on the peninsula.

Policy Recommendations:

- Remove reference to stories and define maximum allowed height of 35 feet only
- Measure height from the mean or median between natural grade and finished grade (maximum cut or fill allowed not to exceed 5 feet, with excess counting towards maximum height measurement)
- Measure height to the mean or median between the eave and highest peak of the roof
- Develop graphics to visually support verbiage

An example of the draft graphics that the study group reviewed and commented on are attached as Exhibit C. Staff and the study group would like to thank Ellis Wills-Begley for his work on these graphics.

Next Steps:

If the planning commission is comfortable with the recommended policy direction staff will work with commissioners Hall and Beard to draft language for consideration at a public hearing at the January 15, 2024, planning commission meeting.

Exhibit A

Peninsula Township Building Height Study Group

Planning Commission:

Kevin Beard

Randy Hall

Armen Shanafelt

Staff:

Jenn Cram – AICP planner

Community:

Ellis Wills-Begley – resident and architecture graduate

Sally Erickson – resident and builder

Laura Howe – resident with home under construction

Ray Kendra – resident and licensed architect

Pete Morrison – resident with future home to be constructed

Scott Naumes – builder (Mapleridge Construction)

Scott Norris – builder (Scott Norris Construction)

Lew Seibold – resident, farmer and retired architect

Lauren Tucker – home builders association

Exhibit B

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

PENINSULA TOWNSHIP PLANNING COMMISSION – BUILDING HEIGHT STUDY GROUP AGENDA

November 29, 2023

Township Hall

9:00 a.m.

This meeting will not be recorded, and no minutes will be taken.

1. **Call to Order**
2. **Attendance**
3. **9:00 am - Business**
 - a. What is the Purpose of Regulating Building Height
 - i. Protection from Fire Hazards
 - ii. Protection from Aviation Hazards
 - iii. Protection of Views
 - iv. Protection of Character of Neighborhoods
 - v. Protection of Light and Air
 - b. Existing Peninsula Township Zoning Ordinance Regulations and Definitions
 - c. Regional Zoning Ordinance Regulations and Definitions Related to Building Height
 - d. Process for Amending Zoning Ordinance
 - e. Policy Recommendations
 - i. Where to Measure Height From (natural grade, finished grade, mean between the two)
 - ii. Where to Measure Height To (eave, peak of roof, mean between the two)
 - iii. Is the Number of Stories Relevant
4. **Public Comments**
5. **11:00 am – Adjournment**

Exhibits:

1. APA Report No. 237 – Height Regulation in Residential Districts
2. Existing Peninsula Township Zoning Ordinance Regulations and Definitions
3. Regional Zoning Ordinance Regulations and Definitions Related to Building Height

Jenn Cram, Planning & Zoning Director
Posted November 28, 2023, 5:00 p.m.

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP PLANNING COMMISSION – BUILDING HEIGHT STUDY GROUP AGENDA

December 6, 2023

Township Hall

4:00 p.m.

This meeting will not be recorded, and no minutes will be taken.

1. Call to Order
2. Attendance
3. 4:00 pm - Business
 - a. Recap of November 29 meeting
 - i. Should the number of stories be considered?
 - ii. Where should height be measured from?
 - b. Continued Discussion
 - i. Where should height be measured to?
 - ii. How should cut and fill be addressed?
 - iii. Review of Draft Diagrams
 - iv. Fire Hazard Considerations
4. Public Comments
5. 6:00 pm – Adjournment

Exhibits:

1. Building Height Definition and Diagram from Emmet County

Jenn Cram, Planning & Zoning Director
Posted December 5, 2023, 4:30 p.m.

Exhibit C

N = FINISHED FLOOR HEIGHT FROM NATURAL GRADE
(MEASURED FROM _____)

X = MAXIMUM DIFFERENCE BETWEEN NATURAL GRADE AND FINISHED GRADE
(MEASURED FROM _____)

FN = FINISHED FLOOR HEIGHT FROM FINISHED GRADE
(MEASURED FROM _____)