



# PENINSULA TOWNSHIP

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MI 49686

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## Township Board Regular Meeting

March 12, 2024, 7:00 p.m.

### Township Hall

### Minutes

1. **Call to Order** by Chown at 7:00 p.m.
2. **Pledge**
3. **Roll Call**

**Chown:** good evening and welcome, everyone. Thank you, Maura, for the balloons waving beside me. I want to confirm the rumor that our supervisor is now a father to a four-day-old baby boy. Zavian Joshua Qureshi Wunsch is the seventh generation of Wunsches on the Old Mission Peninsula. Congratulations to everyone. We can't wait to meet our newest, tiniest OMP farmer.  
Present: Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown  
Absent: Wunsch

4. **Citizen Comments:**

**Dave Murphy, 6943 East Shore Road:** I am speaking in support of the proposal for consulting services that Armen [Shanafelt] will address later in the meeting. My involvement with township matters over the course of 40 years has resulted in frequent observations about how a different structure of government or management might advantage our residents. The first time I heard the idea discussed was in the early 1990s during a dispute with the county road commission. It's been batted around ever since, including in our draft master plan discussed from 2019 through 2021. A full page is dedicated to government structure and calls for a study group. It's on page 82 of the draft plan. We all know about the Fahey Schultz presentation late last summer and the study group that emerged from that. The conclusion of the study group is that the township will be best served by an independent consulting firm taking an objective look at the township's needs. Going into the interviews with the two bidders with the best proposals, I was not optimistic. I was skeptical about the timing of such a study and whether either consulting group could pull off what was needed for a reasonable price. Participating in the interviews, I was caught off guard by the presentation from Maner Costerisan, hereafter known as MC. Armen will address their proposal in detail so I'll limit my observations to these points. MC impressed with a grasp of the challenges we're facing, the team they're offering to work with us, the price for the services proposed, the timeframe for delivery of services, and the clear fact that they are not coming in with preconceived notions. I am not convinced they're going to propose a wholesale change. They want to dig, want to help us optimize what we have. They want to evaluate other resources and efficiencies. I'm convinced that if they do suggest large changes, they'll give us an action plan to get us there that will be palatable to the public. I strongly believe that paying for the study will yield a positive return on investment, both financially and for the future needs of this township.

5. **Approve Agenda:**

**Sanders moved to approve the agenda as presented with a second by Rudolph. Motion passed by consensus**

6. **Conflict of Interest**

**Chown:** I have a conflict of interest and will recuse myself when we get to business item 2.

**7. Consent Agenda:**

1. Invoices (recommend approval)
2. Reports
  - A. Peninsula Community Library
  - B. Cash Summary by Fund
  - C. Fire Department
  - D. Ordinance Enforcement Officer
3. Minutes from February 13, 2024, Township Board Special Meeting; February 13, 2024, Township Board Regular Meeting; and March 4, 2024, Township Board Special Meeting
4. Final List of Election Inspectors for the February 27, 2024, Presidential Primary
5. Map of the New Area in the Green Section at Peninsula Township Cemetery
6. 2024 Ballot Proposal Filing Deadlines in Grand Traverse County
7. Correspondence
  - A. Nancy Davy, President, Old Mission Women's Club
  - B. Ann Dailey

**Achorn:** there's a typo in the February 13 township board regular meeting minutes on page nine, under number 5. It said "TBA" and should be "TBA ISD."

**Sanders moved to approve the consent agenda with a second by Sanger.**

**Roll call vote:** yes – Sanders, Sanger, Rudolph, Shanafelt, Chown, Achorn

**Passed unan**

**8. Business:**

1. Update from John Divozzo, Director of Grand Traverse County DPW, on 2024 Water and Sewer Costs (Achorn)

**Achorn:** John comes to our meeting every year to explain what's going on currently versus last year. He has presented us with his recommendations for the next year.

**Divozzo:** I presented rate study budgets a few years ago, and the township accepted at that time the recommendation of a financial advisor to move water and sewer rates to recommended levels. We did that ahead of schedule. That was my recommendation to move to full rates; her recommendation was to kind of spread that out over a few years. But we are at the point now where we recommend annual adjustments routinely. At this time we ask that sewer rates be moved to 3 percent and water rates to 3.5 percent. These are routine increases and very similar to the other townships we serve. The budgets themselves are in line with the financial studies we did; there's nothing major we're planning or expecting for the 2024 and 2025 budgets, just routine maintenance, operational maintenance, and some capital improvements to scale for the next three years. I'm not saying these rate increases would eliminate those, but based on the financial studies, your fund balances definitely could use increases of this small magnitude.

**Achorn:** what date do you recommend these rates change?

**Divozzo:** the county runs on a calendar year so we would recommend January, but based on your budget year, April.

**Achorn:** regarding the water fund, I sent you the balance sheets for both water and sewer. Are there sufficient monies in the water fund now that they can pay off their loans to sewer and tower?

**Divozzo:** we would not recommend all at once, but you could definitely enter payment plans on the sewer back to the other funds.

Laura Martin,  
Recording Secretary

**Achorn:** for the water. The water owes the tower \$75,000.

**Divozzo:** right. I would not recommend that as a one-time payment. Spread it out over five years.

**Achorn:** the water fund owes the sewer fund almost \$57,000.

**Divozzo:** if you do it over five years, my recommendation is your budget can handle it but then you definitely have to increase rates. I wouldn't *not* withhold rate increases if you're going to start those payments.

**Achorn:** could I start them in the fiscal year beginning April 1, 2024?

**Divozzo:** yes.

**Achorn:** second, the part-time residents have been complaining that their base rate is high. They're not even here and they're paying a lot. Is there some way to adjust between base rate and usage rate?

**Divozzo:** we get this from all the townships. The township ordinances and rate resolutions all state "No free services." Once you connect, your minimum is the minimum regardless of use. You can turn on or off that service, but the cost to turn on and off is roughly the same as what the minimum would be. Rate setting is the township's authority. I've worked in two counties in Michigan, and I can tell you that no township system we've managed has ever gone to zero or reduced snowbird rates. They pay the minimum.

**Achorn:** if the sewer is going to increase by 3 percent and water by 3.5 percent this year, will you be back next year to give us an update?

**Divozzo:** yes. If there's any major project that we have outside the norm, we would bring that to you during the budget year. The county DPW is not in the major capital improvement business; that's the township's authority and responsibility. Typically, you tell me about those types of projects. We maintain your major assets on the system. We are updating all of this data throughout all the townships. We're spreading that over three years, and those costs have been identified as part of your rate studies. If we're going to continue with the projects, you should continue with the revenues being projected by the rate study, which includes rate increases.

**Achorn:** we're getting close to the end of some of the three bonds that we have with the county. Do you anticipate requiring us to pay off new bonds that you will be issuing?

**Divozzo:** we will not issue any bonds to my knowledge. Any bonds that are with the county were at the request of the township, or they were requested by the city, with which you participate. The city is moving forward with two major projects, one in water, one in sewer. They're similar amounts to the current bonds we have. We have continued to budget those bond payments through the future and they're included in your rate studies. Basically, one's going to drop off and a new one's going to come up, but they're the same amount. We don't anticipate any increase over and above what we've recommended for your rates.

**Shanafelt:** is that 3.5 percent increase sufficient to cover the payback that Marge [Achorn] went through? Or was the 3.5 percent proposed in absence of considering that payback?

**Divozzo:** those amounts were included in your rate study. She spread those out over five years. Your rate study goes beyond those five years. Beyond that, it's these annual increases. Those repayments are included in that. The recommendation was made to have a repayment schedule, but you can modify that at any time.

**Chown:** how long have you been with Grand Traverse County DPW?

**Divozzo:** 10 years this summer and 13 in Wexford.

**Chown:** thank you; it's good to have you on board. We appreciate your time.

2. Meeker Addition to Pelizzari Natural Area Update from Claire Herman, Land Protection Specialist with the Grand Traverse Regional Land Conservancy (Wunsch)

**Sanger moved to have Chown recused with a second by Sanders. Motion passed by consensus**

**Achorn:** Dave Murphy from our parks committee will introduce the background and Claire.

**Murphy:** I've been involved with what's now called Pelizzari Natural Area since 1995. It was a citizen-led initiative to create parkland on the south end. We found a willing seller, and after some years of negotiations, the initial petition to create parkland came in 1995, but it took until 2008 to get it on the ballot. There was over half a million dollars of private fundraising put into a pot and a millage in 2008 paid for the balance of the parkland. Additional volunteer efforts paid for remediation, trail building, fencing, and signage. Really, it's a citizen-led park. There was a fund balance at the conclusion of paying off the bonds. We had some discussions about that and how it needed to be put to use with the intention of the millage language, which was for acquisition. So the fund balance was held in reserve for those purposes. In 2019, we changed from an elected parks board to an appointed parks committee. I was fortunate enough to become involved with the parks committee on a formal basis at that time. I proposed we start to look at how we might put that excess funding to use. We knew property values had escalated considerably. What we hoped was that the key party in our work at Pelizzari, besides the volunteers, the Grand Traverse Regional Land Conservancy, might be able to step up once again. We would never have gotten the millage or acquisition without the conservancy. They've been partners with us at Pelizzari probably since around 2000, so we have close to a 25-year relationship with them on this project. And they've been involved in some of the other land preservation efforts on the peninsula. So in 2019 we started exploring how we might expand the property, acquire more land, or expand the park. We found a number of interested parties but the timing wasn't quite right. We did find one party that was interested in selling at that point in time. The conservancy, led by Claire Herman, put together a purchase option. I want Claire to handle the details on this, but it's a tremendous amount of work once again by the conservancy to put the project together and handle the balance of the fundraising. No new township taxpayer dollars were spent on this project.

Last thing I'll cover is that this property is not directly adjacent to the current Pelizzari Natural Area. The obvious concern is, can we tie it back together? We wouldn't have moved forward without getting enough positive feedback from the other necessary parties to have that reassurance. Worst case scenario, we are taking a sizable parcel of land with significant development rights off the market. That's an achievement in itself, but we do feel confident that eventually it'll happen over time. We'll be tying it back and probably come close to doubling the size of Pelizzari.

**Herman:** the great news is that the conservancy has officially raised the remaining portion of the funds in order to close on the property. It's been a while since the initial 2022 resolution in which the board approved the overall project, so I'll quickly go down the structure of the project as a reminder. The conservancy holds an option to purchase the property, which expires June 30 of this year. The property appraised for \$700,000 in 2021. The Meekers generously agreed to a \$50,000 bargain sale right off the top. Thank you to the Meekers. They also agreed to an extended timeline to allow the conservancy to raise the remaining funds for acquisition. The conservancy has made two \$20,000 payments to hold the property, which are applicable to the purchase price, and we've raised the remaining \$410,000. Prior to closing, the conservancy will sign the option agreement over to the township, which will ultimately purchase the property, so we will never be in the chain of title.

Laura Martin,  
Recording Secretary

At that time, the township also agreed to execute a conservation easement that will permanently protect the property from any future development or splits. I've included the draft conservation easement in your board packet. It's currently being reviewed by the township attorney. The conservancy approves or denies a project contingent upon satisfactory attorney review of any closing legal documents like the conservation easement.

I want to thank the donors who stepped up to make contributions to this property. Many of them are township residents, and we could not have done it without them. I've included a draft closing statement in your packet additions. This is based on an April 30 closing date. The township will be responsible for paying the 2024 taxes. The closing company estimate models will be very close to the number that's on the closing statement. I'm just asking for final approval of the exact closing amount, and the property will be the township's.

**Shanafelt moved to approve the resolution for the Pelizzari Natural Area Meeker Addition, Resolution 2024-03-12 #1, to continue to explore appropriate locations to help enhance or enlarge Pelizzari Natural Area in coordination with the Grand Traverse Regional Land Conservancy, and to authorize the supervisor to sign the closing documents with a second by Rudolph.**

**Roll call vote:** yes – Rudolph, Shanafelt, Achorn, Sanger, Sanders **Passed unan**

**Shanafelt moved to authorize the treasurer to do the wire transfer necessary for the April 30 closing estimated to be approximately \$200,000 and for the township to pay the taxes the following year with a second by Sanders.**

**Roll call vote:** yes – Shanafelt, Achorn, Sanger, Sanders, Rudolph **Passed unan**

**Rudolph moved to bring Chown back to the board with a second by Achorn. Motion passed by consensus**

3. Bids to Replace the Wooden Boardwalk and Stairs at Mission Point Lighthouse (Achorn)

**Chown:** Ginger Schultz is our Mission Point Lighthouse manager.

**Schultz:** I've been trying to get bids to replace the beach steps and boardwalk. It's going to be the same as it is now except the beach steps will be six feet wide rather than the narrow ones so people can go up and down at the same time. I received approval from SHPO years ago for that. We talked about this project during COVID and it's just taken a long time to get enough bids from people who can do this job. I think we should go with Boardman Building Company. It's a detailed bid and he came right out and answered all my questions. We went over everything and the price is very good compared to the other bids. I think he's very fair and he had good references. His timeline was good too. He will try to get this done before the busy season hits.

**Chown:** remind us what SHPO stands for?

**Schultz:** State Historic Preservation Office. They have to approve everything at historic buildings because we are registered.

**Sanders:** do you have the license and insurance information?

**Schultz:** I don't have it yet, but I will have it.

**Achorn:** do we have to go through a request for a land use permit for that?

**Cram:** yes, and I've spoken to Ginger and will work with her. An amendment to the SUP is not required because it's maintenance.

**Rudolph:** this is for the boardwalk around the front and the steps going down to the beach?

**Schultz:** the ones that are straight north from the lighthouse. There are other steps too but those are okay right now.

**Rudolph:** and the fencing?

**Schultz:** the white fence is fine; that was replaced a few years ago. The railing going down the stairs will be replaced to code. The posts we might not have to replace; they look in great shape still.

**Chown moved to accept the bid from Boardman Building Company for \$27,416 to replace the beach steps and boardwalk on the north side of the lighthouse with a second by Sanger.**

**Roll call vote:** yes – Sanger, Rudolph, Shanafelt, Chown, Achorn, Sanders **Passed unan**

4. Public Hearing on Peninsula Shores Planned Use Development Special Use Permit #123, Amendment #4 (tabled from the February 13, 2024, Peninsula Township Regular Meeting to be further tabled to a date uncertain) (Cram)

**Cram:** between the planning commission and the board, this was scheduled for a public hearing for the February meeting. In between the February meeting and this meeting, the applicant further evaluated the comments made by the planning commission and proposed some amendments. Those amendments would be considered major amendments prior to final approval, so this matter will be going back to the planning commission. I'll let the planning commission know this is happening at their meeting on March 18. Then we have scheduled this for an introduction with the planning commission at the April 2 meeting. For that reason, it's tabled to a date uncertain. This amendment will likely change depending on how things go with the planning commission. The reason we're tabling it to a date uncertain is that we would likely have to re-advertise anyhow. I did receive some public comment, and I was able to let most people know the item would not be heard tonight. For anyone in the audience who wishes to speak on this, please stay tuned. This will come before the planning commission again at the April 2 meeting.

**Shanafelt:** motion to table?

**Chown:** no, because it's a date uncertain.

**Achorn:** do they need to reapply for an SUP because it's a major amendment?

**Cram:** no. Our fee schedule notes that if you submit a major amendment prior to final approval, there's a fee associated with that. This falls under their current application.

5. Public Hearing on Building Heights, Amendment #204 (Cram)

**Cram:** following the November 14, 2023, joint special meeting with the planning commission and township board, a building heights study group was formed. This group included a diverse group of residents, contractors, and architects to look at our current zoning ordinance related to the definition of how we measure building height. The study group met on November 29 and December 6. A policy recommendation from the study group went before the planning commission at its December 18, 2023, meeting. The summary of that policy direction is to eliminate the number of stories, to measure from the mean of natural and finished grade not to exceed five feet of cut or fill, and to measure roof between the even peak with a maximum height of 35 feet.

That policy recommendation evolved slightly based on additional staff input working with the planning commission chair and our legal counsel. The revised information was presented to the planning commission at a public hearing on January 22, 2024. The minutes from that meeting have been included in your packet to meet the requirements of the Michigan Zoning Enabling Act, so you have heard the public comments that went before the planning commission. The amendment evolved a little bit more at the public hearing based on information staff received from both the public and the planning commission.

Laura Martin,  
Recording Secretary

The amendment went back to the planning commission at their February 22, 2024, meeting for continued discussion and recommendation to the board. We received no public comment at that meeting. The planning commission did unanimously recommend that the township board adopt Amendment #204 as presented in the packet. I have a clean version in your packet and a redline version of the proposed amendment. I also included the red lines from when it first went to the planning commission and then how it evolved at subsequent meetings. We've also included some diagrams that visually help people understand how building height will be measured, which is from the average of natural grade. The reason we evolved the original policy direction from the average between natural grade and finished grade is that in diagramming this and looking at existing examples, we realized that was a very complicated average to come up with. Measuring from the average of natural grade is something homeowners can understand because they can see what the grade of their property is. It's easy to determine that average. The average would be derived from where the exterior wall meets the grade. The average would be from the highest point on the property to the lowest point and then you would take the average. That allows flexibility because we have varied topography. Taking the average gives some flexibility.

We stayed with the recommendation to eliminate the number of stories. Rather than measuring as the policy direction had come before the planning commission, from the mean between the eave and the peak, we decided to go with the peak of the roof. Again, measuring from the mean created a lot of variables, and we presented several examples of how a structure could really get quite a bit taller than what we've seen historically. We stayed with measuring to the peak of the roof, but rather than having the maximum be 35 feet, which we currently have, we are going with 38 feet. This again allows flexibility to incorporate various types of roof pitches. We felt that the 35-foot maximum to the peak was encouraging people to go with flatter roofs, and giving additional flexibility would allow steeper roof pitches, which is consistent with the character we currently see on the peninsula.

With this we have introduced some new definitions. We added a definition of what average natural grade is. We revised the definition of basement. We revised the definition of building height: to be the vertical distance measured from the mean elevation of the average natural grade to the highest point of the roof. We revised the definition of seller. We added a definition of finished grade. We added a definition of natural grade. The definition of story needed no changes. We did a thorough search through the entire zoning ordinance to pick up any sections where building height was mentioned. As a result, we are amending section 6.8, Schedule of Regulations, removing the reference to two and a half stories, and revising 35 feet to a maximum height of 38 feet. Under section 7.9.3 (4) in the airport overlay district, we also changed the height from 35 to 38. Under subsection 8.3.5 (5) under our planned unit development, the maximum permissive height was also changed from 35 to 38. This has been appropriately advertised both with the public hearing before the planning commission in January and a public hearing with the board with the intent, if you're comfortable, for adoption. If so, I can proceed with publishing this and noting the effective date.

**Rudolph:** I like the simplicity. It makes it a lot easier to administer and for people to understand. Well done.

**Shanafelt:** as Rudy said, the beauty of this is it's simple and captures almost all cases of buildings. The only question is when it doesn't. We have a policy group to go through the ZBA to deal with any exceptions that might fall outside the simplicity described here.

**Cram:** agreed. There's currently an exemption for agricultural buildings. In the future, I would like to propose that rather than addressing that with an SUP, there would be an administrative process

for agricultural buildings. There is a process now in the event that there is an agricultural building that would not meet these requirements.

**Sanger:** I'm pleased too. This has been an enigma so getting this clarified is terrific. The other point is that with the popularity today of walkout basements, this can help define exactly what the homeowner can do. We want to be positive, encouraging walkouts, but part of the challenge that Jenn [Cram] and the planning commission faced on the committee is that we have to be careful because if we raise natural grade, we end up with some issues in terms of water falling on the neighbor's property.

**Rudolph moved to close the township board regular meeting and open the public hearing with a second by Sanders. Motion passed by consensus**

**Grant Parsons, 6936 Mission Ridge:** I agree with everything that has been said. This sounds simple. It sounds very clear. I like the fact that you have a beginning point for the measurement, and now I'm going to talk about the ending point. The top part. As you're aware, Traverse City has had a number of building height controversies, and there are a couple of recent court of appeals opinions on the 326 land development LLC case. My question comes from that. When you define the end top part of the measurement as the peak, if a person were to have a flat roof house, building 38 feet, then do you allow rooftop activities above them? That's been the issue in Traverse City, that if it's not considered a building structure, Traverse City didn't want to count it. For example, Hotel Indigo went to its maximum height, then put up two walls, a bar, and I think a food service. What it's done is effectively add 10 feet to the building height by not calling it a building structure. The other issue is elevator shafts. Those are similarly causing controversy. You've done a great job; it sounds like you've got it solved. But if there's a way to clarify that 38 feet means 38 feet, that would be great. Thanks very much.

**Sanger moved to close the public hearing and return to the regular meeting with a second by Rudolph. Motion passed by consensus**

**Cram:** I think that a future clarification would be helpful. In our ordinance, the exemptions address things like elevator shafts and those types of things, but with regard to something being installed on a rooftop patio, it would be helpful to clarify. That could be added to exemptions in the future and I've made a note of that. If the board is comfortable, I would like to proceed this evening so that I can keep land use permits moving forward.

**Chown:** will we need to reconvene that study group to address this concern?

**Cram:** probably.

**Sanders moved to approve Zoning Ordinance Amendment #204 as presented in the packet and to authorize staff to publish it in the Record-Eagle with a second by Sanger.**

**Roll call vote:** yes – Sanders, Rudolph, Shanafelt, Chown, Achorn, Sanger Passed unan

6. Public Hearing on Bowers Harbor Vineyard SUP #132, #1 (Cram)

**Cram:** SUP #32 was approved by the board on April 14, 1992. The approval of this SUP allowed for wine tasting, wine sales, and limited retail sales at a roadside stand. Zoning Ordinance Amendment #95 that authorized the sale of alcoholic beverages as a use allowed in conjunction with the roadside stand was repealed after the approval of that SUP. On August 10 of 2010, SUP #32 was amended to allow for 20 outdoor catered dinners per year with no more than two per week. Food was to be catered by the Boathouse; no tents or amplified sound was permitted. The area where the dinners were to take place needed to be defined and consistent with the MLCC license.



Laura Martin,  
Recording Secretary

On April 11, 2019, the zoning board of appeals granted a variance to allow Bowers Harbor Vineyard to apply for a winery chateau with 45.77 acres of land where 50 acres is required. That's an important component of why we're here today. On July 23, 2019, the board approved SUP #132 for Bowers Harbor Vineyard to operate as a winery-chateau under section 8.7.3 (10) of the zoning ordinance. Permitted activities are detailed in the findings of facts and conditions attached in your packet under exhibit two. There were 14 conditions of approval, including timeframes by which specific conditions needed to be completed, particularly related to the conditions on pages 15 and 16.

Condition number 14 identified four immediate action items and two near-term action items. The immediate action items were completed as evidenced in the email chain and site plan attached as exhibit three in your packet. As such, Bowers Harbor Vineyard has been able to operate as a winery-chateau and SUP #32 was subsequently rescinded.

The near-term action number five of SUP #132 specified the planting of trees no less than 1.2 acres of grapes or fruit trees. The applicant provided a survey that showed the general location and provided some receipts that they had planted about 20 trees. We believe the density of trees should have been greater, and the applicant has agreed to plant additional trees, so there has been a condition of approval that addresses meeting the intent of condition five. However, the applicant did not come in and apply for the land use permits to construct the deck tasting room addition, pavilion addition, single-family residence addition, or the garage within one year of July 2020. As such, those elements of the SUP approval have expired per 8.1.2 (5) as noted in condition six of the approval.

The remedy for failure to obtain land use permits in a timely manner was to apply for an amendment to the SUP. This evening the applicant is before us because he would like to construct two additions to the single-family home. The existing single-family home was encapsulated in the SUP because of the need to provide as many acres as possible to meet that 50-acre requirement. Had the single-family residence not been encapsulated in the SUP, the applicant could have come in and applied for a land use permit to construct these additions, but because it was part of the SUP, he had to go through the process to amend the SUP.

We feel comfortable that through the process that went before the planning commission and now the board, working with the applicant's legal counsel and our legal counsel, that we have solid findings of facts and conditions that reconcile the history of the project and the rights of the applicant in the future as well as the township's. This went before the planning commission for a public hearing at the February meeting. The planning commission unanimously recommended approval to the board. If the board is comfortable, it could take action this evening on this amendment. Again, it is focused on the single-family addition to the single-family residence only. In your packet addition is a revised findings of fact and condition that updates some of the conditions; I highlighted those in red. There is also a resolution that goes with it that helps establish this matter for the record. Once the amendment is approved, the applicant would have the ability to come in and apply for the necessary land use permit to move forward.

**Attorney Marc McKellar:** I want to echo the effort that's been taken. It's been especially pragmatic with the township, with Jenn and legal counsel Chris; they've been really helpful at finding a solution that makes sense. If there are any questions about the specifics of the project, I can answer them. We have reviewed the proposed resolution and approve it. Thank you, staff, for your efforts.

**Shanafelt:** we discussed this in the planning commission, that the additions to the house if it were a house, not part of this SUP, would be of use by right. One way to look at this is that we are allowing the stuff necessary to be done on the house that we would normally allow; we just have to work around this construct. And the solution you came up with allows us to do that.

**Shanafelt moved to close the township board regular meeting and open the public hearing on Bowers Harbor Vineyard SUP #132, #1 with a second by Sanders. Motion passed by consensus**  
**No citizen comments.**

**Rudolph moved to close the public hearing on Bowers Harbor Vineyard SUP #132, #1 with support by Sanger. Motion passed by consensus**

**Achorn:** regarding condition number three, "The applicant shall provide a cash bond to the township in the balance of the cost of the 60 trees before land use permits for the home to be issued. The township shall refund the applicant the cash bond in full within 15 days of receipt of evidence of planting the trees." The first question is, who decides what the cost of the trees is?

**Cram:** I thought we had figured out the cost. I am comfortable with the working relationship. If Spencer and Mark present us with the bids to plant these trees, we would go with that.

**Achorn:** I've never dealt with a cash bond; would it be similar to an escrow?

**Cram:** yes.

**Achorn:** who decides when the escrow can be refunded?

**Cram:** I would determine that. Once the additional grapes or trees are planted, I would come out and do an inspection and then the escrow or bond could be released within 15 days.

**Achorn:** within 15 days. Any check has to go through the normal processes of the township clerk's office and treasurer's office. I think 15 days is tight to get something out. I would say 30 days.

**Patterson:** for a bond, they could provide it as it relates to a cash deposit. I assumed they were going to provide us a surety bond, which is sort of like an insurance policy. It's an actual document that would be given to us, with the terms and conditions that would be in the amount of the 60 trees that the township would hold and then we essentially can release that back to them. But it's not like we actually issue a check like an escrow out of a township fund. Maybe they can clarify that it's not going to cause an administrative burden for the treasurer's department. If they do want to deposit actual cash, I have no issue with the policy being extended to 30 days, but I just want to clarify the financial instrument I think Mr. Keller was discussing.

**McKeller:** Chris is right. I thought it might be quicker if we just gave cash for the amount of the invoices for the trees, and then upon Jenn's authorization after a site visit to verify, we refund for that in a lump sum. Given the concept of "make it as easy as possible," offering the amendment to 30 days, this is probably the most efficient way to handle it.

**Patterson:** no objection here.

**Sanger moved to approve SUP #132, Amendment #1 with a change in the findings of fact as presented on page eight under approval of conditions, item three, to state that the township shall refund the applicant the cash bond in full within thirty days of receipt of evidence of the planting of the trees with a second by Chown.**

**Patterson:** the packet supplement has a resolution that accomplishes what you're asking for before the treasurer's amendment. Your motion could be amended before being voted on to actually move the resolution subject to an amendment, condition three, to reflect that it would be a cash deposit that would be returned within 30 days.

**Chown:** I was going to ask for a second motion to approve the resolution, but it sounds like we can capture it all in one.

**Sanger moved to amend his prior motion to include Resolution 2024-03-12 #2 [summarized aloud from the packet] subject to an amendment, condition three, to reflect that it would be a cash deposit that would be returned within 30 days, with a second by Shanafelt.**

**Roll call vote:** yes – Chown, Achorn, Sanger, Sanders, Rudolph, Shanafelt **Passed unan**

7. Public Hearing on Bayshore Marathon (Cram)

**Chown:** Lindsay McLaughlin is the new executive director of the Traverse City Track Club and is here this evening.

**Lindsay McLaughlin, 2399 Kroupa Road:** I'm a newer resident to the township. I stand here today first and foremost as that resident and neighbor. I really believe we can work together today and have worked together since I've joined the track club to create collective, community, positive power together. I see that every time I visit the Old Mission Peninsula Library with my son who, at age four, knows that Wednesdays are the best day to go to the library because of special craft bag day. And I see that with community events like the Bayshore Marathon. I'm pleased to be here. For 41 years, the Bayshore Marathon has inspired thousands of athletes, hundreds of thousands I should say, including thousands of folks who live on Old Mission Peninsula who run the event. We have 139 signed up to date for this year's marathon. Whether it's qualifying for U.S. Olympic trials or qualifying for the Boston Marathon or just finishing a race they never thought was possible, this makes a big difference in so many people's lives. And as I detail in the packet of information with the Bayshore Marathon report, this impact to the Bayshore Marathon event goes well beyond race day. Over the past four decades, the track club has been in existence, we've been able to raise more than \$2 million thanks to the Bayshore Marathon to give back in charitable giving through community grants, including several here on the Old Mission Peninsula. Pelizzari National Area is the most recent. Also \$25,000 to the Bower Harbor's trail project, \$15,000 to the Peter Dougherty Society trail projects, the Old Mission School track, and Mission Point Lighthouse trails. Importantly, scholarships are a huge facet of our charitable giving completely made possible from the proceeds of the Bayshore Marathon. This past year, 2023, we granted seven, about a third of our overall scholarship recipients, to residents of Old Mission Peninsula. I want to highlight again, and this is in the packet, the charitable giving that goes into specific groups across our region but importantly several groups here on Old Mission, including the women's club, the library, and the school, in exchange for volunteering for the Bayshore. I wanted to highlight some of those pieces of our community involvement. We take our role in the community for charitable infrastructure very seriously, which is why it's a top priority for us to ensure that we have a productive, wonderful relationship with you all and all the municipalities we work with and the larger community as a whole as we continue this really strong tradition of community giving.

**Rudolph moved to close the township board regular meeting and open the public hearing on the Bayshore Marathon with a second by Sanders.** **Motion passed by consensus**

**John Wunsch, 17881 Center Road:** I think it's a wonderful event. Exercise, community, it's a great thing. The second thing I'd like to say is that because we're close to it restarting, and we have this issue and it's emotional, don't let that lead to attacking the board and people who are just following procedure. It's important that everyone knows the history. It was a year ago or more that the conversation came up here. It was in May of 2023, over a year before this event, that the township notified Bayshore that they had raised the cost. The Bayshore said, we would like to talk about it, met in August, the board reconsidered it, notified Bayshore by September, no, it's [the fee

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increase] the same. At that point there was no communication that this was a problem. It was assumed the township would raise the fee. With that in mind, it seems we're in a difficult emotional situation with concern and fear about whether this is going forward. I really think that's just because it's a last minute re-raising of a settled issue. It's difficult for the community to suddenly have comments about potential legal action to be taken. It's normal procedure. A township sets a fee, an organization pays the fee, the township approves it. We need to move forward. I hope the organization will stay with what they agreed to in the past.

**John Jacobs, 5290 Forest Ave:** a township is not a business per se, but it's like a business in that it brings in revenue to provide services and facilities to its customers, who are our citizens. And like a business, it has to be run in an efficient way and it has to pay its bills. We're currently in a period of high inflation, which is following a period of extremely high inflation, and costs everywhere have risen. Let's talk a little bit about what's happened over the last year and cost examples. Consumer Price Index is up by 32 percent. Cost of housing is up by 42 percent. Taxes on my house on Old Mission are up by 22 percent. The registration cost for the Bayshore Marathon over those 10 years has risen by 42 percent. [This year it rose] by \$5 per participant, which is just about 4 percent in the past year. In the past 10 years, there was a small increase of fees charged by the township of \$250 plus a per participant fee of \$1 per head. Given the amount of money that is generated by the event, the township's fees [\$5 up from \$1] strike me as extremely low and underpriced. I believe that you as our town board have a fiduciary obligation for a fee increase. \$5 a participant is perfectly reasonable and will almost certainly be passed along painlessly to each runner.

On a more personal note, every year township residents get to endure the inconvenience of roads shut down, waiting in traffic to accommodate an event that uses our backyard for which we pay lavish taxes. If we're going to allow the events to be held, we should at least expect to be fairly compensated. Frustratingly, only a very small percentage of our taxes stays in the township. As a result, our parks and other township infrastructure are in bad shape. If the running club is asking to use our township facilities and infrastructure, the club should be asked to support them fairly, or, maybe it's time for the running club to host its event elsewhere.

Just a personal note. As board members, it sort of comes with the territory, people tell you what they don't like, and they don't take the trouble to let you know what they do like. Every decision you make is met with people who disagree. You get complaints and not praise. Let me tell you that I applaud your efforts to manage the township in a fiscally responsible way. I don't always agree with everything this board does, but this is the best township board in my memory, and you should know your work is appreciated.

**Lewis Roubal, 14670 Peterson Court:** agrees the township board often does run like a business. I think in respect to this issue I want to know the importance of us looking at actual documentation of cost to ensure that we're supporting what we say is a cost being incurred by the township versus those caused by the track club. All of us on the peninsula know there's police, fire, etc. I think the understanding though is that most bills are paid directly versus incurred by the township. If we are increasing the fee per runner, can we have transparency into the actual costs that are absorbed by the township directly? The second thing from a planning standpoint is are we able to tie the actual cost to the township to that fee so that next year, it's not a \$10 or \$15 or \$25 fee? Ultimately, it's a great event but the more money that goes to the township truly is less money that nonprofit is able to dole out in scholarships and other benefits. It'd be great to know this isn't going to be an annual thing, and depending on what the township budget looks like, you're going to use the Bayshore

Marathon proceeds to fill in. I ask for transparency, understanding that we don't want to deprive the track club of anything that isn't absolutely necessary. Thank you.

**Dave Murphy, 6943 East Shore:** I ran my first Bayshore in 1985. I've been supportive of the race through all those years. We moved onto East Shore Road in 1989. I was kind of jarred by my neighbors' reaction to the race. Many didn't like it. I found myself through the years coming to these meetings and oftentimes supporting the track club, voicing my support because so many of the residents were expressing displeasure. I'm trying to lay the groundwork here that I want to see it continue. I want to see it successful in this township. I was at the parks committee meeting where Jenn brought up the idea of an increase that might go to support our parks. Having been involved in a marathon session of meetings about parks deficits, looking at revenue enhancements of any kind that we could come across, that seemed like a great idea to me. I was also quite surprised [at the cost]; I think I paid \$20 for my first entry into the Bayshore. Knowing the fees are over \$100 for some of the races, it's been a big change. I want to conclude by saying I really want to see this work for all parties. I hope the fee increase makes sense to the club for what is gained and goodwill in the community. I think the community should benefit from this by increased user fees. And we should make a note to the community that the track club may be paying these and it would benefit our residents. I hope that will be a satisfactory explanation to the track club to see the two parties come together.

**Rudolph moved to close the public hearing and return to the regular meeting with a second by Sanger. Motion passed by consensus**

**Chown:** Jenn, please walk us through the process of approving a large event application.

**Cram:** the first thing that needs to happen is for an application to be submitted. We did receive the application for the Bayshore Marathon on January 25, 2024. They met the deadline of 120 days prior to the event. Then the large event ordinance notes we will conduct a public hearing scheduled within 60 days, so we are fulfilling that. It does require that a complete application be submitted. The application is nearly complete. Under section 2.4, we need to conduct a pre-application meeting with other permitting agencies. That has not been conducted yet. It's important that meeting happens and includes emergency services, the fire department, and the police department. I did ask the applicant two weeks prior to the meeting if they'd had any conversations with any of those agencies. They noted that they had not. As of today, they have reached out and made contact with the other agencies. I recommend we include MDOT. Section 2.7 notes the application fee needs to be paid. They have paid the \$600 application fee, but in their application, there is an addendum where they note, "The submission of this application should not be construed as consent by the Traverse City Track Club to pay the increased participant fees stated in the fee schedule on the Peninsula Township website."

Based on their request for additional information and questions about the legality of our fees, we have incurred legal expenses and additional staff time and so we have requested we receive an escrow in the amount of \$5,000. Amendment 196 says that for all applications, if additional professional services are needed in order to review and approve an application, the township has the ability to require an escrow to cover those expenses. As of today's date, we have not received that escrow. Therefore, the application is not complete.

In addition, section 2.8, action on the application, says, "After receiving the complete application for an event permit and the appropriate fee, the township board shall consider the information contained in the application and shall if necessary investigate or cause to be investigated the circumstances surrounding the proposed event including the suitability of the site's location and

course for the proposed event, the timespan of the proposed event, the number of people anticipated to attend, whether there was a conflict with other uses of the site, the increased demands on the township, county police, township fire department, and emergency medical resources and the sponsors plan to provide adequate food and water facilities, bathroom facilities, etc.”

It became clear to me on my drive last week coming to work and seeing all the signs that MDOT has placed about the Grandview Parkway construction project, having to navigate to the peninsula based on the detours, that the construction scheduled for this project could impact this race. I reached out to MDOT to see if the Bayshore had reached out to them to discuss the construction schedule. They had not heard from them. I spoke to the construction engineer to understand the construction schedule and have placed a copy of what I found on the website for phase one and phase two.

The first phase, which impacts our residents most severely, started on March 10 and is scheduled to go through May. I spoke to the construction engineer with MDOT. He believes that, if all goes well, they should be done by May 25. There is a possibility for delay. We have to hope this would be completed in time for the event. However, he did note and agreed that our residents, especially those living on East Shore Road, even if construction is complete, will be fatigued by the construction traffic by that point.

The Bayshore will add additional negative impacts. From my own experience, the last two days have been a line of traffic in both directions utilizing East Shore Road. The race is planned for a Saturday so daily commuting to work might be less, but I highly recommend we work with the Bayshore to better understand the construction schedule and develop a plan to address that traffic and activity.

The area where the race starts, where people will be parking, will be impacted by construction even if phase one is completed by May 25. Phase two will still be underway, so westbound traffic will be impacted. People will be coming and going from the race. There needs to be public education and plans in place. Our number one concern is the safety of our residents as well as the runners, so with construction, the race itself does slow response time and makes it difficult. There may be a need for some type of additional indemnification for the township if you choose to approve the race. Section 2.9 is the basis for determination. I would like to note that H notes that the event will not have a substantially negative impact on township or county resources or on adjacent property.

In order to address those negative impacts, I recommend addressing the indemnification and the construction plan. I'm confident we can all work together to be successful if these other considerations are considered.

**Sanger:** I heard tonight about this monetary issue which has come up at the last minute. It seems like we need to know where the track club stands on the fee that was set a year ago by this board. Because if we can't get together on that, then it's all over.

**Rudolph:** I think it's important to point out that the fee schedule we discussed was not targeted toward any one entity or individual. We were talking about what these large events cost us in terms of time to administer, the process of the applications, the wear and tear on our citizens from events like this interrupting their day-to-day life. We established that fee not thinking about the Bayshore Marathon or anybody else. We're just saying, if we're going to have events like this, what do we need to compensate our citizens for that? That's where that fee increase came from.

**Chown:** and also wear and tear on our parks.

**Cram:** fire, police.

**Sanger:** I have worked as part of this race for more than 20 years. I've seen a major change. Ten years ago when this ordinance was adopted, we didn't close the roads. I remember working, helping traffic on Center Road avoid runners coming southbound on Bluff Road, along with another reserve deputy in a patrol car with the lights on, trying to have southbound traffic on Center Road slow down and let the runners come down Bluff.

This ordinance was adopted 10 years ago with the realization that what was once just a fun run on the peninsula had become a big business. Let me add too that the events at the Boston Marathon a number of years ago put a different spin on these kinds of activities. It means that law enforcement at the level of state police, county, Traverse City is involved. The Coast Guard is involved. Homeland Security is involved. This still seems like a little run on Peninsula Township on a Saturday morning in May, but it has become a large operation. We can't focus on the money. We have to be sure we are protecting the health, safety, and welfare of our residents, the 8,000 runners that are expected, about an equal number of spectators, and the support staff. That's a lot of people on this township that has a population of 6,100. We shouldn't focus on the cost; we have to focus on getting the job done. If we're at a crossroads tonight, if the applicant will not pay the fee, I don't see how we can negotiate because we have a huge obligation as a township if we approve this.

**Shanafelt:** I agree with what's been said. There are two issues. One is the health, safety, and welfare issue, which is separate from following the ordinances. The ordinance part is pretty cut and dried in my mind, but the health, welfare, and safety thing, as Jenn has outlined, actually exposes the township to a great deal of legal risk in the event that anything goes wrong because of the construction. And that's only because we've highlighted this and are aware of it. It means we are all now liable for making a decision depending on what that construction looks like. I noticed Chief [Gilstorff] is here. I don't know if you've had a chance to consider emergency services in the context of the race, in the context of the construction and whether or not they're done with phase one?

**Gilstorff:** we've been looking at that. First, we've always worked smoothly with all partners to provide emergency services for this race and with the track club. We've always had a good rapport and meetings. They fulfill the needs we had from the emergency services side. The race has always been good. That's not the problem. The problem this year is the construction. I can't judge when it's going to be done or if that segment's going to be done. I know it's already created a problem, and we work through it on a day-to-day basis. We've already had issues and it's just started. It's already delayed our ability to get to the hospital and it's going to do that all summer. We need to come up with some kind of plan as far as being able to keep a route open and things of that nature, which would all be discussed in these meetings. They have to be because we cannot just sit there and assume that segment is going to be done and we're going to have a direct passage to Garfield. We're still going to have to go through downtown and cut across all these other things. There may be some other way; we may have to bring in other resources to get to people quicker, which we've done in the past. We're always willing to work with whatever we need to handle the situation. It's gone smoothly, for the most part. Unfortunately, this year that's going to be a major issue.

**Shanafelt:** I'm not arguing it hasn't gone well. But the question is, once East Shore Road is shut down to vehicular traffic, how do you work around that or have we been able to figure out how to work around it?

**Gilstorff:** once again the big thing is MDOT and where they're at with the project. Right now we go down to Eastern and cut to Milliken and we have to run downtown to get over to the hospital. That is going to be there all summer. The thing I look at is the amount of congestion in the Milliken area,

in the high school area, East Shore. We're not going to have any alternate routes unless that construction is done and we have that clear shot down Garfield. I don't know that I can answer that. I don't see any other alternatives.

**Shanafelt:** so right now, you need East Shore Road open.

**Gilstorff:** yes. We know the road is going to be clogged. There's not a lot of solution there for alternate routes.

**Shanafelt:** right now, it's a problem. You take center and Milliken to get out. The race will shut down East Shore –

**Cram:** they don't totally close it to vehicular traffic.

**Gilstorff:** we can typically navigate.

**Shanafelt:** you don't normally take East Shore?

**Gilstorff:** no, we don't typically because it's winding and more time consuming.

**Shanafelt:** so the status quo today won't change the day of the race regardless of where the construction is?

**Gilstorff:** the one thing that is going to change is the amount of people in the Milliken area; that's how we get down to a west-going road.

**Shanafelt:** hence we need to have a discussion with the track club to make sure these necessary routes are open.

**Gilstorff:** coming up with a plan, having an idea, where the construction is going to be during that race.

**Cram:** MDOT has said almost 50 percent of the traffic, if construction isn't complete, will use East Shore.

**Gilstorff:** people are finding alternative routes. Depends on where the construction is going to be.

**Deputy France:** from a law enforcement perspective, in all these previous bayshores, issues came in when they had a change of staff. We usually meet several times, have everything planned out. Most of the traffic isn't even peninsula residents. It's when MDOT decided to divert all that traffic onto the peninsula, which is in the city. Only reason most of them are out is to get through to get off and continue to go east. That was a horrible setup in the first place. They didn't have the lights set up the way they were supposed to. They didn't have a lot of signs up; they had a stop sign and a traffic light so I started to get calls about that.

Milliken is usually the best route to go but a lot of people still passing the signs on Peninsula Drive that say "no thru traffic" think they can still go westbound and end up having to turn around to come back into the line to continue on Eastern right in front of the school. Usually, staff wise, law enforcement and fire, we have enough set up between us, the city, state troopers, canine dogs... We're usually able to divert traffic great when it's an emergency. If something occurred, we're able to get through Milliken Drive even when packed because we can get people moved over and we have enough staff. Usually all the volunteers do an amazing job. They're usually part of the group that's at the base on Eastern Road. We usually don't use Milliken during that run. They already have their cars parked and staged and everybody gets transported out here on buses. There are quite a few people using East Shore all the way down.

The biggest wait is when you get to Eighth Street by the gas station. They didn't even put a turn signal there. So now you're waiting just to continue to go left. It's easy to go straight or turn right, but to go left, you're going to be there a minute. So for our purposes, we're good. I know we



already have emails and everybody involved; our new lieutenant is involved now. They sent out emails, let us know we're supposed to be setting up meetings so we can discuss a safety plan.

**Sanders:** thank you for that. The two main things we're faced with are the escrow account and the agreement to reimburse us the supplemental fee for each runner coming straight out of our Peninsula Township fee schedule. Without it we can't grant this just because it's an institution that's been running for 40 years, because all the residents we serve out here, they would be asking for the same dispensation. And that's not what we're here to do. We're here to treat everybody who comes to us fairly and equally. Jenn went through the ordinance, the application process, and before we can even move forward with anything we need to know that's going to have a guarantee by the track club, in good faith. We're community partners, we want to maintain this community partnership, in perpetuity would be great, but it needs to be two sided. Dave Murphy talked about the fee increase and how it had been brought up at some of the park committee meetings. It's a part of it, but that fee increase definitely is not about parks. It's an operational maintenance fee. It's across the board for anybody who has a project in the township. Anybody wanting to do a small event all the way up to a large event. We have several events that come in and make the same application throughout the year and obviously the Bayshore Marathon is the largest.

**Chown:** from talking to Chris [Patterson], these fees are legally defensible, but that's been something that's been raised by the Bayshore. We've needed to spend some time on that. Chris, I think you're prepared to explain our position.

**Patterson:** I started working with the supervisor a couple of months ago when the issue came back before the board. I also worked with Jenn Cram. There were specific comments made in the media related to the position of whether or not the fee asked by the township is particularly responsive to a specific case, which is Bolt vs the City of Lansing. We are aware of that case. That case is generally thought of as applying in user fee systems, where you're dealing with stormwater charges, water sewer system, building permits, zoning permits, etc. It's not typically a case that applies to this sort of voluntary purchase situation. That case does stand for the proposition for what the Bayshore has represented. We don't think it applies to what the township is actually doing. There's a separate line of cases completely outside of the Bolt analysis that does support the type of fee the township is charging as it relates to a service fee for purposes of this sort of voluntary use as being requested for township-wide events. There are a couple of cases that have been taken before the court of appeals separate from the case that's been sort of relied upon by the applicants, even supporting something that's very similar as far as a per shuttle fee cost of \$1 charge per month for each trip taken. It had no basis or relationship to actual costs; it was related to this voluntary sort of service component and the sort of opportunity that local unit was provided. That's probably more akin to how you legally analyze this issue. But separate from that, it's an appropriate approach for the board, treating it more like a traditional user fee as it relates to how the board has supported its analysis and thought about the various charges. That's a very prudent and appropriate step.

I don't think the law requires it, but looking at it as a user fee, that's similar to how the track club is analyzing it. Scope can be a property as long as it relates to the fee in relation to any reasonable cost. Jenn went through the list of administrative assets, the type of costs that relate to the fee. Rudy [Rudolph] made a fair comment: when you're setting these fees as generally applicable to those who are applying under it, mathematical certainty is not required. You're looking for rough proportionality of what the actual fee is in relation to the costs that are being incurred by the township, common sense in that we're setting a generally applicable fee. We want it to apply with equality to all those applicants who come through, but the intensity and the scope of those comes

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with that flat application fee. We're trying to augment the intensity aspect, which has an administrative increase as the event gets larger by doing the per-participant fee.

The methodology is consistent with the idea of trying to make the fee for the applicant in relation to those additional services that the township has to provide with respect to oversight. It's fair that the track club does invoice specific emergency services. I know the fire chief sends out a specific invoice as to the hours for those staff and those vehicles for that specific day.

The township's concern is the administrative component pieces that come into getting to that day and separate from those specific departments related to emergency services. With emergency services alone, you just heard that budget item for the township is one of the bigger ones that residents pay for. There is work being done to make sure this event happens appropriately. That sort of time and materials is going to be captured by application fees, not by individual invoicing that's occurring for the specific day of the event.

Jenn Cram already touched on and analyzed the pre-application meeting as required by the ordinance. This is the sort of application context and details that have to be reviewed by Jenn: correspondence with other agencies, satisfying the review standard, presenting it to this board. You've got board meeting attendance for meetings, so now we have to have a special meeting. All those pieces will be encompassed within one event process.

We did consult with the supervisor who at a higher level is involved in some of the early coordination of the event and taking public comments, questions. Not just the Bayshore, although I think that event does cause more of an increase because of the size, getting some of those comments from the public. I talked about the emergency services piece, and we do have the wear and use on some of the parks. The township does have a maintenance individual who is involved in augmenting the parks for purposes of the event. Also, if it's wet, damage to the parks from tire tracks, trenching, all of that becomes much worse. For purposes of being prudent, the fee you're charging, looking at it from the basis of all the different cost categories, it's been quite some time since you adjusted that fee. Salaries are increasing. That means hourly rates are increasing. All of those items have gone up. It's in line with not only Bolt vs City of Lansing but a slew of other court of appeals cases that support this type of voluntary service fee. We think the board has been responsible in this action of protecting residents. Even if you look at this as you would generally for zoning, we wouldn't typically take an application and move it forward until you have those complete foundational pieces put together.

**Shanafelt:** I think it's imperative we follow our ordinances, and they are what they are. We're happy to take any application, assuming it follows our ordinances. The point that the application is incomplete is very viable. There are a number of things that need to be taken care of. In particular, what is the emergency plan? We don't know exactly what that is; it's solvable, but it's not solved yet. Until it's solved, it's not a complete application.

I think there are a couple other things. Clearly we are incurring additional expenses as a result of the actions of the track club. They should, as part of the application, pay for the additional legal fees we've incurred as a result of this as well as put up an escrow anticipating future legal fees. We should have Fahey Shultz determine whether or not a greater degree of indemnification is required. Not because it's the Bayshore Marathon, but because the Bayshore Marathon happens to be occurring this year in the midst of a lot of construction. I'm worried about the liability we take on by having discussed this, knowing there could be potentially increased risks to our residents in the context of an emergency and we did nothing about it. I have other things, but I would argue that when the application is complete, we look at it again.

**Cram:** I agree that the fees should be paid before we move forward. But I believe if the track club agrees to pay the fees that have been established, we could work to come up with the alternative plan. I looked at how this has been addressed in the past and the previous zoning administrator sometimes had those meetings before the public hearing and sometimes after. The conversation has been started. Everybody's aware of the concerns and that there could be constructive meetings that would result in an alternate plan.

**Shanafelt:** we are two months away. Those things have to be done before the race goes. I don't see any reason to approve the application until we know it can be solved. We have extenuating circumstances here, partly caused by the track club creating an issue where there really isn't one.

**Rudolph:** I'd like to second what Armen [Shanafelt] has said. This fee increase was not a surprise. It's almost a year ago when we decided to do that. I think we let all the people who might be affected by it know at the time we were raising those fees. What is a surprise is to suddenly be threatened with legal action by an entity that's trying to come out here and make use of our township. It has incurred additional costs to try and address that issue. I agree that, until the application is complete, the meetings have been held, and the track club agrees to the fees, we should table it.

**Sanders:** I partly agree. I think the escrow and the fees are non-starters. The fees would be an acknowledgement that the escrow account gets set up immediately, tomorrow, and that the supplemental fee will be reimbursed at the end of the event. As far as the emergency plan, that could be a conditional approval. Because tomorrow morning at eight o'clock, I know the track club picks up the phone and gets ahold of all the community partners to set up those appointments. It would be great to have those appointments relayed to us. I would like to move forward and grant them a conditional approval, assuming the fee piece can be taken care of. Because with MDOT and the construction project, that stuff changes within a 24-hour period. But let's get the ball rolling and be a part of it.

**Achorn:** the only amendment I have on the escrow, based on last week's activity with our legal, is to increase the escrow to \$10,000. Anything that's not needed will be reimbursed as with any escrow account. If you look closely at our fee schedule, it says any other additional costs, not just professional costs, are involved in the application. They also need to be covered by escrow or be billed. We need to protect ourselves financially. We don't want the taxpayers of this township footing the bill when the applicant is requesting legal services from our attorney.

**Sanger:** do we have any other meetings set up beside a regular meeting?

**Chown:** a special meeting on Monday, March 25.

**Sanger:** should we table tonight to that meeting? It would give all parties a chance to bring back some answers. We're not telling them no, but I don't have enough information tonight to say yes.

**Chown:** have we covered the indemnification concerns?

**Shanafelt:** the indemnification is referring to whether we require additional protection. I don't know if 5 million is the right amount or 10 million. I suggest that in consultation with our counsel, we make a determination of what that number should be. Because it's a special circumstance.

**Sanger:** typically, with an activity the size of this, the financials involved, we would have some sort of agreement in writing. They're naming us as additional insured on their general liability policy. But when I look at indemnification, I'm looking for something in writing that lets me show the court that they have agreed to hold us harmless not only to the extent of their insurance policy but to the extent of any assets we may have. I would ask our legal counsel, can we get something in writing

with the township and this organizer that specifies that they are going to hold us harmless for damages? The insurance policy is a step forward. But again, that's not sufficient.

**Shanafelt:** say someone requires lifesaving help at a hospital and the ambulance is stuck as a consequence of the change in traffic or congestion during the time of the race.

**Sanders:** just this week our fire department responded to an alarm over in Acme. It's awesome that we can provide that service to a community neighbor, but if it happens out here on the day of the race, they're not going to be able to make it.

**Shanafelt:** two minutes makes a difference. Say someone passes away because of a delay because we approved the marathon. How do we protect ourselves against that?

**Cram:** is this something our insurance carrier could assist us with, giving us an idea of what they would feel comfortable with?

**Sanger:** it's part of it. But when their insurance maxes out, we want more assurances that they have other means of helping the township meet a big problem.

**Shanafelt:** we have to interact with our counsel to figure that out.

**Chown:** there are four pieces: the emergency plan, which we know we can come up with. There's agreeing to pay the fee, there's escrow, and then there's the indemnification. Four things that need to happen before this board is willing to approve the application. I think tabling to a date certain is a good idea. It provides a deadline and potential closure that everyone needs. We want this to happen. If we have a deadline, it's more likely to happen. Certainly the individuals deeply invested in making this happen need to know.

**Shanafelt:** I'm not sure everything can be done by the [March 25] meeting. It will show the progress being made in these areas and then move forward with conditional approval.

**Chown:** we've closed the public hearing; we don't have to redo that.

**Sanders:** my question to the track club, knowing that the escrow and the agreement to reimburse is a non-starter, are you guys prepared for us to continue?

**McLaughlin:** I appreciate the opportunity to discuss further. I will keep it brief because I understand we're headed down the path of further discussion. I can't respond to some of these things because it's the first time I'm hearing directly from legal counsel. I don't have an attorney here because I didn't expect that to be part of the conversation. But I'm happy to bring all this back and make sure I understand this better. However, without having to dive deeper with our attorneys, I can say I've been advised that we can move forward with the fee schedule payment as stated because our concern all along has been that we do what's permissible under state law.

When I joined the club at the end of November, my first job was to put together the budget. It was a pretty big jump from last year's fees to this year. That's not your fault; I was hired starting November 27 of last year. We worked with the township as soon as practicable starting in December. I appreciate the feeling that this is last minute, but I felt like I had to do my diligence on the budget and overall impact. I did feel compelled to ask for legal review. That's been our concern, that there's not a conflict of state law. We just haven't been able to get that information, unfortunately. I do understand that there's been some investment in that discussion. The fee schedule as stated, the \$5 participant fee and the \$600 fee that we've already paid, we feel at this point in time because we're still reviewing that we can pay it under our current legal review. We can confirm if that's ticking one item off the list. I will have to go back with that team again who's not here to address the question about the escrow. I've been asking for information and questions. I don't have any information about the fees that may or may not have been incurred as a result. I

do understand, it's been made clear, if we're going to have further legal discussions, we would have to set up an escrow account. And that's where I said we want to pause because given the timing of where we're at, we need to move forward with the race. We will continue to have conversations as appropriate moving forward but at this time we wanted to turn our attention to the permit and the safety of the event itself.

If I can, I'd like to have more specific information about the escrow piece so I can take that back. I would love to understand that a little bit further so I can understand what the actual ask is.

In terms of emergency, I appreciate our public fire and safety comments and questions. Recent years we went off the 30-day mark before an event, but we can appreciate that this year looks a little different. I have not had conversations with MDOT but I have had conversation with the county on the construction. They shared that mid-May is their proposed shift from phase one to phase two. I know we can't control that, and we should be prepared with a focus on safety first. May 25 feels past mid-May, but I know we can't rely on that. I want to clarify that we have had thoughtful conversations with our public partners.

One more item is the indemnification. I don't think I can answer that since I'm not legal counsel, but I would be happy to provide any additional information beyond the additional insured document that we have as well as discuss if there's something we can put in our waivers that would help the township feel more comfortable. These are just things we could discuss. I have to defer to our legal team to talk through that but we're definitely open to supporting the situation.

**Chown:** Chris, any follow-up comments or should we do that offline after the meeting?

**Patterson:** fine to take it offline. Sounds like they're going to go back to legal counsel and report back under a position of being able to meet those foundational demands the township is asking for.

**Sanders:** prior to that special meeting, the full application package needs to be in. The escrow conversation started back around March 5; that along with the agreement to reimburse the supplemental fee, those are requirements with the application, so the whole application package could be fulfilled prior to that meeting. That'd be great. Then we can focus on the other two pieces.

**Chown:** any more questions, Lindsey?

**McLaughlin:** I still want to understand the nuances with the escrow, but we can take that offline.

**Sanger:** as a measure of good faith, it makes sense to get the escrow money in now. If you're not prepared to put escrow money with the township to spend legal fees for this particular purpose, I seen no reason to move forward.

**Achorn:** I just found an email from March 4. Lindsay said, "Thank you, Isaiah. Our legal counsel is requesting that you please provide us with something in writing from your legal counsel explaining how does the large permit fee increase comply with both Headlee and number two, the data relating to the overhead expenses associated with owning and operating parks and other infrastructure that support large events. Thank you for your help with this additional information so that we can determine whether we can pay this fee in compliance with Michigan law." You engaged our attorney.

**McLaughlin:** I wrote that email. That legal opinion was never provided because we would have had to set up an escrow account. My understanding was that request wasn't fulfilled, and I understood why; that was made clear to me. We were not made aware that legal fees had been incurred at that point. I am trying to understand what has been incurred because we have not been made aware to date.

**Rudolph:** because of that, we had to incur the legal fees in order to protect the township.

**McLaughlin:** I understand that concept, but the request I made was not acted upon. I understood why, in order to do that, they would need to incur additional fees. That's why he requested the escrow at that time. I said at that time, we don't want to incur additional fees so we're not setting up the escrow.

**Rudolph:** could you not have gone to your own attorney and gotten a reading on whether these fees were applicable or not?

**McLaughlin:** we did and that's why we've been having these conversations with the township staff for the past couple of months.

**Rudolph:** your actions put us in this position.

**Cram:** this all started with the Ticker article.

**McLaughlin:** this was not included in this packet, this email, but I did reach out to the township and say, "We've been asked by the Ticker to comment, they're running a story, we wanted to give you a heads up that we did comment because they reached out to us." This is not something the track club instigated.

**Shanafelt:** so you're not concerned at all about how the Ticker presented your position?

**McLaughlin:** everything that is in quotations by me is exactly what I told them.

**Shanafelt:** great, thank you for that endearing article you helped provide.

**McLaughlin:** listen, I-

**Shanafelt:** just stop. Thank you.

**Sanders moved to table the discussion until March 25 at an already scheduled township board special meeting, and, prior to that meeting, the township needs to receive the full application with the \$10,000 escrow fee submitted to the township along with an acknowledgement that the supplemental fee will be reimbursed at the completion of the event per our fee schedule with a second by Sanger.**

**Roll call vote:** yes – Achorn, Sanger, Sanders, Rudolph, Shanafelt, Chown **Passed unan**

**Chown:** thank you, Traverse City Track Club. This was a challenge for all of us. And we appreciate your time. This is an event that we are proud to help put on each year. We do want to work with you. We want you to want to work with us too and understand our challenging position.

#### 8. Planning and Zoning Department Verbal Update (Cram)

**Cram:** work on the master plan is moving forward. We have compiled the redline document. We asked the planning commission to review the document and provide us with any comments. We broke those comments up into three different topics. We addressed the easy things, the typos, and redlined the document with those. We have some policy discussions that need to take place. At the March meeting, the planning commission will review the red lines and discuss the philosophy and accuracy of the future land use map. The next meeting we have with the planning commission will look at the vision statements and action items.

The shoreline regulation study group has met three times. It has been a more challenging study group than building height or the citizens agricultural advisory committee. The topic is very important. There are some strong opinions, but despite the challenges, we learned a lot and it has been productive. Right now we're focusing on the location and number of docks and hoists on single ownership parcels. From there we'll move to shared ownership parcels and then start looking at the natural resource protection land use permit issues with the shoreline.

#### 9. Update on Budget Public Hearings for Fire Department, Police, and Township for Fiscal Year 2024–2025 (Chown)

**Chown:** in your packet is an email exchange between the classifieds department at the Record-Eagle and myself. These exchanges occurred in February shortly before the presidential primary. I sent the Record-Eagle the advertisements that I'm required by law to publish 15 days before a public hearing. I received confirmation from the Record-Eagle that they had the ads for the budget public hearings, that they would publish them on the requested dates, and that they would send me a proof ASAP. I was elated. They had my ads and had confirmed the dates. I turned my attention back to the election.

The ads never ran. We caught it a week and half ago. We have a new fiscal year beginning April 1. We are required by law to pass a budget and I need 15 days in a newspaper of record to publicize that we will hold these public hearings. So, the ads have run and the only date we can do this is Monday, March 25. That's why we are holding a special meeting at 7:00 p.m. in the township hall for the first fire department special funds assessment, the police, and then the township board.

**Sanger:** I trust they aren't charging us a second time for the ads?

**Chown:** no, they were very chagrined.

**Achorn:** when is the second meeting for the fire department?

**Chown:** on March 27. That was already planned, at 10:00 a.m.

10. Recommendation from the Peninsula Township Organization, Staffing, and Funding Study Group and Proposal from Recommended Firm (Shanafelt)

**Shanafelt:** I did not think this firm was going to be the top runner, mainly because their focus was on accounting and financial. As we discussed their plan and approach, I realized this process is all about accounting and financial. The energy of the team, their experience, they're hungry to do this. Their approach was impressive. We thought they could get the job done in a reasonable period of time. They were effectively the low bidder in this process and were offering more product for what they were trying to do. Regardless of what we choose to do as a government structure, they will be providing roadmaps and specific suggestions for improving our overall efficiencies and operational effectiveness, to find a better way to do what we do. As we change going forward, we will know how to change to continue doing a better job.

I ask tonight for a couple of things. One is approval to work with our council to finalize a contract with Maner Costerian. The other thing we need approval for, pending finalization of the contract, is approval for up to \$26,000. Their original quote is less than that. They're saying even with exigencies they'll go over that. We talked extensively with them. If they run into something unexpected and it's going to cost more, we'll talk about it and figure out how to get it done. They stated, even in the circumstance where we think we're going to run over, we'll still try to stay below \$26,000. A lot of what they said is reminiscent of some of the better law firms I've worked with who honor their agreements explicitly, even if it's more complicated than expected. They were impressive. Granted, it's 20-some thousand dollars. I think it will help us immensely when it's done. I think we'll have their proposals in five months, still before November.

**Chown:** I received an email this morning from Wes Cowan, who also served on the committee. Wes asked me to read a letter into the record. I'll summarize it instead and will see that it goes into the minutes. [Chown summarized the letter, which urged the township board to award the bid to Maner Costerian; see the attachment at the end of the minutes.]

**Sanger:** I think it's terrific that the person heading up this study from this firm was a township supervisor for eleven years. He knows where we're coming from.

**Sanders:** I'm supportive of this, especially with that timeline. It will be a huge piece of education for every voter in the township before we go out and do our survey. It will have a lot of influence on how people fill out that survey. It's important.

**Chown:** seems like a good bang for the buck.

**Gilstorff:** is it dealing with township operations, fire department included?

**Shanafelt:** no, you are a separate entity.

**Sanger moved to approve the proposal from Maner Costerian in the amount not to exceed \$26,000 and to authorize the supervisor to sign a contract with Maner Costerian for work on the project pending legal review with a second by Chown.**

**Achorn:** the clerk gave us deadlines for the ballot proposals for the November election. They must be in by August 13, 2024. We talked before about how we are going to operate in the meantime, until we figure out what we're going to do in the future. Are they able to come in with their report before the requirement to put the Headlee rollback or something else on the ballot?

**Shanafelt:** the timing is not perfect. The report, no matter what it says, will be useful. I did ask if they would be able to provide interim progress, and we'll be in contact with them continually. What we can do is see how it's going a couple months in. The glaringly obvious will show up in a month, but details will take more time. Perhaps that's something we can make decisions on. Some we can make independent of a charter township decision. One of them is the Headlee rollback. One of them is, run a parks millage. Even if we went to charter township, we would only ask for a millage to hit the operating expenses we need. If we had an approved parks millage, that's an amount we would not have to tax on. Part of it might be, maybe after the budget is approved, we take on the topic of how do we approach a Headlee rollback? Do we do a parks millage? And that really is independent because the money has to come from somewhere, somehow, somehow. Parks isn't our only issue. I think we're okay with timing, but we have to be intellectually separate, what we can do without this report, what we can't do with this report, and what we should do regardless.

**Chown:** the Headlee rollback is obvious.

**Sanders:** that could go on the primary. And there's still room to put something on the general.

**Chown:** and there's time to educate in the summer newsletter about why this is on the ballot and what it would do, how much money it would bring in, exactly where those dollars would go. I think that's pretty simple. I'm concerned about a parks millage at this time. As a member of the parks committee, I'm worried that we don't have time as a township, that we don't have the bandwidth [to fully educate the community]. We don't have a team of people ready to go door to door. The timing on this is not good. And I'm afraid that's going to be a necessity to have this pass, that we have to reach people. I also think it's easy to tie a successful parks millage to a property acquisition and we don't have one. If we can get our work done so we're ready with the numbers and the data when that acquisition opportunity comes along, and I believe it will, it will be irresistible.

**Sanger:** this is a CPA firm that will be digging into numbers, and we will be getting interim reports back in terms of where they're at. We're not going to wait till September or whenever it is and get this big thick report. They'll be working closely with all of us.

**Chown:** we have a lot of work to do in order to get them the information they need.

**Rudolph:** I assumed based on discussions we had in the past that we were going to go ahead with the Headlee rollback on the ballot. I'm for that.



**Achorn:** our decision would be whether we want it on August 6 or November 5. In either event we need to get busy. It has nothing to do with the contract in front of us.

**Shanafelt:** only indirectly.

**Rudolph:** they would use that information in their analysis.

**Roll call vote:** yes – Rudolph, Shanafelt, Chown, Achorn, Sanders, Sanger

**Passed unan**

11. Litigation Update (Chris Patterson from Fahey Schultz Burzych Rhodes)

**Patterson:** we still have the Family Orchard LLC case pending; it is fully briefed with motions in the western district before the same judge who passed the winery litigation. There's been no movement. There was a sixth circuit decision that was sort of relevant to the same kind of moratorium issues. We did work with insurance defense, Lindsay Dangle, in providing a supplemental notice to the court, saying there's a new case that's come out since we briefed, wanted to make sure you were aware. The judge is aware of it because it was brought up at a motion hearing on the winery litigation maybe four to five weeks ago. My guess is they're thinking they'll handle the winery litigation first and then see the extent to which those plans resolve or otherwise leave the Family Orchard case remaining.

There's been activity on the winery litigation case. Multiple motions have been filed with the court since October 2023. The judge has been going through those motions. We're starting to get orders. Some of you went to the federal building a few weeks ago, and on one of those motions, the judge issued a ruling. He issued a ruling on a preemption motion just a week ago. Interesting order in that it did indicate that some of those preemption claims sort of mirrored some of the positions that were taken by the court in June of 2022 as it related to finding that some of those MLCC activities do preempt the zoning ordinances. Issues we don't agree with can be taken up and appealed later. We did get an order from the court a few hours ago; insurance defense is unpacking that. It was a ruling on the affirmative defenses. It wasn't on some of the main motions that we're waiting for the judge to decide before trial. The important part right now is that the township board is preparing for the final settlement conference scheduled for tomorrow. The court hearings have been in Kalamazoo because that's where the judge sits. Settlement in the federal court system can be delegated and handled by the magistrate judge, which is what the judge has done here. You will have conversations with Magistrate Kent in Grand Rapids tomorrow. I know the township board has appropriately posted that as a special meeting, so you will have a quorum present to facilitate those conversations. We have worked with the township to be prepared to facilitate a resolution, which you all want to do. If after tomorrow it doesn't completely resolve, the case is set for trial starting the end of April through the first part of May. I would assume the judge has different sets of motions to rule on. That will give the parties a good idea of what is left for legal issues for trial.

**9. Citizen Comments:**

**No citizen comments**

**10. Board Comments:**

**Chown:** most of this board is heading to Grand Rapids early tomorrow morning. I will ask our county clerk, Bonnie Scheele, if this board needs a petition in order to put a ballot proposal on the August ballot.

**11. Adjournment**

**Sanders moved to adjourn with a second by Sanger.**

**Motion approved by consensus**

**Adjourned at 10:05 p.m.**