

**YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.**

Attorneys at Law  
104 E. Forest Home, P.O. Box 398  
Bellaire, Michigan 49615  
(231) 533-8635  
Facsimile (231) 533-6225  
pwendling@upnorthlaw.com

Bryan E. Graham  
Peter R. Wendling  
Eugene W. Smith

James G. Young, *Of Counsel*

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June 14, 2016

**Sent via email**

Michelle Reardon, Planner  
Peninsula Township  
13235 Center Road  
Traverse City, Michigan 49686

**SUBJECT: Vineyard Ridge Condominium document review**

Dear Michelle:

I have had an opportunity to review the Vineyard Ridge Condominium documents. Beginning with the Bylaws, the drafter has done a very good job of ensuring that the township's interests with respect to its zoning and police power ordinances are intact. The Bylaws also notify future unit owners that any improvements on their unit(s) must be done in compliance with Peninsula Township's zoning and police power ordinances as they exist at the time the activity on the unit occurs.

Section 4.4 of the Bylaws discusses maintenance, repair and replacement of general common elements and limited common elements, noting that any such maintenance, repair and replacement shall comply with all ordinances of Peninsula Township.

Section 6.3 addresses reconstruction and repair and under subparagraph (e), entitled Compliance with Local Ordinances states that "any reconstruction or repair is required to meet all local ordinances and codes, including all ordinances of Peninsula Township as applicable at the time of any reconstruction and/or repair."

Section 7.7 of the Bylaws entitled Local Codes and Ordinances requires that all construction and building comply with all zoning and police power ordinances of Peninsula Township.

With respect to uses, section 8.12 of the Bylaws specifically states that "...all uses must meet the requirements of local laws, codes, and the ordinances, including all ordinances of Peninsula Township."

Turning to the Master Deed, section 3, Definitions, subparagraph (i), defines Condominium Unit or Unit as a "...portion of the project that is designed and intended for separate ownership and use, as described in this Master Deed and as so treated for all purposes under Peninsula Township's Zoning Ordinance, including the definition of Condominium Unit and the definition of Lot under the Ordinance, as amended, as of the date of the recording of this Master Deed." The definition section of the Master Deed

also includes Local Ordinance. This definition includes the Peninsula Township Zoning Ordinance, as amended, and all police power ordinances of Peninsula Township, as amended, "...or created after the establishment of this Condominium Project."

Addressing maintenance responsibility for the common elements, in addition to what was already provided in the Bylaws, section 4.3(e) of the Master Deed states at the end of that paragraph that "...all such maintenance, decorations, repairs, replacements, structures or improvements located within the unit or any appurtenant limited common element, shall meet the requirements of all Peninsula Township Ordinances at the time any such action as described in this paragraph is taken."

Moving on to private roads addressed in the Master Deed, section 4.3(g)(i) states that "All private roads within this condominium development must be built and maintained pursuant to the requirements of section 7.10 of the Peninsula Township Zoning Ordinance, as amended, and any other township police power ordinances, as applicable at the time construction or material maintenance regulated by such ordinances occurs." Continuing with section 4.3(g)(iii), entitled Special Assessments, the developer has included a provision which states that if the Association fails or refuses to construct or maintain the private roadways in accordance with Peninsula Township's Zoning Ordinance requirements, as amended, and the township determines that such failure or refusal to abide by its ordinances has occurred, under this subsection the Master Deed grants the township the authority at its sole discretion to establish a Special Assessment District for the purpose of constructing and/or repairing the private roads and to otherwise bring the private roads into compliance with the township ordinances. The developers and co-owners and successors in title expressly consent that documentation showing ownership of the condominium development and/or of a unit within the condominium development through a recordable instrument recognized under Michigan law, constitutes a petition to request the Special Assessment District under P.A. 188, of 1954, as amended. This eliminates enforcement issues related to the construction and maintenance of private roads and drives as regulated under the township zoning ordinance by allowing the township, at its discretion, to impose a Special Assessment District without worrying about appeals to the Michigan Tax Tribunal.

Note that many of the provisions under section 7.10.2 required by the township are incorporated in this section of the Master Deed, namely section 7.10.2(d), (e) and (f). Owner enforcement is covered under section 8.8 of the Bylaws. Section 2.6 of the Bylaws covers the majority vote for all items under any meeting, not just roads, covering section 7.10.2(a). Finally, apportionment of costs and assessments is covered under section 5.3 of the Bylaws, addressing section 7.10.2(b).

Michelle Reardon, Planner  
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Section 7 of the Master Deed discusses the ability to contract the Condominium Development under Michigan's Condominium Act. Section 7.6 specifically states that "Any contraction or withdrawal of land under the project shall be done in a manner which, in addition to complying the provisions of the Michigan Condominium Act, shall also comply with all ordinances of Peninsula Township."

Finally, the draft affidavit for the establishment of the PUD seems to be in order. I do not have a copy of the site plan, but I trust that the review for compliance with respect to lots, unit sizes and percentages needed in order to have a PUD have been calculated by planning staff and reviewed by the township engineer as they should be.

If you have any further questions, please do not hesitate to contact me directly.

Sincerely,

Peter R. Wendling

PRW/tac

cc: Monica Hoffman (via email)

## Michelle Reardon

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**From:** Peter Wendling <pwendling@upnorthlaw.com>  
**Sent:** Tuesday, June 14, 2016 3:05 PM  
**To:** Michelle Reardon  
**Subject:** Re: FW: Vineyard Ridge Private Road Legal Description

Michelle,

This drawing is very preliminary. The layout seems to work with the regulations under 7.10.6. However the plan (as it is) does not meet the requirements of 7.10.9. Grade, drainage, utility easements, ect. are not included. Both Brian Boals and me will need that information.

Peter

On 6/8/2016 4:53 PM, Michelle Reardon wrote:

Please see attached for review as part of the private road.

### Michelle Reardon

Ph. (231) 223-7314

[planner@peninsulatownship.com](mailto:planner@peninsulatownship.com)

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**From:** Dusty Christensen [<mailto:dusty@maaeps.com>]  
**Sent:** Thursday, June 02, 2016 4:46 PM  
**To:** Michelle Reardon  
**Subject:** Vineyard Ridge Private Road Legal Description

Michelle,

It appears that my regular emails are getting through! At least I'm not getting the same bounce back message...

Here is the legal description for the private roads. There isn't a great spot for this to be included within the regular submittal package so I'm sending it on its own. Other miscellaneous information is forthcoming, along with an updated submission (narrative, drawings, etc.)

Thanks,  
Dusty

Dustin M. Christensen, LLA  
**Mansfield Land Use Consultants**  
830 Cottageview Drive, Suite 201  
Traverse City, MI 49685  
office: (231) 946-9310 ext. 1008  
cell: (231) 360-7021

Peter Wendling  
Young, Graham, Elsenheimer & Wendling, P.C.  
(231) 533-8635

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## Michelle Reardon

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**From:** Grey Hare Inn <greyhareinn@hughes.net>  
**Sent:** Thursday, June 16, 2016 11:10 AM  
**To:** planner@peninsulatownship.com  
**Subject:** Ruzak followup on B & B revisions

Michelle,

As I altered my schedule so I could be available this past Tuesday for the Town Board meeting but that now means I won't be around to attend the PC meeting Monday where the discussion will likely be continuing. So I just wanted to indicate that I hope while the PC members review whatever it was that the TB felt was needed, that it also not **over** compensate as a reaction to the comments by one resident who had a bad experience with their neighbor.

If the minimum acreage were to increase to 5 and all the remaining verbiage remained the same that would seem logical, but I also felt there were just as many reasons for why the study group came up with the 3 acre minimum. I have send further communication with Mary Swift, who actually I thought should have been able to see that what was being proposed would indeed prevent a situation such as she had with a 1 acre B & B that was inconsiderate. But I am not sure there is any size of parcel large enough to erase her bad thoughts, so I hope that as Mr Avery mentioned that we do not create zoning in reaction to one person's bad experience.

While I have many issues as I have already expressed with the rewritten B & B ordinance I still believe it to be a step in the right direction overall. And I do plan to address some of the issues to which I could not respond at the meeting with the Board Members individually. I am confident after our many conversations that you will be able to present the positions of bed and breakfast operators very adequately in our absence. Sincerely, Cindy Ruzak

## Michelle Reardon

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**From:** Mary Swift <mswift@chartermi.net>  
**Sent:** Monday, June 20, 2016 11:44 AM  
**To:** Monica A Hoffman; planner@peninsulatownship.com  
**Cc:** Mary  
**Subject:** Master Plan and Zoning Ordinances, Planning Commission Agenda Items

Please share with Planning Commission before tonight's meetings as well as the Town Board. Thank you. Mary

To: Peninsula Planning Commission  
Cc: Peninsula Town Board

Once again, I am compelled to write about issues being created by our Township government along with staff, counsel, and consultants. I am unable to attend the two Planning Commission meetings scheduled for today, unfortunately, but I would like this letter included in the meeting materials and read into the record, not just listed as "correspondence." I apologize for it arriving the same day as the meeting.

We have put the proverbial "cart before the horse" by continuing to push the zoning ordinance work, which began months ago, ahead of the Master Plan review that began recently. Planning (as in Master Plan) comes before zoning, not the other way around. Our zoning ordinances must have a basis in our Master Plan or they become unenforceable and ignored. As our enforcement resources are minimal, you are inviting scofflaws on every conceivable front, especially because these zoning ordinances do NOT reflect the will of this community. I implore you to suspend the work with the consultant, McKenna, until such time as the Master Plan review has been completed. Suspend any additional input and expenses from McKenna so that a proper review of the Master Plan is conducted before the zoning ordinances are addressed. After a public Master Plan review process is completed, the zoning ordinance work could continue so that it reflects the Master Plan (with or without McKenna). The zoning ordinance work to date has added content, content that seriously affects the residents of Peninsula Township, and you do not have our approval to do so. This process started out to "clean up and organize" the zoning ordinances but has led to wholesale changes in language. Why are you making substantive rewrites to the zoning ordinances without public scrutiny and without basis in the Master Plan? Your agenda does not match your public's will.

A suggestion on how to proceed:

- 1) Suspend all work with McKenna.
- 2) Appoint an ad-hoc committee of residents (along with the Township Planner and perhaps one PC member) to review and provide an updated draft of the Master Plan to the Planning Commission in a timely manner. This ad-hoc committee must be open to the public and accept their input.
- 3) Once review and approval of the Master Plan by the Planning Commission is completed, this ad-hoc committee should undertake a review of the zoning ordinance draft with emphasis on streamlining the language, ensuring all ordinances have a basis in the newly reviewed Master Plan, and simplifying the ordinances.

If you continue to proceed in rewriting the zoning ordinances without completing the Master Plan work first, you are putting our Township at risk, yet again, for lawsuits by our citizens. You are making the ordinances bigger, longer, and more confusing – and especially adding content that does not apply to our community. You also are creating a set of laws that likely will not be followed because they do not reflect citizen input, wants, or needs.

Also I would like to comment on a few specific issues in the proposed zoning ordinances (though the list is long):

- 1) First, the B&B work – I won't repeat my previous notes here, but rest assured I am going to stay involved until the language reflects input from non-B&B owners like myself. You are failing both the B&B owners AND the residents at the moment.

- 2) The ag ordinance work – this whole process needs to be questioned. A detailed article by article conversation, regardless of whether you are finally doing it in a public “roundtable” manner, assumes a foregone conclusion that the existing zoning ordinance should be changed! The current ordinance has worked well for most residents for over a decade and yet the Planner has insisted on a full rewrite, which will likely allow for a much higher degree of proliferation and commercial activities among the wineries on Old Mission. The commercial operators in the community are much fewer in number than those of us who have to live with the consequences of allowing expanded commercial uses. The commercial operations in the community (under the guise of being ag operations) have for far too long benefitted from being considered agricultural uses (lower taxes, expanded “farming” uses, etc.) – the public has spoken loudly and clearly through the Master Plan process that large numbers of commercial ventures are not desirable. The Master Plan calls for limited growth and preservation of our rural character, scenic viewsheds, and shorelines. Why are the staff and board pushing for changes that will increase density and undermine our Master Plan? How many more commercial operations can our Peninsula accommodate and maintain the atmosphere/ambiance we strive to define in the Master Plan? We do not want mini bars and restaurants at the winery/chateaus – they are supposed to be wineries and tasting rooms – not entertainment centers and large scale commercial operations. It appears that because the Planner and the Town Board have been unable or unwilling to enforce the rules on the books, they are rewriting ordinance language to make the infractions “legal” in the winemaking community. That’s like telling the lawmakers to raise the speed limit if I get a speeding ticket!
- 3) Changing definitions of water bodies: In Section 3.103E the CURRENT ordinance reads, “Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines; on the Great Lakes, the boundaries shall be the ordinary high water mark.” The DRAFT ordinance reads, “Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines; on the Great Lakes, the boundaries shall be the ordinary high water mark, OR THE SHORELINE, WHICHEVER IS LOWER.” This modification should not be considered, period. For one, the Township, its Supervisor, and the Assessor are being sued for alleged illegal land division using the water’s edge instead of the OHWM and NO CHANGE should be considered while litigation is pending. Despite that, this change would add enormous complexity to surveys, property assessments, and land divisions – allowing a moving target to be the basis of these things is costly, cumbersome, and nonsensical! The public is appalled that this language has been suggested by the Planner and consultant – McKenna should be fully aware that almost all the townships around Grand Traverse Bay use the OHWM as the boundary standard! Is this language being added to benefit the Supervisor and Assessor? Our Township attorneys continually cite the “trespass” Supreme Court case to justify removing the standard used on the Great Lakes for many decades (the OHWM) – yet our attorneys know fully well that the Glass case was never intended to be used for surveys, property assessments, and land divisions – only as a mechanism for riparian owners to prevent people from using the area below the OHWM to the shoreline as public property!
- 4) The “81” – Why is a developer being allowed to submit a second plan for development on the same property as a plan that is being litigated? To my knowledge, the developer has not withdrawn the first plan. This is a waste of Township time and resources to even consider a second option while the first is in litigation! The developer must withdraw the first application to have any new plans be considered. No additional work on the “81” project should be conducted by the Planning Commission while this project is being litigated.

I appreciate your sincere consideration of these points and look forward to your taking action to protect our community.

Mary Swift