

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686
Township Board Regular Meeting Minutes
February 23, 2021, 7:00 p.m.
Township Hall

1. **Call to Order** by Supervisor Manigold at 7:00 p.m.
2. **Pledge**
3. **Roll Call:** Manigold, Bickle, Sanger, Wahl, Chown, Achorn, Wunsch
4. **Brief Citizen Comments (for agenda items only):** none
5. **Approve Agenda**
Bickle moved to approve the agenda as presented, seconded by Wunsch.
Roll call: Passed Unan
6. **Conflict of Interest:**
Mangold: has a conflict of interest with business item 3.
Sanger: requests that consent item 7 be removed from the agenda and moved to business item 5.
7. **Consent Agenda:** any member of the board, staff, or the public may ask that any item on the consent agenda be removed and placed elsewhere on the agenda for full discussion
 1. Invoices (recommend approval)
 2. Reports
 - A. Grand Traverse County Sheriff Daily Officer Summary and Daily Count for January 2021
 - B. Peninsula Community Library Director's Report for February 2021
 3. To reappoint Peninsula Township Board of Review members to additional two-year terms
 4. Treasurer's Report for the Township Board for January 2021
 5. New Township Fee Schedule
 6. Correspondence
 - A. Dustin P. Ordway
 - B. David D. Taft
 - C. John Haggard
 - D. Rachel McBride
 - E. Curt Peterson
 - F. David Solem
 - G. Helen Mumford
 - H. Louis Santucci**Moved by Bickle to approve the Consent Agenda as amended, seconded by Wunsch.**
Roll call: Passed Unan
Wahl: absent during vote
8. **Business:**
 1. Public hearing on proposed development called Lavender on Old Mission Peninsula (Mielnik)
Manigold closed regularly scheduled meeting and opened public hearing for the development called Lavender on Old Mission Peninsula.

Mielnik: introduced the proposed SUP as a nursery/greenhouse to be located on a 10-acre site off Carroll Rd. The property is currently planted with lavender and a 24x24-foot building is under construction. There is a permit on the site for a roadside stand that is allowed within 24x24-foot building but only 150 square feet of this area is permitted as a roadside stand. The SUP would allow for the construction of an additional building that is 40x60; a portion of this structure would be used for the lavender greenhouse and sales area. This SUP was approved by the planning commission in November of 2020 but due to COVID couldn't be brought before the township board sooner. Item 8 and 9 have been removed from the request.

Amy Parker, applicant: agrees with items 8 and 9 being removed. Asked how the percentage of sales would be calculated and if current farms are being monitored in a similar manner.

Mielnik: one other similar farm does not have this requirement outlined within their SUP.

Parker: they are different SUPs so their inventory is counted differently. Wants to be on the same playing field as similar lavender farms.

Attorney Meihn: the request complies with GAAMPS (MI Right to Farm Act). Other lavender farms may not be operating within the same regulatory parameters. The requirements proposed are consistent with the GAAMPS, wherein 50 percent of the sales of products will have a lavender component grown on the site.

Parker: specifically by gross sales is how the language is stated in the SUP.

Meihn: one or the other. Measurement by area is better than the sales. Recommends that the board table this until specific language can be developed. Clearer language will reduce confusion later.

Parker: agrees with the language Mielnik has created with 50 percent of gross sales that come from products with a lavender component.

Meihn: that component is important with anything that is grown.

Parker: questioned topical as a component.

Mielnik: the 50 percent inventory of products has to include a lavender component grown on the site.

Meihn: get a list of products so when sales are compared it will be easier to track.

Manigold closed the public hearing, returned to the regularly scheduled board meeting, and opened up discussion for the township board.

Achorn: what does the other 50 percent of sales include?

Wunsch: garden product sales.

Wahl: pots, soils, and seeds?

Achorn: also included but does not state specifically what the other sales can be, which alludes to the fact that the remaining 50 percent could be anything so this should be outlined.

Wunsch: suggested the document drop the word "generally." Is comfortable conceptually with the proposed SUP.

Chown: Removing the word "generally" solves the problem.

Parker: does not understand how others can sell t-shirts, etc.

Meihn: suggested the board refer this issue to Dave Sanger, code enforcement officer, to investigate and report back to the board.

Mielnik: neither the planning commission nor the township board has any obligation to make SUPs identical. Requirements and conditions are a product of site-specific circumstances and unique site characteristics.

Sanger: this is a nursery; we don't compare wineries to one another in order to approve their SUPs.

Meihn: Not all SUPs are the same but thinks these should be fairly similar. Suggested the board approve this one and look into the others. They have been approved at different times and by different boards both in the planning commission and the township.

Chown: clarified that the language should state 50 percent of sales.

Mielnik: the change discussed relates to how to measure the 50 percent requirement. Inventory can change from day to day.

Sanger: there is a GAAMP covering this type of an operation and part of the GAAMP is based around sales over a year's period.

Moved by Wunsch to approve the SUP request contingent on the amendment to be made by staff that will delete the word "generally" and say retail sales and related commercial activities are allowed provided at least 50 percent of annual gross sales of all products are related to lavender and other ingredients grown on the site that are a constituent element of the product made, seconded by Wahl.

Roll call: Passed Unan

Moved by Bickle to have Attorney Meihn and Sanger report back to the board their findings on other lavender businesses/nurseries on OMP, seconded by Wahl.

Roll call: Passed Unan

2. Public hearing on proposed Peninsula Township Zoning Ordinance Amendment #200 (solar) (Mielnik)
Manigold closed regularly scheduled board meeting and opened up the public hearing on the proposed Peninsula Township Zoning Ordinance Amendment #200 (solar). No public were present. Manigold then closed the public hearing, returned to the regularly scheduled board meeting, and opened the discussion to the township board.

Mielnik: smaller scale solar panels were previously approved under amendment 199. Roof panels have been allowed in the township prior to this amendment. There is a growing demand for free-standing panels, particularly in terms of farm operations, which often use more than electricity than a 10 kw panel. This amendment also recognizes solar panels on PDR land based on prior actions. Amendment 200 amends ordinance 199 with categories for 10-30 kw systems and those that are more than 30 kw. Larger systems (greater than 30 kw) require a SUP permitting. An updated viewshed map is also being developed to clarify the extent and coverage of these areas. This new map also encapsulates the pin numbers of the parcels. Previously, these were not identified.

Chown: solar systems should not be able to be located within viewsheds.

Bickle: fantastic map and illustration.

Achorn: needs clarification so these specify where power is located and to be used and is identified by the parcel.

Mielnik: ordinance 7.2.8 (amendment 199) does not specifically identify a net metering program, but it does use the term "on-site use."

Chown: no one is allowed to create extra energy for sale. Specific usage only for the parcel and site.

Deeren: clarified that a land use permit is not required for roof-mounted solar panels and there is no limit on the kws for roof-mounted systems.

Sanger: concerned about some of the language. There should be a clear and specific sentence that the energy needs to remain on the property it is permitted on.

Bickle: suggested an amendment be made to the proposal.

Wunsch: prohibit anyone from using on-site power not connected to Consumer's Energy.

Wahl: requested Wunsch work with Mielnik to correct the language.

Sanger: also make it clear that this is intended to be part of net metering.

Mielnik: Without being part of a net metering program, a storage battery would be necessary.

Wunsch: surplus power will go back to the grid and provide a credit against the bill the consumer pays. Not a big concern that allowing this will create a large solar farm.

Meihn: this is not meant to be a commercially profitable endeavor. The changes allow for on-site use of power generated by solar panels for farm and farming activities related to the site. It's very important to execute this correctly.

Moved by Wahl to table and distribute changes to the township board before the next meeting and to simplify and amend language, seconded by Bickle.

Roll call: Passed Unan

3. Request from John Kroupa to refund fine for land use permit violation (Deeren)

Manigold asked to be removed from the board due to a conflict of interest.

Moved by Wunsch to have Manigold temporarily removed from the board, seconded by Wahl.

Roll call: Passed Unan

Manigold: abstained by removal

Deeren: on October 13, 2020, the township board passed a moratorium allowing the use of igloos for the wineries and businesses within OMP. This was passed with certain conditions and specifications that included a land use permit be issued by the township, an inspection for fire safety be conducted by Fire Chief Gilstorff, and if they were to have heaters, a permit was to be issued by Grand Traverse County Construction Code Office to ensure public safety. Two igloos were placed at Peninsula Cellars that were not permitted; the property owner was then notified of the zoning violation. On February 9, 2020, a letter was sent to Mr. Kroupa via certified return receipt, which is standard practice. Mr. Kroupa then came into the township and spoke to Manigold and [Deeren] stating that he was unaware that these required a permit. Mr. Kroupa completed a land use permit application for the igloos and paid the application fee along with the penalty. He requested at the time that the penalty be waived. Mr. Kroupa was informed that the township board is the only body allowed to waive the penalty. Before you is a written request from Mr. Kroupa to have the penalty waived.

Bickle: asked Attorney Meihn for an opinion since this was something approved by the board outside of the normal permitted ordinances. This was something the board approved per the request of the wineries.

Meihn: disagreed that this was done per the request of the wineries; rather, it was a joint agreement with the wineries and board due to COVID-19 closures. Has an issue with this request as he has not heard any basis for the request. Normally the courts and boards will waive the fee if there are economic issues, the party is destitute, or does not have any financial resources to be able to pay the fee. It would be unequitable for those who have had to pay the fee previously. The claim that one did not know is not enough to waive the fees.

Bickle: understood.

Wahl: Similarly, ignorance of the law is no excuse to violate the law but [he] welcomes any reasons for the violation.

Meihn: always good to hear from the resident who is being sanctioned. The board is not here to harm people but rather to enforce the ordinance.

Chown: have we been enforcing other similar violations? Have others received penalties?

Deeren: yes, any time a violation is found the penalty is applied on anything that is discovered that requires a land use permit under the definition of a structure.

Bickle: so, this has been consistent and evenhandedly administered based on the situation?

Deeren: yes.

Sanger: have there been other wineries that have applied for the land use permit prior to the installation of the igloos?

Deeren: yes, Chateau Chantel applied for a land use permit for three igloos. They also had the fire chief inspect them, and the Grand Traverse County Construction Code Office permitted them as well as they were using electric. A couple other wineries have them that are not permitted, and we are enforcing action against them for non-compliance.

Bickle: Attorney Meihn will refer to those in his report next to the board.

Meihn: the board should also know that we just had a very long court hearing on an issue where a resident placed a structure on agricultural land without obtaining a land use permit. The court found in favor of the township that in fact a land use permit is required. The penalty was also requested to be paid for this particular case as well. It would be irresponsible to waive this fee without reasons being provided to us. "I forgot" is not an equitable reason for this board to do something out of the ordinary.

Wunsch: so, we would be looking for mitigating circumstances?

Meihn: yes, sir.

Wahl: would like to open this up to the property owner in case he wishes to make a statement.

John Kroupa: one mitigating circumstance is COVID. The website used to have minutes and now they cannot be found. It's not the boards fault but not [mine] either. Kroupa thought that this was done as an extension of the previously allowed tents. The moratorium for these expired December 31, 2020, so he thought this was done to bridge getting the wineries through to decent weather when the public could be outside and safe. A land use permit was not needed for the tents so he assumed a land use permit was not required for the igloos. These particular igloos can be folded up and carried over a shoulder. The definition of igloo is broad. Feels there was a missed opportunity to be neighborly and let him know a land use permit was required for this instead of a letter with a penalty for not getting the permit. A consideration of a prior record for compliance should be made. [He] is not a repeat offender. Feels the \$300.00 penalty for the igloo is excessive.

Deeren: had a conversation with an employee from Peninsula Cellars, and the employee asked if a tent could be used instead of an igloo as they were having difficulty finding igloos for sale. [Deeren] informed the employee that the tent could not replace the igloos as these were permitted by the township. Was not sure if this information was relayed back to Mr. Kroupa.

Kroupa: she made it clear that there was no conversation regarding the igloos being permitted.

Wahl: did you contact the township after having the conversation with your staff?

Kroupa: no, a follow-up call was not made. We waited until we could find anything that was available and all we could purchase were these pop-up igloos. Fire Chief Gilstorff did look at these and they are fine from a fire standpoint. No electric is located within them; they just give people a place to sit in harsh weather.

Achorn: this material was published in the Gazette but is not sure if the entire minutes of the resolution were published.

Bickle: confirmed the topic was published in the Gazette.

Achorn: Jane was very good at informing the public that this was something that had been approved and was available to the restaurants, wineries, and any other similar business that required outside seating. Does not feel the board can allow one person to have the penalty waived; otherwise the whole purpose of following the rules becomes void.

Wahl: thinks this would be a bad precedent to start. Is sympathetic to Mr. Kroupa but would have more sympathy if a call was placed to the township for clarification and direction.

Kroupa: take a neighborly view and not an adversarial view and ask if people know they need a permit.

Wahl: this goes beyond just the igloos; anyone who receives a violation notice with a clean history will ask the

board to waive the violation.

Kroupa: has not been here before this and will not be back again over the same issue.

Wunsch: also had to pay the fine for a structure that was built by an employee that he was not even aware had been constructed.

Meihn: does not agree with the concept of giving everyone a free pass for violating. Does think a case could be made in this case in the fact that Kroupa's staff misunderstood despite the fact that this was relayed to them. As soon as he became aware of the issue, the igloos were removed, he applied for the permit, and paid the permit. This could be distinguished from other cases.

Deeren: clarified that only one igloo was removed while the other remained up over the weekend without the permit being issued until the following Monday.

Bickle: he too had to pay the penalty for a shed that was delivered to his residence. If the board waived this fee, then he would be next in line to request that the penalty he paid also be refunded.

Achorn: does not see how they can begin to refund penalties as it would create an avalanche of these requests before the board.

Sanger: the zoning ordinance provides for a seven-day grace period before he or the zoning administrator takes action. The ordinance also states that a temporary structure is not allowed; a structure that is to be permanent is allowed with a permit. The township board exercised a different level of authority when it stated from the period of December 31 the prohibition on temporary structures was to be waived. At no time did this board distinguish a difference in the gravity of an offense. The board took action in October for an industry that was suffering due to extreme circumstances.

Achorn: this was a special allowance to the wineries and restaurants under unique circumstances that these were allowed.

Wahl: does not think an explanation needs to be given if the request is denied; however, if it's going to be granted then an explanation should be given.

Moved by Wahl to deny this request as the circumstances do not warrant any leniency on the fine, seconded by Achorn.

Roll call: Passed Unan

Moved by Wahl to have Supervisor Manigold return to the board, seconded by Achorn.

Roll call: Passed Unan

4. Legal update on various township matters (Meihn)

Meihn: provided an update on the winery lawsuit, which is progressing in a positive fashion. Beat the winery's request for injunctive relief that the ordinances do not apply to them. The court has enforced a scheduled mediation between the parties. Joe Quandt will be the mediator with a mediation date of March 6. Looking to make decisions that the board will approve for compromise as it relates to the ordinance and the issues the wineries have with it. Watching and waiting for PTP to come into the lawsuit; they have filed for intervention. That motion has not been heard yet, but they have been made aware of the March 6 date so if the court makes a ruling that they are party to the suit then they can participate in mediation. We hope to walk out of the lawsuit with a draft that the board is happy with. Any new language will not go to the PC for approval. Needs one to three board members to be available by phone and or in person. Working on language to get consensus on and requests Randy also be available. Has spoken to the insurance carriers for the township and made them aware that fees are incurring and made them aware of the success of the township at this point.

We also had a court hearing conducted via Zoom regarding a citation that was issued for Santucci regarding his refusal to obtain a land use permit to place a structure on his property. Santucci argued that he was subject to the Right to Farm Act. The court found that the Right to Farm Act did not apply and the court then ruled that the structure was not temporary. We were awarded the permit fee plus the four times the amount for the penalties. Christina sent to Mr. Santucci the land use permit application that is required to be filed. If Santucci fails to produce a land use permit application, then we reissue a citation or go back to court to seek injunctive relief.

There are two other situations where igloos and tents have been placed in violation. We are seeking injunctive relief with the courts to have these structures removed as well. These will be served by the process server no later than Wednesday. These will be criminal case filings and not civil case filings.

Bickle: will these wineries also be turned into DHHS as they are blatantly out of compliance with published and republished rules?

Meihn: once he has received the complaints, he will make the administrative bodies within the state aware of these violations.

Bickle: what is the last date the igloos can be used by the wineries?

Achorn: the date from the minutes is May 1.

Meihn: there was an article in the Detroit News stating that the wineries in Old Mission and Leelanau County have had their best year as far as productivity. One winery on Old Mission stated they were able to begin bottling from their reserve, which is a wonderful opportunity.

Manigold: will we try to recuperate the tens of thousands of dollars already spent on this lawsuit?

Meihn: yes. The claims against the wineries have an attorney provision if the township prevails.

5. To temporarily appoint Dave Sanger to the Peninsula Township Zoning Board of Appeals (see appeal in packet addition)

Sanger: is honored to be asked to return to the ZBA; he served previously for nine years. Based upon his current responsibilities with the township board and his work in the zoning department, he respectfully declines the offer.

Manigold: would like to appoint Gordon Hayward until another person can be found to fill the position.

Meihn: believes he is a suitable candidate to fill the vacancy on a temporary basis.

Chown: will applicants be interviewed for the position? Someone has expressed interest in becoming a member.

Moved by Walh to appoint Gordon Hayward to fill Rachel McBride's vacancy as a temporary replacement on the ZBA until a suitable candidate can be found or until the end of the term, seconded by Bickle.

Roll call: Passed Unan

9. **Citizen Comments:** none

10. **Board Comments:**

Chown: informed the board and public that the township hopes to raise rates for cemetery plots as rates have not increased in more than a decade.

Manigold: have put out an RFP for bids for garbage removal because the current contract expires at the end of March. A year ago we brought to the board the ability to hire a company to locate Airbnb rentals. Mr. Meihn's company has purchased this software and we may be to contract with his company for a lower cost. This is an issue that we have to deal with. Randy will put out another survey. Airbnbs should be paying six percent into the state for taxes.

Peninsula Township
Town Board Minutes
February 23, 2021

Christina Deeren, Recording Secretary

Fire department chief and deputy clerk emails have been hacked; they are getting approximately 20,000 emails a day.

Chown: no one else has experienced this yet.

11. Adjournment

Moved by Bickle to adjourn, seconded by Sanger.

Roll call:

Passed Unan

Final adjournment: 8:46 p.m.