

**PENINSULA TOWNSHIP  
PLANNING COMMISSION MINUTES**

13235 Center Road  
Traverse City, MI 49686  
August 20, 2018  
7:00 p.m.

**1. Call to Order** at 7:00 p.m. by Couture

**2. Pledge**

**3. Roll Call** Present: Susan Shipman, Monnie Peters, Alan Couture, Laura Serocki, Donna Hornberger, Isaiah Wunsch  
Absent: Marilyn Elliott  
Also Present: Randy Mielnik, Christina Deeren

**4. Approve Agenda**

**Wunsch:** Moved to table items C and D, SUP 130 amending SUP 32 Food Processing use – Bowers Harbor Vineyard Introduction and SUP 131 Amending SUP 32 Open Space use – Bowers Harbor Vineyard Introduction based on the email we received from staff requesting that we delay our discussion until the next meeting, supported by Serocki.

**Discussion:**

**Peters:** The amended agenda finally got onto the website late this afternoon, which mirrors exactly what you said.

**Action/Motion:** Motion to table items C and D, SUP 130 amending SUP 32 Food Processing use – Bowers Harbor Vineyard Introduction and SUP 131 Amending SUP 32 Open Space use – Bowers Harbor Vineyard Introduction based on the email we received from staff requesting that we delay our discussion until the next meeting, supported by Serocki. **PASSED UNA.**

**Action/Motion:** Motion to approve agenda as amended by Hornberger , second by Wunsch. **PASSED UNA.**

**5. Brief Citizen Comments:** None

**6. Conflict of Interest:** 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.

a. Correspondence:

b. Approval of Meeting Minutes: Planning Commission Regular Meeting 07-16-18

ZO Rewrite Committee Minutes: 07-09-18, 07-10-18

Serocki: I have a few corrections on the 7-16-18 minutes, if we could move those to 9 E.

**ACTION-** Motion to amend the Consent Agenda to move b. Approval of Meeting Minutes of 7-16-18 to Business 9 E. by Serocki, second by Wunsch. **PASSED UNA.**

**ACTION-** Motion to approve amended consent agenda by Peters, second by Serocki. **PASSED UNA.**

**8. Reports and Updates**

a. Township Board: **Wunsch:** At our last meeting we discussed a Bata Route that will begin concurrently with the opening of the new Charter School. They have been interested in opening a route out on Old Mission Peninsula for some time and the school seems like a good catalyst for them to make that step. We received a grant from the Traverse City Track Club for trail improvements and we heard a presentation from the Township Attorney on Small Winemakers Licensing. We also heard a review of the current status of the McKenna contract. I think we'll be discussing that later on. Small Winemakers may be of

interest to us in the future. There was a request by the Town Board to look at approving Small Winemakers Licenses for nonretail operations.

**Peters:** I attended, as did Susie, and I highly suggest that people go and listen to the tape. The power point presentation was in the packet for the Tuesday, August 14<sup>th</sup>, Town Board meeting and Greg's presentation begins about 29 minutes in. You could fast forward into that particular point. I found the last 8 minutes to be particularly interesting.

**Wunsch:** My big question coming from that presentation would be the extent to which the Township is able to regulate activities specific to Small Winemakers License. I think that was one of the big hang-ups because the Small Winemakers License does allow retail use at the State level and the question would be the extent to which we would be able to control uses.

**Serocki:** Is there a minimum acreage on that? I didn't see a minimum acreage in the packet of information.

**Wunsch:** No, the Small Winemakers License is a state license that requires approval by the local community governments so the acreage requirements for zoning would be directed from the Township. It is basically the State's way of conducting due diligence on selling a controlled substance.

b. Zoning Board of Appeals: **Serocki:** I included a report from ZBA. We had a rather lengthy meeting where there were three requests and some of them had multiple aspects. I can discuss them at length if you want me to or if you had a chance to look at them and had questions I can answer them.

**Peters:** I would suggest, in your report, that you not only give the request number, but the address. I was interested in where the properties were and I went back to the agenda, which clearly showed where they were.

## **8. Business**

### a. Public Hearing - SUP 115 3rd Amendment - Walter Brys

**Walter Brys, 3309 Blue Water Rd.** We are here to see if we can get approval for our 3<sup>rd</sup> amendment to our current Winery Chateau Zoning.

Mr. Brys summarized the history of their projects, which he presented at length at the July 17th Planning Commission Meeting.

2000 – Renovated the Farmhouse that stood on the property. Bill Cockfield was the architect that designed the renovation with ADA requirements built in to the plans so that the farmhouse could possibly become a Bed and Breakfast at a later date.

2011 – Granted approval for Winery Chateau Zoning

2012 – 1<sup>st</sup> amendment was approved to expand winery building to add cellar space and to build a separate men and women restroom lounge area.

2014 – 2<sup>nd</sup> amendment was approved for expansion of eastside of the winery for additional cellar space to accommodate larger red wine production, and the eastside elevated deck and tasting room.

Next Mr. Brys briefly outlined the plans involved in the 3rd amendment for which they are seeking approval.

Basically what we are asking for is additional support for what we are allowed to do within the Chateau Winery Zoning language. We are here for the 3<sup>rd</sup> amendment and we are not asking for anything beyond what we are permitted to do. We currently live in, what is required in the zoning and is deemed as, the On-Site Manager's Residence. A part of the request is that we would change our current residence into 5 guestrooms to be included in part of our guestroom count for the Winery Chateau. We currently have two guestrooms in the Guesthouse next door to our house which when we add the 5 new guestrooms, we would have 7 guestrooms total on the property. The Zoning Ordinance allows up to 12 guestrooms. The other thing that we want to do is to build a senior-friendly one level house, which will be designated as the on-site manager's residence. We would like to start the project in November of 2018 with a completion goal of mid-year 2019. That is what we are wanting. As we worked with the Planning people a month ago we had already gotten the driveway permit for the new location, we had a street address assigned, and the Fire Chief has visited, walked the building and has given us a list of the things we need to do before turning it into a guestroom lodging, so we have that in place. Our letter to the Sheriff's Department has not been responded to as of yet. The Planning people directed us to the Grand Traverse Code Department with whom we shared our plans. We were told that what we were doing was fine but we would have a building use change, residential to semi-commercial use. What would be needed would be stamped engineered drawings of the proposed revisions of the house and to have confirmed that Life Safety Issues are being met. My original architect has passed away and so we have brought on board an architect, engineer and draftsman team who is helping us to put it all on the CAD and get it ready for the Grand Traverse Code Department people to look at to make sure it is OK. As per the initial reports the house is fine meeting the codes including the first floor handicap bathroom access requirement. We do have an above garage bedroom which we need to change the exits to meet the requirement. We are currently working through a scenario where we will add a doorway and small deck with a stairway to the end of that garage second story. Other than that we'll need to basically add some fire code requirements: lighting, signage, things like that. Smoke detection was already adequate for the Fire Chief. It is going to take some time to get all of the proper documentation to the Code people to have their review. All of that being said I think it is important to note that

it is very difficult to fix our current residence for 5 guest rooms before getting approval for building a house for us to move into. What we are requesting from you is to give us the OK to go ahead with the On-site manager's relocation and we'll put that in process. We've been discussing time frames with contractors and right now we are hoping that if you approve this we can start in early November or December. We could be in next December and at that point we could start to make changes at the current residence. There isn't any issue in the preliminary review with the experts so we are not concerned that changes can't be accomplished pretty quickly. The only other point I wanted to highlight is that if we go the way that I would like to recommend, we could move ahead with the On-site Manager's residence building project and you could stipulate that we can't use the 5 guestrooms until we have all the proper approvals from the right authorities that need to review stuff for the county and/or the Township. Any questions? I have the draftsman here with the conceptual drawing of the new exit, which isn't a major thing or a big change to the building.

**Public Hearing Comments:**

**Nancy R. Heller, 3091 Blue Water Rd.** I am a neighbor of Brys. I have done business with the Brys and if Mr. Brys says he will do something, he will do it. I have no objection. They have developed their property in very good taste. Yes, it has increased traffic but life increases traffic.

**Board Questions and Comments:**

**Peters:** The Fire Department letter had something else. I guess it is the secondary access.

**Brys:** Yes, that is what I was explaining. He did note that he was concerned about that because when he visited the garage apartment the large windows exit on a roof that is too steep. That is why we are looking at changing it by adding the exit door with a staircase down to the ground.

**Peters:** Where your manager's residence is going to be, in the picture that Mansfield did, it looks like that is a building envelope of 100 by 100'. It doesn't become a separate property, am I correct?

**Brys:** That is what the advice was from our planning group; this did not have to have a separate parcel with this house. This house is a requirement of the zoning so it could be put anywhere within any size property because it goes with the 59 acres we've got tied up.

**Peters:** What I wonder about is in the future; say you have gotten old enough where you are no longer acting as the manager. I guess you would have to move, is that correct? Because this will become the manager's building.

**Brys:** That is correct. Basically, at the point in time down the road, when we are no longer living there a family member will need to be assigned to live there and be the On-site Manager for the property.

**Couture:** If we don't have any further public questions or comments for Mr. Brys we will close the Public Meeting.

b. SUP 115 3rd Amendment - Walter Brys

**Serocki:** I have some questions for Randy. On page 4, under 3.3 B, in red, it says Construction Code and Health Department letters for the conversion of the 5 guestrooms is still needed. But then it says the standard has been met. Would it be more correct if it said the Standard Will Be Met?

**Mielnik:** Right, absolutely. It wasn't clear when those plans would be coming forward so they are still in the works, as mentioned.

**Serocki:** So, if we go ahead and approve this tonight we would have to change all places?

**Mielnik:** In that instance, yes.

**Serocki:**

-On page 10, when it is talking about the area equivalence. Number 1 is the Winery and number 2 is the Manager's Residence. But the number says 152, so is that just a typo? I believe it should say 2, the Board finds that the Manager's Residence has been approved and the area equivalence is 5 acres. I think it should say 2 instead of 152.

-And then under 4, The Board finds the applicant is permitted to have 7 guestrooms with equivalence of 11.7 acres, there should be a statement that says, This standard has been met.

-And then the next one is, the total area equivalence assigned as principal uses shall not exceed the actual area of the site and the Board finds the total equivalence at 21.7, at least that was my total. There is no 11.7; it should be 21.7 on 56.61 acres. So, The Standard Has Been Met, and I think that needs a little correction there.

**Couture:** So, under section Board 4, the Board finds the applicant is permitted to have 7 guestrooms with equivalent of 21.7 acres?

**Serocki:** No, the guestrooms are 11.7, but then you have to add the equivalence from the winery and the manager's residence. That's another 10, 5 each. So that is a total of 21.7.

**Peters:** I'm very glad to see the checklist and where things are. Do you have any feel for the Health Department Letter, Soil Erosion, and Storm Water? We heard from Mr. Brys about the Construction Code Letter and I assume that is about the

Guestroom Lodging Facility. I think those are the various ones that are still not complete. I know that we have been sort of working back and forth about how complete we need to be before we pass something. I am still feeling sort of uncomfortable because I have gotten the feeling that the Planning Commission has been looked at as not doing its job because we don't complete something before it gets passed on. I know under the previous Board in previous times it was that we could say we could pass something on or condition something. What is your sense from staff about how complete this needs to be for us to consider passing this?

**Mielnik:** I recognize that there is some history here that I was not involved with, but I know there was an effort to get a checklist together and that is what you have before you. This will probably evolve a little bit more as we go into different kinds of projects. But this was a first effort to try to document what steps have been taken and what requirements are still to be met. As it has been mentioned some of these agencies are outside of Peninsula Township so we don't control how quickly the Health Department responds or any of the other elements here. Mr. Brys explained what was happening with the Construction Code and so we can appreciate a little bit longer process to work through. The Health Department letter is in the works. That has to do with where the well and septic system will go, as well as the Soil Erosion Permit letter. The one issue that is not required that is still on here is the Storm Water letter. We talked with Christina earlier today about not needing it for this application. So that should not say Expected on the checklist.

**Peters:** So, Christina, when you looked at it did you see any particular issues?

**Deeren:** I did not. They are out of the scope of what we usually require for Storm Water, so they do not need to deal with that issue. And, we are expecting to see the other two permits when they come in.

**Shipman:** I have a couple minor sentence construction things that I don't think we need to go through. I wanted to say I had the same thoughts as Monnie did with these items outstanding. Should we be moving forward based on our previous discussions that we had? That is my concern as well. Do we move forward and have it subject to receipt of those before we send it to the Town Board or do we wait?

**Couture:** That's what we all struggle with. There is no better way to do it then by a case by case basis. It could be something very minor which we would hate to hold it up for a minor technicality. Whether or not these two items, The Health Department and Soil Erosion Permit letters are minor or we think we can approve it subject to satisfactory receipt is something we need to ask ourselves as a Board.

**Wunsch:** So, typically we are looking at a new SUP. I always feel more comfortable if our attorney has a chance to review Findings of Facts and the project overall, before we approve it as the Planning Commission. I think that is an issue related to the steps that we are taking as a body before passing it on to the Town Board. My concern anytime we're looking at passing on a SUP is not just related to the project itself but also what ripple effects we would see on other projects, as it is setting a precedent. As this project is fairly narrow and specific in scope I wouldn't be worried about that, but I am wondering if Greg has had a chance look at it.

**Mielnik:** I just know he couldn't be at the meeting tonight because of another engagement.

**Wunsch:** I don't see any big red flags from my standpoint. Again it's more of an issue for something that is completely new rather than this.

**Mielnik:** I just wouldn't see it as uncommon to have that as a condition in the sense that it is going to have to happen regardless. The Health Department is pretty straight forward, these things have to be in place and certainly the Township Board would not approve it until it is done.

**Brys:** I guess I am confused. Are you talking about the new Manager's Residence or the guestroom conversion project? Because, the Manager's Residence, when I hire a contractor he is going to go get all the necessary permits. He won't be able to move one piece of dirt until he has all the necessary permits, and you grant the Land Use Permit. Without a Land Use Permit, Grand Traverse County won't grant a Building Permit, so there are all kinds of checks and balances. But if you are talking about how the Soil Erosion applies to the guestrooms, we are not touching the soil. The Health Department has approved that house for a 5 full bath facility and it has functioning that way for 18 years. So, unless there is something in the code that says guests use the facilities more than people who live in the house, I don't know of it.

**Peters:** The Construction Code letter that is on our checklist, I am assuming goes with the 5 bedrooms; what will become the Guesthouse. The other things all fall under the checklist, but they are a part of what Christina has given you. The Land Use Permit and Construction Code then give you the permit to start building. Those are indeed two separate things. I think we have sort of confused them by what we say when it is something on our checklist that could be better stated. What the Health Department, Soil Erosion and Storm Water are all for the Manager's Residence while the Construction Code is for what will become the Guesthouse.

**Brys:** We did contact the Sanitation Engineer and we dug 4 locations for perk ability and 3 out of 4 met the requirements. We done that but we haven't gone for a permit because that is what I am paying a contractor to do.

**Deeren:** Do you have plans for the new On-site Manager's House?

**Brys:** We have some plans but we are tweaking them with the Contractor's Architect. It is about a 2,200 sq. ft. house.

**Mielnik:** Do you have a copy of what the Health Department provided you as far as the septic system and the well?

**Brys:** They didn't provide us with anything. We dug and told them where they were. They are very familiar with our property and know where we have perk able areas. That is as far as we have gotten. I want to hold the contractor responsible for that, because under his contract he is giving me a warranty.

**Hornberger:** We could vote on this tonight with the stipulation that it passes the lawyer's scrutiny or do we have to wait? If we wanted to pass this on to the Township Board?

**Mielnik:** You could pass this contingent upon the Health Departments approval.

**Hornberger:** Has the lawyer looked at this at all?

**Mielnik:** Not that I know of.

**Hornberger:** I would want to make it contingent on the lawyer looking at it and saying it's OK, before we pass it on to the Board.

**Mielnik:** We could have him review it before it would go on.

**Hornberger:** If he were here or he had already seen it, I wouldn't have any problems, but I think that's what we pay the Township Lawyer to do.

**Couture:** I am not sure I am comfortable with that. I am not sure I am comfortable making the lawyer able to negate our approval because there is a sentence out of place or something. I am comfortable with approving this with specific contingencies, but I don't know about making it subject to Greg's approval. What kind of approval are you thinking?

**Hornberger:** Is the Township Board going to have him look at it?

**Couture:** They could and that's fine with me. For tonight I don't think I would approve such a motion. I am willing to discuss approval of the Amendment SUP with specific provisos. It is too broad to say let's have Greg look at it. It's not specific enough.

**Mielnik:** Ultimately it's a planning issue with planning concerns not so much coming from a legal standpoint.

**Wunsch:** Specifically I like to see legal review on brand new Winery Chateau SUP we are looking to approve or brand new Site Condo SUP that we are looking to approve. I think it is prudent to have our attorney review those because they have a high potential we have for litigation for project denials in this township. I think it would be great if Greg had a chance to review this but I don't see it as essential necessary. I see very little risk in the Township being involved in litigation relative to an approval on this one or denial of it. It does seem like we have typically waited one meeting after the Public Hearing before approval. I don't know if we want to do that but it has been our past practice.

**Shipman:** The discussion about: The *standard has been met* vs. the *standard will be met*, I don't know if I am comfortable with voting with saying, this *standard will be met*.

**Serocki:** Yes, but it's not met and we are saying the standard has been met and that's not correct. I am uncomfortable with saying the *standard has been met* when it says that the Construction Code and Health Department letters are still needed. Yet we are saying it has been met.

**Shipman:** If we start voting on approvals and we say, this *standard will be met*, I just wonder about what our future expectation from folks coming in is going to be? Are we going to change a bunch of these to *will be met*. I am worried about the slippery slope of that; I'm not disagreeing with the logic behind it.

**Serocki:** Is there a better wording we could use? I am uncomfortable saying that I am going to pass this saying the *standard has been met* because I don't feel it has been.

**Mielnik:** Typically this form has been used for both the Planning Commission and the Township Board, so it's the template that has been established and so the thought was that the standard would be met when it's been finally approved. But at this point we don't have that final approval, so I can see striking that and saying *will be met* or *is in process* or some language like that. You can say at the very beginning of the form that this is a template that has been used before so there is language that sets it up for final approval.

**Serocki:** There has been concern by the Town Board because we approved it saying the *standard has been met*, they get it and the pieces are not there then there is concern with them that we passed it incomplete. We are a little leery about using this verbiage.

**Courtire:** A suggestion that Isaiah made was to table this 'til next month. Gives the Brys time to get the final paperwork together and we'll get this done right. I don't know why this couldn't be done in 30 days but that is a suggestion.

**Serocki:** I think we could come with some wording that everybody likes. I like *in progress* or *to be completed*. I just don't think it has been met. That is my concern.

**Brys:** I guess if you want to pursue where you were just going, then we'd probably have to evaluate why even ask for the 5 guestrooms. Would you approve the new Manager's Residence? I'm not sure I understand what piece of paper you guys need in order for me to meet, how many delays do we have? There are a lot of alternatives: I could tear down my house, I could tear down my guesthouse and put up a 12 room Holiday Inn, because I am allowed to do that. So there are all kinds of options. The one that I would prefer, to preserve the integrity of where we are and what we have done, is what we have going on here. It is important for me, the applicant, to be clear as to what it is you are expecting me to do. I don't really know if I understand it right now. How do I build a house and get all the permits for the house before you hire a contractor?

**Couture:** It is something that we have been struggling with as a Board, how complete applications should be before we vote on it. It is not new to you or anyone else; it is something we have been struggling with.

**Brys:** I understand the struggles because I know the projects that created the problem and we were not one of them.

**Wunsch:** Our priority is to make sure that when we pass the project on to the Town Board that they don't have any reason to send it back to us to have another Public Hearing because that is agonizing for everyone involved.

**Brys:** A year ago you approved a deal for me. Then it went in to Town Hall and got undone. I think that it would be good for the citizens to know what's going on before we go too far.

**Hornberger:** It looks to me like this Construction Code and Health Department letters won't be coming by next month because they have to do with that 5 guestroom house, which he is living in while he wants to build the other building.

**Couture:** I appreciate everyone's concern but I think we need to call for a motion.

**Serocki:** I make a motion that we approve SUP 115, 3<sup>rd</sup> amendment but change the language in the report to reflect that the *standard has been met* is incorrect and that the *standard is a work in progress*. We only have that the *standard has been met* or *the standard has not been met*.

**Wunsch:** But then we impose contingencies that require the standard of those things that can be done, before we approve be done, before it's all done. It's all too confusing.

**Serocki:** So, if we approve it and say all of these standards have been met, then we can at the end put a condition that each one of these that has not been met that we are saying has been met. So we would have to go through and have a condition for each permit. I can't make the motion I made. I'd like to make it more specific. I would like to know if I can put the conditions at the end for each permit that has not met at this point.

**Mielnik:** I think you can do that.

**Couture:** I think what you are saying Laura is your motion is to approve it but there are at least possibly 2 standards that have not been met. Your motion may be to approve it subject to those 2 standards which haven't been met being met before.,

**Serocki and Shipman:** I think it is more than 2.

**Couture:** They have not been met and I would propose a motion that reflects that but they will be met by the developer, because we are approving the project subject to fixing those areas of concern.

**Wunsch:** My question to the rest of the Planning Commission, Has it not been our process in the past to hold a Public Hearing and then do the approval of the Finding of Fact at the subsequent meeting?

**Hornberger:** In general but not 100%.

**Serocki:** Not always. I am going to withdraw my motion.

**Couture:** Motion withdrawn. Is there anyone on the Board that would like to move this along, table it, or

**Hornberger:** I make a motion to approve SUP 115, 3<sup>rd</sup> Amendment with contingencies that the two standards that have not been met are in process and will be met.

**Serocki:** Could you specify which ones.

**Hornberger:** There are 2. One is 3.3B on page 4 and then 3.3 D – Department letter still needed for conversion of 5 guestrooms. Those are the only 2 that I have seen.

**Serocki:** Over on pg. 6 it says the Board finds any necessary soil erosion permits – the letter is expected- but we don't have it. It says that there will be one from the Storm Water Control – that one is expected- but it is not here yet. And the Health Department letter is expected. I just wondered if it could be specific what the conditions are.

**Mielnik:** 3.3 B

**Couture:** 3.3 I on page 6

**Serocki:** Right 3.3 I is the Soil Erosion, J is the Storm Water Permit and (conversation changed directions and Serocki did not get a chance to finish her thought)

**Wunsch:** Would it be better for us to have Greg write up the contingencies? It has been our standard practice to wait a month instead of people trying to write contingencies on the fly. If there are some pieces of this application that can be more complete what we want to do is make sure we do our due diligence and pass this on to the Town Board in a fashion that is complete and tight enough for them to accept. Would it not be better for us to table it?

**Couture:** We have a motion on the table.

**Hornberger:** I withdraw my motion.

**Shipman:** When I look at this and look beyond 3.3 B where the statement says: The Board finds the applicant has provided all the required information... When I look at the further comments like D it states: The Board finds that all final permits will be received. To me that is something that says *the standard will be met*, because they will be. I see that in B and F, in H and I it states *shall be submitted*, and in J it's stated *will require*. So the only one where we have a contingency is 3.3 B, because it says: *the applicant has provided*. In fact, if we wanted to make a change could we not say, *the applicant shall provide* in a statement.

**Couture:** That is the standard though that we have to follow. We can't change the standard.

**Shipman:** No, not the standard but the B 1 statement. It has been written for us so we could adjust that so it is more like the other language.

**Couture:** The statement should be reworded to say: The Board finds that the applicant *shall provide*...

**Hornberger:** And we don't need contingencies.

**Couture:** So the motion would be to approve the SUP because we've found that all of the standards have been met, but some of the standards require further work by the applicant.

**Mielnik:** These are all separate organizations, each with their own authority to regulate that phase of development.

**Peters:** Laura did mention on page 10 the typos so I think a motion has to include those corrections: 152 changed to 2, *standard has been met* in # 4 is incorrect; correct the number of total equivalent acres.

**Serocki:** #5, if you want to follow the order that it has been in you should include: The total area equivalent assigned the principal usage should not exceed the actual area of the sight. 5. The Board finds the total equivalence as 21.7. And then *the standard has been met*. I do have a question about line g, it says: The number of single family residence shall not exceed 6. The Manager Residence shall not contain or be used for rental guestrooms and the number of guestrooms shall not exceed 12. When you read what is under 1, it mentions the Manager's Residence and it mentions the 5 rental rooms but it doesn't say anything about the number of single family residence, that there won't be any. Should that be in there, that there will not be any single family residence?

**Mielnik:** That's on the whole property isn't it, 6 residences?

**Serocki:** Right, but those are single family residences that are in addition to the Manager's Residence and the B & B. So, should it be mentioned if they are not doing any of those? I think it is mentioned earlier in the article that they are not doing it. Oh, it's under the equivalences: The Board finds that no additional single family residence has been approved at this time. So I just wondered if that clause should be included under g? I am just curious if that would make it more accurate.

**Mielnik:** So, they are saying that the number of single family residences will not exceed 6?

**Shipman:** Could we just add: No additional single family residences are being requested at this time.

**Serocki:** That would work. I just think we should mention it.

**Couture:** Ok, that's under G 1.

**Shipman:** I move that we approve SUP #115, 3<sup>rd</sup> Amendment for Brys Estates Winery Chateau with the following corrections to the Findings of Fact:

3.3 item B – The Board finds that the applicant replace, *has provided* and use, *shall provide*.

Page 10 – item currently listed as 152 should be corrected to read 2. That's under Section 4 item F

Under Section 4 item F No. 4 – Add, *this standard has been met*

Under Section 4 item F No. 5 – correct number 11 to read 21.7

Under Section 4 item G – Add, *no additional single family residences are being requested*.

**Serocki:** I'll support.

**Couture:** We have a motion and a second by Laura, any discussion?

**Serocki:** Under 5, I think the word *allowed* is incorrect because they're allowed to have 56.61. It says: The total area equivalent assigned to the principal uses shall not exceed the actual area of the site. So I think that they could have more, they could have less. Putting *allowed* in there implies that they could only have 21.7. I don't really know the word *allowed* is in there. Am I reading it wrong? To me 21.7 is not the only number they are allowed.

**Couture:** Under this amendment that's all they are allowed.

**Serocki:** The Board finds the total equivalent are 21.7 on 56.61 acres. We are saying that they are only allowed 21.7?

**Couture:** Under this amendment, yes. That is how I understand it. If they want to do more, they'll come back. Is there any further discussion on the motion by Susie, supported by Laura?

**Shipman:** With some additional minor nonsubstantive corrections. There are some periods missing and a few sentence structure errors.

**Couture:** Do you want to add that to your motion? You'll need to amend your motion to correct it.

**Shipman:** Amended Motion: to approve SUP #115, 3<sup>rd</sup> Amendment for Brys Estates Winery Chateau with the following corrections to Findings of Fact:

3.3 item B – The Board finds that the applicant replace, *has provided* and use, *shall provide*.

Page 10 – item currently listed as 152 should be corrected to read 2. That's under Section 4 item F

Under Section 4 item F No. 4 – Add, *this standard has been met*

Under Section 4 F No. 5 – correct number 11 to read 21.7

Under Section 4 item G – Add, *no additional single family residences are being requested*.

Page 4 under Section 3.1.B #1 – Change to read: There *is-* should be *are*, private solid waste and collection services.

Under 3.3 item K #1 – there is a missing period after amendment (.) on page 7.

Page 12 Section 4 item O Fire Safety #3, #1 – The Board finds the floor plan has been provided to the Zoning Administrator and one (is) on file with the Fire Department. – Change to read: The Board finds the floor plan has been provided to the Zoning Administrator and one *is* one file with the Fire Department.

**Serocki:** Support motion

c. Farm Processing Facility – Committee Report – Farm Processing Facility 07-27-18

**Wunsch:** Our committee had the opportunity to tour Black Star Farms processing facility in response to the requested need for additional storage space due to the square footage limitations of the current ordinance. Looking at their facility, they are utilizing their full processing space. We thought that for Use by Right Wineries, producing wider volumes of wine it would be reasonable to amend the ordinance to allow increased square footage particularly on larger sites. Our proposal would be to modify above ground processing and storage building area language in the current zoning ordinance.

At this point in the meeting Isaiah reviewed the above ground processing and storage building area language in the Use by Right Wineries current zoning ordinance before going on to explain the modifications the committee is recommending.

**Wunsch:** Our proposal is to modify the current language to the total floor area above finished grade, of 1 or 2 stories of the farm processing facility, including retail space shall be no larger than 10,000 sq. ft. per contiguous 20 acre parcel, up to a maximum of 30,000 sq. ft. The retail space shall be a separate room and shall be the lesser of 1,500 sq. ft. in area or 25% of the floor area above finished grade. So the intent would basically be to keep the retail footprint consistent, but to allow increased processing and warehouse space particularly for those Wineries that are operating on the larger footprint. I think it is conceivable that we could need to increase sq. footage requirements in the future as the wine industry continues to grow in this area. 30,000 sq. ft. was the upper limit of any existing winery in Peninsula Township and we felt that it would be less contentious then opening up unlimited sq. footage while still providing the needed sq. footage that we would see for any of the existing players in the wine industry for the foreseeable future.

Presently, I know that what we are looking at is a modification to an existing facility. The only other thought I've had is how to avoid increased square footage allowances; the construction of new Use by Right Wineries whose owners want to convert them immediately to Winery Chateaus, after they are done with construction. We've seen that happen in a couple of instances, where Use by Right is built and then immediately after construction wraps up, there's a request to convert the structure to a Winery Chateau, thus getting around the SUP process. We need to be aware of this and should try to avoid the opportunity.

**Mielnik:** In reviewing the recommended modifications and also looking at the material that preceded it there are some issues to talk about: the minimum parcel of a Farm Processing Facility at 330 feet, the 20 acre minimum doesn't include the road right of way. I am not really sure of what the rationale is of that but it may be a good opportunity to look back at those requirements as well and address them together. I also think working up a few graphics, which we can share later, will help to know what that amount of space looks like.

The Planning Commissioners voiced support of the committee's work. They appreciated its thoroughness, the committee's focus on content area and addressing concerns that both the Commissioners and Public had. After receiving this feedback from the Planning Commissioners, the future plan is for Randy Mielnik and Greg Meihm to review the proposal language and if it fits into our current zoning code, then bring it back to the PC for final review and discussion and then schedule a Public Hearing.

d. Zoning Ordinance Rewrite Future Steps

**Peters:** There are two parts to this presentation. Randy has been working with Patrick Sloan of McKenna on the Memorandum of Understanding which did not completely get through the Town Board last week.

**Meilnik:** As you know there was a contract with McKenna that was entered into three years ago that went through a number of meetings, included in your packet are all of the details. It was recognized a month ago or longer that we needed to revisit that contract. We have had conversations with McKenna and came to some agreement on the steps. That was provided in a closed letter from McKenna to the Township Board. The Township Board reviewed that last week and has deferred it to the attorney, which I have given him some additional background on the contract and we expect his decision here shortly. It really seems as though, obviously the contract, is a legal issue in terms of a contract and to the extent of which McKenna has followed through on their obligations and have deliverables. In some respects redefining their deliverables. That is where we are and I expect that

it will be on the Town Boards Agenda at the next meeting and we can get some closure on them to complete their contract and move forward internally with documents and revisions. Obviously this is a huge undertaking for the Township.

**Peters:** In the McKenna letter it says they will be getting their draft back next Monday. But the next Town Board Meeting isn't until Tuesday. Patrick Sloan is on vacation until Wednesday of this week, so we don't know whether that particular date will slip but my guess is that it will not ultimately slip very much. I am expecting to get back within probably two weeks. Laura, Alan and I will be back again, once we've gotten the draft back, looking to make sure that the changes we sent were indeed put into the new draft. We sent a lot of different material and before we release it to PC and the Town Board we want to make sure that we've gotten back, what we think we've gotten back. A number of months ago we did discuss doing a meeting where we talk about what is different about the new versus our current zoning ordinance, what's just reworded and what has been thrown out, so it gives you an overview of it. We had talked about doing a joint PC and Town Board meeting. I don't know exactly how much in the future, after we have accepted the draft that would happen but I would expect it to happen fairly soon. I would expect that once we have accepted the draft that it should go up on the website for anyone to take a look at. From then on, we on the committee, very much need to work with Randy about how we do sessions with the Public to talk about what changes were made, where things have been moved in our code and then we need to get feedback from the Planning Commission, the Town Board, and ultimately from the Public. I would then see all that put together into a draft that I would hope, somewhere way down the future, it gets the appropriate Public Hearings and approval. How that all works is unclear? But we have a new Planner who's done some of this sort of stuff who will be a huge help to us.

**Mielnik:** Typically there is an informal process that we'll want to go through before it is actually formally introduced as legislation to consider. Obviously there is a large amount of change; some changes seem to be minor cleaning up and updating, whereas some changes are larger in peoples' minds and so we want to let that out and find out where the key issues are and be able to respond to that. There is a variety of techniques we can use to present that to the public and get everyone to weigh in on it. How long that takes is dependent upon what kind of community comments we get.

e. Approval of Meeting Minutes: Planning Commission Regular Meeting 07-16-18

**Serocki:** I have a few corrections:

Page 10, Gordon is speaking; "He gave a new sight plan,..." *Sight* should be *site*.

Pages 12 & 13, *Laura Sanders* is misspelled and should be *Maura Sanders* (5 times on pg. 12 and 1 time on page 13)

**ACTION-**Motion to approve minutes as amended by Serocki, second by Wunsch.

**PASSED UNA.**

### **9. Citizen Comments**

**John Wunsch, 17881 Center Rd.:** I appreciate hearing the commentary on the proposed changes to the Use by Right Ordinance. Certainly anything that a lawyer can see, that maybe by flipping a word or two, makes it stronger is great. Randy, I don't know if you were here and saw my letter from the last meeting? But in terms of looking at this and asking what else we can tweak right now, the entire jest of myself representing those who worked very hard to create that ordinance is that we would be very opposed to substantive change. If there is something substantive that perhaps makes a line more clearly. Our feeling is that it was hard fought and there were reasons for all of the different compromises and we would hope to see them the same. We only came in support of this effort to change it with the understanding that we feel strongly that the ordinance as written with its current intent is correct. We have merely seen as the industry has evolved, we had too small of an area for use for storage and processing. So we would hope that thought would be kept in mind and the letter really gives the history of where this particular section of our ordinance came from and I'd be happy to provide a copy to you.

**Nancy R. Hellar, 3091 Blue Water Rd.:** Isn't an attorney review included in the application process? If it isn't, it should be. I thought you blindsided the applicant tonight. If you are going to require these things, be fair to the applicant. The other thing is, there used to be deadlines that the Commission Members, the Public, per se, adding to the packet. I don't know where that went. I appreciate the Planner having some extra copies tonight of what he handed out. I don't know how you want to run this but I attend these meetings and I had a lot of trouble keeping track here tonight. It was not pretty in my opinion.

**Mary Swift, 13956 Peninsula Drive:** A couple things I noticed here tonight. You don't always see me but believe me I watch, I follow, I know what you are doing. Unfortunately I am here tonight because I am getting comments from friends and neighbors that they are concerned about how things run at the Planning Commission level. I came to see firsthand how things are running. This was just one night, I get it. But on the SUP Public Hearing, I am personally grateful that Walt and Eileen Brys were able to

get out of here with an approval, but only because it was Walt and Eileen. Their integrity, I know in my heart that they won't leave anything unfulfilled, is why I'm not worried. However you set a very dangerous precedent on approving SUPs without a lawyer or legal review prior to approving a SUP and I would caution you to stop doing that. Isaiah had mentioned that in the past you had held your Public Hearing and then wait until the next meeting before you approve allows you time to answer questions, find some of these issues to be resolved before you vote. It is a very prudent way to handle things and I would not waive that day 30 day approval lightly. In this particular case it was an amendment to an existing SUP, it was Walt and Eileen. All those reasons I am not worried about this particular case. They deserved an answer tonight and I am perfectly comfortable with that but there are people in this community who come before you who do not have that level of integrity nor care about this peninsula the way Walt and Eileen do. You are setting a very dangerous precedent by handling it the way you did tonight. Not because of them but because of process and procedure. Be very careful how you are doing this. Legal review, waiting a 30 days are very, very prudent. That is what I am going to say about your SUP process. The other thing I want to talk about is the McKenna thing. I don't know if you've ever really heard anybody from the community about that McKenna Report, or that McKenna contract. But the prior Town Board sold that study and the expense to the community as a reorganization of our existing ordinance laws, only. As a reorganization that means you shouldn't have been changing anything. Not one period, not one comma, not one typo, nothing, because without Due Process you are changing the laws that this community has gone through the process of getting approved. Somewhere along the way the process got corrupted, prior Boards, prior whatever and now you guys have started making changes and we never got to what that whole thing was supposed to be about. Reorganizing so that you could rewrite knowing what we had basing it on our current Master Plan and you haven't even done that yet. So what you are talking about is throwing up a proposed bunch of changes that nobody has seen in the community, letting it sit on the website where people are going to assume that it has passed when it hasn't even gotten through due process. This whole McKenna thing is a farce and it should have been stopped when the new Town Board came in and it should have directed this Planning Commission stop working with McKenna as they were not doing as they were told, as they told the community was the goal. I don't know if you've ever heard that from anyone in the community, but I am telling you tonight. We are not going to sit by and let you jam changes to the current ordinances down our throats without due process.

#### **10. Board Comments**

**Peters:** I don't know how to deal with changes happening late on Thursday afternoon and our not hearing about them until Monday. The fact that staff wanted to pull the SUPs for Bowers Harbor Vineyard and that part of our package was probably 50 pages long, I don't know about other people, I had not intensely studied it but I had already spent some time on it. Had I known that on Thursday afternoon or Friday morning or anytime, Saturday morning would have been fine. It would have been much better to know and I think that is one of the problems with our having our meetings on Monday nights. The last business afternoon before Monday is 4 days in advance. I wonder whether there isn't some way that something is done at 5:30, at close of business on Thursday afternoon, why that impacts something that we are doing at a meeting on Monday, cause we need to prepare. A lot of us are really on a time line Monday to look at things. I think it would be really good to look at that. That is something Isaiah that you might take back to the Town Board. I always wonder about not having business hours at all on Friday. But if we aren't having business hours on Friday, if something comes up, that impacts the work that we are supposed to be doing it would be nice to know about it at that particular point.

**Shipman:** When we look at our checklist, if we are going to talk about legal review, I would like for it tell where we are going to do that. I was comfortable moving forward with that tonight, part of it's the things that were brought up by our audience that would have been a surprise to the Brys family to have had a Legal Review Requirement. We should talk about that, that's really something that is open, upfront and transparent for people coming in. So hopefully that is something we can work on. I absolutely think we have to keep to deadlines for packets. I really do think that is critical. We have always in this township talked about how important it is that we respect our public and their ability to review and trust. I really hope that we can do better and I know there has been a lot of change in the planning department. My final point is that I am going to be absent for the next meeting.

**Hornberger:** I will be out of town next month too.

**Couture:** In terms of the comments tonight: What we handled tonight were SUP and Purposed Finding of Fact. These were Fact Findings that we as a Board review and decide, not the attorney. If we have specific questions that we have for an attorney, we'll submit those to our attorney. But our work here is not subject to what the attorney tells us or doesn't tell us. These are factual findings that we And so we were comfortable tonight with making a Factual Findings that we did without an attorney review because there wasn't anything here that an attorney needed to review. We always struggle with the possibility of missing a document or 2. We tend to approve the project subject to said contingencies. I don't think it fair to the developer or

the applicant; we are here to try to work on reasonable grounds. That is what we felt as a PC Board that these provisos' here were not deal breakers, so we thought those could be handled appropriately and that's why we acted as we did.

**I. Wunsch:** I think it would make sense for us to look at and more clearly define the circumstances where we ask for a legal review. As well as If we are going to look at waiting 30 days to render a decision after a Public Hearing. Whether we do that or not it seems largely random at this point and it would be prudent for us to have things to add to the check list, whether it is a new project or an amendment of a certain scale. I think it was reasonable for us to approve the amendment 3 for SUP 115 the way that we did. But I think it is important for us to, in light of the issues we've had and the litigation in the last couple of years, clearly define to the public how we are operating and to create an understanding of the way that we operate the types of projects where we ask for more detail or timeline to demonstrate those that are clearly different from the Projects we are willing to put through more quickly.

**Mielnik:** This is my first Planning Commissioners Meeting here and I appreciate the comments about processes and conventions and how you going about doing things. Each planning commission I've worked with has operated in much different way. I look forward to helping strengthen the process to make sure the procedures are followed correctly.

**Hornberger:** I just want to reiterate that adding things to the packet at the last minute is a nightmare, not just for the public. We want the time to look at things analytically and if it is given to me at the last minute I can't or if it is taken away at the last minute after having spent hours looking at it.

**Action/Motion** to adjourn made by Shipman, second by Serocki.

**PASSED UNA.**

**11. Adjournment** @ 8:55

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

**Deb Larimer**  
**Recording Secretary**