

NEW BUFFALO TOWNSHIP BOARD  
PUBLIC HEARING/SPECIAL BOARD MEETING  
DECEMBER 22, 2010 SPECIAL MEETING  
17425 RED ARROW HIGHWAY  
NEW BUFFALO, MICHIGAN

Supervisor Dudiak called the public hearing to order at 8:00 a.m. Call to Order  
Public Hearing

Board Members Present: Dudiak, Heit, Oselka, Rahm, and Rogers

Public comments were called for on the rezoning request for a PUD. Public Comments

Dudiak moved, Rahm seconded to adjourn the public hearing at 8:04 a.m. Adjourn Public  
Hearing

Supervisor Dudiak called the special meeting to order at 8:05 a.m. Call to Order  
Special Meeting

Public Comments were called for.

Dudiak moved, Oselka seconded to, upon recommendation of the New Buffalo Township Planning Commission and the Berrien County Planning Commission, and based on the following findings of fact and subject to the following conditions, that part of parcel numbers 11-13-0015-0001-00-8 and 11-13-0015-0002-00-4, being properties located at 18567 and 18639 Harbor Country Drive, respectively (as per the legal description on the Preliminary Site Development Plan) be rezoned from [C-1 and AG-R] to Planned Unit Development (“PUD”) and approve the PUD zoning based on and consistent with the Resort Ten80 application and Preliminary Site Development Plan as revised December 3, 2010 prepared by Land Resource Management Group, Inc. , 1299 Main Street, Crete, IL 60417 under the supervision of Ting Pong Chan, Registered Michigan Engineer (License #6201057272). Approval of  
PUD  
Resort Ten80

Findings of Fact:

1. The Planning Commission has reviewed the applicant’s PUD request and Preliminary Site Development Plan in regard their conformity to the Township Master Plan, compatibility with the surrounding uses and consistency with the intent and qualifying conditions of Chapter 11 of the Zoning Ordinance, and, subject to noted conditions, finds that:
  - a. The proposed development meets the requirements of the intent of a

- b. PUD as set out in Section 11.1 in that it represents an innovative land use concept; includes variety in design, layout and types of structures; and incorporates energy efficient and creative environmental components.
  - c. With respect to the qualifying conditions of Section 11.2:
    - i. At approximately 30 acres, the PUD site meets the requirements of 11.2.A
    - ii. Per the application, the tract of land for the PUD is in one ownership and therefore meets the requirements of 11.2.B.
    - iii. The requirements of 11.2.C are met because the proposed uses are consistent with the Town Centre concept as contemplated by the recent amendments to the Master Plan.
    - iv. The proposed PUD is compatible with surrounding uses of land, the natural environment, and the capacities of public services and facilities affected by the development.
    - v. Subject to condition 17 below, the requirements of 11.2.E. are met in that as a sports and entertainment facility, subject to the Final Development Plan, the PUD does not contain uses or conditions that would be injurious to the public health, safety and welfare.
    - vi. Subject to the Final Development Plan meeting the applicable conditions below, including, but not limited to conditions 1, 2, 10, 11, 12 and 15, the PUD meets all the site plan review standards of Section 14.1. and, therefore, the requirements of 11.2.F.
    - vii. The PUD is consistent with the intent of Section 11.1 and represents a development opportunity for the community that could not be achieved through conventional zoning and therefore meets the requirements of 11.2.G.
  - d. The uses proposed for the PUD are special uses in the C-1 (8.3.I & J) and C-2 (9.3 A & F) Districts and are therefore permitted in the PUD pursuant to Section 11.3
  - e. The applicant requested and participated in pre-application conferences as provided for in Section 11.4.
  - f. The applicant has submitted a complete PUD application and, subject to fulfillment of condition 15 below, the preliminary development plan pursuant to Section 11.5.
  - g. The Zoning Administrator has given proper notice as required by Sections 11.6 and 17.6 of the Zoning Ordinance.
2. With respect to the Site Plan Review Standards of Section 14.1, the Planning Commissions makes the following findings:
- a. Relationship of uses proposed will not adversely affect public health, safety, or welfare. Uses and structures located on site are planned to take into account topography, size of the property, uses on adjoining property, and the relationship and size of buildings to the site. The site will be developed so as not to impede normal

and orderly development or improvement of surrounding property for uses permitted in the Ordinance.

- b. Subject to Applicant's compliance with condition 12 below (i) the proposed uses will provide safe, convenient, uncongested, well defined vehicular and pedestrian circulation for ingress/egress points and within the site; and (ii) drives, streets and other circulation routes will be designed to promote safe/efficient traffic operations within site and at ingress/egress points.
- c. Subject to Applicant's compliance with condition 12 below, the arrangement of public or private vehicular and pedestrian connections to existing or planned streets in the area will be planned to provide a safe and efficient circulation system for traffic in Township.
- d. Pursuant to condition 1 below, Applicant agrees that removal or alteration of natural features shall be restricted to those areas which are reasonably necessary to develop site per requirements of Ordinance.
- e. Pursuant to condition 2 below, Applicant agrees that it will comply with applicable laws, rules and regulations.
- f. Condition 3 below requires Applicant to maintain the purposes and spirit of Ordinance and Master Plan.
- g. Pursuant to condition 10 below, Applicant shall give special attention to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drain system and agrees that all storm water drainage systems must conform to the requirements of the Berrien County Drain Commission.

Conditions:

1. Significant Natural Features: Applicant shall comply with its assurances to the Planning Commission that removal or alteration of significant natural features will be minimized and in any event restricted to those areas which are reasonably necessary to develop the site in accordance with the requirements of the Ordinance. The Final Development Plan shall include a landscaping plan acceptable to the Planning Commission
2. Compliance with law: Applicant agrees that it will comply with the all applicable local, state and federal laws, rules and regulations.
3. Intent of Ordinance and Master Plan: Applicant will ensure that in undertaking the development project it will maintain the general purposes and spirit of the Zoning Ordinance and the Master Plan.
4. Parking: Based on what has been provided by applicant in the Preliminary Site Development Plan there appears to be insufficient parking. Applicant will undertake a parking analysis to determine what would be sufficient parking for the development project and include this information in the Final Development Plan for approval and acceptance by the Township Engineer and concurrence by the Planning Commission.

5. Dumpsters: Applicant will work with the Township Engineer to ensure that access and location of dumpsters are shown on the Final Development Plan and that such locations are within the building footprint.
6. Signage: To be contained in final plan and meet Ordinance requirements.
7. Fire Safety: Applicant to obtain Township Fire Chief approval of its fire safety plan (which shall include compliance with most recent national fire codes) and such approval shall be incorporated into the Final Development Plan
8. Performance Guarantee/Surety: As part of the PUD Agreement to be entered into between Applicant and the Township pursuant to Section 11.11, Applicant agrees that the PUD Agreement will contain a provision pursuant to which Applicant shall provide the Township with a performance guarantee which may be in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township.
9. DNRE Approval: applicant shall provide written evidence from the Michigan Department of Natural Resources & Environment (“DNRE”) that it has issued a permit under Part 301 and Part 303 of the Natural Resources and Environmental Protection Act as described in emails dated November 6, 2010 and December 17, 2010 from Larry Poynter and has otherwise concluded that DNRE has no other issues regarding the project.
10. Storm Drainage: Applicant agrees to pay the Drain Commissioner the \$1000 fee for review of its proposed storm water drainage system and incorporate the Drain Commissioner’s recommendations into the Final Development Plan.
11. Water, sewer, drainage, and other infrastructure: the Planning Commission will be provided with written confirmation from the Township Engineer he approves the water, sewer, drainage and other infrastructure elements of the project and such approvals shall be attached to and become a part of the Final Development Plan.
12. Traffic: Planning Commission and Wightman & Associates review of the preliminary site plan disclosed problems with traffic patterns and vehicular and pedestrian traffic connections. Those conflicts, as well as any further issues the Country Road Commission raises must be addressed to the satisfaction of the Planning Commission prior to Final Plan Approval.
13. Conservation Easements: Applicant hereby agrees to create all the Conservation Easements detailed on the Preliminary Site Development Plan and provide written proof of such dedication prior to Final Plan Approval.
14. No Assignment: The PUD is being entered between New Buffalo Township and Applicant, Ten80, LLC, a Michigan Limited Liability Company represented by Craig A. Wilkinson and may not be assigned or transferred by Applicant to any other entity or entities without prior written consent of the Township.
15. Pursuant to Section 11.9D and consistent with comments from the Planning Commission and those contained in the Wightman & Associates memo dated November 27, 2010 (“Wightman Memo”) regarding applicant’s preliminary site plan, applicant will ensure that all of the requirements of Section 11.9D are complied with, including specifically, but without limitation: the location on the site plan of all activities generally described on the Preliminary

Site Development Plan; anticipated start and completion dates posted on the Final Development Plan; all issues noted in the Wightman Memo shall be satisfied prior to Final Development Plan submission for approval, especially issues of staging and protection of the trees between the building and the road and the designated wetlands noted on the Preliminary Site Development Plan; inclusion of an exterior lighting plan acceptable to the Planning Commission.

16. Sustainability: In undertaking the PUD development, Applicant will adhere throughout to its commitment to sustainability, natural resource and ecosystem preservation and shall obtain a LEED Silver Certification.
17. Law Enforcement Review: Particularly in regard to Section 14.1.D.1.a., but also with respect to other relevant public, health and safety issues, Applicant will request review and comment from local law enforcement and incorporate any of their recommendations into the Final Development Plan.
18. Applicant shall submit a request for final PUD approval within twelve months of the Township Board approval of the PUD district and the preliminary development plan.
19. If applicant does not proceed with a final PUD development application within twelve months (by December 20, 2011) of Township Board approval of the PUD District pursuant to Section 11.9 of the Zoning Ordinance, the PUD preliminary approval shall, without any action by the Township, lapse and the PUD zoning shall revert to its previous C-1 and AG-R zoning designations.

Roll Call:

Dudiak	Yes
Heit	Yes
Oselka	Yes
Rahm	Yes
Rogers	Yes

Motion            Carried

Rahm moved, Heit seconded to adjourn the meeting at 8:07 a.m.

Adjournment

Submitted,

Paul Oselka, Clerk