



PENINSULA TOWNSHIP

13235 Center Road, Traverse City
MI 49686

www.peninsulatownship.com

Township Board and Planning Commission

Joint Special Study Session

July 26, 2022, 7:00 p.m.

Township Hall

Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.

2. **Pledge**

3. **Roll Call**

Planning commission roll call:

Present: Alexander, Dloski, Hornberger, Warren, Shipman

Town board roll call:

Present: Wunsch, Achorn, Sanger, Wahl, Rudolph, Chown, Fahey (by phone)

Absent: Shanafelt

4. **Citizen Comments**

Monnie Peters, 1425 Neahtawanta Road: good evening. It's good to see all these people here. I want to push you all to remember that the zoning code has been under work for now over a year at the town board level. Planning commission first passed it more than a year ago. It was at the July meeting last year that it first came in front of the town board. I think it has been a waste of time not to pass it and been working under the new zoning code. Jenn is doing really good work, and you're asking her to do it under the old code. I really hope it won't be more than the next month before you pass it. You keep identifying problems, but don't solve them under the old code. Solve them under the new code. Pass it; get it done. I've been before you every meeting but one. I will be disappearing to go home and have dinner with grandchildren. Have a good meeting.

Mary Beth Milliken, 7580 East Shore Road: I wish to express my support of the revised ordinance documents produced by planning commissioner Jenn Cram and the efforts of the agricultural advisory committee. I know the resulting documents took a substantial amount of time. They took collaboration and compromise from all involved. They were revised by honest, hardworking professionals with integrity and respect for the Peninsula Township residents as a whole. This was an open process. A number of involved parties were invited to participate but chose not to. Unfortunately, those who choose not to participate often are the loudest critics of what comes out as the result. Sometimes they fail to consider the wishes and vision of the Peninsula Township residents as a whole. The wishes of the residents were evidenced by the survey that was taken and reported on over a year ago. There never will be a perfect document, and I think it's time for all of us to accept that. Put aside the acrimony, adversity, the self-centered belief that the ordinances

were written to limit businesses on the peninsula. That's really not true. They were written to abide by what the majority of residents want and have expressed many times: their wishes to protect the beauty and serenity of our township. Thank you.

John Jacobs, 5294 Forest Ave: two things to say. First of all, Jenn, you and other staff have done a monumental amount of work, and good work, on the proposed changes to the agricultural ordinance. You've been bullied and otherwise treated unfairly and uncivilly by a few hurtful people while doing it. Let me say on behalf of the vast majority of our community, thank you for the terrific job you've done. In the short time you've been here, you've made a huge and positive impact. Two: the proposed changes to the ordinance are the culmination of thousands of hours of thoughtful, careful, and diligent work on the part of the agricultural advisory committee and many others. They have been crafted with the input of a wide cross section of individuals interested in the township. They rectify unfair disadvantages that the current ordinance imposed on many agricultural operators. They clarify numerous murky aspects of the current ordinance, and they strike a balance that aims to serve the interests of all without imposing an unfair disadvantage on any. I hope the board will quickly adopt it. Thank you.

Louis Santucci, 12602 Center Road: sometimes I feel like I'm going down a rabbit hole in Alice in Wonderland. When I look at this rewrite of the farm processing facility, I see so many things in there that make no sense at all and are actually anti-farmer. Requiring 80 acres for a farm processing facility that's going to have outdoor seating? Do you realize for a new farmer what 80 acres would cost? Two million dollars maybe if they're lucky, and that's before they build the farm processing center. The 50 acres for one without outdoor seating, that's a million dollars. You say the agricultural committee came up with this, but you had three agricultural people on that committee, one of whom hardly showed up. You had three Protect the Peninsula people, which is why this thing is written the way it is, with all these things that are in essence going to stop any winery from ever coming in again, but it hurts the farmer. If you can't put a processing facility in, or you can't sell your land for a winery, I don't know any farmer that's going to start out with one or two million dollars in the hole to buy property to farm. A lot of these things as I read through this, and I only had a short while to read through because quite frankly it's very confusing, you've got two different zoning ordinances in there, one says 40 acres one says 50 acres. Trying to hop between the two is very difficult. Having looked at what the judge said in the WOMP lawsuit that you lost, you've got to come up with rationale for these things. For example, whoever came up with the idea that you can only have 50 people outside, or the seating space can only be 750 square feet? Where does that come from? One thing to think about is the requirement that the farm processing facility has to have 70 percent of the goods that they're going to be processing come from their own land. That means you're saying to farmers who might want to supply them with something, well, sorry, they can only buy 30 percent from you. Why have these limits? Why not say, if you're going to process, process what you can of your own, process what you can from someone else. One final thing. You can call anything attorney client privilege, but it bothers me that you're going to go into a closed session and talk about ordinances. We don't get to know what the ordinances are, then you're going to come out of that meeting, maybe you're going to make an announcement and say, "Hey we got these new ordinances; come back next week and talk

about them.” Thank you.

Marc Santucci, 11789 Center Road: I’m just going to focus on one thing. The name of the agricultural committee would make those who like to obfuscate proud. As Louis said, there were three farmers on that agricultural committee. There were nine people on the committee. If you’re going to have an agricultural committee, if you’re going to seriously look at agricultural farmer-related issues, the majority of the members of that committee should be farmers, not one-third of the members. On top of that, when you talk about what the committee recommended, the farmers voted against many of the items that you are now proposing. And to follow what Louis said, it’s crazy to have 80-acre, 50-acre requirements. If you’re trying to promote, which maybe you’re not, new blood in the community, you need to not burden them so much that they don’t even try. I am fortunate that I have traveled the world in my various careers. One of my most enjoyable experiences was in Italy. The company that I was part owner of imported olive oil from the Verona region. I got to be friends with the people who owned that company. I went there during harvest time, and it was one of the more interesting and fun experiences I had. These guys not only did their own olive oil, but all the farmers in the area made olive oil for them. The way you’ve set this up, something like that could never happen here. I just think that’s a tragedy. In addition, by requiring that many acres to do anything, you get people who want to start a business. You don’t start a business with 80 acres. You hope to reach that point at some point in time. But that’s not where you start. I know a person who has twenty acres and would like to set up a maple syrup operation. Can’t do it. You have no distinction between a large producer and a small producer. The artisans, they are left out of this area. That’s why I think you need a majority of farmers on the agricultural committee because there are a lot of unintended consequences. Thank you.

Bernie Kroupa, 3183 Shore Wood Drive: we farm in the general vicinity of the Old Mission Tavern. We try to do it right, try to do it well. I have no desire or need to come to the township for anything, I hope, but we’ve got generation six coming and they do. It’s sad because it’s going to be the last generation of tree fruit on our farm. Those are the kind of things that get left out when we form an agricultural committee to do situational analysis. Twenty years ago, we did a white paper, a look-see at things, and a lot of things came of that. I was very proud of the Use by Right 139 that we’ve operated under. We worked long and hard on that. Again, hasn’t affected us because we’re just farmers. I’ve seen what the next group has in mind, and it will require a special use permit. Let’s face it, public hearings here have been kind of weaponized. The social media lights up, the crowds come out, we beat up the person requesting. I wouldn’t want to see them go through that. The option would be something non-agricultural. I hope that doesn’t come to pass. Yes, everyone could have been on this committee. “What the hell would I be on that committee for? Going to tinker with the winery ordinance, when the dust finally settles.” But I had no concept that we were going to sweep the deck clear, that any rights we had in 139 wouldn’t be intact anymore, and that’s troubling. We’ve talked about keeping the committee going, but I hope not. We don’t need a minister of agriculture monitoring our every behavior. We haven’t misbehaved that badly out here. Thank you.

Mark Nadolski, 10 Mckinley Road: with all that’s going on in the world and in our country, it seems we could set an example of how to intelligently and peacefully work out our

issues here on Old Mission Peninsula. We have one of the best planners in Jenn Cram, a great town board and planning commission, and citizens who have donated years of their lives to making Old Mission Peninsula the best place to live. We have generations of farm families who have given their all to preserve the heritage of the cherry, apple, and many other fruits on this peninsula. Let's honor that heritage by approving this new ordinance that Jenn, the ag committee, and others have worked so hard to create. Thank you.

Dave Murphy, 6943 East Shore Road: first, thank you all for working on these challenging issues. I have a lot of contacts in Traverse City, as I live on the south end of the peninsula. I've said before that we live so far south, some say we talk with an accent. We're a community on a very unusual and valuable piece of land surrounded by water. I can't tell you how often I've heard from my city contacts, "Boy, you do things differently out on Old Mission Peninsula." Yes, we do. We do it differently in the agricultural community; we do it differently in the residential community. We take umbrage with the county road commission telling this township that there's no reason to treat a county road here any differently than a county road anywhere else. We know that's ignoring reality. When so many of our roads abut Lake Michigan, they require greater care not only because of water quality issues but because of the blend of farming, residential, and recreational. There's a uniqueness of this peninsula that disproves the county's assertion that every road is the same. Similarly with other land uses, great care has been taken and must be taken and not just with farming. It's why this township long ago limited common elements found in other municipalities such as extensive commercial zones and billboards. It's why we have a dark night sky ordinance. It's why we have a common waste hauler, it's why residential developments face such scrutiny, it's why we watch the amount of keyholing and waterfront developments. It's why we take care of installation waterfront decks. It's why on waterfront land zones that are r1b and r1c, I can have one-acre lot and I'm still limited to one home. And that's because we take care of what we do in the residential community. It's why we've done a hard sell on municipal water and sewer, because we see how impervious surface permits such infrastructure that we may actually hurt the environment more with sewer and water than having septic and well. It's why we fight road widening and live with potholes and poor drainage, because we aren't going to get the proper treatment by the road commission. It's why we fight short-term rentals. It's why we've dedicated so much land to park use. There's 1,200 acres in this township, and it's state, it's county, and it's conservancy, and it contributes to township health. It's why we have three fire stations. It's why we have PDR. We do a lot differently out in Peninsula Township. This body of land merits special care. We've worked through many different concerns and controversies to protect the land and the interests of those of us fortunate enough to live here, agriculture and residential. The efforts in this new zoning are to achieve what was stated repeatedly: to support thriving agriculture and the preservation of rural character. Those twin goals have been emphasized by citizen surveys in our master plan. I think your groups have been trying to achieve that. If it's not perfect, we know we can make it better. Thank you very much for your work.

Curt Peterson, 1356 Buchan Drive: on my computer, page 11, under "policy direction for farm processing facilities," bullet point five or six down says, "No guest rooms shall be permitted." Let's not try to solve a problem that doesn't exist. There have been no

reported problems, nuisance problems, environmental problems, water problems, with guest rooms. So, this is a taking, essentially. Contrary to what you have been told, guest rooms in a house are not necessarily a bed and breakfast. They might be, but they might not be, and that is per Michigan State statute. So let's not solve a problem that doesn't exist. Thank you.

Brit Eaton, 1465 Nehtawanta Road: the citizen's agricultural committee came about because of the meeting in October of 2021. More than 250 residents came out to oppose the effects of the WOMP lawsuit. The charge was for the committee to look at ways of equalizing. At the same time, the 19 farmers wanted the same rights, the same special use rights that the wineries were requesting. When you think about those 19 farms having those special uses, on top of WOMP, the impact with visitor-serving sites on the peninsula is going to be horrific. So the committee set about to look at how we can equalize. How can we take the existing agricultural ordinances and form them into something that gave parity between the agricultural group and agricultural wine community and counter the divisive impact of WOMP on the peninsula and bring parity to the agricultural community while respecting the citizens' concerns? It requires the careful crafting of new agricultural zoning ordinances. It will require compromise, clarity of purpose, well-defined expectations, and enforceable rules understood by all parties. Jenn deserves our trust and support to make that happen.

Jeremiah Warren, 2677 Island View: I had just a quick minute today to glance at some of the stuff that you guys are going to decide on tonight I'm assuming. I don't like it. I want to agree with the Santuccis on the acreage requirements. I mean, you're looking at, you know, big-time producers. Terry Hooper is a prime example. She grows an acre of flowers. They do 147,000 gross on that one acre, but you need a studio to prepare those flowers to go out for the wedding. So please look at that acreage requirement and maybe do something different there. And there was some other stuff. I can store a recreational vehicle, a use by right, but to store agricultural products I've got to have a special use permit? That's what it said in the paperwork I looked at. I'm sorry, I don't have the page number. There's a lot of this stuff that's going to have to be gone over and looked at. I would hope that somebody's doing that, not waiting until it gets passed and going back to change stuff. Let's get it right the first time and be done with it. Thank you.

John Wunsch, 17881 Center Road: I have mixed feelings about this. In fact, I have great sadness about this. I worked hard over the last 30 years with the winery owners and citizens and Bern Kroupa, as you referenced, 20 years ago. And I think we built and established a really nice balance. We could have a very small, simple tasting room that was a use by right; it didn't do anything else. But clearly it was just there for a tasting without extensive retail events. We had a balance where if a winery-chateau had events for guests, they had to buy more grapes from around the peninsula. And there were limitations to what kind of groups and what size they could do. But I get it. When a lawsuit comes in and starts establishing that as soon as you have a wine tasting license, you can do anything, then how can we have a use by right? It has been taken away from us by the lawsuit, which has destroyed our ability to keep the balance we had. So what choice do we have? I am sad about it. I worked hard on all of it, but I get it. And similarly, limiting outdoor use unless there is a good amount of space for a good setback. We've had so much complaint

from neighbors who get all the noise when you put it outside. What choice do we have? Circumstances change. I worked very hard on these balances. I am sorry to see them go. I am conflicted about it. But I support moving forward. I support the good work Jenn is doing. I support all of you and looking carefully at this, considering it, and trying to move us forward in a way that keeps us from being vulnerable to lawsuits undoing the good intentions we had. Thank you.

Phil Wilson, 2570 Phelps Road: I just want to basically say that the township clearly is a really complex area with a lot of potentially conflicting interests. I do think that the township has in its own somewhat halting way tried really hard to balance those out to achieve some sort of equilibrium. The only constant, of course, is change. Change is something we all basically fear. It seems to me that if there's a lesson from the winery lawsuit, it's to stop and really look carefully at things and work a little harder to get a real true consensus. Or if not a consensus, some sort of larger equilibrium. Thank you.

Chown: Read letters (attached). Correction to Marty Lagina's wording: tonight is not a public hearing; it's a study session. The public hearing will be August 9th.

5. Approve Agenda

Town board

Cram: We are going to move the closed session to the end of the meeting so we can get right into our study session.

Wahl moved to move business item one to business item two and approve the agenda as amended with a second by Rudolph.

Roll call vote: Yes – Achorn, Sanger, Rudolph, Chown, Wunsch

Passed unan

Planning commission

Alexander moved to approve the agenda as amended with a second by Hornberger.

Roll call vote: Yes – Alexander, Dloski, Hornberger, Hall, Shipman

Passed unan

6. Conflict of Interests

Wunsch: I have a conflict of interest. I am one of the larger farm land managers in the township. I will endeavor to work through these issues without allowing my land ownership to impact my decision making, but I would welcome any of you to question if those conditions present a conflict of interest as we move through the decision-making process. If anyone has concerns, I would be happy to recuse myself from decision making.

Planning commission: none

7. Consent Agenda

1. Request to use Charlie Doe sign to advertise the annual Peninsula Community Library book sale

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

Roll call: Yes – Sanger, Wall, Rudolph, Chown, Wunsch, Achorn

Passed unan

8. Business

1. Joint Study Session on the Agricultural Sections for the Township's Zoning Ordinance

Cram: I want to thank the planning commission, the township board, the citizens, and our attorney for joining us at 7:00 p.m. on a beautiful Tuesday evening. I know that all of you agricultural operators are busy and everybody has lives, but this is important work and I appreciate hearing from all of you. These recommendations, or proposed amendments, have developed as a result of what we have learned from the WOMP lawsuit. I have been working very closely with our legal counsel, Bill Fahey, and his team on what the decisions

that Judge Maloney brought forward mean for us and our zoning ordinance. Our goal is to develop a zoning ordinance that is legally defensible and also equitable. The equity is one of the most important things for me personally. I accepted this position to come here because I am a pro-agriculture planner. That was my background before coming here. When I interviewed with this township board, I felt I was making a good decision because I felt that it was pro ag. I started participating with the citizens' agricultural advisory committee in December of 2021, before I was officially an employee with Peninsula Township. I wanted to quickly get up to speed with the issues, with the lawsuit, with where the community was at. And it's true, we only had three agricultural operators who participated. We held three seats for three additional agricultural operators, the wineries. They chose not to join us. That committee is called the citizens' agricultural advisory committee because it was meant to get diverse opinions from the citizens here who are not agricultural operators as well as the agriculture operators. I believe that one thing is very clear: this is a very special place. It is unique because we're surrounded by water. People want to come here to enjoy the scenic views and vistas. People want to live here for the same reasons. And all of those things are possible because of the strong agricultural heritage and culture in this community. I believe that if we continue to work together and come to these study sessions and speak honestly about what is important to us, we can get there. So thank you all for taking the time and being honest. Whether it's pro or against, all comments have helped me to understand the uniqueness of this community and where we're going. I bring with me experience. I understand how agriculture works in other areas, but, again, Peninsula Township is very unique, so I'm excited to walk through these amendments with you. This is a study session. There will be no action this evening. There will be a public hearing on August 9th at 7:00 p.m., where the board and the planning commission will have a joint public hearing to discuss these items further. Tonight, it is going to be very helpful for me to hear from the planning commission and the township board. I will continue to take written comments or you can call me.

The proposed changes we are looking at this evening include removing the winery-chateau use under Section 6.7.3(22), 8.7.2 (11) and 8.7.3(10) from the zoning ordinance. We will be replacing that with two opportunities for obtaining a special use permit for retail farm processing. We will also be updating the farm processing facility as a use by right under section 6.7.2. The other proposed amendments update the definitions, table of contents, parking requirements, and things like that so that the entire document looks at these amendments thoroughly. These amendments are the current priority because of the lawsuit. I want you to know that there will be additional amendments to address new uses such as a farm market. That's what I'm calling it right now, which is the missing middle. That is the smaller acreage for new farmers who want to get in and do some processing, such as if I'm growing blueberries and want to make blueberry jam or other things. Right now, the opportunities for ag operators go from having a roadside stand to a farm processing facility. Not everybody wants to go in that direction. Realistically, there aren't any farm processing facilities here that aren't wineries, maybe one or two. We're hoping to encourage new processing. In other parts of the country, that's called value-added agriculture, when you're taking something that you grow and changing it into something else. We want to provide those opportunities and that missing middle piece.

We also want to look at agritourism and some of the things that will be coming out with the winery-chateau, such as guest activities. Those belong in another section of the zoning ordinance that are specific to agricultural uses. They drive tourism, allow agricultural operators to be more creative, and to have those uses that truly complement agriculture. We can look at how to mitigate impacts and allow those things to coexist with the rest of the community. Those changes will be brought forward as quickly as possible. I believe it is very important to bring the agricultural advisory committee back together with a good balance of citizens and agricultural operators. I hope that we will have the opportunity to do that and that all of you will express your interest if you'd like to participate in that committee.

The other thing we need to think about, especially because Peninsula Township does function so uniquely, is some type of cooperative farm processing. Not everybody wants to have that large footprint on their land or take that on, but one of the things that's wonderful about the peninsula is that farmers do work together, and in order to grow or process wine and other things, it's good to use agricultural produce from other farms. I think there's opportunities for that. I'm committed to updating the zoning ordinance to make it work for this very unique community.

The first six pages in this packet are copies of the recommendations that were brought forward from the citizens' agricultural advisory committee to the planning commission. They were presented on May 16, and the planning commission did welcome public comment at that time. Things were then paused because of Judge Maloney's decision on the WOMP lawsuit. These recommendations came over several months of work. We went through a series of exercises where I asked specific questions. One of the examples, and this will help us with our acreage as we move forward, is that I asked the group, "Do you believe that a farm processing facility is a more intensive use than growing crops, agricultural production, and/or a single-family residence?" The answer to that question from everyone was yes, unanimously. That is a more intensive use. It's a larger footprint. There are noises, there are smells, there are things associated with the farm processing facility. In order for us then to mitigate impacts, we need to think about the amount of land that can accommodate that use. Think about the parking, the access, and appropriate setbacks to the neighboring uses. One of the things we know that agricultural operators don't like is nuisance complaints. And the township doesn't like nuisance complaints. If we look at the land associated with that and develop appropriate setbacks, we can hopefully help to mitigate some of those things. Those were the types of questions that were asked. Here you can see that I noted the agricultural operators who were present had a different perspective than the residents. There were some things that the group agreed on unanimously and some things that were a majority. I reflected all of those to be very transparent as to what the decisions of that committee were. That work has been shared with our legal counsel, Bill Fahey, who is here on the phone with us this evening. We also talked through the impacts from the lawsuit and trying to make this equitable. Right now, the way the zoning ordinance exists, farm processing is specific to wineries, and winery-chateau is specific to wineries. We want to make farm processing so that it applies equally if I'm growing lavender and processing it into lavender oil or growing apples and I want to make applesauce or growing grapes and want to make wine.

This is hot off the press; there will be some typos. I am starting on page seven of the packet that I put before you. What I did for the board members is print a packet for them and then hand write page numbers so that I can refer to the numbers. This is the same packet that is posted on the website. The first thing you'll see is updates to the definitions of farm processing. We are proposing three types of farm processing. There will be a farm processing as a use by right, which is a wholesale farm processing. Then there would be two retail farm processing facilities that are approvable through the special use permit process; one is indoors only and one includes some outdoor seating. Being in alphabetical order, the farm processing facility with indoor retail sales is the first definition. I used the existing farm processing facility definition that exists in the zoning ordinance now on page eight as a reference to that, and then tried to make the definition unique to each of those individual uses.

Hall: the sixth line says, "An indoor retail sales area may include a 'tasting' room." You probably mean tasting. The same typo appears in the next paragraph.

Dloski: just so I can put this in context, are the changes that we're going through now starting with page seven the changes that are mandated by the lawsuit?

Cram: some of them, yes. Those are some of the things that Bill will be discussing with us at closed session so we know the things that we need to change direction on. Are we good with definitions? Then I'm moving on to page nine; you'll see the definition of winery-chateau has been removed. Under Winery, new language was added: "From raw produce." We want to support local, regional, and state agriculture. I want to make sure that it is that first stage of processing, the apple or the grape, that is processed. This seemed to be very important to the community as well as supportive to local agriculture. You'll see that language used throughout the ordinance.

Wunsch: if a winery is currently trucking in all their juice from California, they would be a non-conforming use, right?

Cram: another thing I want to make very clear: if this zoning ordinance is adopted, all of the wineries with existing special use permits will be considered legally non-conforming. All of the uses approved with the special use permit would still stand. Any changes to those uses would come through a process and be under the new zoning ordinance. We will be looking in the future to see that existing special use permits are in compliance with what was approved.

Jumping to page ten, under Wholesale Farm Processing Facility, the major change is that retail sales would no longer be allowed. This is intended for the farmer who has a minimum acreage in crop production and has reached a point where they want to add value to that agriculture and change it into something else. Provided that they meet the minimum, then they could have a farm processing facility. The acreage minimum stays the same at 40. Another thing I want to point out from some of the comments that were made by the public is that, yes, 40 is a lot acreage to accumulate, as well as 80, but those acreages do not have to be owned. They can be leased. This supports the ability for new farmers to get in. You don't necessarily have to invest in owning it. But if you are leasing it, and successfully growing it, and want to change that product, then this would be an option for you. The intent statement has been modified to clearly demonstrate that the intent is to allow this use when there is a minimum acreage of land in active crop production. To try

to mitigate some of the negative impacts, we have added clarification under 19 (b) 1, "All processing shall be conducted indoors." 40 acres is the smaller of the acreages. We're trying to address noise and things like that. "No retail sales or consumption of processed products on the premises is permitted. The Michigan Liquor Control Commission and the Michigan Department of Agriculture shall control applicable wholesale liquor and food licenses and compliance with said licenses." So we're not trying to intervene in any of that. Are there any questions on the intent or (b)1?

Hall: I have a comment on 19(a). This is a technical comment for the attorney. In the middle of 19(a), a sentence says, "The majority of the produce sold fresh or processed shall be grown on the specific farm operation" and then there's a parenthetical, "land owned or leased for the specific farm operation." I'm going to suggest to legal counsel that the term "specific farm operation" be changed. I think the intent of that sentence is to say that the majority of the produce shall be grown on certain land, and the land is whatever land qualifies the project for the farm processing facility. Meaning, the minimum number of acres. But to talk about a specific farm operation, it's not talking about land; it's talking about an operation. That term "farm operation" appears throughout this ordinance. I suggest it would be clearer if instead there were a defined term like "qualifying land" or "minimum required land," something like that.

Cram: what if farm operation were defined to include that?

Hall: you could; it's just that the term "farm operation" to me doesn't mean land.

Cram: so the idea is to qualify this as a use by right. A use by right means they don't have to come before the township board to get approval of a special use permit. It's an administrative process. So the planner would review their site plan to make sure they're compliant with all those things. And then when that site plan is approved, then they go to zoning to get their land use permit and they move forward. The idea was if you were doing this by right, you have to have the minimum acres, but that doesn't prevent you from processing. Let's say I have 80 acres, and I want to be able to process things from my entire farm operation. In order to meet these requirements, I'm going to commit these 40 acres to this because maybe I want to do other things on that other 40 acres. I want to have another dwelling or something, but I still want to be able to process agriculture from my entire farm operation. So that was why I thought farm operation allowed for more flexibility. But the minimum acreage applies to the fact that it's a use by right and you don't have to go through another process for it. You're meeting those minimum requirements.

Fahey: I wrestled with this too. We are going to come up with something that is more transparent and clearer than what we have here. I agree, we need to tie the ability to have this use by right to specific land, not necessarily to a specific operation.

Rudolph: The last part of that: "Since a farm processing facility is generally an industrial use, it is not the intent to grant any vested interest in the continued non-agricultural uses." If that wholesale farm processing facility would go out of business, then that use by right does not automatically go with that piece of property, is that what we're saying?

Cram: uses do run with the land. If I as Jenn Cram the farmer meet all the requirements for my farm processing as a use by right, and I sell it to Christina, as long as she's doing the same and meeting it, she could continue to do that. The intent of this is that if the farm

processing facility operation were to go away, and now we have this large building, that large footprint couldn't be used for other things that aren't allowed as uses by right for agricultural operations.

Hall: it could only be used for wholesale farm processing.

Cram: or another thing I think that was mentioned earlier. As a farmer, you don't have to come in and get any type of approval to have a barn to store your hay or agricultural products. You can grow flowers and cut them in your shed and you don't have to have a permit. This would mean that large building then could be used for standard agricultural operations, but it wouldn't allow for more intense uses beyond that.

Hall: I have another technical comment. I'm glad Bill mentioned that second to last sentence of 19(a). It says, "It is not the intent to grant any vested interest in the continued non-agricultural uses." I'm not a zoning law expert but I believe under Michigan common law the term is "vested right," not "vested interest." I believe the intent here is to talk to that specific area of Michigan common law that talks about vested rights in the context of non-conforming uses. So I think we should use "vested rights" instead.

Fahey: yes, and this is one of the subjects of the closed session that we're going to have, because this is one of the key things I think we all have to understand from a legal perspective. What some of the implications are going to be going forward.

Cram: that is something that is in the existing zoning ordinance. Anything that is in black is existing. Anything that changed is either in red or blue. But good catch, because our goal is to improve this.

Deeren: I don't see anywhere that this is a permitted use by right.

Cram: that happens in other sections of the zoning ordinance. Section 6 under (a)1 it lists what uses.

Chown: one little tweak, that final sentence in 19(a), "This amendment is also not intended to, *and may not* supersede any conservation easement." We have to make that crystal clear.

Cram: I do have that comment elsewhere. This version includes some of Bill's comments but Becky corrected some editorial things that are good for the public to hear.

Wahl: I would recommend adding "or amend" after "supersede." So, "This amendment is not intended to supersede or amend any conservation easement."

Chown: I like that.

Cram: Okay. Page 11. Because there are no retail sales, it takes out the confusing language about logoed merchandise. Moving on to page 12, item number two: Limitations on Sources of Produce. We did add language: "processing is limited to raw produce. For example, apples may be processed into apple juice or applesauce." The thought is that it wouldn't allow for bringing in juice and things from other areas. This gets in further when we talk about the 70 percent and 30 percent. I would be processing 70 percent of what I grow and 30 percent could come from anywhere as long as it is the raw produce. So then this allows for farmers on the peninsula to process one another's products as well as come from the region and the state potentially, as long as it is raw produce.

Sanger: is lavender considered produce?

Cram: yes. For that we would just need to go back to our definitions of what agriculture is. It does give a varied list of fruit trees and so on.

Sanger: you're going to pick up the definition of produce then as a definition? This has come up in the past, when we've discussed roadside stands and some conflicts there.

Cram: we hadn't planned on it, but that is something we could look at. I'll just make sure it's covered in an existing definition or something.

Achorn: does this cover Marty Lagina's question about forest timber? (see attachment)

Cram: At the citizens' agricultural advisory committee, we talked about the minimum acreage. We included some language because we didn't want to force someone to remove mature trees and put that land into agricultural production just to meet minimum requirements. It's not included in this version, but it is something we discussed and were supportive of. I discussed it with Bill, and we postponed putting it in here because we want to make sure the minimum acreage is established. We don't want someone to say, "I have 40 acres, and I want to process something, but all of my acreage is mature trees or wetlands." So we have to come up with what is a good balance where you're still producing that minimum amount to justify having a processing facility. The other thing, in other areas, in order to have a farm processing facility as a use by right, you have to be processing 100% of what you grow. I come from Larimer County. The crops there are sugar beets and wheat and corn and things like that, and it makes sense there. Here it doesn't make sense. There has been a cooperative nature where you're processing other cherries or apples and things. So the 70/30 is something that has been discussed, but it's not set in stone. It would be helpful to hear how it does work here. The goal is that if you are doing this as a use by right, you're actually growing something and you're going to process it; you're not just using this landscape as a backdrop for your business.

Shipman: keeping with the 70/30, I did note the change from those notes you provided previously. Also in this discussion about the land owned or leased, what you forwarded to us in the April meeting included more of a focus on that you could include produce from another farm on Old Mission. This seems more broad to me. Is that very specifically a change where I hear you saying things like regional produce, state produce, things like that? I'm assuming that change may be related to the lawsuit.

Cram: yes, we're learning from the lawsuit, trying to allow for flexibility and what works specifically for this community. The recommendations that came forward from the citizens' agricultural committee to the planning commission also talked about having to own all the land. Bill has advised that, no, we have to allow for the opportunity. It makes sense, trying to make this work for new farmers who may not have accumulated a lot of land but as long as they are an active farmer, they would have the opportunity to pursue this as a use by right. And we did keep in the standard number three: "If crop conditions or natural disasters result in a short of locally grown fruit," all someone would have to do is come before the board and talk about it. There could be flexibility to bring in produce from outside the area as long as that amount didn't exceed five years total. That again is exact language from the existing zoning ordinance to allow for flexibility.

Hornberger: page eight, number two, the phrase "specific farm operation" is again used. Do we want to remember we need to fix that?

Cram: when Bill and I figure out how to address that, I'll do a search and catch them all but thank you for noting that. Okay, moving on to page 13 to the parcel requirements. We've touched on this, for the wholesale farm processing as a use by right: "A total of 40

acres of land are required to be devoted to the operation of a wholesale farm processing facility. The 40 acres shall be located within Peninsula Township and shall be owned or leased for the specific farm operation by the same party owning the farm processing facility.” This is language right from the existing zoning ordinance. “Up to 20 of the required 40 acres does not have to be contiguous and may be either owned or leased with exclusive control and use by the operator of the farm wholesale processing facility.” I just moved that up because I thought it made more sense than where it previously was.

Wahl: I have a comment about that. In paragraph three, there are two new concepts introduced. One is a qualification on leased. It says, “leased with exclusive control.” But in other paragraphs, it doesn't use that language. So I think we should decide how we're going to reference leases. Maybe a definition of what “leased” means. To add “exclusive control” here but not to say it elsewhere can create ambiguity. The other concept introduced here is one of an operator instead of an owner. I wonder if that's appropriate.

Cram: that is what is in the ordinance now.

Wahl: I would change it.

Rudolph: “owner” makes more sense.

Fahey: there are a number of levels that we have to look at. So there's the ownership of the property, there's leasing the property, there's operating the property, and there's controlling the property. I think the most important thing is to be able to connect these facilities to specific land. Whether that land is controlled by the person who's operating this facility, or owned, or leased, maybe shouldn't make a difference. I want us to keep an open mind on that and try to be flexible as long as the result is that the land which is producing those crops is tied to the processing of those crops.

Wahl: I would agree with your approach. I'm not taking a policy stand here; I'm just pointing out as a drafting matter that the concept of an operator is newly introduced in this paragraph.

Fahey: yes, I agree we need to make these consistent.

Wahl: when we finalize this, can we be consistent whether we have a number or a numeral?

Cram: part of it is I'm dealing with a zoning ordinance that was adopted in 1972. Yes, I want to make it as consistent as possible. I want to fix the whole thing but I have to focus on these sections right now. But thank you; I do agree.

Shipman: we have at the end of this section a note on the length of time for the lease. That includes a good chunk of existing language, but do we want it there? Or do we bring that up so that they're together? It jumped out to me as those are completely separate but very important that they live together.

Cram: yes, so on page 14, maybe move that up? Sure. Currently, the zoning ordinance only allows for a lease of one year, which is really difficult to track. We are going to have to come up with a way to track all of this since it doesn't require ownership. We propose to increase that to five years.

Deeren: could we have them provide us a copy when they register with the county?

Cram: I noted under site plan review it will be a requirement. Before you get it for a land use permit, we'll make sure that all the parts and pieces are together.

Hall: as a matter of real estate practice, in the paragraph that says “The lease shall be

recorded,” I recommend that it say, “The lease or a memorandum thereof shall be recorded.” Parties typically wouldn’t want to place the potentially confidential economic terms of the lease of record. The memorandum would just state that there is a lease, it would describe the parties and the property leased, and give the term. But it wouldn’t have to include the economic terms.

Cram: noted. I’m jumping back to page 13, roman numeral number four: “The parcel containing the wholesale farm processing facility shall be a minimum of 20 acres and have a minimum parcel width of 330 feet.” That’s existing with some clarification. “The 20-acre minimum parcel and the farm processing facility shall be owned by the same party.” We’re going to get into owning, leasing, operating, those types of things to make sure that it is clear and legal. “None of the 20 acres shall be further divided while the wholesale farm processing facility use is in effect.” That’s important because with the way that the Michigan Land Division Act works, you can come in and divide land and then it could create a situation where this farm processing facility as a use by right no longer conforms to the minimum requirements. Roman numeral number six: “The remaining 20-acre parcel(s) associated with the wholesale farm processing facility necessary to meet the 40-acre minimum requirement shall be in active crop production. The remaining 20 acres may be one parcel or two contiguous parcels such that the contiguous parcels that make up the balance of the farm operation are not separated by a road.” It used to say, “They may be separated by a road.” The reason I changed it to “are not” is because I didn’t want that road right of way 60 feet to take away from the acreage and production. That’s one of the comments that Marty [Lagina] read. Do we think we can accomplish the acres and production with a road through it? Any thoughts on that? Is that standard practice? I know people own land on both sides of a road.

Deeren: our current zoning ordinance says that if the road divides the property, it’s supposed to be treated as two separate parcels of land. That is current language adopted in 1972. Then the road right of way doesn’t count either because I have to subtract that from the calculations.

Cram: I thought this was cleaner, but I also don’t want to make it more difficult for an agricultural operator to have the minimum acreages in production. So I’m open to discussing that based on what Marty brought up today.

Wahl: it’s definitely going to make it hard for new property owners.

Sanger: it’s quite common in a township for a 40-acre parcel to be the gross area. Later on, roads came in, so the net area is less than 40. The zoning board of appeals has handled several cases in terms of, if we have say 40 acres in an agricultural zone with five-acre minimum parcel size, and the net is 38 acres, how many dwelling rights do you have? The answers come back in my memory; you have one per five on the gross. So if we have gross of 40, roads take off, say 238, there still remains five. Somehow we have put that into words. That’s common in a township as a quarter section is divided up and then the roads came along.

Cram: maybe we need to think about gross and net acreages then, to allow for that. So we could change it back to the existing and allow for the acreages to be divided by a road as long as the net acreage and crop production remains the same and meet the minimum?

Chown: that makes sense.

Shipman: I support that. Farmers need access to different parts of the property anyway. There's going to be access usage throughout the property.

Cram: Roman numeral number seven: "There shall be no more than one single family dwelling on the 20-acre parcel containing the wholesale farm processing facility and no more than one single family dwelling on the remaining required 20 acres." That is the existing standard for the 40 acres. "The total number of allowed single-family dwellings which may be built on the total 40 acres dedicated to the wholesale farm processing facility use shall be two." That's existing language.

Hall: let's suppose that somebody has a 50-acre parcel. This is a use by right. Can they say, "On the 40 acres, as related to the wholesale farm processing, I can only have two residences, but the other 10 acres, I can put two residences there because I'm going to treat those as not part of the wholesale farm processing." Could they do that?

Cram: yes. On the site plan, they can show which acreages are dedicated to which. Okay, and then roman numeral nine: "None of the minimum 40 acres shall be used to satisfy acreage density or open space requirement of any other food processing or other use in the township while the wholesale farm processing facility is in effect." That is an existing standard.

We already covered roman numeral 10, with regard to the minimum lease terms and a suggestion to move that up to the top to read better. I'm moving on to page 15, roman numeral 11: "There shall be a minimum of 10 acres in active crop production on the same parcel as the wholesale farm processing facility. There shall be an additional 15 acres of land and active crop production of the 40-acre minimum such that a minimum of 65 percent of the total land associated with the wholesale farm processing facility is in active crop production." In the existing zoning ordinance, for the 40-acre minimum, you are only required to have five acres in crop production. Which I questioned: are you even growing enough to warrant a processing facility? In talking through this with the citizens' agricultural advisory committee, everybody agreed that, yes, you should be processing more. I looked at standards for the region and the country too. I had a lot of conversations with Isaiah about this in particular, and we came up with about 25 acres of crops that warrant having enough to process. In conversation with Bill, the the comfort level from him was about 20 acres. So I feel we're really in the ballpark here. I also compared what the existing farm processing is as a use by right with only having a minimum of five acres to what the winery-chateau said. One of the things I really liked about the winery-chateau ordinance is you have to have 75 percent of 50 acres in crop production. That is really preserving a lot of crops. That 65 percent for 40 acres is 10 percent lower than what the winery-chateau ordinance allowed. That's where that 65 percent came from.

Hall: a technical point: the math doesn't work here. If you have 25 acres in active crop production divided by 40, total is 62 and a half percent.

Cram: I'll fix that.

Sanger: how does this address the issues of lavender farms where it's very intensive farming. I'm unaware of any 15-acre lavender farm in the township. Also, someone brought up tonight the cut flower operation. Aren't we really penalizing these operators who need to have some place to process what they're growing on their property?

Cram: page six of your packet. One of the things we agreed at the citizens' agricultural

advisory committee is that there is a missing component to the uses we currently allow. As a farmer, I can only afford five acres here in Peninsula Township and I am growing my carrots and as soon as I sell one carrot, I am protected by Right to Farm. I have the ability to have a roadside stand. There are no minimum acreages, other than meeting the underlying zoning district requirements. And then our current zoning ordinance jumps right up to the farm processing, which our existing farm processing as a use by right says you have to have a minimum of 40 acres. So there is that missing middle. We want to have another use that does allow someone to have a smaller acreage where they're very productive. Where I come from, our most productive farms that were providing food to that area were on two and a half acres. Yes, our current zoning ordinance doesn't allow for that and so we plan to fix it. This is really for the larger-scale operations, for the fruit farmers and things like that.

Wunsch: I think the important thing to note as you look through to number five, "Wholesale Farm Processing Facility Size," is that this is the use that anticipates up to 30,000 square-foot build. So I think what the agriculture committee will work through subsequent to this conversation is what that smaller footprint facility is that might include some processing and retail.

Sanger: lavender requires a place to dry; you need a place if you're going to distill it into oils. There is a missing piece; maybe we need a small farm processing facility.

Wunsch: we've tried as a township to do some things to accommodate those uses, but our ordinance doesn't support them very well, so we're going to try to come up with some language that will support the smaller footprint. More direct retail and direct market-type agriculture. This farm processing facility, whether you're looking at the wholesale or retail that we're discussing tonight, will be focused more on a combined wholesale and direct sales approach, where the owner or operator would have a fairly substantial facility. A 30,000 square-foot facility is quite large. We will work on the smaller uses.

Cram: those are a priority. We called it a farm market in our discussions with the citizens' agricultural advisory committee. The agritourism uses are also very important for us to have a section that covers those.

Dloski: page 15, are Roman numeral 11 and 12 consistent with Roman numeral 6 on page 13?

Cram: yes, it is consistent because what we're saying is that the actual facility that is going to be constructed has to be on 20 acres. And on that 20 acres where you have the facility, 10 of those acres would be in crop production. Which leaves 10 acres to develop your facility, your parking, or whatever. Where is the best location for your crops? Where's the best location for your facility? Then on the other acreage, that is entirely crops. It doesn't have the farm processing building. Those are consistent and meant to be together. I am happy to take another look at that again, Larry, if it needs additional clarity. The goal is that 65 percent of the total 40 acres is in active crop production. Is everybody comfortable with that goal? I see head nods.

Next is number four, Setbacks: "The minimum setbacks for a wholesale farm processing facility, including required parking, shall be: side and rear yards, 200 feet. Front yard, 50 feet." The existing ordinance had a requirement of 100 feet. The 200 feet comes from the existing zoning ordinance with the winery-chateau later, where there is a 200-foot

required setback from residential structures. It's difficult because someone could build later a residential structure on A-1 land, or residentially zoned, and you can't limit what's going to happen off your property. It made sense to take that 200-foot setback from a residential structure and make it from the property line. That way you're protected regardless of what development happens around you. That 200-foot setback allows you then to locate your facility and your crops and the best locations. It helps to mitigate the noise and the parking. We get calls about the beeping from the trucks backing up. Creating that distance between these types of uses helps to mitigate those impacts. So that 200 feet was proposed in another area, and I'm bringing it forward here so that it's all encompassing.

Item number five: "Wholesale Farm Processing Facility Size." This section of the zoning ordinance was actually updated by amendment 197 in 2019. That is where the township board heard from the agricultural operators that the maximum 6,000 square feet wasn't enough for the storage of all the things they needed for their operation. The township board responded and increased those limits. I incorporated here the language from Amendment 197, which allows for an agricultural operator to have 250 square feet per acre. If you only have that 40-acre minimum, you would be limited to about 10,000 square feet. But if you had more acreage, then you could have a larger building. That is existing language that is carried forward in the existing zoning ordinance from the approved Amendment 197.

Item number six: "Pre-existing Buildings." That is also an existing part. I put in there that it was the 10,000 maximum. We want to encourage the adaptive reuse of existing buildings. There might be barns and other things out there that could be used for this. So we want to allow for that flexibility.

Page 16, item seven: remains pretty much unchanged with regard to vested interest. That is something we'll be discussing with Bill as noted. Currently, it reads: "There shall be no vested interest in non-agricultural uses of the structures. Structures shall only be used for allowed uses and the A-1 Agricultural district in the event that the farm processing facility use is abandoned." This goes back to what we talked about earlier, those vested interests. With regard to parking: "Parking shall conform to the requirements of section 7.6." You'll see that there have been some changes there and we'll talk about that. "Lighting shall conform to section 7.14. Signs shall conform to section 7.11." I do know that the signage requirements for agricultural operations was discussed at the citizens' agricultural advisory committee. I recommend that we look at our sign ordinance and allow for greater flexibility for our agricultural operators. That will be coming forward in the future.

Page 17: "Access shall be from a public road." It was also discussed that the public road should be paved. Again, this is a more intensive use. We can anticipate large trucks and things, and so how do you all feel about the requirement of it being paved? So that we know that this use is occurring in a location where we have adequate transportation systems in place?

Sanger: I think that's a lot to ask if it's a use by right.

Rudolph: this is a wholesale facility, not a retail facility.

Chown: I would hate to require paving.

Cram: okay. It does come up later. Number 12 is Data and Records: “The owner of the wholesale farm processing facility shall annually provide data and records to the director of planning showing that a minimum of 70 percent of the raw products processed are grown on the land owned or leased for the specific farm operation by the same party owning and operating the wholesale farm processing facility.” Number two: “An up-to-date record of land ownership or lease to comply with the minimum acreage requirements shall be provided to the director of planning. The above data shall be supplied to the township in a format or form approved by the director of planning.” That will be vetted with the community and the township board. We need to come up with something that's easy for the agricultural operator and easy for staff resources to document and keep track of. “Any change in the above shall be submitted promptly.” These are all existing conditions for the farm processing as a use by right with some clarifications.

Rudolph: when you have a statement that says “must be submitted promptly in writing,” I wonder if there needs to be some kind of time frame or date.

Cram: within 60 days of the change or something like that. Good catch. Then 13 is the approval process, with some changes to existing language: “A site plan drawn to scale (one or more sheets as appropriate) shall be submitted to the director of planning along with the appropriate permit fee as established by the township board.” I’m not going to go into a lot of detail in this particular location on the approval process because in farm processing, I dug a little bit deeper. I do believe that we need to update our application forms and submittal requirements. It would be my recommendation that we don't put the specifics of what you have to submit in order to do it. We talk about the process and the zoning ordinance, then we have supporting documents that are approved by the township board, administered by the planning department, that are very clear and transparent so that the applicant will know what they need to do. We don't have to get into the weeds here. So I'm going to save this conversation until we get a little bit further. My goal as your planner is to make sure that the zoning ordinance is clear, that it's easy for us to make recommendations and decisions. And that it's very clear for the applicant what the process is and what it looks like, what do they need to submit and long is it going to take. Those are areas that we can absolutely improve on.

Page 18 continues the site plan review, which we can talk about a little bit later. But to talk about the process here: if I am a farmer and I have 40 acres, I have 65 percent of that in crop production, and I want to change that raw apple into something else. Then in order to do that, I would come into the planning department, I would bring my site plan in, the planner approves it, then go to the zoning administrator to have the land use permit approved. Then they would move forward depending on what they're doing, building permits, things like that. But the zoning administrator and planner would work with the applicant to help them through the site plan review and land use permit process and make sure that we have all of the other state and federal licenses and permits in place for the type of processing they're doing. We want to develop a clear process.

Number 14 talks about any violation of the site plan issued. There will be conditions of approval for the site plan. It will say very clearly if any of the conditions change, there would be the ability for the township board to suspend that use. The existing zoning ordinance allowed for a residence within a farm processing facility. I think that's a good

thing to keep. If someone has limited resources, they might propose a simple or modest dwelling inside their barn. I saw that a lot in my previous experience. Allowing someone to have a dwelling within the farm processing facility is standard. There are safety concerns with making sure that dwelling is safe, but I think we should still include that opportunity. So no changes proposed for that.

Page 20, you can see that section 8.7.3 changes the winery-chateau use to retail farm processing facilities. Standards for the two retail farm processing facilities are covered in section 8.7.3 (10) and (11).

Page 21 is Parking Standards. Winery-chateau is changed to "retail farm processing." Bill noted we should have less restrictive parking requirements for the wholesale farm processing than the retail farm processing. We need to take a look at that. I came up with the one for each 150 square feet of retail floor space based on some research I did for restaurants and different type of retail stores to be more consistent with that. I think it would be helpful for us to have specific standards for wholesale and for retail. Do you all agree?

Board members signal agreement

Three-minute break

Cram: page 22, Retail Farm Processing Facility. This incorporates an indoor-only retail sales facility. The intent statement is consistent with the wholesale farm processing but makes it specific to a retail operation. All the comments we made with regard to the intent statement and the additional clarification on language, I will take all of those comments forward. Anything anyone believes should be included in the intent statement for retail sales? Okay. Then we get into the details of the retail sales. (b)1: "Retail sales of fresh or processed agricultural products are allowed subject to the requirements of Section 8.7.3.(10)(b)2, and the following additional requirements. All processing and retail sales shall be conducted indoors. The consumption of processed products on premises is permitted indoors only. A tasting room may be included in the allowable square footage for retail sales to provide for the tasting of fresh or processed agricultural products, including wine." What that is saying is the areas designated as retail sales could also have a tasting room. "Free entertainment may be provided within a retail sales/tasting room indoors only." That is taking into consideration some things that have been included in liquor licenses. "The hours of operation for retail sales, including a tasting room, shall be limited to an opening time no earlier than 9:00 a.m. and a closing time no later than 9:30 p.m." Hours of operation are currently being discussed. It has always been understood by me as a professional planner that zoning allows us to say what the best locations are, what the conditions associated with that are. I do believe that putting hours of operation is okay. Depending on what happens, we might need to adjust that. In discussing this with the citizens' agricultural advisory committee, this is another area where the committee unanimously agreed that nothing needs to be open later than 9:30 here on the peninsula.

Dloski: isn't this a contentious issue in the lawsuit? If the board is going to consider adopting this on the 9th of August, is that issue going to be resolved?

Fahey: let me address the hours of operation from the perspective of Judge Maloney's opinion. In the first part of his opinion when he addressed hours of operation, he was pretty clear that despite the argument by the wineries, the liquor control commission

statute and regulations are not controlling on the hours of operation for wineries. In other words, he agreed with us that it's appropriate to set hours of operation in a zoning ordinance, and that would control any liquor control condition requirements. The place where things went upside down in the opinion were after the judge read some of the depositions that suggested there were not any consistent hours of operation in the ordinance. That is an important observation, to be clear, and we need to put hours of operation in the ordinance or in the special use permits so that it's absolutely clear to everyone what those requirements are. If we do that, I don't think from the judge's opinion that he'll have a problem with that.

Hall: my reading of the the opinion is consistent with Bill's. On the issue of preemption, the question is, does the state liquor license law and regulations preempt local ordinances? The judge said that what the state allows, the township cannot prohibit, but it can regulate.

Fahey: exactly. The way that the state regulations are written, it doesn't require that a bar be open until 10, it simply says it cannot be open after 10. That gives the township the ability to set different hours. They are not going to be preempted by the state liquor laws.

Shipman: a note on the free entertainment: is that to separate a fee-type of concert versus having someone playing guitar in the background?

Cram: that helps with the promotion. It might encourage someone to come in and sample the agricultural products and that would enhance the experience. With it being indoors, it is less likely to have impacts on surrounding neighbors.

Number six: "The Michigan Liquor Control Commission and Michigan Department of Agriculture shall control applicable licenses and compliance with said licenses consistent with the requirements of this ordinance and any special use permit granted for the retail farm processing facility."

Number seven: "Those retail farm processing facilities that hold a liquor license may sell limited food items indoors in the retail sales area to offset the effects of consuming alcohol. Food items not processed within the retail farm processing facility are limited to snacks that require minimal preparation such as cheese and crackers, dried fruit and nuts, and chocolates. No commercial kitchens shall be permitted as part of the retail farm processing facility." The discussions we've had around food have been unanimous agreement that if somebody is consuming alcohol, they should have some food. It was never the intent of the existing zoning ordinance and the winery-chateau to allow for a commercial restaurant. It's been something that's been challenging for us to achieve. The goal is to try to make it very clear what types of food would be permitted with a tasting room. I think this needs some work. I'd love to hear from you on it.

Deeren: I think this gives a good example of what you're talking about. I think it could be expanded a little bit, but it covers what we're looking for; it limits to the basic items.

Cram: you could be creative with those things as well.

Wahl: where I disagree with the retail kitchen is, you can make a lot with a microwave and that's not a retail kitchen. It's still opening up larger dinner-type options. We'll need to look into this more later.

Hornberger: commercial kitchens have never been allowed up to this point, right?

Cram: correct, but it's been spotty. The zoning ordinance specifically said that the intent of

allowing food was not that it be a commercial restaurant. The existing ordinance has a lot of gray areas. We really need to have a clear definition of what limited food items are that still allow for comfort that there is some creativity involved. I think we need to consider with the agritourism option there could be the opportunity under another section of the zoning ordinance to allow something like a farm-to-table dinner. Some of these agricultural operators might be growing more than what they're processing that they might like to present here. We want to allow for flexibility for that without opening the door to having a full commercial restaurant. This is tricky and part of the lawsuit, so we need guidance from our attorney. As far as the intent, that it is a snack, something small, different than a full meal. Does everyone feel that we're in the right direction with that, with some additional clarity?

Dloski: this would prohibit the wine tasting dinners.

Cram: it would.

Dloski: why would we want to do that? They're doing that now.

Cram: the wineries that have have special use permit approval that allow that would be able to continue to do that. I would say that some of them are doing it without the approval. It gets very confusing for the community and for us. That's why we're really getting a handle on what the actual approvals are. This conversation is the same as when we talk about retail sales. You can't say that you can sell this but not that. We have to define it so that it is clear. I do think that we want to have these agricultural operations have the ability to do some of these special things. I think because of the challenges we have with traffic, we as a community need to say what's the right number of special dinners and things like that. I think the existing zoning ordinance says it's okay to do Blossom Days or other town-wide events. So we definitely want to allow this, but as far as the day-to-day operation, we want it to be limited so that it doesn't open that door to become something else.

Rudolph: the concern is if that door gets opened too far then you become a commercial restaurant. I don't think that anybody really wants that to happen.

Deeren: this creates consistency with everyone coming new into the process.

Cram: Marty did bring up a good point. He has invested in commercially zoned property and has a restaurant; now the wineries are competing with commercially zoned properties. That's another other reason you don't want a full-blown commercial restaurant on agriculturally zoned properties.

Wunsch: something that repeatedly came up in the agricultural committee was that if a restaurant is not an agricultural use when it's not associated with the winery, then it is also not an agricultural use when it is associated with a winery. It's an accessory commercial use that we tried to allow in the old ordinance and it blew up in our faces.

Dloski: what happens when WOMP has all those special mac and cheese, all that kind of stuff. That's out the door now?

Hornberger: I think those are caterers coming out.

Dloski: okay, if I'm a winery, I'll have more than just cheese and crackers. I'll have a caterer come out.

Hornberger: I would sure hate to close down on mac and cheese.

Dloski: isn't that what we're doing?

Achorn: isn't that a community event?

Dloski: it's a WOMP event.

Cram: it would be a community-wide event. Our goal right now is to come up with a defensible zoning ordinance. That's not to say that this won't evolve and change in the future. I think there are other sections of the zoning ordinance that will accomplish some of the other things that were tried for fitting a square peg into a round hole under the winery-chateau ordinance. Guest activities should be covered under agritourism, and we need to update special events as well, so it would allow for some of these community-wide events. From my previous experience, you could apply for a special event, you could have one per month, three per calendar year. You could apply for that, do something special, have a caterer come in, feature some seasonal things. Those are not off the table. It's just not in this part of the ordinance. We need to make sure that the retail farm processing use is clearly defined.

Hornberger: what do you do about Chateau Chantal, which does wine tasting dinners?

Cram: this applies to anyone coming in new. Chateau Chantal has an existing special use permit. So the uses they were allowed to do, they would continue to be allowed to do.

Deeren: what will happen once the new ordinances are created is that we will have legal non-conforming existing wineries that will still have special uses that they can operate under. This is for anyone new coming in the door.

Cram: as long as they are compliant with their use, they can continue to do it.

Dloski: isn't this still an issue with the court? I don't believe Judge Maloney has ruled definitely. Mr. Infante has made the case that if you have an MLCC license, you can have a full-service restaurant. I don't think the courts have addressed that issue in finality.

Fahey: correct, that's still an issue that that the plaintiffs want to raise at trial. Whether or not their liquor control license gives them the right to have a restaurant.

Cram: should we not include this in this draft of the zoning ordinance?

Fahey: I think we need to nail this down. If it later happens that we're wrong, then that part of the ordinance will be preempted. But if we aren't, then we will have made the right choice and we'll have established a rule that will be enforceable. It's all going to be up to what the judge decides.

Achorn: is there any type of agricultural farming other than WOMP that this would apply to?

Cram: all of these farm processing facilities are intended to apply to all agricultural operators.

Wunsch: realistically, I couldn't see anybody other than a winery using the combined 30,000 square foot maximum processing space plus retail. We're still basically talking about how we manage wineries.

Cram: but it could. If I were growing honey crisp apples and I had a farm processing facility to make applesauce and apple pies, I could sell my applesauce and my apple pies and people could consume them inside and if we are allowing for other limited food things, I like a little sharp cheddar cheese with my apple pie, things like that. Our goal is to be equitable for all types of agricultural operations, not just specific to wineries.

Hornberger: but it says that you have to hold a liquor license.

Cram: we probably need to change that then.

Alexander: they could make hard cider. Could be a brewery, not just wineries.

Cram: I would like this to be equitable for all. I think that number seven needs some work.

Sanger: we've had a case with one of the lavender-growing operations in the retail sales area selling hot cider in the fall. Yes, we need to think outside the box. Lavender doesn't seem to fit in terms of the consumption of food.

Chown: actually it does. Lavender honey, lavender ice cream, lavender lemonade.

Cram: would you agree that if it's legal, we should allow for some food items, particularly associated with the consumption of alcohol? And if we allow it for those farm processing facilities that have alcohol, that we would allow it for other processors to make it fair?

Alexander: they are all retail farm processing facilities. We just say, these farm processing retail facilities may sell those food items, and leave the liquor license out of it.

Board discussion

Rudolph: Maybe it is important to identify those places specifically that require a liquor license because they are a more intensive use than just providing applesauce or apple pie.

Cram: seven needs work. I'm going to keep going. Number two: "Limitations on Sources of Produce: (a) Processing is limited to raw produce. For example, an apple may be processed into apple juice or applesauce." This is all very similar to what we looked at for the wholesale so it carries through. Number three is where things change and there is a larger acreage requirement. 3(a): "A total of 50 acres of contiguous land is required to be devoted to the operation of a retail farm processing facility with indoor retail sales." This is consistent with the existing winery-chateau with regard to the minimum acreage requirements. "The 50 acres shall be located within Peninsula Township and shall be owned, leased, or cooperatively managed." Again, we have the same type of things that we talked about and wholesale to clarify that. "The parcel containing the retail farm processing facility shall be a minimum of 20 acres." That is similar with the frontage requirements. "The remaining 30-acre parcel associated with a specific retail farm processing facility necessary to meet the minimum 50-acre requirement shall be in active crop production." We would allow it to be separated by a road as long as it met that minimum. "There shall be no more than one single-family dwelling on the minimum 20-acre parcel containing the retail farm processing facility and no more than one single-family dwelling on the remaining required 30 acres. None of the 50 acres shall be used to satisfy acreage density or open space." That is similar to wholesale. Same thing about registering the leases with the Grand Traverse County Register of Deeds, so those comments would carry forward. Hopefully my math is better. Randy?

Hall: No. 17 acres should be 17 and ½.

Cram: I know. I didn't like that .5. I wanted to stick with whole numbers.

Hall: I get it.

Cram: I'll do some better math. Okay, setbacks then. Front yard setbacks remain the same at 50. This is where we talked about the intensity of the use. Now we have a farm processing facility that could have up to 30,000 square feet depending on how much acreage is consumed. You have retail now so the public is coming. To mitigate the impacts of that retail, the 200 feet is increased to 350 feet from adjacent property lines.

Dloski: that is really taking a lot property from these owners. Why do you need 350 feet?

Cram: because there could be a residence built on that adjacent agricultural property. This

is to consider the required setbacks from residential uses.

Dloski: that's just a humongous amount of land for a setback.

Deeren: it can be used for crops too.

Hornberger: crops can't be that close to where people are.

Cram: they can here because this is all indoors. It wouldn't effect spraying or anything.

Sanger: I think the key is it's a structure setback. That's the issue we've had, a contention between structures. A structure right now and a winery can be 15 feet from the property line, and we've had issues.

Wahl: this is a use by right.

Cram: no, this is a SUP.

Wahl: not all properties will have an buildable site.

Cram: what if we included language that would allow for the setback to be reduced because there might be situations where you're adjacent to agriculture. That setback could be reduced if there are adequate buffers. Then the planning commission could review and approve a lesser buffer. I don't think we would want to go any less than the 200 feet, which we've already established in the existing ordinance. So you could go from 350 to say 200 if you had some exceptions.

Dloski: that's a good compromise.

Sanger: that's a slippery slope that got us to where we are tonight. My suggestion is, this is a zoning board of appeals manner. The person wishing to apply for a SUP can go to the ZBA and present their case. Keep in mind that the ZBA ruling can be appealed to the circuit court for proper process. And I'm more comfortable with that as a relief valve than trying to put more language on results in a very convoluted ordinance.

Achorn: I agree.

Hornberger: I don't think you can build into this every single contingency or scenario. I think David's right.

Cram: because this is a SUP, it's for a retail farm processing, so everything's going to be indoors. So the things that we get complaints about, the outdoor uses, are going to be less likely for the indoor situation. Are you comfortable then with the 200 foot setback here? I'm guessing Larry's going to have a really big problem when we get to the next level of the 80 acres and it's a 500-foot setback. And so you know, maybe we keep this one at the 200 and then 350 for the next one. There could be that ability to go for a variance.

Achorn: what if the neighbor is an agricultural neighbor? What happens if tomorrow it's a subdivision? You have to protect the future possible use of your neighbor.

Sanger: Underwood Farms is a good example. When it was developed, we made them adhere to a 200-foot setback for the residential buildings. Today we have a winery that is so close. Basically the only limitation we have in that winery today has to do with the structure setbacks of 15 feet side and rear, in the front. So I'd be very careful here. We need to do some studying. Sound travels; it depends on topography. In the case of what I just mentioned, we're dealing with an uphill, and of course the noise tends to follow the wind. So I would leave it at 350. I wouldn't try to solve the problem tonight.

Cram: the other thing that I want to throw out there because, again, I am pro agriculture: instead of putting the onus only on agricultural land to provide the setbacks, I think we need to look at both sides. If a new subdivision were to go in, I think we should also put

the onus on that developer. If we look at setbacks right now, our PUD setback, there's this 30-foot required setback. Maybe that needs to be increased to consider if you are proposing a new subdivision adjacent to agricultural land, you need to think about those buffers. So that it's equitable for both an agricultural operator and a residential developer.

Deeren: what's happened in the past with the agricultural pieces that have been developed is that the planning commission has given the lesser setbacks to residential because they're condensing their property. The buffering has to be both ways.

Chown: that's more equity, more parity in this community.

Cram: in Larimer County, we made those changes. Whatever use is there first, the other person needs to consider and it needs to be equitable. We can stick with the 350 right now with the comment that some think it is too much and we can look at it.

Then, on to Farm Processing Facility Size. All of those things remain the same as the existing zoning ordinance with regard to the 250 square feet per acre. "The retail sales space may be a separate room within a retail farm processing facility and shall not exceed the 1,500 square feet in area. A tasting room shall be included in the allowable square footage for the retail sales." That is a clarification that says you can have this footprint for retail and that's where the tasting room needs to be as well. Then the pre-existing buildings are the same. That vested interest, parking, lighting, signs, access, data, and records. Then this is where we get into the approval process where I really tried to focus on what is the process. First you come in and you get approval of your special use permit. Then you do your site plan, and then you do your land use permit. Providing enough detail so that it's clear, you know what process you're going to go through, but we don't get into the nitty gritty of a site plan drawn to scale, those types of things. I'm open to any feedback on approval process.

Sanger: is this all going to be done administratively?

Cram: the site plan would be administrative. The special use permit, the use of the land would come before the planning commission. They would make a recommendation to the township board, and then the planning director would make sure that the site plan is consistent with the special use permit approval. This is one area I have found there seems to be a lot missing. Because if you think about it, when a developer comes forward and they're wanting to get approval of a special use, they don't necessarily want to invest all of the time to have a final grading plan, final construction plans, because they don't know if the use is going to be approved. So a lot of times the planning commission and the township board approves this thing that we have enough evidence to show, yes, it meets the standard and is going to be a compatible use. But we don't have the final details. Then you come to get the land use permit and things are different. We really need to tighten up that site plan review, especially because we don't control our building permits. We need to make sure that the Grand Traverse County Building Department is approving construction plans that match the site plan, that match the land use permit. That's something we're working internally to clean up.

Dloski: the planning commission still needs to see a site plan.

Cram: yes. For the special use permit, there will be a site plan that shows everything. I am going to make sure that site plan has all the uses labeled. The site plan should be pretty well vetted. That floor plans are labeled with uses, that we have a preliminary drainage

plan, that we know that things are going to work. The final site plan needs to match the conditions of approval from the special use permit. And that's what the building permit is issued on.

Page 26. This is the Retail Farm Processing Facility with Outdoor Seating. The intent is consistent; the retail sales is consistent. Number two, this gets into the retail sales if you have an outdoor seating area: "The consumption of processed products on premises is permitted indoors and within an approved and clearly defined outdoor seating area." This means I can come into the retail facility, buy a glass of apple juice and a slice of apple pie, and go and sit outside and I can consume it. "The hours of operation for an approved outdoor seating area shall be limited to an opening time no earlier than 9:00 a.m. and a closing time 8:00 p.m." I'm a little bit conflicted with this because it sure is nice to drink a glass of apple juice and watch the sunset. But thinking about when we get the noise complaints, we need to come up with something reasonable. What are your thoughts? Should the hours of operation for the outdoor be the same as indoor or different?

Rudolph: I was a little bit hesitant about the eight o'clock because during the summer hours you have the sun till about ten o'clock at night. If you're not allowing any kind of entertainment outside...

Cram: entertainment is indoors for both of the retail farm processing facilities.

Rudolph: so you have someone buying something inside and going outside to enjoy it. I don't know that it makes sense to have different hours.

Chown: I agree it makes sense to let it all go till 9:30.

Cram: And it also goes back to that we have to be consistent.

Board discussion

Cram: I think that the two differences are now we have indoor retail, but we are allowing an outdoor seating area. We're providing consistency between the two. The limitations on the sources of produce are the same; we're looking for that 70/30. There's the ability if there's a bad crop condition. The parcel requirements change here again; this goes back to the intensity of the use. Now we have a retail facility and we have some outdoor seating and so allowing for larger areas so that we can have greater setbacks. Whether the proposed setback is good or not, I'm open to suggestion. For this particular situation that was discussed at the citizens' agricultural advisory committee, they came up with an 80-acre recommendation. They thought it allowed for greater separation. Again, it could be leased. The facility needs to be on 20 of the 80 acres; the remaining 60 need to be in crop production. We would allow that 80 acres to be divided by a road. You would have 15 acres in active crop production on the parcel with the farm processing, 37 on the other. The goal is to have that minimum of 65 percent in crop production. Moving down to setbacks, you can see that jumps up to 500 feet.

Hornberger: a total of 80 contiguous land, and then you're talking about a parcel containing 20 acres.

Cram: that has been consistent throughout. If we go back to the wholesale farm processing as a use by right, we said that you had to have 40 acres. And the 40 acres should be should be contiguous, but you didn't have to own. What we said is, let's say I own 20 and I'm leasing 20, I'm going to put the actual facility, the footprint, on a minimum of 20 acres. In order to meet the minimum acreage requirements and have the crop

production, you have to have additional acreage. We're trying to tie the use to the land. We felt like 20 acres could accommodate a larger building.

Dloski: if I have 40 acres retail, and I want to have a couple of outdoor seats, I have to have another 40 acres?

Cram: in order to have retail, you have to have 50 acres.

Dloski: so I need another 30 acres just to have four outdoor seats?

Cram: it's not four.

Dloski: what if I wanted four?

Cram: if you want outdoor seating then you would be required to apply for a special use permit for a retail farm processing facility with outdoor seating.

Dloski: and I'd have to have 80 acres.

Cram: yes.

Dloski: I don't get that. Plus a 500-foot setback on the property. I don't see that being feasible for anybody in this township.

Cram: the recommendation when I brought it forward to the citizens' agricultural advisory committee was 50 acres, and the 80-acre minimum came up because of the intensity of the use and wanting to have a certain percentage of acreage to be able to mitigate the negative impacts from the outdoor use. It is open to discussion.

Dloski: if you want to have 10 outdoor seats, you have to have 30 more acres?

Achorn: we're not talking about that level of participation. We're talking about the larger winery-type operation.

Dloski: it's covering any outdoor seating, 80 acres, and you need a 500-foot setback.

Sanger: but the facility itself is still limited to 20 acres. "Contiguous" is misleading. Each of these three sections of the ordinance we're talking about uses this word "contiguous." My interpretation is that means the whole project, but it does that broken up into 20-acre pieces. Basically, when we talked about this outdoor, it could be applicable to 20 whether it's on the retail indoor only or the retail outdoor allowed. When we're talking about setbacks then to allow something to happen outside on 20 acres.

Cram: contiguous means that they touch by a point; there's a property line that we can look at the the minimum acreage as a whole. They don't have to be owned; they don't have to be one parcel. It can be multiple. I do think, Dave, when you present it that way, it does raise an issue because if this facility is on 20 acres, it would be hard to meet a 500-foot setback.

Rudolph: you could not. In fact, if you had 40 acres, I don't think you could do it. I'm trying to remember why we came to the 80 acres. I think the concern was generated by the number of complaints the township got because of noise with the outdoor guests at wineries. We were thinking new facilities on a bigger parcel of land would mitigate the possibility that they're going to be interfering with their neighbors.

Dloski: the noise that the wineries are generating now is illegal. They shouldn't be doing that.

Wunsch: what you're seeing is the emergence of a much more conservative ordinance because, a, we have these issues with enforcement. The township will try to enforce these rules that everybody's agreed to in one area and then we'll have a slip somewhere else and so on. I would agree with you that the new ordinance is much more restrictive than

the old ordinance. It pains me that this is the direction we're moving in. We've gone from a scalpel to a tourniquet as our policy tool because of the ongoing legal dispute. We have the ongoing nuisance issues with outdoor tasting room cases that we're up against now. After the litigation, there's an ongoing risk that we will face lobbying at the state levels to have rules changed that will further erode our ability to control things like outdoor uses. Sighting a winery, or a farm processing facility with outdoor uses, is clearly within the township's purview to do. But we may face challenges in the future on whether we can limit the intensity of that outdoor use. The sighting is relatively low risk for us from a policy standpoint. As we try to control what happens in that outdoor space to mitigate nuisance, our control going forward becomes more tenuous. There's a risk that there will be lobbying at the MLCC or with the state legislature to preempt conditions that have been agreed to during the approval process.

Chown: I would also just say, I can't imagine anyone would build a retail farm processing facility with outdoor seating and only want four seats.

Dloski: I'm saying that just to make a point.

Chown: really, the inclination will always be for more. We're here because the wineries want the maximum usage they can get.

Wahl: as soon as we approve four, then we're stuck with having approved any outdoor seating. That's the issue.

Chown: that is the lesson we have learned from the lawsuit, and it is a sad lesson.

Dloski: what is the lesson?

Sanger: it's called "creep."

Chown: we let the camel's nose under the tent, and now we have a camel in the tent.

Sanger: the enforcement is the problem because it's very difficult. First of all, the county noise ordinance was abolished. The only remedy we have is the township noise ordinance, and who is going to enforce a noise call at 10 o'clock at night? The answer is the sheriff. It gets out of control quickly and there is no practical means of determining the violation unless you want to put some decibel levels in and get very technical.

Deeren: those are not admissible in court.

Sanger: right. We have to think ahead. We thought at one time an evergreen buffer would work. It doesn't. We have to consider worst case. We know that noise attenuates over space, so you need to put enough space in. To do the enforcement, it's getting out the tape measure.

Dloski: my concern is you're eliminating outdoor seating. This ordinance in this format with 80 acres will eliminate outdoor seating. I don't think there's anything wrong with going to a winery, sitting outside, and having a glass of wine. No music, no entertainment.

Hornberger: but it gets noisy.

Dloski: living on center road is noisy.

Chown: you're saying that because you think there are not going to be enough 80-acre parcels?

Dloski: I think that's one case. Also, it's financially a deal killer to get 80 acres to have outdoor seating.

Achorn: this is the only way to mitigate the noise and nuisances.

Wunsch: the real estate acquisition cost is not your barrier to building one of these types

of facilities. It would represent 15 to 20 percent of the overall cost.

Dloski: have we done inventory for how many 80-acre parcels would be available for this?

Wunsch: I believe there are about 30 that are not developed.

Deeren: The thought process was, you have a more intense use, so you need to have larger acreage so that you can have a greater setback to mitigate that negative impact. I do see some challenges with the setback component when you don't have to own all of the 40 or 50 acres. When a land use permit comes in or a site plan, we measure setbacks to the property line. And so we might be seeing these applications come in where there are property lines in the middle of their application that technically we have to measure setbacks to. I do believe we need to apply greater setbacks, but we're going to have to have flexibility of where they're measured from. It wouldn't be the same if you came in for a single-family residence. With the farm processing facility, you don't have to own it all and there will be multiple parcels. We will have to think about where setbacks are measured from.

Board discussion

Cram: I think it's something that we need to address. I believe we need to have larger acreage to support mitigating the negative impacts.

Chown: one last thing. Is there a saturation point regarding how many farm processing establishments with outdoor seating this peninsula can handle given our geography?

Wunsch: we're not able to regulate that.

Shipman: this is land use planning. This is what we're tasked with doing. Our job, to me, isn't to make sure that every one of the potential 80-acre parcel options can be developed into a big facility. For those who want to, these are the rules.

Deeren: there are a couple of options; it's not like they're locked into a box and this is the only option you have.

Cram: the next section I want to take you to is on page number 28, number seven, Outdoor Seating Area Size. I did a bit of research. "The outdoor seating area shall be limited to 750 square feet." That is a reasonable size for a seating capacity of 50 persons. 50 persons is consistent with what other regional areas have allowed. This is something that we legally can regulate. I wanted to know what your thoughts are on the capacity. I believe that square footage allows it. "The limits of outdoor seating area shall be clearly defined with a fence and or combination of fencing and landscaping." It's important that they have to define where it is.

Shipman: we have wineries out here that have an elevated deck; that's clearly defined. Would that option be eliminated?

Cram: no, a deck with railing would be clearly defined.

Wahl: the total capacity of outside should be considered with maximum capacity in case people outside suddenly, because of something like rain, have to move inside.

Cram: we would likely need to do that. The maximum occupancy for the entire thing would be set by that 1,500 square feet of retail. That maximum occupancy can either be indoors or out. We're saying no more than 50 for the outdoors, going back to the noise.

Achorn: doesn't that connect with the parking limitations also?

Cram: yes. Parking will be based on the ordinance distinctions for the warehousing requirement, if there's an office space, retail space. You calculate one per 150 square feet

or one per 75 square feet. You come up with what the total required parking is based on the whole thing. The rest of the changes that you see are really just redlining and removing winery- chateau in its entirety. We'll be going through this to make sure there is consistency with all three of the processes as far as spelling things out, parentheses, all of the things that are duplicative will be consistent.

Sanger: each of these sections, in terms of enforcement, picks up language that at this point is 20 years old. Page 29, approval process number 14. It put the town board as the authority that's going to pull the SUP. I want to be sure that our legal counsel has looked at this. I thought this was unusual when it was done back in 2002. Typical enforcement would involve the issue of a citation and, if it's necessary, to pull the permit and move towards an injunction if we can't get compliance.

Cram: Bill and I have talked about it and he is looking at it.

Fahey: I'm going to take another look at it, but it's not bad; it's in pretty good shape.

Cram: I appreciate your time and attention. Your comments are very helpful.

Chown: we're going to do public comment now and then turn off everything to go into closed session.

9. Citizen Comments

Nancy Heller, 3091 Blue Water Road: I still have concerns about parts of this ordinance that are left up to individual interpretation and creating non-conforming situations. I attend the zoning board of appeals meetings. It's a challenge to meet the six basic conditions. You're giving the impression that they can do this and that, yes, they can. But not necessarily successfully, and at great cost to the applicant.

Town board:

Wunsch moved to enter closed session pursuant to MCL 15.268(1)(h) to discuss a confidential written legal opinion from the township attorney on proposed amendments to the zoning ordinance with a second by Achorn.

Roll call vote: yes – Wall, Rudolph, Chown, Wunsch, Achorn, Sanger Passed unan

Planning commission:

Hornberger moved to join the town board in closed session with a second by Alexander.

Roll call vote: yes – Alexander, Dloski, Hornberger, Wahl, Shipman Passed unan

Wahl moved to come out of closed session with support by Achorn. Motion approved by consensus

Dloski moved to come out of closed session with support by Hornberger. Motion approved by consensus

10. Board Comments: none

11. Adjournment:

Wahl moved to adjourn the meeting with support from Chown. Motion approved by consensus

Hornberger moved to adjourn the meeting with support from Alexander. Motion approved by consensus

Meeting adjourned at 11:00 p.m.