

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
REGULAR MEETING
13235 Center Road
Traverse City, MI 49686
July 13, 2017
Regular Meeting 7:00 p.m.**

1. Call to Order

Meeting called to order at 7:00 pm by Vida.

2. Pledge

The Zoning Board of Appeals recited the Pledge of Allegiance.

3. Roll Call

Present: Serocki, Soutar, Vida, Cowell, and Snow.

Also, present Deeren, Essad and Hayward

4. Approve Agenda

Motion by Soutar/Cowell to approve agenda. PASSED unanimously.

5. Conflict of Interest

None.

6. Public Comments – for items not the Agenda

None.

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.

Motion by Cowell/Soutar to approve consent agenda. PASSED unanimously.

8. Minutes Approval April 20, 1017

Changes were noted and will be addressed by Deeren.

Motion by Vida/Soutar to approve minutes as corrected. Snow did not vote, as he was not present.

9. Request

a. Request to post-pone election of officers until September 2017 meeting.

10. Schedule of Public Hearing:

A. Request No. 859, Zoning R-1B (Coastal Zoning)

Parcel No. 28-11-128-029-00

Applicant: Old Mission Historic Development LC, 3075 Charlevoix SE Ste. 100, Grand Rapids MI 49546

Owner: Old Mission Historic Development (Northern United Brewing Company) 2319 Bishop Circle East, Dexter, MI 48130

Property Address: 13512 Peninsula Dr., Traverse City, MI 49686

Request:

Revision of Special Exception Conditional Land Use Permit No. 743 dated February 28, 2008, (hereafter, the "Permit"). Re-configuration to the 7,000 square foot portion of the building used to operate the brewery. Proposal is to devote approximately 1,000 square feet of the microbrewery to add tasting room and retail area for the sale of Northern United's products and merchandise.

Vida opened hearing for discussion.

Hayward commented that the minutes of 6/14/11 findings reveal portions of special exceptions were removed, however, conditional, temporary permits were not removed, and it was asked for them to be allowed. Copy given to secretary for record.

Cowell questioned the permissions.

Hayward stated the Planning Commission addressed this and stated that they all should be removed and the Town Board approved part, but some were sent back.

Vida questioned the impact to permit issued to Northern United in 2007.

Hayward noted that there were specific things in original permit and one of them was that the board deal with these minor changes. The whole process would begin again with Zoning Board of Appeals, but interior changes to new buildings such as internal configuration were something altogether different.

Deeren presented changes to revise and stated the amendment to conditions of the use permit of 2/23/2008. They are requesting to delegate 2,000 feet of the microbrewery for Northern United products and merchandise. Interior plans have also been submitted. Same as submitted in 2008 when asked for initial request.

Vida opened the hearing for the applicant's presentation.

Greg Lobdell – Owner of Old Mission Restored Development, Northern United Brewing Co.

2300 Woodside Rd., Ann Arbor, MI

The applicant provided a brief history. Northern United Brewing Company purchased the site in 2006 and it had previously been approved to knock down the end and add 11-14 residential units. The end was purchased and preserved. Several ways have been attempted to do so and to make it work and in the end, historic preservation easement was accomplished for perpetuity. It is monitored annually. Reception facility was built to be inside with brewing company. Buffers were built in and between the building and the neighborhood. Brewery has been reduced to brew for onsite to diminish traffic and they are now attempting to reconfigure that space for a tasting room as well within the brewery. Lobdell feels this request is in line with our original approval.

Cowell asked if people were tasting in that area now.

Lobdell responded no, it was mainly a manufacturing area.

Cowell: Where do people taste now?

Lobdell: In a tasting room in the front of the Mission Table restaurant, wedding receptions held in the reception area of the brewery and at the bar.

Cowell: Is this the same drawing from 2008? Question directed to Deeren.

Deeren: I'm not exactly sure where the change is to occur, but yes.

Cowell: The map is a new request, not what was submitted in 2008.

Lobell: Original approval did not have this in it. This is all new, a new request.

Vida: There is a heavy dark line showing a difference where retail/tasting will be. It is important to specifically lineate the area that pertains to the 1,000 square feet.

Cowell: Planning Commission perspective?

Serocki: The 1,000 sq. ft. appears to not match up with what we have been provided. We want more dimensions. Be exact and precise. If the bar is in this corner, please include it on the map? Is this enclosed? Are people able to wander the entire area? Gate? Rail?

Lobdell: Presents to board more specifics to Serocki visually. Gated area available to protect the public consisting of tables and bar. Over in this area, there will be shelves, tasting area, etc.

Serocki: What kind of products are you offering for sale? Wineries are not allowed to sell certain products.

Lobdell: T-shirts, beer etc.

Serocki: I would like to see a specific merchandise list please.

Soutar: This map presents a 51 x 65 square foot section, which is much larger than mentioned.

Lobdell: Yes, this is a little deceptive, not sure where that came from. Wished we had a clearer drawing for this.

Vida: James Toner states in the 3rd paragraph of the 6/1/17 letter that this 1000 square feet of this microbrewery portion of the building will be devoted to provide guests with a tasting room and "retail" area for the sale of Northern United Products and Merchandise. Will all this be local?

Lobdell: Jolly Pumpkin brands, North Peak Beer, Old Mission Beer, Civilized Spirits, Bonafide Wine etc. The intent is to taste and sell those products locally made.

Vida: Any other products than locally made?

Lobdell: T-shirts, hats, sweatshirts and other brand related items. Lifestyle items that work with the brands.

Vida: Logo'd is one thing, the concern is not giving you a cart blanche to sell everything.

Cowell: This sounds more of like a SUP that go through the township board and planning commission etc. Lots of these issues that have taken time and energy on the Peninsula and understand the condition of the permit issue. I wish I had more confidence in the approval of them rearranging the equipment in this space. Adding use driving stuff is not our depth. We don't see or deal with that. In fairness, I'm not sure if this is appropriate to send the applicants to different boards for approval.

Lobell: We are not asking for anything that we aren't already doing. We are just moving the site of this work.

Cowell: Are we generating more traffic, different traffic? I'm out of my depth here. What is the process we should take besides this change in use than what I am unfamiliar with?

Soutar: We are judicial board. Is this a reorientation of the facilities that presently exist or a different use for a building of more of one area than the other? We don't need to rehash what you can sell or not sell. Those issues can be addressed in other areas. What concerns me more is this drawing leaves 3519 instead of 3840 that has not been represented. Consequently, there is a discrepancy between the drawing in possession than the physical location. Permit is currently for 3840 not the original 3519.

Vida: Public tours expected to take place in this area.

Lobdell: No.

Vida: Requested a drawing that delineates the common area and questions the area, and would like specific list of products they will be selling in this area.

Cowell: To be clear, we aren't rearranging the space, this will eliminate the disallowed use of food and beverage in this permit. There was a provision stating there would not be a bar, sales etc. in the brewery portion of the building.

Deeren: This is part of the request.

Cowell: Why was that of importance in 2008?

Snow: Site visit may be helpful. Request is not specific as it should be and clarifying that now would assist. Expansion doesn't change in essence what is already existing in the area. People coming back and forth hasn't changed. If we grant this, I fail to see how anyone is harmed or an undesirable precedent is established.

Cowell: Agreed. Devil in the details. Out of my depth here. Honoring effort provided by township etc., this feels like this is leaving out some context, background and best practices on the peninsula.

Snow: Why do we not have jurisdiction on this?

Cowell: Permit came back as written back in 2008. Concerned about the depth of this that could be of importance.

Vida: I am thinking we adjourn this and request a resubmission of an accurate area, list of products and modification to the original land use permit pointed out.

Serocki: I would like to point out risk being in specific details not being presented. I want a specific list of what is allowed.

Soutar: I concur and feel we need for more detailed plans allocating space because of discrepancies.

Lobdell: We were hoping to get on this project last month and hope to move this project forward as soon as possible.

Vida: Too many open issues to be fair to you and come up with a correct request. We need more specific information.

Vida: Are there any more questions? Is there anyone wishing to speak on their behalf?

Deeren: Presented a letter received for the minutes from Karen Whalen.

Public Comment:

Diana Hammond 13598 Heading Drive, Traverse City, MI. Behind Jolly Pumpkin.

Diana stated the real question she has is about the tasting room issue. There already is one in existence. Is it moving to the brewery area or if they are adding more tasting room? Is the other remaining tasting room remaining open?

Lobdell responded and stated that they were scaling back, concept is to move it over to the brewery and use Mission Table strictly sit down seating.

Nancy Heller 3091 Bluewater Rd., Traverse City, MI

Not for or against, but would like to make a comment on two comments of the board members. Soutar, it is the responsibility of this board to maintain. Every entity in this township has to follow the ordinance and addressing the change in the area, change of uses must be included, everything that is connected with that. All are under very strict rules. Snow doesn't see any change and lives by a wonderfully operated winery, 9 years ago kids could play tennis and now I take my life in my hands going to the mailbox. You hear everything going on and that is acceptable, but it is going to change. 25 people will be impacted. I'd like to see the Fire Dept. do an inspection in

regards to this change. That is the norm. In the 2008 granting there were conditions. Therefore, your conditions should be made and inform yourself about how this township works. This is unique and I am not sure what your role is. Seek guidance from your attorney. Right needs to be done by applicant and the township.

Yvonne Whitt 13686 Heading Drive, Traverse City, MI

Horrible traffic problems not under control. Running on drive continuously. Next door, neighbors losing sprinkler system, children are not safe, tour buses parking on our street, no one knows who is on that bus. It is becoming a serious problem and they want to increase it. No good sign in front of establishment, people get lost on our street. They use our driveways to turn around. No one will put up a sign stating there is no entrance. 17 years ago, beautiful property, now everything is blocked, bay view gone, establishment is growing. This bring more problems, all in the name of money.

Dean Whitt 13686 Heading Drive, Traverse City, MI

Weekends, screaming yelling, language, tires squealing, drinking, busses running for hours and he wants to increase people visiting here. Something needs to be done. It is miserable. It really is. People do not pay attention to the kids trying to play etc. Twenty cars turned in my driveway down the street in a given weekend. No signage etc. I asked and they won't do it.

Lobdell offered to put signage up for the neighborhood. If we can adjust landscaping, we will. We want to be good neighbors. One thing this would do would take it from a production brewery to a tasting on site.

Vida closed to public comment and brought it back to the board.

Cowell: I am not sure this changes the intensity of the use of the site. Not sure if it does or doesn't. I don't feel very well versed in this thing. Not sure I am able to gage this in this aspect. Shifting from one building over to the other, this helps with fine dining. Argument can be had you are moving the same pieces around the chessboard. No way to truly gauge that. What kind of impact are we working with? My gut says this will not change the onsite use. Concerns have been heard and honored as well. I need more time to school up on what we may be doing with this action.

Vida proceeded to give specific direction to applicant requesting more detail on merchandise, specific mapping and delineation of space in use.

Cowell: No change in use unless approved by Zoning Board of Appeals.

Soutar: Are we rewriting the use permit?

Cowell: Permitted use in this case, tasting and selling in the brewery area, which is specifically in the permits and state you can't do that.

Soutar: Are we changing the definition of the brewery?

Cowell: That idea makes sense.

Soutar mentions quality of the neighborhood also. Encouraged applicant is going to respond to that and I certainly want to encourage him to find signs and direct areas we can address and approve. That is positive. I also think the indication is that the brewery has been successful in drawing more customers and if this changes the aspect of the brewery to be less, but more automotive vehicles increasing the clientele again with tasting. This is change that needs to be addressed, which he states he will do. I think as a judicial board we want to minimize what we do. We can direct him to address signage, better floor plan for facility to document changes requested and we may want to look at actual sales division and earmark that to what is in this permit. I don't want to redo this permit. The sales are dealt with in other aspects of the law. We don't want to open another can of worms.

Snow: I am confused that people looking for other things. Wording there gave a free hand to modify at a later date and I don't think we are going against the initial intent to do so.

Serocki: I want better dimensions, better floor plan, list of merchandise, what is logo'd and what is not. I would also like to see you deal with signage.

Deeren: There are 5 critical changes that they are requesting. The rest of the permit remains untouched. Section 8 microbrewery and reception area needs to be looked at changing. Remainder of permit virtually untouched. They are adding 1000 sq. ft. to reception area.

Soutar argues this is a use change in this building. We are actually changing the use, which is why it is coming back to the Zoning Board of Appeals.

Vida asked for a motion to adjourn requested 859.

Essad: Without a date certain we can adjourn, but redo mailings etc. If we do have a date certain it can be adjourned to that date and doesn't have to be noticed. 15 days still needs to be given.

Clarification was presented referencing the same board must address, no alternates allowed.

Soutar commented that it must go past 8/25/17 in regards to conflicts in member's schedules.

Essad: If you adjourn with date uncertain for notice, especially considering the request for better mapping and further information requested. Will double-check on the alternate in the audience to see.

Motion by Cowell/Vida to adjourn to the next available meeting. PASSED unanimously

BREAK at 8:15 PM

Reconvened at 8:20 PM

11. Schedule of Public Hearing:

A. Request No. 860, Zoning R-1C (Suburban Residential Zoning)

Parcel No. 28-11-475-011-00

Applicant: Ann Elizabeth Schofield Trust, 3163 Holiday Village Rd., Traverse City, MI 49686

Owner: Ann Elizabeth Schofield Trust, 3163 Holiday Village Rd., Traverse City, MI 49686

Property Address: 860 Birchwood Ave., Traverse City, MI 49686

Request:

To fill 85.36% of the flood plain area of the property that is below the defined flood plain elevation of 583.5 feet with 922 cubic yards of fill in order to construct a new single-family residence on the subject property.

Vida opened hearing for discussion.

Vida Conversation ensued with counsel and Deeren related to handling of this request. Counsel asked to provide direction.

Essad: Per section, 7.4.75C is where request is coming from with applicant asking to fill in flood plain area. There were standards for variance and confusion when applicant was told he needed to request a variance. This isn't a variance from the ordinance, just need approval from Zoning Board of Appeals to do so. Standards under variance are not important. Need to look at Article 7.4 to see if requirements specifically pointed out C and looking at DNR to see if state is monitoring this.

Soutar: All of section 7.4 is germane?

Essad: Flood plain – 7.4.7.

Soutar: What about 7.4.3?

Essad: It is germane.

Deeren: corrected Staff reports were handed out, Deeren instructed that, highlighted in yellow, changes from report in packet to this report, and I will address changes that have been made. On original report, it was put in that it was to fill in 85.36% below flood plain. The revised is was to fill 34.25% or 1916.14 square feet below defined flood plain elevation. First change is on page 1. Page 2 notes the change from adjacent property. Deeren also added, as well as, adjacent property and filling requested 85.36 % changed to 34.25% and square footage. Page 2 removed bullet and 3rd paragraph removed and all of basic conditions on original that have been removed.

Vida: Using same yards, how does percentage change?

Essad: 85.36 % in total flood plain, however, they are only filling 34.25%.

Soutar: Is this construction of the home included in this request? This states this is an existing home. Are there plans?

Deeren: I didn't submit plans for home because this was not pertaining to the flood plain. Structure there is now torn down. This was removed from property. Plans were not submitted to me in full.

Vida: Is the applicant trying to make site buildable by fill? Were these built prior to the zoning of the adjacent properties?

Soutar: Is there required fill to bring this site up to buildable? Is this the 586.5? This isn't being done to make it buildable.

Deeren: No. Under 7.4.7, item 3.b. state that yard and setbacks areas or other open space portions required for any District, PROVIDED that the elevation of the lowest floor designed for human habitation shall be at least three (3) feet above the established flood plain.

Vida: That pertains to build a habitable structure.

Soutar: So what they are asking for doesn't achieve that.

Vida: Isn't that a design issue?

Soutar: No.

Essad: This may be explained with applicant.

Vida: Are there any more comments?

Hayward: Presenting summary or analysis of request and presents a request for the record. Complicated, but I apologize. What I provided to you is section 7.4 of zoning ordinance, Pages 59-63, I have highlighted in green areas what I thought were important to point out, changes outside of our control. First referred to 7.4.1 on page 59. The intent of the supplemental Great Lakes Shoreline is to protect it for the future of the health and safety of the township. This qualified the township for federal funding. I now go to 7.4.3 on page 61. This states the following rules shall apply to any filling and grading within 200' of the normal high water mark. Not only dealing with flood plain but highlighted area because of Zoning Administrator. This is an example to provide another use other than building a house. Next, I refer to 7.4.5 on page 62. This is the section creating the problem. Under 7.4.5, once ZA determine a structure may adversely affect, deteriorate or alter the resources, this shall be transmitted to Michigan for review. They do not do that any longer, now what do we do? The development could determine would adversely affect public health and deteriorate public shoreline resources; this shall be used for denying a building permit. We know they want to build a home in the flood plain and fill to do so. Please review the standards with what the ordinance deals with in this structure in the flood plain. 7.4.7 Pages 62 Intent and Purpose: The purpose of these regulations is to protect those areas of the Township, which are subject to predictable flooding in the flood

plain of the Great Lakes. All land included in the flood plain shall be subject to the requirements specified herein, in addition to the normal zoning district requirements in which said land is located. My point being, water level goes up and down. It is predictable there could be flooding. The flood elevation, there is 3' above the watermark. Number 2 same page states Flood Plain Area Identification: Flood plain shall be those areas falling below elevation 582.8 I.G.L.D. Such flood areas shall be restricted as to use, building encroachment and occupancy, so that human life is protected and future flood damage is minimized. In the event of reasonable doubt as to the location of a flood plain, the Zoning Administrator may require the applicant to submit detailed engineering studies prepared by a registered professional engineer showing the extend and location of floodable areas. That was done and was supplied. Page 63, Permitted Uses is where complications arise. States not withstanding any other provisions but this ordinance, no uses shall be permitted to occur within a flood plain except the following. Uses such as farms, truck gardens, nurseries, parks, playgrounds, preserves, bridle paths, or other similar uses. a. Go to parens 4, parens 5, same page, parens 5C, I don't believe they are doing that any longer. We have one that says you can fill and one states you cannot put a house on a flood plain. This is inconsistent based on the zoning ordinance. Parens 5C is talking about filling in order to allow permitted uses such as items requiring structures and some may require filling. I don't see an inconsistency between parens 4 but you do have permitted uses. You are all trying to solve the problem. I am trying to point out the issues.

Deeren: Site visit was made and pictures provided.

Essad: Comments on Gordon's findings. Those areas along great lakes area shoreline 582.8 IGLD so that is a fined term. The applicant is here to ask the Zoning BA to fill in, not ask for a permit to construct the house. These are 2 distinct issues and the first issue for the Zoning Board of Appeals asks is he allowed to fill in the area. There is ambiguity here.

Hayward: On page 63, parens 3b, we are talking about yards and setback areas and other open space areas. What it means there is you can use the flood plain for yards and setback areas. Houses aren't.

Vida: Is it an option they put in 3 more feet of fill? Does this address that?

Hayward: No. Houses cannot be built in these areas. They are prohibited. Not my opinion, just reading what the words say.

Vida: Are there any further questions?

Vida opened the hearing for the applicant's presentation.

Dusty Christensen of Mansfield Land Use Consultants

It has been mentioned we are here with a request of the Ann Elizabeth Schofield Trust at 860 Birchwood Ave. Traverse City, MI 49686. Christenson presented a visual discussing and pointing out all areas of beach. Confirmed site visit by Zoning Board of Appeals. Documentation submitted to address variance standards. As mentioned previously, 85% of lot area falls below defined lot area. Of the buildable area, 87.23% falls below flood elevation. Elevation would then be high enough to not be considered in the flood plain area. Township has a stipulation that allows fill to be placed in flood plain area upon prior approval by Michigan agencies. They have stopped regulating flood plains in these situations. Erosion control permit has been given to place fill on this property. This was granted in March and amended in May.

Vida: Without filling in some area of the flood plain, it is an unbuildable plot.

Cowell: There was a house on the property where people were living in correct?

Christensen: Yes, in lower portion of the flood plain area. Homes on adjacent properties are existing below the flood plain.

Vida: Where does the rain runoff go with this elevation?

Christensen: Drainage currently goes through a seawall area.

Soutar: Then seawall is not effective then.

Christensen: Not really a seawall, we call it that. We comply with the ordinance.

Deeren: Existing structure has been removed? Is this city sewer or septic?

Christensen: Existing septic on the site that is abandoned. Home connected to municipal sewer and utilities.

Deeren: Is it still on the grounds?

Soutar: There was a house there, grandfathered in the same location.

Christensen: Applicant is just asking for the ability to fill.

Soutar: To minimize fill, if we knew where the house was, we could increase that to the point where the original house was.

Vida: Can they build in the former existing building envelope?

Deeren: It is better torn down. Unfortunately, when you take a structure down you are subject to what is currently happening because all portions have been removed.

Vida: Clarify for me Hayward under 7.4.5 restricted uses, page 63 #4, any structure where human habitation is contemplated either as a place of residence, places of public gathering or employment shall be prohibited from locating in flood plain areas. Does that eliminate the flood plain?

Hayward: As Deeren mentioned there was a previous house built on that site. I think Christesen could indicate what that footprint of that house was and because the house was there, it was above the flood plain. Not sure of the lower level. If you look at the house directly south, that house, their lower level is below the flood elevation line. I would assume in 1986 they had water in the basement. With the house there, I would have considered it was above the flood plain. In reality, it is a buildable lot.

Vida: I am concerned if we allow them to fill is there still an issue?

Hayward: Unfortunately, they tore the house down and they are here. It would have been easier if they had left the house and then asked. On proposed fill area, there seems to be an irregularly shaped parcel. Why was that area picked?

Christensen: Conceptual design area. Talking about filling an area in defined flood area as defined in the ordinance. 1986 was the highest the water has come up. We are in defined flood area, but not concerned. You, as the Zoning Board of Appeals, have the ability to grant approval for filling in that area. State is not concerned and we have an erosion control permit. We will comply with building code. If we fill this area above flood elevation, insurance issues are eliminated. From that point forward, simple design solution following any standards by building codes, erosion etc.

Deeren: About 45' and 54' from the wall, I see diagonal section of fill area, do you know how many feet that is from that to the high water marker.

Christensen: That is irrelevant.

Deeren: It has to be 60'

Christensen: Army Corp defines a different standard than you have in your ordinance.

Vida: If they put in enough fill, forget about setbacks and all that, can they build a home on that part of the parcel that has been filled in?

Deeren: Yes

Vida: It is simple as that.

Soutar: According to what Hayward states, that is inaccurate.

Essad: When you look at a Zoning Ordinance, what is in the ordinance otherwise use common meanings, which as I stated before in Article 3, Page 7 of definitions, 582.5 that we have been talking about that is the elevation for flood

plain area. As Zoning Board of Appeals, you can interpret your ordinance any way you like, they would not fit the definition of the flood plain. If you were to fill above that, they are not within that definition any longer.

Hayward: A different take that flood plain was defined in 1972. We are dealing with a flood plain area that has declined. Essad is correct that a separate determination would have to be made. Once filled in, ordinance would need to change and rewrite the ordinance. I would disagree that it automatically is not flood plain area any longer and maybe they need a variance for that.

Soutar: Which takes precedence?

Hayward: The numbers are the same point on the ground.

Vida: Counselor how do we resolve this dichotomy?

Essad: They are asking to fill with 85.36% of the flood plain area of the property that is below the defined flood plain elevation of 583.5 feet with 922 cubic yards of fill, with prior approval of the state. If there is demonstration that there are no state regulations on that, the Zoning Board of Appeals can grant that and allow them to fill in that area. If the Zoning Board of Appeals needs to interpret their ordinance to determine what that area is going to be after they fill that in, you need to look at standards of construction. You must look at the defined term. The Zoning Board of Appeals needs to determine whether that is in the flood plain or not. There are a number of stages in this process. I know there has been discussion of building the house and that needs to be separated from this request.

Soutar: The request for the area is part of the cake and not all of it.

Vida: I don't want them to come back later to have something denied after the fill area is taken care of.

Serocki: My concern is that are we obstructing any flood flow on to the neighbors? We can't predict if there is going to be another 1986 in 100 years or 10 years. How will this water flow? My main concern is not structure, but obstructing floodwater.

Snow: How did you determine flow of water?

Christensen: Existing grade.

Serocki: Counsel, when Zoning Board of Appeals makes a determination, will this set precedent?

Essad: Yes, it could.

Vida: This is a new one for us. I see this as a problem, the planner has an interpretation, council has another, and I do not know how that is resolved.

Hayward: Again, I am not rendering an opinion, I am reading the words. Any interpretation comes back to you.

Christensen: Nothing further to add.

Vida: Any other speakers?

Monnie Peters of 1425 Neatawantah Rd.

I live in an 1880 house and in 1986 when we had the high water we found that the water not only went over the beach, but it's all underneath the house so that the statement that the water gets contained on the beach isn't true. When lakes rise, the water rises underground as well. When our addition was put in, not only a septic tank was required but a pump chamber was needed. 1997 was high, but not as high as 1986. Those tanks had to go in and be filled immediately. This is one point and I very much agree with Serocki's point about the neighbors. We are now hearing complaints not from fill in flood plain but fill so you can build your house on the shoreline. They put fill in to put in large houses get a basement, be up higher, but the drainage supposedly does go downhill, but if you have high water, we are almost at 1986 levels. I think the precedent of filling in the flood plain is a really bad precedent and feel we need to do more to buttress our flood lines. I recommend that you do not allow this to move forward.

Laura Jacobsen of 900 Birchwood Rd.

Neighbor to the north. We would be impacted by any changes they make to their lot and I don't see any problem with this much fill. Our yard has a large hump in it and it's not going to be a problem for us with drainage. We bought that property in 2012. I hope you approve it.

Robert Parker 101 N. Park St., Attorney for applicants.

Please be sure that letters from neighbors make their way into the record. This is not a variance request. You are on sort of uncharted waters and have a checklist to go through. This ordinance states you need to approve. This application needs to be able to be reviewed by an appellate body. It is improper to use variance standards. I do think that the record needs to reflect the standards and conditions you will be utilizing will be recorded.

Deeren presented two letters.

Soutar: I have one last question. I heard clean sand is one of the things mentioned from a letter. Clean sand placed Dusty?

Christensen: Class 2 material primarily sand. Any fill on site will also be stabilized by topsoil, seed and mulch.

BACK TO BOARD 9:40

Vida: The 7.4.5 c that makes it sound simple. I'm comfortable with councils interpretation that they fill in the flood plain with enough dirt it becomes buildable. Concerns are drainage issues that is a crapshoot.

Cowell: I was uncomfortable when we got this request and my mind hasn't changed. I've received lots of information but there is a reason why we keep track of flood plains and the 7.4 ordinance discusses health and safety. Under what circumstance do we allow building/construction allowing for flood plains. This is an extreme request and a lot of fill. Flood plains are not to be built in for good reasons. A lot comes to have to or want to. This is not a variance request. I see a lot of want to in this request, not a lot of have to. This property hasn't changed. There was a house on it that existed. Fill expands that area. The lot is not unbuildable without this fill. This is not a unique circumstance on the peninsula. What is the extenuating circumstance? We aren't stuck here. There are spots on the lot that are buildable. For all those reasons, I continue to not support this request. I learned more, but I can't see how this is currently presented to us and can't find a good way to defend it with the ordinance. Language is pretty clear. You don't build a house in this stuff. In terms of flood plain it's the Army Corp and us.

Snow: Heard good engineering study that there is no negative impact on the environment. We are being asked by an owner to improve their property that doesn't negatively affect anyone else. I don't see any justification that I tell them that they can't.

Essad states there is nothing that prohibits this.

Soutar: The engineering report is not good. This soil is porous. That makes it the same material as what is existing. I know this situation is fraught with danger. The water will flow south. More sand on it leaves it a larger capability to move water. This is a problem. Neighbors should be concerned of water flowing through. I see no way to change our policy on this. If we add beyond the flood plain, there could be problems that develop.

Serocki: I do worry about how many properties on the peninsula will attempt this. The precedent we set will be damaging.

MOTION by Soutar/Serocki to disapprove request #860 to add 922 cubic yards of soil. Roll call vote provided 2 against and 3 for.

Stone no.

Vida no.

Serocki yes.

Soutar yes.

Cowell yes.

12. Adjournment

Motion by Cowell/Soutar to adjourn at 10:10 PM. PASSED unanimously.

Peninsula Township has several portable hearing devices available for use during this meeting. If you would like to use one, please contact the Chairperson.

These minutes stand to be approved at the next meeting to be scheduled.