PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP PLANNING COMMISSION MEETING MINUTES

February 28, 2022, 7:00 p.m.

Corrected on March 22, 2022 by Beth Chan

1. **Call to Order:** 7:00 p.m. by Shipman
2. **Pledge**
3. **Roll Call:**
   Present: Shipman, Hall, Dloski, Alexander, Couture, Hornberger, excused: Wunsch, also present: Planner-Jenn Cram, Zoning Director-Christina Deeren, Attorney Meihn via phone, and Recording Secretary-Beth Chan

4. **Approve Agenda:**
   Moved by Hornberger to approve agenda as presented, seconded by Couture
   approved by consensus

5. **Brief Citizen Comments (for agenda items only):** None

6. **Conflict of Interest:** None

7. **Consent Agenda:**
   a. Approval of Meeting Minutes: Planning Commission Regular Meeting, January 24, 2022
   Moved by Dloski to approve consent agenda, as presented, seconded by Couture
   approved by consensus

8. **Reports and Update:**

Cram: the Citizen's Agricultural Advisory Committee meets on the second and fourth Thursdays, the next meeting is March 10, 2022. We will look at the agricultural sections of the zoning ordinance in preparation to make a recommendation to the planning commission. The last meeting was focused on farm markets and the next meeting will focus on comparing the winery-chateau ordinance to farm processing. The March 24th meeting will have a representative from Michigan Right to Farm to talk about the GAAMPS for farm markets.

Hall: supports the discussion of the right to farm impacts on the zoning ordinance, it supersedes ordinances that are inconsistent with the right to farm statute and the GAAMPS.

Cram: we are looking at the Michigan Zoning Enabling Act and the Michigan Right to Farm Act.a. Peninsula Township Purchase of Development Rights (PDR) Ordinance #23, Amendment #3 Re-write-Introduction

Cram: the PDR study group has been meeting since January looking at updates to the existing PDR Ordinance. The purpose is to make it consistent with the Michigan Zoning Enabling Act and make the ordinance more contemporary. Ginny Coulter and Susan Tarczon are here to present a summary of the proposed changes. This is on the agenda for the joint planning commission and township board meeting on March 14, 2022. The changes have been reviewed by the township assessor and the treasurer's office and comments have been received that have not been addressed in this draft. Additional modifications are expected to address their comments.

Ginny Coulter: gave an introduction and cited past experiences working with PDR issues and on the planning commission as a chairperson. Joined the PDR study group to update and revise the PDR ordinance. The committee followed guidance from the second vision statement from the proposed updates to the Township Master Plan "to continue to implement any and all steps that reduce build-out potential including the renewal of the PDR program." Gave a timeline and history of recent PDR activity from the fall of 2017-present. Summarized staff and citizen involvement in the PDR study group. Plans are to have the finalized document on the March 14th agenda for the joint meeting with the Planning Commission and Township Board.
Susan Tarczon: We have over 6,000 preserved acres, 34 percent of Peninsula Township is protected. There are approximately 4,000 acres left with interested property owners and we would like to further preserve more acreage; that is why we are pursuing a millage.
Hall: How many acres are subject to PDR versus a conservation easement granted to the conservancy?
Tarczon: 17,859 total acres, regional parkland is 1,192 acres, seven percent; the conservancy is 159 acres, Peninsula Township is 167 acres, Grand Traverse County is 201 acres, and the State of Michigan is 666 acres which is parkland. 4,800 acres are protected through private easements.
John Wunsch: the conservancy holds about 400 of the 4,000 acres, approximately ten percent.
Coulter: Summarized the significant revisions that are proposed: encouraging the use of more federal and state programs and closely aligning the township programs to take advantage of matching funds, streamlining the selection process to make the program more time-sensitive, modifying the scoring so it is less subjective and prioritizes large parcels and the use of matching funds, providing a set-aside that could be used to purchase retained development rights that are unused under conservation easements, strengthening the integrity of the program for the long haul by providing more guidance for appraisals and expanding the professional assistance that is required for managing the program, including a review of all amendment requests, and proposing a budget increase for the legal defense fund. Referred to the summary of revisions in the packet and pointed out the biggest changes in the sections found in the packet.
Hall: Will the committee meet before the public hearing on March 14th, can planning members attend?
Cram: yes
Dloski: asked for clarification of Section 4, paragraph 1, "when the township purchases development rights, the property should remain substantially undeveloped."
John Wunsch: the language for the easements restricts it to farm use only and does not include the winery-chateau use currently because of the cross over to commercial.
Dloski: if I sold the development rights, I could not sell the property to a winery chateau?
Wunsch: it is yet to be determined.
Cram: written comments will be taken until noon on March 14, 2022.

b. Special Use Permit (SUP)-Peninsula Shores Planned Unit Development (PUD) #123 Amendment #3-Updates from Introduction and Continuation of Public Hearing.

Cram: Special Use Permit (SUP)-Peninsula Shores Planned Unit Development (PUD) #123 Amendment #3 was introduced at the planning commission meeting on December 20, 2021, and the first public hearing was held on January 24, 2022, and tabled to this meeting. The applicant has provided a complete application, answered questions, and provided additional material. Reviewed a PowerPoint presentation to summarize Peninsula Shores PUD #123. Reviewed the four modifications: relocate unit one from the south end of the development along Boursaw road to the north end of the development, remove parcel A from the SUP, modify a sanitary easement on unit six, and adjust lot lines of units thirty-eight through forty-one. Explained an aerial view provided by the applicant. The grading plan was

followed. The zoning for the property is R1-A and R1-B coastal zone. The total acreage is approximately 82.63 acres and the total open space proposed with the third amendment is 54.2 acres, meeting the open space requirement of 65 percent. The open space calculations will be reviewed again. Summarized the history of the original SUP and amendments; documents found in the packet. The proposal to relocate Site 1 was discussed in the past; brought forth again with information that was provided by the applicant. Utilizing the existing Michigan Land Division Act, the potential on this property with over 81 acres could have resulted in a 55-unit development with no open space requirement. The resulting project that was approved was 41 units and 65 percent open space, with 115 feet of shoreline preserved with vegetation, which resulted in a better project having gone through the PUD process. The original approved grading plan was presented. The approved grading plan was compared with the current aerial images. Staff has also discussed the project with the township engineer, Gourdie-Fraser, to assure that the grading plan and the work that was done on site today are consistent with the approved grading plan. This grading plan was developed after the final findings, facts, and conditions from January of 2018. The grading was monitored by Gourdie-Fraser for compliance. In addition, land use permits were issued for individual sites. Air monitoring was conducted during overall site grading with no indication of off-site contamination. It is assumed that any proposed changes to residential site development will still comply with the thorough analysis that was done for soils and air.

Kyle O'Grady, 416 Michigan Avenue, representing Peninsula Shores: the development plans went through thorough scrutiny for a subdivision. We followed and met conditions, and monitored the air.

Cram: a packet addition was published this afternoon that includes a letter from a previous property owner when this was originally being considered, as well as one new e-mail that was received over the weekend. Also included are the findings of fact and conditions and minutes from the January 23, 2018 Township Board meeting. Staff believes the requested amendment meets the standards within the zoning ordinance for an amendment and the spirit of the original approval and recommends that staff move forward with the detailed findings of fact and conditions.

Meihn: legal counsel concurs with staff.

Dloski: for proposed unit one, will the septic and the tank be located within the building envelope?

O'Grady: it will be located inside of the lot lines.

Dloski: asks for clarification

Deeren: clarifies township and county guidelines for septic placement does not have to be within the building envelope.

Moved by Hall to close the regular planning commission meeting and open the public hearing, seconded by Hornberger **approved by consensus**

Craig ~~Haddix~~ Haddox, 4150 Trevor Road: See attached comments. ~~the ordinance states that an SUP shall constitute the land use authorization for the property; I disagree with what Jenn is talking about as to what can be done on this property. My understanding is that under the current ordinance, there is no right to put a house here. I would like for legal counsel to address that section of the ordinance. The application states, the proposed lot will be serviced by an individual sanitary system. That means there will be even more excavation and dirt moved. I believe this will increase the amount of contaminated soil that blows onto the neighboring properties. It is claimed that under our approach, no house could be built next to another house. That is false, the "not disturbing" standard is not found, in other words than the sections of the ordinance; thus, the literal reading of it will not prevent a house from being built and other situations. We are saying that once a developer agrees to designate open space in return for other benefits under an SUP, the developer cannot later turn around and build a house on that open space if it disturbs the use of neighboring properties. We think that it is good public policy, but most importantly, that's what the ordinance says. It was suggested that the view from our house is the only~~

~~issue under Section 8.1.3. The application fails to address the other disturbances mentioned by neighboring owners. It ignores the fact that the ordinance language is not limited to the house but applies to interference with the uses of the rest of the property. It ignores the fact that the cul-de-sac by the proposed house is common property used by all owners of Smokey Hollow Estates. Further, my written comments recite information about the lead and arsenic contamination on the Peninsula Shores property. This proposed house would be much closer to our house and the cul-de-sac than any other construction on the development. This contamination is yet one more reason why the amendment will be hazardous and disturbing to the neighbors. We also find it very telling that Mr. Quandt is silent on how this proposed relocation of a house would be a substantial improvement to the property in the immediate vicinity as required under 8.1.3. Mr. Quandt's statement that various objections and arguments were raised before and rejected by the courts and township is highly misleading. Neither the township nor the courts have addressed the issue of relocating a house within this development onto this property that is currently designated as open space. Mr. Quandt states his client has agreed to plant trees to address our concerns. Our reaction is that even if you put lipstick on the pig, it's still a pig. If the developer believes that planting some trees for screening solves the problems with having a house instead of open space, then he can solve his concerns of the current lot one by planting screening there. We firmly believe that under the plain language of the ordinance, and as a matter of law, the conversion of open space by our property to a residential lot cannot be approved. As such, there was no reason to meet with the developer to discuss screening or other issues. Thank you for your consideration.~~

Dloski: During this meeting and in previous meetings you have alluded to the fact that the developer received benefits. What specific benefits did the developer receive?

Haddox: was talking about the benefits the developer received for the SUP including being able to have much narrower lots than the ordinance otherwise would have allowed. He was able to get many more lots in the prime locations. Explained the placement.

Dloski: He received that benefit because he did not build in the open space to the north?

Haddox: when you do an SUP it is a combination of things and they look at everything that is in there and whether it benefits the neighboring properties. In this situation, it is not like they are all tied in to each other but to get those approvals; he agreed that that would be an open space. He put that in his site plan and I assumed he would agree that what they filed was what they were committed to doing. The minimal impact was a factor in the approval.

Scott Howard, Oleson, Bzdok and Howard, 420 Front Street, representing the Lewis Family and their cottage: the PUD and SUP approval process is effectively a covenant by the developer to do certain things. It's a promise to say that in exchange for (what Craig was just talking about these narrower and better home sites) we're going to do some other stuff on our property, including preserving certain open space. The ordinance is clear that you are to look to the unique features of that open space when you're evaluating whether or not the PUD is appropriate in the first place and some of those important features are wetlands, streams, coastal areas, but also these uninterrupted areas of open space. What you have at that corner is a block of that open space. Now, an issue that we've discussed a lot in the past, but I do want to recall is that the open space calculation that the developer is using in this circumstance is, you take the space for the residential lots, you take the roads, and you subtract just that area from the overall development site and everything else is open space. I think the ordinance is pretty clear. You are supposed to look at special characteristics of open space when you're evaluating what is open space. What you have in that corner is sort of a block of open space that helps to do a couple of things. If you're going to have open space, you don't want to segment it; you want corridors of open space. So that's a positive to keep a larger area. The other component of that is that you see throughout the application and the discussion and the materials there is a discussion of trees along the perimeter of the site to be preserved to act as a buffer to the development. That open space is designed

for a couple of reasons: one is to keep the sort of corridor and two is to act as the buffer. That is important (obviously) to folks like Craig and Megan Haddox, whose informed decisions were based on the proposal; how are they going to react to that? Are they going to come here and oppose it? Or are they going to say, you know what, we can live with this particular development, we may not love it, but hey, the open space is right next to our place. There's a buffer of trees that are preserving our place, we're okay with this. This is the bait and switch, right? You haven't objected to it in the first place. Then all of the sudden the development is coming right next to you, and it is segmenting the open space, and it is taking away the value that was part of the bargain in the first place. So it's appropriate to come before you and say this is important to us. It was really important to us in our decision not to take active opposition to the project in the first place, but we don't want the promise that the developer made to change. There are lawsuits over it. There are 400 pages in your packet, as a result of this particular development; it was a big deal and a long process. As a result of that, it resulted in the approved development in a particular configuration, and now that's changing. That's why it's so important to my clients. It relates specifically to what your ordinance asks you to evaluate. I appreciate the hard work that your staff has put in and legal counsel, but the reality of it is, this is not their call. This is your call as the planning commission. You're the ones that need to take a look at section 8.1.3(1)(a) and determine whether or not the development is "designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing intended character of the general vicinity and will not change the essential character of the area in which it is proposed." You also have to take a look at 8.1.3(1)(b). That requires that the change will not be "disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole." So that's the question you need to ask yourself, is this a substantial increase in value to the neighboring property owners? So that's the standard that you adopted in your zoning ordinance and that's the standard that you need, the lens that you need to look at this particular project. Lastly, I talked to you about trees a lot and my letter to you from the 22nd of January goes into more detail. I think a picture is worth a thousand words in that regard. When you take a look at what was put on those maps and the approved plans, throughout the process and where those trees were supposed to be, and where they're not, in my opinion, then I think that it is apparent that you're not maintaining the requirement of the ordinance which also requires that the developer preserve natural features to the greatest extent possible. Those existing tree areas were designated to remain, they're not there. They are not in the pictures. I think that you all need to take an independent look at this. And I think when you do that, the right call is to say no to this particular amendment.

Mark Nadolski, 10 McKinley Road, speaking as the president of Protect the Peninsula: the PDR open space has the same purpose as the open space in the development, for visuals and for keeping peace among the neighbors.

Cram: first thing that I would like to just point out is that there is a difference between land use and the zoning of the property. A PUD approval via the special use permit process does not change the underlying zoning. The zoning is still R1-A and R1-B, which allows for residential uses. To get the 41 sites in that location, they provided 65 percent open space, which is a requirement of the zoning ordinance, the zoning ordinance does not say where that 65 percent needs to be located or how. The zoning ordinance further says that the open space that is provided is private open space, and is for the benefit of the development. Thus, it is internal to the project. To be clear, the 65 percent of open space to meet the requirement of the PUD designates how that area will be used, but it does not change the zoning. SUPs and PUDs are amended from time to time and as such the applicant must follow the appropriate process and must meet the standards in the zoning ordinance.

Haddox: maybe we're quibbling about zoning, but the ordinance says that the SUP shall constitute the land use authorization of the property. That's how it can be used. The SUP governs that and the SUP

says this land is open space. So I'm not sure even if it is still classified on your records as residential property, I'm not sure how that's relevant.
Cram: the zoning has not changed as a result of the PUD/SUP being approved. The applicant can apply for an amendment. They're asking for an amendment as to the use of the land and where the residential uses are located and where the open spaces will be.
Haddox: we agree it's currently open space and it cannot be used for residential.
Cram: it is currently approved as an open space. That is the use of the land there. The underlying zoning is still the R1-A and R1-B which would allow for residential uses. The applicant is requesting an amendment that must meet the standards of the zoning ordinance.
Haddox: We agree. The other thing I would say about your comments on the open space is when this development was sold to the community the developer said this plan would be better for the neighboring properties. The township also found that the viewsheds would not be diminished to such an extent that the standards were not met; the township looked at that also. I guess I would say that even though the ordinance, says the open space is set aside for the use of the development, I would say that open space is also intended for the benefit of the adjoining property owners and the community as a whole.
Cram: correct, I believe the applicant is considering that with their amendment and as you know as a project is developed you tend to learn things and they are requesting an amendment. We will review that amendment with the zoning ordinance standards.
Armen Shanafelt, 7402 East Shore Road: once open space has been defined, it's like that's it, and is that where we're at? Is open space always subject to modification going forward? Raising this point, my experience is with open spaces- you buy a house with open space behind you on purpose because it's designated that way in perpetuity.
Cram: in this case, open space is a requirement of the PUD. To be approved, they had to provide 65 percent of private open space specific to this development. It is in perpetuity as long as the project is developed according to the approval, and no amendments come forward; then yes, it would continue to function as open space. Open space that has a conservation easement or is held as public land is different than private open space designated in a PUD. This is still private property owned by the applicant. Again, they can request an amendment and it is our job to make sure that it meets the standards of the zoning ordinance.
Meihn: the other question he's asking, is once open space is established, will it be there in perpetuity in the designated location, and that's not necessarily true. The standard of 65 percent applies to the entire PUD, but open space can move from one place to another as long as the overall percentage required by the PUD is maintained. That's how it's different than a conservation easement or some other form of open space protection under the law.
Shanafelt: I guess the question ultimately narrows down to is, does it still meet the ordinance requirement and all that in totality? Does it improve the neighborhood overall as well as adjacent neighbors? A very complex problem.

Moved by Dloski to close the public hearing and open the regular meeting, seconded by Hall.
approved by consensus

Dloski: would respectfully ask the staff when they're doing their findings of fact for the next meeting to address the township's zoning ordinance definition of open space which excludes building envelopes.
Alexander: I have some questions; I think it was asked to talk about substantial improvement at our last meeting.

Couture: No, that part is found in the minutes. Section 8.1.3 (1) what exactly does the language "disturbing to existing or future uses in the same general vicinity..." mean?
Meihn: I am prepared to address that.
Cram: going back through the findings of fact and conditions, it was noted that, for residential development, you have to consider that there will be some disturbance, such as putting in a well or on-site septic system. This is anticipated with residential development and a substantial disturbance would be defined as disturbance from a use that is more intensive than residential such as industrial or commercial uses adjacent to residential uses.
Couture: it says disturbing to existing uses and will be a substantial improvement to the community. right?
Meihn: I understand what both of you are saying, will give one analogy, and then move into your other comments and then get to this. But there's a similar type of problem when you talk about PDR land and you talk about the restrictions on PDR land, not to disturb the property in any way, shape, or form. But merely walking could be considered as a disturbance in some aspects. There are some cases that I have researched for you.
Alexander: one of the things that was discussed and that was supposed to be a focus was looking at where lot number one is going to be moved, it would not be in the interior of the development. That was one concern that we have; talking about the viewshed from the land and water, is also a concern being raised with the relocation of lot number one. When talking about the open space, I was reading the ordinance regarding open space and it talks about the open space that is dedicated for private use and that it's owned by the homeowner's association. In looking at where the proposed lot one is going to go and then where it is now, having that big piece of open space I think is more conducive for use, so they move a house up here. Now, the open space in that chunk of open space, then somebody's yard is right there. It talks about recreational use: such as what kind of recreational uses the people in this subdivision can have. I believe that you talked about lot one, were you going to move that back from that, you were going to be planting and beautifying it. Asked for clarification.
O'Grady: I don't recall any specific conversation.
Meihn: I just want to make sure you're not assuming that open space is an entitlement to a landowner to recreate on the physical property of open space.
Alexander: if owned by the HOA and says that for the sole use and enjoyment in present and future for those homeowners. Was there something about sewer and or sanitary landfill that needed to be addressed? Then it says, it's going to be served by individual septic and sewer if it's moved.
O'Grady: both locations
Couture: regarding 8.1.3 (1)(b) of the zoning ordinance is a key component, it requires us to find the proposed amendment "will not be disturbing to existing or future uses in the same general vicinity and will be a substantial improvement of property in the immediate vicinity and to the community as a whole." What does that mean?
Meihn: The word disturbing is an unfortunate word here because the case law and other district courts across the state of Michigan have looked at similar types of statutes, but the word disturbing wasn't used, it was a disruptive engagement or disruptive of what the intended use is. The word disturbing is a problem in terms of a definitional phrase. Look at the cardinal rule of interpretation of a statute. As you know, you try use English for reading and understanding if you can. My interpretation of what that means is that it requires something more than what is ordinarily happening or done in a residential district and residential area. When you look at the word benefit, which is the other disturbing word for me, and our ordinance, the benefit is looked at in many aspects. The benefit to adjacent properties for some people would be having another home that is nearby in terms of value: kids, engagement with residents being in close, proximity, etc. Others that live on the peninsula look at the benefit or value of

having more space, unobstructed views, more quietness, and those kinds of things. So the word benefit is a discretionary term and the previous term with plain reading, all these under the cardinal principles of law and under case law. If you are engaging in an activity that is expected in a residential area, then that is not going to invalidate our law or our ordinance. Then the benefit would be the one that you'd have to look at to determine if it is a benefit to the residential project as a whole, not necessarily to the person who is," burdened by it." When you move one lot from one area to the other, (obviously) you're benefiting the people around the area where the lot was to go and you are burdening, the people or person, where the lot is being placed and what that property owner values. Typically the legislature, the courts, and zoning boards have found that does result in a benefit for that community. That is how those were typically interpreted and that is how these words (I believe) would be interpreted by Judge Power or any other circuit judge. I do agree with you, those two words make it very difficult for yourselves and a lawyer to understand how to measure against those words and those standards.

Couture: how would this amendment bestow a substantial improvement to property in the immediate vicinity and to the community as a whole? I fail to understand how changing these lots around will be a substantial improvement for the property in the immediate vicinity, which would include the neighbors and to the community as a whole, which I would think would mean the whole peninsula township community, as I read it.

Cram: we will be discussing this in detail in the findings of fact and conditions. One benefit is that access to the shore is being removed as a result of this amendment, which benefits the two lots on either side of it.

Couture: asking for more of a legal interpretation.

Miehn: Allen is trying to have an understanding of what is the baseline that he gets to compare or has to compare. The answer to the question of the substantial benefit to the community is usually defined as that residential community, not Peninsula Township as a whole; the immediate residents are those that, are impacted or not impacted, in the relief of the burden. When you have a situation where it is, either zero-sum or when you have a situation where there is movement. Is there a benefit to relieving the burden on the shoreline? That's when you're able to answer that question. But you do have to find that there is that substantial benefit to the immediate resident and to that community as a whole.

Couture: community as a whole would be the community of people within the development.

Meihn: yes

Shipman: in (1)(a) in the zoning ordinance, it says: be designed constructed, operated and maintained so is to be harmonious, and appropriate, etc., but with the existing or intended character of the general vicinity. So we have general vicinity, we have immediate vicinity, and we have the community as a whole. They can't all be referencing the same thing.

Meihn: the residential people that are impacted by a lot going into their area in a development and then there is an impact on the overall development. It's not unlike that, what happens on one part of Peninsula Township doesn't impact the farther part of Peninsula Township, but it can impact the entire peninsula as a whole. The way the ordinance looks at it is, you don't judge a subdivision and a request for an amendment and compare that to how it's going to impact the farmers or the winery property that they're in. It's a subset that starts large with the residents of the development and another subset that goes into that immediate vicinity of where this proposed change is going on. So they don't mean the same, they can be drastically different with the answers when you go through the findings of fact; because you may very well find that the benefits of the community and the subdivision are there, but the burden to the surrounding residential homes where this is going to happen is so egregious that you don't need a standard. The problem has to do more with the language of the ordinance than it does with the desire and intent of what you're trying to do.

Dloski: do you feel if it is challenged, our ordinance language would hold up?

Meihn: I think it would be upheld if you interpreted it the way that I discussed a moment ago. I talked about disruptions that are going to naturally happen in the residential area that are not to be considered to be improper, illegal or in violation of the zoning. Then when you get to the substantial benefit and that, I think, your decision would be upheld.

Shipman: when looking at amendments in general, at what point does it become silliness? If you're looking at multiple amendments to produce a project that is substantially different from what was originally approved in the process, what becomes unreasonable? I was looking at some of the specific language about clustering: what was going to be developed where the home sites are placed so that they would be towards the interior of that parcel. Looking at an amendment, I've circled back to our specific project here, looking at the language and that original approval is something that we can't point to. I don't understand how it is that we can't point to what was originally approved and the language in that original approval. We're being told to stick to what's in the ordinance, not the technical approval, and what intent was as a part of the approval.

Meihn: that question is the baseline of every issue that's ever been litigated in this country regarding zoning and planning. You have an approval of a project, people rely upon it, the people around them rely upon it, and the people that buy into the project rely upon what is going to happen. And then (I think you had) one of the individuals talk about that it feels like a bait and switch and to some degree is not too far from the truth. When things start to change, you have the people that live within the project that bought with certain assumptions, who are not happy, and you have people who live outside of the project that are impacted who are not happy. It does start to feel like a builder/developer can get his/her toe into the development part, and then start repetitively doing amendment after amendment so they can ultimately get a project they wanted in the end that we rejected in the beginning, but did it through all these amendments. Our constitution gives the right for zoning boards like yourself to restrict control and hold people accountable, and on the other hand, you have to do it which fairness, understanding, and with property rights engaged. So the answer now to that question is that the tools that you are being asked to use have words like, what we just discussed, that are not very well defined-that are difficult to understand; every time you see the words substantial or material it is up to interpretation. Ultimately, to keep the project on it's proper course, you will look at things through the zoning ordinance that gives you the control. You also look at practical difficulty; things that were not anticipated that would give rise to it. Modifications and changes are just the nature of zoning. The answer to the question is to go through those standards and come up with some thoughts of where you may go on each of these and using the language in the ordinance to determine for better, or for worse, that those guidelines have been met. By doing that, you will keep the project in its nature as close to original as possible.

Dloski: during the public hearings, we heard comments that there was a trade-off, there was a covenant, or there was a promise that the PUD would be approved if they didn't build on this open lot. If they put the existing house where it is now and didn't build in that open space is there anything that you've been able to find that would tell you that there was a covenant, a legally enforceable, promise or covenant, that would change the complexity of this?

Meihn: the only thing that would minimize the complexity of this is looking at the findings of fact and conditions of the prior approval, that will tell you where there was exact quid-pro-quo. Generally speaking, there's always horse-trading in the design and working with the planner and the zoning administrators to meet and find out where the 65 percent is. My experience has been open space, for example, the 65 percent is usually what the developer has designed into the plan and it usually doesn't get much of a discussion unless it is raised by the residents or doesn't meet the 65 percent. But the answer to your question is in the findings of the fact: should be there if horse-trading took

place, this would be binding in the findings of fact. If there's something in there that says that in exchange for this, we gave that, you are welcome to hold tight to that rule and that agreement.
Couture: are we obligated?
Meihn: you should be obligated to do so unless you believe that there are circumstances that would be a benefit to the community as a whole by making the change. For instance, it's kind of like lead pipes in the 1950s. Now, we would agree that it's dangerous. So you wouldn't hold the builder to lead pipes. Now, you would allow that change. But the community is bettered by changing that quid-pro-quo, so you're not obligated.
Hornberger: at what point in time do you stop asking for amendments for an SUP?
Meihn: at the point in time where the township tells the developer that the proposed amendment is not approved, but the developer does have the right to pay the fee and to engage the professionals to do as many amendments throughout the lifetime of that developer in the project as that person sees fit. A fee is paid and a decision is made. But we don't ever get to tell the developer, because it's unconstitutional, that you can't come in to try to improve the project if it's truly an improvement.
Hornberger: once all the lots have been sold, then there would be no more amendments.
Meihn: that is generally true but I have seen even after all the lots have closed and sold; sometimes, there are amendments to provide for other types of things that have been retained by the developer. I did not see that would be the case here, when the lots are sold, my review of this is the developer will be out of the project completely. There will be no more amendments to the SUP.
Hall: I understand what you said that the developer has essentially an unlimited right to come to us to request amendments; if the developer requests an amendment and staff believes that the amendment satisfies the requirements of our zoning ordinance, are we obligated to approve it or not?
Meihn: no, the planning commission is the decision-maker. The legal team will provide information for the decisions.
Cram: we were not planning to draft the findings of fact this evening
Meihn: will provide an opinion; encourages planning commission to go back and look at findings of fact that existed in the original SUP approval.
Discussion ensued
Moved by Dloski to close the public hearing and schedule to move forward and direct staff to prepare findings of fact for the March Planning Commission meeting, seconded by Couture.
approved by consensus

c. Special Use Permit (SUP) #140-Schroeder Bed & Breakfast-Findings of Fact and Conditions
Cram: Summarized the Findings of Fact and Conditions for SUP #140-Schroeder Bed and Breakfast found in the packet.
Dloski: clarified that the parlor will not be used for sleeping.
Cram: Explains bedroom configuration: maximum of five guests for two bedrooms for the bed and breakfast.
Moved by Dloski to recommend that the planning commission recommend approval to the township board SUP#140 Schroeder Bed & Breakfast, with the conditions and findings of fact prepared by staff, seconded by Hall.
Roll call: **approved unanimously**

10. Public Comments:

Dave Edmondson, 12414 Center Road: commented on the rewrite of the PDR ordinance, disagreed with the exclusion of wineries and chateaus. Thinks that is a legitimate farm activity that is currently quite successful and an economic engine that is propelling a lot of wealth out here on this peninsula. Believes that the precedent has been set seeing that Bonobo is on PDR land. Another example of a restricted property is Dave Kroupa's Peninsula sellers. He self-restricted 150 acres to have a remote tasting room, which was very forward-thinking with no costs to the community. Questioned retroactive and going forward for PDR contracts which are true covenants.

Cram: the change to prohibit winery-chateaus and remote winery tasting rooms was a recent addition based on feedback received from the land conservancy and possible legal issues. I will get additional information.

Edmondson: that makes sense because of the use of their money. I'm referring to our PDR program and to these previous contracts that are on the books.

Cram: previous contracts would not be affected by the changes. Not retroactive but forward, that is my interpretation, but I will confirm the facts.

Edmondson: if we can stick with our zoning, with the required 50-acres for winery-chateau, that in itself with having to have 75 percent of the land planted; it takes care of the substantially undeveloped requirement.

Nancy Heller, 3091 Blue Water Road: encouraged the planning commission to save the date for the March 24th meeting of the Citizens' Agricultural Advisory Committee to hear the right to farm speaker; many of your decisions are based on agricultural properties, so it is important to attend. Commented on the Peninsula Shores project, adjacent property owners think it is a done-deal, but that is an unknown.

11. Other Matters or Comments by Planning Commission Members:

Hall: I have a question for John Wunsch on the PDR study group, why is the Grand Traverse Regional Land Conservancy involved?

Cram: because they grant a lot of the easements; part of the reason that the PDR ordinance was updated is that there are additional funding sources such as matching grants. If another millage is approved, it could go a lot further with these matching grants. We also have to include them because some land included in the PDR program currently have land conservancy easements. They are the regional expert. Their legal team reviewed the draft and it was my understanding that some of the changes could affect their 501-C3 status. They cannot be a partner with us unless our ordinance is in alignment.

Meihn: as the township has developed and more money can be available from a match, our ordinance needs to be aligned with both state and potential federal funding to allow that to occur.

12. Adjournment:

Moved by Dloski to adjourn, seconded by Couture. **approved by consensus**

Adjournment at 9:22 p.m.

Craig Haddox of 4150 Trevor Road: the application states the proposed lot will be serviced by an individual sanitary system. That means there will be even more excavation and dirt moved. I believe this will increase the amount of contaminated soil that blows onto the neighboring properties.

Joe Quant claims that under our approach, no house could be built next to another house. That is false. The "not be disturbing" standard is not found in other residential sections of the ordinance. Thus a literal reading of it will not prevent a house from being built in other situations. We are saying that once a developer agrees to designate open space in return for other benefits under an SUP, the developer cannot later turn around and build a house on that open space if it disturbs the use of neighboring properties. We think that is good public policy, but most importantly, that's what the ordinance says.

Joe suggests that the view from our house is the only issue under 8.1.3. He fails to address the other disturbances mentioned by neighboring owners. He ignores the fact that the ordinance language is not limited to the house but applies to interference with the use of the rest of the property. He ignores the fact that the cul de sac by the proposed house is common property used by all owners in Smokey Hollow Estates. Further, my written comments recite information about the lead and arsenic contamination on the Peninsula Shores property. This proposed house would be much closer to our house and the cul de sac than any other construction in the development. This contamination is yet one more reason why this amendment will be hazardous and disturbing to the neighbors. We also find it very telling that Joe is silent on how this proposed house would be a "substantial improvement to property in the immediate vicinity" as required under 8.1.3.

Joe's statement that various objections and arguments were raised before and rejected by the Township and the courts is highly misleading. Neither the Township nor the courts have addressed the issue of relocating a house within this development onto this property that is currently zoned as open space.

Joe states his client has agreed to plant trees to address our concerns. Our reaction is that even if you put lipstick on a pig, it's still a pig. If the developer believes that planting some trees for screening solves the problems with having a house instead of open space, then he can solve his concerns at current lot 1 by planting screening there.

We firmly believe that under the plain language of the ordinance and as a matter of law, the conversion of open space by our property to a house lot cannot be approved. As such, there was no reason to meet with the developer to discuss screening or other issues.

Thank you for your consideration.