

Dr. and Mrs. L.M Phillips
15755 Smokey Hollow Rd.
Traverse City, Michigan 49686

August 10, 2016

Peninsula Township Board of Supervisors
C/O Peninsula Township Planning and Zoning Department
132535 Center Rd.
Traverse City, MI 49686

RE: Parcel ID #: 28-11-114-001-00, 28-11-114-002-00 August 15, 2016 hearing

Dear Township Board Members:

We are writing to object to your approval of the above application for subdivision development based on a lack of a traffic analysis impact study on these parcels and feel that the township would be ill-advised to approve it. M37, Smokey Hollow Rd., Boursaw Rd., and Bluff Rd are all impacted by the 81 Development. Three of these roads are two lane country roads which support farm equipment traffic, commuter traffic and bicycle traffic. With the exception of M37, Grand Traverse County maintains these roads, to our understanding. Mostly recently, it has been reported in local media that the Peninsula is requiring a traffic study for the proposed Vineyard Ridge subdivision bordering on M37 and which may have only 47 homes vs. 53 homes in this above application.

Why is there not a traffic study on the impact of the 81 in either application? Are the concerns of those of us who live near the 81 considered somehow less important than those of citizens who live near the proposed Vineyard Ridge? This is an especially relevant question as the developer now plans even more homes in addition to a large marina.

We question whether or not Peninsula Township even cares about citizen concerns about the 81 given the fact that you have already approved the PUD application despite a landslide of citizen objections last August. Neither the above-referenced development nor the original development belong in this part of the county at these densities.

We presented our initial objections to your township planner last year prior to the August 15th 2015 PUD application of the 81. Our concerns included an inadequate fire plan, absent environmental impact studies and increased road traffic and resultant road deterioration. We were basely told that a fire plan

was adequate despite only one access road, that an environmental impact study was not needed as the land had not been farmed for years, that the initial 81 PUD development did not contain enough homes to warrant concerns about traffic and that we should address our concerns about road deterioration to the county only. The recent judicial ruling proved that several of our above concerns were indeed warranted despite being them dismissed by township officials. We do not feel our concerns, both written and oral, are considered important by township officials either then or now.

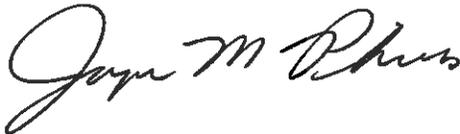
Should you agree that a traffic study is needed, it would be vital that you require the developer to engage an impartial, non- local consultant firm which can demonstrate its lack of alliance with either township officials or the 81 Development Corporation. The appearance of immaculate professional consultation going forward is imperative given the dubious history of development approval.

Please do not repeat the mistakes of the past in not listening to citizen comments and in listening only to your township planner and township attorney. Please do not being bullied into not demanding that the developer consider a compromise. A compromise surely can be reached if all parties' concerns and interests are listened to and weighed equally and without duress. We are already paying to defend your actions in a lawsuit that has confirmed several citizen concerns which were presented to you before the PUD approval. We will continue to pay for loss of the natural beauty of that piece of land. Road congestion, accidents, death and deterioration of the roads and higher county road expenditures will only add to the sorry legacy of the township's ill-conceived approval of both these applications.

Sincerely,



Dr. L. M. Phillips



Jayne M. Phillips, NP

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Bryan E. Graham
Peter R. Wendling
Nicole E. Graham

Eugene W. Smith
James G. Young, *Of Counsel*

MEMORANDUM

TO: Michelle Reardon, Director of Planning & Zoning
Peninsula Township **VIA EMAIL**

FROM: Bryan E. Graham *BEG*

DATE: August 13, 2016

SUBJECT: Review of sign zoning ordinance amendment

I have now had the opportunity to review the sign zoning ordinance amendment. The following are my comments concerning this proposed amendment.

1. If this amendment is intended as an amendment to the current zoning ordinance, then it is not in the proper legal format. On the other hand, if it is intended to be a provision of the new zoning ordinance, then I am assuming that it represents a new numbering system within the new ordinance. In any event, my comments will be addressed to the merits of the amendment.
2. Concerning Section 11.101, the subsections do not provide grammatical sentences. I believe the intent is that those subsections would constitute bullet points. If that is the intent, then a statement should be made in the introductory paragraph setting up those bullet points.
3. Concerning subsection (B), you should be aware that the Michigan courts have ruled that under the Highway Advertising Act a local government can only provide regulations related to billboards in adjacent areas where the regulations are unrelated to the spacing, lighting, and size of the signs. Otherwise, regulations of billboards in adjacent areas related to those areas requirements are preempted by the act. The Highway Advertising Act defines adjacent areas as follows:

“Adjacent area” means the area measured from the nearest edge of the right-of-way of an interstate highway, freeway, or primary highway and, in urbanized areas, extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line or, outside of urbanized areas,

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extending perpendicularly to the limit where a sign is visible and then along a line parallel to the right-of-way line.

If you would like a more detailed analysis of the Highway Advertising Act, please let me know.

4. Concerning Section 11.102(A)(8), this definition makes reference to an “on premises sign.” The amendment then specifies definitions for on premises signs and off premises signs. As you know, under the recent United States Supreme Court decision, zoning regulations must regulate signs without reference to the content of the message. As provided in the amendment, an off premises sign is generally defined as a sign advertising a use or activity occurring at a different location. The township will only be able to determine whether a sign is an off premises sign or an on premises sign based on the message on the sign. For example, a sign located at Red Lobster that advertises “Come eat at Red Lobster” is an on premises sign. On the other hand, this very sign located at Red Lobster that advertises “Shop at ABC Warehouse” is an off premises sign. It makes no difference from an aesthetic, traffic safety, or other legitimate governmental interest perspective what the sign says. In other words, if the sign is appropriately sized, setback from the highway, and does not obscure vision, whether it is an on premises sign or an off premises sign does not matter. This comment is a long way of saying that it is my opinion the township should reconsider basing its regulations on a distinction between on premises signs and off premises signs.
5. Concerning Sections 11.102(A)(9) and (10), these definitions are generally content-based definitions. In other words, one only knows that the sign is an ingress/egress sign by reading it. However, the Supreme Court noted in its opinion that content-based regulations can survive strict scrutiny analysis if there is a compelling governmental interest. An example that was given was street signs that are needed to direct emergency vehicles. As a result, even though these definitions are content-based regulations, I believe they would be lawful under the Supreme Court decision.

6. Concerning Section 11.102(C)(1), this definition is an impermissible, content-based regulation. One does not know whether the sign is commercial or noncommercial until one reads the content of the sign.
7. Concerning Section 11.102(C)(4) and (5), I believe that identification and safety signs, although content-based regulations, would be permissible since there are compelling governmental interests for those type signs.
8. Concerning Section 11.103, the sign regulation should not make reference or draw a distinction based on commercial versus noncommercial messages.
9. Concerning Section 11.108, these are the type of dimensional regulations that the sign regulations should emphasize. These regulations are truly content-neutral.
10. Concerning Section 11.112(A), the provision that allows the ZBA to decline a variance even if certain of the circumstances is present is contrary to the zoning enabling act. The act provides that when making discretionary decisions the body making that decision must grant the request if the standards for approval are met. As a result, this provision should be rewritten to specify the standards that must be met in order to obtain the requested variance.

As you may have heard me say many times, drafting sign regulations is perhaps the most difficult amendment to write. If you would like to discuss my comments, please call me on Monday.

BEG

Michelle Reardon

From: Patrick Sloan <PSloan@mcka.com>
Sent: Monday, August 15, 2016 9:19 AM
To: Michelle Reardon
Cc: Leslie Sickterman
Subject: RE: Review of sign amendment

Importance: High

Thanks, Michelle. Here is my initial response to the comments:

1. The numbering system is new, so it will be treated like a new ordinance even though most of the regulations are the same.
2. We will restructure the introductory paragraph of Section 11.101 to set up the following bullet points, including using a colon at the end of the paragraph.
3. We can reword Section 11.101(B) to state "size (including height and display area), lighting, and spacing (including setbacks and distances between billboards)" to be more consistent with the language of the Act. We may want to follow up with the Township Attorney regarding proper language for this so that this article of the Zoning Ordinance starts out on the right foot.
4. We will revise the Signs article to make the regulations more content neutral. Opinions on the required **degree** of content neutrality vary among municipal attorneys (to be fair, the Supreme Court was not very clear), but I think we have clear direction here.
5. We will include language related to traffic safety for drivers, passengers, and pedestrians so that there is a strong public safety purpose for a content-based standard.
6. We will fix based on the Township Attorney's 4th comment.
7. We will revise based on the Township Attorney's 5th comment.
8. We will fix based on the Township Attorney's 4th comment.
9. It looks like we're on the right track with the table format.
10. We will reference the ZBA's variance standards and write them in a manner where they fit in with the ZBA standards. We'll probably want the Township Attorney to take a look at this once it's finished.

We'll get started on these revisions. Overall, I think we're very close to having a final product. If you have any questions or comments in the meantime, please let me know.

Patrick

Patrick Sloan, AICP
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-----Original Message-----

From: Michelle Reardon [<mailto:planner@peninsulatownship.com>]
Sent: Monday, August 15, 2016 8:46 AM
To: ajc@runningwise.com; dsh_44@yahoo.com; Lanny Leak <keithlleak@gmail.com>; Laura Serocki <rocki1323@yahoo.com>; Monnie Peters <mgpeters@acegroup.cc>; Penny Rosi <psyr2@acegroup.cc>; wunschis23@gmail.com; zoning@peninsulatownship.com
Cc: Patrick Sloan <PSloan@mcka.com>; Leslie <lsickterman@gmail.com>

Subject: FW: Review of sign amendment

Importance: High

All,

Please see the attached review of Article 11 of the draft ordinance. I will have hard copies available for your use tonight. See you at 5:30.

Michelle Reardon

Ph. (231) 223-7314

planner@peninsulatownship.com

-----Original Message-----

From: Bryan E. Graham [mailto:bgraham@upnorthlaw.com]

Sent: Saturday, August 13, 2016 9:41 AM

To: Michelle Reardon

Subject: Review of sign amendment

Dear Michelle:

Here is a memo concerning my review of the sign amendment. Please call with any questions.

--

Bryan E. Graham

Young, Graham, Elsenheimer & Wendling, P.C.

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James G. Young, *Of Counsel*

August 15, 2016

Sent via email

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

SUBJECT: Review of draft zoning language based on August 9, 2016 email

Dear Michelle:

I assume that the language that you forwarded to me has been worked on by both you and McKenna Associates for presentation to the township planning commission. Reviewing the proposed section 5.101(A)(1), the second line after the word "use", the word "of" should be inserted and after the word "planned" the word "unit" should be inserted.

My next comment involves subparagraph (B) entitled Authorization (currently section 8.3.1). I am presuming that this a separate PUD standard for parcels zoned AG only given that the paragraph at the top of 7.2.6(A)(1) seems to relegate PUD's in residential districts only.

At the bottom of page 5-4, paragraph 6 entitled Exceptions to Open Space, I would include as an exception limited common elements in condominium developments. (As we have seen), condominium developers attempt to use limited common elements as a buffer zone for what otherwise would be the unit in a site condominium. A site condominium unit needs to be treated just the same as a lot under the zoning ordinance. Any building envelopes (being the space between the border of the unit and the building area in any given unit) should not be listed as a limited common element. Doing so under the Act would exclude it from being considered a unit in a site condominium development. Otherwise, limited common elements are generally used for small features such as water and sewage pipes entering a building, etc., and should not materially impact the ability of a site condominium developer to otherwise create a PUD in a manner which complies with the zoning ordinance. Please make sure that the definition of "lot" includes a site condominium unit. Site condominium units are not defined in the condominium act. Therefore, you may suggest to McKenna that they also introduce a definition of site condominium unit such that it reads as follows:

Site Condominium Unit - a parcel of land meeting the depth to width ratios and minimum square foot size requirements of a lot within the zoning district in which

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it is located as part of a condominium development under Michigan's Condominium Act, being Public Act 59 of 1978, as amended.

Under subparagraph (E) Uses That May Be Permitted (currently Section 8.3.4) located on page 5-5 subparagraph (4)(b), I recommend that before the word "parks" that you insert the words "public and/or private." Remember that we had an issue, although not adopted by the Circuit Court, wherein under The 81 it was argued by the Appellants that parks can only be public and therefore a private parkland area reserved for the owners of property within the PUD are not contemplated under the ordinance language. I believe that the township does contemplate private parks for the use of property owners within a development as being part of a use under a PUD. It might as well be specifically stated in the zoning ordinance.

My next comment involves the bottom of page 5-5 entitled Parallel Plan. I am concerned that if the township is desirous to eliminate two sets of plans being presented to the planning commission at the same time (i.e. a use by right platted subdivision while at the same time presenting a PUD by special use permit), then this does not seem to be the direction that the township wishes to go with respect to zoning. If, from a planning perspective, it is desirable to have a parallel plan, it should be clear in the ordinance that the property owner cannot proceed with a parallel plan while the applicant is in the process of requesting that a PUD be approved. Make sure that McKenna looks at the language that I have provided in previous correspondence preventing this to ensure that there is no conflict with the parallel plan provision and the provisions which follow it. Otherwise, I do see how the information on a parallel plan would be helpful for planning purposes while processing a PUD.

Moving on to page 5-7, subparagraph (b) entitled Open Space Dedicated for Public Use, I suggest that the first sentence be amended to read as follows:

A residential planned unit development wherein the developer voluntarily dedicates a minimum of 10% of the net acreage to the Township.

Again, this argument came up with The 81 (not successfully) that 10% dedication is required. This clarifies it is not, but if it occurs these regulations apply.

Moving on to page 5-11, number (7) should be rewritten to read as follows:

A description of the community septic system, if one is to be provided as part of the condominium project.

Michelle Reardon, Planner
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Keep in mind that many site condominium projects may not invoke community septic systems because the site condominium units will be large enough to accommodate both a private well and septic system. You may ask McKenna and the planning commission if they would prefer to add in a requirement that if the development includes well and septic areas, that septic areas, including a reserve field, should be marked on the property. I am not sure if this is too much of a burden to do at that stage of process or whether septic fields site and alternate sites can easily be ascertained prior to the planning commission's and township board's review of these types of developments.

Given that I have suggested a definition for site condominium unit which includes and incorporates it in the word "lot", I would suggest that site condominium unit be substituted for condominium lot throughout the ordinance. Of course, through your discussions with McKenna and the planning commission you can also change things around such that a condominium lot becomes the new definition instead of site condominium unit. The choice is the townships.

The balance of the site condominium provisions are fine so long as they apply equally to other types of development that are not under a condominium form of ownership. This will rarely occur as most large developments will come in as a site condominium. Certain things are unique under the condominium laws, such as plans showing expandable or convertible areas. This is dealt with correctly by the revisions provided on page 5-13 and, to a certain extent, on page 5-14. Make sure that site provisions pertaining to soil types, etc., apply the same to other forms of development, such as monumentation, etc.

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

Sincerely,

Peter R. Wendling

cc: Pete Correia, Supervisor (via email)
Monica Hoffman, Clerk (via email)
Claire Schoolmaster, Zoning Administrator (via email)

PRW/tac