

PENINSULA TOWNSHIP

13235 Center Road, Traverse City, MI 49686

Ph: 231-223-7322 Fax: 231-223-7117

www.peninsulatownship.com

Planning Commission Meeting

Township Hall

May 20, 2019

7:00 p.m.

Meeting Minutes

1. **Call to Order:** 7:00 p.m. by Hornberger
2. **Pledge**
3. **Roll Call:** Present: Alan Couture, Larry Dloski, Donna Hornberger, Todd Oosterhouse, Susan Shipman,
Absent: Isaiah Wunsch
Also present: Randy Mielnik, Christina Deeren
4. **Review for Conflict of Interest:** None
5. **Brief Public Comments:**
Cindy Ruzak, 1994 Carroll Road: asked that for the Bed and Breakfast discussion consideration be given to the letter from Randy; refer to letters and comments to give the PDR land some consideration
6. **Additions to Agenda/Approval**
Hornberger: remove Conflict of Interest number seven and in exchange, appoint a Vice Chairman for the Planning Commission (Monnie Peters has resigned)
Moved by Shipman to remove number seven and appoint a Vice Chairman for the Planning Commission, seconded by Couture

Pass unan
7. **Conflict of Interest**
8. **Consent Agenda**
 - a. Approval of Meeting Minutes: Joint PC/Township Board Meeting 4/15/2019
Moved by Dloski to accept consent agenda, seconded by Shipman

Pass unan
9. **Reports**
 - a. Zoning Board of Appeals (Couture)
Couture: The ZBA has not met since the last meeting and on tomorrow's meeting is a zoning variance request for setbacks
 - b. Bowers Harbor SUP Committee-Mtg. 5/14/2019 (Hornberger)
Hornberger: the committee met on May 14, 2019, it was a very productive meeting and will discuss in more detail

- c. Notice of Acme Township Master Plan Update Availability (Mielnik)
Mielnik: Acme Township has notified the adjacent townships of the draft copy of their master plan as required by Michigan law that adjacent jurisdictions be notified; no action is necessary, summary is in the packet

10. Business Items

a. Public Hearings

I. Harbor Winery Chateau SUP

Hornberger closed regular planning commission meeting and opened public hearing

Mielnik: gave summary of Bowers Harbor Vineyard actions: In August of 2018 Bowers Harbor Vineyard applied for a special use approval; it was pulled from the August meeting and considered on October 2, 2018. After that meeting a committee was formed. A committee met on October 23 and again on December 10; Bowers Harbor Vineyards were pursuing a Winery Chateau designation. One variance would be need to move forward, on the December 17 meeting that was discussed. The Michigan Liquor Control changed the regulations as to what manufacturing meant for the winery and craft brewing industry and that was a setback. The application were filed on April 11, 2019 meeting; the change from 50 acres to 45.77 was approved by the Zoning Board of Appeals. The current SUP application was received on May 1, 2019, and was reviewed by the Bowers Harbor Vineyard Planning Commission Committee. A number of issues were identified that need clarification. At this time is the public hearing where the public can weigh in and the committee can listen to the comments.

Sarah Kiever, Northview 22, P.O. Box 3342, Traverse City: Bowers Harbor Vineyard did go before the Zoning Board Appeals in order to apply for a SUP under the Winery Chateau Ordinance. One of the conditions is 50 acres. We were given a variance from the 50 acre minimum to a 45.77 acre with three parcels. On the map the three tax identification numbers are owned by two LLCs and was discussed with attorneys on both sides; the SUP is binding to all three parcels with both LLCs signing. In addition, the other condition of a Winery Chateau is the minimum 75% planting referred to on the maps that identify the estate grapes for 14.75 acres, and the maple trees for syrup for use in wine is 10.5 acres, and also eight acres of cold air drainage as component. We will add a 1.2 acres of planting in the 2020 growing season to add up to 75% coverage with planting on this property. Added there will be 0.4 acres of fruit trees and 0.6 acres of estate grapes.

Addressing the parking, referring to C1.1 in the packet to show the areas for parking: a circle drive, a lawn and the entrance drive to cover fifty-six spaces. There is a proposed West side service drive that will handle additional parking and hold three busses and overflow parking.

Kristy McClellan, 16642 White Pines Trail: in speaking of the parking management plan, we experience a lot of traffic but we manage numbers by reservations and by time slot and make sure capacity is not exceeded per fire chief recommendations. He has walked the property to agree on where the shuttles will go safely; and recommended to use one way directional signs. We have trained staff on Saturday to control the parking and plan of action.

Keever: Referring to C1.1 in preparing to apply for the Winery Chateau SUP, we looked at our current operation and have a wish list for future SUP applications, including the following: plans for a pavilion addition to match present structure, two existing residences on site to include a planned pool and decking, a personal three car garage on the south end of property, and a sparkling wine facility at a later date, and a 20' by 65' tasting room addition.

Joseph Infante, Attorney, Miller, Canfield, Paddock and Stone, P.L.C.: wanted to comment on definitions of production and manufacturing, he is a beverage attorney. Explained that a new definition of manufacturing was put into place and that MC 436:1109 and the first part says that manufacturing means to distill, rectify, ferment, brew, make, produce, filter, mix, concoct, process or blend an alcoholic liquor or to complete a portion of one or more of these processes. Bottling is not manufacturing. In Michigan, in order to be a manufacturer, you have to do one of these on one gallon of alcohol. He explained that Bowers Harbor Vineyards fits the definition of manufacturing, as they produce 3,500 bottles of sparkling wine on premise that is aging and fermenting. They have barrels of wine for barrel aging, which counts as manufacturing. Local ordinance are overridden by the state laws. The local ordinances have a definition of a winery and are preempted by state laws. MCL 436:1109, the township cannot have its own ordinance as to what is the manufacturing of wine.

Dloski: our township zoning ordinance has a definition for a winery chateau that it must process and bottle on site. Is this no longer valid?

Infante: states it is unconstitutional, the state of Michigan preempts the township ordinances and the U.S. Supreme Court says that a states and local municipality cannot regulate what the federal government regulates. There are several federal cases that point to this

Mielnik: Michigan Liquor Control Commission does require that they get local approval from township zoning

Infante: local control only applies to the tasting room, no local approval is needed as the law changed as of December 18, 2018

Hornberger: opens the floor to public comments

Harold Edmondson, 12414 Center Road: Should fit to the fifty acre minimum and to not adhere to this, sets up an unfair playing field from a business perspective. Pertaining to the 75%, it refers to the active production of crops; cannot be met as there is no fruit grown on maple trees. This is a creative use of

the definition. Also, how that got to 75%, they are using eight acres of air with the cold air drainage, it is a sinkhole, blocked by pine trees. Significant from a growing perspective. Regarding the licensing issue; they do not have a complete documented area approved for consumption by the Michigan Liquor Commission; for example “Dining in the Vines” serves one hundred people. There are flaws. Does not see how this could qualify at this location; a disservice to support this as a winery chateau per the acres and site conditions given.

Tom Petzgold, 4300 Happy Hour Lane: spoke in support of Bowers Harbor Vineyard’s request as a winery chateau. Has lived here for twelve years and has worked at Bowers Harbor Vineyards for eleven years. Spoke about Linda and Spencer Stegenga and their character. First, they have respect for people, the environment; and second, for the community in their operations. They take into consideration their neighbors and the community; for example, support Rotary and the lighthouse label donation program. They have integrity and fairness in the treatment of their employees and for their product. Allow Bowers Harbor Vineyard to grow and prosper.

Linda Carlson, 11654 Bluff Road: she has lived here since 1970 and has been a business owner. She has known Spencer and Linda, they are hardworking and are stewards of the land. She is unhappy with the unpleasant rumors about them.

Doug Kosch, 14620 Peninsula Drive: spoke in favor of Bowers Harbor Vineyard to get winery chateau designation. He has worked with them and experienced a successful business relationship with them since 2014 and more recently “Dining in the Vines” event and does not see any parking problems. They are stewards of the land.

Charles Kass, 9958 Peninsula Drive: Bowers Harbor Vineyards are behind the success of the Peninsula and have complied with requests and complaints; the board should try to make it happen (winery chateau) as they are locked in by road and parks; in support of the Bowers Harbor Vineyards owners.

Joanne Wesphal, 12414 Center Road: in her professional opinion, the Bowers Harbor Vineyards evolution has become messy between state and township government. Her concerns are expressed in a letter read to the board members and audience. In summary, the first point is that the winery does not meet ownership by a single tax authority and that a minimum of 75% of the property is not in agricultural production. The second point states that Bowers Harbor Winery has never processed wine or cider at its current permitted facility. The third point states that the Michigan Liquor Control Commission is not in the business of enforcing Peninsula Township’s ordinances, but it is important that the township boards and commissioners review the document from December 19, 2018 regarding the manufacturing requirements and retail sales at tasting rooms. She does not support the winery chateau SUP for Bowers Harbor Vineyards and asked that her letter be inserted in the minutes.

Ruzak: I agree with all sides and hope for the township to be more flexible and that this signals a new trend on how we look at ordinances to allow niche businesses to succeed and find ways to do that.

Hornberger: allow for Infante to respond

Infante: responded to Joanne Wesphal's letter; he had talked about the Michigan liquor laws and statutes, he helped write the ordinances in the liquor control code. Explained the manufacturing ordinance change was not for wineries such as Bowers Harbor, but for breweries. Further the winery licenses can be transferred and the single parcel for a property is untrue. The comment that Bowers Harbor Vineyards is not making anything; their monthly excise tax reports disclosed to the federal government the production of wine on their property.

Mielnik: introduced two written communications with the first from Walter Brys expressing that the simplest solution is to grandfather Bowers Harbor Winery into what they have been for the past twenty years and not to try to turn them into a chateau when they clearly do not meet a number of the minimum zoning requirements; not only the two variances they are requesting but most importantly the requirement to have an on-site winery operation. The second communication is two letters from John Wunsch with the first expressing a concern of the eight acres of air drainage to count toward the 75% as is a significant departure from the clear standard of the ordinance and urge the commission to work to establish a standard as to how much drainage is acceptable by percentage. The second concern from Wunsch is he does not support the currently proposed winery chateau language and suggests the insertion of "one development right" to replace each occurrence of "five acre space allocation."

Dloski: this is a public hearing so this will not be put to vote. The real concern is preemptions, what parts are valid and enforceable; what is enforceable to the winery chateau and seeks an opinion from the township attorney.

Mielnik: the township attorney has been involved in all conversations on this topic, will relay that concern.

Dloski: requests a written legal opinion and the state and federal level preempting on the winery chateau issues enforceable and non-enforceable.

Mielnik: there was conversation between the applicants and our attorney on that topic

Dloski: this would be in general, not just for Bowers Harbor Vineyards, what do we have that is enforceable and non-enforceable

Hornberger: this would be for the most recent changes, December of last year

Dloski: so we need township board approval

Mielnik: will make that request tomorrow morning

Couture: concerning the eight acres of air drainage as active production of crops and the 75%, this is a stumbling block and need clarification from Meihn; looking for guidance in terms of the active production of a crop

Dloski: three instances this has been recognized as valid, the attorney needs to look at granting it

Couture: bound if precedent

Dloski: granted to other owner

Shipman: looked at application and applicant; one of the things needed is a site visit. Confused about ownership issue and liquor control and variance. Legal counsel clarification needed, wishes to see a review of where we are in compliance with the ordinance and this application; the conditions, how many, significance of them and timelines involved.

Oosterhouse: look at zoning and the Zoning Board of Appeals decision; 75% was approved at 45.77 acres. We look at that, not the 75% of fifty acres. They are in compliance with that. There is a need to look at timelines, road, and clear up ownership of parcels, how that lays out legally.

Meilnik: did clarify that point this morning, two LLCs is acceptable

Oosterhouse: The maple trees as fruit has been done, cold air drains has been allowed

Dloski: do we grand SLUP approval on the time of the application or on what needs to be done?

Hornberger: when we granted the SUP for Marty Lagina, we had conditions to be done in a certain period of time; they did not have everything planted in grapes, they were just starting. We can make conditions and a timeline for Bowers Harbor Vineyard. If interested in a site visit, we can set that up.

Oosterhouse: acreage on MLCC tasting rooms?

Mielnik: MLCC tasting rooms are in a graphic C1.2 in the packet

Shipman: the letter received from other winery chateaus carry weight. The made investments and have followed rules; do not want to see precedents.

Mielnik: this is a very unique situation and small winery chateaus are not necessarily encouraged, addressing a narrow set of circumstances, should include language in the SUP so that this is a special case

Hornberger: our winemaking community does not want to see this

Dloski: have we determined proposed property expansion would comply with the ordinance?

Hornberger: far enough down the line that the SUP does not include permission, the sub-committee has not gone that far, that is not part of the application

Discussion among Hornberger and Dloski about the application and the future sparkling wine timeline in the future

Mielnik: subject to more conversation and another sub-committee

Hornberger closed public hearing and opened the regular scheduled meeting
Motion by Dloski to table the Bowers Harbor Winery Chateau SUP to June, seconded by Shipman

Pass unan

b. Other Business

I. Introduction to PUD Development Concept-Coldpen One, LLC

Dan Leonard, representing Coldwater Estates: presents PowerPoint presentation with the details of a proposed development between Center and Bluff Roads, south of Eagles Landing. The proposal is for a PUD. Propose to put six site condominium units on this site which is very hilly and the homes will be clustered with a common area; will meet zoning code, private road standard. Under PUD zoning ordinance, need minimum of twenty acres. The septic fields will be co-located in a central location.

Dereen: will it encroachment occur with adjacent property? Neighboring land will encroach property

Leonard: the drives are not on the Bluff Road side, shared access, 130' of frontage

Dloski: what do you want the board to comment on?

Leonard: presenting to the board tonight to outline the details of the project; will next meet with the neighbors. PUD cluster of will not remove the tree cover, preserve as much open space as possible

Dloski: a common well and septic

Leonard: the PUD with access to the bay, common space stairwell to walk through on the Bluff side to the water

Dloski: does the topography make it difficult to get to the water?

Leonard: will need a significant stairwell, will need a small staging area for the water access, temporary parking, and the 130' will be sufficient to provide that

Mielnik: this is a good application for a PUD, there is an issue with the size, the access points are a departure from the ordinance, and this was drawn up before there was history

Leonard: zoning was different under different administration, before eight units were proposed, one with four units, to balance legal and the interpretation of the project landed at six

Mielnik: common open space?

Leonard: yes, it will be delineated and measured

Dereen: tree removal can be a problem, hesitant to have trees removed for the potential for run-off and to flood homes

Dloski: storm drainage to the Center Road portion?

Leonard: The South side of the entry off Center Road

Dloski: drain to Center Road

Leonard: it is all sand

Dloski: you will have catch basins?

Leonard: yes, that is why he is presenting in this way this evening

Shipman: This project is one I want to see come in front of us, what is your relationship to the builder?

Leonard: stated he is familiar with the peninsula, helping Justin through the project

II. Zoning Amendment-Bed and Breakfasts *Discussion*

Hornberger: in the joint meeting (April 15, 2019) we directed the planner to come to us with modified Bed and Breakfast wording

Mielnik: The Bed and Breakfast wording is up to three guest rooms for one acre, the ordinance does not go beyond three guest units. The concern was it is not appropriate for a larger piece of property. The ancillary issue is to add guest units is the fact that we have the PDR program. The township Public Development Rights program is tax dollars from private land owner and the land can only be used for agricultural purposes, essentially non-developable. For the Bed and Breakfasts and winery chateaus it can be acreage for additional development opportunities. The land under PDR issue is one to seven homes allocated when PDR was executed. There is some development potential the way the PDR was prepared. We have this issue, the bed and breakfast and the winery chateau deserves evaluation. The PDR and zoning ordinances are not the same, they are two separate ordinances. The PDR program is secondary to the zoning ordinance and is unique to Peninsula Township.

Dloski: if the taxpayer money has bought development rights they should not be used on another property. Are there conservation easements that restrict the use to agriculture, open space and excludes residential development?

Mielnik: there is an acre set aside that says you can build a home and market value was adjusted accordingly

Dloski: a bed and breakfast, does that equate to a dwelling?

Oosterhouse: we do not say in the PDR, how big it could be

Mielnik: a single-family unit for one acre. The complication presented itself this evening. The packet and statements about processing facilities being allowed on conservation easement properties and are different in agriculture and winery,

Dloski: the winery chateau is more complicated and should be tabled to the next board meeting

Board discussion about tabling the issue

Edmondson: I am involved in five legal contracts and language is specific. Additional covenants restrict more thoroughly; to not us PDR in the future, put it in the contract. All the rights with what is retained and what was in the covenant.

Hornberger: table the Bed and Breakfast discussion to June

Moved by Dloski to table the Zoning Amendment- Bed and Breakfast discussion to June, seconded by Couture

Pass unan

III. Zoning Amendment-Winery Chateau *Discussion*

Moved by Shipman to table Zoning Amendment-Winery Chateau Discussion to June, seconded by Couture

Pass unan

Hornberger: We are without a Vice Chair do you wish to select one tonight?

Mielnik: we need another member, the township board selects that member

11. Public Comments

Ruzak: on the written comments on the PDR selection is OK for farm processing permitted on PDR land. Felt is should be for open space and farm land in my opinion. Thinking about what I can do with my twenty-seven acres, for example twenty as farm processing and seven for a bed and breakfast. Is there a way to grade the land and to have land in PDR and not bed and breakfast? With seventeen acres, there can be two more rooms, PDR does not matter. It is not black and white and there should be a gradation plan. For Bowers Harbor Vineyards the SUP language should be so everyone doesn't come forward and remember how Bowers Harbor Vineyards began with special language, a farm market to sell wine.

Wesphal: I stand by the fact to attorney Infante and verify my statements on Michigan Liquor Control and the definitions from the Michigan Liquor Control. This is selective exclusion of individuals, carefully monitor this change as precedents will be set for the short and long term.

12. Other Matters or Comments by Planning Commission Members

Dloski: not part of the Bowers Harbor Vineyards committee from what I have heard, not convinced that SLUP is needed; grandfathered in and expressed concerns with SLUP

Hornberger: it is called a roadside stand

Dloski: winery chateaus have invested a lot

Mielnik: the code was written, a non-conforming usage is limiting

Dloski: concerned that the SLUP is to fix a broken situation, but they are expanding

Oosterhouse: adding production for sparkling wine, parking is needed; cannot tell them to shut down

Dloski: do we want them to expand substantially?

Oosterhouse: if they want the expansion, they want to be in existence

Board discussion how to use SLUP to expand and what approval would be for the tasting room and what has started this entire process and the expansion plans beyond the 150 square feet for the roadside stand

Westphal: considering conversations as a planner maybe looking at a zoning variance instead, regulate as a business instead of a SLUP

13. Adjournment:

Moved by Dloski, seconded by Shipman

Pass unan

Adjournment time: 9:25 p.m.

COMMUNICATION ATTACHED -Jo Ann Westphal

DRAFT

Joanne M. Westphal, PhD, DO

12414 Center Road, Traverse City, MI 49686, (231) 649-4080

May 20, 2019

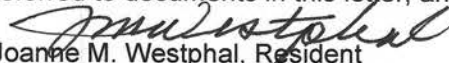
Re: BHV Winery-Chateau Application

Dear Honorable Planning Commission Members

I am writing to express my concerns surrounding the potential approval of a new Special Use Permit (SUP) for a Winery-Chateau at Bowers Harbor Vineyard (BHV). As a professional planner of 43 years, a township resident, and the former Clerk of the Peninsula, I strongly encourage the Planning Commission to unanimously reject this application for the following reasons:

- 1) BHV does not meet two basic standards in Peninsula's Winery-Chateau Ordinance. Standard #1 requires ownership **by a single legal tax entity** of a minimum of 50-acres of land for a winery-chateau permit. Standard #2 requires a minimum of **75% of the property in agricultural production** of vines or trees used to manufacture wine or other value-added agricultural products. Both standards are, and have been, essential in protecting the township from a plethora of small wine-maker license applications arising from every 5-acre agriculturally zoned parcel of land on the Peninsula. While the Zoning Board of Appeals approved a variance earlier this month for BVH in terms of acreage amount, **it failed to consider the ownership issue of this acreage. Furthermore, consideration of a variance for the agricultural production standard was pulled from the agenda, and thus remains unresolved as a standard.** (*The Staff Report for ZBA Request #873 clearly shows the nature and magnitude of the problems surrounding this Winery-Chateau application, including ownership, basic conditions of site, inconsistencies in application information, and application incompleteness; the current application before the Planning Commission has some of the missing pieces addressed but remains incomplete in its entirety.*)
- 2) BHV has never processed wine or cider at its current permitted facility. This is a violation of its Michigan Liquor Control Commission (MLCC) small wine-maker's license and its intended purpose under SUP#32 for a food processing/winery facility. Failure to meet the requirements of a Special Use Permit in the Township, by ordinance, requires that the permit be rescinded for non-compliance. SUP#32 has been on the books since 1992; during this time, the applicant has failed to meet the most fundamental requirement of its permit—the **processing of wine at its own facility—while it has moved forward with its wine tasting and retail sales of wine and cider by the bottle**. This has been a perennial issue. When asked by Trustee Wendy Witkop if BHV ever intended to process its own wine on-site under the conditions of SUP#32 (*Town Board meeting minutes of April 25, 2016*) the owner said "probably not..." a direct violation of conditions set under SUP#32.
- 3) Finally, let me observe that the Michigan Liquor Control Commission (MLCC) is not in the business of enforcing Peninsula Township's ordinances. Therefore, when it comes to on-site inspection of a property, it will only consider MLCC rules and provisions for operating a winery; it is totally unconcerned with our land use regulations. Therefore, it is eminently important that the Township Boards and Commissions review the MLCC document "Information on New Manufacturer Provisions Enacted on December 19, 2018 Related to Manufacturing Requirements and Retail Sales at Tasting Rooms" (*Exhibit attached*). This document spells out the significance of where and how wine can be made legally under the auspices of the MLCC; particular attention needs to be given to the subtle distinction afforded a wine maker versus a small wine maker. This distinction may explain why BHV has not been cited for a violation of its MLCC license. More importantly, the distinction could herald the future of the Peninsula in determining whether we go the way of Napa Valley.

Needless to say, the significance of this application to the future of land use in Peninsula Township cannot be understated. If this application moves forward and is ultimately approved by the Town Board, it will signal a new era in non-compliance for winery requests in the township. I ask you to prudently review the attached exhibit and referred to documents in this letter, and vote "No" on moving this application forward to the Town Board.


Joanne M. Westphal, Resident
12414 Center Road, Traverse City, MI