

PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board Special Meeting

January 29, 2025, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order by Sanders at 7:00 p.m.**
2. **Pledge**
3. **Roll Call – Present:** Sanders, Clark, Milliken, Sanger, Chown; **Excused/Absent:** Alexander, Wunsch
4. **Governmental Updates – None**
5. **Approve Agenda**
Motion by Sanger to approve agenda, seconded by Chown. Motion passed by consensus
6. **Conflict of Interest – None**
7. **Consent Agenda – None**
8. **Business:**

Appeal Hearings of Land Division Applications

- A. **Land Division Appeal 358 Hearing/Decision**
 - a. **Staff/Township Attorney Report**

Chris Patterson, Fahey Schultz Burzych Rhodes: the board is reviewing an appeal related to a land division request, a process that involves verifying that proposed child parcels meet zoning and accessibility requirements. The assessor will provide parcel-specific details while the board will focus on the appeal process and standards. **Land division process:** a land division application is reviewed by the land division committee, which follows criteria outlined in Section 6 of the ordinance. Two key requirements must be met: accessibility (ensuring legal access via a road or easement) and compliance with zoning ordinances (ensuring the new parcels conform to zoning laws). **Decision and denial of LDA 358:** the land division committee denied LDA 358 for two primary reasons: a) accessibility issues – the proposed division lacks legal access meeting township standards, and b) zoning compliance – the proposed division does not meet the township’s zoning requirements. The ordinance requires strict adherence to these standards. If either is unmet, the division must be denied unless a variance is sought through the township’s zoning board of appeals. **Appeal process and board authority:** the board has the same decision-making authority as the land division committee when reviewing appeals. The board can affirm the denial, grant approval, or defer the decision for further review. A written decision is required after reviewing all evidence and testimony. **Easement and land use considerations:** the parcel in question is partially encumbered by a Purchase of Development Rights (PDR) easement, limiting land use to agricultural and open space purposes. The easement allows for some land divisions but only for agricultural uses, not for general residential development. The applicant's request appears to conflict with these restrictions. **Legal precedent and township zoning ordinance:** a prior case (in a neighboring township) upheld the decision to deny a land division that violated a PDR easement. The township's

zoning ordinance requires that any newly created parcels comply fully with zoning standards, reinforcing the committee's denial.

Sally Murray, Peninsula Township Assessor: in 2017, the Peninsula Township Land Division Ordinance was amended to create the Peninsula Township Land Division Review Committee. The committee includes the planner, zoning administrator, assessor, and legal counsel. Previously, only the assessor and zoning administrator handled land divisions. The committee reviews approximately a dozen land divisions per year, each case unique and complex. The review process ensures compliance with local ordinances, state statutes, and zoning requirements. **Importance of the PDR (Purchase of Development Rights) program:** the PDR program was created through a voter-approved initiative to preserve farmland and open space. Peninsula Township residents have taxed themselves via three separate millages to fund the purchase of development rights on agricultural land. Since 2003, land divisions involving PDR properties have always undergone planner review to ensure compliance with the PDR ordinance. The township has a strong commitment to preserving agricultural land, and PDR regulations prohibit development inconsistent with this goal. **Analysis of the conservation easement on Parcel - 010:** the -010 parcel is subject to a conservation easement recorded in 2005. The easement prohibits residential development, allowing only agricultural and open space uses. Key language in the easement states that "The land must remain available for agricultural and open space use; no new roads may be constructed except for agricultural purposes; the land must be retained in a predominantly agricultural condition; the easement explicitly prohibits residential construction unless it was reserved in the original easement" (it was not). **Reasons for land division denial:** the proposed land division sought to use the -010 parcel (PDR-encumbered land) as an access point for four new parcels. The review committee determined that this would violate the conservation easement for the following reasons:

- Driveway construction on PDR land violates the easement (no new roads or driveways can be built on the parcel unless specifically for agricultural use).
- The land division would fragment and reduce the conservation value of prime farmland.
- The new parcels were not considered "accessible" under the Land Division Act because access would require violating the PDR easement.
- Residential development is explicitly prohibited in PDR-encumbered land under both the easement and township zoning ordinance.

The applicant cited MDOT (Michigan Department of Transportation) driveway approval; however, MDOT approvals focus only on traffic safety, not compliance with township zoning or PDR regulations. The applicant suggested that combining PDR and non-PDR land would not extend PDR restrictions, but the easement states that "all new parcels" must be subject to the PDR restrictions, meaning any newly divided land that includes PDR-encumbered property would also be subject to the easement.

b. Presentation by Appellant Croft LLC/Marty Lagina

Criticism of the appeal process: compared the land division appeal process to a flawed judicial system whereby the same judge who made the initial ruling is also reviewing the appeal. Argued that the township attorney, who was involved in the original decision, is now presenting arguments in favor of that decision, making the appeal process inherently biased. He argued that this creates bad justifications for the denial and undermines the integrity of the review. **Disagreement over PDR interpretation:** challenged the claim that if PDR-encumbered land is combined with non-PDR land, the PDR restrictions extend to the entire new parcel. Argued that this interpretation is illogical and overly restrictive,

pointing out that farmers might want to combine PDR land with other land for agricultural purposes without affecting their entire property. Insisted that PDR restrictions should only apply to the originally encumbered land, not any newly attached non-PDR land. **Accusation of misrepresentation in legal arguments:** strongly objected to how the township attorney has framed the issue of accessibility. Claimed that the legal team misrepresented the applicable location standards, which are meant to refer specifically to the Michigan Department of Transportation (MDOT) or county road commission, not township zoning or PDR restrictions. Argued that this misrepresentation was used to wrongly introduce PDR considerations into the denial process. Suggested that omitting key words in a legal argument is like a doctor leaving out a critical part of a diagnosis, such as failing to mention an aneurysm on an MRI report. Asserted that this type of omission would never be tolerated in medicine and should not be tolerated in legal decision making. **Called for reform in the appeal process:** urged the board to revise the appeal process to ensure that the same attorney who participated in the initial denial does not also play a role in advising the board on the appeal. Asks that this be a true "de novo" hearing, where the board evaluates the case independently rather than being influenced by prior decisions.

- c. **Citizen Comments to the Board – None**
- d. **Board Deliberation and Questions to Staff/Appellant**

Board discussed attorney's input and findings and the board's inability to ignore the limitations imposed by the conservation easement.

e. **Potential Board Decision:**

Motion by Chown to ask legal counsel to provide additional guidance on how to properly interpret and apply the reserved rights outlined in paragraph three, subsection B of the conservation easement, specifically regarding the right to divide the property, with the goal of making a legally defensible and well-substantiated decision to deny, with a second by Sanders.

Roll Call Vote: 5 Ayes, 0 Nays

Motion passed by consensus

B. Land Division Appeal 359 Hearing/Decision

a. **Staff/Township Attorney Report**

Patterson: the discussion focuses on evaluating a land division request and its compliance with zoning and land division ordinances. Key considerations include determining whether the proposed division meets requirements for lot width, adjacency, and legal appurtenance. The primary issue is whether the new parcels created meet the necessary criteria, particularly regarding their relation to existing conforming building sites. Legal definitions and interpretations of terms such as "immediately adjacent" and "appurtenant" play a significant role in the decision-making process. The review committee has denied the request due to non-compliance with these criteria. Further discussions will involve clarifying ordinance language and legal interpretations before a final determination is made.

Murray: emphasized that the land division ordinance is intended to ensure compliance with regulations, prevent the creation of non-conforming lots, and protect public welfare. The ordinance was amended to address divided waterfront parcels, ensuring that newly created lots align with existing patterns and maintain legal compliance. Stated that all new parcels must conform to zoning requirements, such as minimum area and frontage, and that the proposed division in this case does not meet those standards. The denial was based on the fact that the proposed lots would be substandard in size and width, violating both the township's ordinances and the Michigan Land Division Act. Also addressed the applicant's claim that similar parcels had been approved in the past. Clarified that those approvals were made under previous ordinances and would not be allowed under current regulations. Additionally,

noted that some references made to other zoning provisions, such as those related to docks and boat hoists, were not applicable to determining land division eligibility.

b. Presentation by Appellant Calla, LLC/Calla, LLC Representative

Lagina: discussed whether the proposed land division met the legal requirements, particularly regarding adjacency and appurtenance to an existing conforming building site. Argued that the proposed split should be allowed, as it would be attached to a larger property under common ownership. Asserted that the land he wants to attach is contiguous and should be considered part of his lot, minimizing distinctions based on minor differences in attachment points. Referenced the Peninsula Township Zoning Ordinance, particularly section 6.2.2 2C, which he believes supports his position that the parcel is a conforming beach access lot.

The board questioned the contiguity claim, citing the lack of a survey proving the attachment and questioning whether the parcel meets zoning requirements post 1972.

Lagina: argued that numerous 50-foot-wide parcels have been created since 1972 under the zoning ordinance and believes his request aligns with precedent. Insisted that, under the ordinance, a beach access lot only needs to be 50 feet wide and provide two parking spaces, challenging the board's interpretation that additional requirements apply.

Murray: explained that Section 6.2.2 does not allow the creation of new non-conforming parcels but rather governs how many docks and shore stations can be placed on an already conforming lot. It does not serve as a method for creating standalone 50-foot-wide lots. Under the prior ordinance, parcels could be created as *non-buildable* by recording a deed restriction. These parcels were explicitly marked as not eligible for variances or future development, limiting their use. The **2017 Ordinance Amendment** introduced the concept of a "Standalone Beach Parcel" and required that any new beach access lot be attached to an immediately adjacent, conforming building site to prevent the creation of independent, non-conforming lots. The goal was to eliminate the creation of standalone, non-buildable lots like those in the applicant's examples.

c. Citizen Comments to the Board: none

d. Board Deliberation and Questions to Staff/Appellant/Potential Board Conclusion:

The board debated the definition of "immediately adjacent" and whether the proposal meets this requirement. The township's legal counsel acknowledged that the term was not explicitly defined in the ordinance but emphasized the intent behind the rule—to prevent the creation of standalone, nonconforming beach parcels. A board member requested that the applicant be able to show that lot 5a currently has beach access at the next meeting. Meeting concluded due to time constraints.

Board Comments:

Chown: strongly emphasized the importance of upholding conservation easements, viewing them as sacred agreements that must be honored, regardless of inconveniences or disagreements future landowners may have with them. Stressed that they are the primary document the township must adhere to. With taxpayer dollars paid to restrict or eliminate specific development rights in perpetuity, township board members may not violate the easements that are on the books.

9. Adjournment

Motion to adjourn by Milliken, seconded by Sanger.

Motion passed by consensus.

Peninsula Township
Township Board Regular Meeting
Shaina LaFond, Recording Secretary

Meeting adjourned at 10:00pm.

DRAFT