PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686
Ph. 231.223.7322 Fax: 231.223.7117
www.peninsulatownship.com

ROBERT K. MANIGOLD SUPERVISOR
JOANNE WESTPHAL CLERK
DAVID K. WEATHERHOLT TREASURER
MARK D. AVERY TRUSTEE
JILL C. BYRON TRUSTEE
PENELOPE S. ROSI TRUSTEE
WENDY L. WITKOP TRUSTEE

2nd REGULAR TOWNSHIP BOARD MEETING
October 25, 2016
7:00 p.m.
Township Hall
Agenda

1. **Call to Order**
2. **Pledge**
3. **Roll Call**
4. **Approve Agenda**
5. **Brief Citizen Comments – for items not on the Agenda**
6. **Conflict of Interest**
7. **Township Board Business**

   A. Old Business

   1. Bonobo Winery Compliance (Hayward, Essad)

   B. New Business

   1. Resolution to establish guidelines for water and sewer benefit payments
   2. PDR selection committee questions (packet, Gordon)
   3. Change first Town Board meeting in November to 11/10/2016 at 1:00pm, Township Hall, to pay bills only

9. **Citizen Comments**
10. **Board Comments**
11. **Adjournment**

Clerk's Office **ORIGINALS**
Regular Town Board
October 25, 2016

Gordon Hayward

To: supervisor@peninsulatowship.com
Cc: zoning@peninsulatownship.com
Subject: FW: Scenic turnout at Hogsback on M-37

From: ODonnell, Patty (MDOT) [mailto:ODonnellP@michigan.gov]
Sent: Thursday, October 13, 2016 2:19 PM
To: Gordon Hayward
Subject: RE: Scenic turnout at Hogsback on M-37

Dear Gordon:

Scenic Turnout Development –

1. Township can request MDOT Traverse City Staff to look at a potential driveway and safety issues prior to the Township's acquisition of the property. The Township can place a stake at the location and we can do a site visit. We would require a driveway entrance/exit and parking and not just a pull-off for safety.
2. Obtain an MDOT permit for the driveway.
3. Township would own and operate the scenic turnout.
4. TAP Grant opportunity: eligible activity – turnouts, overlooks, and viewing areas. Projects that provide views of the Great Lakes or highly unique and scenic areas, and/or provide a benefit to state tourism. A local road agency (Grand Traverse County Road Commission) would have to be the applicant and the Township would partner with them. The grant is for construction costs only and must provide match. Survey, design engineering and construction engineering are the responsibility of the applicants and cannot be used as match.

Please feel free to contact me with any further questions.

Sincerely,

Patty O'Donnell
Transportation Planner
***MDOT** North Region*
989-614-4229

From: Gordon Hayward [mailto:planner@peninsulatownship.com]
Sent: Thursday, October 13, 2016 11:33 AM
To: ODonnell, Patty (MDOT) <ODonnellP@michigan.gov>

Cc: supervisor@peninsulatowship.com
Subject: Scenic turnout at Hogsback on M-37

Dan Fouch owns property on M-37 north of Mapleton that the Master Plan has designated as one of the three prime scenic views in the Township known as the Hogsback. He would be willing to allow a scenic turnout looking East from M-37. I would like to discuss the options with you regarding this.

Gordon Hayward
Peninsula Township Director of Planning & Zoning
13235 Center Road
Traverse City MI 49686
phone - 231-223-7314
fax - 231-223-7117
planner@peninsulatownship.com

Please note that this email message and any attachments may contain privileged or confidential information that is protected against use or disclosure under federal and state law. If you have received this in error, please advise by immediate reply. Any transmission to persons other than the intended recipient shall not constitute a waiver of any applicable privileges. Any unauthorized use, disclosure, copying or dissemination is strictly prohibited.

Michigan Transportation Alternatives Program (TAP)

Competitiveness and Eligibility Details

What types of projects are competitive for TAP funding?

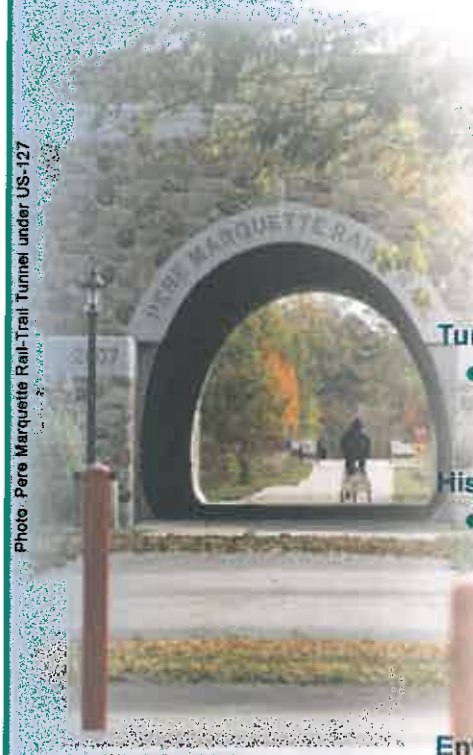


Photo: Pere Marquette Rail-Trail Tunnel under US-127

Facilities for Pedestrians and Bicyclists

- *Pedestrian and bicycle facilities, including shared-use paths, that:*
  - connect and develop documented regional or statewide bicycle and pedestrian transportation networks.
  - are appropriate for the need and user types targeted.
  - benefit state tourism or economic development initiatives.
  - if locally significant, have strong transportation connection and involve planning efforts or serve as connectors to regional networks.
  - are a priority on state, county or regional nonmotorized transportation plans.
  - address documented safety deficiencies.
  - are part of a broader non-Transportation Enhancement or TAP-funded bicycle and pedestrian transportation networks.
- *Amenities that increase usability of bicycle and pedestrian facilities.*
- *Streetscape improvements that:*
  - are located in established traditional downtowns or historic districts, including areas with high pedestrian activity or of a context that promotes pedestrian transportation.
  - use a creative design approach that enhances pedestrian safety and takes into account the community identity, history, context, and the human environment.
  - accomplish multiple goals (traffic calming, pedestrian safety, tied with other initiatives, water quality improvements, etc.).
  - receive input and support from citizens, local businesses, economic developers, traffic engineers, historians, etc.

Turnouts, Overlooks, and Viewing Areas

- *Projects that:*
  - provide views of the Great Lakes or highly unique and scenic areas, and/or provide a benefit to state tourism.

Historic Preservation and Repair of Transportation Facilities

- *Historic preservation projects that:*
  - enhance National Register-listed historic districts, locally designated districts or National Heritage Areas.
  - preserve original property in place (certain bridges designed to be moved are an exception).
  - promote cultural tourism.

Environmental Mitigation Activities

- *Water quality projects that:*
  - will have a positive effect on important watersheds or water bodies with sensitive fisheries or that are not attaining state water quality standards.
  - include monitoring after implementation or projections of water quality improvement.
  - are consistent with a local watershed management plan.
  - include an inspection and maintenance schedule.

Other Eligible Activities

- *For information on the Safe Routes to School Program, go online at www.saferoutesmichigan.org.*
- *Other eligible activities defined in the Fixing America's Surface Transportation Act (FAST Act) but not specifically listed here are generally not competitive. Consideration will be given in certain circumstances where significant benefit to the state is demonstrated.*

*** Important note:** These details about competitiveness and eligibility pertain only to the $17 million of TAP funding available per year through the competitive process administered by MDOT. $7 million is available per year through competitive grant processes administered by metropolitan planning organizations (MPOs) in urban areas with populations greater than 200,000. For applicants in those areas, please consult with the MPOs for competitiveness and eligibility details.

Michigan Transportation Alternatives Program (TAP)

Competitiveness and Eligibility Details

What other factors make a project competitive for TAP funding?

Financial factors

- Realistic expectations and cost.
- A high level of overmatch (40 percent and higher, ability to pay is considered).
- Non-participating work that is determined to be a benefit to the TAP project.

Public input

- Project identified as a result of a community's Complete Streets stakeholder involvement process.
- Project receiving a high level of public input from multiple partners.

Coordinated efforts

- Project supporting a community's Complete Streets policy, is on a designated state or national scenic byway, or is part of a statewide initiative, such as placemaking, statewide trail connectivity, or tourism efforts.
- Paired with other infrastructure work.
- Part of an economic development or community improvement initiative.

Constructability

- Project design will use industry design standards and can obtain all necessary permits and approvals.

Maintenance factors

- Strong maintenance plan that includes tasks, schedule, cost, source of maintenance funding, and responsible parties.

Previous Transportation Enhancement (TE) and TAP funding

- Lower-than-average per capita TE and TAP investment in prior years.
- Timely implementation and appropriate maintenance on previous projects.

What items are ineligible for TAP funding?

Eligible costs are those costs determined by federal TAP guidance and by the Michigan Department of Transportation (MDOT) to be consistent with achieving the intention of eligible categories set forth in federal law. To enable limited TAP funds to support more projects, some project development costs are considered ineligible by MDOT, but may meet federal eligibility. MDOT usually considers the following costs to be ineligible for funding:

- *Construction engineering*
- *Construction extras and cost overruns*
- *Design engineering*
- *Environmental clearance and mitigation (except for water quality)*
- *Permit cost*
- *Project administration*

Various project elements also deemed ineligible for funding include the following:

- *Annual plantings*
- *Banners*
- *Building facades (except for historic transportation buildings)*
- *Burying utility lines*
- *Clock towers*
- *Curb and gutter (negotiable in a water quality project)*
- *Decorative fountains*
- *Decorative street signs*
- *Electrical for tree lighting*
- *Flag poles*
- *Irrigation*
- *Items required as federal-aid project mitigation (except for water quality)*
- *Public art*
- *Speaker systems*
- *Landscaping of property (as opposed to road right of way)*
- *Wayfinding primarily for vehicular use*
- *Welcome signs*

For many projects, these ineligible costs may be characterized as non-participating costs.

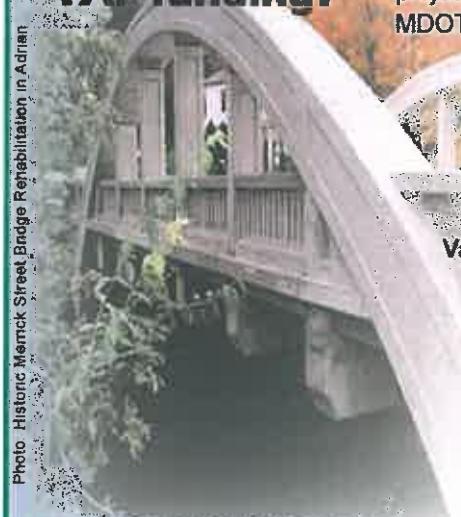


Photo: Historic Merrick Street Bridge Rehabilitation in Adrian

*** Important note:** It is highly recommended that you contact a grant coordinator at 517-335-1069 to discuss your proposed project before filling out a grant application. For more information, please visit www.michigan.gov/tap.

Supervisor

From: Jason Hamilton [jhamilton@gtsheriff.org]
Sent: Thursday, October 13, 2016 9:39 AM
To: Chris Barsheff; supervisor@peninsulatownship.com; randyr@peninsulatownship.com
Subject: Fwd: Thank you for your help

Lt Barsheff, Supervisor Manigold, and A/Chief Rittenhouse:

I received this email this morning and thought I would share. Mr. Manigold the firemen in question were A/Chief Randy Rittenhouse, Lt. Brent Strom, and Fireman Cody Lipe who responded to this call for service.

Jason Hamilton

---------- Forwarded message ----------
From: **Pam Sheridan** <pam@waterleafdesign.com>
Date: Thu, Oct 13, 2016 at 7:40 AM
Subject: Thank you for your help
To: jhamilton@gtsheriff.org
Cc: "Anton T. Sheridan" <atsheridan55@gmail.com>

Good Morning Jason and Firemen of Peninsula Township,

Anton and I want to thank you so much for your unbelievable and quick response to our 911 call yesterday morning and for the response and support of the Peninsula Township Fire Dept. We're so grateful that we did not have a fire. Through years of having family members involved with the volunteer services of local fire dept and through years of healthcare careers we understand and respect the nature of a fire and honor and treasure the dedication and service of those who service our communities through the fire and EMS services. We're new to the Peninsula community but you have our utmost honor and respect for the work you all do and for your response in helping us out.

At the end of the day after having an electrician out and then working with Consumers Energy it was determined that Severe High Voltage Fluctuation surges were coming into the house. Consumers found a faulty ground that appeared to have been damaged and poorly repaired at some point near the sewer line exiting our home. Prior to our purchasing the home the previous homeowner had told us of some sewer work that had been done. The ground line was actually placed under the sewer line and Consumers said that this is where the ground line had been cut and then a poorly repaired. The faulty (failed) ground allowed the current to come into the house in a series circuit rather than a parallel circuit. This put direct high voltage surge directly on the fixtures. Consumers was able to replace the fault ground with a new ground. Once the electric was restored and turned back on the damage appeared to be concentrated on several blown ballasts on fluorescent lamps, 14 bulbs on a dining fixture (which are self-ballast lamps), our coffee pot and a computer surge protector. Unfortunately, it does appear that our furnace and hot water heater have been affected. We are having those services further checked out today. Again, thankful and grateful doesn't even been to describe how blessed we feel to have been home when this incident occurred, for the amazing response of everyone who helped us out and for the minimal damage that occurred.

Please share our gratitude for all your help with the Fire Department Personal. We are truly truly blessed to live here and receive the services you all provide.

Our Best Regards,

Anton and Pam Sheridan

--

Pamela S. Sheridan
Interior Designer
WaterLeaf Design
616-217-8536

Supervisor

From: Todd Millar [tmillar@swoggerandbruce.com]
Sent: Thursday, October 13, 2016 2:16 PM
To: supervisor@peninsulatownship.com; Sally Akerley (assessor@peninsulatownship.com)
Cc: 'Bryan E. Graham'
Subject: Kahn
Attachments: Certify (67).pdf

The court denied plaintiff's motion for reconsideration of its prior ruling. Let me know if you have any questions.

Todd

Todd W. Millar
Swogger, Bruce & Millar Law Firm, P.C.
10691 E. Carter Road, Suite 103
Traverse City, MI 49684
(O) (231) 947-6800 x110
(F) (231) 421-5909
tmillar@swoggerandbruce.com
www.swoggerandbruce.com

DEFENSE LAWYERS. DEFENSE LEADERS.

CONFIDENTIALITY NOTICE: This email and any documents, files or previous email messages attached to it may contain information that is confidential or legally privileged and is for the sole use of the intended recipient(s). If you are not the intended recipient, do not read, print, or save this email. Any unauthorized review, use, disclosure or distribution of this email, its contents or the attachments, is strictly prohibited. If you are not the intended recipient, please contact the sender by telephone or reply email and destroy the original, any attachments and all copies without reading or saving.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

NANCY L. KAHN, JON KINNE, SUE KINNE,
RICK SHAFFER, DIANE SHAFFER, SARA TAFT
and DAVID TAFT,

Plaintiffs,

v

File No. 2016031743CZ
HON. PHILIP E. RODGERS, JR.

PENINSULA TOWNSHIP, SALLY AKERLEY
and PETER CORREIA,

Defendants,

and

PEOPLE OF THE STATE OF MICHIGAN, ex. rel
GRAND TRAVERSE COUNTY PROSECUTING
ATTORNEY,

Plaintiff,

v

PENINSULA TOWNSHIP, SALLY AKERLEY,
and PETER A. CORREIA, jointly and severally,

Defendants.
/

Jay Zelenock (P58836)
Attorney for Kahn, Kinne, Shaffer and Taft

William D. Kahn (P27638)
Co-Counsel for Kahn, Kinne, Shaffer and Taft

Robert A. Cooney (P47454)
Attorney for State of Michigan

Todd W. Millar (P48819)
Attorney for Defendants

Bryan E. Graham (P35708)
Co-Counsel for Peninsula Township and Akerley

DECISION AND ORDER DENYING MOTION FOR RECONSIDERATION

On April 25, 2016, Nancy Kahn, Jon Kinne, Sue Kinne, Rick Shaffer, Diane Shaffer, Sara Taft and David Taft (hereinafter the "Original Plaintiffs") filed a three-count complaint against Peninsula Township, Sally Akerley and Peter Correia.[1] Count I alleged a violation of the Land Division Act, Count II alleged a violation of the Freedom of Information Act and Count III alleged a violation of the Open Meetings Act. On July 15, 2016, Defendants filed a Motion for Partial Summary Disposition.[2] The Plaintiffs filed a cross Motion for Summary Disposition on July 28, 2016, and the Court heard oral arguments by the parties on August 29, 2016.[3]

On September 22, 2016, the Court issued a Decision and Order Regarding Motions for Summary Disposition, granting Defendants' Partial Motion for Summary Disposition as to Nancy Kahn, Jon Kinne, Sue Kinne, Rick Shaffer, Diane Shaffer, Sara Taft and David Taft and denying Original Plaintiffs' Motion for Summary Disposition as to Counts I, II and III. Defendants' did not request summary disposition be granted in their favor as to Counts II and III and the Decision and Order issued by the Court did not grant summary disposition on those issues.

Defendants submitted a proposed Order Granting Summary Disposition to Defendants and Denying Plaintiffs' Summary Disposition on September 30, 2016.[4] On the same date, Original Plaintiffs filed a Motion for Reconsideration and/or Clarification.[5] The Court having now reviewed all documents submitted, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order for the reasons stated herein.

---

[1] See Grand Traverse County File No. 2016031561CZ. On August 8, 2016, the Grand Traverse Prosecuting Attorney filed a two-count complaint against the same Defendants, requesting declaratory judgment (Count I) and injunctive relief (Count II). See File No. 2016031743CZ. These two cases are premised on the same facts and have been consolidated by the Court pursuant to an order issued September 15, 2016.

[2] Defendants' Partial Motion for Summary Disposition was filed before Case No. 2016031743CZ was initiated and prior to the cases being consolidated.

[3] For factual and procedural accuracy, on September 30, 2016, original Plaintiffs filed a Motion to Amend Complaint to Add Necessary Parties and Counts for Enforcement of Ordinance Violation and Nuisance and the Prosecuting Attorney filed a Motion to Amend Complaint to Add Necessary Parties on October 3, 2016. On October 10, 2016, the Court granted to the motions to add Stephanie Miller, Shirlanna Corriea, Charles Miller and Marsha Miller as necessary parties to this action. The Court also held that the re-conveyance of the Correia property does not render moot any claims brought pursuant to Peninsula Township Ordinance § 10. The Prosecuting Attorney and Defendants have also filed cross motions for summary disposition, on October 3, 2016 and October 5, 2016, respectively. These cross motions for summary disposition have not been heard by the Court.

[4] On October 3, 2016, Plaintiffs filed Objections to Defendants' Proposed Order Granting Summary Disposition to Defendants on All Counts in the Kahn Complaint.

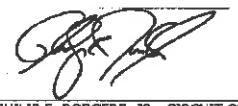
[5] On October 3, 2016, Original Plaintiffs filed a proposed Order Granting Defendants' Partial Motion for Summary Disposition on Count 1 of Plaintiffs' Complaint and Denying Plaintiffs' Motion for Summary Disposition. Both this proposed Order and the proposed Order submitted by the Defendants are moot, and duplicative, as the Court previously issued a Decision and Order stating its findings. Furthermore, the Original Plaintiffs' Objections are overruled for the same reasons.

The standard for reviewing motions for reconsideration is codified at MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, and reads in pertinent part, as follows:

> (3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

The Court finds that the Original Plaintiffs' Motion for Reconsideration and/or Clarification presents the same issues previously ruled on by the Court, either expressly or by reasonable implication. The Court does not find that a palpable error has been demonstrated and that a different disposition of the motion must result from the correction of an error.[6] Therefore, for the reasons stated herein, Plaintiffs' Motion for Reconsideration and/or Clarification is denied.[7]

IT IS SO ORDERED.



10/13/2016
11:29AM

PHILIP E. RODGERS, JR., CIRCUIT COURT JUDGE, P29082

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

---

[6] MCR 2.119(F)(3).

[7] With regard to "clarifying" the Court's Decision and Order, the Plaintiffs have asked the Court to: (1) confirm that the Decision's reasoning was limited to an analysis of the evidence in the light most favorable to the Defendants in connection with the denial of Plaintiffs' Motion for Summary Disposition; (2) confirm that the Decision was made without the benefit of witness testimony or potential trial evidence and (3) confirm that it was not the Court's intention to influence the trial judge with respect to findings of fact, conclusions of law or credibility determinations as to the Freedom of Information Act and Open Meetings Act claims made by the Original Plaintiffs. The Court believes the Decision and Order issued on September 22, 2016 speaks for itself and does not require the "clarification" requested by the Original Plaintiffs.

STATE OF MICHIGAN
IN THE 13th CIRCUIT COURT FOR GRAND TRAVERSE COUNTY

PEOPLE OF THE STATE OF MICHIGAN, *ex rel*
GRAND TRAVERSE COUNTY PROSECUTING ATTORNEY,

Plaintiffs,

v

Case: 16-31743-CZ
Judge: Philip E. Rodgers, Jr.

PENINSULA TOWNSHIP, SALLY AKERLEY,
PETER A. CORREIA, [OWNERS OF PROPERTY],
Jointly and Severally,

Defendants.
_____/

NANCY L. KAHN, JON KINNE, SUE KINNE,
RICK SHAFFER, DIANE SHAFFER, SARA TAFT,
and DAVID TAFT,

Plaintiffs,

v

PENINSULA TOWNSHIP, SALLY AKERLEY,
and PETER CORREIA,

Defendants.
_____/

Jay Zelenock (P58836)
JAY ZELENOCK LAW FIRM PLC
Attorneys for Plaintiffs Kahn,
Kinne, Shaffer, and Tafts
160 East State Street, Suite 203
Traverse City, MI 49684
231.929.9529
jay@zelenocklaw.com
info@zelenocklaw.com
deb@zelenocklaw.com

Robert A. Cooney (P47454)
GRAND TRAVERSE COUNTY
PROSECUTING ATTORNEY
Attorney for Plaintiff People
324 Court Street
Traverse City, MI 49684
231.922.4600
rcooney@grandtraverse.org

WILLIAM D. KAHN (P27638)
Co-Counsel for Plaintiffs Kahn,
Kinne, Shaffer and Tafts'
1715 Cedar Hill Drive
Royal Oak, MI 48067-1055
248-399-7039
w.kahn66@gmail.com

Todd W. Millar (P48819)
SWOGGER, BRUCE & MILLAR
Attorneys for Correia
10691 E Carter Road, Ste 103
Traverse City, MI 49684
231.947.6800
tmillar@swoggerandbruce.com
ekrieg@swoggerandbruce.com

Rejected

Bryan E. Graham (P35708)
Young, Graham, Elsenheimer & Wendling
Attorneys for Def Peninsula Twp and Akerley
PO Box 398
Bellaire, MI 49615-0398
(231) 533-8635
bgraham@upnorthlaw.com
_____/

ORDER GRANTING DEFENDANTS' PARTIAL MOTION FOR SUMMARY DISPOSITION ON COUNT 1 OF PLAINTIFFS' COMPLAINT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION

At a Session of said Court
Held in Traverse City, MI on _____
Present: The Honorable Philip E. Rodgers, Jr.
Circuit Court Judge

On July 15, 2016, Defendants filed a motion for partial summary disposition as to Count I (violation of the Michigan Land Division Act) of the Kahn Complaint, formerly case number 16-31561-CZ. On July 28, 2016, the Kahn Plaintiffs filed a motion for summary disposition asking this Court to rule in their favor on all three counts of the Complaint. On August 25, 2016, Defendants filed a brief in opposition to Plaintiffs' motion for summary disposition. On August 26, 2016, Plaintiffs filed a reply to Defendants' brief in opposition to Plaintiffs' motion for summary disposition. The Court held oral arguments on August 29, 2016, and took the matter under advisement.

The Court issued a Decision and Order Regarding Motions for Summary Disposition on September 22, 2016, granting Defendants' Motion for Summary Disposition as to Count I, and denying Plaintiffs' Motion for Summary Disposition as to Counts II and III.

Rejected

On September 30, 2016, the following pleadings were filed: (a) Plaintiffs' Motion for Reconsideration and/or Clarification of the Court's September 22, 2016 Decision and Order and Brief in Support; (b) Plaintiffs' Motion to Amend Complaint to add two additional counts (for Enforcement of Violation of Peninsula Township's Land Division Ordinance and Nuisance) and to include two additional parties as a result of Defendant Correia's death and transfer of the subject property; (c) Defendants' Seven-Day Notice for Order Entry, and proposed Order granting Summary Disposition to Defendants on Counts II and III of the Kahn Complaint.

On October 3, 2016 the following pleading was filed: (a) Plaintiffs' Objections to Defendants' proposed Order granting summary disposition to Defendants on all counts in the Kahn Complaint.

Now having had the opportunity to review the pleadings and file materials, and otherwise being fully advised on the premises, it is hereby Ordered:

1. Defendants' motion for partial summary disposition as to Count I was granted against the Kahn Plaintiffs in this Court's Decision and Order Regarding Motions for Summary Disposition dated September 22, 2016, and no further order from this Court is required with respect to that decision.

2. Defendants did not file Motions for Summary Disposition with respect to Counts II and III of the Kahn Complaint, and this Court's Decision and Order of September 22, 2016 reviewed the evidence in the light most favorable to the Defendants' and did not grant summary disposition to Defendants on Counts II and III.

Rejected

3. Upon review of Plaintiffs' Motion for Reconsideration and/or Clarification and Brief in Support, and further review of the Summary Disposition Briefs and record before the Court, including but not limited to Defendants' own documentation regarding the documents produced under FOIA, it is clear Defendants are not entitled to Summary Disposition as to Counts II and III.

4. Defendants' argument that their production of the two FOIA documents at issue was only temporarily delayed and took place prior to litigation is not sufficiently supported because it is:

a. contrary to Defendants' own documentation and e-mails regarding the documents produced (Plaintiffs' Exhibits 22 and 15);

b. contrary to the Affidavit of Nancy Kahn in Support of Plaintiffs' Motion for Summary Disposition (Plaintiffs' Exh. 21);

c. not sufficiently supported by the vague and equivocal testimony of Defendant Sally Akerley regarding what she "believes" or recalls about the 200+ page documents production;

d. Defendants did not submit an affidavit or any documentation confirming that they ever produced either of the two documents at issue under FOIA, or prior to this litigation;

e. MCR 2.116(G)(4) provides that:

> When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not

Rejected

so respond, judgment, if appropriate, shall be entered against him or her.

f. Plaintiffs have submitted documentation supporting their repeated requests, particularly for the "attached photo" (Plaintiffs' Exhs. 13 and 25), and evidence that Defendants did not produce it on repeated occasions (Plaintiffs' Exhs. 22 and 15);

g. the record demonstrates that Defendants would have a strong motivation to "bury" the Steffes e-mail because it contradicted Defendant Akerley's statements to the Township attorneys that Steffes agreed the Supervisor's parent parcel had over 20 acres (Plaintiffs' Exh. 26) and her statements at the October 26, 2015 Township Board Meeting to that effect (Plaintiffs' Exh. 27).

h. the record demonstrates that Defendants would have a strong motivation to "bury" the "attached photo" (i.e. the County aerial photo inaccurately modified by Defendant Akerley to add land to the Supervisor's parent parcel), because one of the issues before the Board on September 8 and October 26 was whether Township staff had generated "suspect documents" to cover-up the improper approval of the Supervisor's land division #212 (Plaintiffs' Exhs. No. 4, 28 and 30) and the disclosure of the "attached photo" would have revealed that Assessor Akerley created an inaccurate modified photo and e-mailed it to surveyor Jesse Mitchell as the basis for an "Assessor's Map", which purported to add acreage to

Rejected

Supervisor Correia's "parent parcel" in support of his invalid land division #212. (Plaintiffs' Exh. 10, pgs. 86-93, and 97-98); and

i. the Court's acceptance of Defendants' argument that they demonstrated a good faith intention to produce the two FOIA documents at issue is not, upon further review, supported by the record.

5. This Court's Decision and Order of September 22, 2016 is hereby modified to the extent that it is inconsistent with this Order.

IT IS SO ORDERED.

Dated: _____

_____
Philip E. Rodgers, Jr.
Circuit Court Judge

Rejected

Supervisor

From: Todd Millar [tmillar@swoggerandbruce.com]
Sent: Wednesday, October 19, 2016 7:57 AM
To: Sally Akerley (assessor@peninsulatownship.com); supervisor@peninsulatownship.com; clerk@peninsulatownship.com
Cc: Ellie Krieg; Bryan Graham (bgraham@gtii.com)
Subject: Kahn v Peninsula Twp
Attachments: 16.10.17 Kahn First Amended Complaint.pdf

Morning Everyone,

I am attaching the amended complaint in the Kahn lawsuit for your review. It is the same that they filed with the court along with their motion to amend.

We are in the process of preparing another motion to dismiss these claims. Based on the prior ruling of the judge, the FOIA and OMA claims are moot and should be dismissed. As for the nuisance claim, the plaintiffs have not alleged any unique harm that would give them standing to sue for a nuisance. Finally, in my opinion, the plaintiffs do not have standing to sue on the Twp. LDA. Furthermore, now that the properties have been recombined, there is no longer a violation to enforce.

As you know, our judge is retiring. It is unclear when his replacement will be named or who it will be. The two who I think are considered front runners are the Prosecutor and Bryan's partner, Kevin Elsenheimer. If either were to win the appointment, neither could hear this case. That would mean that they would have to bring in a visiting judge or Tom Power would be reassigned to the case. Not sure how or when this will unfold but it will slow things down.

As always, please let me know if you have any questions.

Todd

Todd W. Millar
Swogger, Bruce & Millar Law Firm, P.C.
10691 E. Carter Road, Suite 103
Traverse City, MI 49684
(O) (231) 947-6800 x110
(F) (231) 421-5909
tmillar@swoggerandbruce.com
www.swoggerandbruce.com

FDCC
DEFENSE LAWYERS. DEFENSE LEADERS.
LISTED IN
Best Lawyers
THE WORLD'S PREMIER GUIDE

CONFIDENTIALITY NOTICE: This email and any documents, files or previous email messages attached to it may contain information that is confidential or legally privileged and is for the sole use of the intended recipient(s). If you are not the intended recipient, do not read, print, or save this email. Any unauthorized review, use, disclosure or distribution of this

email, its contents or the attachments, is strictly prohibited. If you are not the intended recipient, please contact the sender by telephone or reply email and destroy the original, any attachments and all copies without reading or saving.

STATE OF MICHIGAN
IN THE 13th CIRCUIT COURT FOR GRAND TRAVERSE COUNTY

NANCY L. KAHN, JON KINNE, SUE KINNE,
RICK SHAFFER, DIANE SHAFFER, SARA TAFT,
and DAVID TAFT,

Plaintiffs,

v

Case: 16-31561-CZ
Judge: Philip E. Rodgers, Jr.

PENINSULA TOWNSHIP, SALLY AKERLEY,
SHIRLANNA CORREIA, AND STEPHANIE MILLER, as
Personal representative of the estate of PETER CORREIA,

Defendants.
_____/

PEOPLE OF THE STATE OF MICHIGAN, ex rel
GRAND TRAVERSE COUNTY PROSECUTING ATTORNEY

Plaintiffs,

Case 16-31743-CZ

v

PENINSULA TOWNSHIP, SALLY AKERLEY,
PETER A. CORREIA, [OWNERS OF PROPERTY],
Jointly and Severally,

Defendants.
_____/

Jay Zelenock (P58836)
JAY ZELENOCK LAW FIRM PLC
Attorneys for Plaintiffs
160 East State Street, Suite 203
Traverse City, MI 49684
231.929.9529
jay@zelenocklaw.com
info@zelenocklaw.com
deb@zelenocklaw.com

WILLIAM D. KAHN (P27638)
Co-counsel for Plaintiffs
1715 Cedar Hill Drive
Royal Oak, MI 48067-1055
248-399-7039
w.kahn66@gmail.com

Robert A. Cooney (P47454)
GRAND TRAVERSE COUNTY
PROSECUTING ATTORNEY
324 Court Street
Traverse City, MI 49684
231.922.4600
rcooney@grandtraverse.org

Todd W. Millar (P48819)
SWOGGER, BRUCE & MILLAR
Attorneys for Defendants
10691 E Carter Road, Ste 103
Traverse City, MI 49684
231.947.6800
tmillar@swoggerandbruce.com
ekrieg@swoggerandbruce.com

Received on 10/17/2016 at 3:20 PM

FIRST AMENDED COMPLAINT

NOW COME Nancy Kahn, Jon Kinne, Sue Kinne, Rick Shaffer, Diane Shaffer, Sara Taft, and David Taft, ("The Shipman Road Residents"), by and through their attorneys, and respectfully submit to this Court the following Complaint based upon Peninsula Township's refusal to enforce a violation of the Peninsula Township Land Division Ordinance, Defendants' violation of the Freedom of Information Act, violation of the Open Meetings Act, and nuisance, seeking declaratory relief, injunctive relief, a Writ of Mandamus and damages.

INTRODUCTION

This Complaint arises out of Peninsula Township Land Division #212 involving land owned by former Township Supervisor Peter Correia and his wife Shirlanna Correia, as well as the Open Meetings Act (OMA) and Freedom of Information Act (FOIA) issues relating to it. Land Division #212 was approved by the Township Supervisor's subordinate, Township Assessor Sally Akerley. The FOIA responses at issue were prepared by Sally Akerley and were the responsibility of FOIA Coordinator Peter Correia.

Violation of Land Division Ordinance and Nuisance. Peter and Shirlanna Correia obtained approval for the division of Parcel No. 28-11-565-946-40 (the "Parent Parcel") into 3 new child parcels in 2012 (Land Division #187, Parcels 41-43). In 2014 Peter and Shirlanna Correia obtained approval to divide child parcel No. 28-11-565-946-43 (the "Revised Parent Parcel") into 4 additional child parcels (Land Division #212, Parcels 44-47), for a total of ***6 resulting parcels.*** However, under the Peninsula Township Land Division Ordinance, which incorporated the requirements of the Michigan Land Division Act, unless the Parent Parcel" was at least 20 acres in size, ***the maximum allowable was 4 resulting parcels***. MCL 560.108(2)(a). Mr. Correia's own survey, which was recorded and incorporated by reference in the Township's approval of his Land

Divisions, certified that the Parent Parcel was ***less than 20 acres***, even when the entire length of Shipman Road (3.75 acres) was included with the parcel size (which was not permitted by applicable ordinances). Peninsula Township has refused to bring an enforcement action regarding the violation of its Land Division Ordinance and the resulting nuisance per se.

Freedom of Information Act ("FOIA"). The Township's response to the FOIA request regarding Land Division #212 omitted, without justification, the following critical documents: (a) an aerial photo inaccurately modified by Defendant Akerley to "capture" additional land, and sent by her to Supervisor Correia's surveyor as the basis for a bogus 8/18/15 document entitled "Assessor's Map," which purported to claim that Peter and Shirlanna Correia's Parent Parcel was more than 20 acres; and (b) an email to Defendant Akerley from Grand Traverse County's GIS Department confirming its agreement with Mr. Correia's recorded Parent Parcel survey showing less than 20 acres. Neither of the above referenced documents were produced by the Township under FOIA; they were first produced by the Township at the duces tecum depositions of Defendants Akerley and Correia in this case.

Open Meetings Act ("OMA"). The OMA claim relates to the Peninsula Township Special Board Meeting of October 26, 2015, which was held to address whether the Land Division Ordinance was being violated because Land Division #212's application included false representations and a false affidavit, the validity of the "Assessor's Map" (which added 1¼ acres to the recorded survey incorporated in Land Division #212), whether there were conflict of interest issues because Land Division #212 was for the Township Supervisor and the Approval was given by his subordinate, and whether the Township should obtain an independent legal opinion on these issues. The Township attorney's announcement that this was a "no action item" prior to deliberations, the pre-meeting memo suggesting that a decision on the Land Division Ordinance

violation could lead to personal liability, the fact that there was no Board vote taken, and the complete failure to deliberate on important issues such as the potential conflict of interest, and the Township staff's role in the creation of an inaccurate Assessor's Map, is evidence from which a fact finder could conclude some or all of the decisions to take "no action" were necessarily made prior to and outside of the public meeting, in violation of the OMA.

PARTIES, JURISDICTION, AND VENUE

1. The Shipman Road Residents, Plaintiffs herein, are owners of residential property on or near Shipman Road, the private road on which the property subject to Land Division #212 is located. The Plaintiffs' property is impacted by Land Division #212, and the Plaintiffs are all signatories on the 10/10/15 correspondence to Peninsula Township regarding Land Division #212, which was on the business Agenda for the 10/26/15 Peninsula Township Board meeting.

2. Defendant Peninsula Township is a municipal corporation of the State of Michigan.

3. Peter A. Correia, deceased, was at all times relevant to this Complaint, a resident of Grand Traverse County. Stephanie Miller, Personal Representative of the Estate of Peter Correia, is a resident of Grand Traverse County.

4. Shirlanna Correia, ex-wife of Peter Correia: a), is a resident of Cheverly, Maryland; b) was a co-owner and of the Parent Parcel and an applicant of Land Division #187 in 2012; c) was a co-owner of the Revised Parent Parcel and an applicant of Land Division #212 in 2014; and d) as of August 25, 2016, was the co-grantee (in joint ownership with Peter Correia with rights of survivorship) of a quitclaim from Peter Correia to child parcels Nos. No. 28-11-565-946-46 and 47. Peter Correia passed away on or about Septermber 4, 2016.

5. Sally Akerley (Peninsula Township Assessor) is, on information and belief, a resident of Antrim County, employed by Peninsula Township in Grand Traverse County and her actions and the events giving rise to this Complaint occurred in Grand Traverse County.

6. The property involved is located in Grand Traverse County.

7. This is an action for declaratory judgment, injunctive relief, and damages for which jurisdiction is provided by MCL 15.271, MCL 15.240(1)(b), Const 1963, Art 6, § 28 (See *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 197; 550 NW2d 867 (1996)).

COUNT I
ENFORCEMENT OF THE PENINSULA TOWNSHIP LAND DIVISION ORDINANCE

8. Plaintiffs reassert the allegations contained in paragraphs 1-7 of this Complaint, as though fully set forth herein.

9. In 2012 Peter and Shirlanna Correia, then husband and wife, were the owners of the Parent Parcel located on Shipman Road in Peninsula Township.

10. Peninsula Township Assessor Sally Akerley approved Peter and Shirlanna Correia's Land Division #187 on August 28, 2012, and Land Division #212 on December 3, 2014, creating 6 resulting parcels from Peter and Shirlanna. Correia's original Parent Parcel on Shipman Road. (The Approval, Survey and Legal Descriptions regarding Land Division #187, Register of Deeds #2012R-16718 is attached to Plaintiffs' original Complaint as Exh. 5. The Approval, Survey and Legal Descriptions regarding Land Division #212, Register of Deeds #2014R-20900 is attached to Plaintiffs' original Complaint as Exh. 6.).

11. Shirlanna Correia's involvement in the subject land divisions included the following: a) Shirlanna was a named applicant, affiant and owner, along with Peter Correia, for 2012 Land

Division #187, which claimed the right to 6 resulting parcels (Exh. 5, pgs., 2, 5, 6, 15-17); b) subsequent to the completion of the Parent Parcel Survey showing less than 20 acres, Shirlanna and Peter Correia executed an August 28, 2012 quitclaim deed to themselves (drafted by Assessor Sally Akerley) purporting to convey the right to make 3 additional land divisions in the new child parcel 28-11-565-946-43 (i.e. 4 more resulting parcels); c) the 2014 Certificate of Approval /Land Division Application names Peter and Shirlanna Correia as co-owners of the Revised Parent Parcel claiming the right to 3 additional divisions, and 4 more resulting child parcels (Exh. 6, pgs. 1-3); d) subsequently, using cross quit claim deeds, Shirlanna Correia became the sole owner of Child Parcel No. 28-11-565-946-46 and Peter Correia became the sole owner of Child Parcel Nos. 28-11-565-946-44, 28-11-565-946-45, and 28-11-565-946-47; and e) on August 25, 2016, again using cross quit claim deeds, and with full knowledge of the subject litigation and Peter Correia's impending death, and for no consideration, Shirlanna and Peter Correia deeded parcels 28-11-565-946-44, 28-11-565-946-46, and 28-11-565-946-47 to themselves as joint tenants with full rights of survivorship.

12. Land Division #212 is governed by the Peninsula Township Land Division Ordinance No. 49. (Attached to Plaintiffs' original complaint as Exh. 7), which incorporates the provisions of the Michigan Land Division Act relating to the maximum number of divisions in unplatted parcels.

13. Under the Land Division Act, and by incorporation under the Peninsula Township Land Division Ordinace, 4 resulting parcels is the maximum allowable unless the parent parcel is a minimum of twenty acres. MCL 560.108(2)(a); *Sotelo v Township of Grant*, 470 Mich 95, 101 (2004).

14. Peninsula Township's approval Land Division #212, purportedly creating 6

resulting parcels, was *ultra vires,* and a violation of the Peninsula Township Land Division Ordinance.

15. Under Section 12 of the Peninsula Township Land Division Ordinance, this violation is a nuisance per se and declared to be offensive to the public health, safety and welfare.

16. Plaintiffs have repeatedly requested Peninsula Township to enforce its Land Division Ordinance with respect to the violation and nuisance per se described in the preceding paragraph, and Peninsula Township has not done so.

17. Peter and Shirlanna Correia's survey of the original Parent Parcel, recorded and incorporated by reference in the Township's approval of the initial Land Division, **certified a parcel size of less than twenty acres (19.22 acres), even when the entire 3.75 acres of Shipman Road (Est. 1952) is included in the Parent Parcel.** (This road right of way should not have been included in parcel size under Peninsula Township's Zoning Ordinance.)

18. Shipman Road resident Nancy Kahn verbally objected to the violation of the Land Division Ordinance resulting from Land Division #212 at a meeting with Sally Akerley on August 13, 2015, on the ground that the recorded survey of the Parent Parcel confirmed that it did not meet the 20 acre requirement.

19. On August 18, 2015, Defendant Akerley emailed a document labeled "Assessor's Map" to Nancy Kahn, describing it as a "revised survey." The map was dated August 18, 2015, and contained the name of Mr. Correia's surveyor of the Parent Parcel, but was unsigned and purported to add 1.4 acres to the size of the recorded survey of the Parent Parcel.

20. A signed version of the "Assessor's Map" was later submitted to the Grand Traverse County Prosecutor by attorneys on behalf of Peter Correia. That map was specified to

be based upon an "Attached Photo."

21. The "Attached Photo" is nothing more than a copy of the Grand Traverse County Aerial Tax Parcel Photo Map, strategically shown in black and white so that the blue of the water in Bowers Harbor is no longer distinguishable. In addition, the map is modified by a purported extension of land into Bowers Harbor that did not exist in 2012 or 2014, and does not exist today. (The "Assessor's Map" and "Attached Photo" are attached to Plaintiffs original Complaint as Exh. 1. The County aerial photo/Tax Parcel Map is attached to Plaintiffs' original Complaint for comparison as Exh. 2).

WHEREFORE, Plaintiffs respectfully request that this Court enter a Declaratory Judgment confirming the following with respect to Land Division #212: (a) the two excess child parcels created by Land Division #212 are in violation of the Peninsula Township Land Division Ordinance; (b) said violation is a nuisance per se under Section 12 of the Peninsula Land Division Ordinance; (c) the approval of Land Division #212 by Peninsula Township was *ultra vires;* (d) Peninsula Township has refused to bring enforcement action for the violation of its Land Division Ordinance; (e) Peninsula Township's approval of Land Division #212 is declared invalid and a copy of the Declaratory Judgment, in recordable form, shall be recorded with the Grand Traverse County Register of Deeds. Plaintiffs further request a Writ of Mandamus, directing Peninsula Township to enforce this violation of its Land Division Ordinance, including the mandatory penalties specified in Section 10 thereof.

COUNT II
VIOLATIONS OF THE FREEDOM OF INFORMATION ACT

22. Plaintiffs reassert paragraphs 1 –21 of this Complaint as though fully set forth herein.

23. Plaintiff Nancy Kahn made a FOIA request to Peninsula Township for "all documents related to land divisions #187 or #212." The cost estimate for the FOIA response was $197.43, and was paid prior to receipt of the FOIA response.

24. Peninsula Township's FOIA response was submitted to Nancy Kahn with an invoice for $607. The response contained hundreds of pages of duplicates, as well as charges for copies of documents which Ms. Kahn had submitted to the Township.

25. Ms. Kahn submitted a timely FOIA Appeal to the Board, objecting to critical missing documents as well as the excessive charges.

26. The critical missing documents included an e-mail string dated 8-17-15 and 8-18-15 between Township Assessor Sally Akerley and Mr. Correia's Surveyor, plus attachments (the "Assessor's Map Emails," attached to Plaintiffs' original Complaint as Exh. 3). The Assessor's Map Emails were originally marked "attorney/client privilege" but that claim of privilege was later waived.

27. On October 15, 2015, Nancy Kahn emailed Sally Akerley again requesting the 8/17/16-8/18/15 Assessor's Map Emails, due to their omission from the FOIA documents produced. Ms. Akerley produced the Assessor's Map Emails on October 15, but omitted certain attachments, falsely stating that there were no attachments to the assessor's map emails, other than the map itself.

28. At the October 26, 2015 Peninsula Township Board hearing on the FOIA appeal, the Board ruled that all of the documents withheld based upon attorney/client privilege should be produced. However, the Board did not comply with Plaintiff Nancy Kahn's October 19, 2015 written request that someone from the Board assist Ms. Akerley in producing the attachments to

the Assessor's Map emails. Those attachments would have included the attachment described in the Assessor's Map Emails as "attached" and "the furnished photo," purporting to justify the "capture" of .8 additional acres below the ordinary high water mark at the 66' wide Shipman Road end. Peninsula Township never produced the "Attached Photo" to the Assessor's Map Emails, in response to the FOIA request or otherwise, until the deposition in this case of Defendant Sally Akerley on June 30, 2016. Although a copy of the photo modified by Defendant Sally Akerley was submitted by Pete Correia's private attorney to the Prosecuting Attorney months after the FOIA requests (claiming that the photo was part of a "signed and sealed" survey), there was no confirmation until the deposition of Defendant Akerley that she created the modified the photo based upon "an estimate" and that it was an attachment to her emails to Pete Correia's surveyor.

29. The other critical document omitted from the Township's FOIA response was the 8/13/15 email from Mike Steffes, Grand Traverse County GIS Department, to Assessor Sally Akerley, stating "I agree with the surveyor's gross acreage calculation of 19.22 acres." The 8/13/15 Steffes email was never produced by the Township and was only obtained by Plaintiffs in response to a subsequent FOIA request to Grand Traverse County.

WHEREFORE, Plaintiffs respectfully request that this court enter an order declaring that Peter Correia, Sally Akerley, and Peninsula Township to have acted in violation of FOIA, enjoining further violations of FOIA and requiring the payment of attorney's fees and penalties in accordance with MCL 15.240.

COUNT III
OCTOBER 26, 2015, VIOLATION OF THE OPEN MEETINGS ACT

30. Plaintiffs reassert paragraphs 1 – 29 of this Complaint as though fully set forth

herein.

31. The Open Meetings Act (OMA) "serve[s] as both a light and disinfectant in exposing potential abuse and misuse of power." *Booth Newspapers v U of M Board of Regents,* 444 Mich 211, 223 (1993). The OMA is interpreted broadly, while its exemptions are strictly construed. *Id.*

32. The OMA requires public notice, deliberation, and decision-making with respect to issues placed before a public board.

33. A group of 14 Peninsula Township residents owning property on or near Shipman Road submitted correspondence dated October 10, 2015, to the Peninsula Township Board requesting the Board to investigate the Land Division Ordinance violations, as well as "suspect documents being generated by Township employees in August 2015, which conflicted with the surveys incorporated in the Township's approval of the splits." (Correspondence to Township Board placed as a business item on October 26 Board Agenda, attached to Plaintiffs' original Complaint as Exh. 4, p 2).

34. The correspondence described in Paragraph 33 was placed on the Peninsula Township Board Business Agenda for October 26, 2015 as item 4.

35. At the October 26 Board meeting it was announced by the Township Attorney that this was a "no action item." The "no action" announcement was made prior to any deliberations by the Board, and although the Board made some comments after the Township Attorney spoke in support of the land division, there were no deliberations regarding the request to proceed with enforcement of the land division violation, for which Plaintiff Kahn had provided supporting case law, there were no deliberation about the false documents created to cover up the improper land

division, and there were no deliberations regarding any option other that an appeal of the ZBA decision, which the Township Attorney confirmed would be futile. This unilateral "no action" announcement by the Township attorney at the commencement of the discussion demonstrated that the decision to take "no action" on enforcement of the ordinance violation or conflict of interest had been made prior to and outside of the public meeting.

36. The predetermined "no action" announcement at the October 26 Township Board meeting was part of a pattern of conduct reflecting predetermined decisions made prior to and outside of Peninsula Township public meetings. For example, at the September 8, 2015, Peninsula Township Board meeting, at which the validity of the purported "Assessor's Map" and the potential conflict of interest or appearance of impropriety were on the Business Agenda, the Township submitted a pre-meeting September 1, 2015, memo to the Board, ***advising Board members to "take no action and make no comments"*** regarding the Assessor's Map or any potential conflict of interest relating thereto.

37. Similarly, the October 8, 2015, Zoning Board of Appeals meeting Agenda specified that the validity of Land Division #212 was to be addressed. However, at the commencement of that meeting and without a vote of the Board, participants and public commenters were instructed that ***comments and arguments on the validity of Land Division #212 or the Assessor's Map would not be permitted***, and that comments and arguments would be limited to procedural and jurisdictional issues. This decision to block a hearing and public comment on the scheduled substantive issues was necessarily made prior to the meeting, in violation of the Open Meetings Act.

38. A Township resident at the October 8 meeting who began making substantive comments about the invalidity of land division #212 (and of critical importance the County

software that appeared to have been used to create the bogus "Attached Photo" to the Assessor's Map) was interrupted and told that he would not be permitted to make a statement regarding any substantive issues.

39. The actions of the Township described in this Count demonstrate a violation of the Open Meetings Act on October 26, 2015, as part of a continuing pattern of violations of the Open Meetings Act with respect to the substantive issues involving the Township Supervisor's violation of the Peninsula Township Land Division Ordinance, the cover up of that violation, the Township's involvement in the creation of an inaccurate Assessor's Map, and the potential conflict of interest and appearance of impropriety with respect to same.

WHEREFORE, Plaintiffs respectfully that the Court find in their favor and against Defendants finding a violation of the Open Meetings Act with respect to the October 26, 2015 Peninsula Township Board meeting, enjoining further violations, and awarding costs and attorneys' fees in accordance with MCL 15.271(4) and 15.273, penalties and such other and further relief determined by the Court.

COUNT IV - NUISANCE

40. Plaintiffs reassert paragraphs 1 – 39 of this Complaint as though fully set forth herein.

41. The resulting parcels from Defendants' violations of the Michigan Land Division Act and the Peninsula Township Land Division Ordinance are a continuing nuisance per se and "declared to be offensive to the public health, safety and welfare" in accordance with Section 12 of the Ordinance.

42. Parcel 28-11-565-946-44 is also a common law nuisance and offensive to the public health, safety, and welfare for reasons that include, but are not limited to, the following:

a) it does not have access to public sewer and water, and does not meet the one-acre minimum for such parcels specified by the Peninsula Township Master Plan;

b) because it is not in keeping with the size and setting of the surrounding properties;

c) because its Application for Division contained false representations regarding the number of divisions to which the applicants were entitled and a false affidavit;

d) and because its purported approval by Peninsula Township was *ultra vires,* as well as a violation of the Peninsula Township Land Division Ordinance and the Michigan Land Division Act.

43. The nuisance described in this Count is not abated by the 9/25/16 deeds purporting the transfer the excess child parcels to common ownership, without consideration and with knowledge of the subject litigation and pending claims for a declaratory judgment that the subject excess child parcels should be declared non-buildable.

44. The Plaintiffs and their nearby properties have been and will be further damaged by the subject nuisance, specifically with respect to diminution in value, reduction of enjoyment of Plaintiffs' adjacent and nearby property, and increased population density and traffic, as well as increased use, maintenance, and the reduced safety of the private road known as Shipman Road.

WHEREFORE, Plaintiffs respectfully request that this Count confirm that the subject violation of the Peninsula Township Land Division Ordinance is a nuisance, a nuisance per se, and offensive to the public health, safety, and welfare of the surrounding community, that Plaintiffs have been specially damaged thereby, that the resulting child parcels shall be deemed non-buildable, and that Plaintiffs shall be compensated in the amount of monetary damages to which they are found to be entitled.

Respectfully submitted,

Dated: September 29, 2016

By: /s/ Jay Zelenock
Jay Zelenock (P58836)
Jay Zelenock Law Firm PLC
Attorneys for Plaintiffs

160 E. State St. Ste. 203
Traverse City, MI 49684
231-929-9529

By: /s/ *William D. Kahn*
William D. Kahn (P27638)
Co-Counsel for Plaintiffs
1715 Cedarhill Drive
Royal Oak, MI 48067-1055
248-399-7039

Supervisor

From: Dave Murphy [dgmurphy@charter.net]
Sent: Monday, October 17, 2016 7:15 PM
To: supervisor@peninsulatownship.com
Subject: compliment to Sally

Rob,

Just noting that Sally Akerley has helped us extensively in the past & yet again today as we've dealt with the home we helped my mother buy, her death, the sale of that home, our home after the fire & with a rebuild, & all the complications those circumstances entail with homestead, fire remediation, etc.

Sally's not only advised us, but gone to the trouble to research & contact state officials about some of these unusual circumstances. Her work is hugely appreciated.

So...just paying a compliment where it's well deserved. I know this desire to help where she can is how she conducts business with each of our residents.

Thanks Rob.

Dave

YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.
Attorneys at Law
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635
Facsimile (231) 533-6225
nessad@upnorthlaw.com

Bryan E. Graham
Peter R. Wendling
Eugene W. Smith
Nicole E. Essad

James G. Young, *Of Counsel*

MEMORANDUM

TO: Peninsula Township Board **VIA EMAIL**

FROM: Nicole E. Essad

DATE: October 18, 2016

SUBJECT: SAD Maintenance

At the last Township Board meeting, there was some confusion as to who would be maintaining the drainage infrastructure for the Special Assessment Districts (SADs) that are starting to be formed. Normally, the Township would maintain the drainage infrastructure. This can be done in a number of ways. Once the SAD for construction is completed the Township may initiate another SAD for the continued maintenance of the drainage infrastructure. The Township would then put the maintenance of the drainage infrastructure out to bid and the cost of the maintenance would be paid by the people benefitting from the drainage infrastructure.

The second way is that when the petitions are being passed, they would include not only the estimated cost of constructing the improvement but the estimated cost of maintaining it. This SAD would be a continuing SAD and before the public hearings there would need to be two contracts being contemplated, one for the construction and one for the maintenance.

Another way would be for the Township to build the drainage infrastructure via the SAD but have an agreement either with the Drain Commission to maintain the drainage infrastructure. However, this is unlikely and the residence may not approve.

If you have any questions please feel free to contact our office.

NEE

YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.
Attorneys at Law
104 E. Forest Home, P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635
Facsimile (231) 533-6225
nessad@upnorthlaw.com

Bryan E. Graham
Peter R. Wendling
Eugene W. Smith
Nicole E. Essad

James G. Young, *Of Counsel*

MEMORANDUM

TO: Peninsula Township Board **VIA EMAIL**

FROM: Nicole E. Essad

DATE: October 18, 2016

SUBJECT: Escrow Accounts

As discussed at the last Township Board meeting this memorandum is to clarify whether the amendment to the zoning ordinance for the use of escrow accounts may be used for existing projects within the Township. As Gordon pointed out, the escrow account may be used for projects that have started after the amendment has taken effect. Further, if there has been material changes to projects started before the amendment was in effect then it is possible to use the escrow account. However, there must be material changes to the project which makes it necessary to review plans and other requirements again. In order to know if the escrow accounts could be used, there must be a review of all projects before the amendment took effect and if any of those projects have material changes then the Township Board could vote to use the escrow accounts. For projects initiated after the amendment took effect, the Township Board can use the escrow accounts as stated in the amendment. Peter discussed this at the Planning Commission meeting as well.

If you have any questions please feel free to contact our office.

NEE

MEMORANDUM

TO: Peninsula Township Board

FROM: Township Planner

SUBJECT: Review of Oosterhouse Vineyards, LLC "Bonobo Winery Agricultural Land Use Map"

DATE: October 18, 2016

On October 17, 2016 I made a site visit with Todd Oosterhouse of the Bonobo Winery property to review the Agricultural Land Use Map updated 10.04.16 Described as Update Crop Plantings & crop Calculations prepared by Mansfield and received by me on October 4, 2016.

The purpose of the site visit was to visually observe the planted areas as shown on the Agricultural Land Use Map and the sites labeled Block A and Block C Spring 2017 Plant Cover Crop/ Spring 2018 – plant cider apple trees .

Based on a review of the Map and what I observed at the Site Visit, It is my conclusion that 75% of the land area (minus 27.7 feet along the western parcel line containing a road easement as shown on the plan) of Bonobo Winery will be existing or planted provided that:

1. Bonobo Winery plants on Block A 2.90 acres or more of cider apple trees or grape vines; and

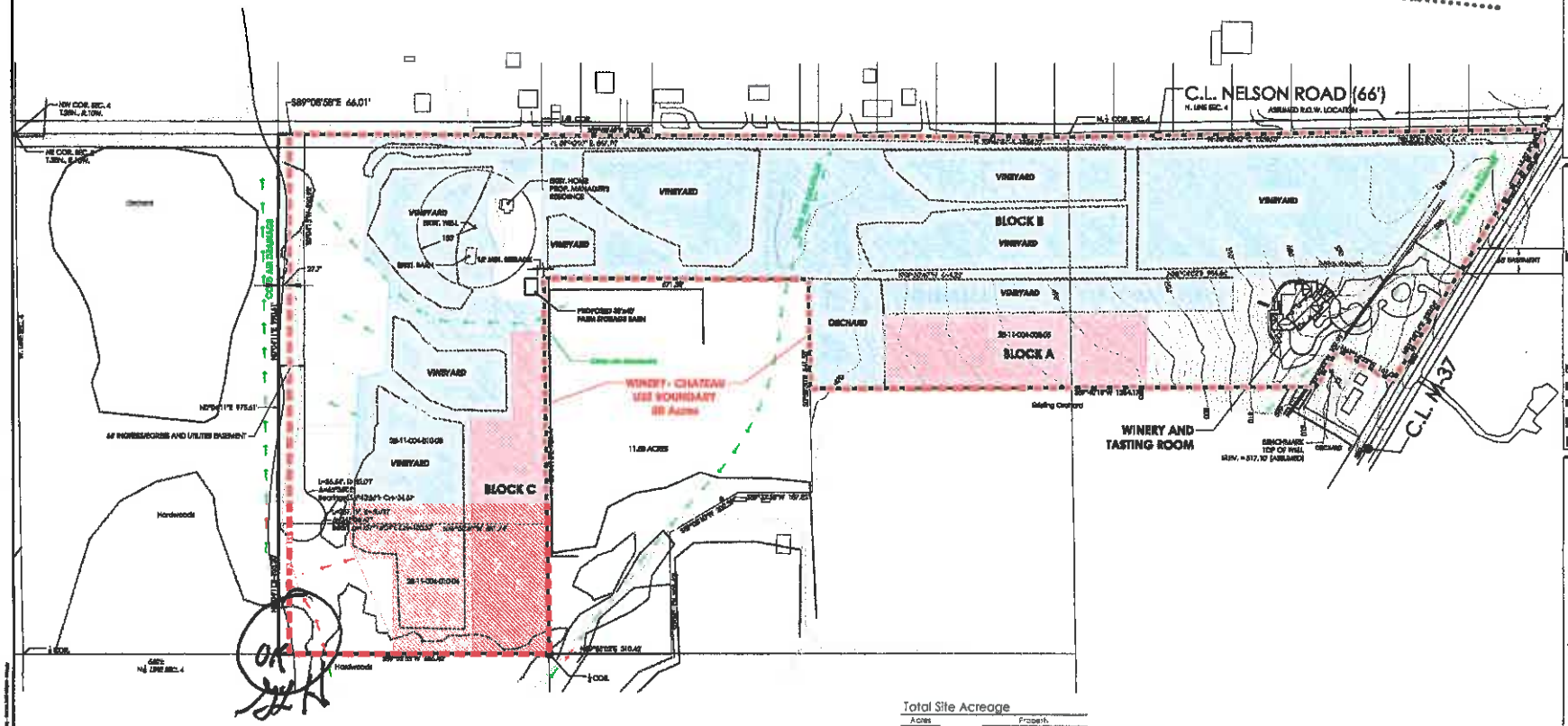
2. plants on Block C 3.05 acres or more of cider apple trees or grape vines; and

3. The 37.5 acres of Total Land in Production shown on the plan includes the Cold Area Drainage area. (NOTE – I have attached the site plan for the approved Mari Vineyards SUP # 126 which includes Cold Air Drainage; and Page 12 of the approved Findings by the Township Board on March 15, 2016.)

Gordon L Hayward

Director of Planning and Zoning

RECEIVED
OCT 04 2016
BY: GLH.



Total Site Acreage

Acres	Property
9.75	Tax ID: 28-11-004-000-05 (primary winery parcel)
35.98	Tax ID: 28-11-004-010-03 (adjacent farmed parcel)
5.11	Tax ID: 28-11-004-010-04 (adjacent farmed parcel)
50.84	Total Parcel Acreage

Winery-Chateau Use Boundary 50.00 acres

Area Acreages and Uses

Acres	Area	Use
2.90	BLOCK A	Spring 2017 - plant cover crop / Spring 2018 - plant cider apple trees
31.55	BLOCK B	Existing vineyard
3.05	BLOCK C	Spring 2017 - plant cover crop / Spring 2018 - plant cider apple trees
37.50		Total land in production

acres	%	
37.50	75.00%	Total land in production

GLH

~~Total Acreage~~

OK.
GLH

Mansfield
Land Use Consultants
810 Cottage View Dr., Ste. 301
P.O. Box 4015
Traverse City, MI 49685
Phone: 231.946.9399
www.mansfieldplan.com
info@mansfieldplan.com

No.	Date	By	Description
01	10.3.16	JM	Public Review Draft
02	11.1.16	JM	Public Review Draft
03	11.7.16	JM	Planning Commission
04	11.8.16	JM	Planning Commission
05	11.9.16	JM	Planning Commission
06	11.10.16	JM	Planning Commission
07	12.8.16	JM	Planning Commission
08	12.9.16	JM	Planning Commission
09	12.12.16	JM	Public Hearing - Final Consideration
10	12.14.16	JM	Public Hearing - Final Consideration
11	1.19.17	JM	Updated Site Plan - Final Consideration

Oosterhouse Vineyards, LLC
Bonobo Winery
Agricultural Land Use Map
Section 4, Town 28 North, Range 10 West
Peninsula Township, Grand Traverse County, Michigan

CONSTRUCTION

DRAWN	CHK'D	DATE
JMM	GLH	1.30.19

JOB NO. 12116

SHT 4 OF 10

The Board finds that the proposed site plan indicates that the special use will take place upon a 50.61 acre site within six parcels of land. The site has been designed to host 43.64 acres of land dedicated to crops that can be used for wine production; including grapes, sugar maple trees, berries, crabapple trees and cold air drainage areas that surround the proposed structures. (Exhibit 4)

The Board finds that the main winery and guest house site access is via an MDOT permitted commercial driveway from M-37/Center Rd. (Exhibit 4 & 12)

The Board finds that the proposed residential structures shall be accessed via private road from Underwood Ridge Drive; a private road that has been reviewed for compliance as required by Section 7.10 of the Ordinance. (Exhibits 4, 6, 18)

This standard HAS been met.

2. The use shall be subject to all requirements of Article VII, Section 8.5, Food Processing Plants in A-1 Districts and the contents of this subsection. Data specified in Section 8.5.2, Required Information, shall be submitted as a basis for judging the suitability of the proposed plan. Each of the principal uses shall be subject to the terms and conditions of this ordinance except as specifically set forth herein.

The Board finds that the applicant's request is in compliance with the requirements under section 8.5 and section 8.5.2 as reviewed below:

Authorization – The Township Board may authorize the construction, maintenance and operation in the Agricultural District of food processing plant related to local agricultural production, by the issuance of a special use permit, subject to the procedures and requirements of Section 8.1 and provided that it has been demonstrated that the operation will not create any nuisance which will be detrimental to the health, safety and welfare of the Township residents or adversely affect adjoining property owners.

The Board finds that the proposal shall be in compliance with the standards found in Section 8.1 of the Ordinance as it pertains to special use permits as has been evaluated above. (Exhibit 2, 4)

Required Information: The following information shall be submitted as a basis for judging the suitability of the proposed operation:

1) A site plan of the property showing the location of all present and proposed buildings, drives, parking areas, waste disposal fields, landscaping, plant materials, screening fences or walls, and other construction features which shall be proposed.

   The Board finds that the application has been submitted with a site plan that shall govern the site in compliance with this standard. (Exhibit 4)

2) A description of the operations proposed in sufficient detail to indicate the effect of those operations in producing traffic congestion, noise, glare, air pollution, fire or safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation.

   The Board finds that the operations shall be in compliance with the ordinance standards for a winery chateau and that a significant portion of the processing activity shall be conducted below grade. (Exhibit 4)

HERITAGE CIDER

Secure payments by

Payment Receipt

Transaction time

Receipt ID

Total

We'll send a confirmation email to todd@bonobowinery.com. This transaction will appear on your statement as PayPal *HERITAGECID.

Paid to
Heritage Cider Supply

Shipped to
todd oosterhouse
7700 Peininsula drive
traverse city, MI 49686
United States

Your shopping cart

Description	Price	Quantity	Amount
Payment to Heritage Cider Supply for invoice 0002	$2,400.00	1	$2,400.00
		Item total	**$2,400.00**
		Total	**$2,400.00 USD**

SUMMIT TREE SALES

REPRESENTING THE COUNTRY'S FINEST NURSERIES

Customer Order Notification

Sold To: BONOWI
TODD OOSTERHOUSE
BONOBO WINERY
12011 CENTER RD
TRAVERSE CITY, MI 49686

Ship To Via: BEST WAY
TODD OOSTERHOUSE
BONOBO WINERY
12011 CENTER RD
TRAVERSE CITY, MI 49686

Sales Person: Matt Schuld
Supplier: **HERITAGE CIDER SUPPLY**
Cell Phone 1 (231) 383-5118
Cell Phone 1
Cell Phone 1
Email Address todd@bonobowinery.com

Order Nbr: 14084
Order Date: 10/6/2016

CropYear: **2018**
Req Ship Date:
Deposit: $4.00 per tree

Qty	Size Preferred	Size Sub Category	Variety	Rootstock	Order Type	Variety Royalty	Est Price	Estimated Extended Price
200	5/8		Roxbury Russet	Geneva® 41		$0.000	$13.50	$2,700.00
200	5/8		Dabinett	Geneva® 935		$0.000	$13.50	$2,700.00
200	5/8		Kingston Black	Geneva® 41		$0.000	$13.50	$2,700.00
						Estimated Total Order Amount		$8,100.00

Price noted is based on the current price list and is for reference only. Actual price will be determined by quantity and size shipped and at the price list in effect at time of shipment. All pricing is FOB PUYALLUP WA. A deposit of $4.00 per tree is required to confirm this order. Please remit to HERITAGE CIDER SUPPLY upon their request.

Price noted is based on the most current price list and is for reference only. Actual price will be determined by quantity and size shipped and at the price list in effect at time of shipment. All pricing is FOB the supplying nursery.
Contract Orders will be grown under the terms and conditions of the supplying nursery's growing agreement and pricing.
A **Deposit** will be required upon acknowledgment by the supplying nursery. Please remit directly to the supplying nursery at that time.

55826 60th Avenue, Lawrence, MI 49064 * Phone: (800) 424-2765 + (269) 674-8866 * Fax: (269) 674-3758

summittreesales.com

PENINSULA TOWNSHIP
STATE OF MICHIGAN
RESOLUTION NO. _____

RESOLUTION ESTABLISHING GUIDELINES FOR SEWER & WATER BENEFIT PAYMENTS

At a regular meeting of the PENINSULA TOWNSHIP BOARD OF TRUSTEES held on October 25, 2016, the PENINSULA TOWNSHIP BOARD OF TRUSTEES, on a motion made by ,and seconded by, passed the following Resolution by a vote of in favor and opposed:

WHEREAS, the Peninsula Township Board finds that in order to protect the health, safety and welfare of the Township, the Township has set up growth boundaries, and has required municipal Water and Sewer use inside these boundaries.

WHEREAS, the Peninsula Township Board, out of concern for the financial burden that purchasing Water and Sewer benefits may cause to the residents of this Township; and whereas, given the poor economic times, by working together, we are able to achieve a workable solution;

WHEREAS, the Peninsula Township Board agrees to allow the payment of Water & Sewer benefits to be paid over a FIVE year period at 3% interest rate, if paid within the first 6 months the interest rate would be waived. If not paid within FIVE years the balance would be put on property tax bill.

NOW THEREFORE BE IT RESOLVED THAT PENINSULA TOWNSHIP also supports partnering with its residents to allow a building permit to be issued in the Township after a payment plan has been accepted.

Upon roll call vote the following voter
"Aye"
"No"

The Supervisor declared the resolution adopted.

_____
Robert K. Manigold

CERTIFICATE
I, Joanne Westphal, the duly elected and acting Clerk of Peninsula Township, hereby certify that the foregoing resolution was adopted by the Township Board by a roll call vote at a regular meeting of the Board held on October 25, 2016, at which meeting a quorum was present; and that this resolution was ordered to take immediate effect.

_____
Joanne Westphal, Clerk

EAST BAY CHARTER TOWNSHIP

STATE OF MICHIGAN

RESOLUTION NO. 2014-5

RESOLUTION ESTABLISHING GUIDELINES FOR WATER & SEWER BENEFIT PAYMENTS

At a regular meeting of the EAST BAY CHARTER TOWNSHIP BOARD OF TRUSTEES held on October 13, 2014, the EAST BAY CHARTER TOWNSHIP BOARD OF TRUSTEES, on a Motion made by, and seconded by, passed the following Resolution by a vote of in favor and opposed:

WHEREAS, East Bay Charter Township Board finds that in order to protect the health, safety and welfare of the Township, the Township has set up growth boundaries, and has required municipal Water and Sewer use inside these boundaries.

WHEREAS, East Bay Charter Township Board, out of concern for the financial burden that purchasing Water & Sewer benefits before the issuances of any building permit has on the residents of this Township; and whereas, given the poor economic times, by working together , we are able to achieve a workable solution;

WHEREAS, East Bay Charter Township Board agrees to allow the payment of Water & Sewer benefits to be paid over a **FIVE** year period at **3%** interest rate, if paid within the first 6 month the interest rate would be waived. If not paid within **FIVE** years the balance would be put on property tax bill.

NOW THEREFORE BE IT RESOLVED THAT EAST BAY CHARTER Township supports partnering with its residents to allow a building permit to be issued in the Township after a payment plan has been accepted.

Upon roll call vote the following voted
"Aye":
"No":

The Supervisor declared the resolution adopted.

Glen Lile, Supervisor

CERTIFICATE

I, Susanne Courtade, the duly elected and acting Clerk of East Bay Township, hereby certify that the foregoing resolution was adopted by the Township Board by a roll call vote at a regular meeting of the Board held on October 13, 2014, at which meeting a quorum was present; and that this resolution was ordered to take immediate effect.

Susanne Courtade CMC, Clerk

Gordon Hayward

From: Fred Woodruff <fmwoodruff@gmail.com>
Sent: Tuesday, October 18, 2016 5:46 PM
To: Michelle Reardon
Cc: Grey Hare Inn
Subject: Re: PDR Selection Committee email review and confirmation meeting date

Gordon:

That is too bad. Do not change the meeting date.

Do we have an opinion from the Township attorney as to whether the PDR committee can continue without an amendment to the ordinance? The Agenda you published today suggests that the current PDR Committee is going to proceed with the Weatherholt acquisition without one. Has the Township Board discussed whether or not they want the PDR committee to do anything or whether they want to proceed with the Weatherholt acquisition as authorized by the ordinance? Until those questions are answered, I do not see a role for the current PDR committee. As I have indicated before, I think the Township Board can and should proceed without a PDR committee, if all that they want to do is proceed with the Weatherholt acquisition. If they want proceed with other options and want the involvement of a PDR committee, they need to amend the ordinance and then appoint a new committee.

In any event, if the PDR Committee meets, surely someone has a cell phone with speaker capability. Just let me know and I will call in on that number. My cell is 517.899.1166.

Fred

On Oct 18, 2016, at 10:44 AM, Gordon Hayward <planner@peninsulatownship.com> wrote:

Cindy and Fred,

The Conference room was tied up by the time the meeting date was decided and we have to meet in the Township Hall which does not have speaker phone capability. We could change the date when the conference room is available.

Gordon Hayward
Peninsula Township Director of Planning & Zoning
13235 Center Road
Traverse City MI 49686
phone - 231-223-7314
fax - 231-223-7117
planner@peninsulatownship.com
Please note that this email message and any attachments may contain privileged or confidential information that is protected against use or disclosure under federal and state law. If you have received this in error, please advise by immediate reply. Any transmission to persons other than the intended recipient shall not constitute a waiver of any applicable privileges. Any unauthorized use, disclosure, copying or dissemination is strictly prohibited.

From: Grey Hare Inn [mailto:greyhareinn@hughes.net]
Sent: Tuesday, October 18, 2016 10:34 AM

To: 'Fred Woodruff'
Cc: planner@peninsulatownship.com
Subject: RE: PDR Selection Committee email review and confirmation meeting date

Dear Fred,
I am copying Gordon with this response to request that he find out how we can set up a conference call in the Township meeting room so you can call, and then asking that he respond directly as I am in the UP for the next two days and getting spotty reception for both email and phone. Cindy

From: Fred Woodruff [mailto:fmwoodruff@gmail.com]
Sent: Monday, October 17, 2016 1:40 PM
To: Grey Hare Inn <greyhareinn@hughes.net>
Subject: Re: PDR Selection Committee email review and confirmation meeting date

Well done. Do you have a number for me to call on Thursday?

On Oct 17, 2016, at 9:50 AM, Grey Hare Inn <greyhareinn@hughes.net> wrote:

Dear PDR Selection Committee Members:
While many of us have voiced similar questions during our meetings, I think Fred and Ed have most specifically and eloquently expressed some of these concerns so I am sending all of you copies of excerpts from their recent emails so that we as a group in conjunction with the Township Planner and Town Board can reach some finite conclusions, and consequent actions, as soon as possible.
While my understanding of the Bond Counsel response (again attached for your perusal) is that it adequately explains most of the concerns raised regarding bond legality, I must admit I am nowhere near as knowledgeable in these areas as are Fred, Ed and Roy; and thus believe their comments deserve additional weight for consideration. But also our questions regarding the very necessity of the PDR Selection Committee at this point are still unaddressed, yet presumably will be by the next meeting. I have listed their excerpts by most recent date but then in more of a chronological order within that date. The red highlighting is mine to emphasize and summarize. Cindy

From Fred to Ed and Cindy, Oct 12

My grandkids are in school and my wife and daughter-in-law are shopping and the Santa Cruz Mountain air is too chilly to play golf this morning. So I looked through the accumulation of emails and saw the following from an earlier email from Gordon:

"The current millage vote (2002) was for 20 years. The first vote in 1994 was for 15 years. When we did the second vote **the last years of the first vote were not levied**."

Do either of you know what the highlighted means? Does it possibly mean that the Township Board does not have to levy the full 2 mills each year if they can still meet the bond payments? I think I am generally in favor of maximizing the extent of the PDR program using the full 2 mills authorized in 2002, but shouldn't that be a fully informed and intentional decision by the Township Board? If the Township Board is in favor of continuing to levy the full 2 mills each year through 2021 when the current millage authority expires, shouldn't they look into how many of the properties left on the list could be purchased if they were purchased under a land contract (or perhaps yet another limited GO bond since interest rates are still low) rather than a one time cash purchase of the next property on the list? Since the next property is owned by the father of the outgoing treasurer, shouldn't all possible options be explored? Isn't that what you are saying Ed?

If so, what is the role of the Committee versus the Township Board? I am still puzzled about what role the Committee can play without the Township amending the ordinance to extend the life of the committee and addressing the question of the current validity of the property rankings. However, if the Township Board were to decide to move forward with a single PDR for the Weatherholtz property, couldn't they simply authorize Gordon to proceed with the appraisal and ask the Conservancy to negotiate a deal and leave the Committee "terminated"?

Ed's response was as follows:

Fred Hi-these are all good points/questions-Cindy do you want to follow-up w/ Gorgon to wee where the TW atty. is regarding legal opinions on the outstanding issues-or just let it ride until next Thurs.?
My hunch is that the majority of the PDR C'ee may be reluctant to pass any substantive motion(s)-unless we have answers and some imprimatur from the TWP bd. ED

My response was partially insinuated and summarized in the recent email to everyone reconfirming the meeting time next week, but I waited until I received permission from Ed and Fred to disseminate their comments:
Hello everyone,
Let's keep the next meeting scheduled on Thursday, Oct 20th at 10:30am (Susan – hope you can also make it even though Wed was your preference) as that seemed better for most. Please review the bond paperwork that Gordon sent everyone, so that we can briefly express our opinion on that at the meeting. By the meeting I am confident that Gordon will also have the answers to the other questions we have posed regarding the legitimacy of a need for a PDR selection committee (aka direction from the Township Board as to their perception of the task assigned to the Selection Committee at this point), as well as whether there have been any changes to the properties left in Round 4 for purchase that might justify a change to their ranking, and the other issues that some of you have individually expressed and I have forwarded to him when given permission to do so. Thanks, Cindy

October 11 -
Oct 11 Gordon to Cindy with copy to committee members:
Cindy,

Based on the letter from the Bond Counsel, it seems that we can start the process to acquire an appraisal on the Weatherholt application at our next PDR meeting.

I will try to have the review of the remaining Round IV applications for any changes in their status.

Oct 11 - Fred to Ed – "Don't we still 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 in the committee terminated after eight years?"

On Oct 11, 2016, at 4:54 PM, Ed Roy <eroy@krlawtc.com> wrote:

Read Atty. Swets memo-

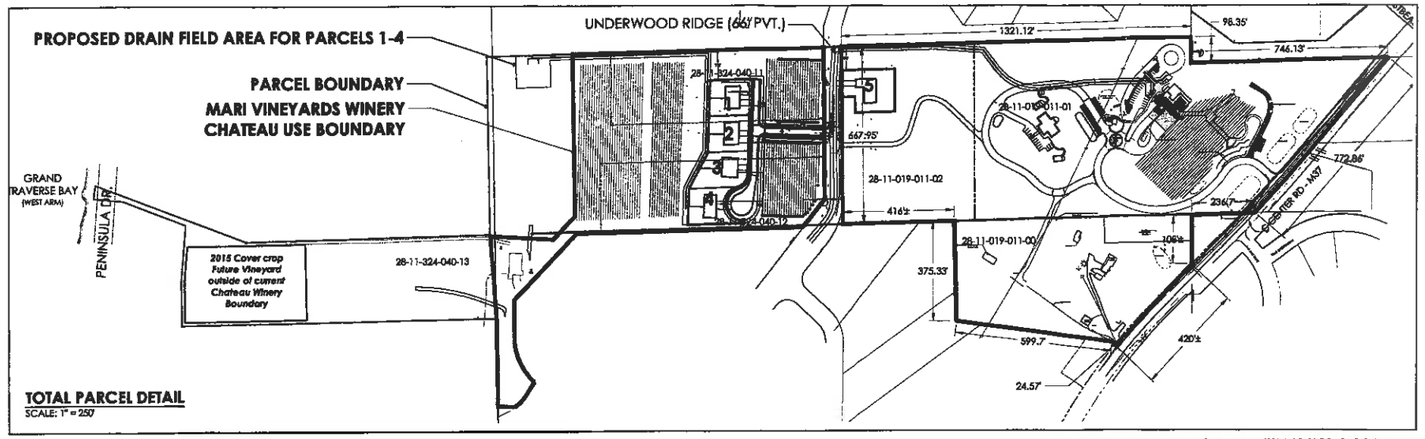
Just because there is a "surplus"-does the Twp Bd (after advise from Warren Cramer as to "amount of coverage"-referred to at page 3 of the memo) then determine/vote at a public mtg. to actually USE the surplus(and If so in what amount)?
I guess what I'm interested in here is transparency and that ALL of the Twp Bd members are made fully aware of these circumstances-current use of the surplus is a discretionary matter- at least I think so.
And does it make sense for the Treasurer to generate a chart which shows future surplus projections as referred to at page 3-"it would be reasonable for the TWP to expect to continue collecting surplus revenues from the millage for some time"?

Also-there is an entirely new TWP BD which will be sworn in to office in late November. Should the current OR future Bd make the discretionary decision ?
Clearly the decision or directive should not come from a sub- set of the TWP Bd-at least it doesn't seem that's the correct protocol-especially with the other currently unanswered questions.

Believe me when I say I am ALL for the purchasing the dev. rights, AND if the Wetherholt family is properly/ next in line-then lets follow the PDR obligations set forth in the Ord. and promptly forge ahead.
Let me know what you think-but erring on the side of involving all TWP Bd. members and for the public to learn of all of the "moving parts' makes good common sense to me.

Openness -rather than expediency- is our better friend. ED

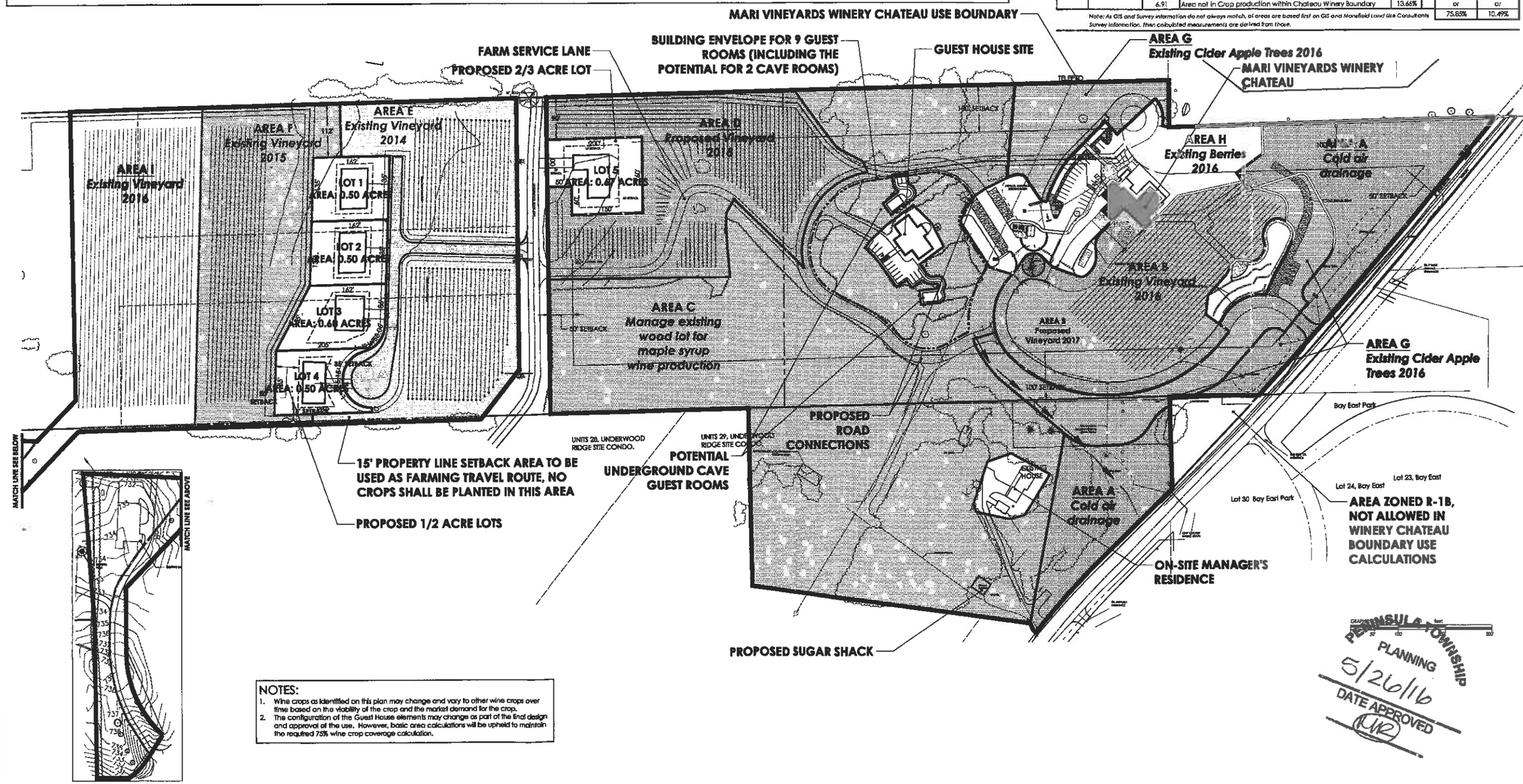
<GRAPIDS-#425546-v1-Peninsula_Memo_Re__PDR_Program_Questions.pdf>



Wine Crop Area Calculations Within The Winery Chateau Boundary						
Tax ID	Total Parcels Acres per GIS	Per	Total Parcels Acres per GIS & Mansfield Survey	Per	Total Chateau Winery Use Area Acres	
28-11-019-010-00	8.58	GIS	8.58	GIS	8.16	(existing managers residence and wine crops)
28-11-019-011-01	20.93	GIS	19.09	SVY	18.50	(existing primarywinery parcel and wine crops)
28-11-019-011-02	7.62	GIS	7.62	SVY	7.62	(proposed guest house and wine crops)
28-11-324-040-11	5.00	GIS	5.00	GIS	5.00	(proposed single family hom es and wine crops)
28-11-324-040-12	5.00	GIS	5.00	GIS	5.00	(proposed single family hom es and wine crops)
28-11-324-040-13	20.37	GIS	20.37	GIS	6.33	(proposed single family hom es ana wine crops)
	67.50		65.66		50.61	

Crop Areas	Crop Production Acres			Acres in Active Agriculture by 2016	Acres in Future Agriculture Planting
Area A	4.16	Cold air drainage area		4.16	
Area B	3.70	Existing Vineyard 2016 - Proposed Vineyard 2017		2.53	1.17
Area C	15.08	Manage existing wood lot managed for maple syrup wine production		15.08	
Area D	4.14	Proposed Vineyard 2018			4.14
Area E	4.74	Existing Vineyard 2014		4.74	
Area F	3.48	Existing Vineyard 2015		3.48	
Area G	2.85	Existing Cider Apple Trees 2016		2.85	
Area H	0.81	Existing Berries 2016		0.81	
Area I	4.75	Existing Vineyard 2016		4.75	
	43.70	Area in Crop production within Chateau Winery Boundary	86.34%	38.39	5.31
	6.91	Area not in Crop production within Chateau Winery Boundary	13.66%	or	or
				75.85%	10.49%

Note: As GIS and Survey information do not always match, al areas are based first on GIS ana Mansfield Land Use Consultants Survey information. Then calculated measurements are derived from those.



NOTES:
1. Wine crops as identified on this plan may change and vary to other wine crops over time based on the viability of the crop and the market demand for the crop.
2. The configuration of the Guest House elements may change as part of the final design and approval of the use. However, basic area calculations will be upheld to maintain the required 75% wine crop coverage calculation.

PENINSULA TOWNSHIP PLANNING 5/26/16 DATE APPROVED

Mansfield Land Use Consultants
830 Cottageview Dr., Ste. 201
P.O. Box 4015
Traverse City, MI 49685
Phone: 231-946-9310
www.mlucsys.com
info@mlucsys.com

REV	DATE	DR	CHK	CHG
05	12.21.15	pbk/mm	pbk	Apples 2015 to Vineyard 2016
06	12.30.15	pbk/mm	pbk	Update for Township submittal
07	01.20.16	pbk/mm	pbk	Update for Township submittal
08	01.27.16	pbk/mm	pbk	Update for Township submittal
09	01.29.16	pbk/mm	pbk	Berries 4 Acres to 5 Acre
10	02.3.16	pbk/mm	pbk	180Acres Sugar Shack
11	03.07.16	pbk/mm	pbk	Township Submittal
12	05.24.16	pbk/mm	pbk	Update Wine Crops

Croft, L.L.C.
Mari Vineyards
WINE CROP AREA CALCULATIONS
Section 19, Town 28 North, Range 10 West
Peninsula Township, Grand Traverse County, Michigan

PRELIMINARY

DWN: mm	CHKD: pbk
CREATED: 09.16.15	
JOB NO.: 13099	