

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

PETER A. CORREIA
SUPERVISOR

MONICA A. HOFFMAN
CLERK

DAVID K. WEATHERHOLT
TREASURER

MARK D. AVERY
TRUSTEE

JILL C. BYRON
TRUSTEE

PENELOPE S. ROSI
TRUSTEE

WENDY L. WITKOP
TRUSTEE

PENINSULA TOWNSHIP BOARD

April 25, 2016

9:00 a.m.

2nd Regular Meeting - Conference Room

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. **Business**
 1. Bowers Harbor Vineyards Enforcement Discussion
 2. PDR Selection Committee Discussion
 3. Request for Kahn Second Opinion – Verbal
 4. Brining Contract
 5. Create Fund 510 – Friends of the Lighthouse - Verbal
 6. Peninsula Drive Special Assessment District
8. **Citizen Comments**
9. **Board Comments**
10. **Adjournment**

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

To: Peninsula Township Board

From: Michelle Reardon, Planning & Zoning Department

Re: Bowers Harbor Vineyard

Date: April 21, 2016

Bowers Harbor Vineyard currently operates and is permitted as a legal non-conforming Roadside Stand that allows the sale of regional wine.

The existing Roadside Stand with wine tasting was permitted by SUP #32; approved April 14, 1992.

Section 6.7.2 (8) requires a roadside stand to offer "limited seasonal sale". SUP #32 defines the retail sales and wine tasting season for the Bowers Harbor Vineyard as from Memorial weekend through October 31 plus the Christmas season and then weekends thereafter.

On February 29, 2016 P&Z staff and the Township Attorney met with the owners of the establishment as well as their attorney to discuss the options for compliance and agreed on a deadline of April 1, 2016 for said compliance. Attached you will find the response from Bowers Harbor Vineyard in response to this meeting.

Staff has been working with the owners of Bowers Harbor Vineyards since April 2015 regarding compliance with and amendment of the governing SUP document. The business is currently in violation of this document in the following ways:

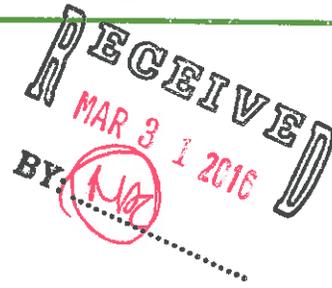
1. The roadside stand/tasting room is open year-round as opposed to seasonally as permitted by SUP #32 and the Peninsula Township Zoning Ordinance standards.
2. The roadside stand/tasting room is selling items that are not regional products (i.e. logo items, stuffed animals).

Both myself and Peter Wendling will be present on Monday, April 25, 2016 to discuss the next steps regarding this enforcement issue.

Feel free to contact me should you have any questions.

Bowers Harbor Vineyards

2896 Bowers Harbor Road, Traverse City, Michigan 49686



Old Mission Peninsula Township Board

April 1, 2016

Bowers Harbor Vineyards would like to propose two options for your consideration and approval.

1. The "seasonal" clause removed from our use. At the April 14, 1992 meeting, the Town Board approved the Planning Commissioner's recommendation that wine tasting & retail sales be allowed in our SUP. Later in the meeting they removed alcoholic beverages from roadside stand sales. This would be a very simple solution to the problem if you would use this same approach for the "seasonal" clause.
2. Develop a new ordinance for our level of operation.

We want you to be aware that we are diligently working on this issue. It was the Town Board that put Bowers Harbor Vineyards into this ordinance and we want to find a solution that is good for both of us. Our conclusions and decisions need to be good for Old Mission Peninsula, the other neighboring wineries, and Bowers Harbor Vineyards. We have the full support from all of the Peninsula wineries who are members of WOMP. As new wineries are developed, our business is faced with more competition. With our location being 10 miles out the peninsula and 5 wineries on the road before us, we are not seeing the same traffic as we once did. We need to be open year round to be competitive and support our full time employees, many of whom live on Old Mission and pay property taxes that help us all.

Linda Stegenga

Spencer Stegenga

owners



winery	800-616-7615
fax	231-223-7625
web	www.bowersharbor.com

To: Peninsula Township Board
From: Michelle Reardon,  Planning & Zoning Department
Re: PDR Selection Committee
Date: April 21, 2016

We are currently working with the Chris Sullivan of the Grand Traverse Regional Land Conservancy to negotiate the next PDR project as part of the Round IV applications. As part of this process, the PDR Selection Committee will need to be re-appointed. This is a seven (7) member committee that is currently vacant for all positions. Section 6 of Ordinance #23, Purchase of Development Rights (attached), regulates this membership.

The most recent PDR Selection Committee included:

Jon Schmidtke
Dave Edmondson
Cindy Ruzak
Ray Weigel
Fred Woodruff
Doug Schroeder
Ed Roy

These appointments expired in August of 2009. Staff is requesting the appointment of a new committee at this time.

Feel free to contact me should you have any questions.

PENINSULA TOWNSHIP
PURCHASE OF DEVELOPMENT RIGHTS

ORDINANCE #23

Approved by Peninsula Township Board May 4, 1994
Revised August 25, 2003 amending Section 8 to provide a process for
amending easements and adding Section 14 Severability.

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ORDINANCE NO. 23

AN ORDINANCE relating to the acquisition of voluntarily offered interests in Farmland and Open Space Land in Peninsula Township: calling an election by the voters of the Township on August 2, 1994, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisition. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes.

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

SECTION 1 Findings and Declaration of Purpose

The Township Board finds that:

(1) Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters, creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected.

(2) The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming they also include other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage. However, Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.

(3) The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables to sell at roadside stands and other local outlets in the Township. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource is permanently lost to the citizens of Peninsula Township.

(4) It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Comprehensive Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A. 116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use by zoning and subdivision control. However, these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.

(5) Agriculture on Old Mission Peninsula is predominantly fruit production; the majority of the nation's tart cherries are grown within this region. Of the 17,000 acres of land in Peninsula Township, there are currently 12,000 acres in the Agricultural District of which some 7,000 acres provide the basis for the township's currently active agricultural enterprises.

(6) Generally, Farmland and Open Space Lands which are close to urban centers have a greater market value for future urban development than their market value for farming or open space, and prime fruit land has the same features of high elevations and proximity to water that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers and removed from agricultural uses.

(7) The permanent acquisition by the Township of voluntarily offered interests in Farmland and Open Space Lands within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for the public interests which are served by Farmlands and Open Space Lands within the Township.

(8) Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their "Agricultural Use".

(9) The acquisition of interests in Farmland and Open Space Lands as provided in this Ordinance is a public purpose of Peninsula Township and financing such acquisition requires that the Township enter into purchases or installment purchases not to exceed statutory limits.

SECTION 2 Definitions

(1) "Agricultural Use" means substantially undeveloped land devoted to the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities.

(2) "Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other agricultural uses.

(3) "Appendix A" of this Ordinance means the maps which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are appended to this Ordinance for more readily accessible public reference.

(4) "Chairperson" means the member of the Selection Committee who is elected Chairperson by the Selection Committee.

(5) "Development" means an activity which materially alters or affects the existing conditions or use of any land.

(6) "Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.

(7) "Development Rights Easement" means a grant, by an instrument, whereby the owner relinquishes to the public in perpetuity, the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land, not to develop, except as this right is expressly reserved in the instrument.

(8) "Eligible Land" means Farmland and Open Space Land for which the purchase of "Development Rights Easements" with tax funds are authorized pursuant to this Ordinance.

(9) "Farmland and Open Space Land" means those lands shown in the Township Master Plan as an Agricultural Preserve Area as adopted and amended from time to time by the Peninsula Township Planning Commission.

(10) "Full Ownership" means fee simple ownership.

(11) "Governmental Agency" means the United States or any agency thereof, the State of Michigan or any agency thereof, any Township, City or municipal corporation.

(12) "Owner" means the party or parties having the fee simple interest, a real estate contract vendor's or vendee's interest, or a mortgagor's or mortgagee's interest in land.

(13) "Parcel" means contiguous property under one ownership that is included in an application.

(14) "Permitted Use" means any use contained within a development rights easement essential to the farming operation or which does not alter the open space character of the land.

(15) "Selection Committee" means the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.

(16) "Substantially Undeveloped Land" means land on which there is no more than 1 residential dwelling unit (exclusive of migrant housing units) for each 20 acres of land.

(17) "Supervisor" means the Peninsula Township Supervisor.

(18) "Township Board" means the Peninsula Township Board.

(19) "Value of Development Rights" means the difference between the fair market value of Full Ownership of the land (excluding the buildings thereon) and the fair market value of the Agricultural Rights plus any Residential Development Rights to be retained by the owner.

SECTION 3 Authorization

(1) The Township Board is hereby authorized to expend tax revenues to acquire property interests in the Farmlands and Open Space Lands described and prioritized in Section 5 of this Ordinance. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The collected tax revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.

(2) The Township is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchases are made, the Township is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

(3) The Township Board is further authorized to contract with other parties, for example American Farmland Trust, to participate jointly in the acquisition of interests in Eligible Lands.

(4) The Township shall contract with a recognized and legally established non-profit land conservancy or other experienced and qualified individual that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any conservation easements acquired under this Ordinance and would be done in accordance with "The Standards and Practices Guidebook" issued in 1989 by the Land Trust Alliance.

(5) Interest which the Township owns in property other than Eligible Lands may be exchanged for property interests in Eligible Lands on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(6) The Township Board shall budget on an annual basis for monitoring of all Development Rights Easements purchased under the authority of this Ordinance (Not to exceed \$1000.00 annually from General Fund Money).

SECTION 4 Retained Residential Development Rights

(1) To promote the "Agricultural Use" of properties on which the Township has purchased the Development Rights, it has been determined that such properties should remain substantially undeveloped.

(2) It is in the best interest of property owners and of the Program to Purchase Development Rights that property owners retain some residential development rights so long as the land remains substantially undeveloped. When property owners retain some development rights their land value remains higher than it would be if they sold all their Development Rights and the value of the Development Rights to be purchased is correspondingly reduced.

(3) Applications for the sale of Development Rights may include a provision to retain the right to build residential dwellings (Residential Development Rights), provided, that no retained residential development rights would result in more than one dwelling unit per twenty (20) acres of land (exclusive of approved migrant housing units). This is not to preclude the sale of all the remaining Development Rights on a property that has existing dwelling units in excess of one dwelling unit per twenty acres of land.

(4) The building locations for retained Residential Development Rights may be restricted in the negotiated "Development Rights Easement" in order to protect Scenic Views identified in the Township Comprehensive Plan.

SECTION 5 Eligible Lands and Priority of Acquisition

The tax revenues shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7.

Primary Criteria that all properties must meet:

Voluntary application by the property owner and included in the Agriculture Preservation Area Map adopted by the Peninsula Township Planning Commission as it may from time to time be amended.

Criteria for Selection Within Same Priority.

The following criteria shall be used in determining which offers to accept in the event that funds are not adequate in any Selection Round to purchase Development Rights on all Eligible Lands of equal priority for which valid offers have been received by the Township:

Cumulative Points

- 21-30 1. Parcel by class is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission.
- a. Class I - (30)
 - b. Class II - (27)
 - c. Class III - (24)
 - d. Class IV - (21)
- 20-30 2. Parcels with percentages of green and/or yellow rated sites as shown on the Red Tart Cherry Site Inventory for Grand Traverse County published by the Soil Conservation Service.
- a. 90 % or more - (30)
 - b. 50% to 89.9% - (25)
 - c. 30% to 49.9% - (20)
- 10 3. Contiguous with other properties currently being farmed.
- 10 4. Parcel which is greater than 10 acres and is adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.
- 5 5. Parcels offered for development rights purchase that are 10 acres or more in size.
- 5 6. Parcels which are less than 10 acres in size and adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.

Up to 25 points for Physical Characteristics based on PROFESSIONALLY QUALIFIED site analysis to be used when other point totals are equal (Tie Breaker).

- (25) 7. Physical Characteristics
- a. Soil Factors
 - (1) Texture
 - 2 (a) Coarse loamy sand
 - 1 (b) Fine loamy sand
 - (2) Drainage
 - 2 (a) Well drained
 - 1 (b) Moderately well drained
 - (3) Depth/rooting restrictions
 - 2 (a) No restrictions to 48 inches
 - 1 (b) Coarse fragments

- b. Physiographic Factors
 - (1) Slope
 - 2 (a) 2-12%
 - 1 (b) 0-2%
 - (2) Elevation
 - 2 (a) Minimum 640 feet above sea level.
 - (3) Air Drainage
 - 2 (a) Uninterrupted airflow to major air storage basin.
 - 1 (b) Minor obstruction of air flow to major air storage basin.

SECTION 6 Selection Committee

(1) A seven-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of the Millage by the voters. The Selection Committee shall advise the Township Board in the selection of Eligible Lands on which Development Rights are offered for acquisition by their owners. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.

(2) The Selection Committee shall consist of residents and/or property owners of the Township chosen to provide equitable representation of geographical and agricultural interests. The Township Board may appoint ex-officio members.

(3) The Selection Committee may consult experts as it may desire and the Township Board may appropriate funds for that purpose.

(4) Members shall serve three-year terms, except that the initial term of three members shall be two years and terms of four members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms but the Selection Committee shall be terminated when the proceeds of the Millage vote have been spent and in any event no later than eight years after the Millage election.

(5) No member shall vote on the selection of individual parcels in which they have an interest or on individual parcels adjacent to property in which they have an interest.

SECTION 7 Selection

Beginning in the first year following the Millage election and continuing at least once a year until all proceeds of the Millage election have been expended, the Township Board shall conduct a voluntary property selection process (herein called "Selection Round") generally as follows:

(1) In each Selection Round the Development Rights on all Eligible Land properties offered shall be eligible for purchase. In all Selection Rounds properties of higher priority shall be purchased with available funds before properties of lower priority are purchased, provided:

- a. If the average appraised value per acre of Development Rights on a given parcel deviates by 30% or more from the median appraised value of all appraised properties, then the Township Board may renegotiate for a lower price and/or seek outside funding for the purchase of Development Rights on that parcel.
- b. In the interest of protecting a significant amount of agricultural land, the Township Board may determine not to buy all or any of the development rights on a particular parcel if the Board makes a finding that it is in the best interest of the program to protect a larger number of acres rather than a smaller number of acres of higher valued development rights.
- c. In the event that points are assigned to properties based on a viewshed and the whole scenic view is not protected because either some of the properties in the viewshed are not offered or an easement that protects the scenic view cannot be successfully negotiated, then the Selection Committee shall determine and remove those scenic view points from all parcels that might be obstructed by development on the non-protected parcel.
- d. The selection committee shall remove points that were given because the property was adjacent to properties with offered development rights and those adjacent development rights are no longer offered.
- e. The selection committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.

(2) The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the properties eligible for purchase in that Selection Round, the general procedure to be followed in the selection process, including an estimated time schedule for the steps in the process, and shall invite the Owners of such properties to make application for purchase of Development Rights by the Township and to describe the property interest which the Owner is willing to sell, such document shall include any residential development rights to be retained by the owner.

(3) Upon closing of the application period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search. For properties located within a Prime Scenic View as shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Comprehensive Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.

(4) For those applications which meet the requirements of SECTION 5. Eligible Lands and Priority of Acquisition above, the Selection Committee shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the Value of Development Rights. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any specifically retained Residential Development Rights.

(5) Appraisals shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

(6) Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense by a State Certified appraiser. The appraisal shall then be filed with the Selection Committee. The Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.

(7) Terms and conditions of sale and information on the effect of the sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.

(8) Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. These written offers shall include any development options desired to be retained by the owners.

(9) Upon receiving the recommendations of the Selection Committee, the Township Board shall take final action on such recommendations.

SECTION 8A. Duration of Acquired Interests and Relinquishment of Any Interest.

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following: If the Township Board shall find that Farmland and Open Space Land described in this Ordinance can no longer reasonably be used for "Agricultural Use" as to any interest in land acquired with Millage proceeds, the Township Board shall submit to the voters of the Township a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Township and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. A "before and after" appraisal shall be made to determine the Value of Development Rights, and the Township shall not sell the Development Rights for an amount less than the appraised value of the Development Rights determined as follows: One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any retained development rights. Appraisals of the fair market value of Full Ownership or of a property interest other than Development Rights shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

SECTION 8B. Amendment of Conservation Easement. Because of the public trust that is inherently involved with the Purchase of Development rights and the corresponding intent that all conservation easements endure in perpetuity, amendments of conservation easements are to be discouraged and can only be amended in compliance with strict standards. An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

- (1) Application. Application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.
- (2) Application Costs.
 - a. The Township shall not be responsible for any expenses incident to the request for amendment.
 - b. All costs associated with the requested amendment, including appraisals, attorney fees and publication fees, shall be paid by the applicant.
 - c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.
- (3) Public Hearing. The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment.
- (4) Notice. All property owners within 1,320 feet of the property shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.
- (5) Standards. An amendment to a Conservation Easement shall not be granted by the Township Board if the amendment causes any of the conditions set forth in Section 8B.(5) a. i-vii to occur, unless a finding is made that the standards in both Section 8B.(5) b. and c. have been satisfied:
 - a.
 - i. The amendment increases the number of future dwelling units.
 - ii. The amendment increases the probability of parcel fragmentation.
 - iii. The amendment results in a scattering of residences more than prior to the amendment.

- iv. The amendment increases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
 - v. The amendment reduces the net amount or quality of productive agricultural land as a result of the amendment.
 - vi. The amended building sites interfere with air drainage.
 - vii. The amendment results in new buildings located in identified scenic views.
- b. The possible adverse effects on adjacent property, particularly adverse visual effects on adjacent conservation easement parcels, shall be determined to be less than the positive benefits of the proposed amendment.
- c. The amendment enhances the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance. Examples of enhancement include:
- a residence or reserved building is moved from the current location to a location further away from land being actively farmed;
 - a residence or future building site is moved and placed in an area of existing buildings;
 - a residence or future building site is moved to a location on adjacent property that consolidates residences in a cluster;
 - an existing building is moved from a prime scenic view and relocated to another site that is out of prime scenic view;
 - a building or reserved building site is moved from a location that creates an adverse impact on farming operations due to its location or access to a site that has less of an adverse impact;
 - the amendment will result in a larger block of agricultural land without an existing residence or future building site.

The Township Board shall make written findings of fact as to the foregoing conditions and standards.

- (6) Appraisal of Changes in Value: Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall obtain an appraisal of the property (paid for by the property owner) to determine if the value of the retained development rights is increased as a result of the amendment. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.
- (7) Publication. The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.
- (8) Referendum. A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall stay any action until the decision has been approved by the voters.
- (9) Recording. All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment.

SECTION 9 Related Costs

The costs of appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Township shall be paid from the proceeds of the Millage, however, the Township shall not be responsible for expenses incurred by the Owner incident to this transaction.

SECTION 10 Supplemental Funds

Supplemental or matching funds from other Governmental Agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights, or some lesser interest in Eligible Lands or to supplement or enlarge such acquisition. The Township Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise supplement the proceeds of the Millage in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 11 Township Purpose

The Township Board finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in Eligible Lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements, or to participation with any party for such purposes will promote the public health, safety, and general welfare of the people of Peninsula Township.

SECTION 12 Development Rights Acquisition Fund

The revenues from the Millage shall be deposited in a Farmland Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Peninsula Township (here and after "Acquisition Fund"). Money in such Acquisition Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The revenues from the Millage and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 13 Development Rights Enforcement Fund

The Township Board shall establish a Development Rights Enforcement Fund (here and after "Enforcement Fund") from the proceeds of the Millage vote in an amount of not less than \$40,000.00 to be used for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering, and other professional services. Money in such Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Section.

SECTION 14 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.



**COUNTY ROAD IMPROVEMENT AGREEMENT BETWEEN
THE GRAND TRAVERSE COUNTY ROAD COMMISSION AND PENINSULA TOWNSHIP**

Mineral Brine	Estimated		
		Cost	Twp 75%
County Maintained	12.09	4745.33	3,558.99
Non County	1.20	471.00	471.00
Miles			13.29
Grand Total			4,029.99

- ___ Peninsula Township has chosen ___ (number) applications of brine.
- ___ Peninsula Township has chosen not to brine.
- ___ The road list has been reviewed and there are no changes. (please Initial)

The Board of County Road Commissioners' policy is to provide a 25% match for brine application on county maintained gravel roads with the Township paying 75%. The Township will pay 100% for all seasonal and public access roads requested.

This proposal is for the summer of 2016. Please return by April 13, 2016 to schedule the first application. The second application is scheduled for July, weather permitting.

*The above amounts are based on 2016 bids and are close approximations of costs to be incurred. Invoices will be based on actual costs billed to GTCRC which may vary from the estimates above.

Enclosed are road listings/approximated distances and maps of the areas to be brined. If any discrepancies are discovered, please contact us at your earliest convenience.

Township Supervisor

Dated

Township Clerk

Dated

Manager, GTCRC

Dated

Peninsula Township Gravel Roads

Road Name	From	To	Section	Length (in miles)
Brinkman Road	Swaney	Murray	26 35	1.3
Carroll Road	Center	West	4	0.5
Carroll Road	Center	East & South	4	0.6
Cherry Hill Road	Center	Heritage Circle	27 34	0.4
Dougherty Lane	Old Mission	Heritage Circle	35	0.2
Grand Street	Brinkman	Traverse	35	0.2
Heritage Circle	Dougherty	End	35	0.1
Mission School Rd	Mission Rd	End		0.15
Montague Road	Rolling Ridge	Gray	17	1.1
Neah ta wanta Road	Terrace	Four Oaks	19 20	1.1
Old Mission Road	Whispering	Peninsula	33 4	0.4
Peninsula Drive	Old Mission	Swaney	33 34	1.1
Phelps Road	Peninsula	End	9	1
Pyatt	Neah ta wanta	Seasonal		0.33
Ridgewood Road	Eastern	End	25 26	0.95
Smokey Hollow Ct	Smokey Hollow	End		0.1
Swaney Road	Center	End	27 28	0.9
Terrace Ave	Neah ta wanta	E Cabernet Cove	19	0.7
Traverse Street	Swaney	Woodland	35	0.3
Woodland	Brinkman	Eastern		0.26
Wunsch Road	Phelps		9	0.6

Total Mileage: 12.09

Non-County Public Access				
Bowers Pk Entrance				0.1
Haserot Beach				0.1
Center Rd Nature Reserve				100 x 70
Seasonal Rd.				
Forest Ave.	Eastern	Dead end	35	1

Total Mileage: 1.2

Grand Total 13.29

Monica Hoffman

From: Jim Cook <jcook@gtcrc.org>
Sent: Friday, April 08, 2016 3:29 PM
To: Pete Correia; clerk@peninsulatownship.com
Cc: 'Karrie A Zeits (kzeits@shrr.com)'; Jim Johnson; Garth Greenan; Deb Hunt; Dean Bott; Carl Brown; John Nelson; Laura Tandy
Subject: Draft Agreement - Township Drainage District SAD
Attachments: Peninsula Storm SAD.pdf

Pete and Monica,

Attached please find the Draft Agreement prepared by our legal counsel (Karrie Zeits) for the township's review. This Agreement is intended to address the Road Commission's agreement to share in the assessment as authorized by MCL 41.734 because without the Road Commission's Agreement, it would be either exempt from or not subject to any special assessment imposed by the Township within the districts. See OAG, 1957, No. 2710 (properties held by governmental entities for public purposes are exempt from special assessments). The formula that has been used is the same formula that would be used under the Drain Code for determining the County's share of the cost for drainage from County roads. As discussed, only 50% of this cost may be paid from County Road funds under Act 51 for the basic benefit provided that the formula established by Administrative Rule by MDOT and MDARD is followed. See R. 280.1 et seq.

It is also intended to address the Road Commission's ability to access the improvement in this district and to maintain or repair them in the event that an event occurs causing damage or flooding to the county roads.

We do still need clarification on a couple of items from the Township. These are the proposed term of the special assessment districts and the boundaries of the districts. With respect to term, based on our previous conversations with the Township and the residents, we assume that the term will be perpetual. It is our understanding that once the districts are established, the Township will levy an assessment that will cover the cost of constructing/improving the drain system as proposed and engineered by the residents' engineers and some amount for ongoing maintenance cost. However, the districts' term will be perpetual and will allow for the assessment of future maintenance/improvement costs as necessary to keep the district operational. Please confirm that this understanding is correct.

With respect to the District boundaries, it is our understanding that the District will include the storm system through the point of discharge. Thus, the "improvements" described in the Agreement that will be depicted by an appropriate attachment, which the Township will be responsible for maintaining and improving, will include the entire drainage/storm sewer system from the beginning through the point of discharge. Please confirm that this understanding is correct.

Lastly, please note that there will be a separate agreement for each of the proposed Township Drains/Districts (two.....as we know of today). Therefore, once we finalize the language, we will be providing one for Braemar Estates/Old Mission Estates and one for Maple Terrace/Logan Hills for each of our board's approvals.

Please let us know if you have any questions. We'd be happy to meet with you when you return to review and discuss.

Sincerely,

Jim

Jim Cook
Manager
Grand Traverse County Road Commission

1881 LaFranier Road

Traverse City MI 49696

231-922-4848, ext 215

231-929-1836 FAX

www.gtcrc.org

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_____ SPECIAL ASSESSMENT DISTRICT

ASSESSMENT AND MAINTENANCE AGREEMENT

This Agreement is dated this ____ day of _____, 2016, by and between the Grand Traverse County Road Commission, a quasi-municipal corporation, of 1881 LaFranier Road, Traverse City, Michigan, (the "Road Commission"), Peninsula Township, a Michigan township, of _____, MI 49690 ("Peninsula").

WHEREAS, Peninsula has established pursuant to Act 188 of 1954, MCL 41.21 *et seq* a special assessment district for the construction, improvement, and maintenance of a storm sewer (the "Improvement") located over real property located within Peninsula as depicted on **Attachment** ____ (the "District"); and

WHEREAS, roads under the jurisdiction of the Road Commission are located within the District; and

WHEREAS, once the District is established, the Township will be responsible for the construction, improvement, and maintenance of the Improvement; and

WHEREAS, the parties desire to set forth the Township and the Road Commission's right and responsibilities in the event that the Improvement causes or is likely to cause flooding within the roads under the jurisdiction of the Road Commission; and

WHEREAS, the Road Commission desires to agree to pay a special assessment for the Improvement as set forth herein pursuant to MCL 41.734; and

WHEREAS, this Agreement is authorized under the Intergovernmental Contracts between Municipal Corporations Act, MCL 124.1 *et seq* and MCL 41.734;

NOW THEREFORE, the parties in consideration of \$1.00, receipt of which is hereby acknowledged, and the mutual benefits and promises set forth herein, the parties agree as follows:

1. Special Assessment. In the event the District is established, the Road Commission shall pay an assessment as follows:

A. Basic Benefits. The Road Commission shall agree to pay a special assessment for the initial construction, maintenance, and improvement of the storm sewer in the amount of 50% of the county road benefit computed and determined under OAR 280.2. The apportionment established for the initial construction, maintenance, and

improvement of the storm sewer shall be utilized for any future assessment by the Township for subsequent maintenance or expansion of the Improvements.

B. Supplemental Benefits. For any facilities, structures, or mechanical devices which exceed the needs of the drainage district requested by the Road Commission, the Road Commission shall agree to pay a special assessment for those benefits as computed and determined under OAR 280.3. These costs will be billed separately from the Road Commission's basic benefit assessment.

2. Maintenance.

A. Routine. The Township shall provide all maintenance for the Improvements, including any portion of the improvements located within the County road right of way. In the event that routine maintenance is required that is or could cause flooding on to the roads under the jurisdiction of the Road Commission, the Road Commission may enter over and upon the lands comprising the Improvements and provide maintenance for the Improvements to eliminate the condition that is or could cause flooding on to the roads under the jurisdiction of the Road Commission if the Township fails to maintain the Improvements within 30 days after written notice of the need for maintenance.

B. Emergency. In the event that maintenance is required for the Improvements to prevent actual or imminent flooding or damage to the roads under the jurisdiction of the Road Commission, the Road Commission may immediately enter over and upon the lands comprising the Improvements and provide maintenance to the Improvement to eliminate the condition causing actual or imminent flooding or damage to the roads under the jurisdiction of the Road Commission.

C. Costs. In the event the Road Commission performs maintenance on the Improvements, the Township shall reimburse the Road Commission for the Road Commission's actual costs incurred in performing the maintenance.

3. Expansion of the District. In the event that the Improvements become insufficient or incapable of handling storm water runoff as a result of future development or additional flows into the District causing flooding onto the roads under the jurisdiction of the Road Commission, the Township shall initiate procedures to cause an expansion of the Improvements as may be necessary to handle the storm water runoff.

4. Work within County Road Right of Way. No work performed in connection with the Improvements within the roads under the jurisdiction shall be performed until a Permit to Construct, Operate, Use and/or Maintain with the Right-of-Way has been issued by the Road Commission and all work shall be subject to the terms and conditions of such Permit.

5. Not a Joint Venture. The parties do not intend this Agreement to be a joint venture.

6. Effective Date and Termination. This Agreement shall be effective on the date that the District is established by the Township and shall terminate in the event that the Improvements are established as a drainage district under the Drain Code of 1956, MCL 280.1 *et seq.*

7. Third Party Beneficiaries. This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

8. Execution in Counterparts. This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

9. Entire Agreement. This Agreement, together with all items incorporated herein by reference, constitutes the entire Agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein.

GRAND TRAVERSE COUNTY ROAD
COMMISSION

Dated:

Carl Brown, Chairperson

Debra J.M. Hunt, Clerk

Approved as to Substance:

Approved as to Form:

Jim Cook, Road Commission Manager

Karrie A. Zeits, Road Commission Attorney

PENINSULA TOWNSHIP

Dated:

Pete Correia, Supervisor

Monica Hoffman, Clerk