
Diagnostic Review of the
**Peninsula Township
Zoning Ordinance**

**Prepared for
Peninsula Township, Michigan**

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INTRODUCTION

We have reviewed the Peninsula Township Zoning Ordinance, and this Diagnostic Review identifies the strengths, weaknesses, and essential areas of improvement – such as adding tables, charts, and graphics, fixing fragmented, inconsistent, or outdated language, and addressing irrelevant and incorrect cross-references, redundancy, contradictory language, conflicts, and changed laws. With the identified areas of improvement, the Township can address the update of the Zoning Ordinance in a proactive manner.

The purpose of this Diagnostic Review is not to identify every item in the Zoning Ordinance that must be amended; rather, this Diagnostic Review identifies major tasks to undertake during the amendment process and recommendations for addressing those tasks. This Diagnostic Review includes topics discussed at the January 14, 2016 Kick-off meeting, as well as our findings from the following Township documents:

- Peninsula Township Zoning Ordinance (adopted in 1972)
- Peninsula Township Master Plan (adopted in 2011)
- Minutes of the Peninsula Township Planning Commission (including Sub-Committee Notes) from January 2014 through December 2015.
- Minutes of the Peninsula Township Zoning Board of Appeals from January 2014 through December 2015.
- The [Old Mission Peninsula Scenic Heritage Route Management Plan](#) (adopted in 2012).
- Draft Zoning Ordinance amendment documents previous prepared for Local Food Production Facility, Winery-Chateau, Use by Right Winery, Food Processing Plants, Shoreline Overlay Regulations (from 2010), Agricultural Preservation & Development Standards (from 2012), and Bed and Breakfast Establishments.

CLARITY AND SIMPLICITY OF USE

HYPERLINKS AND CROSS-REFERENCES

As the Zoning Ordinance has been amended over time, some of the cross-referenced sections may become incorrect because cross-references are not always updated when sections are added or deleted from the Zoning Ordinance. To remedy this problem and allow users to electronically click on a link to get to a section, we will fix any cross-reference errors and “hyperlink” all cross-referenced sections of the Zoning Ordinance in the electronic document. By properly hyperlinking all sections and cross-references, the cross-references can be automatically updated whenever the Zoning Ordinance is amended.

GRAPHICS

Many areas of the Zoning Ordinance refer to diagrams; however, the corresponding diagram is missing. We recommend inserting these diagrams and adding new graphics where they can enhance the effect of the text. Graphics are especially important to illustrate lot types, building heights, landscaping requirements, signage, lighting, and clear vision zones.

EFFECTIVE LANGUAGE

- **Passive vs. Active Language.** To make the Zoning Ordinance an effective document to regulate the use of land and buildings, the regulations must have active language instead of passive language (e.g., “shall” instead of “should,” “must” instead of “may,” etc.).
- **“Intent.”** Many areas of the Zoning Ordinance refer to the “intent” of a regulations. While a statement of intent can give guidance to the Township and the applicant, the statement must be supported with standards that are not subjective.
- **Confusing Text.** In many areas, the text is either confusing or contradictory. In many cases, there is more text than is needed to describe a regulation. We will identify these problem areas and recommend more concise, effective text.

ORGANIZATION OF ARTICLES AND SECTIONS

One of the major problems with most Zoning Ordinances is that they do not organize all of the sections coherently into corresponding articles. This causes the user to sift through several different sections to locate the applicable regulation. We recommend organizing the Zoning Ordinance into the following articles, which are referenced through this Diagnostic Review.

- A. Title, Purpose, and Scope.** This article will contain sections for Title, Purpose, Scope, Interpretation, Repeal, Effective Date, Severability, and Conflicting Regulations. This article will be very short, and the purpose is to cover some basic legal requirements.
- B. Definitions.**
- C. Zoning Districts and Map.**
- D. Schedule of Regulations.**
- E. Supplemental Zoning District Standards.** Site Condominiums, PUD's, and Overlay Districts.
- F. Standards Applicable to Specific Uses.**
- G. General Provisions.**
- H. Environmental Performance Standards.**
- I. Parking, Loading, and Access Management.**
- J. Landscaping and Screening.**
- K. Signs.**
- L. Nonconformities.**
- M. Administrative Organization.** Zoning Administrator, Township Board of Trustees, Planning Commission, and Zoning Board of Appeals.
- N. Administrative Procedures.** Permits, Site Plan Review, Special Land Use Review, Variances and Appeals, Amendments, Public Hearing Procedures, and Enforcement.

DEFINITIONS

While many definitions will remain the same or have only minor changes, we propose the following changes. Also, we will proposed new definitions where the such new definitions will clarify or support the Zoning Ordinance.

- **Adult Foster Care Facility , Child Care Organization, Child Care Center, Day Care Center, Family Day Care Home, Group Day Care Home, and related definitions.** We will review the existing definitions of these types of uses to ensure they are consistent with State Law, and we will propose additional definitions, as needed, to comply with State Law. We will also make sure that the proper State Acts are referenced.
- **Accessory Building.** Although the definition of “Accessory Building” includes an accessory structure, we recommend making this term “Accessory Buildings and Structures.”
- **Adequate Permanent Access.** This definition should be included in “Right of Way” or the term should refer to “Road – Access by Easement – Easement Access.” Also, the definition of “Adequate Permanent Access” includes a dimensional regulation that should be relocated to the proposed article on Parking, Loading, and Access Management.
- **Adjacent – Adjoining Area.** The definition refers to lots fronting a major thoroughfare and not the common definition of “adjacent” or “adjoining.” We recommend simplifying this definition to be more in line with the common definition, irrespective of whether the lot is on a major thoroughfare.
- **Basement.** A basement is described as a “story,” but the definition excludes some basements from the definition of “story.” We recommend not referring to all basements as “stories.”
- **Boat House.** The definition includes a dimensional regulation that should be relocated to the proposed article on General Provisions, Standards Applicable to Specific Uses, or Shoreline Overlay District.
- **Boat Livery.** This definition does not appear anywhere else in the Zoning Ordinance. It should be distinguished from a “Marina” and located in the appropriate zoning district.
- **Building Area.** This definition should be changed to “Floor Area” and it should be consistent with the definition of “Floor Area” in the parking regulations as well as any other reference to “Floor Area” in the Ordinance. Also, there should be distinctions between “Floor Area, Usable” and “Floor Area, Gross.”
- **Building.** This definition should state that a building must have permanent attachment to the ground or be attached to something having permanent attachment to the ground.
- **Building, Height of.** This definition should not measure all building heights to the peak, as it would encourage more flat roofs. Instead, we recommend revising this definition to measure the height to the deck line of mansard roofs or to the mean height level between the eaves and ridge for hip, gable, and gambrel roofs. We also recommend adding graphics that illustrate how height is measured for each type of roof.
- **Cellar.** A cellar is described as a “story,” but the definition excludes some cellars from the definition of “story.” We recommend referring to cellars as “basements” (see definition of “Basement” above).
- **Dwelling, Multiple.** This definition should clarify that units are attached and may also include duplexes, triplexes, and quadplexes.
- **Dwelling Unit.** This definition should be revised to state that dwelling units include cooking, sleeping, and bathroom facilities.
- **Easement.** This definition only includes a “right of way,” but should be revised to also include utility easement and non-right-of-way easements. Any references to “Easement” that are intended to only include access easements should be changed to “Access Easement” or “Road – Access by Easement – Easement Access.”
- **Essential Services.** This definition should state that telecommunication towers, solar energy facilities, and wind energy conversion systems are not essential services.
- **Family.** We will review the definition of “family” and, if needed, propose amendments required to comply with federal fair housing regulations.

- **Feeder Lots.** We recommend revising this definition to be consistent with the State’s definition of a concentrated animal feeding operation (CAFO).
- **Fence.** We recommend eliminating the requirement that fences be at least 50% open. If there are areas where fences must be at least 50% open, they should be addressed in the General Provisions article.
- **Gasoline Service Station.** This definition allows for the servicing of motor vehicles, but we recommend having separate definitions for “Automobile Repair, Minor” and “Automobile Repair, Major” to distinguish small repairs (oil changes, brakes, tires, etc.) from major repairs (e.g., engines, transmissions, collision, rustproofing, etc.). The definition of “Gasoline Service Station” also allows for washing and cleaning, and we recommend adding a new definition of “Car Wash” because there may be locations that are sufficient for a car wash but not a gas station, and vice versa.
- **Impervious Surface.** If the proposed definition of “Lot Coverage” (see below) excludes such surfaces as driveways, sidewalks, etc., then we recommend defining “Impervious Surfaces” to include all of these surfaces as well as “Lot Coverage.” When the Schedule of Regulations are reviewed, the Township may want to consider adopting a maximum impervious surface coverage in addition to maximum lot coverage as a means of limiting the area of a lot that is covered by buildings, structures, and other impervious surfaces. For example, if the maximum lot coverage is 25%, the maximum impervious surface coverage could be 50%.
- **Junk Yard.** This definition includes any premises upon which 2 or more unlicensed used motor vehicles which cannot be operated under their own power are kept or stored for 15 days or more. This implies that all lots are entitled to have 1 such vehicle. We recommend making this definition consistent with the Township’s Junk Ordinance.
- **Kennel.** We recommend splitting this definition into “Kennel, Private” and “Kennel, Commercial” to distinguish between intensity of use, number of dogs, permitted training, and boarding.
- **Lot.** We recommend clarifying this definition to state that 2 or more parcels may be treated as a single lot only if a lot, by itself, cannot meet the minimum area, width, setback, lot coverage, or frontage requirements. The intent is for this to be a housekeeping task, with no changes to the current regulatory effect. We also recommend adding graphics of the lot definitions and lot types to make the definitions easier to interpret and administer.
- **Lot Coverage.** We recommend adding a definition of “Lot Coverage” and determining what it includes and excludes. For impervious surfaces that might not be considered to be “Lot Coverage” (e.g., driveways, sidewalks, etc.), we will recommend a separate definition of “Impervious Surfaces.”
- **Lot, Through.** A definition of “Through Lot” (i.e., a lot with frontage along the front and rear) should be added.
- **Lot, Width of (Minimum).** The minimum lot width is currently measured at the shortest distances between the side lot lines within 100 feet of the front lot line. We recommend considering measuring lot width along the frontage(s) and/or at the front yard setback line(s).
- **Major Thoroughfare.** This definition should be more specific. Also, a definition of “Minor Thoroughfare” should be added.
- **Mobile Home and Mobile Home Park.** We will review these definitions in accordance with the applicable State Act and propose amendments as necessary.
- **Ordinary High Water Mark.** We recommend citing the agency responsible for determining the OHWM.
- **Practical Difficulty.** The definition of “Practical Difficulty” should be in the Review Procedures article under the Zoning Board of Appeals procedures.
- **Public Utility.** This definition should state that telecommunication towers, solar energy facilities, and wind energy conversion systems are not public utilities.
- **Recreational Unit.** We recommend adding a definition of “Recreational Vehicle” and distinguishing between a “Recreational Unit” and “Recreational Vehicle.”
- **Roads.** There are several different types of roads defined. We recommend consolidating definitions, where possible.

- **Signs.** Because of the complexity of sign regulations and the importance of keeping definitions consistent with the regulations, we recommend relocating the definitions related to signs to the beginning of the proposed Signs article. Also, many of the sign definitions are content-based. A recent decision by the U.S. Supreme Court requires all communities to review their sign regulations and make them content-neutral in accordance with the decision. Based on our review of the sign definitions, many of these definitions must be amended to be content-neutral. Instead, the definition should describe the sign based on its type, location, material, etc.
- **Structure.** This definition excludes fences over 4 feet in height and many other items. We recommend removing all of the exemptions from the definition and allowing certain exemptions in the appropriate regulatory section in the General Provisions article. For example, any fence should be considered a structure, but the regulation for fences may exempt fences 4 feet and under from permitting or other forms of regulation. This may be a complicated task, and many communities have unique regulations for structures.
- **Wall.** We recommend eliminating the requirement that wall be 50% or more open. If there are areas where fences or walls must be at least 50% open, they should be addressed in the General Provisions article.
- **Yard, Front.** A definition of “Yard, Front” should be located near the definitions of “Yard, Rear” and “Yard, Side” and graphics should be added that illustrate where the yards are located.

PHASE 1. ZONING DISTRICTS

PERMITTED USE TABLE

Each zoning district includes a long list of permitted and special land uses, which makes for several pages of duplicated and unnecessary text. To simplify the list of permitted and special land uses, we recommend incorporating a land use table similar to the table illustrated below. The table would be an excellent organization tool for the Township and the public by including all of the uses regulated by the Zoning Ordinance and in what districts those uses are permitted. Also, the Zoning Ordinance defines some uses that are not listed in any zoning district, and the table would help identify and resolve that problem. Finally, each use with specific development standards would have a clickable hyperlink to the section of the Zoning Ordinance that contains the development standard.

Sample Table of Permitted Uses by District

Table 1. Table of Permitted Uses by District

Key: ■ Principal Permitted Use ● Special Land Use [blank] Use Not Permitted

USE	RR (A)	R-1 (A)	R-2 (A)	R-3 (A)	PO-1 (F)	C-1 (F)	C-2 (F)	C-3 (E, G)	C-4 (E, H)	I-1 (I)	I-2	DEVELOPMENT STANDARD
RESIDENTIAL USES												
Mixed Use Dwelling Unit						■		■				Section 74-2.424
Low Intensity Multiple Family (3-4 units)			●	■								Section 74-2.425
High Intensity Multiple Family (5+ units)				●								Section 74-2.426
One Family Dwelling Unit	■	■	■	■				■				Section 74-2.427 Section 74-5.105
Townhouse				■				●				Section 74-2.428
Two Family Dwelling Unit			■	■				■				Section 74-5.105
Accessory Dwelling Unit	●	●	●					●				Section 74-2.402
LODGING USES												
Bed & Breakfast	●	●	●	●				■				Section 74-2.407
Boarding or Lodging House				■								
Inn						■	●	■	■			Section 74-2.420
Hotel						■	●	■	■			Section 74-2.420
OFFICE and SERVICE USES												
Bank or Financial Institution					■	■	■					
Health or Exercise Club or Spa (Small)					■	■	■	■				
Health or Exercise Club or Spa (Large)							●	●				
Office					■	■	■	■				
Personal Service Establishment					■	■	■	■				

ZONING DISTRICT SUMMARIES

In addition to the land use table, each zoning district will have a 1-page zoning district summary, which will include the district purpose, permitted and special land uses, dimensional standards from the Schedule of Regulations, and clickable links to general standards sections of the Zoning Ordinance that apply (e.g., landscaping, lighting, signs, etc.). This zoning district summary page will work in tandem with the land use table; users who want to know in what district a particular land use is permitted will refer to the land use table, while users who want to know all of the relevant information about a particular zoning district will refer to the zoning district summary page of the district.

CONSIDERATION OF NEW ZONING DISTRICTS TO IMPLEMENT THE MASTER PLAN

The Master Plan recommends creating new zoning districts for Agricultural Production, Rural Agriculture, and Public/Semi-Public. Because new districts are a major task of any Zoning Ordinance update, it is essential to determine which districts the Township desires, what performance those districts must achieve, and where

those districts will be located. The following are our comments on the potential creation of these districts at this time:

- **Creation of an Agricultural Production Zoning District and a Rural Agricultural Zoning District.** The Master Plan recommends creating 2 agricultural districts, though it does not state many differences between the 2 districts. Presumably, the districts would be split based on the agricultural uses permitted and the quality of the land. However, if there is not a clear direction on how to split the existing A-1 Agricultural zoning district, differences within the district can be resolved by adding Agricultural Production overlay standards or developing land use regulations based on the specific uses (e.g., Local Food Processing Facility, Food Processing Plants, Winery-Chateau, etc.).
- **Creation of a Public and Semi-Public Zoning District.** The Master Plan recommends a new Public/Semi-Public zoning district to differentiate standards for land owned by the Township and other governmental agencies. However, the district could also have the opposite effect of excluding certain uses by publicly-owned land outside of the Public/Semi-Public zoning district. Therefore, we recommend revising the land use regulations for public uses and determining in which districts to allow them. If it is determined at that time that a separate zoning district should be created for publicly owned land, we will propose a district at that time.

CONSOLIDATION OF RESIDENTIAL ZONING DISTRICTS

The Master Plan calls for the consolidation of Residential zoning districts. Based on our review of the residential zoning districts, we recommend that the Township consider consolidating the R-1B and R-1C because they permit the exact same land uses and most of their standards in the Schedule of Regulations (Section 6.8) are the same. The only differences in the Schedule of Regulations are as follows:

Zoning District	Minimum Lot Size	Minimum Front Yard Setback	Maximum Lot Coverage
R-1B	25,000 sq. ft.	30 feet	15%
R-1C	20,000 sq. ft.	25 feet	25%

If consolidation of these districts is considered, we must be careful of any nonconformities that could be created. For the differences between the R-1B and R-1C districts for minimum lot size, minimum front yard setback, and maximum lot coverage, any differences that cannot be reconciled in a consolidated zoning district might be reconciled in a new Shoreline Overlay District (below), which would apply to all underlying zoning districts. However, if too many nonconformities would be created by the consolidation of the R-1B and R-1C districts, then consolidation of these districts may not be appropriate at this time.

CREATE SHORELINE OVERLAY DISTRICT

The Master Plan calls for the creation of a Shoreline Overlay District as a means of protecting the areas along and around the shoreline. The protections recommended in the Master Plan include minimizing artificial shoreline, requiring storm water management, and protecting wildlife habitats. The Township has a Storm Water Control Ordinance and a recommended enforcement policy (dated May 22, 2014) that includes storm water review for lots adjacent to and near the shoreline. Additionally, the Township has a draft of Shoreline Overlay regulations (dated April 5, 2010) that were intended to apply to all land within 200 feet of the Ordinary High Water Mark. Both documents will be used in the development of the proposed Shoreline Overlay District, which will be an overlay district on the Zoning Map that will apply to all underlying zoning districts. The following could also be part of the Shoreline Overlay District:

- **Removal of Shore Cover.** Section 7.4.3 regulates the removal of vegetation near the shoreline. Rather than the ZBA permitting the removal of vegetation, the removal permit should be reviewed and enforced administratively unless a variance or appeal is required.
- **Michigan Water Resources Committee.** Section 7.4.5 permits the Zoning Administrator to have the Michigan Water Resources Committee review plans when necessary. We will determine if this committee or a similar state committee is still active and whether this requirement should remain.

- **Shared Waterfront Ownership.** Section 7.4.2 includes provisions for shared waterfront ownership for multiple families. Regulating the number of families can be difficult based on how a family is defined by federal law. We recommend considering regulating shared waterfront ownership by number of owners, docks, hoists, and watercraft. Also, portable toilets are permitted but there are no time restrictions. We recommend that the Township consider time restrictions for portable toilets on lots with shared waterfront ownership.
- **Decks and Storage.** The provisions for decks and storage for waterfront lots are currently in the R-1A district (Section 6.2.2(2)(d)) even though the Schedule of Regulations (Section 6.8) implies that these provisions apply to all districts. Therefore, we recommend including the regulations for decks and storage on waterfront lots in the General Provisions article or a new Shoreline Overlay District, and cross-referencing where necessary. A cross-reference to the corresponding graphic of the regulation should be added. Finally, we recommend applying these standards to any non-deck structures, such as patios.
- **Boat Hoists and Docks.** The provisions for boat hoists and docks are currently in the R-1A district (Section 6.2.2(2)(c)) even though the Schedule of Regulations (Section 6.8) implies that these provisions apply to all districts. Therefore, we recommend including the regulations for boat hoists and docs in the General Provisions article or a new Shoreline Overlay District, and cross-referencing where necessary.

CREATE HISTORIC PRESERVATION OVERLAY DISTRICT

The 2011 Master Plan recommends the creation of a Historic Preservation Overlay District as a means of preserving identified historic resources. The Old Mission Peninsula Scenic Heritage Route Master Plan identifies historic structures and properties along the M-37 corridor. Before the Township establishes the boundaries of a Historic Preservation Overlay District, the Township must create a local Historic Commission and identify the historic resources in accordance with Public Act 169 of 1970, as amended. Because these tasks are unlikely to be completed before the adoption of the Zoning Ordinance, we recommend creating the text of the Historic Preservation Overlay District only. The text of the Historic Preservation Overlay District would take effect upon the completion of the of the historic resources map at some point in the future. The text of the Historic Preservation Overlay district will include a review procedure for changes to historic structures.

AIRPORT OVERLAY DISTRICT

Section 7.9 includes provisions for the Airport Overlay District, which became an issue when the AT&T tower was recently reviewed. If possible, we will put the Airport Overlay District on the Zoning Map.

SCHEDULE OF REGULATIONS

Based on our review of the ZBA minutes from 2014-2015, there are several recurring variance requests where the Schedule of Regulations should be reviewed to determine if they can be improved to address nonconforming lots as follows:

- **Lot Coverage.** Many lot coverage variance requests are for lots that do not meet the minimum lot area of the district. We recommend a sliding scale, where lots with nonconforming lot areas are granted a higher percentage of lot coverage (or a maximum square footage of lot coverage) based on the size of the lot. For example, for nonconforming lots in the R-1C district (where the maximum lot coverage is 25% and the minimum lot area is 20,000 sq. ft.), the maximum lot coverage could be, say, 2,500 sq. ft. or 25%, whichever is more.
- **Setbacks.** Like with lot coverage variance requests, many setback variance requests are on lots where it is impossible to meet setbacks based on nonconforming lot area or lot width. The Township may want to consider a limited sliding scale for unusually small and/or narrow lots. For example, for lots less than the minimum lot width, the minimum side yard setback could be tied to a percentage of the lot width, with narrower lots permitted to have smaller side yard setbacks.

PHASE 2. GENERAL DEVELOPMENT REGULATIONS

DEVELOPMENT STANDARDS FOR SPECIFIC LAND USES

Currently, the development standards for specific uses are scattered throughout several areas of the Zoning Ordinance. We recommend consolidating all of the development standards for specific uses into one article, with a section for each use. The following are the land uses with specific development standards, with their current section in parentheses. Please note that this is not a comprehensive list, as more sections will be added throughout the process:

- Adult Entertainment (New Section because regulations are required by law)
- Adult Foster Care Facilities (currently Section 8.7.3(9))
- Barn Storage (currently Section 6.7.2(18))
- Bed and Breakfast Operations (currently Section 8.7.3(6))
- Campgrounds (New Section, which will exclude Recreational Vehicle Parks)
- Child Care Center (New Section)
- Day Care, Group Home (currently Section 6.2.2(7))
- Day Care, Family Home (currently Section 6.2.2(7))
- Drive-Through Uses (New Section)
- Dwelling, Multi-Family and Apartments (New Section)
- Dwelling, Single-Family Residential Detached (New Section because we recommend minimum standards, such as minimum elevation width and requiring a permanent foundation)
- Dwelling, Single-Family Residential Attached (New section because we recommend minimum standards, such as limiting the number of attached units that can be in one building)
- Farming and Horticultural Use (currently Section 6.2.2(6))
- Food Processing Plants (currently 8.5)
- Gasoline Service Stations (currently Section 8.8)
- Golf Courses and Country Clubs (currently Section 8.7.3(4))
- Greenhouses and Nurseries (New Section)
- Home Occupation (currently Section 6.2.3(2))
- Hospitals and Nursing Homes (New section because these may be proposed uses in the future)
- Hotels, Motels, and Tourist Courts (currently 8.10)
- Incinerators and Sanitary Landfills (currently Section 8.7.3(1))
- Institutional Structures and Uses (currently Section 8.6)
- Indoor Recreation (New section because these may be proposed uses in the future)
- Institutional Uses (currently Section 8.6)
- Junk Yards (New Section because we recommend minimum standards)
- Keeping of Pets and Livestock (currently Section 6.2.2(5))
- Kennels (New Section because we recommend minimum standards)
- Local Food Production Facility (currently 6.7.2(19))
- Marinas (currently Section 8.7.3(5))
- Mobile Homes (On Individual Lots: currently Section 6.7.2(3); In Residential Districts; currently 8.9)
- Mobile Home Parks (currently Section 8.2)
- Outdoor Recreation, Private (New section because these may be proposed uses in the future)
- Outdoor Storage (currently 6.6.3(1) and 7.2.4)
- Public Recreation (NEW, although referenced in Section 6.2.2(3))
- Recreational Unit Parks (currently Section 8.4)
- Remote Winery Tasting Rooms (currently Section 8.7.3(12))
- Rental of Non-Owner Occupied Dwelling (currently Section 6.2.2(2)(e))
- Roadside Stands (Section 6.7.2(8))
- Sewage Treatment and Disposal Installations (Section 8.7.3(2))

- Special Open Space Uses (currently Section 8.7.3(3))
- Warehousing and Light Industrial (currently Section 8.7.3(7))
- Winery, Use by Right (currently Section 8.7.3(10)/new)
- Winery Chateau (currently Section 8.7.3(10)/new)
- Wind Energy Conversion Systems (currently Section 8.7.3(8))
- Wireless Communications Facilities (currently Sections 7.12 and 8.7.3(11))

We will review the development standards for each use and make recommendations for amendments based on better planning and zoning practices or changes in state or federal law.

PARKING, LOADING, AND ACCESS MANAGEMENT

- **Single Article.** We recommend placing all standards for parking, loading, driveways, and roads into a single article and cross-referencing as necessary. For example, Section 6.2.5 includes general safety standards for residential driveways in the R-1A district only, but there should be uniform standards that apply to all residential driveways.
- **Joint Parking.** We recommend revising the joint parking standards to allow the Planning Commission (not the ZBA) to grant fewer parking spaces for 2 or more uses that share a parking lot if the peak use times are different. We recommend citing the most recent edition of Parking Generation, which is published by the Institute of Traffic Engineers, or other acceptable expert study.
- **Parking Space Modifications.** We recommend allowing the Planning Commission to use the most recent edition of Parking Generation, or other acceptable expert study, to modify the existing parking space requirements where the required parking is either too much or too little.
- **Parking Standards for Specific Uses.** Review parking standards for specific uses to ensure they are appropriate based on current parking patterns.
- **Uses Not Mentioned.** For uses not mentioned, we recommend including a reference to the most recent edition of Parking Generation.
- **Conflicting Parking Standards.** Any conflicting parking standards will be resolved.
- **Graphics.** We recommend adding a graphic that illustrates the required layout of Section 7.6.4(2)(a).
- **Ingress and Egress Standards.** While adequate ingress and egress is required in Section 7.6.4(2)(c), we recommend minimum dimensional standards.
- **Cross-Access.** In areas where more dense development is anticipated, we recommend requiring cross-access easement agreements where cross-access would be beneficial to the public, improve traffic flow, and relieve traffic congestion.
- **Private Roads.** We recommend locating the Road Standards of Section 7.10 into the article for Parking, Loading, and Access Management unless the Township wants to adopt a separate private road ordinance as a general ordinance. In either case, one of the biggest problems facing the Township is Section 7.10.11, which requires an owner to improve the road before a land use permit or occupancy permit is required. The ZBA has received many variance requests from this requirement, and has granted variances based on the large expense required in many cases. We will work with the Planning & Zoning Director and Township attorney to identify alternative standards that are easier to administer and achieve compliance over the long term.

LANDSCAPING AND SCREENING

The landscaping and screening standards are scattered throughout various sections of the Zoning Ordinance (e.g., Sections 6.6.3(1), 7.2.6(2), and 7.6.4(3)). We recommend consolidating all of the landscaping standards into the new Landscaping and Screening article. We recommend the following changes to the landscaping regulations:

- **Required Landscaping.** For organizational purposes, we recommend including a section for each of the following landscape design requirements that currently exist:
 - Street Trees
 - Frontage Landscaping

- Buffer and Greenbelt Requirements
- Parking Lot Landscaping
- Loading Area Landscaping
- Garbage and Dumpster Screening
- Landscaping Applicable to Specific Uses

By having a section dedicated to each design requirement, the user can easily follow along with the requirements.

- **Graphics.** We recommend including graphics to communicate the standards of the landscape requirements and provide an illustration of how landscaping enhances a site and its surrounding area.
- **Landscape Material Standards.** We recommend adding provisions that address minimum caliper and height standards, planting standards, replacement of dead, dying, or diseased landscaping, irrigation requirements, mechanical equipment screening, and foundation plantings (i.e., shrubs and ornamental trees along wide nonresidential buildings).
- **Buffering and Greenbelt Standards.** For buffering and greenbelt standards, we recommend a table that lists all of the proposed land uses in the left column (e.g., single-family residential, multi-family residential, commercial, office, industrial, etc.) and the abutting zoning district in the top row. Within this table would be specific buffering requirements based on the proposed land use and the district that it abuts. For example, commercial use abutting a residential district might require a wide buffer with dense evergreen screening while a commercial use abutting another commercial use might only require a loose row of trees in a narrow buffer area. This table would condense a large amount of text into a simple, easy-to-understand table for the user.
- **Recommended and Prohibited Species.** We recommend having a recommended and prohibited plant material lists. We will recommend lists based on desirable species (including species identified in the Old Mission Peninsula Scenic Heritage Route Master Plan) and recent history with species and diseases.

SIGNS

Last summer, the United States Supreme Court decided the case of *Reed v. Town of Gilbert* where it held a municipality's sign ordinance unconstitutional because it violated the First Amendment. While the signs at issue were noncommercial signs (temporary directional signs, ideological signs, and political signs), the Court's decision impacts many other types of signs. To address these concerns, as well as other sign-related issues, we recommend the following:

- **M-37.** Emphasizing that M-37 is a Pure Michigan Byway (Heritage Route) and that proper sign scale, placement, and design is required along the corridor. We also recommend design along the corridor that fulfills the goals of the Old Mission Peninsula Scenic Heritage Route Master Plan.
- **Billboards.** Removing the regulation for "billboards" and simply requiring signs to meet certain standards such as on location, area, height, lighting, and zoning district without respect to the content of such a sign.
- **Approving Authority.** Making the Zoning Administrator the approving authority for signs instead of the Planning Commission and ZBA for special land uses and other identified uses. This will reduce the number of requests to the Planning Commission and ZBA for sign changes, and will make the standards more objective.
- **Content Neutrality.** Limiting the standards that regulate the content of signs, which can be a violation of the First Amendment, based on review and feedback from the Township attorney. This includes considering whether to distinguish between "commercial" and "non-commercial" signage.
- **Substitution Clause.** Adding a substitution clause, which allows any commercial copy to be substituted with non-commercial copy on a lawful sign structure and allows any sign permitted by the Zoning Ordinance to have a non-commercial message.
- **Lighting and Message Changes.** The Signs article should include provisions for lighting and frequency of content changes.
- **Exempt and Prohibited Signs.** The list of exempt signs and prohibited signs should be expanded and clarified in a more clear and content neutral manner.

- **Sign Types By Zoning District.** For sign types and areas by zoning district, we recommend developing a table that distills several pages of existing text into a 1-page, easy-to-read table that clearly communicates the signage requirements for each district.

STORM WATER MANAGEMENT

Storm water detention standards are currently located in Section 7.2.5, but do not provide best practice standards for capacity retention, storm water plan specifications, construction and inspection, and maintenance. We recommend locating these standards into a proposed Environmental Performance article, citing the existing Storm Water Control Ordinance and incorporating the recommended enforcement policy (dated May 22, 2014) that includes storm water review for lots adjacent to and near the shoreline, and including additional standards. Among the new standards recommended are the implementation of Best Management Practices (BMPs) for smaller-scale projects. In communities where BMP's are required for small projects, the property owner often opts to construct an underground infiltration trench because, if properly designed and constructed, an underground infiltration trench allows lawn area to be planted over the trench. Other BMP's have also been used, such as rain gardens, rain barrels, and swales. We recommend locating the storm water management standards in the proposed Environmental Performance article.

LIGHTING

- **Cutoff.** Section 7.14, which regulates exterior lighting, should be amended to describe what a full cutoff fixture is and include a graphic.
- **Illumination Level.** The regulations should have a maximum illumination level (footcandles) at a property line and other areas on a site.
- **Waivers.** We recommend strict compliance with the lighting requirements (especially along the M-37 corridor, consistent with the Old Mission Peninsula Scenic Heritage Route Master Plan), but also recommend a waiver process through the Township Board or Planning Commission instead of the ZBA. The purpose of the waiver process is to grant waivers for temporary events and/or public events. The waiver standards should prohibit negative impacts on neighbors and include limits on time and illumination.
- **Environmental Performance.** We recommend locating the lighting standards in the proposed Environmental Performance article.

ENVIRONMENTALLY SENSITIVE AREAS

Although the Master Plan recommends an Environmentally Sensitive Area Overlay District, the goals of the district consist of protections for wetlands, steep slopes, and ridgelines. Rather than adopt an overlay district, we recommend adding the following sections in the proposed Environmental Performance article:

- **Wetland Protection.** This section would require minimum setbacks and buffering from any wetland.
- **Steep Slopes and Ridge Lines.** This section would require additional Township review for any grading changes to a ridgeline or slope over a certain percentage.

AGRICULTURAL SETBACKS

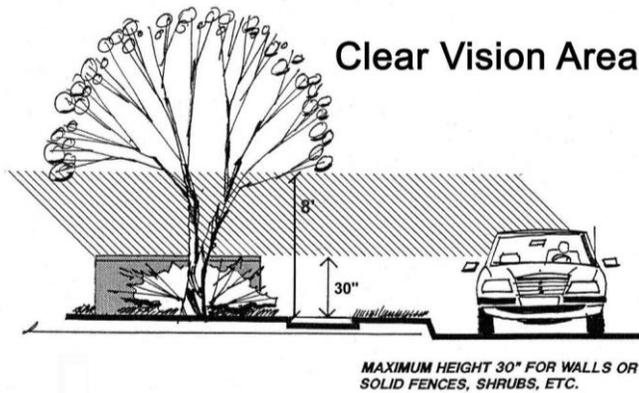
There are several sections that address agricultural setbacks (including Section 7.7). We recommend having a comprehensive section and cross-referencing to the section as needed.

SWIMMING POOLS

We recommend adopting standards in the General Provisions article for swimming pools that regulates locations and aesthetics.

CLEAR VISION AREA

Several sections (e.g., signs and private roads) regulate visibility at intersections through a required clear vision zone. We recommend consolidating the clear vision zone regulations into one section in the General Provisions article and adding a graphic that illustrates the clear vision zone similar to the graphic below:



- **Height.** Section 7.3.1 permits the height of ornamental church steeples and cupolas, chimneys, ventilators, and antennas to exceed the maximum height requirements. We recommend placing a maximum height for these structures or requiring a special land use permit for any structure over a certain height.

ACCESSORY BUILDINGS

In general, there are few restrictions on the size and location of accessory buildings. We recommend adding standards in the General Provisions article that regulate maximum size and permitted locations of detached accessory buildings. For example, many communities prohibit them in the front yard, require them to be no larger than the principal structure (non-agricultural uses only), and require a minimum separation distance from the principal structure.

FENCES AND WALLS

- **General Standards.** Section 7.13 regulates fences and it should also regulate walls. Provisions should be added that address waterfront setbacks (if any), aesthetics (prohibiting barbed wire and requiring the finished side of the fence to face outward), clear vision zone locations, and alternative heights and setbacks.
- **Seawalls and Retaining Walls.** Section 7.4.3(5) permits the Zoning Administrator to issue a permit for a seawall when a seawall is necessary to protect or prevent structures on the premises from erosion damage. We recommend that similar regulations be considered for retaining walls on a site. The ZBA has received many requests for retaining walls, and we recommend that certain retaining walls be approved by the Zoning Administrator if they meet grade, height, and engineering standards.
- **General Provisions.** We recommend locating the fence and wall standards in the General Provisions article.

ALTERNATIVE ENERGY

In addition to the Wind Energy Conversion System regulated in Section 8.7.3(8), we recommend addressing small-scale facilities for both wind energy and solar energy (e.g., solar panels on a roof or a wind tower in a yard). If the technology and cost-effectiveness of these facilities improves, we can expect them to be more prevalent. While we recommend adopting standards in the General Provisions article to allow property owners to generate electricity, we recommend regulating the location and development of these facilities to control potential negative impacts and ensure they are aesthetically compatible with the community.

RECREATION VEHICLES

Section 6.2.2(4) refers to Storage of Trailer Units as a permitted use in the R-1A district. If the intent is to regulate the storage of recreation vehicles, we recommend adding a section to the General Provisions and cross-referencing the regulations as necessary.

SITE CONDOMINIUMS

We will review the standards for site condominiums to ensure that they are consistent with the rest of the Zoning Ordinance and best planning and zoning practices. Site condominium standards are typically non-controversial, but we will make recommendations for improving the site design and layout.

PLANNED UNIT DEVELOPMENTS (PUD'S)

- **Density (Parallel Plan).** The permitted density of a PUD (Section 8.3) is based on a mathematical formula, with deductions for sensitive areas and infrastructure. It may be better to simply require a parallel plan from the applicant showing how the development could be built under conventional standards. This way, the density would be based on a tangible development as opposed to a formula that may not be realistic for a site.
- **Off-Site Open Space.** We recommend considering adding provisions to allow for off-site open space if the Township is interested in limited Transfer of Development Rights (TRD) arrangements.
- **Attached and Detached Units.** We recommend separate setback standards for attached and detached units, with attached units setback slightly more than attached units.
- **Garages and Stacked Flats.** We recommend requiring an attached garage and prohibiting stacked flats.

PHASE 3. ADMINISTRATIVE PROCEDURES AND STANDARDS

NONCONFORMING USES AND BUILDINGS

- **Expansion of Nonconforming Uses.** The standards for nonconforming uses in Section 7.5.1 should be limited to not permit the expansion or relocation of nonconforming uses without ZBA approval.
- **Changes to Nonconforming Structures.** The standards for nonconforming structures requires the ZBA to approval all changes to nonconforming structures, including additions that are completely conforming. Most communities allow the Zoning Administrator to approve a change to a nonconforming structure that is conforming (e.g., no vertical or horizontal expansion in a required setback, no additional height or lot coverage exceeding the maximum, etc.). The ZBA reviews many requests for completely conforming additions, and this process can be streamlined by allowing the Zoning Administrator to approve such additions.
- **Reconstruction or Re-Establishment.** The reconstruction or re-establishment of nonconforming uses and structures should be clarified to require certain forms of proof from the applicant when it is questionable when (or whether) an alleged nonconforming use or structure existed.

LAND USE PERMITS

Section 4.1.3 (Land Use Permits) should be revised to clearly state which uses and types of development require Land Use Permits, what information is required on the Land Use Permit application, and the procedure by which Land Use Permits are reviewed. As noted under “Site Plan Review,” we recommend a table that lists all of the informational items required in the Zoning Ordinance in the left column and the applicable procedure in the top row (Land Use Permit Review, Site Plan Review, and/or Special Land Use Review). This will eliminate redundancy of listing all of the informational items under each type of review. This will also take several pages of text and condense it into an easy-to-read table.

SPECIAL EXCEPTIONS (TEMPORARY PERMITS AND CONDITIONAL PERMITS) AND ESSENTIAL SERVICES

Currently, review of Special Exceptions (Temporary Permits and Conditional Permits) in Section 5.7.4 and Essential Services in Section 5.8 are a function of the ZBA. Because Special Exceptions and Essential Services are not appeals or variances, we do not recommend the ZBA being the reviewing body for these. We recommend that Special Exceptions and Essential Services be reviewed by the Planning Commission. Additionally, the Township may want to authorize the Zoning Administrator to approve minor Special Exceptions (e.g., landlocked lots with adequate permanent access and removal of farm-related residence in an Agricultural District).

SITE PLAN REVIEW

- **Consolidating Procedures.** Many site plan review requirements are located in various sections throughout the Zoning Ordinance, and we recommend consolidating all of the site plan review procedures into a single section.
- **Required Review Based on Activity Proposed.** To simplify which type of review is applicable, we recommend a table that lists all of the possible activities in the left column (re-occupancy, construction over a certain threshold, façade improvement, new building, etc.) and the applicable procedure in the top row (Site Plan Review, Special Land Use Review, Land Use Permit Review, etc.). This will allow Township staff and the applicant to quickly and easily determine the appropriate procedure for reviewing an activity.
- **Required Information Based on Review Required.** Currently, many sections of the Zoning Ordinance address the information required on a site plan or plot plan. To simplify the information required on an application, we recommend a table that lists all of the informational items required in the Zoning Ordinance in the left column and the applicable procedure in the top row (Site Plan Review, Special Land Use Review, Land Use Permit Review, etc.). This will eliminate redundancy of listing all of the informational items under each type of review. This will also take several pages of text and condense it into an easy-to-read table.

ZONING BOARD OF APPEALS (ZBA)

- **State Law References.** The State Law reference must be updated to reference the Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended).
- **Michigan Zoning Enabling Act Provisions.** The Zoning Ordinance must be updated to include the standards of the Michigan Zoning Enabling Act with respect to membership, removal, powers and duties, standards of review, and appeals to Circuit Court.
- **Administrative Organization.** We recommend locating all sections regarding membership, duties, and removal in the proposed Administrative Organization article, and locating all sections regarding procedures and standards of review in the proposed Administrative Procedures article.
- **Classifying Uses.** Section 6.1.4 permits the ZBA to classify a use which is not specifically mentioned in the Zoning Ordinance along with a comparable permitted or prohibited use for the purpose of clarifying the use regulations in any district. While the ZBA is not permitted to grant variances in the use of property, we recommend adding a provision that an amendment to the Zoning Ordinance be initiated to either permit or prohibit the use.

AMENDMENTS

Section 9.1 includes provisions for requesting an amendment to the Zoning Ordinance, but should include standards for approving or denying amendments. This way, when the Township takes action on an amendment application, it's decision will be more defensible.

PUBLIC NOTICES

Several sections of the Zoning Ordinance refer to public notices for hearings (variances, special land uses, and zoning amendments). We recommend adding a separate section of the Zoning Ordinance in the proposed Administrative Procedures article that describes all of the noticing requirements of the Michigan Zoning Enabling Act. This way, redundancy will be eliminated and only one section of the Zoning Ordinance will have to be amended when the noticing requirements of the Act are amended.

ENFORCEMENT, VIOLATIONS, AND PENALTIES

Several sections of the Zoning Ordinance address enforcement, violations, and penalties. We recommend consolidating all of these sections into a single section. This will eliminate redundancy, and it will be easier to articulate the standards to the public and, if necessary, in court.

EXPIRATION OF APPLICATION APPROVALS

The approval periods for approvals are currently different based on the approval (e.g., variances require construction within 6 months and occupancy within 1 year, land use permits require completion within 2 years, etc.). We recommend making the approval periods the same for variances, site plans, land use permits, and nonconforming structures.

PERFORMANCE GUARANTEES

Several sections of the Zoning Ordinance address performance guarantees (e.g., Sections 5.9, 6.9.6.3, and 7.10.12). We recommend having one section of the Zoning Ordinance address performance guarantees and cross-referencing to the standards as needed. Also, we recommend reviewing the types of bonds that will be acceptable, if any. During the severe recession in the late 2000's, many communities were left with partially-completed developments after a developer abandoned the project and/or went bankrupt. In many cases, the bonds ensuring completion of a project had expired. To address this issue, we recommend that the Township consider only allowing cash, certified check, letter of credit, or similar financial instrument that allows immediate access to cash if the Township is required to complete a development.

PHASE 4. ZONING MAP

This phase will include a draft of the Zoning Map that will include the existing Zoning Districts and, depending on initial Planning Commission review, may include the following:

- **Splitting the A-1 Agriculture Zoning District into the following 2 districts:**
 - **Agricultural Production Zoning District**
 - **Rural Agricultural Zoning District**
- **A Public and Semi-Public Zoning District**
- **Possible consolidation of the R-1B and R-C Zoning Districts into a single district**
- **A Shoreline Overlay District**
- **An Airport Overlay District**
- **Amending the boundaries of existing and proposed zoning districts**

ADDENDUM: SUBDIVISION CONTROL ORDINANCE AND LAND DIVISION ORDINANCE

Although updates to the Peninsula Township Subdivision Control Ordinance and Land Division Ordinance are not part of the Zoning Ordinance update project, these ordinances relate to the Zoning Ordinance. Thus, our comments on the Subdivision Control Ordinance and Land Division Ordinance are primarily from a standpoint of how they impact the Zoning Ordinance, and vice versa. Once the Zoning Ordinance is updated, it will be easier to return to the Subdivision Control Ordinance and Land Division Ordinance to update them as needed.

SUBDIVISION CONTROL ORDINANCE (ORDINANCE #8)

- **State Acts.** The Subdivision Control Act (Act 288 of 1967) was amended in 1997 and is now called the Land Division Act. Other State Acts should be updated as necessary.
- **Building Line or Setback Line.** The definition of “Building Line or Setback Line” describes only front yard setbacks and waterfront setbacks. The definition should apply to all setback lines.
- **County and State Agencies.** References to the “Tri-County Health Department,” “County Plat Board,” “Water Resources Commission,” and “Department of State Highways” should be updated to refer to the current agencies.
- **Floodplain.** The definition of “Floodplain” should be changed to the definition used by FEMA.
- **Lot.** The definition of “Lot” and the lot types should be reconciled with the Zoning Ordinance definitions so that both are consistent with each other.
- **Planning Commission.** The definition of “Planning Commission” should be updated to refer to the Michigan Planning Enabling Act, as amended (P.A. 33 of 2008).
- **Pre-Preliminary Plat.** The definition of “Pre-Preliminary Plat” should require the sketch to be professionally drawn.
- **Public Utilities.** The definition of “Public Utility” should exclude wireless communication, wind energy, and solar energy.
- **Street.** The definition of “Street” and street types should be reconciled with the Zoning Ordinance definitions so that both are consistent with each other.
- **Subdivide.** The definition of “Subdivide” should be consistent with the Land Division Act.
- **Submittal and Approval Deadlines.** The submittal and approval deadlines for plat applications should be updated to reflect the periods specified in the Land Division Act.
- **Information Required.** The lists of information required for plats should be reconciled with the site plan information required in the Zoning Ordinance so that both are consistent with each other.
- **Contours.** The contours required in Section 3.2.1(3)(k) should be at shorter intervals than 5 feet for slopes greater than 10%.
- **Plat Construction.** Section 2.3.7 permits the commencement of “plat construction” after the Township Board approves the preliminary plat. The Ordinance should specify what “plat construction” entails.
- **Bonds.** Please refer to our comments on Performance Guarantees in our Diagnostic Review of the Zoning Ordinance.
- **Depth-to-Width Ratio.** The maximum depth-to-width ration is 2.5-to-1. While the Land Division Act suggests 4-to-1, municipalities can require a lower ratio.
- **Uninhabitable Areas.** The uninhabitable areas in Section 4.7.11 should also refer to wetlands.
- **Private Roads.** Any references to private roads should refer to the private road standards of the Zoning Ordinance.
- **Street Trees.** If the Zoning Ordinance update includes a requirement for street trees in all residential developments, then we will recommend revising Section 5.4.7 to refer to the Zoning Ordinance regulation.

- **Farm Fence.** The farm fence standards in Section 5.4.13 are similar to farm fence standards in the Zoning Ordinance. After the Zoning Ordinance is updated, the standards of Section 5.4.13 might need to be amended so that both regulations are consistent with each other.
- **Variations.** Article 6 permits the Township Board to grant variations, with the recommendation of the Planning Commission. The ZBA may be a more appropriate body to hear and decide on variance requests. Also, we recommend that the standards for granting a variance are consistent with those of the Zoning Ordinance.
- **Penalties.** Section 7.2 classifies violations of the Ordinance as misdemeanors. We recommend classifying violations as civil infractions.

LAND DIVISION ORDINANCE (ORDINANCE #49)

- **Update.** The Township adopted the current Land Division Ordinance in 2012, so it is more current than most Land Division Ordinances in the state.
- **Application.** In Section 5, we recommend requiring the applicant(s) to submit the recorded deed of all parcels subject to the application. We also recommend that the survey include wetlands, floodplains, and the Ordinary High Water Mark, where necessary. Finally, although Section 5 allows the Assessor to waive the requirement for a survey, we recommend a survey in all cases because recorded legal descriptions can often be different from a surveyed boundary.
- **Depth-to-Width Ratio.** The maximum depth-to-width ration is 3-to-1. While the Land Division Act suggests 4-to-1, municipalities can require a lower ratio.
- **Cross-Reference.** The reference to “Section 9” in Section 7(e) should be changed to “Section 10.” This is a minor cross-reference correction.
- **Beach Parcels.** The body of the text in Section 9(a) states that the text is specifically intended to address divided waterfront parcels. Therefore, we recommend moving this statement to the beginning of Section 9(a).