

# MEMORANDUM

**TO:** Elk Rapids Township Planning Commission  
**FROM:** Larry Nix, PCP Consulting   
**DATE:** August 8, 2020  
**RE:** Site Plan Review for Shoreline Modification  
Raymond & Micki Pollister, 8543 Cairn Hwy, Elk Rapids, MI Parcel: 05-06-015-047-52

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Lindsey Barnwell of Great Lakes Water Permit Consulting, on behalf of Raymond and Micki Pollister, has submitted an after the fact site plan application to seek approval of a shoreline modification at 8543 Cairn Hwy. The property is situated on Elk Lake north of the Village of Elk Rapids. The purpose of the shoreline change was to install rip rap along the shoreline for protection and create a walkway from the shoreline to the top of the bank. The walkway segment of this project is within the 25' protection zone adjacent to the water's edge. The shoreline protection element of the application that will be conducted in the water is not under our jurisdiction. Only the proposed upland modifications within 25' of the shoreline is the subject of this review.

The soil erosion permit issued by Heidi Shaffer noted the applicant was to secure all permits associated with the proposed project including local zoning. Two similar projects were completed just north of this parcel and the Pollister's were provided a notice of each of those projects. (2017 - Krill: 8535 Cairn Hwy; 2019 - Amos: 8443 Cairn Hwy) Lindsey Barnwell (the owners representative) was not involved in either of these projects and has not been involved in the approval process previously. A soil erosion permit was issued for this project in May of 2019.

The Antrim Soil Erosion Officer, Heidi Shaffer, has visited the site since the construction was completed and emailed me her observations. See page 4. In summary, she approved the construction of what was completed. The photos of the site included with the application provide insight as to the condition of the shoreline prior to construction. As can be seen, the shoreline is steep, covered with vegetation and several trees with a stairway from the top of the bank to the shoreline below.

As defined in the Zoning Ordinance, the regulated shoreline is a strip of natural vegetation paralleling the shoreline or streambed and traversing the property in question for a depth of twenty-five (25) feet beginning at the edge of surface loam soil or a contiguous root system, whichever occurs nearest to the shoreline. The regulated shoreline for this lot corresponds with the steep bank down to the water's edge.

This memorandum provides our review and recommendation of the application pursuant to the standards of Section 2.11 of the Township Zoning Ordinance.

Section 2.11, B. The Zoning Ordinance provisions permitting shoreline modification but subject to several standards. Following are the standards and our comments on each:

1. The applicant shall submit a site plan in accordance with Chapter 17. The submission requirements for the site plan shall include items 17.04-A 1-14, and 17.04-B 1-7 and 22. The site plan shall be prepared by a Natural Shoreline Professional certified by the Michigan Natural Shoreline Partnership or a qualified professional and shall detail the proposed modifications to the property to enable the Planning Commission to determine the extent and potential impacts of proposed changes. In addition to the review process outlined in Chapter 17, prior to Planning Commission action on the request, the applicant shall submit the site plan to the Antrim County Soil Erosion Control Officer for review.

**Comment: The applicant has submitted illustrations prepared by Lindsey Barnwell. The drawings properly illustrate what was constructed and a qualified professional prepare the site plan. The different plan was also submitted to the Antrim County Soil Erosion Control Officer and a permit was issued as noted previously. There were field adjustments between what was permitted and what was constructed.**

2. The shoreline erosion design shall make every effort possible to maintain a forested/wooded shoreline character by maintaining existing trees and shrubs in the design and construction of the new shoreline protection system.

**Comment: The existing regulated shoreline area was primarily shrubs and ground cover and other natural material along the entire length of the shoreline. The bulk of this material has been removed and replaced with rocks. (See Application Photos and Photos provided by Heidi Shaffer)**

3. The Planning Commission may require a performance guarantee as outlined in Section 17.08 to insure completion of any restoration, native landscaping or other features of the proposed modifications. An inspection coordinated with the Township Zoning Administrator, conducted by the Antrim County Soil Erosion Control Officer shall take place after the modifications have been completed to determine whether stipulations have been met and whether Township permits can be issued. A second inspection coordinated with the Township Zoning Administrator, shall be conducted by the Antrim County Soil Erosion Control Officer one year after Township permits have been issued to determine whether any required performance guarantee can be relinquished to the applicant. If the condition of the site is in compliance with approved plans, any such performance guarantee shall be returned to the applicant.

**Comment: This standard relates to an enforcement action and can be incorporated into Planning Commission action on the request, if desired. Consideration of a performance guarantee is at the discretion of the Planning Commission.**

4. The Planning Commission shall consider the recommendation of the Soil Erosion Control Officer, the extent of proposed vegetation removal or land alteration, proposed restoration, existing and proposed topography, and the location of any nearby structures. The application shall be approved where it is shown that the proposed modifications will not be injurious to shoreline on adjacent properties, and where the plan demonstrates an intent to improve a situation that is dangerous to the general public or harmful to water quality because of unchecked or potential shoreline erosion, sediment runoff or water pollution.

**Comment: The Soil Erosion Officer has visited the site and provides a glowing review of the final product.**

**Recommendation.** Based on the standards in the Zoning Ordinance for this situation, it appears the outcome for this project may have been quite different that the constructed project. This is very unfortunate since the Township works extremely hard to maintain a natural shoreline for the first upland 25 feet from the shoreline. Public comments should always be taken into consideration prior to a final action.

The Planning Commission will need to discuss their options for this application and situation. Options include:

1. Approve the project as constructed.
2. Approve the project with the condition upland rocks be removed and replaced with suitable vegetation to stabilize the bank and return the bank to a natural condition as it existed previously.
3. Others as deemed appropriate by the applicant.

If the Planning Commission requires restoration of the shoreline to a natural condition with vegetation plantings, it would be appropriate to require a Performance Bond as authorized in Section 2.11.B.3 of the Zoning Ordinance.

**PS: As a result of this very unfortunate situation, I will be taking a more proactive position on permits issued by other agencies to assure compliance with Township regulations.**

**EMAIL FROM HEIDI SHAFFER**

Heidi Shaffer <heidi.shaffer@macd.org>

Fri, Jun 26,  
9:51 AM

to me, Heidi

Hey Larry,

I went out to Pollister's site. I was expecting rape and pillage - but was pleasantly surprised. I wish all people did what the Pollisters did. It is beautiful.

As I said before - the plan does absolutely show a walkway from the top of the 15' bank to the bottom of the hill. I like very much what the contractor did - instead of cutting a huge trench into the bank that would have extended at least 30' into the yard to make it walkable, the contractor protected the bank, protected that beautiful tree and maintained all the vegetation on the bank. There are trees on both sides of the riprap protection - dense trees and shrubs that were left. If they had cut the walkway perpendicular to the slope the amount of earth disturbance would have been significantly more. The contractor was responsible and minimized the earth disturbance. As he dug the ramp out - he hauled the dirt off. He didn't leave it on site to risk it compromising the lake.

Micky Pollister has already planted the terrace and it is beautiful ---I also love their rain garden road side of their home.

Contractors often times make changes in the field to address actual conditions. I am sure Bruce thought a walkway was a walkway. Bruce Banwell Jr is a very conscientious contractor. I believe what he did was right for conditions and especially right for the environment.

Lindsay Banwell was unaware she needed to do anything additionally with you. She knows I send copies of permits to township zoning officials. I bet she thought you would call her if she needed to do anything else. If you needed detail for the walkway - if that is standard procedure, I'm surprised you didn't at least email her questions. I told her from now on to always call zoning officials when doing shoreline projects in zoned communities and to send plans if needed, so she doesn't get sideways with the zoning officials. I appreciate when Lindsay does permit applications because she applies for EGLE and soil erosion simultaneously. I'd bet she will be adding zoning to her checklist now.

I am quite happy with what was done here. It is environmentally appropriate and aesthetically pleasing and I know the contractor protected the lake when he did his work. But - just because it works for soil erosion doesn't mean it works for zoning.

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Let me know if I can provide any additional information for you.

Thanks,  
Heidi

**PICTURES PROVIDED BY HEIDI SHAFFER AS PART OF THE ABOVE EMAIL**





