

2nd REGULAR TOWNSHIP BOARD MEETING

**October 25, 2016
7:00 p.m.**

Meeting called to order at 7:00 pm.

Present: **Avery, Byron, Westphal, Manigold, Weatherholt, Witkop, Rosi, Hayward, Nicole Essad.** Rachel Mavis, recording secretary.

Approve Agenda

Agenda amendment: Correction on item #3 (new business). The town meeting will be changed from its regularly scheduled time at November 8th (election day) to November 10th at 1:00 p.m. The purpose will only be to pay bills. Because of schedule conflict, it will be changed to 9 a.m. on the 10th. First town board business meeting would be 22nd.

Witkop requested to add item to agenda - discussion on Bowers Harbor vineyard / winery into new business #4.

MOTION to approve agenda as amended. **Weatherholt / Witkop. Motion passed.**

Brief Citizen Comments

Harold David Edmonson - would like to speak to decision pertaining with Bowers Harbor Vineyard and the decision made at the last meeting pertaining seasonality, which was justified by GAMPS practices / guidelines. He feels it was very misleading to say that GAMPS trumps township zoning / rules. GAMPS don't supersede township regulations - they are only practices that provide protection for you under the Right to Farm Act. He believes the board should change the ordinance first. Don't use standards that are meant for agricultural entities to break township rules. GAMPS information says that you must comply with local and state regulations. Where did the information come that it supersedes township zoning? He recommended that someone makes a motion to rescind the decision and when they want to be open seasonally, the zoning ordinance is amended. All violations that are occurring will never meet a GAMPS audit. He just wants the to follow the rules. Also concerned about safety violations (he has video). He thinks seasonality should be enforced - they should be shut down in November and get into compliance.

- **Manigold** thinks he's incorrect regarding GAMPS. He wholeheartedly believes that the Right to Farm Act runs GAMPS. Right to Farm is the legislation and those are the guidelines.

- **Byron** said that if the people at GAMPS have offered to conduct an assessment and give an opinion - let's have them do that.
- **Manigold** said he's in favor of that idea. He and **Westphal** had talked about GAMPS coming in January, following the election and holidays.
- **Essad** said there is a provision in the right to farm act (MCL 286.474 subsection 6.) The Right to Farm Act (and GAMPS developed under this Act) pre-empts local ordinances that are in conflict with this act or GAMPS.

Susie Shipman from the Park Commission Board brought an update on Bowers Harbor. Committee has been meeting regularly. The second site visit was last week on site and next meeting will be morning of November 3. They had a very successful first public meeting and report based on that meeting is on the township website. They also had additional public comment added to that. The committee reviewed and consultant adjusted, so that it was more comprehensive for the public. They initially had a 3 phase proposal from planning consultants. In phase 2 the potential options were different from the beginning concept plan, but they decided they are close enough to the original concept plan that they will stick with that. When it comes to scheduling, they started with an aggressive schedule (not wanting to miss grant deadlines), but the committee believes the second public meeting should be in January, following the holidays. Thank you to the residents who have been involved. The planning itself has had 3-phase explorations, beginning with baseline improvements. They want to get park open to public and let people know that a more formal park arrangement will be in the future. They are discussing signage, delineated parking, etc. They are working on informing people that private uses need to cease. She is excited to see others out using the park.

Conflict of Interest

Manigold sells grapes to wineries and has sold to Bowers Harbor and Bonobo. In case either ends up in court, he doesn't want to have a conflict of interest. He asked to recuse himself. **Motion for Manigold** to be recused by **Witkop / Byron. Motion passed.**

Weatherholt asked to be recused from #2. **Motion for Weatherholt** to be recused from #2 by **Byron / Witkop. Motion passed.**

Westphal asked to be recused from #4 under new business for household conflict of interest. **Motion for Westphal** to be recused from #4 by **Byron / Witkop. Motion passed.**

Motion by Avery / Westphal to appoint **Weatherholt** as acting chair. **Motion passed.**

Old Business

1. Bonobo Winery Compliance (Hayward, Essad)

Motion by **Witkop / Rosi** to waive attorney/client privilege for item #1. **Motion passed.**

Essad shared that the township has 3 options:

- enforcement (through district court proceeding via a municipal civil infraction ticket and formal hearing, or by filing a circuit court action to abate the nuisance in the form of an inductive complaint)
- come to an agreement regarding bringing the property into compliance (through mediation or having a signed agreement between the township and Mr. Oosterhouse).
- revoke the SUP granted in 2013 (after a public hearing, where Mr. Oosterhouse was given notice of the public hearing and had the opportunity to be heard by the township board)

Weatherholt clarified whether or not you can revoke the SUP without going to court.

Essad said that you can, but it is not recommended. Her suggestion was that the township pursues one of the first two options instead of automatically revoking. Her primary suggestion would be option one.

Witkop asked about the timing of the options - if the second option is chosen, with a new board coming on in less than a month, is a motion required tonight? She doesn't want to tie the future board members' hands. Also, what if the conversations begin and an agreement can't be reached? Can you go back? **Essad** said that yes, there could be a motion tonight to choose the second option. They would then start talking more fully about it with the next board. Also, yes, if the discussions don't come to a resolution the option of going to court is still there.

Byron said that she was not supportive of going into mediation, since that's where they've been for several months - even years. They haven't been interested in coming into compliance with the ordinance. She's concerned about the length of time that will go by between the SUP's initial granting in 2013 and the time that they will be in compliance will only stretch into more and more years. The board continues to get an unsatisfactory response time after time, so her opinion is court.

Avery - to go into mediation, it takes both parties to be acting in the manner that they're attempting to meet the ordinance. Bonobo's Facebook page has an annual halloween party listed, which is not supposed to be taking place. He doesn't see that as acting in good faith. This board would have a hard time acting in this manner, too, because they have had enough.

Westphal - with the payment receipt for the apples, there's no guarantee that those apple trees will available in the spring 2018. Everyone has been putting in orders and a fraction of the amount ordered are what's received. There's no backup for this order. There is also no specific date for "spring 2018." She thinks there are a few problems with the proposal as it is seen today. They're not seeing any stability in purchase orders of trees right now (apples, cherries, or any stone fruits).

Rosi hates putting this issue on the new board. **Avery** - this is the last meeting... are we in a position to make that decision tonight? If not, we should table it and let the next board pick it up at the next meeting. **Witkop** - what she's hearing, is that enforcement is necessary. However, the timing bothers her. She's not comfortable making that decision for the new board to pick up and run with it. Either the board table it and let the new board look at it, or we work towards an agreement. **Weatherholt** - if he was going to stay, he'd start down the legal road with the attorney since they are not in compliance, but doesn't think it should be done now. **Byron** - struggling. This current board is the group who has dealt with it and already have pushed it back to this date to decide.

Rosi - There are a couple of steps for preparing the land, even before the new trees are planted. Those steps haven't even been started.

MOTION by **Byron / Witkop** that this board select to enforce through a ticket in district / circuit court (whichever is expeditious) and that case is presented to the court. **Byron, Witkop, Westphal, Rosi, Weatherholt - support.** **Avery - no.** **Motion passed (5-1).**

Motion by **Witkop / Byron** to bring **Manigold** back. **Motion passed.**

New Business

1.) Resolution to establish guidelines for water and sewer benefit payments

Manigold - In our township, water and sewer lines are run. The hookup is not mandatory - usually sewer is, but not water. With all of the special assessments (Logan Hills, for example), some people have paid to run pipe in and want to hook up. It's several thousand dollars in benefit fees to hook up. He is asking board to approve the option for a payment plan that could split the payments up over time so that it can be put into place for the people who want to hook up.

Byron - since this is adapted from a previous one, should we remove "poor economic times."

Motion by **Byron / Avery** to approve resolution and to strike "poor economic times." **Motion passed.**

Motion by **Byron/ Witkop** to recuse **Weatherholt** from next order of business (PDR Selection Committee questions). **Motion passed.**

2.) PDR Selection Committee Questions

1. 2020 Millage Vote - "Does it possibly mean that the township board does not have to levy the full 2 mills each year?" - The township is levying the maximum millage rate as reduced by Headlee.

2. Should the township purchase easements under a land contract rather than for cash? - The applicant has the option to take a cash payment or a land contract, however the land contracts would have to end in 2021.
3. What is the role of the Selection Committee versus Township Board? - Selection committee prioritizes properties in a certain round, then brings their recommendations to the town board (as an example).
4. Don't we need the opinion from the Township general counsel as to the legal status of our committee in light of the provisions of the ordinance that say the committee terminated after 8 years? What role can the committee play without the Township amending the PDR Ordinance to extend the life of the committee? **Westphal** - part of the history of the PDR... they thought there'd be one round. They're now in the fourth round. That's why the 8 years were in place. **Motion by Witkop / Byron** to have attorney review PDR ordinance to determine what appropriate actions would be and amend ordinance appropriately. **Motion passed.**
5. What is the legitimacy of a need for a PDR Selection Committee?
6. Should there be a re-ranking of the Round 4 applications as well as changes to the properties left in Round 4 for purchase that might justify a change to their ranking? — No change in rank order unless change in application. **Hayward** will look for changes and if there are any in a particular application, he will bring back to board.
7. Questions regarding the Bond Counsel letter of 10/6/16 - placed in mailbox for your information. a.) Just because there is a surplus, does the Township Board vote to actually use the surplus and in what amount? b.) Does it make sense for the treasurer to generate a chart which shows future surplus projections? c.) There is a new township board being sworn into office in late November. Should the current or future board make the discretionary decision? - The decision is too far out for current board and would be handled by new board.

Motion by Witkop / Byron to bring **Weatherholt** back. **Motion passed.**

3.) Change first Town Board meeting in November to November 10th at 1:00 p.m. at the Township Hall, to pay bills only. The regular meeting is November 8th, which is election day. They would like meeting moved to November 10 at 9:00 a.m. because of a scheduling conflict. **Motion by Rosi / Byron** to change meeting time. **Motion passed.**

Manigold - attorneys have been asking when the last two items in the 81 project are going to be addressed. There is a *tentative* meeting scheduled for Thursday, November 17th, 7 p.m. The Catholic church would be rented for the meeting. They are still waiting to hear back from a few people before the meeting is confirmed.

Motion by Byron / Witkop to have **Westphal** and **Manigold** recused from next item on agenda. **Motion passed.** **Motion by Byron / Avery** to have **Weatherholt** lead meeting. **Motion passed.**

4.) Bowers Harbor Vineyard

Witkop questioned whether or not the board wants to rescind their decision to let SUP 32 operate year-round. Is that the appropriate action? We are not fully informed when it comes to GAMPS. Is it better to wait until after an education process has happened? The second part of the conversation that needs to happen pertains to the activities that are going on. She is uncomfortable with the level of activity that is happening based on the size of the parcel. There was a video taken of site (by a resident) that brought up safety concerns. There were numerous vehicles and people maneuvering along a small, narrow road to a “roadside stand” - she doesn’t think it’s a “roadside stand” and doesn’t think GAMPS should be applied to this particular venue. The cars couldn’t pass each other and were trapped. It was bumper to bumper traffic. People drive on the park property, between the two. The park is also being used for overflow parking. People who want to use the public park come to the board for approval. She thinks something needs to be done. She’d like for Claire go back to day 1 of the proposed plan and look at what was approved and what’s been approved since, then take a look at that in connection with what is physically there. From what she remembers of the site plan, she doesn’t think that parking in that site plan was developed. She’d like to have them look at what’s there vs. what was allowed, along with making sure the board is educated in GAMPS. We have to enforce zoning ordinance and safety. She’d like to direct claire to move forward.

Essad said that a motion is needed by someone who voted for the previous motion in order to reopen it. **Weatherholt** expressed concern that because it got added to agenda, people who may want to be present for the discussion won’t know we’re discussing it. Also, how do GAMPS effect SUPs? Were GAMPS appropriately used? Do we have violations and safety issues? Those are two separate issues.

Motion by Witkop / Avery to open discussion on SUP 32. **Motion passed.**

Witkop doesn’t know that it was the right or wrong decision, but feels like it should wait until it follows education by someone knowledgeable regarding GAMPS so that it is an educated decision.

Essad said that to the extent that there are potential violations, those should go to staff so that they can be investigated.

Byron - now that the winery industry has matured, should we have different winery rules and guidelines? If you did that, you may change the taxing and not end up in court. We need to look as a township at OUR township and where we want things to go.

Witkop would like to see board rescind decision on SUP 32 and make appropriate changes on zoning ordinance.

- Tom Petzold - absolutely astounded at the discussions tonight. The board admits that they made a decision that was wrong because they didn't have all the information. Tonight they agreed to discuss the topic, but weren't going to make a decision tonight because citizens aren't here for input, and a decision was made. A video was shown personally to board members and was not available for others. (That video will be available.) He was a subject in that video - he was being paid by Bowers Harbor Vineyards to manage traffic - safety of customers, vehicle traffic, pedestrian traffic, etc. With two people being hired by Bowers Harbor, that is recognition of the importance of safety that they have. How many other wineries hire people to manage traffic? Did vehicles cross over border? Yes. When he saw it, he drove to the edge and brought cones to prevent it from happening again. The video should show it. If it doesn't, it's selective video. The only time a golf cart crossed into park property it was driven by him - because the owner of a large tour bus drove over to the park, in spite of his instructions. One customer had a walker - he put individual and walker into cart and drove to bus.
- Ray Weidel - He didn't know this was on the agenda tonight and knows people would have wanted to have been here. It turned from discussion to rescinding the decision. It should be on the agenda with the new board at the next meeting.
- Brett Mistoly - does it have to be rescinded at the next meeting? They can't push it back to the next meeting if it has to be done immediately. (**Essad** - it had to be reopened, but discussion can be tabled until next meeting. Opening up the meeting had to take place at this one.) He can personally tell you - he asked the tour bus who told them to park there and they said the park did. (**Essad** - all potential violations should go to the staff and enforcement officers, not to individual township board members).
- Linda Stegenga - never gave anyone permission to come onto their property and videotape it. Tom will have bus driver come to next meeting if necessary. (They are not investigating certain date - just looking at what SUP has had approved). Additional parking is all going down the driveway - they were never told to pave it. Can't discuss my business and not let us know it is going to be on there. She's trying to run a reliable, honest business that's in compliance.
- **Motion by Avery / Witkop** - to table discussion about Bowers Harbor until a further meeting, after posted and after more information is available from Claire (Zoning administrator). The next board meeting with the new board will be November 22.
Motion passed.

MOTION by **Byron / Witkop** to bring **Manigold** and **Westphal** back to meeting. **Motion passed.**

Citizen Comments

Maura Sanders, Parks Commission Board - thank you to the outgoing board. She sincerely wishes them the best going forward.

Monnie Peters, Planning Commission Board - she recommended that the new board carry on with Byron's suggestion to look at the wineries and what has changed in the peninsula over the past years. Last Saturday, as she was driving down the peninsula, there were 12-15 cars parked on one side, with 8 parked on the other side. There were people wandering across Center Road. The peninsula has become a hugely popular tourist destination and we desperately need to look at what the ramifications are. We are indeed changing.

Also, on the afternoon of the 17th there will be a work session by the Planning Commission in the ag area. She also wanted to thank the current board for their hard work.

Board Comments

Byron - for those leaving the board, remember to turn in keys and notebooks / iPads that were given out. Can we be updated on the status on the school?

Manigold shared that it's in a holding pattern. There was a meeting a week ago Sunday, organized by a group that is actively working together to try to purchase it. \$750,000 has been offered to the peninsula in a proposal to purchase, but the offer has not been accepted yet. It will be citizen-driven what kind of school it is (public, private, charter, etc.) in negotiations.

Westphal - update from clerks office. The planner's job position is now posted. Also, 2159 absentee ballots were sent out and 40% have already been turned back in.

Meeting adjourned at 9:33 p.m. by Manigold.