

PENINSULA TOWNSHIP PLANNING COMMISSION
SPECIAL MEETING
June 20, 2016
5:30 P.M.

Meeting called to order at 5:30 p.m.

Present: **Wunsch; Peters; Couture** (arrived at 5:39 p.m.) **Hornberber; Serocki; Rosi** (arrived at 5:37); *Leak*-Chair
Also present were Michele Reardon, Director of Zoning and Planning; Peter Wendling, Township Attorney; via skype Patrick J. Sloan, McKenna & Associates and Mary Ann Abbott, Recording Secretary

Approve Agenda

MOTION: Hornberber/Wunsch to approve the agenda with the addition of two correspondence items: Mary Swift and Cindy Luczak.

PASSED UNAN

Brief Citizen Comments – for items not on the Agenda

Louis Santucci, 12602 Center Road trying to figure out how entire Zoning package relates to Amendment 190? *Reardon* responds that Amendment 190 was passed by the Town Board however the B& B portion was taken off. That portion will be sent back to the Planning Commission. Amendment 190 amends our current Zoning Ordinance. What you are working on tonight is a Zoning Ordinance more in keeping with enabling legislation as well as using the Master Plan to guide the regulations in that document. *Santucci* So if the B& B portion of 190 is going back to the Planning Commission will the public have an opportunity to comment. **Leak** answers Yes.

David Taft, 952 Neahtawanta expressed concerns over the “81” development and the possibility of arsenic and lead poisoning due to the fact that it had been a cherry orchard. He urges the Township to use due care in requiring an environmental assessment of this property.

Nancy Kahn, 14890 Shipman would like to comment on Article 2 Definition 115 that is “Site Area”. The question is whether you can use Road Right of Way to calculate lot size. There is a question that the word “excluded” has been changed to “included”. She wanted to bring this to the attention of the Commission and suggests that it may be appropriate to deliberate on this topic.

Anne Rogers, 1236 Peninsula Drive, representing NMEAC (Northern Michigan Environmental Action Council) is concerned about the water and air, tree cutting, erosion and the impact on the water. Also about the pesticides and herbicides that had been used on the property. She is asking for an independent environmental assessment.

Jim Komendera, 4168 Rock Shore, President of Preserve Old Mission has environmental concerns about “81”. The cherry orchards were exposed to pesticides and fertilizers that were legal at the time but phased out in the 1950’s. Suggests a soil test on the property before soil is moved.

Margaret Achorn, 11284 Peninsula Drive would like to speak about Escrow Accounts. On 2/22/2016 the PC passed the escrow portion of Amendment 190 and sent on to the Town Board. The Town board approved this portion on June 14, 2016. At the meeting Achorn asked why the 81, Vineyard Ridge, and Tabone Winery were not billed for Gourdie Frazier fees. She was told that there was not an ordinance establishing an escrow mechanism. **Leak** we require them to post a bond. *Reardon* The amendment was just approved it was published and will be approved in 30 days after publication. Not in effect right now. At Town Board we saw there was a problem and corrected it. **Rosi** There was a system at the time of the Orchards to put money into escrow at that time.

Mark Nadowski, 10 McKinley Road representing Protect the Peninsula. He would like to bring to their attention to a 4 page document from Global Environmental and Planning and hopes that that the Board will look at this report Basically on 7/11/15 that report states that based on the application it should be denied.

Scott Howard, 420 E. Front, Attorney for Jim Komendera and Preserve Old Mission would like to have the Board keep in mind that the township has the right to require applicant to pick which particular mechanism they are using to develop their plan. He suggests that language is developed to make this clear to the applicants. Also in terms of Environmental Due Diligence that application may be required to give you reports that they have and the Township may do their own environmental analysis for Public Safety and Health.

Andris Valdmanis, 1484 Chimney Ridge has worked with the Township for over 35 years and they have been very cooperative with him. He would like to talk about Zoning and the Master Plan. Resident surveys are 10 years old and needs to be looked at. McKenna has not been inclusive of the residents. Valdmanis advocates more education, more community participation and less legislation.

Conflict of Interest

None

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

- a. Correspondence (as provided)

MOTION: Hornberger/Serocki to approve Consent Agenda.

PASSED UNAN

New Business

Peninsula Township Zoning Ordinance DRAFT: Articles 3-4 (Discussion)

Reardon reported that Patrick Sloan from McKenna is participating via phone this evening. Sloan begins with Article 3: Zoning Districts and Maps Interpretation. Section 3.103 Interpretations of District Boundaries. Major changes are section E) Water Bodies and F) Zoning of Filled or Accreted Land.

Reardon repeats that the Planning Commission was asked to discuss if we want our Zoning Districts interpreted to the Ordinary High Water Mark or the Shoreline. Attorney Wendling is here to help us with implications. There have been issues with regulating Hoists and Docks.

Peters We are looking at Shoreline to do a couple of things. We need a difference to deal with hoists, docks and storage. This is very different than measuring the quantity of land that you own. This township needs a standard on how you measure quantity of land, but this does not say that we cannot write more.

Wendling Zoning Ordinance says now that for zoning the regulations end at the Ordinary High Water Edge. The purpose is to regulate things that are done to the water's edge such as Hoists and Docks. This is different for Land Division.

Reardon we have discovered that we cannot regulate most docks and hoists and storage of these because they are below Ordinary High Water mark. From a staff perspective when we are talking about setbacks the Ordinary High Water Mark is preferred. Is the issue about Hoists and Docks important enough to re-write the ordinance?

Peters Would like to have cake and eat it too.

Wunsch to summarize the Township would like to be able to regulate Docks and Hoists but continue to use the Ordinary High Water for measuring land division without being in conflict with the Public Access Doctrine. Is that good direction for McKenna? *Wendling* you would have to use the same way throughout.

Serocki would like to move on to F. and possible redundancy in definition.

Discussion then moved to topic of filling and treating as well as inland water and wet zones.

Reardon indicates that staff could provide board with a map of these areas.

Review of Article 3 continues. *Reardon* notes 3.106 to 3.112 give you a place to find a use but will be redone in alphabetical order.

Reardon draws attention to McKenna transmittal letter. Asks McKenna to look at comments on the Adult Foster Care and Child Care and make sure that they are up to par with the Enabling Act but not redundant.

Leak states that he has a comment on the definition of site area that includes road right away. He thinks it should exclude road right away. *Reardon* The Town Board did make a policy decision in about 2013 that the right away would be used in area Peninsula Township
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calculations. The decision was made that if they own it they should use it. When we get to definitions Reardon will give the minutes to the Planning Commission.

Rosi 6/2/16 letter from McKenna takes about Ordinary High Water mark on inland ponds and would like to have McKenna look at that again

Citizen Comments

Dan Fleckenstein, 12000 Peninsula Drive hears issues of Ordinary High Water Edge. His deed goes to water's edge. The Public is represented in the Peninsula with beaches and parks. Not in the public interest to allow strangers on my property.

Hornberger The Planning Commission and the Township do not regulate this issue.

Nancy Kahn, 14890 Shipman comments on the Ordinary High Water mark. Notes that in the PUD section of the language "land below the ordinary high water mark should not be considered as part of the net acreage" and it is deleted. There is no explanation for why this came out. Asks if someone would make a motion to look into who took out the language about the high water mark in 5 101 (G) 2 and the exclusion of road right away in Definition 115 of article 2.

Margaret Achorn, 11284 Peninsula Drive requests that the document she presents be put in the minutes. That item is attached at the end of these minutes.

Joanne Westphall, 12414 Center Road states that the Zoning Ordinance was in need of revising to eliminate inconsistencies in definitions and enforcement issues. She believes that the proposed ordinance language and planning process has produced a zoning ordinance that is still too big, has been modified too fast with too little public input and does not conform to the Master Plan at all. She would like the discussion of the Ordinance rewrite to be tabled until it is convenient for the public.

MOTION: Hornberger/Wunsch to recess this meeting so that more chairs can be brought in and the 7:00 p.m. can begin shortly.

PASSED UNAN

5:30 P.M. continues with additional Citizen Comments

Susie Shipman, 14735 Shipman Road would like to support the recommendation that Zoning to apply to the waters edge. The shoreline is a mess. The Great Lakes belong to all of us and it is not every one's personal private playground. She applauds the effort. There are extra rules. The ordinance is long but she sees the value of what is happening here. We all need to share the shoreline. Also thinks that Land Division should be kept at the Ordinary High Water Mark.

No additional comments.

MOTION: Peters/Serocki to close the 5:30 p.m. meeting.

PASSED UNAN

Respectfully submitted by Mary Ann Abbott, Recording Secretary.

June 20, 2016
Margaret A. Achorn
11284 Peninsula Drive

I request that this document be placed in the meeting minutes:

This is regarding **BOUNDARIES ON THE GREAT LAKES: Proposed ARTICLE 3.103(E) (Current Ordinance Section 6.1.3(5))**

I own property on West Grand Traverse Bay and would be impacted by this proposed change. **I AM AGAINST IT.**

The Current Ordinance reads: "... the boundaries shall be the ordinary high water mark"

The Proposed Article: INSERTS: a critical additional phrase "**or the shoreline, whichever is lower**"

This additional phrase adds unnecessary and burdensome complexity to the Zoning Ordinance for several reasons:

1. **ELABORATE RECORDS** would have to be maintained for historic purposes to record lake levels every year –which would affect property sizes and assessments.

2. **HISTORICAL RECORDS –INCLUDING LAND DIVISIONS** – could be altered if it enabled Land Divisions not possible by the Ordinary High Water Mark standard used for decades.

This would be self serving to our current Township Supervisor and any discussion related to this Zoning Ordinance. I would insist that RESIDENTS demand he recuse himself from any Board discussion on this matter.

3. **This definition would ADD COMPLEXITY AND COST to existing surveys for purposes of Assessment and Land Division. The current language indicates that a Certified Survey is necessary for Land Division. **Will this enable earlier Ordinary High Water Mark Surveys and Land Divisions to be Grandfathered? Or, does this enable possible Land Divisions at a lower water level to happen****

for Grandfathered properties when the lower lake level is beneficial to increase the land size and value for the landowner?

4. If the lake level is lower, will this then encourage the Assessor to increase value? And when returning to the OHWM in future years, will the land value then be reduced by the Assessor?

THIS ADDED CLAUSE RESULTS IN COMPLEXITY AND IS BURDENSOME FOR THE TOWNSHIP TO OPERATE COST

EFFECTIVELY. Even more concerning is the RECORD KEEPING of lake levels from year to year to justify the Boundary Records going forward.

PENINSULA TOWNSHIP IS NOW IN A LAWSUIT BECAUSE OF A DISPUTED LAND DIVISION BY THE TOWNSHIP SUPERVISOR. The proposed modification to the language in this Article appears to be self serving—and, maybe, in the future inure a financial benefit to the current Supervisor.

The Consultant, McKenna and Associates should be fully aware that almost all of the Townships around Grand Traverse Bay use the Ordinary High Water Mark as the Boundary Standard.

Our Township Attorney continually attempts to guide the Boards on this issue citing a “trespass” case to justify removing the Standard used on the Great Lakes for many decades – which is, **THE ORDINARY HIGH WATER MARK.**

I urge the Planning Commission to use good judgement and **NOT CHANGE** the existing definition for Water Bodies, currently in our Zoning Ordinance. The added cost for Record Keeping, Enforcement, Assessment and even Legal Defense from Lawsuits resulting from this variable definition would be **burdensome and very expensive.**

Thank you