

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

www.peninsulatownship.com

Township Board Special Meeting Minutes

March 20, 2019

1:00 p.m.

1. **Call to Order:** by Supervisor Manigold at 1:00 p.m.
2. **Pledge**
3. **Roll Call:** Achorn, Chown, Manigold, Bickle, Wahl, Sanger; Wunsch arrived after roll call.
Also present: Randy Mielnik, planner, Greg Meihn, township counsel, and Christina Deeren, director of zoning
4. **Brief Citizen Comments (for items not on the agenda):** None
5. **Approve Agenda**
Moved by Bickle to approve the agenda as presented, seconded by Wahl.
Passed unan
6. **Conflict of Interest:** Manigold stated he has a conflict of interest with business items relating to Bowers Harbor Vineyard and will recuse himself during discussion of those items.
7. **Consent Agenda:** any member of the board, staff, or the public may ask that any item on the consent agenda be removed and placed elsewhere on the agenda for full discussion.

No consent agenda was presented at this meeting.

Manigold: suggested Christina might have an item to add to the agenda.

Deeren: Bowers Harbor Vineyard was scheduled to present its case before the ZBA on March 14. Because the ZBA did not have a full board, the applicant withdrew the petition to be heard at that meeting. Requested that the board consider waiving today's fee even though special meetings are charged at a higher rate because Bowers Harbor Vineyard already paid the fee to be heard at the March 14 meeting that did not occur.

Manigold: explained that there was a quorum but not a full board on March 14. The applicant requested a full board and has now asked for a special meeting, which is why we would have to charge an additional fee. Asked if we should put this on the agenda at this time.

Meihn: suggested this be put on the agenda for the next regular township meeting.

8. Business

1. Discussion regarding Bowers Harbor Vineyard.

Meihn: informed the board that Bowers Harbor Vineyard owners, representatives, and Attorney Joe Infante were present in the audience. Explained that a ZBA meeting is scheduled on April 11 to address Bowers Harbor Vineyard's request for variances that will allow them to proceed with the chateau SUP process. Bowers Harbor Vineyard was a specially created winery in 1992 and did not fit into any of the zoning ordinances that were practiced by lawyers or townships at that time. Since that time, many changes have occurred. This has caused confusion for both the township and

Bowers Harbor Vineyard as to what is and is not permissible and has caused each entity financial loss from attorney fees over the years. Noted that we are stuck with this issue but that we do have a plan of action that would place Bowers Harbor Vineyard into chateau status and allow for clear rules and regulations that will put them within the same guidelines as the other wineries on the peninsula. Hope to have this resolved by June if not by July. Noted that Bowers Harbor Vineyard has been working with staff and has provided all the information that has been requested. Last year when Bowers Harbor Vineyard was allowed to operate under the rules set in place by the board, it followed these rules in terms of the pavilion by getting a building inspection, permits, and having the correct postings. Bowers Harbor Vineyard has reduced events and has dealt with the dining in the vines issue. The liquor issues were dealt with through a lease and both legal counsels are currently working through the manufacturing issues. Noted that the township does not see any problems with compliance at this time. Explained that Christina, Randy, Dave, and Bowers Harbor Vineyard staff and owners have worked jointly to get us to this point. Requested that, given these activities and compliance since October 2018, that this moratorium be approved again. A number of complaints prior to this were received on parking and other minor issues; they have all been addressed and corrected. Bowers Harbor Vineyard is now in compliance and conformity. After the ZBA meeting in April, he will have better insight as to how this will unfold. If this does not proceed as projected, then he will bring that information back to the board and direct them in how to move forward. He requests that this item be on the late April town board meeting agenda.

Manigold: requested to be removed from the board.

Moved by Bickle to support Manigold's request to be excused from this portion of the meeting, seconded by Wahl.

Roll Call:

Passed unan

2. Discussion regarding Bowers Harbor Vineyard request for moratorium pending PC processes.

Bickle: Meihn gave a good summary of where we are on this specific item. We have been working with Bowers Harbor Vineyard. Some of the points are exact. Our ordinances and SUP permits pertaining to wineries have variations that create confusion and uncertainty. Happy to report that Bowers Harbor Vineyard has followed every request that has been asked of them and every course correction that was required. He is in favor of continuing the moratorium until such time as the appropriate materials are in front of the board. **Said that this is a motion.**

Meihn: asked for a second; explained that if this motion got a second, discussion could ensue, and if not, the motion would fail. If seconded, then it could be up for discussion.

Chown: seconded the motion.

Sanger: informed the board that ten items are currently scheduled and asked if the motion could be amended to include these ten events that will occur from May through September.

Bickle: we would want to support those calendar events as Bowers Harbor Vineyard has already committed to them; not sure what the solution would be if it was more than that.

Meihn: suggested making a motion to amend Bickle's motion.

Moved by Bickle to amend the motion he made to continue with the moratorium for Bowers Harbor Vineyard to focus on and include their ten scheduled events, seconded by Chown.

Sanger: asked for clarification for the benefit of the Bowers Harbor owners and staff and asked for clarification from Kristy McClellan of Bowers Harbor Vineyard on events schedule.

McClellan: under the current SUP, Bowers Harbor Vineyard is allowed 20 events. Requested that the board approve that number regardless of whether or not permission was granted with the variances. Stated that BHV is open for clarification and willing to work with what is approved.

Meihn: stated that she is correct but as moratoriums are an extraordinary process, he asks that as additional events are added to the calendar, they be communicated to Christina or Randy so that they can be brought before the board.

Motion stands as made and seconded.

Wahl: questioned the moratorium and the ZBA meeting as possibly affecting the moratorium that is requested. In the event that the ZBA does not grant the variances, would that affect the moratorium in any way?

Meihn: clarified that it will not affect this moratorium but the board has the ability based upon events that occur to make different decisions. Assured the board that after the April 11 meeting, additional information would be provided to the board, and if this information modified or changed anything, the board would have the right to review the issue.

Achorn: questioned the timetable of the process.

Meihn: outlined the projected date of July but said it would likely be accomplished prior to this date.

Mielnik: outlined the process of a SUP permit.

Achorn: asked when the board would see this issue again.

Mielnik: after the planning commission has reviewed it and held its public hearing, it would be presented to the township board.

Meihn: projected this could take up to two months at the PC level.

Mielnik: stated that the township board needs to hold a public meeting and then action on the request could be taken at the same meeting.

Wunsch: in favor of granting the moratorium. Bowers Harbor Vineyard was encouraged to pursue the variances and the SUP for a winery chateau by a subcommittee of the PC. The reason this is taking this long is due to the request by the PC and under guidance from staff. Bowers Harbor Vineyard has been a diligent applicant through this process by following the request by the PC.

Mielnik: the PC formed a committee that met two times with Bowers Harbor Vineyard and considered a number of options, and this option was recommended by the PC subcommittee.

Sanger: reminded the board that approval for using the pavilion last summer was granted for activities that began in late May. The winery chateau discussion began in September to address a solution to this problem. Two moratoriums were issued last year. Suggested we move ahead with this as we have made progress to this point.

Chown: questioned additional events and how the board would handle that if the issue came back before them.

Meihn: clarified that the board would not be approving additional events. Noted that we are operating outside of the SUP. Stated that, in his view, the board could only decide on what is in front of it at this time.

Bickle: Bowers Harbor Vineyard is moving towards a resolution with regard to this situation. Requested that Bowers Harbor Vineyard staff keep the board informed of any issues that arose and that Bowers Harbor Vineyard keep the code enforcement officer informed.

Sanger: outlined guest activities and reporting to the zoning administrator as required under the ordinance with advance notice, which also allows the board to change the parameters of these.

Mielnik: stated that this gives guidelines of how they can operate, as without such guidelines, it is unclear.

McClellan: requested clarification as the event planner of Bowers Harbor Vineyard. If additional events are added to the calendar, does she need to seek permission and then wait a month to find out if they are allowed?

Meihn: suggested they communicate this to the planner and then they will be advised going forward. Suggested that a withdrawal be made of the two prior motion and new motions made.

Moved by Bickle to withdraw the two prior motions, seconded by Sanger.

Wahl: questioned the burden put on the board if the ZBA and PC do not approve. Feels the moratorium should be contingent on the approval of the ZBA and PC and wonders where this will end if not approved. Believes the burden should be on the applicant and not the board.

Meihn: requested that the board vote on the motion.

Roll Call:

Passed unan

Moved by Bickle that we enact and continue a moratorium for events with Bowers Harbor Vineyard specific to the ten events that are on their agenda; if there are any additional events, they will come to the appropriate parties at the township or town board so we can be aware of them and decide upon them, seconded by Chown.

Sanger: asked to amend the motion that any additional events seek prior approval of the board; does not want to be in a position to have events scheduled. Asked to amend the motion as the motion made was to events subsequent to this day. Would like the amendment to state that additional events be approved by this board before being scheduled and for the township to have prior notice.

Bickle: questioned amending the motion or withdrawing his motion and allowing Sanger to make the motion.

Meihn: advised the board that it could extend the moratorium to the events that are presently advertised and any additional events that comply with the existing SUP up to twenty, which the SUP allows. Need a second for Sanger's request to amend the previous motion.

Bickle: need a second to Sanger's amended motion.

No second was made for amended request.

Meihn: with no second made, the motion fails and now you still have the original motion.

Bickle: back to the original motion, which was to approve the requested moratorium for Bowers Harbor Vineyard to include the ten events that have been mentioned and are scheduled and any additional events that are considered.

Board: no, goes back to the original motion to be discussed.

Chown: Brad, you would like to make a motion to continue a moratorium to allow the currently scheduled events and that any additional events come before the board for discussion and be brought to the planner.

No second was made.

Moved by Bickle that the board approve the requested moratorium extension for Bowers Harbor Vineyard identifying the ten events that have been scheduled that Mr. Sanger brought to everyone's attention and, further, that if there are any other events up to the total of twenty that were discussed over and above what is on the agenda that they be brought to the appropriate party at the township so they can be brought to the board's attention for review and approval, seconded by Wunsch.

Motion died.

Achorn: returned to Wahl's question. If the ZBA denies, then what happens?

Meihn: in the event that that happens in April, the board will have the option to review this based upon that information.

Wahl: feels it should be up to the applicant to bring this back before the board and that it is not the board's responsibility; believes the moratorium should end at any stage in the process of denial from either ZBA or PC.

Chown: expressed concern over events being scheduled and then cancelled, creating chaos for all involved. Does not think this is necessary given the compliance that has been documented and presented today.

Wahl: concerned that the moratorium is being granted on the assumption that the variances will be granted and, if they are not granted, then the moratorium should end.

Chown: Said the expectation is that Bowers Harbor Vineyard is working with planning and that everyone is hoping to come to an agreement, so if there are additional issues those would be unexpected but also something that could be addressed.

Bickle: questioned Meihn regarding the possibility of an epic failure at the ZBA or at PC. If the moratorium is approved, they can still hold their events. What remedies does this board have if a worst-case scenario occurs?

Meihn: you've limited your exposure to the ten events. That is why motions should be made based upon what you know and not what you don't as no commitment is being made beyond the SUP.

Wunsch: recapped that Bowers Harbor Vineyard is the only one operating under a pre-existing ordinance. Amending an SUP under an ordinance that no longer exists is a risky move that could create issues with due processes. Even if this is not successful, the PC has made a commitment to help resolve this issue.

Deeren: this moratorium is only to allow Bowers Harbor Vineyard to move the dining in the vines to the pavilion. In the event the board does not approve this, they could move the dinners back into the vines without board approval.

Sanger: the SUP they are operating under today allows them to hold events in the area identified in the sight plan that was approved in 2010 in which they are allowed to hold twenty of the dining events within a year.

Wunsch: requested that the board vote on the motion before them.

Moved by Bickle that the board approve the requested moratorium extension for Bowers Harbor Vineyard identifying the ten scheduled events that Mr. Sanger brought to everyone's attention and, further, that if there are any other events up to the total of twenty that were discussed that they be brought to the appropriate party at the township so they could be brought to the board's attention for review and approval, seconded by Wunsch.

Roll Call: Bickle-yes, Chown-yes, Achorn-yes, Sanger-yes, Wunsch-yes, Wahl-no

Pass 5-1

Moved by Wahl to have Manigold come back to the board, seconded by Wunsch.

Roll Call:

Passed unan

Manigold: questioned the closed session portion of the meeting and if that was still required.

Meihn: no.

9. Citizen Comments:

Mary Swift expressed dismay with the process to approve the requested moratorium. Noted that she is the largest landowner adjoining Bowers Harbor Vineyard, and if anyone would have a problem with the request, it would be her. Noted that Bowers Harbor Vineyard has cited by legal representation along with planning and zoning that it is in compliance. Concerned that the ZBA rep on the town board voted no, which creates a risk for Bowers Harbor Vineyard to go before the ZBA. Feels the process is ridiculous. Concluded that if the town board is trying to put Bowers Harbor Vineyard out of business because it is non-conforming instead of helping it become conforming with a few exceptions like zoning variances, then she will join BHV's lawsuit against the township.

10. Board Comments:

Wahl: did not have an issue with the moratorium but rather with the way it was worded. He feels the burden should not be on the township.

Bickle: felt Wahl could have made a motion but didn't. Believed Wahl led the dialogue to take a simple issue with facts presented by counsel to turn this process into an embarrassment.

Manigold: recapped the point that Wahl made. Noted that, as a board, we had to work through the process to move forward.

11. Adjournment

Moved by Wahl to adjourn, seconded by Sanger.

Passed unan

Adjournment: 1:48 p.m.