

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI
49686 www.peninsulatownship.com

Township Board Regular Meeting

May 10, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Manigold at 7:02 p.m.
2. **Pledge**
3. **Roll Call**

Present: Manigold, Achorn, Wahl, Sanger, Wunsch, Shanafelt, Chown

Manigold: welcome to Armen Shanafelt, our new board member.

4. **Brief Citizen Comments (for agenda items only):**

Mike Dettmer, 7003 Leorie Drive: regarding the Citizens' Agricultural Advisory Committee, hopes the board has a written summary or that [planner] Jenn [Cram] can put one together so that when [Attorney] Meihn goes to the next mediation, it is provided to the court so Magistrate Kent fully understands the position of the township board.

Brit Eaton, 1465 Neahtawanta Road: is a member of the Citizens' Agricultural Advisory Committee. Believes the major points of concern raised by citizens last fall are satisfactorily addressed in the committee's recommendations. These recommendations mean that ag operations on the peninsula will have parity with wineries, and they go a long way toward limiting commercial activities on the peninsula. Urges the township to pass the rewritten ordinances, including those recommendations by the citizens' committee.

Julie Alexander, 4856 Forest Avenue: does not believe the Peninsula Shores amendment should be passed. Took more time to review the matter and the zoning ordinance and rethought her position. Is here tonight to articulate her concerns, which are reflected in the letter she wrote that appears in the packet.

Louis Santucci, 12602 Center Road: the ag committee is an unofficial committee and has not made recommendations to the planning commission, so taking their recommendations to court would be an error. Along with his brother, is very upset that they were not allowed to participate remotely in that committee. Believes it's cavalier to look at the winery lawsuit and say that people are greedy and so on for utilizing their constitutional rights to go to court. Worst-case scenario, we're talking two million dollars. Where is that money going to come from if that happens? You have a fiduciary duty to protect the township's and residents' assets. Please go down to this next settlement conference with that in mind. The township has already been sanctioned \$18,000 for not following through on their commitments with the wineries. Where is that two hundred million or whatever it is going to come from?

Meihn: where did you get that figure, two hundred million?

Santucci: it's in the lawsuit.

Meihn: it's not in the lawsuit. Want to bet two hundred million?

Santucci: are you crazy? So how much is it?

Meihn: did you violate the settlement agreement?

Santucci: I read it in Next Door Neighbor.

Meihn: we are going to have a discussion about that.

Manigold: you said it, Louis.

Santucci: somebody else said it.

Audience member: who is speaking? Please introduce yourselves.

Meihn: I am Greg Meihn, the attorney for the board. Santucci is making a demand or question about the money, and I want to know where he came up with that number. It's not in the lawsuit. It's not in any demand that's been made. I want to understand so I can answer his question.

Manigold: lots of emotion here and we're going to follow the rules. It's emotional but we're all neighbors. This is the time in a lawsuit when everybody points fingers. Whatever happens, someone will appeal, so it's not going to be resolved this evening.

Ray Weigel, 19135 Whispering Trail and 19141 Whispering Trail: is there anywhere we can read about what has been spent to date on the winery lawsuit and what is projected to be spent?

Meihn: it's all been paid by the insurance company. Bills are submitted to the insurance carrier and they contain attorney-client privilege. There is no document you can get.

Weigel: if the township is at fault, is there any way the insurance company won't pay?

Meihn: can't answer that. There are 400 or 140 complaints – can't remember which – and allegations made. What the court does and what it says will determine whether or not there's coverage. It's way too large to estimate, and if we win, it's the same thing; we can't tell you what those fees or awards would be.

Weigel: what I'm hearing is that we don't know because of all these allegations and questions in front of the court whether our insurance will cover us or not.

Meihn: we have insurance coverage now for costs and fees. We don't know what claims for damages there would be, if any. We have to wait to see what the court says. A damage is a conclusion that someone has suffered harm. Allegations of damage are where we are today. There is coverage for the claims that have been made.

Weigel: what is the \$18,000 that Santucci referenced? Did the insurance company pay that?

Meihn: yes.

5. Approve Agenda

Wahl moved to approve the agenda with a second by Sanger. Motion approved by consensus

6. Conflict of Interest:

Chown: has a conflict of interest with item 1 under business.

7. Consent Agenda:

1. Invoices (recommend approval)
2. Reports
 - A. Grand Traverse County Sheriff Daily Officer Summary for March 2022
 - B. Cash Summary by Fund for April 2022
 - C. Peninsula Township Fire Department for April 2022
 - D. Grand Traverse Sheriff's Office Citation, Accident & Arrest Statistics for April 2022
 - E. Peninsula Community Library for May 2022
3. Performance Resolution for Municipalities for upcoming Bayshore Marathon
4. Minutes from April 7, 2022, township board special meeting and April 12, 2022, township board regular meeting
5. 2021 PDR Monitoring Reports

6. Correspondence

- A. Bill Danly
- B. Garfield Road closure information from MDOT
- C. Joe Gorka
- D. Fred Gilstorff and Tyler Royston
- E. Peggy Byland and Grand Traverse County Road Commission
- F. Joe Gorka
- G. Joe Gorka
- H. Don Atkinson
- I. Consumers Energy press release on Cleaner Energy Future for Michigan
- J. Edward Stych
- K. Dave McClary
- L. Diane and Thomas Rensberry
- M. Grant Parsons

Shanafelt: will abstain from approving the consent agenda

Manigold: he was just appointed to the trustee role yesterday and was not a trustee at the meeting at which the minutes on the consent agenda were taken.

Shanafelt: thank you [for applause from the audience] but you'd better hold your applause until you see how I do.

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

Roll call vote: Yes – Manigold, Achorn, Wahl, Sanger, Wunsch, Chown passed unan

Abstain - Shanafelt

8. Business:

1. **Public Hearing on Peninsula Shores SUP #123, Amendment #3 (Cram) (see the end of the minutes for one additional letter, which came in too late to be added to the packet)**

Wunsch moved to ask Chown to recuse herself with a second by Sanger. Motion approved by consensus

Cram: introduced the Peninsula Shores amendment request and gave a PowerPoint presentation and history of the project. Discussed zoning, density, open space, grading requirements, the soil analysis, conditions of approval, the SUP and PUD processes, and other specific project criteria. Discussed the benefits and intricacies of the proposed amendment as well as the safeguards the applicant agreed to. Read all the minutes and agendas from all the years that this development has existed. Understands the high emotion that accompanies this proposal. It is in compliance with the original approval. Meets all the required standards as discussed in the findings of fact. The planning commission approved the requested amendment and recommends its approval by the township board with the six conditions of approval (there originally were four but the planning commission requested two more, which the applicant agreed to).

Manigold: asked if Mr. O'Grady would like to say anything.

Kyle O'Grady, Peninsula Shores developer: appreciates Jenn's work in putting this presentation together and going over the application with a fine tooth comb. It follows all standards and will continue to do so. Firmly believes it meets the zoning ordinance. Will be 41 residences total instead of the 55 it could have been.

Manigold: this is the time to comment on this amendment.

Holly Hillyer, 420 East Front Street: is here on behalf of Craig and Megan Haddix and the Lewis Family LLC. Doesn't believe the proposed amendment meets the general standards for a special use permit in the zoning ordinance. Noted that the burden of proof is on the developer. Putting a massive house in the open space would violate the rural character of the area. "Community as a whole" isn't just the people in the PUD; it's all the surrounding people too. This proposed change would not be a substantial improvement to the people in the immediate vicinity of the development. The courts are clear: the township has to apply the plain and ordinary meaning of the ordinance. The proposed use has to be harmonious, it can't be disturbing, and it must be a substantial improvement to the property in the immediate vicinity and the community as a whole. Some members of the planning commission relied on the township attorney's interpretation of these requirements; the Haddixes would like this analysis made public. While the FOIA request is pending, we ask that the township not make a decision. The developer significantly overcut trees that he promised to preserve. Now he wants to reconfigure this development that he sued you to get approved. Given that history, do not bend over backwards to approve this proposed change.

Megan Haddix, 4150 Trevor Road: the developer promised to keep the land in question in open space. Explained in detail her opposition to the proposed amendment. Approving it would be fundamentally unfair and legally unsound under the ordinance and means the community can have no faith that future PUDs or SUPs will be honored by the township or a developer. Means they can come back and break promises they made in the first place to get a development approved. The proposed change would negatively impact her family's property and change the rural character of the area and directly disturb the use of their property. It does not comply with at least four of the requirements of the township's zoning ordinance.

Jill Lewis, 4150 Trevor Road: the proposed amendment does not meet the objectives and goals of the township's master plan. Discussed the history of the SUP and the designation of open space required to maintain the rural character of the area. Approval of this amendment would open the door to other developers to come back and put houses in preserved open space.

Craig Haddix, 4150 Trevor Road: discussed in detail why he believes the findings of fact in the packet are flawed in regard to the proposed amendment to the Peninsula Shores development. There is no improvement to the Smokey Hollow Estates properties. The phrase "community as a whole" does mean the broader community. This proposal is detrimental to the broader community as a whole. Discussed the legal analysis used to approve this amendment. Asked the board to table this public hearing until the analysis is released in order to give the community a meaningful opportunity to comment on it. Asked the board to protect and preserve the rural character of the peninsula and further the goals of the master plan by denying this amendment.

Mark Nadolski, 10 West McKinley Road: is speaking as president of Protect the Peninsula.

Discussed the contentious past of the 81 project, now called Peninsula Shores, and the broken promises made by the developer regarding how the development would fit into the neighborhood. Urged the township to make it right by saying no to a development that infringes on the neighbors' rights. Asked the board to support these individuals.

Randy Hall, 2610 Twin Eagles Drive: is an attorney and a member of the planning commission but is speaking tonight as a private citizen. No one wants a new home on a private lot next to their existing home. It's happening to him right now and there's nothing he can do about it except perhaps he should have bought the lot and kept it vacant. Clarified that SUPs are not contracts. They can be amended. The elements of the original submission and amendments are being characterized as promises but they are not. The site plan that is approved is part of the permit

and has to be adhered to or there is a remedy, but there are no promises in a contractual sense. Even if a contract did exist, it can be amended. The parties are the applicant and the township through its board. Also discussed the substantial improvement component of the project. Could have been 55 residential lots without open space versus 41 with 65% open space. The PUD with the open space is much more harmonious to the surrounding area than it could have been and is clearly a substantial improvement. Noted that SUPs don't create property rights for adjoining owners. Recommends that the board approve the proposed amendment.

Nancy R. Heller, 3091 Blue Water Road: has sat through many meetings characterized by high emotion. Can the planning commission put a condition on a developer to not change the configuration of a development down the road?

Meihn: the planning commission has the authority to add, subtract, and modify conditions.

Heller: could the planning commission have put a condition on this developer that this plan can't change? This would have eliminated a lot of this difficulty.

Meihn: the planning commission is a recommending body so it would still have to go to the township board.

Discussion occurred.

Wahl: I think what she's asking is, in 2015, could the planning commission have made a recommendation that the developer can't come back later and amend?

Meihn: no, they could not.

Discussion occurred.

Meihn: the planning commission can bring forward anything it thinks is legal, but they are not the final decision maker, the township board is.

Heller: this is a done deal, but in the future, could the township board approve a condition that the configuration of the lots can never change?

Meihn: generally no. I'm sure there are conditions out there where because of safety, fire, or whatever, the lots might need to be changed. Is always subject to being contested.

Cram: the planning commission can always propose conditions to that effect. There could be situations such as wetlands or other natural resources where lots couldn't be reconfigured.

Meihn: it is possible, but he has seen rare appeals 20 or 30 years later that the condition isn't constitutional or constitutes a taking.

More discussion.

Manigold: time to close the public hearing.

Cram: Mr. Meihn provided a legal opinion. Generally, legal opinions are protected under attorney client privilege. The township board has not seen that opinion; it is making a decision based on what is in the packet.

Manigold: closed the public hearing and returned the item to the board. There's been a lot of concern and a great deal of research. [Jenn's] recommendation is to pass the amendment?

Cram: yes, and that is also the recommendation of the planning commission.

Shanafelt: I've only had 24 hours to look at this and I do have a few questions.

Manigold: I don't think you should vote on it. It's not fair to put you in that position.

Shanafelt: I will abstain.

Manigold: [to Isaiah] you had this in the planning commission.

Wunsch: I always look to see if the amendment is going to improve the project. I feel sorry for the residents of Trevor Road, but the change creates additional open space on the other end of the development, so to me it's kind of a toss up. It's not like you're creating a new lot out of thin air, which I think I would be opposed to.

Sanger: it's a case of balancing the property rights of both properties. Agrees with Wunsch. Has faced the same thing where he lives. Discussed needing two means in and out of the development for emergency purposes, how the process of determining the two means played out, and the ramifications for the development and the proposed amendment. Doesn't see how we can turn it down. Have to vote on basis of what is right and wrong as opposed to what he really wants to do.

Achorn: went back to 2015 and reread everything. Agrees with Sanger that the second access was moved, which opened up new possibilities. Feels bad for the residents of Trevor Road but what about the residents on Boursaw Road? This is an improvement for them. The developer has tried to increase the buffer between the properties, and the trees will grow. The neighbors can plant trees too. We have to follow the rules that are set down before us.

Wahl: I live in the cove [near the development], and I'm mentioning that because it was brought up. I don't think this change will have any impact on my view either way. Just want to make this disclosure.

Achorn moved to approve the Peninsula Shores SUP #123, Amendment #3, based on the findings of fact presented in the packet along with the six conditions of approval with a second by Wunsch.

Roll call vote: Yes – Wunsch, Achorn, Wahl, Sanger, Manigold passed unan
Abstained – Shanafelt and Chown

Wunsch moved to allow Chown to rejoin the board with a second by Wahl. motion
approved by consensus

Santucci: because my character was maligned by the attorney and my integrity was called into question, I would like a chance to respond before everybody leaves.

Manigold: no.

Santucci: I would like one minute to respond. I have proof here. Are you afraid I'll prove him wrong?

Mangiold: will someone get the deputy, please?

Santucci: great, haul me out. I'll sit down and wait, but I have a copy of the court document that talks about the two million dollars that Mr. Miehn wanted to bet me about.

2. Citizens' Agricultural Advisory Committee update (Cram)

Cram: the committee has made some policy recommendations with regard to agricultural standards in the zoning ordinance. Explained the work of the group and clarified that it's an advisory board. The policy direction the board advises will go to the planning commission May 16. The planning commission will make a recommendation and the attorney will help draft new language as appropriate. The last meeting of the citizens' ag committee was supposed to be April 28, but many areas of the ordinance need the input of ag operators. Would like the board's permission to continue meeting once a month and to fill the three empty seats with ag operators. The goal is to create parity among all ag operators related to farm processing. Would also like to discuss things such as introducing a new use, farm markets, and to look at agricultural labor housing and migrant housing.

Shanafelt: thinks we should keep the winery seats open and add three seats.

Cram: agrees.

Wahl moved to support the continuation of the Citizens' Agricultural Advisory Committee and to keep the three seats open for winery representatives but add three more seats for additional agricultural operators with a second by Shanafelt.

Sanger: achieving parity among all ag operators is a very important element of the master plan.

Achorn: how will the additional members be chosen?

Cram: will place it on the website and ask for applicants to submit their interest.

Meihn: would like diversity in the group.

Cram: is specifically looking for ag operators.

Wunsch: recommends looking for ag operators in the commercial or wholesale space because they are not well represented currently. We already have ag operators with exposure to the retail side and agri-tourism.

Wahl renewed his motion with the amendment by Wunsch. Motion approved by consensus
Board discussion occurred.

3. PDR Ordinance Public Hearing (item will be tabled to the June 14 township board regular meeting) (Cram)

Manigold: closed the regular scheduled meeting and opened the public hearing.

Cram: explained the timeline and recent proposed change in the PDR ordinance rewrite that necessitates moving the PDR ordinance public hearing to June 14.

Meihn: recent changes in accounting practices make this change prudent.

Wunsch moved to move the PDR Ordinance Public Hearing to the June 14, 2022, meeting with a second by Wahl.

Roll call vote: Yes – Manigold, Achorn, Wahl, Sanger, Wunsch, Shanafelt, Chown passed unan

Manigold closed the public hearing and opened the regularly scheduled meeting.

4. Parks Committee update (Skurski)

Manigold: Skurski is out sick so Shanafelt will give the update.

Shanafelt: summarized the material in the packet. Discussed the pickleball plans, the need to move the basketball court, and other changes. The parks committee recommends changing the master plan to include the construction of pickleball courts. Also recommends resurfacing the tennis courts at the same time to cut down on costs and removing the playground equipment.

Wunsch moved to authorize our attorney to draft a resolution to amend the master plan to include the construction of pickleball courts and the other requisite changes with a second by Wahl. motion approved by consensus

Sanger: where will the \$60,000 come from to make these improvements to the tennis courts and to move the basketball court [the two changes will cost \$30,000 each]?

Shanafelt: the township board will need to discuss this. The parks committee has not addressed making a recommendation on financing because it is not in our purview.

Manigold: that is a discussion we are going to have because it was going to be no charge to the township. That will happen when we get a committee together to negotiate with the pickleball people.

Shanafelt: the parks committee wants to organize a volunteer day at Archie Park. More info to come. Is looking to add a parcel to Pelizzari in conjunction with the conservancy. Is focused on health and safety components at all the parks. Will use up the budget.

Manigold: need to get a committee together to work with a committee of pickleball people to figure out the money and the timeline. This board, not the parks committee, will make these decisions. We've done this twice before at Bowers Harbor Park with the soccer fields and Little League fields. Need three volunteers.

Achorn, Shanafelt, and Wahl volunteered.

Meihn: discussed the upcoming mediation conference in Grand Rapids with Magistrate Kent that Judge Mahoney requested at the summary hearing two weeks ago. It has been moved to May 19 at 10:00 a.m. instead of May 13. Is attorneys only but the board met last week and created an outline of what to discuss with details. Going into closed session again today.

Supervisor and planner will be in Grand Rapids for support. Don't know what will happen. Is a lot at risk for both sides. Also gave a brief update on zoning issues and violations, including the hoist violation issue and a roadside stand violation. Said the recording will bear out that in the question of where the two hundred million will come from, Mr. Santucci stated "the complaint." The complaint does not say that. [Meihn] did not call Mr. Santucci's integrity into question.

Manigold: the Miller Canfield attorney for the wineries suggested [Manigold] seels all his grapes off the peninsula, which is not true. Detailed the peninsula wineries he sells to. Says anyone can look at his taxes and records; it's all there.

Meihn: there is a lot of misinformation.

Manigold: it's probably going to get ugly. There will be more lawsuits. If we were to lose, that would say you can have commercial uses on all ag land in Michigan. We can't have that.

Doesn't think the township is going to lose. Trying to get laws changed with the governor.

Meihn: no one's comments, whether aggressive or not, should go unheard and unconsidered. That's how we all learn, and there's a lot to learn.

Manigold: we'll do public comment right now.

Santucci: you [Meihn] are changing your tune. Would like an apology because you did malign my character by suggesting I violated the mores of the legal profession. Did not make up the amount of damages the plaintiffs are seeking. What will happen and who will pay the money if the township loses? Now you are backing down.

Meihn: I am not backing down. Where'd you get that number? You said the wrong thing and I reacted to what he said.

Santucci: is a motion for summary part of the original complaint?

Meihn: no!

Discussion occurred.

T. J. Andrews, 619 Webster Street: is here tonight as your next county commissioner. The county redistricting commission increased the seats from seven to nine commissioners last year starting this election cycle, which means more seats around the table, more voices involved in these important issues, and smaller districts. Means our representatives can be more responsive to residents and work more closely with township representatives to serve our mutual constituents. We are in district seven, which includes Peninsula Township and the part of Traverse City from East Bay to downtown. Is here to urge everyone to take the county survey regarding how to spend the 18 million dollars in ARPA [American Rescue Plan] funds. Only takes five minutes to raise the issues you believe are important and how those funds should be allocated. The survey is on the county website. Not sure how long it will stay up so take it soon.

Grant Parsons, 6936 Mission Ridge: reiterated the degree of support that accompanies the township when it returns to Grand Rapids. Do not be pressured into settling. Judge Mahoney cannot be told anything about settlement discussions. No matter what Judge Kent says, Judge Mahoney won't hear it. We have spent a ton of time working to get this right. Jenn and the ag committee are making substantive improvements. We have every foundation to uphold our ordinance. One of the biggest law firms in the U.S., which handles Supreme Court cases, is on standby to take on this case pro bono if it is appealed, and they will take it to the Supreme Court. This case isn't just important to Peninsula Township – it's important to the whole state. This gut-wrenching challenge is about whether township zoning is superseded by commercial interests. I guarantee this township will be defended, and if cost comes into it, a Supreme

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Becky Chown, Recording Secretary

Court-qualified firm will take this on in a heartbeat. Stay the course. Jenn is a fabulous addition, making improvements and sorting this out.

5. Enter closed session pursuant to MCL 15.268(e) to discuss the winery lawsuit (Meihn)
Chown moved to enter closed session pursuant to MCL 15.268(e) to discuss the winery lawsuit with a second by Sanger.

Roll call vote: Yes – Manigold, Achorn, Wahl, Sanger, Wunsch, Shanafelt, Chown passed unan

Return to open session pursuant to MCL 15.261

Wahl moved to come out of closed session and return to open session pursuant to MCL 15.261 with a second by Wunsch.

Roll call vote: Yes – Manigold, Wahl, Sanger, Wunsch, Shanafelt, Chown (Achorn is excused) passed unan

9. Board Comments:

Wahl: when we have citizen comments, no one should interrupt. I interrupted Nancy [Heller], which was inappropriate. My intentions were good, but it was inappropriate. If we choose to respond, we should do it later, under board comments. I apologized to Nancy.

Wunsch: we should be timing comments.

Manigold: Doesn't like to stop people in the midst of a prepared statement. Think it's more appropriate to let them speak.

Board discussion occurred.

10. Adjournment

Wahl moved to adjourn the meeting with a second by Sanger. Motion approved by consensus.

Meeting adjourned at 9:44 p.m.

Rebecca Chown

From: Noah Durham <noahdurham@gmail.com>
Sent: Tuesday, May 10, 2022 4:05 PM
To: supervisor@peninsulatownship.com; clerk@peninsulatownship.com;
treasurer@peninsulatownship.com; dave.peninsulatrustee@gmail.com;
warren.peninsulatrustee@gmail.com; Wunschis23@gmail.com;
planner@peninsulatownship.com
Cc: mlhaddox@mac.com; Nancy Durham
Subject: Changes to Peninsula Shores development

Dear Township Board Member,

I am a Peninsula resident with property owned on Henderson Dr and on Trevor Road. On Trevor Road, my family and I are next door neighbors to Megan Haddox. I stand firmly with Megan in her request that changes not be allowed to the plan for house sites in the Peninsula Shores development.

The development in question has already destroyed our landscape and our views. Excessive tree removal has forever shaped this part of the peninsula. Changing this land use authorization, and placing a house directly next Megan's and ours would adversely affect our view, our privacy, and the rural feeling of the area.

Please follow the zoning ordinance and further the Master Plan by denying the lot relocation request.

Noah Durham Fried
7194 Henderson Dr
4126 Trevor Rd
Traverse City, MI

Dear Township Board Member,

We are next door neighbors of Megan Haddox and her extended family on Trevor Road. We are writing in support of her heartfelt request that changes not be allowed to the plan for house sites in the Peninsula Shores development.

Our group of families on Trevor Road frequently gather on the cul-de-sac at the top of Trevor Road for stargazing, pot luck dinners, family game nights and other activities. We are saddened and deeply troubled by what appears to be the exorbitant number of trees that have been removed from the nearby landscape. Having a home built right next to this area would be a further incursion into our community.

The approval of this development has been controversial from the start and it is very frustrating that the builder continues to try to change and expand the plan that was approved. This is the third time the builder has done this.