

**Special Town Board Meeting
January 10, 2019, 7:00 pm
Peninsula Town Hall
Minutes**

1. **Call to Order** by Manigold at 7:00pm
2. **Pledge**
3. **Roll Call** Present: Wunsch, Achorn, Chown, Manigold, Bickle, Wahl, Sanger
4. **Brief Citizen Comments (for items not on the agenda)** None
5. **Approve Agenda** Bickle moved to accept the agenda; Wunsch seconded **Passed unam**
6. **Conflict of Interest** None
7. **Consent Agenda** None
8. **Business**

Manigold; Called a recess for 15 minutes to wait for Attorney Meihn to provide legal opinion for the pertaining to the Frederick R. Bimber letter that was tabled from November 27th Town Board meeting. Dealing with the Campbell/Oosterhouse land division.

Meihn: Has met with Mr. Bimber on this issue a few times. Meihn is concerned about the level of concern with the issue that has been raised regarding this division that occurred approximately five to five and a half years ago regarding a portion of Campbell's property. Campbell owned 40 acres and 20 acres was to be sold to Oosterhouse. At the same time Mr. Oosterhouse had purchased a portion of property that was owned in trust from Mr. Edmondson who was the trustee for this property. The property was purchased on a land contract from Edmondson to Oosterhouse. Oosterhouse then paid off the land contract to Edmondson. Mr. Edmondson or trust had granted the easement on the Edmondson sale property which ran north and south. The land division was reviewed and approved by several people in the Township, not just one. There was a reference in the sale of the property from Campbell/Oosterhouse that an easement would be placed east and west. This easement would connect to the easement that the Edmondson trust had provided to Mr. Oosterhouse to access the property. That was the application that was made and the information provided based upon those representations the Township approved the land division. Mr. Meihn reiterates that more than one person looked at and approved this land division, the Planner, Sally and others that were involved. The participants that filed the land division had never created the east/west easement. Mr. Meihn is concerned why the work was not done, the document was not filed. Meih has not interviewed Oosterhouse/Campbell regarding this and is sure they had their reasons for doing it or not doing it Meihn will find out as he goes through the process. The easement is not used it is completely in agriculture in vines. Understands the level of concern on a land division that has these things that were not followed through by the parties that received the land division but does not understand the level of concern when the property is in grapes and the easement is not used and there is no road, no PDR violation. In fact you can't you have a PDR violation if you don't have an easement. There is no easement here as Mr. Bimber indicated in the letter and Mr. Edmondson has stated over time. So if there is no easement there is no violation to the PDR. Mr. Meihn is befuddled with the level of concern here as there has been no use of an easement that does not exist there has been no paving on an easement that does not exist. There has no petition in the past six years to the Township to build the road on an easement that does not exist. This is a problem that does

not exist at this point and time. In the law this is called ripeness. Ripeness means that when there is a proposal to do something that would violation something it gives everyone jurisdiction to do something to make a decision. At this time there is no use of an easement, there is no easement and the proposed area is in vines. Both parcels are PDR properties, you can't build on them, you can't do anything on them unless you are going to violate the PDR. Does not disagree that at some point if the issue were to come before the Township if the entire area where to be changed in nature which it can't under the PDR and conservation easement if the road or other improvements were to be sought then it would not be allowed to be permitted for those things to happen. Meihn will talk to Mr. Bimber, Oosterhouse and Campbell and recommend an approach to the Board to determine the intent in moving forward. There is a problem relating to the Campbell property because if they are not using an easement that does not exist then one could claim that they then have a parcel that is land locked. Campbell's property is not land locked and is accessing parcel via Santucci's parcel pursuant to their request. One can't tell you what the legal issues are when there is no issue. There is a possibility of a formal easement being established from Santucci to Campbell. There are a number of alternatives if it ever becomes a problem. Meihn will make certain that there is no violation of the PDR and will not allow anyone to go outside of the conservation easements. Mr. Bimber does feel that any kind of road over PDR property is inappropriate and not permitted. When you look at the purposes of the conservation easement is to ensure that the property will be retained forever in its predominantly agriculture scenic and open space condition and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property. So for the proposition that one cannot create roads and two-tracks and other means on the PDR property to access and ensure the agriculture, open space and scenic conditions are met Meihn has a difference of opinion. Significantly impaired is a very high standard. If it just said impaired then it could refer to most anything. One other thing that is a little conflicting is one comment Mr. Bimber had made when he cited section B. of the easement that states: No surface activities including excavation for underground utilities, pipe lines and other underground excavation shall be permitted that cause permanent disruption of the surface of the property. One could argue that you can't have any surface activity a minimum of pulling a blade of grass would be deemed to be a surface disruption. Meih does not share in this opinion. You're supposed to allow for agricultural use, scenic views and open spaces, two-tracks and roads that promote those are not prohibited in the easements. We want to make sure these properties are protected therefore we don't want people getting the benefits of these and then getting to abuse these. A road is not a permanent disruption of the property as it can be removed and replant so how is it permanent. At this point in time there is no PDR violation as there is no easement that exist Mr. Bimber is correct that there is no easement as one has not been created. There are alternatives and those will be decided once Meihn has spoken to the Campbell/Oosterhouse. Meihn suggest that each PDR parcel is reviewed not for the purpose of finding wrong but rather to ensure that the property will be forever retained as predominately agricultural in its scenic, open space conditions. Meihn has not had a chance to speak to the Sheriff's office on the complaint that was received with regard to the land division. Meihn instructed Sally to meet with the Sheriff to provide any and all information. This was also raised with Mr. Bimber and he was unaware of how or why this occurred. Meihn stated that the Township is in good shape and the Board is in great shape.

Manigold; Expressed concerns of people down the road interrupting the documents different than the individuals that entered into these PDR contract agreements. The idea of not putting a road in on the PDR land is very offensive as it is against agriculture use.

9. Citizen Comments:

Harold Dave Edmondson, 12414 Center Road; Commented on Mr. Meihn's presentation. The issue is the land being split. The statute says that you need to have access to split a piece of property. You cannot make a land locked parcel. That is the point the second point is the ramifications of the land being split allowed the ten acre purchase to the Oosterhouse to build a chateau in our number one view shed that we the people paid for. Expressed to Chown and Manigold that they should be concerned as this is their whole lives. You split the property and all of these other ramifications come about because of the split of the property. Citizens payed millions of dollars for this program and the number one view shed is sold and compromised. That was Edmondson's centennial farm that was sold and that was not what was intended along with George Kelley and his wife. Today nobody can show Edmondson an easement to the property as it is land locked. Where is the easement today, five years later, that is illegal.

Meihn; This is not about the split as Mr. Edmondson states today, maybe tomorrow it will be something different. Meihn reads the last paragraph that Mr. Edmondson's lawyer, Mr. Bimber provided in his letter dated; November 19, 2018, which was the concern, "To be clear, we are not advocating that approval of the Campbell land division be rescinded. We also are not requesting that the Township require construction of the indicated private road to Parcel A. Whatever access is now required to Parcel A appears to be accommodated informally across neighboring parcels. We believe construction of a private road would violate conservation easement restrictions on PDR lands, a more important consideration. Meihn's understanding based on his knowledge is when the land division was done it was done properly with the representations. When the easement did not find its manner then Mr. Campbell acquired different access. The major issue here is correcting the problem to ensure the protection of Campbell to access the property. The issue will be resolved.

Sally Akerley, Township Assessor, Dave Edmondson is the significant other of Joanne Westphal, previous Township Clerk, who recently resigned leaving office only a few days ago. In 2018, Joanne's behavior and actions caused another employee and herself to seek legal counsel for harassment, hostile work place and constructive termination. This land division occurred in 2013, five and a half to six years ago and no issues had been addressed in all that time. Akerley finds that concerning, curious and that Joanne continually made a point to put this on the agenda that past several months and press the issue. Credible sources have stated to Akerley that Mr. Edmondson does not have an issue with the land division rather he simply wants to get Akerley and harass her. Appreciates Mr. Meihn stating she was not the only person that approved this land division there were others and it is a process with Planning, Zoning and Assessing offices. Akerley is the only one being pointed at and referenced. Wanted to go on the record to state that Joanne Westphal former Township Clerk is continuing to harass Akerley by proxy through her significant other Dave Edmondson, the only thing missing was her sitting at the podium mouthing his words. Akerley submitted to Recording Secretary for inclusion to minutes a copy of a letter that was prepared by her Attorney, Mr. Dave Rowe, because this issue appears to be ongoing and because of the tactics to attack her reputation and worse to waist Township resources, feels the public should be informed on all of the issues that have thus far transpired.

**ALWARD FISHER RICE
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September 27, 2018

Via Email & First Class Mail

G. Michael Meihn, Esq.
Foley & Mansfield PLLP
130 E. 9 Mile Road
Ferndale, MI 48220

Re: **Akerley/Deeren v. Westphal**
SUBJECT TO MRE 408

Dear Mr. Meihn:

Please be advised that our office represents the legal interests of Sally Akerley and Christina Deeren. As you know, our clients are employees of Peninsula Township ("the Township"). Let this correspondence serve as a formal notice that our firm is currently investigating potential hostile workplace, constructive terminations, and harassment claims relating to the actions and behavior of Peninsula Township Clerk, Joanne Westphal.

Based on discussions with our clients, it is clear that Ms. Westphal (both within and outside the scope of her employment) has been engaging in repeated, severe mistreatment of our clients with the intent to intimidate, degrade, humiliate, or undermine them. The behavior exhibited by Ms. Westphal toward these individuals (and other employees) represents a clear violation of Peninsula Township's Personnel Policy Handbook ("the Handbook") and rises to the level of defamation, harassment, constructive termination, and a hostile work environment.

According to our clients, Ms. Westphal's campaign of harassment toward them began in or around November 2017, when the 2017 PDR monitoring investigation revealed that she (Ms. Westphal) had unlawfully constructed a deck on her residence without first securing the necessary land use permit. This action was a violation of the zoning ordinance and Section 110.12 (Conflict of Interest) of the Handbook. Since public officials are required to abide by the same laws and procedures as the general public, Ms. Westphal should have secured a permit prior to her construction activities. Upon discovering that this had not occurred, Ms. Deeren (in her duties as zoning administrator) notified Ms. Westphal of her violation and advised that she pull the necessary permits on an *ex post facto* basis. Ms. Akerley, in her duties as assessor, then properly updated Ms. Westphal's tax assessment to reflect the unauthorized improvement. It is our clients' firm belief that Ms. Westphal has since been retaliating against them for their roles in demanding that she follow the law as it relates to her improvements to her property.

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Section 120.3(6) of the Handbook provides:

"The Township will not tolerate retaliation against any employee or other person who in good faith reports a violation or perceived violation of this policy, or retaliation against any employee or other person who participates in any investigation as a witness or otherwise. Retaliation is a serious violation of this policy and is subject to the investigation and corrective measures described in this policy. . ."

It should be noted that our clients were simply exercising their duties as employees of the Township when they: (1) required Ms. Westphal to secure a permit; and (2) considered her improvement for assessment purposes. Thus, this reporting of unlawful activity clearly constituted a protected activity under the law. Again, it is our clients' belief that the performance of these protected activities caused Ms. Westphal to retaliate against them with the pattern of harassment and discrimination outlined below:

- Publicly questioning Ms. Deeren's competence and fitness to perform her duties due to her physical disability. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.
- Requiring our clients, who are salaried employees, to execute time sheets while other salaried employees of similar or lower ranking were not required to do so. This was a violation of Section 90.4 (Time Recording) of the Handbook.
- Disclosing, without authorization, the personal health information of Ms. Deeren at a public meeting. This was a violation of Section 120.4 (Confidential Information) of the Handbook.
- Filing meritless complaints against our clients in an attempt to disparage and punish them for simply exercising their professional duties. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.
- Upon information and belief, submitting a complaint to Ms. Akerley's personnel file without notifying her of the nature and existence of said complaint. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.
- Publicly questioning Ms. Akerley's competence and fitness to perform her job duties. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.
- Baselessly accusing our clients of being "liars" in front of other employees in relation to the accuracy of time sheets that only they are required to fill out. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.
- Using her significant other, Dave Edmonson, as a proxy to imply that Ms. Akerley is a threat to the public because she is licensed to carry a concealed weapon. This was a violation of Section 120.1 (Standards of Conduct) of the Handbook.

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- Editing the Township's meeting minutes prepared by Ms. Deeren to help paint herself and/or Dave Edmonson in a better light. This was a violation of Section 110.12 (Conflict of Interest) of the Handbook.
- Upon information and belief, failing to properly fund Ms. Akerley's pension fund.
- The unauthorized taking of files from our clients' offices, specifically Bower's Harbor Vineyard's zoning file, presumably for her own personal benefit/agenda and/or the benefit/agenda of her significant other, Dave Edmonson. This was a violation of Section 110.12 (Conflict of Interest) of the Handbook. As a result, employees were forced to put locks on their doors to prevent such unwarranted intrusions.

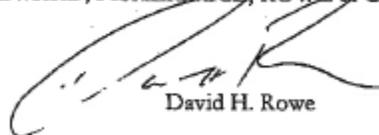
This list is not exhaustive, as it would be impracticable to list all of Ms. Westphal's almost daily harassment of our clients over the past calendar year. What is abundantly clear is that Ms. Westphal has been using her authority to improperly benefit her own personal interests (or those of Dave Edmonson's), while at the same time retaliating against employees (principally our clients) who prevent her from doing so. Such conduct is obviously outside of her authority as clerk, grossly negligent, and a violation of the Handbook. Moreover, the atmosphere she has created for our clients is extremely toxic and rises to the level of constructive terminations.

The purpose of this correspondence is to place you on notice of the current toxicity of the Township office, and to request a meeting with you to help discuss an immediate mitigation/resolution regarding the same. Accordingly, please contact our office immediately to schedule a meeting to discuss your plans to deal with this unacceptable situation. Unfortunately, if this matter is not resolved immediately to our clients' satisfaction, our office will be forced to pursue the other legal remedies available to our clients.

Our office looks forward to working with you to resolve this unfortunate circumstance.

Sincerely,

ALWARD, FISHER, RICE, ROWE & GRAF, P.L.C.



David H. Rowe

DHR/dpg
c: Robert K. Manigold, Supervisor
Sally Akerley
Christina Deeren

Moved by Whal and seconded by Wunsch to move into closed session.

Roll call vote:

Passed unam

Closed Session meeting

Manigold; Would like to call the meeting back to order.

Moved by Wunsch to come back out of closed session, seconded by Whal.

Roll call vote: **Passed unam**

Moved by Sanger to approve the recommendation of counsel Meihn regarding the FSLA matter, seconded by Wunsch.

Roll call vote: **Passed unam**

Moved by Sanger to adopt the best practices minute taking in accordance with the recent presentation by counsel Meihn, seconded by Bickle.

Roll call vote: **Passed unam**

Moved by Sanger to direct counsel Meihn to send a letter to Mr. Campbell and Mr. Oosterhouse regarding the assessment easement as related to the Campbell land division, seconded by Wunsch.

Roll call vote: **Passed unam**

10. Board Comments:

Manigold; Reminder on the fourth Tuesday of the month Board will be meeting jointly with the Planning Commission

11. Adjournment

Wunsch moved to adjourn the meeting; Bickle seconded the motion. **Passed unam**

Adjournment: 8:40 p.m.