

**PENINSULA TOWNSHIP BOARD
REGULAR MEETING
September 13, 2016**

Meeting called to order at 7:00 p.m.

Manigold asked for a moment of silence for Pete Correia and his family.

PRESENT: Manigold, Westphal, Avery, Rosi, Byron, Weatherholt and Witkop

ALSO PRESENT: Peter Wendling, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning and **Deb Hamilton**, Recording Secretary

ABSENT: None

APPROVE AGENDA

MOTION: Witkop/Rosi to approve agenda as presented.

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

David Taft, 952 Neah Ta Wanta Rd., said (regarding The 81 on East Bay) per Judge Rogers decision and the 18th Circuit Court Order there are two remanded issues - the fire road and soil erosion plan. There have been two public hearings that have been postponed at the request of the developer's attorney because the fire road and the other road access do not meet Fire Code requirements. I have spoken to the Township Board and the Planning Commission about the new knowledge of toxic material use on this property learned after approval of the SUP in August 2015. If the developer intends to grade and re-contour the site, he may redistribute contaminated soil. With the new knowledge of use of toxic Pb and As insecticides the developer has a due care obligation to undertake an environmental assessment to determine if the site is contaminated. The DEQ is clear about the owner responsibility on this issue. Re-contouring this site without an environmental assessment may expose the developer and the Township to legal consequences if contaminated soil is redistributed about the site or erodes off of it. The Planning Commission and your questions in 2015 about environmental issues of this site were not adequately answered. I contend you have the right to ask the developer to re-submit a new SUP plan for a PUD on the 81 with adequate detail of the new fire road and with a soil erosion plan that includes an independent environmental assessment with on-site sampling and testing that shows the site is safe. As redesign of roads is required to meet the Fire Code this updated plan may affect drainage, how the community septic may operate and the meeting of open space requirements. Because of these changes and the need for an environmental assessment I feel you are justified in asking the developer to pull the original SUP and re-submit a new plan for review by the Planning Commission before approval is considered by the Township Board.

Vicky Shurly, 1156 Lin-Dale Dr., Township Library Director, said I have lived here since 1989 and all three of my children are graduates of Old Mission Peninsula School. I am the Director as well as the business manager of the Library. I have also served on the Library Board for 10 years. We are not a branch of the Traverse Area District Library (TADL) nor are we a part of Traverse City Area Schools (TCAPS) but rather certified by the State of Michigan as an independent township library. We operate through a contract with TADL for funding and shared services. The library runs on a tight budget of just over \$215,000, 82% of which comes by the contract with TADL loosely based on property values in Peninsula Township. Last fiscal year, we checked out over 45,000 items in a community that is just over 5,400 people. We are currently negotiating a lease for the space the library occupies in Old Mission School with TCAPS. Please come to the library.

Jim Komendera, 4168 Rocky Shore Trail, said last month The 81 development company submitted an application for a second development plan for the 81 acres – a platted subdivision plan. I am asking that if they are serious about this application it should be considered in comparison with the PUD plan. Many have been skeptical because it includes approximately 10 more lots than the PUD plan. However on the shoreline, it only includes 12 lots and the PUD plan has 23 shoreline lots. I think this plan should be looked at seriously. If the developer is going to take the time and the expense to submit this application I think it should be done in its entirety and consider both plans before making a decision on either plan.

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Meeting Minutes
 - August 8, 2016 Special Meeting
 - August 9, 2016 Regular Meeting and Closed Session
 - August 23, 2016 2nd Regular Meeting
4. August 2016 Payroll
5. Old Mission Peninsula's Historical Society Sign Request

Margaret Achorn, 11284 Peninsula Drive, asked about the Young, Graham and Elsenheimer invoice large amounts going to the same account and an escrow account being established for charges on Gourdie-Fraser, Inc. **Reardon** said the escrow provision was not in place at the time the application was filed.

There was discussion regarding the history of escrow accounts for developments.

MOTION: Witkop/Byron to approve the Consent Agenda excluding the attorney invoice.

Roll Call Vote: Manigold-yes, Weatherholt-yes, Avery-yes, Byron-yes, Rosi-yes, Witkop-yes and Westphal-yes
PASSED UNAN

BUSINESS

1. 2016 Phragmites Report and Contract – Public Hearing

Reardon said there is a Phragmites Ordinance that states that every year the Board will hold a public hearing to allow residents to come forward to exempt themselves from treatment. Once a resident has exempted themselves they are exempted in perpetuity. We are in the maintenance phase of treatment. This year the eastern shoreline will be treated exempt the state land at northern end that was treated last year. Vickie Smith from Wildlife and Wetlands Solutions is here tonight to answer questions. The permit that the Township applies for every year covers all invasive species should residents wish to address other invasive species. That can be done contracting through Wildlife and Wetlands Solutions at the residents own expense.

Manigold opened the public hearing at 7:26 pm

Nancy Davy, 14713 Shipman Rd., thanked the Board for the program. We had one of the worse infestations and now it is a beautiful open beach.

Byron said there was a letter in packet from a resident with concern about environmental impact of the treatment. *Vickie Smith* said Phragmites are treated with two different chemicals. We use an aquatic formulation so when the chemicals come in contact with water or soil they become inert. We post a 24 hour restriction for entry into the water for safety and precaution. The treatment now is so small and specifically directed at Phragmites there is very little impact on wildlife habit. **Rosi** asked about Round-Up and where are the infestations that Smith is seeing. *Smith* said Round-Up is not aquatic approved and in violation of the permit. We are only seeing small sprouts in areas that 5-6 years ago where very dense stands. We start at the City-Township line, walk the shoreline and treat Phragmites. **Manigold** asked if still treating the island. *Smith* said it was treating last year when the western shoreline was treated. **Witkop** asked about the state land at north end area. *Smith* said it was treated last year and has separate permit. **Witkop** asked if residents asking to be exempted are treating themselves or not being treated. **Reardon** said the residents asking to be exempt often do not give a reason. **Byron** said the intent was they would treat themselves. **Reardon** said ordinance does not state that. The attorney can review that portion of the ordinance. **Reardon** asked Smith to report on those exempted properties.

Manigold closed the public hearing at 7:34 pm

MOTION: Weatherholt/Witkop to approve the contract of \$2,000 as submitted and authorize the Supervisor to sign the contract.

Roll Call Vote: Rosi-yes, Witkop-yes, Weatherholt-yes, Manigold-yes, Byron-yes, Avery-yes and Westphal-yes
PASSED UNAN

2. Bonobo Winery Hearing

Wendling said at the last meeting the Township Board scheduled a hearing to make a decision on whether or not to revoke the Special Use Permit for Bonobo winery because they were not meeting the 75% planting requirement under the ordinance. In preparation for the hearing I suggested to the Planning and Zoning staff to line up an expert on farming practices. I suggested the MSU Extension. **Reardon** asked Todd Oosterhouse whether or not the Township would have permission to enter onto the property with the expert in preparation for the hearing. That permission was denied by an email sent to **Reardon**. The next option would be an administrative search warrant. Schoolmaster contacted the Extension and so apparently did Oosterhouse. Duke Elsner from MSU Extension went out to the property and issued the letter dated August 26, 2016. This made it difficult for me to recommend for the Township to proceed with a termination hearing on the SUP when reported when there is a MSU Extension expert stating the property was in compliance and normal farming practices were utilized in the planting of the property not planted in vineyard. The option the Township has now is to seek out one or two additional experts to look at the property to ensure it was properly planted. This would have to be done this fall. I recommend the Board does this regardless of any decisions the Board may make tonight. **Manigold** said he thinks it was a mistake to allow pumpkins to be planted. That is not the intent of the ordinance. I cannot vote for keeping Bonobo open when they are growing pumpkins. This is the time to order grapes for next year's planting. I could be satisfied if nine acres were ordered and contracts in place to come into compliance I would feel more comfortable. **Avery** said part of the letter from Elsner was not completely conclusive in the way it was worded. Steven Fox let the Board know he was here representing Oosterhouse. *Fox* said two members of the Board have changed therefore he resubmitted information previously submitted. The primary crux of the letter is to identify that Mr. Elsner's opinion appears to be determinative and I

understood the hearing would likely be adjourned. The evidence before the Board today demonstrates that the blocks in question were planted. I understand Mr. Manigold's concern with respect to pumpkins. It is not a valid concern the way this ordinance is written. It is a policy issue this Board should take up at some point but you cannot penalize Bonobo for that. It was approved and Oosterhouse planted the fruit to meet the 75% threshold. **Byron** and **Avery** asked how many bottle of wine were produced from the pumpkins in 2015. *Fox* said to his knowledge there are no bottles currently but it is being fermented. **Witkop** said I do not think that Mr. Elsner letter is conclusive at all. The ordinance requirement is active production of crops. I think implied in this statement is plant something in a way it will grow. We are skirting around this. This letter does not clearly state Bonobo met the ordinance. I think Mr. Elsner was put in an uncomfortable position and he is trying to satisfy what he was hired to say but is uncomfortable with it. *Fox* said let me be clear we did not hire or pay Mr. Elsner. **Byron** said what disturbs me about this the most is when Bonobo came to the Board; the Board gave conditional approval if Bonobo plants the additional acreage. We are now two years down the road and we are still playing with pumpkins. We all know the intent of the ordinance was a fruit producing crop that could be turned into wine. There is no evidence wine was produced from the previous year's pumpkins. It is time to put the crop in the ground. Deal with what the Township wants Bonobo to do and stop playing a game. *Fox* said we are not trying to play a game. **Byron** said then she would like to see some product from pumpkins. **Reardon** said she did a search on Bonobo labels and did not find pumpkin but her search was not exhaustive. **Byron** said I agree with Manigold's perspective. **Weatherholt** said the Township does not have this problem any other winery. *Fox* said the provision in the ordinance "not less than 75% of the site shall be used for active production of crops that can be used for wine production such as fruit growing on vines or trees". This Township approved pumpkins. Your counsel and Planner confirmed that pumpkins were satisfactory and met the ordinance. I understand that members of the Board may not agree with the language of the ordinance. Mr. Elsner stated that active production can mean more than simply planting grapes, apple trees, pear trees; it can also include cover crops. Mr. Oosterhouse had a discussion with staff to plant cover crops to get the soil ready and it was suggested that would not satisfy the language of the ordinance. At that point Oosterhouse planted pumpkins because it was suggested that would satisfy the language of the ordinance. **Reardon** said she wants to stop this because this is hearsay from a conversation that happened 2-3 years ago. It is not just a couple of blocks that are not in production it is 23%. I recommend publishing notice for a hearing to be held at the October meeting and allow staff to pursue an administrative search warrant. *Fox* said we submitted information to the Township in July and August and all the information confirms that pumpkins were planted in the blocks. The only possible issue is the question of density. Tonight is the date the Township set for a hearing. We are here and prepared to submit evidence. I suggest we be done with this. **Manigold** said planting takes maintenance and cultivation. It is my understanding that did not happen. If Bonobo wants to go forward with a hearing with expert witnesses I think this Board is prepared to go there. We gave Bonobo the olive branch to order the vines and put the deposit down. The Board wants Bonobo to come into compliance. *Fox* said my concern is a legal one not a practical one. I am not in the position to let my client lose his SUP that is why I am concerned about the process and about the 75% and not about how much wine has been produced because that has to do with guest activity uses not this provision in question regarding 75%. I do not think the ordinance as it is presently worded compels that result. It is clear, based on the evidence that Bonobo has complied. **Weatherholt** asked if Bonobo has any plans to plant the grapes. *Oosterhouse* said ordered two acres for next year. Five acres of topsoil was stripped back and the soil underneath was used for the parking lot. That soil is not very strong. We are planning on planting two acres up by the winery. It is not our intent to keep growing pumpkins forever. **Westphal** said when reading the ordinance and I quote "75% on the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees." Active production is more than simply putting a seed in the ground. It means you care for the seed or that plant or tree and enable it to get to the production point. Mr. Elsner's statement about cover crops they are not producing wine. They are cover crops that are capturing nitrogen and making the soil more fertile. You are fighting a battle of semantics here. The Township ordinance

is clear in its intent. It was Oosterhouse's choice to take that top soil off during construction. From my perspective Bonobo is not in compliance with the 75% in active production. I think that Mr. Manigold has offered a reasonable strategy. How Bonobo is going to bring the soil up to a state of fertility is Bonobo's problem. *Oosterhouse* said did the same practice this year planting the pumpkins as last year. In the ordinance it states winery/chateaus do not have to use what is produce. **Byron** said this Board gave Bonobo a conditional permit based on having 75% planted in active production in May 2014. It was a conditional permit. We want you to put that land in production according to the ordinance. **Manigold** said I think we should take counsel and Reardon's recommendation and start the process. *Oosterhouse* said he does not want to go down that road. I will talk with my brother. **Reardon** said could hold a hearing October 11, 2016, notice and execute an administrative search warrant. *Fox* said have both sides have experts and then appeal it to Judge Rodgers or Judge Powers. **Manigold** said I am on the same page. **Byron** said we all are.

MOTION: Byron/Witkop to seek out an expert for full review of this issue. **MOTION PASSED**

Witkop asked Oosterhouse to step back and look at the big picture.

3. Waste and Sewer Budgets/Septage Treatment Facility Payments

John Divozzo, Grand Traverse County Director of DPW, said I did speak with the administrator's office today and they are going to appoint Manigold on the DPW. Divozzo reviewed the DPW budgets. This is informational. The Township's authority lies in the rate setting in the ordinance so the Township basically applies the rules for the system. The DPW enforces the rules and maintains the operating system. The DPW also does administrative functions like permitting and billing. There are checks and balances throughout this whole process. **Manigold** said everything looks good on the budget. We will have to go head to head with the City because they are making improvements without consulting us.

MOTION: Byron/Weatherholt to approve the 2017 Water/Sewer budget as presented. **MOTION PASSED**

MOTION: Byron/Witkop to appoint Manigold to DPW Board. **MOTION PASSED**

Witkop asked about the resolution before the Board. *Divozzo* said all authority lies at the County however it is your systems. We are trying to bring changes to you before they are official. There are three minor changes. The Township Engineer indicated he is okay with the changes. There was Board consensus to approve the minor changes as stated in documentation.

4. Future of Old Mission Peninsula School Discussion Regarding Presentation on August 29, 2016

Manigold said I met with the School Board today. We need to form a team. There was an appraisal on the Old Mission School of between \$575,000 and 1.5 million. All this information is on the Township website. The School Board is anxious for us to come together with an agreement. If successful the school would be owned by Peninsula Township with a deed restriction that it would be used for a library, school or public building. Any change of that use would be subject to a vote of the people. We are looking at fund raising for the entire purchase. TCAPS would like to start with a 10 year agreement. TCAPS would pay the first two years then the Township would be responsible for the annual payment which is about \$400,000 to run the school. We are trying to negotiating this to a five year agreement. This gives the Township control of the school and stability for the library. We want to prepare a package to present to the community. There is a November 30 deadline. **Avery** asked has the student base been projected out 5-10 years. **Manigold** said he believes TCAPS has. **Avery** said that is an important number. **Manigold** said this process is very preliminary.

5. Public Hearing for Braemar Estate SAD (to be tabled pending the resolution of easements and Road Commission concerns over additional improvements)

Manigold said Akerley and I met with the Road Commission yesterday. We are still trying to get numbers finalized for the cost of the project.

MOTION: Avery/Byron to table to October 11, 2016 meeting.

Roll Call Vote: Witkop-yes, Weatherholt –yes, Manigold –yes, Westphal-yes, Byron-yes, Avery-yes and Rosi –yes.
PASSED UNAN

6. Planning Commission Recommendation Regarding Five Year Review of Master Plan

Reardon reviewed the Planning Commission recommendation. There was Board consensus to have Schoolmaster work on clearing up maps.

7. New Planning and Zoning Director Discussion

Manigold said Reardon has submitted her resignation. We need someone to be hired for 60-90 days while we start RFQ process for a new Planner. Gordon Hayward was suggested to work with Claire day to day. Hayward brings PDR experience too. **Witkop** said the new Board needs to be involved in the process of hiring the new Planner. **Byron** said we need to get the position posted and need to be clear with Hayward about what the Board wants him to do.

MOTION: Witkop/Avery to appoint Hayward as interim Planner not to exceed 90 days and authorize Manigold to offer same pay rate as current Planner.
MOTION PASSED

8. Fire Department Millage - Set Rate Discussion

Weatherholt said during budget time last spring the Board set the fire millage at 1.1 for budget purposes. Publication was up to 1.4 mils if more money is needed. The committee was set aside during union negotiations. This will not be collected until December. **Manigold** said this Township wants ALS. Items have been sold that the Fire Department needs like the portable hydrant pump. There was discussion about what was sold. Manigold suggested going to 1.4 mils. **Weatherholt** said 1.1 mils would be \$709,000 and 1.4 mils would be \$903,000. **Witkop** said if the Township Board is going to be controlling this she is okay with collecting extra.

MOTION: Bryon/Rosi to authorize the Treasurer to collect 1.4 mils.

Roll Call Vote: Weatherholt-yes, Manigold-yes, Westphal-yes, Byron-yes, Avery-yes, Rosi-yes and Witkop-yes
PASSED UNAN

9. Tabone Vineyard LLC Address Change

Reardon said it was originally submitted with Tabone residential address. This needs to be resubmitted with the commercial address.

MOTION: Byron/Manigold to change the Tabone Vineyard LLC address.

Roll Call Vote: Manigold-yes, Westphal-yes, Byron-yes, Avery-yes, Rosi-yes, Witkop-yes and Weatherholt-yes
PASSED UNAN

10. Update on Fire Department – Chief Rittenhouse

Rittenhouse said reviewed his report. Rittenhouse explained the Advanced Life Support Intercept Agreement.

MOTION: Avery/Witkop to authorize Rittenhouse to sign agreement. **MOTION PASSED**

11. First Congregational Church Women's Fellowship Resolution

MOTION: Byron/Witkop to approve resolution to raise money.

Roll Call Vote: Byron-yes, Avery-yes, Rosi-yes, Witkop-yes, Weatherholt-yes, Manigold-yes, and Westphal-yes
PASSED UNAN

CITIZEN COMMENTS

Nancy R. Heller, 3091 Blue Water Rd., said I asked the Fire Board when it was active about the salary for the Interim Fire Chief's and the Fire Board said they would pay the Chief's salary. That never happened. Now we have another Interim Fire Chief and I am wondering is that Interim Chief being paid Chief salary. **Weatherholt** said we are not changing anything due to union negotiations. *Heller* said the Interim Chief has been very gracious taking on the additional responsibility without any additional compensation. **Manigold** said I agree with you and will ask the union attorney about making compensation changes and hiring.

David Taft, 952 Neah Ta Wanta Rd., said I want to commend the Board for taking a firm position on the Bonobo questions. It is important for those members who were not on the Board at the time to understand that Bonobo is here tonight because of their behavior. They have continually ignored the rules of this township. Before that winery was approved the level of the ground was six feet below Center Road as reported by Mr. Oosterhouse at a public meeting. The winery ended up above the level of Center Road helping to block the beautiful view shed. A year later the Board was told that the winery ended up 20% larger than what was approved. Oosterhouse thought the County informed the Township. Frankly they built a bigger winery and ignored the Township. This spring there was a consent judgement on three violations, again ignoring the rules of their SUP. I commend Manigold for the olive branch proposal. I cannot believe that Oosterhouse and his lawyer argued against it. I hope the Board continues to take a firm stand and you will have the support of the whole community.

Monnie Peters, 1425 Neah Ta Wanta Rd., said I agree with what David Taft said about Bonobo. From the time the Board gave Bonobo conditions I thought it would be problem. Stay strong on this. Regarding replacing Reardon, I think pulling the old RFQ is fine but Reardon did more than just what a Planner does. Capture from Reardon all the non-planner work she did.

Vicki Shurly, 1156 Lin-Dale Dr., said the Library Board will be charged with any decisions regarding what happens with the Library. The Library has been in the school from the very beginning. In the 1990's the Library Board had the foresight and the wisdom to purchase 5.2 acres at Island View and Center Roads. The Library loves being in the school. The Library Board is in a hold pattern waiting to see what is going to happen with the school. TCAPS has offered two years but understand that those two years started July 1st. In regards to the rent, it is true the rent is \$6,000 a year. It is only 3,140 sq. ft. of space and it is not ours. It is co-habited space by TCAPS school library. Also the TCAPS school librarian is one there one day a week. We essentially run the library for TCAPS. I do not know what will happen but I promise you that you will always have a library somewhere on Old Mission Peninsula.

Cory Phelps, 9877 Sunset West, thanked the Supervisor for going to meetings with TCAPS. I want the Board to know what parents and PTO has been meeting Saturday mornings every week at the school. TCAPS has handicapped the school for years based on the message the school is on the chopping block. Parents have taken

their kids elsewhere not because the school is not great but because of the uncertainty. Old Mission School has the most transfer of talented and gifted students in the district. That takes out 14-20 students every year. As far as aging population and density, Isaiah Wunsch has also run the numbers and it does not agree with TCAPS numbers. There are two pre-school programs this year which is also a profit center for TCAPS. The Township can make this happen. It will take fund raising.

Maura Sanders, 20202 Center Rd., said I wanted to say the conversation tonight regarding the increase in the Fire Department millage is very important. As Park Chair, with the number of people out here enjoying the parks the Fire Department is important for the health and safety residents and visitors. Also, Reardon does a lot of work above and beyond what a Planner normally does. Sanders thanked Reardon for all the work she has done for the Township.

Mark Nadolski, 10 McKinley Rd., said I want to thank the Planning Commission and the Township Board that made sure AT&T put in a tower that actually looks like a tree.

BOARD COMMENTS

Weatherholt welcomed the two new members to the Board.

Byron thanked Reardon.

Meeting adjourned at 10:00 p.m.

Respectfully Submitted,
Deb Hamilton, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for October 11, 2016