

May 10, 2016

Township Board, Planning Commission,
and Director of Planning & Zoning
Peninsula Township
13235 Center Rd.
Traverse City, MI 49686

Subject: Proposed Zoning Ordinance Articles 8 – 11

Members of the Township Board, Planning Commission, and Staff:

Enclosed for your review and comment is the proposed draft of the Peninsula Township Zoning Ordinance, dated May 10, 2016, which now includes Articles 8 through 11. In keeping with the proposed schedule (enclosed), Articles 8-11 address General Regulations (Environmental Performance Standards, Parking, Loading, and Access Management, Landscaping and Screening, and Signs).

While we are still working through Articles 1-7 through special meetings, it is important to keep the proposed schedule for the Zoning Ordinance as a whole. If additional special meetings are needed to review Articles 8-11, we can certainly hold those meetings to keep the Zoning Ordinance on schedule.

All of the current sections of the Zoning Ordinance are referenced in the headers, from which the current text has been copied and changed accordingly. As you will see, the changes are noted in the document, with new text underlined and deleted text in the margin. This way, it will be much easier for the Township to track changes during the amendment process. Some of the text is highlighted, which means that there is a corresponding editorial comment in the margin.

While several changes are proposed to the Zoning Ordinance at this time, the most notable changes are described in this letter. Again, if additional special meetings are required to complete the review of Articles 8-11 and address major items, we can schedule them.

The major changes to proposed Articles 8 through 11 of the Zoning Ordinance are as follows:

Article 8. Environmental Performance Standards.

This article consolidates several environmental performance sections that are located in different parts of the Zoning Ordinance. These sections, and the major changes proposed, are as follows:

- **Wetland Restrictions.** The only major changes to the current wetland regulations is to require a minimum setback of 25 feet from a wetland. However, dock, patios, terraces, decks, pathways, and similar structures would be excluded if the Township finds that there will be no adverse impact on the wetland. The purpose of the wetland setback is to fulfill Chapter 4 of the Master Plan, which recommends an Environmentally Sensitive Area Overlay. While an overlay would be difficult to map and administer, simply requiring a minimum setback from a wetland is just as effective.

- **Floodplain Controls and Restrictions.** This section combines two (2) sections of the current Zoning Ordinance that address floodplains. We recommend that the review and approval of the permitted structures in a floodplain be decided by the Planning Commission instead of the ZBA because the ZBA would apply variance standards of review that would result in most applications being denied. However, like any other non-use standard of the Zoning Ordinance, applicants may still apply to the ZBA for a variance from the floodplain requirements. It is our understanding that FEMA will update the floodplain maps of Peninsula Township sometime in 2017.
- **Soil Erosion and Sedimentation Control and Protection of Steep Slopes.** This section will allow the Zoning Administrator to review a plan if the development is under the purview of the Zoning Administrator. The other significant change is that the Zoning Administrator or Planning Commission may require Township Engineer review of a plan where development is proposed on or near a steep slope. This would enable the Township to require additional protections if a Soil Erosion and Sedimentation Control (SESC) permit is not required or if additional protections are required in the opinion of the Township Engineer.
- **Mining or Removal of Topsoil, Sand, Gravel, and Minerals.** In general, communities have limited control of mining activities when they are permitted so we will defer to the Township Attorney regarding what regulations the Township can adopt and enforce. However, if permitted, we recommend including requirements based on best practices such as site rehabilitation, establishing truck routes, and on-site safety standards.
- **Storm Water Management.** For larger projects, Peninsula Township Ordinance #33 addresses storm water management standards. Smaller residential projects are more difficult to administer and don't generate enough storm water for a detention/retention basin that is often required for larger projects. However, there are many low-maintenance Best Management Practices (BMP's) that can easily be implemented by homeowners to control runoff and improve ground water quality. Currently, the Township has an administrative policy of requiring MAJOR or MINOR storm water review for residential structures based on the type of activity proposed (see enclosed policy). This is a very good policy that we recommend adopting into the Zoning Ordinance, along with some required detention volumes and design and maintenance standards. The Township may want the Township Engineer to review the proposed standards and make recommendations.
- **Exterior Lighting.** Shielding standards are proposed, including a graphic to illustrate how shielding must be installed. While applicants can easily add a photometric sheet to a plan to show compliance, measuring light trespass requires specialized equipment for the Township. If the Township adopts tangible lighting standards and needs access to this measurement equipment, we recommend coordinating a joint purchase of the equipment with other local municipalities.

Article 9. Parking, Loading, and Access Management.

Sections related to parking, loading, and access management have been consolidated into one article. The following major changes are proposed:

- **Deleting the P-1 District.** The P-1 district was designed to allow off-site parking for uses. We recommend deleting the P-1 district and allow for joint parking and off-site parking subject to Planning Commission approval. For example, the C-1 district allows parking lots as the principal use, subject to Special Land Use approval.
- **Land Use Changes.** We recommend that the number of parking spaces meet the requirements of the proposed land use when the land use changes.
- **Joint Parking.** We recommend allowing joint off-street parking to reduce impervious surfaces and get the most use out of parking areas. Joint parking would require Planning Commission approval, proof that the joint parking lot will have a sufficient number of spaces, and a shared parking agreement between the users.
- **Uses Not Mentioned.** For uses not mentioned in this article, we recommend referencing the most recent edition of the *Parking Generation*, published by the Institute of Traffic Engineers (ITE), or other acceptable standard applicable for that use or a similar use.
- **Parking Space Requirements.** We recommend updates to the parking space requirements based on new uses and more appropriate standards. This section will likely change as development standards for specific uses change during the course of the Zoning Ordinance review process. We also recommend allowing the Planning Commission the flexibility to modify parking standards based on the most recent edition of the *Parking Generation*, published by the Institute of Traffic Engineers (ITE), or other acceptable standard applicable for that use or a similar use.
- **Parking Space Dimensions.** We recommend that all spaces be 9 feet wide, which is currently the requirement for 75-90-degree spaces. We have also included a graphic that illustrates the space dimension standards.
- **Shared Driveway Access.** In some cases, property owners will voluntarily allow shared access where it is mutually beneficial and cost-effective. In these cases, we recommend a formal easement agreement as a means of preserving the shared access.
- **Driveway Spacing.** Having too many driveways in a small area can lead to traffic confusion. We recommend minimum parking lot driveway setbacks from adjacent driveways on the same side of the street and from road intersections. However, we also recommend that the Planning Commission be able to modify the requirements as appropriate.
- **Parking Lot Surface.** We recommend that the surfacing requirement include examples of acceptable surfaces, such as asphalt or concrete.
- **Off-Street Loading.** Currently, the Zoning Ordinance does not include minimum loading standards. Rather than proposing conventional loading space standards that are found in most zoning ordinances (many of which lead to too many loading spaces), we recommend giving the Planning Commission discretion on a case-by-case basis.

- **Private Roads.** The Township has been working on private road standards for the last several years. The major challenge has been enforcing the requirement to upgrade a private road to current standards prior to the issuance of a Land Use Permit. In most cases, the applicant obtains a variance from the ZBA. At this time, we recommend keeping all of the development standards for private roads, but have a tiered system for when an improvement is required. In some cases, the owner only has to record easements prior to obtaining a permit. In other cases, the owner has to make improvements on his/her own property. Finally, we recommend that the private road be upgraded to current standards when lots are added along the road or the road is extended. While the proposed tiered system can be modified during the review of the proposed Zoning Ordinance, we recommend having a user-friendly format that can be easily understood by staff and the public.

Article 10. Landscaping and Screening.

Sections related to landscaping and screening have been consolidated into one article. As the changes are finalized, we can incorporate graphics as necessary. The following major changes are proposed:

- **Scope and Application.** We recommend that all sites subject to site plan review by the Planning Commission include a landscape plan, including building changes or re-occupancy.
- **Frontage Landscaping.** We recommend that frontage landscaping requirements be clarified to apply to all uses in the C-1 district and all other uses with a parking lot over 2,700 square feet (currently, parking lots over 2,700 sq. ft. are also required to include parking lot landscaping). While 1 tree per 24 linear feet is currently required for frontage landscaping, McKenna's landscape architect recommends a spacing of 35 feet to allow for tree growth. We recommend that the Planning Commission be allowed to modify the frontage landscaping requirements where there are orchards or vineyards in the front yard and when landscaping would block a scenic view area as shown in the Master Plan.
- **Parking Lot Landscaping.** Where parking lot landscaping is currently required (i.e., for parking lots over 2,700 sq. ft.), landscaping is currently required around the perimeter and in the interior. We recommend standards to specify the number of trees and shrubs as well as the minimum size of landscape areas.
- **Greenbelt.** In many areas of the Zoning Ordinance, there are greenbelt requirements that are either inconsistent or not descriptive. We recommend having one standard for all required greenbelts.
- **Additional Screening.** We recommend adding screening requirements for mechanical and utility equipment and garbage and refuse areas. Again, this requirement would only apply to uses subject to site plan review.
- **Standards for Plant Materials.** We recommend that the Zoning Ordinance include minimum standards for plant materials, such as ground cover and plant species (both recommended species and prohibited species).

- **Landscape Installation and Maintenance.** When landscaping is required, there should be minimum standards to ensure that the material is properly installed and maintained.
- **Modifications.** We recommend that the Zoning Ordinance clearly state that the Planning Commission is the body that can grant a modification of the landscaping requirements.

Article 11. Signs.

Last summer, the United States Supreme Court decided the case of *Reed v. Town of Gilbert* where it held a municipality's sign ordinance unconstitutional because it violated the First Amendment. While the signs at issue were noncommercial signs (temporary directional signs, ideological signs, and political signs), the Court's decision impacts many other types of signs. Therefore, many of the proposed changes to the sign regulations are with respect to sign content, and we anticipate additional changes after the Township Attorney reviews the proposed article.

While many of the major changes are noted in the margins of the draft Zoning Ordinance (dated May 10, 2016), they are summarized as follows:

- **Purpose.** Many items were added to the purpose statements to make them more robust by emphasizing public safety and rural character.
- **Definitions.** We recommend moving the sign-related definitions from Article 2 to the Signs article. This change will make the sign definitions easier to administer. The sign definitions were grouped based on the sign type and the sign content. Although the regulations are made more content-neutral, the content-based definitions were preserved and put into a sub-class as an example of a content-based standard. This way, the only content-based distinctions for signs are whether they are **commercial or noncommercial**, or **on-premise or off-premise**. However, if the definitions and regulations must be more content neutral, it will be easy to make them more content neutral based on the proposed format.
- **Substitution Clause.** A substitution clause is a requirement that any lawful sign may contain noncommercial content. Therefore, commercial speech cannot be favored over noncommercial speech, which is a legal requirement based on a previous U.S. Supreme Court case.
- **Sign Measurement.** We recommend being more specific regarding how sign area is measured for irregular shapes and two-sided signs.
- **Sign Placement and Design.** While natural or natural appearing materials are "highly encouraged," we recommend making these materials a requirement along M-37 and "highly encouraged" elsewhere in the township. Also, we recommend minimum maintenance requirements. Finally, we recommend that the Planning Commission or Zoning Administrator review signs instead of the ZBA. However, the ZBA would still review signs where there is a variance application.
- **Prohibited Signs and Signs Permitted in All Districts.** We recommend adding to the lists of Prohibited Signs and Signs Permitted in All Districts to make them easier to understand and administer. There are corresponding definitions for new signs added to these lists.

- **Sign Regulations for Specific Zoning Districts.** We recommend adding a table for each zoning district with corresponding sign regulations. In proposed Section 11.108, there are standards that apply to all zoning districts. In many cases, the number and area of signs has not changed. However, for example, signs for “Construction Site,” “Real Estate,” “Yard/Garage Sale,” and “Event” are now classified as “Temporary On-Premise Commercial Advertising Signs” as a means of making these types of signs more content neutral. Additional sections are added pertaining to signs in the C-1 district and signs in the A-1 district. Please note that the A-1 district permits an “Additional Temporary On-Premise Commercial Advertising Sign,” which is a more content neutral substitution for the additional sign currently permitted for Farms, Roadside Stands, Food Processing Plants, and Local Food Production Facilities. In essence, one use will not be favored over another similar use in the same zoning district.
- **Illumination.** While internally illuminated signs are currently permitted under limited circumstances, we recommend including maximum illumination standards based on the time of day. We also recommend that internally illuminated signs be required to include a photocell and automatic dimmer.
- **Nonconforming Signs.** Like all other nonconforming structures, there should be regulations for nonconforming signs that allow a nonconforming sign to continue as long as the on-site business remains and the sign is not expanded or changed to be more nonconforming. We recommend including standards for acceptable maintenance and repair. Please note that general standards for nonconformities will be located in Article 12.
- **Appeals and Variances.** Although appeals and variances will be reviewed under the general standards in Article 14, we recommend including additional standards for the ZBA to consider with respect to signs based on visibility.

NEXT STEPS

We look forward to discussing the proposed Articles 8 through 11 with you on May 16, 2016 and at any future special meetings. For those items that require additional revision and discussion, we will work with staff to revise them and reintroduce them at a future meeting.

Respectfully submitted,

McKENNA ASSOCIATES



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Enclosures

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